

STATE OF SOUTH CAROLINA  
IN THE SUPREME COURT

---

Certiorari to Kershaw County  
Honorable Clifton Newman, Circuit Court Judge

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S.C. SUPREME COURT

DERRICK MCDONALD,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO 2019-000317

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APPENDIX

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1     **A**     Oh, I don't know for sure.

2     **Q**     But you did think he was injured the day after the  
3             death, didn't you?

4     **A**     That was the -- that was the date that the person  
5             said she saw him injured.

6     **Q**     All right. So you were already looking for him,  
7             right?

8     **A**     I went to the Sonic to see Ms. Cecile Trapp and Mrs.  
9             Pat.

10    **Q**     You had in your possession a license check on him,  
11            didn't you?

12    **A**     I did.

13    **Q**     And you had been provided information by Ms. Davy  
14            that there were some difficulties between them,  
15            right?

16    **A**     I had.

17    **Q**     And when you got there, you were reported that he was  
18            scratched and had an ankle injury, right?

19    **A**     Was scratched under the eye and had an ankle injury.  
20            Yes, sir.

21    **Q**     All right. And you then heard for the first time  
22            about Mr. McDonald and Mr. Cannon, didn't you?

23    **A**     Except for the part about the shoes that Mr. Cannon  
24            supposedly had that looked like some that Josh had  
25            stolen.

1 Q Okay. Well, did you ever confirm whether that was  
2 true or not?

3 A No, I did not. I couldn't ever confirm that.

4 Q But you certainly hadn't heard Mr. McDonald's name,  
5 had you?

6 A I had not heard Mr. McDonald's name at that time.

7 Q All right. And you were provided with some  
8 information up there that someone had seen them the  
9 night of the death together at the Sonic earlier in  
10 the evening, right?

11 A That's correct.

12 Q And you heard that Mr. Cannon had a ski mask on,  
13 right?

14 A Correct.

15 Q And so once you heard that, you decided to go look  
16 for Mr. McDonald and Mr. Cannon, didn't you?

17 A Correct.

18 Q And this is on -- what date was all this?

19 A This was on the 15th.

20 Q The 15th. Friday, the 15th of December. Now, how  
21 long was that after you had found the body of Mr.  
22 Zoch? How many hours or days had it been?

23 A We found -- Mr. Zoch's body was found somewhere  
24 around 6:30 on the 13th.

25 Q Okay. And so you're at the Sonic about what? 36



1           hours later? Something like that?

2   **A**     I am at the Sonic on Friday morning of the 15th.

3   **Q**     Okay. And you immediately went out and looked for  
4           Mr. McDonald and Mr. Cannon, didn't you; as soon as  
5           you heard this story about that they were playing  
6           around and there was a ski mask involved, right?

7   **A**     That's correct.

8   **Q**     And you had already called Richland County, by the  
9           way, hadn't you, on Mr. Whitehead; called the  
10          Sheriff's Department of Richland County about him?

11   **A**     No.

12   **Q**     You hadn't called them to have them pick him up on  
13          the driving under suspension?

14   **A**     Not until we run across him beside the road on Boney  
15          Road.

16   **Q**     Okay. You didn't ask them to set a roadblock up for  
17          him?

18   **A**     Absolutely not.

19   **Q**     Do you know whether they did that or not?

20   **A**     I can't answer for Richland County.

21   **Q**     Do you have in your notes what time you called  
22          Richland County, the Richland County Sheriff's  
23          Department?

24   **A**     I don't believe I do.

25   **Q**     Okay. Now, sir, are you aware that Mr. Whitehead had

1 a restricted license and not a suspended license?

2 A No, I did not.

3 Q But he was picked up, wasn't he?

4 A By Richland County. Yes, sir.

5 Q And he was put in jail?

6 A Yes, sir.

7 Q And when you questioned him, he told you he doesn't  
8 know he anything about this, didn't he?

9 A He said, "I don't know a damned thing about it."

10 Q He said he knew nothing, didn't he?

11 A That's what he said.

12 Q All right. Did you tell him at that time that this  
13 was going to be a death penalty case and he'd better  
14 talk to you?

15 A I did not.

16 Q You questioned him for some time though, didn't you?

17 A Absolutely not.

18 Q You didn't question him while he was sitting there on  
19 the side of the road?

20 A There was very little discussion.

21 Q But you were looking for him so you could interview  
22 him, weren't you?

23 A Yeah. Well, yes, sir.

24 Q Well, when you got him stopped over, you didn't ask  
25 him anything?

1     **A**     He would not cooperate.

2     **Q**     After he said he doesn't know anything about it, what

3             was your next question to him?

4     **A**     I don't remember what my next question was.

5     **Q**     Okay. You then went over to Mr. McDonald's house,

6             right?

7     **A**     I did.

8     **Q**     And he wasn't there, right?

9     **A**     He was not.

10    **Q**     You left a card?

11    **A**     I did.

12    **Q**     And you were contacted, right? By Mr. McDonald,

13             right?

14    **A**     Later on that evening.

15    **Q**     Okay. And he asked you what this was about, didn't

16             he?

17    **A**     Actually, he didn't call me. His mother did.

18    **Q**     His mom called you. Well, you had tried to talk to

19             him before his mom called you, hadn't you?

20    **A**     Repeat that? I couldn't hear you.

21    **Q**     I'm sorry. You had tried to speak to Mr. McDonald

22             before you were contacted by his mother, right?

23    **A**     That's correct. We went back to his house and seen

24             him at his residence.

25    **Q**     And he told you that he wanted his mom with him

1           before he answered any questions or talked to y'all,  
2           right?

3   **A**    At that time he answered a few questions. I told him  
4           what it was about. And he stated that he would like  
5           to have his mother present before he answered any  
6           more questions.

7   **Q**    Okay. And he had told you that he had been at the  
8           Sonic. He told you that, right? The night of the  
9           death?

10   **A**    That's correct.

11   **Q**    And then he told you he'd spent the night with who?

12   **A**    Chris Rust.

13   **Q**    And he told you that?

14   **A**    And he said that he spent an hour in Chris Rust's  
15           car. He got in Chris Rust's car around 10:30 and  
16           slept 'til 11:30.

17   **Q**    Did you inform him that he was a suspect in this  
18           case?

19   **A**    I don't remember if I actually used the word  
20           "suspect" or not.

21   **Q**    Investigator Catoe, you learned from your  
22           investigation that there had been a lot of trouble  
23           over at Mr. Zoch and Ms. Davy's house in the past,  
24           right?

25   **A**    At this present time I didn't know that there was a

1 lot of trouble, no. Not at this point in the  
2 investigation. I just knew that there had been some  
3 arguments.

4 **Q** Who is Sergeant Craig Hudson?

5 **A** He is a sergeant with the Sheriff's Office.

6 **Q** Okay. Have you ever looked at the information he  
7 gathered?

8 **A** I don't -- I don't know. What have you got? I don't  
9 ...

10 **Q** Are you familiar with this?

11 **A** Yes. I've seen that.

12 **Q** Do you see the two that are checked there?

13 **A** Yes, I do.

14 **Q** Are you familiar with that information contained in  
15 there?

16 **MR. MEADORS:** Your Honor, may I ask the  
17 investigator if he prepared this document?

18 **A** I did not prepare this document, and I don't know  
19 when the investigator that did that, I don't know  
20 when he gathered this information. It doesn't have a  
21 date on it.

22 **THE COURT:** He just asked you if you knew  
23 anything about the information, not the document.

24 **MR. WHITLARK:** Which he answered yes to that,  
25 Your Honor.

1                   **THE COURT:** No, he didn't.

2   **A**    I didn't know anything about this information on that  
3           Friday.

4   **Q**    Are you familiar --

5   **A**    I don't know what time this information was gathered  
6           or what date.

7   **Q**    Are you familiar with it now?

8   **A**    I'm looking at it now. Yes.

9   **Q**    Would you mind reading to the jury the two that are  
10          checked? This is a neighborhood canvas of the  
11          neighborhood of the Zochs, right?

12               **THE COURT:** Sir, that's the same evidence that  
13               I've ruled on that another officer gathered, and he  
14               just can't read from that --

15               **MR. WHITLARK:** All right. I understand. I'll  
16               wait.

17               **THE COURT:** He can't just read from that  
18               officer's notes.

19   **Q**    What is the man's name that collected this  
20           information?

21   **A**    It is typed at the top Sergeant Craig Hudson.

22   **Q**    Sergeant Craig Hudson. Were you aware of this --  
23           other than trouble at their house, other than what's  
24           in this report, trouble at the Zoch/Davy house?

25   **A**    Only what Melissa had told me.

1 Q Okay. Well, they had a volatile relationship, didn't  
2 they, based on what you learned?

3 A I know that they had some problems.

4 Q All right. He had gotten physical with her, hadn't  
5 he? Mr. Zoch?

6 A That's what I was told.

7 Q And she wasn't there. She lived there, didn't she?

8 A She did live there.

9 Q Where they found Mr. Zoch. Now, she wasn't there  
10 that night, was she?

11 A It's my understanding through the course of the  
12 investigation that she and Mr. Zoch had been apart  
13 for a few days.

14 Q Who was she with the night of the death?

15 A She was with, I believe it was Zack Waltemath and  
16 Molly Waltemath.

17 Q All right now. And that's her new boyfriend, right?

18 A That's my understanding at this time.

19 Q So she was over at her new boyfriend's house the  
20 night that Mr. Zoch was killed or the morning Mr.  
21 Zoch was killed?

22 A She was at Molly's and Zack's grandparents' house  
23 that night. Yes, sir.

24 Q Okay. Have you ever checked the records to see what  
25 time Ms. Davy called 911?

1    **A**    I don't know if I've looked at those records or not.  
2           I'd have to see them.

3    **Q**    Okay. Investigator Catoe, once you -- let's go back  
4           to the Sonic. Once you left the Sonic looking for  
5           McDonald and looking for Cannon, right? This was  
6           what? Late in the afternoon on the 15th, correct?

7    **A**    The first time that I went to Mr. McDonald's house  
8           was somewhere -- somewhere around 2:00. That's the  
9           first time.

10   **Q**    All right. The first time you made contact with him  
11           was late in the afternoon, right?

12   **A**    If you consider that late in the afternoon.

13   **Q**    What time did you speak to Mr. Cannon that day the  
14           first time you spoke to him?

15   **A**    It was probably somewhere around 6:30, because I  
16           believe I advised him of his Miranda rights at 6:45.

17   **Q**    So you were just going to go there and arrest him at  
18           6:30 because he was with Mr. Whitehead that night?

19   **A**    I did not have a warrant on Mr. Cannon.

20   **Q**    Well, you went over there and advised him of his  
21           Miranda rights, didn't you?

22   **A**    I did.

23   **Q**    Were you trying to scare him?

24   **A**    No. I wanted to make sure that he understood his  
25           rights.



1 Q You told him, I'm investigating a murder?

2 A I told him I was investigating the death of Joshua  
3 Zoch.

4 Q And I'm going to give you your Miranda rights?

5 A That's correct.

6 Q Now, he's 17 years old?

7 A I reckon that was his age at that time. It's been --  
8 it's been a while.

9 Q Did you tell him at that time it's going to be a  
10 death penalty trial?

11 A No, I did not.

12 Q He told you that he didn't really know anything about  
13 this, didn't he?

14 A I'll refer to my notes. Do you want to know  
15 everything he told me?

16 **THE COURT:** Just answer the question.

17 Q I want you to answer my question if you don't mind.

18 A He give me some information. Yes, he did.

19 Q Yeah. That's after you went over there and told  
20 them, I'm investigating a murder, I'm going to give  
21 you your Miranda rights, and I want some help, I want  
22 you to be a witness against Chris Whitehead. Didn't  
23 you tell him those three things?

24 A That is not what I told him. I told him we was  
25 investigating the death of Joshua Zoch.

1 Q Investigator Catoe, did you ever tell Mr. Cannon, I  
2 want you to be a witness against Mr. Whitehead?

3 A Not that I remember.

4 Q So how long were you over at his house that evening?  
5 Mr. Cannon's house?

6 A We got there somewhere, somewhere around 6:30 to  
7 6:45. And we must have been there at least 'til  
8 6:45 -- I mean 'til 9:45 or somewhere in that  
9 neighborhood. I mean, it was -- it was a good while.

10 Q And when you were talking to him, he told you, at  
11 first he just says, look, I don't know anything about  
12 it, didn't he?

13 A No. He give me some information.

14 Q Well, he said he had seen Whitehead that night,  
15 right?

16 A Yes. He said he left Sonic with Chris and he dropped  
17 him off at Melvin's.

18 Q All right. And he told you he had gone to Wal-Mart  
19 with Mrs. McDonald, Derrick McDonald and Mr.  
20 Whitehead, right?

21 **MR. MEADORS:** And, Your Honor, for the record, I  
22 assume they're waiving any previous objections to the  
23 matters we discussed earlier with these questions.  
24 I'd like the record to reflect that.

25 A In his first statement to us, I don't see anything in

1 my notes about going to McDonald's.

2 **MR. KENDRICK:** Your Honor, before we go forward,  
3 I just wasn't sure. When he says we are waiving, I'm  
4 not involved in this cross yet.

5 **MR. MEADORS:** Any questions by Mr. Whitlark  
6 which bring up some other matters we've agreed to, if  
7 they don't object, I'm assuming there's no objection.

8 **MR. REUWER:** I don't understand his question,  
9 Your Honor, I mean, his statement, Your Honor, the  
10 solicitor's statement, Your Honor.

11 **THE COURT:** Well, go ahead, Mr. Whitlark.

12 **Q** As part of your investigation that night you came  
13 into the possession of some information that Cannon,  
14 Whitehead and Mr. McDonald and his mom had gone to  
15 the Wal-Mart, hadn't you?

16 **A** Through the course of the investigation that night,  
17 yes.

18 **Q** Okay. So you knew they had gone up there, right?  
19 Right?

20 **A** Correct.

21 **Q** And you also knew that you didn't have any  
22 fingerprints at the scene of this crime, right?

23 **A** I did not.

24 **Q** And you had one fingertip of a glove, a rubber glove?

25 **A** Correct.

1 Q And so at the end of this and some of the information  
2 contained in the statements you get later on, they  
3 went to the Wal-Mart to buy some rubber gloves,  
4 right?

5 A That's correct.

6 Q But they never told you that, did they, sir? Neither  
7 one of these young men, Cannon or McDonald, has ever  
8 told you they bought rubber gloves at that Wal-Mart,  
9 have they?

10 A They most certainly did. In their statements.

11 Q You wrote the statements, didn't you?

12 A In their own words.

13 Q So you did write it?

14 A I wrote it in their own words.

15 Q And contained within the statement coincidentally  
16 they went and bought at Wal-Mart some gloves, rubber  
17 gloves, right?

18 A That's correct.

19 Q And someone had put a towel on the decedent's head,  
20 right? Do you have that information?

21 A I don't understand what that's got to do with the  
22 Wal-Mart. You've lost me.

23 Q I'm talking to you about the information, the  
24 evidence you gathered that night?

25 A Okay.

1 Q All right. You found out, they told you they'd gone  
2 to Wal-Mart. You had this glove tip, right?

3 A That's correct.

4 Q And so by the time you finished writing their  
5 statements for them, right, Investigator Catoe, they  
6 had gone to Wal-Mart to buy rubber gloves? That's  
7 what you wrote in there, isn't it?

8 A That's correct.

9 Q And you also wrote that a bloody towel that you had  
10 found was placed upon the head of the decedent,  
11 right, by someone?

12 A Okay.

13 Q And you also said that someone put some chicken on  
14 his head as a compress, right?

15 A That's what they said.

16 Q You wrote that in there in your handwriting, didn't  
17 you, sir?

18 A In their own words.

19 Q So, they told you stuff that neatly fit right into  
20 what the evidence was you had gathered, didn't they?

21 A They told me the truth or what I believe to be the  
22 truth.

23 Q You told them about 20 times each that night that  
24 they weren't telling you the truth, didn't you?

25 A I -- I don't remember.

1 Q You told them you needed a witness against Whitehead,  
2 didn't you?

3 A I don't remember telling them that either.

4 Q Did you -- do you remember telling them, do you want  
5 to be a witness or a defendant in a death penalty  
6 trial? Do you remember telling them that?

7 A No, I don't.

8 Q Do you remember Derrick McDonald telling you, I don't  
9 want to talk to anybody without a lawyer?

10 A No, he did not.

11 Q Do you remember his mother telling you that I'm going  
12 to get a lawyer for you, son, when you were putting  
13 him in that truck?

14 A She was talking to him, not to me.

15 Q You heard her say it though, didn't you?

16 A I heard her say it.

17 Q Investigator Catoe, you've done no further  
18 investigation on anyone else in this case except  
19 these young men, have you?

20 A We talked to several people.

21 Q Did you go get a list of people that Mr. Zoch had  
22 informed on to the police?

23 A I don't even know that Richland County would have  
24 provided me with that.

25 Q Did you inquire into it about who he had recently

1 informed on?

2 **A** No, I did not.

3 **Q** Well, being a professional Investigator, sir, that  
4 certainly would be something you'd want to look at if  
5 the informant turns up dead, right?

6 **A** Unless you've already got the people in jail that did  
7 it.

8 **Q** 36 hours after his death you had this crime solved,  
9 didn't you?

10 **A** I did.

11 **Q** You didn't look anywhere else? You're not familiar  
12 with the information we've been talking about, not  
13 much of it this morning, right?

14 **A** I didn't have to look anywhere else. I had what I  
15 needed.

16 **Q** Derrick McDonald told you he didn't want to discuss  
17 anything with you unless his mom was with him, right?  
18 You do admit that, right?

19 **A** Repeat that, please?

20 **Q** Do you admit that Derrick McDonald told you, I don't  
21 want to talk with you unless my mom is present?

22 **A** He said, "I don't want to talk any more until my  
23 mother is present."

24 **Q** And this is after he's told you everything that he  
25 did that night, where he spent the night and where he

1           was. He told you he was with them up at the Sonic,  
2           right?

3   **A**   Where he slept in the car and was at the Sonic; yes,  
4           sir.

5   **Q**   What Mr. Cannon told you, he told you he had no  
6           involvement in this, didn't he, at first? Mr.  
7           Cannon?

8   **A**   When mr. Cannon gave the first statement he just kind  
9           of gave some details; and, yeah, he didn't -- he  
10          didn't confess in the first statement.

11   **Q**   Do you have your notes from the interview of Mr.  
12          Cannon?

13   **A**   The first one or the second one? His first statement  
14          to me?

15   **Q**   Before he gives you the information you're searching  
16          for, do you have those notes?

17   **A**   I've got both sets of notes.

18   **Q**   All right. Now, you wrote in very small letters in  
19          your notes, did you not, sir: "Got him outside away  
20          from his parents", right?

21   **A**   That is not what's in my notes. Do you want me to  
22          read you what's in my notes?

23   **Q**   Do you mind if I take a look for you? Do you see  
24          that right there? Would you mind reading that?

25   **A**   Yeah. It says: "Went outside away from parents."



1 Q All right.

2 MR. MEADORS: Your Honor, it's out of context.  
3 He said what's the first thing he told him. That's  
4 not the first thing he told him.

5 MR. WHITLARK: No.

6 THE COURT: Go ahead. Overruled.

7 Q And that's written in letters that are tiny compared  
8 to what the rest of the writing on that page is,  
9 right?

10 A In parentheses.

11 Q Little letters, right?

12 A In parentheses.

13 Q In the paragraph below there he says, I might have  
14 some more information if you can give me some help,  
15 doesn't he?

16 A He says -- it says in my notes: "Started to tell us  
17 away from parents that he knew more but wanted to  
18 make sure he could get some help."

19 Q Okay. And, sir, his parents were very concerned,  
20 weren't they? They were right there, weren't they?

21 A Wouldn't any parent?

22 Q So, is the answer yes?

23 A Yes.

24 Q They were very concerned?

25 A (Nods head affirmatively).

1 Q Right?

2 A Right.

3 Q And you claim that he freely and voluntarily signed a  
4 waiver of the Miranda and so forth, don't you?

5 A He did.

6 Q Uh-huh (affirmative). And his parents were planning  
7 on going on a trip the next day, weren't they?

8 A And they did.

9 Q And they did go, didn't they?

10 A Mm-hmm (affirmative).

11 Q And you claim that he gave you freely and voluntarily  
12 information about a murder, right?

13 A He did.

14 Q And you left him there and drove off after he told  
15 you he was involved in a murder. Is that what you  
16 claim?

17 A I did.

18 Q So you didn't arrest him after he told you he was  
19 involved in a murder?

20 A I did not.

21 Q Do you do that often? When somebody tells you  
22 they've murdered somebody, do you say, well, I'm  
23 coming back to get you later?

24 A This is the first time that I've done it. But I've  
25 known it to be done in the past.

1 Q Normally you take them into custody immediately,  
2 right?

3 A Just depends on the circumstance.

4 Q Okay. All right. You claim that Derrick McDonald on  
5 his own volition after you arrested him for murder,  
6 you put him in your truck and were driving him back  
7 to Kershaw County, right?

8 A That's correct.

9 Q And you claim that he on his own volition said, I'm  
10 going to go ahead and tell you all about it, right?

11 A That is not what he said.

12 Q Did you tell him that you wanted him as a witness  
13 against Whitehead that night?

14 A I don't remember saying that.

15 Q Okay. Did you tell him, do you want to be a witness  
16 or a defendant in a death penalty trial? Do you  
17 remember telling him that?

18 A I did not tell him that.

19 Q What time was it when you were driving him back to  
20 Kershaw?

21 A It was -- it was pretty close to midnight. I don't  
22 know exactly what time. But it was getting late.

23 Q You knew he had school. He was in high school,  
24 right?

25 A Yes, sir he was in high school.

1 Q You knew he had school the next day?

2 A No, I didn't. Because the next day was going to be  
3 Saturday.

4 Q All right, sir. Let me ask you a question. Was he  
5 scared or not?

6 A I -- I can't answer for the way he was feeling.

7 Q Well, you were closely observing him, weren't you?

8 A Yeah. But I still can't tell you what he was  
9 thinking or feeling.

10 Q Well, you had him handcuffed, didn't you?

11 A I was.

12 Q And it was nighttime?

13 A It was.

14 Q And you and another investigator from Kershaw who  
15 he'd never met in his life, right?

16 A Not that I know of.

17 Q Were driving him back here on an accusation of  
18 murder?

19 A That's correct.

20 Q After he'd told you he had nothing to do with it?

21 A The first time; yes, sir.

22 Q Investigator Catoe, you took him to jail. You took  
23 him to the Sheriff's Office, didn't you?

24 A Upon his request I did.

25 Q He asked you, said, hey, take me to the Sheriff's

1 Office?

2 **A** He said, "Take me to the Sheriff's Office."

3 **Q** So he went from not wanting to talk with you with his  
4 mother present and wanting a lawyer --

5 **A** He did not ask for a lawyer.

6 **Q** Do you deny that he asked for a lawyer at least four  
7 times that night?

8 **A** I do.

9 **Q** So he goes from that when he's in the truck to, I'm  
10 going to tell you everything about it now?

11 **A** No. He tells me he wants to talk to me and to take  
12 him to the Sheriff's Office.

13 **MR. WHITLARK:** Your Honor, I have a matter of  
14 law to take up with the Court regarding the next line  
15 of questioning I've got.

16 **THE COURT:** All right. All right, ladies and  
17 gentlemen. I just ask you to retire to the jury room  
18 just a few minutes. I don't know what this is about,  
19 but I'll find out. And y'all just relax for a few  
20 minutes.

21 (Jury out at 10:51 a.m.)

22 **MR. MEADORS:** Your Honor, for the record, before  
23 we start, there's a polygraph form that's sitting  
24 right there that's been there --

25 **THE COURT:** I know.

1           **MR. MEADORS:** -- pointed this way. I think --

2           **THE COURT:** Turn it over.

3           **MR. MEADORS:** Well, it's not mine. I mean, but  
4 he's had it there for ten minutes, and that's just  
5 not right.

6           **THE COURT:** Just turn it upside down.

7           **MR. MEADORS:** It's consistent with what he's  
8 done throughout this trial.

9           **THE COURT:** I understand. All right. Do you  
10 have a matter of law or are you going to proffer some  
11 testimony?

12           **MR. WHITLARK:** Yes, sir. I do want to proffer  
13 the testimony, Your Honor. That will probably  
14 actually expedite the situation.

15           **THE COURT:** You don't have to sit down. I mean,  
16 if you want to stand up.

17           **THE WITNESS:** No. That's fine.

18           **THE COURT:** I can hear you. They can hear you.  
19 If you're more comfortable standing.

20   **Q**   Investigator Catoe, at this point you took Derrick  
21 McDonald down to the Sheriff's Department and you had  
22 him sign this statement, right?

23   **A**   He signed it freely and voluntarily.

24   **Q**   Okay. And when he signed that statement, you told  
25 him that he was a witness in the case, right, that he

1 would be a witness?

2 **A** I don't remember telling him that.

3 **Q** You didn't make any agreement with him if he'd sign  
4 this thing here that you would have him testify  
5 against Whitehead --

6 **MR. MEADORS:** Your Honor, this has been asked  
7 and answered.

8 **THE COURT:** I know that. I'm trying to --

9 **MR. MEADORS:** He said he didn't tell him.

10 **THE COURT:** Sir, you know, I can hear just as  
11 well as you can.

12 **MR. MEADORS:** I'm sorry.

13 **THE COURT:** Now, I'm just trying to -- Mr. --

14 **MR. WHITLARK:** Yes, sir.

15 **THE COURT:** He's proffering some testimony that  
16 doesn't sound like there's any reason for the jury to  
17 be out.

18 **MR. WHITLARK:** I'm sorry, Your Honor.

19 **THE COURT:** Get to the point.

20 **MR. WHITLARK:** I don't know how long I've been  
21 talking, but I'm jumping ahead of myself here.

22 **THE COURT:** Well, get to the point.

23 **Q** All right. Adrian Duran was given a lie detector  
24 test. You came into possession of the results of it,  
25 didn't you?

1     **A**     I did.

2     **Q**     All right. And what date was that?

3     **A**     I would have to see it. I don't know.

4     **Q**     Well, for purposes of this, do you remember if it was  
5             Friday or Saturday?

6     **A**     I do not remember what day he was polygraphed.

7     **Q**     All right. Well, the reason I'm bringing it up, Your  
8             Honor, is because he's previously testified that he  
9             wasn't aware of the information contained in the  
10            polygraph about that he was under arrest or whether  
11            or not he was in custody. And my question to him is  
12            going to be, well, you knew that he was up for a  
13            polygraph and you all brought him over from the jail  
14            to do the polygraph, didn't you?

15    **A**     I did not.

16    **Q**     Did you know he was brought over from the jail to  
17             take the polygraph?

18    **A**     That's what I told you earlier. I know he was  
19             brought to the Sheriff's Office.

20    **Q**     All right. And you were provided with that  
21             information before you arrested Derrick McDonald,  
22             weren't you?

23    **A**     That was before Derrick McDonald was arrested. Yes.

24             **MR. WHITLARK:** Right. That's what I was going  
25             to ask about, Your Honor. Because I'm going to get



1           into the other suspect now, the third party  
2           responsibility for this. And I wanted to make sure  
3           that he understood -- he has already denied having  
4           all this other information that's suspicious of other  
5           people, but he did have the information that he had  
6           failed the polygraph in essence.

7           **THE COURT:** He didn't say that.

8           **MR. WHITLARK:** Well, I know, Your Honor. I'm  
9           just saying what my line of questioning is going to  
10          be about the polygraph, not to prove the truth of the  
11          matter asserted but to show that he had information  
12          that there were other suspects in this case before he  
13          ever went to McDonald.

14          **THE COURT:** I don't know that he's denied that.

15          **MR. WHITLARK:** Well, Your Honor, he said he  
16          doesn't know what was going on in this investigation  
17          otherwise about neighborhood canvassing.

18          **THE COURT:** I understand. We've been through  
19          that.

20          **MR. WHITLARK:** Yes, sir. Well, Judge, out of an  
21          abundance of caution before I ask that, I want to  
22          take it up with the Court because I will ask him  
23          that.

24          **THE COURT:** Pose the questions that you propose  
25          to ask and we will rule on them one at a time.

1                   **MR. WHITLARK:** Here goes, Your Honor. I'll try  
2 to make it quick.

3   **Q**   Investigator Catoe, you were aware of other suspects  
4 in the death of Mr. Zoch in this case before you  
5 talked to Derrick McDonald, right?

6   **A**   We had talked to other people in reference to this  
7 case before we went to Derrick McDonald.

8   **Q**   And the status of that --

9                   **THE COURT:** All right. That question is okay.

10   **Q**   Okay. And the status --

11                   **THE COURT:** Now the next question.

12                   **MR. WHITLARK:** I'm sorry, Your Honor.

13   **Q**   The status of that was that you had brought him in as  
14 a suspect, Mr. Duran, right?

15   **A**   I did not bring Mr. Duran into the Sheriff's Office.

16   **Q**   All right. Were you aware he was a suspect in the  
17 case before you met McDonald?

18   **A**   He was someone of interest.

19   **Q**   All right. Is he listed as a suspect on the  
20 polygraph sheet?

21   **A**   I don't know. I don't have the polygraph sheet and I  
22 didn't fill out -- I don't do polygraphs.

23   **Q**   I just asked you if you were aware of the information  
24 contained on it?

25   **A**   No. I'm not aware of anything on these polygraph

1 sheets. I don't fill them out.

2 **Q** All right. At the time you were going up to get  
3 Derrick McDonald, you were aware that Adrian Duran  
4 had shown being deceptive on whether or not he killed  
5 Mr. Zoch, right?

6 **A** That's correct.

7 **MR. WHITLARK:** That's what I was going to ask  
8 him about, Your Honor.

9 **THE COURT:** I'm sorry. That's inadmissible.  
10 Because what you're doing is putting the polygraph in  
11 evidence without any substantial -- I mean, you're  
12 assuming that the polygraph results are properly done  
13 and scientifically valid, which you cannot do.

14 **MR. WHITLARK:** I know. But --

15 **THE COURT:** All he can testify about is that he  
16 knew that he was a -- you call him a suspect. He  
17 calls him a person of interest. He can testify. But  
18 he can't testify about anything on that document.

19 **MR. WHITLARK:** Okay. And I understand.

20 **THE COURT:** He said he doesn't know anything  
21 about it.

22 **MR. WHITLARK:** I understand that, Your Honor.  
23 Could I pose to the Court what my reasoning is on  
24 this --

25 **THE COURT:** Sure.

1           **MR. WHITLARK:** -- and my legal argument is? The  
2 jury needs to be informed that there were other  
3 suspects. And we have informed them of that.

4           **THE COURT:** I agree with you.

5           **MR. WHITLARK:** Well, the problem is this. You  
6 see, he knew that Duran had come up deceptive on the  
7 polygraph.

8           **THE COURT:** I don't know that.

9           **MR. WHITLARK:** That was before he went to  
10 McDonald.

11          **THE COURT:** He didn't say that.

12          **MR. WHITLARK:** I believe he did.

13 **Q** You did say you knew that. You did say you knew  
14 that, didn't you?

15 **A** Do you want me to answer the question?

16          **THE COURT:** Well, the jury is not here. The  
17 question is ...

18          **MR. WHITLARK:** I know the question.

19          **THE COURT:** The question is, you're asking to  
20 what degree did he know that he was -- I mean, that's  
21 basically --

22          **MR. WHITLARK:** I remember the exact question.

23 **Q** You knew that Duran had come up deceptive on a  
24 polygraph test before you ever met Derrick McDonald?

25 **A** I was told that he came up deceptive.

1           **MR. WHITLARK:** Okay. There you go. That's the  
2 question.

3           **THE COURT:** Inadmissible.

4           **MR. WHITLARK:** Okay. Well, that was what I was  
5 going to ask him about next.

6           **THE COURT:** Okay. Do you need five minutes?

7           **MR. WHITLARK:** Yes, sir. Yes, sir.

8           **THE COURT:** Let's take five.

9           **MR. MEADORS:** Your Honor, could you admonish him  
10 not to have the polygraph which has been up the whole  
11 time?

12           **THE COURT:** You can move it.

13           (Whereupon, a break is taken)

14           **THE COURT:** The State ready to proceed?

15           **MR. MEADORS:** Yes, sir.

16           **THE COURT:** Bring the jury, please.

17           (Jury in at 11:14 a.m.)

18           **THE COURT:** Mr. Whitlark, you may continue.

19           **MR. WHITLARK:** May it please the Court, Your  
20 Honor.

21   **Q**   As part of your investigation, Investigator Catoe,  
22       were you aware that Adrian Duran and Josh Zoch were  
23       in the drug dealing business together?

24   **A**   No, I did not know that.

25   **Q**   All right. Were you aware as part of your

1 investigation that Mr. Duran had made threats to get  
2 Mr. Zoch after the burglary at his house?

3 **A** Yes.

4 **Q** Were you aware that Mr. Adrian Duran knew that Zoch  
5 was a snitch for the police?

6 **A** Repeat that again, please?

7 **Q** As part of your investigation did you become aware  
8 that Adrian Duran knew that Joshua Zoch, the  
9 decedent, was working for the police as a snitch?

10 **MR. MEADORS:** Objection to what -- and this  
11 isn't what we discussed during the break, Your  
12 Honor -- what Duran could know about him. It's  
13 speculation. No way he could know what's in that  
14 gentleman's mind, whoever he is.

15 **THE COURT:** He can answer the question.

16 **A** I don't know if Adrian knew that or not.

17 **Q** Do you have information in your file regarding that?

18 **A** I don't know. I'd have to go back through my file.

19 **Q** Don't you have information in your file regarding  
20 that?

21 **A** I'd have to go back through my file.

22 **Q** Adrian Duran was the first person picked up in this  
23 investigation, wasn't he, sir?

24 **A** Adrian wasn't picked up in reference to this  
25 investigation.

1 Q He was arrested, wasn't he?

2 A That's what you say.

3 Q Do you have information in your file that Adrian  
4 Duran was arrested?

5 A That form you showed me said that he was under  
6 arrest.

7 Q And you're the chief investigator in the file and you  
8 don't know this?

9 A He was not arrested in reference to this case.

10 Q Well, what was he arrested for?

11 **MR. MEADORS:** Objection to relevance, Your  
12 Honor. Nothing to do with this case.

13 **THE COURT:** Well, if he says he was not arrested  
14 in relation to this case, I would agree with you, and  
15 I'll sustain the objection.

16 Q All right, Your Honor. Then I have just a few more  
17 questions. Sir, isn't it a common practice for you  
18 in an investigation to arrest people even if it's an  
19 unrelated charge and question them about the charge  
20 you are interested in?

21 A It happens.

22 Q And you did that in this case, didn't you?

23 A I did not arrest Mr. Duran.

24 Q Did you arrest Chris Whitehead?

25 A Yes. We charged him in this case.

1     **Q**     But he was arrested before this for driving under  
2             suspension, wasn't he?

3     **A**     In Richland County.

4     **Q**     And that was pursuant to your request, wasn't it?

5     **A**     I'm the one who called Richland County.

6     **Q**     And the reason is you wanted him taken into custody  
7             on some charge, right?

8     **A**     He was driving under suspension.

9     **Q**     You wanted to question him about this killing, didn't  
10            you?

11    **A**     I had questions for him. Yes, sir.

12    **Q**     And you arranged for him to be picked up on the DUS  
13            so you could do that, right?

14    **A**     I called Richland County.

15    **Q**     And that's a common thing you do in these cases,  
16            isn't it, to get a suspect in, no matter what the  
17            charge so you can question them on the murder? You  
18            did that to two people in this case, didn't you?

19    **A**     I did not -- I did not do that to two people in this  
20            case.

21            **MR. WHITLARK:** I think that's all I have, Your  
22            Honor.

23            **THE COURT:** Mr. Kendrick.

24            **MR. KENDRICK:** Thank you, Your Honor. May it  
25            please the Court.



CROSS EXAMINATION

**BY MR. KENDRICK**

**Q** Good morning, Mr. Catoe.

**A** Good morning.

**Q** According to your testimony earlier this morning, you don't know a whole lot about the SLED test, the results that were done in this case, do you?

**A** No, sir.

**Q** Okay. According to your testimony this morning, you don't know a whole lot about any witnesses that were interviewed before my client, right?

**A** Which ones?

**Q** There were people that were suspects that Mr. Whitlark asked you about. You didn't know anything about those, right? You didn't know a lot about the questions that were asked of Mr. Duran, right?

**A** Asked of Mr. who?

**Q** Duran. Adrian Duran.

**A** No.

**Q** You don't know much about him or his involvement in this case, period?

**A** Not in this case.

**Q** Okay. You don't have any eye witnesses in this case, right?

**A** I do not.

1           **MR. KENDRICK:** Do you guys have --

2           **MR. MEADORS:** You talking to me?

3           **MR. KENDRICK:** Your Honor, I can hear Mr.  
4 Meadors. I know the jury can. If he'll just let me  
5 ask my questions. He's going to get a turn. I'm not  
6 trying to cause trouble; but, I mean, it's my cross.

7           **MR. MEADORS:** Your Honor.

8           **THE COURT:** Sir, just -- please. I know you  
9 have to consult with counsel, but please do it in as  
10 unobtrusive manner as you can. You are sitting next  
11 to the jury. The jury might be able to hear you.

12           **MR. KENDRICK:** Thank you, Judge. And I  
13 apologize.

14           **THE COURT:** No. You're perfectly within your  
15 rights to ask that. Everybody show decorum in this  
16 courtroom.

17           **MR. KENDRICK:** Thank you, Judge.

18 **Q** On the 13th when you showed up at the crime scene,  
19 you didn't talk to anybody that was present there,  
20 right?

21 **A** No, sir.

22 **Q** On the next day you spoke with Melissa Davy, right?

23 **A** I did.

24 **Q** And you told us earlier this morning that in the  
25 course of talking with her you learned about some

1 kind of dispute between her and her boyfriend, Mr.  
2 Zoch, and Mr. Cannon, right?

3 A That's correct.

4 Q But there is no information about that dispute in  
5 your file anywhere, is there?

6 A I don't see any in her notes.

7 Q Okay. That information on Friday morning was the  
8 only thing you had linking my client, Mr. Cannon, to  
9 this case, right; according to your testimony?

10 A On early Friday morning.

11 Q When you went to the Sonic Friday, at that point the  
12 only thing you had linking Mr. Cannon to this case is  
13 some story about bad blood between him and Melissa,  
14 right?

15 A That's correct.

16 Q But that isn't reflected anywhere in your file, is  
17 it?

18 A Not that I see in the interview with Ms. Melissa  
19 Davy.

20 Q So that's something that's come up in the last couple  
21 of days? Did you just now remember it?

22 A No. I just failed to put it in my notes.

23 Q You agree with me that at this point in time that's  
24 the crucial link Mr. Cannon and this situation,  
25 right?

- 1    **A**    As of early Friday morning, the 15th.
- 2    **Q**    That didn't make it to your notes?
- 3    **A**    No, sir.
- 4    **Q**    When you spoke with Ms. Davy on the 14th, you didn't  
5        know she was staying with Molly and Zack, right? You  
6        testified to that earlier today?
- 7    **A**    She told me that she was staying with them.
- 8    **Q**    So you did know she was staying with them?
- 9    **A**    Yes.
- 10   **Q**    Do you know how long she had been staying with them?
- 11   **A**    Not exactly.
- 12   **Q**    Did you know why she was staying with them?
- 13   **A**    She had told me that her and Josh had had an  
14        argument.
- 15   **Q**    So you knew at that point that she lived with Josh or  
16        somewhere else?
- 17   **A**    She told me she lived with Josh.
- 18   **Q**    So she was a resident of the house where Mr. Zoch's  
19        body was found?
- 20   **A**    Correct.
- 21   **Q**    She in fact found the body?
- 22   **A**    Correct.
- 23   **Q**    Okay. Did you question her at all about what she  
24        might have known about this death?
- 25   **A**    Yes. I mean, I sat down and talked to her.

1 Q Did you ask her specific questions about whether or  
2 not she was involved in this situation?

3 A I mean, I done an interview with her.

4 Q Did you ask her specific questions about whether or  
5 not she was involved in this case?

6 A Well, I'm sure they were specific.

7 Q Did you reflect that in your notes?

8 A I don't -- I just have my notes. That's -- I mean  
9 ...

10 Q Well, then let's stop for a second and talk about  
11 that. What you have right there that I see you  
12 flipping through, is that your investigative file?

13 A Of Melissa Davy.

14 Q Just from Melissa Davy. But what's in your lap right  
15 now is your investigative file in this case?

16 A Mm-hmm (affirmative).

17 Q Right? So, as far as this crime is concerned, that  
18 is what you know, right?

19 A (Nods head affirmatively).

20 Q Okay. Are there other notes that are not in that  
21 file?

22 A No, sir.

23 Q Are there other notes that at one time you took that  
24 are not in that file?

25 A No, sir.

1 Q Okay. Are there any notes that have existed and now  
2 don't?

3 A No, sir.

4 Q So it's fair for me to say that everything you knew  
5 about this case and everything you know about this  
6 case unless you've learned it in this courtroom is in  
7 that file, right?

8 A That's correct.

9 Q All right. And in that file do you have any notes  
10 about questioning Ms. Davy about what she knew about  
11 the cause of Mr. Zoch's death?

12 A I don't have any notes.

13 Q Did you ask any other investigators to question her  
14 about that?

15 A I believe other investigators did talk with her, yes.

16 Q Okay. But you're not sure?

17 A I know other investigators talked to her.

18 Q You know other investigators talked to her. Did they  
19 do that at your request?

20 A (Nods head affirmatively).

21 Q Was there something that she told you in your  
22 interview with her that made you feel like someone  
23 else should question her?

24 A No.

25 Q There wasn't anything or you don't recall?

1     **A**     I don't -- I don't see anything.

2     **Q**     Okay. Now, on the 14th, did you gain information  
3             that Mr. Zoch was working with the police?

4     **A**     I don't remember the date. I don't remember the  
5             date.

6     **Q**     You did obtain that information though?

7     **A**     That's correct.

8     **Q**     All right. Did you know which department he was  
9             working for?

10    **A**     Not for sure. Just what information I had obtained.

11    **Q**     And when I say department I mean, did you know if it  
12            was Kershaw, if it was Richland, Lexington, York  
13            county? Did you have any --

14    **A**     Just what I was told.

15    **Q**     What did you learn? Did you learn an answer to that  
16            question?

17    **A**     I was told Richland County.

18    **Q**     Okay. So you thought he worked with Richland County  
19            possibly. Did you ever go back to anybody at  
20            Richland County about that?

21    **A**     I did not.

22    **Q**     Okay. Are you aware of anyone else in this  
23            investigation doing that?

24    **A**     Not anyone that I could testify to calling a name,  
25            no.

1 Q Okay. Let me ask you this before we move on. When  
2 someone else does something in this case, do they  
3 give you the notes?

4 A Yes.

5 Q You've got notes in your file from Mr. Tisdale. Is  
6 that correct?

7 A Yes, I do.

8 Q Sergeant Hudson?

9 A Yes, I do.

10 Q Anything else?

11 A George Marthers.

12 Q Investigator Marthers. All right.

13 A That's all I see right now.

14 Q Why do you have those people's notes in your file?

15 A This is just the main case file.

16 Q Okay. So we can be assured that everything involving  
17 this case should be in that file?

18 A (Witness nods head affirmatively).

19 Q Okay. And there is nothing in that file that  
20 reflects anyone from your Sheriff's Department going  
21 to the Richland County Sheriff's Department to  
22 inquire whether Mr. Zoch was working for them?

23 A No, sir.

24 Q Nobody went there and asked if they knew of any  
25 danger he was in based on his work?



- 1     **A**     No, sir.
- 2     **Q**     Nobody knew if there was a specific target of what he
- 3             was doing?
- 4     **A**     No, sir.
- 5     **Q**     You work here in Kershaw County, right?
- 6     **A**     That's correct.
- 7     **Q**     Richland County is the neighboring county, right?
- 8     **A**     That's correct.
- 9     **Q**     You guys probably have a good relationship with them?
- 10    **A**     Yes, sir.
- 11    **Q**     It would have been absolutely no problem for you to
- 12             go over there and talk to them?
- 13    **A**     Yeah. I could have talked to them.
- 14    **Q**     Okay. Now, Melissa told you that Mr. Zoch was having
- 15             difficulties with one of these defendants over here,
- 16             right?
- 17    **A**     That's correct.
- 18    **Q**     And you agree with me these are young men. They are
- 19             19, 20, or so?
- 20    **A**     Correct.
- 21    **Q**     Did you investigate whether there really were
- 22             difficulties or not?
- 23    **A**     Just what I was told.
- 24    **Q**     Okay. She told you at some point that my client had
- 25             a problem with Mr. Zoch?

1     **A**     Correct.

2     **Q**     Did you ever follow up on that?

3     **A**     I believe we asked your client about that.

4     **Q**     Did he ever say that he had bad blood with him?

5     **A**     He just denied it.

6     **Q**     Okay. Did you ever ask any of the people that might  
7            have seen these two men together if they appeared to  
8            have bad blood?

9     **A**     Repeat that now?

10    **Q**     Did you ever talk to any of these people in this case  
11            that might have had the opportunity to observe Mr.  
12            Cannon and Mr. Zoch together and did you ever talk to  
13            these people and ask them if there was bad blood  
14            between them?

15    **A**     Yes.

16    **Q**     Okay. And you didn't find out there was any bad  
17            blood, did you?

18    **A**     Nothing major had ever happened that we had found  
19            out. No.

20    **Q**     Okay. But you are aware from your investigation that  
21            there was bad blood between Ms. Davy and Mr. Cannon,  
22            right?

23    **A**     Yes, sir.

24    **Q**     Okay. On the 14th you have people that are working  
25            for you as the chief investigator canvassing the

1 neighborhood, right?

2 **A** Yes, sir.

3 **Q** And you don't know a whole lot about what they found  
4 out, do you?

5 **A** No, sir. I was doing other things while they were  
6 doing that.

7 **Q** Okay. They turned those notes over to you and put  
8 them in your file?

9 **A** Correct.

10 **Q** All right. But it's fair for me to say that even a  
11 few -- a little while ago on cross with Mr. Whitlark  
12 when we were talking about that, you don't know very  
13 much about what those people found out in the  
14 neighborhood?

15 **A** I don't know exactly everything that was told to  
16 them, no, other than that's in their notes.

17 **Q** What's that?

18 **A** Other than what they put in their notes.

19 **Q** So you are familiar with what they put in their  
20 notes?

21 **A** I am have their notes.

22 **Q** So when they turned those notes in, when did you look  
23 at them?

24 **A** I don't know the first time I looked at them.

25 **Q** Okay. Would it have been before or after Friday,

1 December 15th?

2 **A** Very possibly after Friday because we were so busy.

3 **Q** Okay. So the knowledge that was in those notes  
4 wouldn't have come into play when you arrested my  
5 client because you didn't know it, right?

6 **A** Myself personally, no.

7 **Q** Okay. As the chief investigator, your job is to  
8 coordinate the case, right? Coordinate the  
9 investigation?

10 **A** Somewhat.

11 **Q** Okay. Is it your job to make sure that everybody is  
12 doing something different?

13 **A** Somewhat.

14 **Q** You agree with me that you don't want two, three,  
15 ten, twenty investigators all doing the same thing,  
16 right?

17 **A** That's correct.

18 **Q** That would be a waste of time?

19 **A** Correct.

20 **Q** So you'd agree with me that different investigators  
21 are doing different tasks in these investigations?

22 **A** That's correct.

23 **Q** Who assigns those tasks?

24 **A** Sometimes myself. Sometimes it would be our captain,  
25 David Thomley.

1 Q So Captain Thomley was also involved in this case?

2 A Yes, he was.

3 Q And he is your boss?

4 A He is.

5 Q So would that make him the chief investigator?

6 A He's just a captain of investigations. He oversees  
7 all investigations.

8 Q Okay. Earlier you were handed a document related to  
9 Mr. Adrian Duran. You said you'd never seen it  
10 before, right?

11 A I had never seen that document.

12 Q But you agree with me that at some point or another  
13 between December the 12th or December the 13th and  
14 December the 15th he was questioned in this case?

15 A He was.

16 Q Okay. And you agree with me, without saying what it  
17 is, there was a reason he was questioned in this  
18 case?

19 A There was.

20 Q Okay. You guys don't just pull people down there and  
21 ask them questions because you don't have enough to  
22 do?

23 A Do not.

24 Q Very busy in the Sheriff's Department, correct?

25 A That's correct.

1 Q So you did not think it important to go and find out  
2 what was the result of this questioning?

3 A I did.

4 Q Okay. And what did you find out?

5 A I mean, I was -- I was told that he was questioning  
6 it. I mean, I don't know how you want me to answer  
7 it.

8 Q And you don't know a lot about what the follow-up to  
9 that was, right? You didn't talk to him yourself?

10 A I spoke with him very briefly.

11 Q When did you speak with him?

12 A I spoke with him just briefly in the Sheriff's  
13 Office. But nothing whatsoever was said.

14 Q Okay. Then I'm confused. If you spoke with him and  
15 nothing was said, what was the nature of the  
16 conversation? Hey, how you doing?

17 A I just spoke with him, asked him if he would like to  
18 talk with me, and he said he wanted his attorney.

19 Q Okay. So he invoked his right to an attorney  
20 immediately when you said --

21 A With me.

22 Q With you. Okay. And did you tell him what you  
23 wanted to talk to him about?

24 A Yes.

25 Q What did you say to him?

1     **A**     I told him I wanted to speak to him about the death  
2             of Joshua Zoch.

3     **Q**     Why did you have that conversation?  Why was he at  
4             the police station?

5     **A**     To talk about the death of Joshua Zoch.

6     **Q**     Was he invited there or was he brought there by one  
7             of your men?

8     **A**     He was brought there.

9     **Q**     Brought there by a regular person, civilian or  
10            brought there by one of your fellow officers?

11    **A**     By one of the officers.

12    **Q**     Okay.  Was he brought there in a police car or police  
13            truck?

14    **A**     If he was brought there by an officer, yes, sir.

15    **Q**     Okay.  Did you sit him down in a little room  
16            somewhere?

17    **A**     Just in our office.

18    **Q**     Just in your office?  All right.  He said, I don't  
19            want to talk to you, man?

20    **A**     That's right.

21    **Q**     Did you initiate him coming there?

22    **A**     No.

23    **Q**     Who did?

24    **A**     I don't know who the first person was to talk to him.

25    **Q**     So there is another investigator involved in this

1 case that got him to the police station?

2 A I don't know if it was an investigator or not.

3 Q There is another member of the Kershaw County  
4 Sheriff's Department that got him to the police  
5 station?

6 A That's correct.

7 Q And we don't know who that is?

8 A I do not know who brought him to the Sheriff's  
9 Department.

10 Q And the information about why he was at the police  
11 station or the Sheriff's Department is not in that  
12 file, right?

13 A There is some information but it's not my notes.

14 Q Okay. Do you know whose notes it is?

15 A I do.

16 Q Can you tell me who it was?

17 A Lieutenant Eric Tisdale.

18 Q Okay. So Lieutenant Eric Tisdale is the person who  
19 handled what we can refer to as the Duran situation?  
20 Was it Lieutenant Eric Tisdale that gathered the  
21 evidence on Mr. Duran?

22 A What evidence?

23 Q When I say evidence, we'll use a broader term. Was  
24 it Mr. Eric Tisdale who gathered the information on  
25 Mr. Duran?



1     **A**     He had gathered some; yes, sir.

2     **Q**     And that information ultimately resulted in a ride  
3             down to the Sheriff's Department in one of y'all's  
4             vehicles?

5     **A**     Yes, sir.

6     **Q**     Do you know if it was Mr. Tisdale that went and  
7             picked him up?

8     **A**     I do not know how picked him up.

9     **Q**     Do you know if it was Mr. Tisdale that questions him?

10    **A**     I am know Mr. Tisdale talked with him.

11    **Q**     In the course of talking to him, he was talking with  
12            him about this case here, right?

13    **A**     That's my understanding.

14    **Q**     But there are no notes that would reflect that  
15            conversation, right?

16    **A**     I believe there are.

17    **Q**     Okay. Are they in there?

18    **A**     Mm-hmm (affirmative).

19    **Q**     What do those notes say?

20            **MR. MEADORS:** Your Honor, those are Investigator  
21            Tisdale's notes he's asking him to read.

22            **THE COURT:** Sir.

23            **MR. KENDRICK:** Your Honor, I'll withdraw the  
24            question actually. That's an excellent point.

25            **MR. MEADORS:** I thought we'd been over that

1 before.

2 **THE COURT:** Sir, I understand what's going on.

3 I don't need you to remind me. Thank you.

4 **MR. KENDRICK:** Thank you, Judge. And I

5 apologize to the Court.

6 **Q** So on the 14th, so far what you have, we've got this.  
7 Adrian guy. You don't know he much about him.  
8 You've talked to Melissa. The information she has  
9 given you that links to my client doesn't appear in  
10 your notes?

11 **A** No, sir.

12 **Q** You go to Sonic the next morning?

13 **A** Yes, sir.

14 **Q** Okay. And who is the first person you talked to at  
15 Sonic?

16 **A** We spoke with the manager.

17 **Q** Who is the manager?

18 **A** Ms. Pat.

19 **Q** Okay. And do you know her?

20 **A** No, I do not know her.

21 **Q** Do you know her now?

22 **A** Yes, sir.

23 **Q** Are you all fairly close?

24 **A** Oh, no. No.

25 **Q** Just Ms. Pat is a common way to refer to her?

1     **A**     That's the way they called her at Sonic.

2     **Q**     So the witnesses called her that?

3     **A**     Yeah.

4     **Q**     Okay. I was just checking. And you spoke with her.  
5             And did she give you any information that was  
6             relevant to this case?

7     **A**     She had give us some information about Mr. Whitehead  
8             and some of the working relationships and that kind  
9             of thing.

10    **Q**     Okay. Did you take notes on that information?

11    **A**     I don't think I took any from the initial  
12            conversation with her.

13    **Q**     Did you take a written statement from her?

14    **A**     I don't believe so.

15    **Q**     Okay. Then you talked to somebody else there, right?

16    **A**     I did.

17    **Q**     Okay. And who did you talk to there?

18    **A**     Cecile Trapp.

19    **Q**     Okay. And through the course of talking with  
20            Ms. Trapp you learned about an incident on the night  
21            of the 12th where my client was horsing around at  
22            Sonic with a ski mask on, right?

23    **A**     Correct.

24    **Q**     Okay. And you will agree with me that at this point  
25            in time, on this Friday morning, what you have in

1           your file is a story from a young lady about somebody  
2           horsing around at a Sonic in a ski mask. This is on  
3           Friday morning, on December 15th. And you have a  
4           story from Ms. Davy about a dispute even though it  
5           doesn't appear in your notes. Do you agree with me  
6           that I'm right so far?

7    **A**    So far.

8    **Q**    Okay. And at that point you decide you're going to  
9           go and look for Derrick McDonald. Right?

10   **A**    We had more information than that.

11   **Q**    Okay. Why didn't you go to Mr. Cannon's house first?

12   **A**    If I'm not mistaken, we had made a phone call and he  
13           wasn't at home.

14   **Q**    Okay. Did you have Mr. Cannon's cellphone number?

15   **A**    I think we obtained that through Sonic.

16   **Q**    Okay. So you knew how to get in touch with him,  
17           right?

18   **A**    Mm-hmm (affirmative).

19   **Q**    And you agree you called him that day, right?

20   **A**    That's correct.

21   **Q**    Did you call him in the morning or in the afternoon?

22   **A**    I know we spoke with him before we went to his  
23           residence to talk with him.

24   **Q**    Good. That morning, Friday morning, you agree with  
25           me that Mr. Whitehead was taken into custody on

1 something unrelated to this case?

2 **A** That's correct.

3 **Q** Okay. And you made the call?

4 **A** I did.

5 **Q** Did you tell the jail to keep a detainer on him for  
6 y'all?

7 **A** At that point I don't remember.

8 **Q** Did you inform the booking department to only release  
9 him to you?

10 **A** I -- I don't know.

11 **Q** But that could be true, because you don't remember?

12 **A** It could be, yeah.

13 **Q** Did you inform at some point on the 15th the Richland  
14 County Sheriff's Detention Center to make sure Mr.  
15 Whitehead wasn't allowed to make any phone calls?

16 **A** I don't recall that, but it could be true.

17 **Q** Okay. So you would agree with me that on  
18 December 15th you have Mr. Christopher Whitehead  
19 isolated from the outside world?

20 **A** He was in the Richland County Detention Center.

21 **Q** Without telephone privileges, correct?

22 **A** I don't know what they allowed him.

23 **Q** On your direction he was not allowed to make any  
24 telephone calls, right?

25 **A** If I asked them that.

1 Q Would it help you to look at your instructions?  
2 Would that help you remember whether or not you did  
3 that?

4 A If I did.

5 MR. KENDRICK: Your Honor, I'd just mark this  
6 for identification.

7 (WHEREUPON, Defendant Cannon's Exhibit No. 4 is  
8 marked for identification.)

9 Q I'm going to show you what we have marked for  
10 identification only as Exhibit No. 4 and ask you if  
11 that helps you remember any of the events of Friday?

12 A Yes, sir. This is where we had faxed something over  
13 placing a hold on Christopher Whitehead for murder.  
14 So that would have been close up to midnight that  
15 night.

16 Q Okay.

17 A Not when he was arrested for DUS.

18 Q Okay. And does the -- are there notes on there that  
19 would help you remember what kind of phone  
20 conversation you had with Richland County?

21 A This is not my writing.

22 Q I'm not asking you if that's your writing. But does  
23 that help you in any way remember whether or not you  
24 told them to make sure he couldn't make any phone  
25 calls?

1    **A**    It doesn't say that I said that.  It just says that  
2           on the paper.

3    **Q**    Okay.  And it says:  "Per phone conversation, no  
4           telephone calls", right?

5    **A**    That's right.

6    **Q**    And you don't remember saying that?

7    **A**    No.  I don't remember that specific point, no.

8    **Q**    Okay.  You've said earlier that Mr. Whitehead wasn't  
9           cooperating with you, right?

10   **A**    No, sir.

11   **Q**    No, you didn't say that?

12   **A**    No, sir.  He didn't.

13   **Q**    He did not cooperate with you?

14   **A**    Correct.

15   **Q**    Okay.  Did he deny knowledge of this incident?

16   **A**    He did.

17   **Q**    How is that not cooperating with you?

18   **A**    He wouldn't -- he wouldn't talk to us any further.  
19           He didn't want to talk to us any further about any of  
20           the things that went on.

21   **Q**    You'll agree with me that on December 15th you had no  
22           direct evidence against any of these defendants?

23   **A**    Not on the morning of the 15th.

24   **Q**    And initially every one of these defendants denied  
25           knowledge of this, right?

1     **A**     No, sir.

2     **Q**     Okay. Well, then let's talk specifically about my  
3             client, Mr. Cannon. You came to his house and asked  
4             him if he knew anything about this, right?

5     **A**     That's correct.

6     **Q**     What did he say? Yes or no?

7     **A**     He just said he had heard some things.

8     **Q**     Okay. You have testified earlier that all of the  
9             people involved in this case, pretty much every  
10            witness and everyone sitting at this table that's got  
11            a lawyer, knew each other, right?

12    **A**     That's correct.

13    **Q**     They knew each other through Sonic. As a matter of  
14            fact, you testified Sonic was a central hub to all  
15            these people?

16    **A**     That's where they knew each other.

17    **Q**     So did it surprise you that Mr. Cannon two days after  
18            someone that he knew died knew about it?

19    **A**     Not really.

20    **Q**     Ms. Trapp knew about it?

21    **A**     Mr. Who?

22    **Q**     Ms. Trapp knew about it that you interviewed?

23    **A**     Yes.

24    **Q**     Ms. Pat knew about it?

25    **A**     Yes.



1 Q Allen Brown knew about it?

2 A Yes.

3 Q So it wasn't unlikely that my client knew something  
4 about what had happened, right?

5 A That's correct..

6 Q But he denied his involvement in what happened,  
7 right?

8 A That's correct.

9 Q At 6:47 -- earlier yesterday I think the State showed  
10 you a Miranda form you had my client sign, right?

11 A That he freely and voluntarily signed. Yes, sir.

12 Q And what he said in there was that no threats or  
13 promises had been made to him to give a statement,  
14 right?

15 A That's correct.

16 Q What time do you remember him signing that?

17 A I believe it was -- and I'd have to look for the  
18 correct time on the paper. But I believe it was  
19 about 6:45.

20 Q And you hadn't taken any statement from him at 6:45,  
21 right?

22 A No, I had not.

23 Q You had hardly talked to him, right?

24 A That's correct.

25 Q So there is no way you could have made any threats or

1 promises yet, right?

2 A That's correct.

3 Q Around 6:45 you talked to him. He signs that paper.  
4 Do you guys shoot the breeze a little while, make  
5 small talk?

6 A Very, very little.

7 Q You go straight to the heart of the matter, right?

8 A That's correct.

9 Q You want to know about this case. You want to know  
10 if he is involved, right?

11 A That's correct.

12 Q You want to know if he knows who is involved, right?

13 A That's correct.

14 Q He says he doesn't, doesn't know anything about it?

15 A He just gives -- he gives me some information.

16 Q Okay. And the information he gave you denied his  
17 involvement in it, right?

18 A He doesn't implicate himself at that point, no.

19 Q Okay. He says he was not there at that house?

20 A I don't know that he said that.

21 Q But you would agree with me from 6:45 to 10 he hadn't  
22 admitted to anything that's criminal?

23 A No, sir.

24 Q And you don't have any direct evidence to dispute  
25 that, do you?

1     **A**     No, sir.

2     **Q**     There's no other witness that's told you something  
3             that makes him look like he's not telling the truth,  
4             right?

5     **A**     That's right.

6     **Q**     So for an hour and a half he's telling you a story  
7             that would be perfectly legitimate, right? You have  
8             no reason to believe he's lying?

9     **A**     Could be.

10    **Q**     Why didn't you leave after that story was over?

11    **A**     Because he asked us to step outside away from his  
12            parents.

13    **Q**     So when you get done after an hour of denials, he  
14            denies it for an hour, and that's how long it took  
15            for you to get the full and complete denial from him,  
16            right?

17    **A**     I don't know that it took that long.

18    **Q**     You're not repeating any questions. You're not  
19            telling him you don't believe him. You're just  
20            listening?

21    **A**     That's right.

22    **Q**     At no point did you say, come on, tell us the truth,  
23            that can't be what happened, man, give us some more  
24            details?

25    **A**     Not at that point.

1 Q You never told him you felt like he was a witness in  
2 this case?

3 A Not that I remember, no.

4 Q You never told him that you knew somebody else did it  
5 and he could help you with that?

6 A No, sir.

7 Q But you agree with me he's not telling you anything  
8 that implicates himself, right?

9 A Not at this point.

10 Q Okay. Then he goes outside, right?

11 A Yes, sir.

12 Q And according to your notes, and we agree that the  
13 notes we're talking about are your notes, right?

14 A That's correct.

15 Q And they're your reflection of what you interpreted  
16 was going on at his house, right?

17 A That's correct.

18 Q Okay. At around 8:00 he says, let's go outside,  
19 let's get away from my parents?

20 A I believe it was before 8:00.

21 Q Okay. Then at some point before 8:00 according to  
22 what you remember and after 6:47 I would assume he  
23 says, let's go outside, I want to get away from my  
24 parents for a minute?

25 A That's correct.

1 Q Did you know how old Mr. Cannon was before you got to  
2 his house?

3 A I'm sure I did.

4 Q Okay. And it was 17, right?

5 A I would have to go back and look at his date of birth  
6 to make sure.

7 Q But that's something you would probably look at, was  
8 the date of birth, correct?

9 A That's correct.

10 Q Did you know he had no prior criminal record when he  
11 you got to his house?

12 A I don't know if we pulled that information or not.

13 Q So you didn't check on that?

14 A I don't know if we had that at that time.

15 Q Did you ask him if he'd ever talked to the police  
16 before?

17 A I don't know if I asked him that.

18 Q Okay. So you were absolutely unaware of his  
19 experience with law enforcement at this point?

20 A Yes, sir.

21 Q So for what we can -- can you agree with me that we  
22 can estimate the time he's denying your questions at  
23 about an hour?

24 A 45 minutes to an hour.

25 Q All right. So for 45 minutes or an hour you're

1 sitting in his house and you're asking him, did you  
2 do it, and he's saying no. What is it you're doing  
3 for 45 minutes?

4 A No. We're just sitting there and I asked him if he  
5 knew any information about the death of Joshua Zoch  
6 or if he heard any information.

7 Q Okay. You accused him of being involved in it,  
8 didn't you?

9 A No.

10 Q So you guys go outside. He says he wants some help?

11 A That's correct.

12 Q You're going to give him that help, right?

13 A I did not tell him that.

14 Q Okay. You promised my client you were going to make  
15 him a witness in this case and he wasn't going to get  
16 charged, didn't you?

17 A I did not promise your client anything.

18 Q Why did you need Captain Thomley to come to the scene  
19 at that point?

20 A He was my supervisor.

21 Q Okay. What was my client not believing about you  
22 that needed your supervisor there?

23 A I guess he just felt more comfortable if he knew that  
24 I was on the up and up. I don't know.

25 Q On the up and up about what?

1     **A**     I don't know.

2     **Q**     Captain Thomley is the boss, right?

3     **A**     He's the boss of investigations.

4     **Q**     Deal maker. He's got the authority to make any kind

5             of deal?

6     **A**     He's the captain of investigations. I wouldn't say

7             that he had all the authority.

8     **Q**     He's third in command though, right?

9     **A**     He is.

10    **Q**     That's pretty high ranking at the Sheriff's

11            Department?

12    **A**     Oh, yes.

13    **Q**     Did you tell my client how high ranking Captain

14            Thomley was?

15    **A**     I probably just told him he was the captain of

16            investigations.

17    **Q**     You explained to him that he was somebody with more

18            authority than you?

19    **A**     Correct.

20    **Q**     What did you need somebody with more authority than

21            you for?

22    **A**     He wanted -- he wanted to speak with my supervisor.

23    **Q**     He walked outside and he says, I need some help and

24            maybe I'll talk to you; and you say, I can't give you

25            any help?

1     **A**     (Nods head affirmatively).

2     **Q**     And then your captain shows up. The third person in  
3             command of the Kershaw County Sheriff's Department  
4             shows up, right?

5     **A**     Correct.

6     **Q**     Talks to my client for a little while?

7     **A**     Correct.

8     **Q**     And he comes back in and gives you a statement?

9     **A**     We go back inside his house and he gives us a  
10            statement.

11    **Q**     And you're telling us that there was absolutely  
12            nothing offered to him out in that driveway in  
13            exchange for that statement?

14    **A**     I did not.

15    **Q**     But you don't know if Captain Thomley did?

16    **A**     I wasn't part of that conversation.

17    **Q**     Okay. So now you don't know what he and Captain  
18            Thomley talked about, do you?

19    **A**     I was never around that conversation.

20    **Q**     Did you not just tell me a minute ago that Captain  
21            Thomley absolutely denied offering him any help? I  
22            could be wrong. It happens all the time.

23    **A**     Yeah.

24    **Q**     So now what we have, your testimony is that you have  
25            no idea what your boss told my client?



- 1     **A**     They talked at the back of my truck.
- 2     **Q**     Okay. So you'll agree with me that you had no idea
- 3             what your boss said to my client?
- 4     **A**     That's correct.
- 5     **Q**     But you also agree with me that when that
- 6             conversation was over he walked back in the kitchen
- 7             and gave you a statement, right?
- 8     **A**     That's correct.
- 9     **Q**     Okay. Did he give you that statement twice?
- 10    **A**     The first time I took notes. The second time we put
- 11             it on a statement form.
- 12    **Q**     Okay. And your notes are consistent with what's on
- 13             the statement form, right?
- 14    **A**     Yes, sir.
- 15    **Q**     So he told you the story once. You didn't ask him
- 16             any questions?
- 17    **A**     I think I asked him questions at the end of the
- 18             statement.
- 19    **Q**     Okay. Did you want to clarify the statement while he
- 20             was giving it to you?
- 21    **A**     The -- the first -- the first part? Or, I mean, I
- 22             don't understand your question.
- 23    **Q**     My client is giving you a statement, right?
- 24    **A**     That's correct.
- 25    **Q**     And he just tells you a story and you take notes?

1     **A**     That's correct.

2     **Q**     Do you have some conversation with him between your  
3             notes and the statement?

4     **A**     Just filling out the statement form.

5     **Q**     Okay. So you say, Robert, that's just what I needed  
6             to hear, let's fill out the next form? . . . . .

7     **A**     I told him that this was going to be a statement  
8             form. We needed to put it on this form. I asked him  
9             to fill out the top part of it.

10    **Q**     Okay. Tell me what you said to my client after the  
11            statement was finished. Did you thank him for his  
12            help?

13    **A**     I don't remember what I said to him.

14    **Q**     Did you tell him he was in a lot of trouble?

15    **A**     I don't remember what I said to him.

16    **Q**     Would you agree with me that after that statement was  
17            written he was in a whole lot more trouble than he  
18            was in before it was written?

19    **A**     I would say he implicated himself, yes.

20    **Q**     In a fairly serious crime, right?

21    **A**     Yes.

22    **Q**     You didn't have any evidence linking him to that  
23            crime before he wrote that statement, did you?

24    **A**     No.

25    **Q**     Did you discuss the fact with him that he had

1 admitted to a very -- two very serious crimes in  
2 South Carolina?

3 A He knew that.

4 Q Did you ask him if he knew it?

5 A No.

6 Q How do you know he knew it?

7 A I told him what the crimes was.

8 Q When did you tell him? Before or after he gave the  
9 statement?

10 A I don't remember. I don't remember when I told him.

11 Q You don't remember when you told my client which  
12 crimes in South Carolina you were asking him about?

13 A I'm sure it was before the statement because we had  
14 done discussed everything.

15 Q Okay. And how did you convey to him how serious it  
16 was?

17 A That I don't know.

18 Q You told him he was facing very serious penalties,  
19 didn't you?

20 A May have.

21 Q Okay. You told him if he wrote the statement he'd be  
22 a witness, right?

23 A I did not.

24 Q Okay. Did you make any promises to him at all?

25 A I did not.

1 Q Okay. Did you say that in any way it would help him  
2 to give that statement?

3 A I did not.

4 Q Do you know what my client -- can you describe my  
5 client's demeanor during this time?

6 A He seemed pretty relaxed. He was eating a bowl of  
7 cereal as we took the statement.

8 Q Okay. And you've testified earlier that he was --  
9 you thought he was a fairly intelligent guy, right?

10 A That's correct.

11 Q Okay. Was aware of what was going on, right?

12 A Mm-hmm (affirmative).

13 Q Okay. You at the end of the statement, will you  
14 agree with me that he's admitted to two serious  
15 crimes according to you. You then left. Correct?

16 A Correct.

17 Q Captain Thomley was already gone?

18 A Correct.

19 Q You left and Mr. Marthers left?

20 A Correct.

21 Q What did Mr. Cannon do the rest of that night?

22 A I don't know.

23 Q You don't know because you didn't have anybody  
24 watching him, did you?

25 A Just his parents.

1 Q Okay. So you trusted his parents to keep an eye on  
2 him after he gave you that statement, right?

3 A Correct.

4 Q So you took that statement to be true and that was  
5 what you thought had happened and you just left him  
6 sitting in his kitchen eating cereal?

7 A (Nods head affirmatively).

8 Q Was that part of what he got out of writing that  
9 statement?

10 A No, sir. As long as he was cooperating with us, we  
11 wanted to try and verify his information.

12 Q Okay. Why did you leave him at home while you were  
13 doing that? You obviously didn't feel he was a  
14 danger to the community, right?

15 A I can't answer that.

16 Q And I'm not talking about this case. But in general,  
17 is there any time where you would feel someone was  
18 dangerous and let them go?

19 A I wouldn't think so.

20 Q You've been a police officer for a while, right?

21 A That's correct.

22 Q 14, 15 years?

23 A That's correct.

24 Q Very experienced. If you arrest somebody for a DUI,  
25 do you take them to jail?

- 1     **A**     Yes.
- 2     **Q**     Why?
- 3     **A**     Because they're intoxicated.
- 4     **Q**     Who cares? It's not illegal to be intoxicated, is
- 5             it?
- 6     **A**     It is behind the wheel of a car. You said DUI.
- 7     **Q**     And why? Why is it illegal?
- 8     **A**     That's the law.
- 9     **Q**     Would you agree or disagree with me that it is
- 10            dangerous?
- 11    **A**     It's dangerous.
- 12    **Q**     As a police officer, you protect and serve, correct?
- 13    **A**     That's correct.
- 14    **Q**     Who are you protecting?
- 15    **A**     The public.
- 16    **Q**     From what?
- 17    **A**     Danger.
- 18    **Q**     So you didn't feel it necessary to take my client
- 19            into custody or even have somebody keep an eye on
- 20            him, right?
- 21    **A**     We did not.
- 22    **Q**     So you agree with me you didn't think he was any
- 23            danger? You don't know?
- 24    **A**     Don't know.
- 25    **Q**     Beg the Court's indulgence, Your Honor. A couple

1 more questions, Mr. Catoe. Did you discuss with Mr.  
 2 Cannon's parents what was going to happen to him?  
 3 **A** I think we discussed him coming to the Sheriff's  
 4 Office the next day.  
 5 **Q** Did they tell you whether or not they were going to  
 6 be around?  
 7 **A** They said that -- if I'm not mistaken, they said they  
 8 would have his brother or something bring him down.  
 9 They were going to Atlanta.  
 10 **Q** Did they seem very concerned about him going to the  
 11 police station?  
 12 **A** They went to Atlanta.  
 13 **Q** Did you tell his parents that he had admitted to a  
 14 pretty serious crime?  
 15 **A** I did.  
 16 **Q** Okay. Did you tell them what the consequences were  
 17 going to be?  
 18 **A** I mean, we told them what the crime was.  
 19 **Q** Did you tell them what the consequences were going to  
 20 be?  
 21 **A** I didn't know at the time what the consequences would  
 22 be.  
 23 **Q** Okay. Were you -- so you didn't know if you were  
 24 going to charge him?  
 25 **A** Well, I'm sure he was going to be charged, but I

1 don't know what the outcome or the consequences of  
2 what he did was going to be at that time.

3 **Q** Okay. Did you know that you were going to charge him  
4 with a murder?

5 **A** We still hadn't made that determination.

6 **MR. KENDRICK:** No more questions, Your Honor.

7 **THE COURT:** Mr. Reuwer. Mr. Riley.

8 **MR. RILEY:** Thank you, Judge.

9 CROSS EXAMINATION

10 **BY MR. RILEY**

11 **Q** Investigator Catoe, just by way of summarizing a bit,  
12 is it true or not true that you have no fingerprint  
13 evidence linking Cannon or McDonald or Whitehead to  
14 the crime scene?

15 **A** That is true.

16 **Q** Is it true or not true that you have no eye witnesses  
17 linking Cannon or McDonald or Whitehead to the crime  
18 scene?

19 **A** That's true.

20 **Q** Is it true or not true that you have no forensic  
21 evidence of any sort linking Cannon or McDonald or  
22 Whitehead to the crime scene?

23 **A** I can't testify on the forensic evidence. I don't --  
24 I didn't -- I didn't do that. SLED did.

25 **THE COURT:** Speak up a little bit.



1 Q But you're familiar with it, correct? You're  
2 familiar with the forensic evidence?

3 A I am familiar with what was submitted to SLED.

4 Q I couldn't hear that last part.

5 A I am familiar with what was submitted to SLED.

6 Q And you're familiar with the reports that SLED  
7 returned, correct?

8 A I've seen them.

9 Q And it is true that they indicated no connection with  
10 any of the evidence that was submitted?

11 A From my understanding.

12 Q On Friday, the 15th, when you made contact with Mr.  
13 Whitehead, were you aware that Mr. Whitehead was  
14 working a second job at a movie theater?

15 A Not at that time.

16 Q In your contact with Mr. Whitehead on Friday, the  
17 15th, if he said, as you testified, that he knew  
18 nothing about the Josh Zoch case, he would have had  
19 no further reason to answer any questions, would he?

20 A That's the only -- that's the only question he  
21 answered.

22 Q Thank you, sir.

23 **THE COURT:** Redirect?

24 **MR. MEADORS:** Very, very briefly.

25 REDIRECT EXAMINATION

1 **BY MR. MEADORS**

2 **Q** Who told you about -- in State's 103, Robert Cannon's  
3 statement, somebody asked questions about Wal-Mart.

4 "We then left Sonic and went to the Two Notch  
5 Wal-Mart and another person got a ski mask"?

6 **A** Correct.

7 **Q** Who told you that?

8 **A** Robert Cannon.

9 **Q** And he told you that on what day?

10 **A** That was on December the 15th.

11 **Q** Did you have any knowledge about a ski mask being  
12 bought at Wal-Mart?

13 **A** Yes.

14 **Q** Prior to this?

15 **A** Yes.

16 **Q** When?

17 **A** On December the 15th.

18 **Q** Prior to December 15th. I don't mean prior to today,  
19 Danny. Prior to December 15th them telling you, did  
20 you have any knowledge about it?

21 **A** Oh, no. No.

22 **Q** There's no way you would have known that, correct?

23 **A** No.

24 **Q** In State's 104, is that a statement of Derrick  
25 McDonald?

1     **A**    Yes, it is.

2     **Q**    It says: "We went to Wal-Mart on Two Notch and  
3            bought a ski mask and a box of purple Latex gloves"?

4     **A**    That's correct.

5     **Q**    Did Danny Catoe know that a box of purple Latex  
6            gloves and a ski mask had been purchased at Wal-Mart?

7     **A**    I did not.

8     **Q**    Who told you about that?

9     **A**    Derrick McDonald.

10    **Q**    Mr. Whitlark asked you specifically about did you  
11            have information about who went to Wal-Mart and the  
12            mother going to Wal-Mart. You just learned about the  
13            mother going to Wal-Mart yesterday in this courtroom,  
14            correct?

15    **A**    That's correct.

16    **Q**    So you didn't know that information prior to that?

17    **A**    No, sir.

18    **Q**    And, Danny, referring to State's 99, you're not a  
19            chemist, are you?

20    **A**    No, sir.

21    **Q**    You don't work at SLED, do you?

22    **A**    No, sir.

23    **Q**    But do you know that that was sent to SLED and the  
24            blood came back as Joshua Zoch's?

25    **A**    Yes, sir.

1 Q Is there any dispute about that?

2 A Yes, sir.

3 Q You didn't do it, but it was done at SLED, right?

4 A It was.

5 Q And a report was submitted saying that's Josh's blood  
6 on this bat, right?

7 A Yes, it was.

8 Q And following up also on their line of questioning;  
9 did SLED attempt to get fingerprints on all those and  
10 couldn't? Correct?

11 A That's correct.

12 Q And a report was submitted to that, right?

13 A That's correct.

14 Q They tried and they couldn't?

15 A That's correct.

16 Q Based on your experience, if you wear gloves, are you  
17 going to leave fingerprints?

18 A No, sir, you're not.

19 Q How about purple Latex gloves?

20 A No, sir.

21 Q And when Mr. Whitehead was arrested initially after  
22 he told you, "I don't know a damned thing about  
23 this", was he under suspension?

24 A He was.

25 Q And that's why Richland County arrested him?

1     **A**     Yes, it was.

2     **Q**     And was Robert Cannon arrested the next day?

3     **A**     Yes, he was.

4     **Q**     After he had talked to Phil Crawford?

5     **A**     Yes, he was.

6     **Q**     And then after he talked to Phil Crawford, he  
7             admitted to actually touching Joshua Zoch, didn't he?

8     **A**     He did.

9     **Q**     That's all.

10            **MR. WHITLARK:** Very briefly, Your Honor.

11            **THE COURT:** Yes, sir.

12                    RE CROSS EXAMINATION

13     **BY MR. WHITLARK**

14     **Q**     Investigator Catoe, we know now that there's no  
15             physical evidence linking these boys to the thing,  
16             right?

17     **A**     Correct.

18     **Q**     In Derrick McDonald's statement he tells you he burns  
19             his clothes and all of the other stuff in a barrel in  
20             his backyard, doesn't he?

21     **A**     That's correct.

22     **Q**     And you've never gone over there to see what's in it,  
23             have you? Not ever?

24     **A**     I never did. Another investigator went over there.

25     **Q**     No one has ever gone to his house and looked for

1 burned residue stuff from DVD's or anything else in  
2 this case, have they?

3 **A** I never did.

4 **MR. WHITLARK:** That's all I have, Your Honor.

5 **THE COURT:** Mr. Kendrick.

6 **MR. KENDRICK:** Just very briefly, Your Honor.

7 RE CROSS EXAMINATION

8 **BY MR. KENDRICK**

9 **Q** Investigator Catoe, just a second ago Mr. Meadors  
10 asked you if you already knew about that ski mask  
11 before the statement, right?

12 **A** He asked me about the one bought at Wal-Mart.

13 **Q** Yeah. You said you already knew about that?

14 **A** I did not know about the one bought at Wal-Mart.

15 **Q** And your answer to his question was yes?

16 **A** It was just a mistake.

17 **Q** Okay. So then when he asked you the second question  
18 again, you realized, oh, wait?

19 **A** I didn't know about the ski mask bought at Wal-Mart  
20 until then.

21 **Q** I apologize. Was there more?

22 **A** Go ahead.

23 **Q** You took all the pictures in this case, right?

24 **A** I did.

25 **Q** Do you remember what was in all those pictures?

1     **A**     I could identify them. I can't say that I remember  
2             every one of them, of the pictures.

3     **Q**     I wouldn't give you a hard time about that one bit.  
4             I don't even remember what's in all of them. At some  
5             point you took a picture of a white work glove at the  
6             front door?

7     **A**     Yes, sir. At the front door. Yes, sir.

8     **Q**     Mr. Meadors asked you -- and I'm not an expert either  
9             on this chemistry or forensic stuff -- but he asked  
10            you if purple Latex gloves would leave fingerprints,  
11            right?

12    **A**     That's correct.

13    **Q**     You said no?

14    **A**     That's correct.

15    **Q**     Would a white work glove leave a fingerprint?

16    **A**     No, sir.

17    **Q**     Okay. Thank you. That's all I have.

18            **THE COURT:** Mr. Riley.

19            **MR. RILEY:** No recross, Judge.

20            **THE COURT:** All right. Thank you very much.  
21            You they may down, sir.

22            **MS. MCDUFFIE:** The State calls George Nicholson.

23            (WHEREUPON, State's Exhibit No. 105 is marked  
24            for identification.)

25            GEORGE E. NICHOLSON, after being duly sworn,

1 testifies as follows:

2           **THE CLERK:** Thank you. Please have a seat in  
3 the witness chair and state your full name for the  
4 record.

5           **THE WITNESS:** My full name is George Edward  
6 Nicholson.

7                           DIRECT EXAMINATION

8 **BY MS. MCDUFFIE**

9 **Q** Good morning, Mr. Nicholson.

10 **A** Good afternoon.

11 **Q** Mr. Nicholson, where you currently employed?

12 **A** With AT&T in Columbia.

13 **Q** And what is your job with AT&T?

14 **A** I am the area manager for South Carolina for asset  
15 protection for AT&T.

16 **Q** And have you always worked for AT&T?

17 **A** Well, since they merged with BellSouth, yes. Prior  
18 to that with BellSouth and prior to that with  
19 Southern Bell.

20 **Q** And when did AT&T merge with BellSouth?

21 **A** Finalized the end of 2006, like December 29th I  
22 believe.

23 **Q** So at the early part of December of 2006 it would  
24 have still been BellSouth?

25 **A** Correct.



1 Q And as part of your duties at BellSouth and now AT&T,  
2 are you in charge of keeping records and documents  
3 for them?

4 A I am a custodian of records, yes.

5 Q And it's part of your normal course of business to  
6 keep these documents?

7 A Yes, it is.

8 Q I'm going to show you what's in evidence as State's  
9 Exhibit 21. Do you recognize this document?

10 A Yes, I do.

11 Q Can you please tell the Court what that is?

12 A It's referred to as a call log or a call detail.  
13 It's a record of incoming and outgoing telephone  
14 calls for a specific telephone number.

15 Q And what telephone number is that?

16 A That number is [REDACTED].

17 Q And, Mr. Nicholson, three calls labeled number 22, 23  
18 and 24 on that report, --

19 A Yes, ma'am.

20 Q -- those are from -- what number is calling the  
21 [REDACTED]?

22 A On all three entries the calling number is  
23 [REDACTED]

24 Q I'm going to show you what's been marked as State's  
25 Exhibit 105. Do you recognize that document, and

1 will it aid in your testimony?

2 **A** I recognize it, and it will aid. Yes, ma'am.

3 **MR. MEADORS:** The State would offer Exhibit 105  
4 into evidence.

5 **THE COURT:** Let them look at it.

6 **MR. SHELDON:** No objection from McDonald.

7 **THE COURT:** Without objection. Hearing none,  
8 it's admitted.

9 (WHEREUPON, State's Exhibit No. 105 is admitted  
10 into evidence.)

11 **Q** Mr. Nicholson, what is State's Exhibit 105?

12 **A** Would you repeat that, please?

13 **Q** What does that document show?

14 **A** It's a subscriber record showing the telephone number  
15 we just looked at on that other document, who that  
16 was assigned to.

17 **Q** And who is that number assigned to?

18 **A** It's assigned to Alltel Communications, Incorporated.

19 **Q** And what kind of number is that?

20 **A** It's a connection between BellSouth and this other  
21 telephone company. We would refer to it as a trunk  
22 line.

23 **Q** And what is a trunk line?

24 **A** It's just a connection point, If a customer from  
25 Alltel calls one of BellSouth's customers, it's going

1 to be brought to BellSouth on a trunk line.

2 Q So any person who has an Alltel service that calls a  
3 BellSouth customer, it would just show up as that  
4 generic number on their phone bill?

5 A If it came from this switch from Alltel, yes. There  
6 are different trunks in different parts of the  
7 country. But in this area, it could show this  
8 number, yes.

9 Q So a customer in Columbia or in the surrounding area  
10 calling a BellSouth customer, it would show up as  
11 that Alltel trunk line?

12 A It would.

13 MS. MCDUFFIE: No further questions.

14 THE COURT: Anything?

15 MR. SHELDON: Yes, Your Honor. Thank you. May  
16 it please the Court.

17 CROSS EXAMINATION

18 BY MR. SHELDON

19 Q Good morning.

20 A Good morning.

21 Q Okay. Just a couple of questions for you. She had  
22 referred to the trunk line, [REDACTED]. Is that  
23 correct?

24 A Yes.

25 Q Are there any incoming calls at all on this sheet

1           that you have between the hours of 7:00 and 8:00 p.m.  
2           on December 12th, 2006?

3   **A**     Incoming calls?

4   **Q**     Yes, sir.

5   **A**     Well, you're looking at military times. So 12:00 --  
6           I mean, for 7:00 would be 19:00.

7   **Q**     I'm sorry. 7:00 and 8:00 p.m.

8   **A**     All right. So we're looking at 19:00 to 20?

9   **Q**     I believe that would be 19:00 to 20 on here.

10   **A**     There is one at 19:22.

11   **Q**     At 19:22?

12   **A**     Line 9.

13   **Q**     That's it. That is correct. But that would be an  
14           outgoing call though, right? The calling number?

15   **A**     It is correct. That's an outgoing call.

16   **Q**     And I'm just speaking about incoming calls.

17   **A**     Okay. All right. Then I see no incoming calls at  
18           that hour.

19   **Q**     How about between 11 a.m. and 9 p.m.? Any incoming  
20           calls?

21   **A**     11 a.m. and 9 p.m.?

22   **Q**     Yes, sir. So 11:00 to 21:00.

23   **A**     There is something at 20:18.

24   **Q**     That's right. And you're referring to [REDACTED]?

25   **A**     Correct.

1 Q How long did that call last?

2 A Less than a second.

3 Q Okay. All right. Now let's just move on down the  
4 line. How about between 11 a.m. and 9:30 p.m.?

5 A What are you looking for this time, sir?

6 Q I guess it would be call 19 and 20. Those are the  
7 only other incoming calls, right?

8 A Okay.

9 Q And what were those numbers?

10 A Area code [REDACTED] and area code [REDACTED]

11 MR. SHELDON: And, Judge, at this time I would  
12 ask you to take judicial notice that [REDACTED] is an  
13 Indiana area code, which is where --

14 THE COURT: Any objection?

15 MS. MCDUFFIE: No, Your Honor.

16 MR. SHELDON: Which is where Mr. Zack Waltemath  
17 said he was from and lived.

18 MS. MCDUFFIE: I do object to their narration  
19 then, Your Honor.

20 THE COURT: Yes, sir.

21 MR. SHELDON: Withdraw that.

22 THE COURT: It's an Indiana call.

23 Q Okay. So we've got that established. So again,  
24 there are no calls incoming between 7:00 and 8:00 or  
25 a little after 8. How about now let's go to the

1 outgoing calls. I'd like to direct your attention to  
2 call number 10. Do you see that on there?

3 A Yes, I do.

4 Q Okay. And at what time did that call take place?

5 A At 20:16 which would be 8:16 p.m.

6 Q And what was the called number?

7 A The called number was [REDACTED] -- am I on the right  
8 line?

9 Q No. I'm sorry. You're not.

10 A [REDACTED]

11 Q Okay. And how long did that call last?

12 A Three minutes 47 seconds and a half second.

13 Q Okay. And I you would just let the record reflect  
14 that previous testimony of Melissa Davy indicated  
15 that was her phone number. How about call number 13?  
16 At what time did that take place?

17 A At 8:21 p.m.

18 Q And is that the same call number as call number 10?

19 A It's the same outgoing number and the same incoming  
20 number, yes.

21 Q [REDACTED]?

22 A Yes.

23 Q And what time did that call -- I mean, how long did  
24 that call last?

25 A Five minutes -- I mean -- excuse me. Five seconds,

1 24 minutes.

2 Q Five minutes and 24 seconds?

3 A Five minutes and 24 seconds, yes.

4 Q Okay. Great.

5 A And a .3 second if you're that --

6 Q And just a couple more questions for you. How many  
7 times did [REDACTED], the trunked number, how many  
8 times did they call the house?

9 A I see just the bottom three.

10 Q Three. Not two. Three?

11 A Three.

12 Q Okay. And let me ask you about the exhibit they just  
13 turned in. What date was that printed out?

14 A Printed out?

15 Q Yes, sir.

16 A Yesterday.

17 Q Okay. Yesterday about 8:35 p.m.?

18 A It might have been. I wasn't with them watching.

19 Q And that's the time that's listed on the computer. I  
20 mean, that's just why I'm asking.

21 A Okay. May well have been.

22 Q And let me ask you one more question. This document,  
23 I think it's State's 103, this one.

24 MS. MCDUFFIE: State's 21.

25 Q The one you were looking at.

1                   **MR. MEADORS:** 21.

2   **Q**   State's 21, is there a time that -- is there a date  
3       on the top of that?

4   **A**   There is.

5   **Q**   And what date is that?

6   **A**   01-04-2007.

7   **Q**   Okay. So this was printed out about 488 days later,  
8       give or take a couple of days. Is that right?

9   **A**   Yes.

10               **MR. SHELDON:** Okay. I have no more questions,  
11       Your Honor.

12               **THE COURT:** Mr. Kendrick.

13               **MR. KENDRICK:** I don't have anything else, Your  
14       Honor.

15               **MR. REUWER:** Just a couple, if it pleases the  
16       Court.

17               **THE COURT:** Sure.

18                               CROSS EXAMINATION

19   **BY MR. REUWER**

20   **Q**   Good afternoon, Mr. Nicholson.

21   **A**   Hello.

22   **Q**   Sir, on looking at the detailed toll records?

23   **A**   Mm-hmm (affirmative).

24   **Q**   Does the number [REDACTED] appear under a calling  
25       number at all?



1     **A**     Would you repeat the number, sir?

2     **Q**     530-1646.

3     **A**     As a calling number?

4     **Q**     Yes, sir.

5     **A**     I do not see that.

6     **Q**     Does that same number, [REDACTED], appear under a  
7             called number?

8     **A**     I do not see it, sir.

9     **Q**     And, Mr. Nicholson, and a trunk line uses -- more  
10            than one number can use a trunk line?

11    **A**     Yes.

12    **Q**     Approximately how many can use it?

13    **A**     I have no idea.

14    **Q**     Hundreds?

15    **A**     I don't know, sir.

16    **Q**     Lots?

17    **A**     They're usually engineered by whoever thinks what  
18            kind of traffic is going to be coming across it.

19    **Q**     I mean, do you have a capacity idea?

20    **A**     I do not.

21    **Q**     Can it be many?

22    **A**     It could be many, yes.

23    **Q**     Okay. Thank you. Nothing further, Your Honor.

24            **THE COURT:** Anything further?

25            **MS. MCDUFFIE:** One follow-up question.

REDIRECT EXAMINATION

**BY MS. MCDUFFIE**

**Q** Mr. Nicholson, if (803)530-1646 was an Alltel cellphone, could that show up as this trunking number on this phone bill?

**A** It could.

**Q** Thank you. No further questions.

**THE COURT:** Yes, sir. Anything further?

**MR. SHELDON:** No more questions, Your Honor.

**MR. KENDRICK:** Yeah. I do have a follow-up question now, Your Honor.

CROSS EXAMINATION

**BY MR. KENDRICK**

**Q** Mr. Nicholson, if I had an Alltel cellphone number, could it show up as that trunking number?

**A** It could.

**Q** If anyone in this courtroom had an Alltel cellphone number, could it show up as that trunking number?

**A** I'd say if they're calling from the same area. Like if you're calling from this county, you may have a different trunking number. But if it's an Alltel connection going to a BellSouth connection, you would have a trunk connection.

**Q** So basically that trunking number absolutely has nothing to do with identifying what number called

1 other than the fact that it was an Alltel customer?

2 A It does not.

3 Q Do you watch TV?

4 A Do I watch TV?

5 Q Yes.

6 A Yes, sir, I do.

7 Q Do you see all those Alltel commercials?

8 A I try to ignore them, but I see them.

9 Q I will proceed with caution knowing that you work for  
10 AT&T. You would agree Alltel has got some pretty  
11 good service plans?

12 A Would you repeat that, please?

13 Q Would you agree with me that Alltel has got some  
14 pretty good service plans? If you didn't work for  
15 AT&T?

16 A I'm not looking for another cellphone, so I'm not  
17 really paying that much attention to their ads, sir.

18 Q That's all. I appreciate it.

19 **THE COURT:** Mr. Reuwer.

20 **MR. REUWER:** Nothing further, Your Honor.

21 **THE COURT:** Thank you very much. You may come  
22 down. May this witness be excused? Without  
23 objection.

24 **THE WITNESS:** Thank you.

25 **THE COURT:** Next witness.

1                   **MR. MEADORS:** Captain Thomley.

2                   DAVID THOMLEY, after being duly sworn, testifies  
3 as follows:

4                   **THE CLERK:** Thank you. Please be seated in the  
5 witness chair and state your full name for the  
6 record.

7                   **THE WITNESS:** David Thomley, T-H-O-M-L-E-Y.

8                                   DIRECT EXAMINATION

9 **BY MR. MEADORS**

10 **Q** Captain, good afternoon. Could you please tell this  
11 jury a little bit about David Thomley, Captain David  
12 Thomley; where you're from, where you're raised --

13 **A** I'm originally from --

14 **Q** -- background, training, experience; you know, just a  
15 little bit about you?

16 **A** I'm originally from Elgin. I was raised in Elgin.  
17 I've been involved in law enforcement, been employed  
18 in law enforcement for 20 years. About 17 years I've  
19 been here at the Sheriff's Office. 12 of those years  
20 I've been captain, head of investigations. Prior to  
21 that, for two years I was head of narcotics. I also  
22 worked as a criminal detective and I worked on the  
23 street, patrol officer.

24 **Q** Prior to coming here though, 17 years here, where did  
25 you work before that?

1    **A**    I worked for USCPD as a patrol officer, and I worked  
2           for the Town of Bethune as a patrol officer.

3    **Q**    And as part of your training and schooling, did you  
4           go to the Criminal Justice Academy?

5    **A**    Yes. I'm a graduate of the South Carolina Criminal  
6           Justice Academy in Columbia. I'm due to graduate in  
7           August from South University with a bachelor's degree  
8           in criminal justice. I also graduated from the  
9           American Polygraph Institute in Atlanta. I've  
10          attended approximately 30 courses in law enforcement  
11          totaling somewhere around 1600 hours of classroom  
12          time.

13   **Q**    You all have to do like we do and get periodic CLE's  
14          I call them, updates?

15   **A**    Yeah. We have legal updates and core updates  
16          throughout the year.

17   **Q**    And you've been Captain here for Sheriff McCaskill  
18          how long?

19   **A**    12 years.

20   **Q**    And as part of the captain of investigations, are you  
21          at least -- do you keep up or aware of the different  
22          investigations that are going on in the county?

23   **A**    Yeah. I've got -- I have eight detectives that work  
24          for me. And I assign approximately 3,000 cases a  
25          year.

1 Q Now, in December of 2006 you were captain of  
2 investigations?

3 A That's correct.

4 Q And specifically referring back to what's State's 8,  
5 do you recognize this as a December 2006 calendar?

6 A Yes, I do.

7 Q And I believe on December 15th, 2006, did you have an  
8 occasion to respond to the residence of Robert  
9 Cannon?

10 A Yes. On the 15th. Yes.

11 Q My mind just went blank. But at the residence of [REDACTED]  
12 Troll Bridge?

13 A Yes.

14 Q And who had asked you to come there, Captain?

15 A I was actually telephoned by Investigator Danny Catoe  
16 that evening.

17 Q And was he currently working the case then?

18 A Yes, he was.

19 Q The case we're all here talking about?

20 A That's correct.

21 Q And you arrived at Troll Bridge. Do you remember  
22 approximately what time?

23 A I don't remember the time. But it was -- it would  
24 have been after 7 p.m.

25 Q And when you got there, you saw Investigator Catoe?

1     **A**     Yes, I did.

2     **Q**     Did you have an occasion to see Robert Cannon?

3     **A**     Yes, I did.

4     **Q**     Please tell the jury where you saw him and what  
5             happened when you saw Mr. Cannon?

6     **A**     When I got to the residence, Mr. Cannon was standing  
7             at the front of Investigator Catoe's truck along with  
8             Investigator Marthers there at the residence.

9     **Q**     And had Mr. Cannon asked to speak to you?

10    **A**     That's my understanding, yes.

11    **Q**     And you got to talking to him. Can you tell the jury  
12             about that conversation? Did you talk to Mr. Cannon?

13    **A**     Yeah. I spoke to him. We walked to the back of  
14             Investigator Catoe's truck. And we spoke for maybe  
15             one or two minutes. It was very brief.

16    **Q**     And while you were back there at that truck, did you  
17             threaten him or coerce him in any way, Captain?

18    **A**     No. Not at all.

19    **Q**     Did he appear to you -- I want to ask you about it.  
20             Did he appear to understand -- did he appear to you  
21             when you all were talking to understand your  
22             questions?

23    **A**     Yes. He appeared to understand everything I was  
24             talking to him about.

25    **Q**     Based on his responses to you or however long you all

1           talked, could you understand his words that came out?

2   **A**     Yeah. I had no problem understanding Mr. Cannon.

3   **Q**     Were his responses timely to you?

4   **A**     Yes, they were.

5   **Q**     Okay. Appropriate? Did you all have any trouble  
6           communicating?

7   **A**     No. We didn't have any trouble.

8   **Q**     Did he appear to you to be under the influence of any  
9           alcohol, drugs or any other intoxicant?

10  **A**     He didn't appear to be, and I didn't smell anything  
11           that caught my attention.

12  **Q**     And at that point did you promise anything to  
13           Defendant Robert Cannon?

14  **A**     No, I did not.

15  **Q**     And did he ask you whether or not his cooperation, if  
16           he cooperated would be told to anybody?

17  **A**     I don't remember specifically if he asked me that.  
18           But I did tell him that if he cooperated we would let  
19           the judge know and the solicitor know that he had  
20           cooperated with the investigation.

21  **Q**     And on December 15th, 2006 you told Robert Cannon you  
22           would let it be known his cooperation to a judge or  
23           to me?

24  **A**     Both. Yes.

25  **Q**     And had you done that before with folks you were



1 talking to?

2 A Absolutely.

3 Q And are you going to do that? Are you doing it right  
4 now?

5 A Well, yes, sir. I'm doing it right now. He  
6 cooperated.

7 Q And besides that, did you tell him anything else?

8 A Not that I'm aware of. No.

9 Q Did you promise him anything?

10 A Oh, no.

11 Q Did you say, Robert, do this and I'll do this?

12 A No. We don't -- I never do that. And I don't -- I  
13 don't condone that.

14 Q But you told him that you'd let his cooperation be  
15 known to His Honor and to the Solicitor's Office,  
16 specifically me?

17 A That is correct.

18 Q How long did you stay there, Captain?

19 A I'm sorry?

20 Q How long did you stay at [REDACTED] Troll Bridge I think it  
21 is that day? How long did this conversation take  
22 place between you and Mr. Cannon?

23 A I stayed at the residence maybe, I don't know, ten or  
24 fifteen minutes maybe. My actual conversation with  
25 Mr. Cannon was more of one or two minutes. It was

1           very brief.

2    **Q**   Prior to talking to Mr. Cannon, did you ask  
3           Investigator Catoe whether or not he read the Miranda  
4           rights to him?

5    **A**   That is the first thing I asked him.

6    **Q**   And what did Investigator Catoe tell you?

7    **A**   He said he had advised him of his rights.

8    **Q**   And was Robert Cannon arrested the next day?

9    **A**   Yes.

10   **Q**   Well, is this person in this courtroom that you  
11           talked to and said you'd let his cooperation be  
12           known -- and did he act like he wanted to hear that  
13           from you?

14   **A**   Yes, he did.

15   **Q**   Is that Robert Cannon? Or is he in the courtroom  
16           here today?

17   **A**   He's seated with the white shirt and white tie beside  
18           his defense attorney.

19   **Q**   Beside Mr. Josh Kendrick, his lawyer?

20   **A**   Yes.

21               **MR. MEADORS:** We'd ask the record to so reflect.

22               **THE COURT:** The record will so reflect the  
23           witness identified the defendant, Thomas (sic).

24   **Q**   That's all. Thank you.

25               **THE COURT:** Mr. Whitlark.

1                   **MR. WHITLARK:** Very briefly, Your Honor.

2                               CROSS EXAMINATION

3           **BY MR. WHITLARK**

4   **Q**     Captain Thomley, Mr. and Ms. Cannon appeared to you  
5           to be very concerned parents, right?

6   **A**     Are you asking me?

7   **Q**     Yes, sir.

8   **A**     Yes.

9   **Q**     As a matter of fact, they were very, very interested  
10          in what was going on, weren't they?

11   **A**     I would say yes.

12   **Q**     And they left town to go on a trip the next day,  
13          didn't they?

14   **A**     I don't have that knowledge.

15   **Q**     Okay. You said you worked in the narcotics division  
16          for some time?

17   **A**     Two years.

18   **Q**     Have you ever heard that leaving a chicken at the  
19          head of an assassinated person means that they were a  
20          snitch and they were killed by a drug dealer? Have  
21          you ever heard that?

22   **A**     Absolutely not.

23                   **MR. WHITLARK:** That's all I have, Your Honor.

24                   **THE COURT:** Mr. Kendrick.

25                   **MR. KENDRICK:** Thank you, Your Honor.

CROSS EXAMINATION

**BY MR. KENDRICK**

**Q** Good afternoon, Captain Thomley.

**A** Good afternoon, sir.

**Q** You and I have had the occasion to speak before,  
right?

**A** Yes, sir.

**Q** So you know I represent Mr. Cannon. You're pretty  
high ranked in the Kershaw County Sheriff's  
Department, right?

**A** I am third ranked. Yes, sir.

**Q** You have more authority than Investigator Catoe,  
right?

**A** Yes, I do.

**Q** You have more authority than Investigator Marthers,  
right?

**A** They both work for me. Yes, sir.

**Q** Okay. So between the three of you all, you're the  
one who can make decisions?

**A** They're capable of making decisions.

**Q** You're able to make bigger decisions than they are?

**A** I can overrule their decision.

**Q** Who contacted you again? Was it Catoe?

**A** Investigator Catoe.

**Q** He called you? What were you doing? Were you off

1 work or --

2 A I believe I'd just gotten home that evening.

3 Q You live down here in Camden somewhere?

4 A I live in Elgin. I live in Elgin about three miles  
5 from the scene.

6 Q Okay. So when he called you, he informed you that  
7 Mr. Cannon wanted to talk to you, right?

8 A I don't remember his exact terminology, but  
9 Investigator Catoe indicated that he would feel  
10 better if I was there and that he thought Mr. Cannon  
11 would feel better if I was there also.

12 Q Do you know Mr. Cannon?

13 A I do not.

14 Q So he probably didn't ask for you by name, right?

15 A I wouldn't think so.

16 Q Okay. Did Investigator Catoe ever inform you who he  
17 was asking for?

18 A I'm sorry?

19 Q Did Investigator Catoe ever inform you who he was  
20 asking for?

21 A I don't recall if he did that or not.

22 Q Okay. You would agree with me that he probably  
23 didn't ask for anybody by name, right?

24 A I don't see how he could have asked for me by name.  
25 I wasn't there, but I don't see how he could have

1           done that.

2    Q    Did you learn when you got there that he was just  
3           asking for somebody with more authority?

4    A    No. I wouldn't say that I learned that when I got  
5           there.

6    Q    Okay. Did you ever learn that he was asking for  
7           somebody with more authority?

8    A    Yeah. I mean, it was -- Investigator Catoe was  
9           calling me because I'm his supervisor and I do have  
10          more authority than he does. But --

11   Q    And that was -- ultimately the request came from Mr.  
12          Cannon, right?

13   A    I believe so, yes.

14   Q    We know Mr. Catoe is a good Investigator. You  
15          weren't coming out there to help with the  
16          investigation, right?

17   A    No. I was not.

18   Q    You trust him. He's doing everything fine by  
19          himself, right?

20   A    I believe he was.

21   Q    So you wanted to talk to Mr. Cannon about something,  
22          right?

23   A    I wanted to? No, I did want to.

24   Q    He wanted to talk to you about something?

25   A    I was requested.

1 Q Okay. And you were requested by Mr. Cannon?

2 A By Mr. Catoe. Mr. Catoe called me.

3 Q Okay. I'm sorry. I think I've confused myself now.  
4 But you would agree with me that Mr. Cannon initiated  
5 the request?

6 A I don't know that, is what I'm saying. I think he  
7 may have, but I wasn't told that specifically. As I  
8 testified earlier, I think Investigator Catoe felt  
9 better with me being there, and as well as Mr.  
10 Cannon. So I guess the assumption is that Mr. Cannon  
11 asked, but I was never told that specifically that I  
12 recall.

13 Q Specifically, you're the captain of investigations,  
14 right?

15 A That's correct.

16 Q So is it fair to say you're going to have at least  
17 some knowledge of every investigation in Kershaw  
18 County?

19 A I try to.

20 Q Sure.

21 A Sure.

22 Q And according to the questions you were just asked,  
23 you had been in contact with the Solicitor's Office  
24 about this case?

25 A I don't understand what you're asking me.

1 Q Had you been in contact with the Solicitor's Office  
2 about this case before you got to Mr. Cannon's house?

3 A Had I?

4 Q (Nods head affirmatively).

5 A I don't recall specifically. But typically in a  
6 murder case if I have information I will contact  
7 someone with the Solicitor's Office to let them know  
8 that we've had a homicide and brief them as to what I  
9 do know at that time. But typically the investigator  
10 will contact the Solicitor's Office because he has  
11 the majority of the information.

12 Q So you had a one or two-minute conversation with Mr.  
13 Cannon?

14 A That's correct.

15 Q Were you informed later that as a result of that  
16 conversation he gave a statement?

17 A I knew he gave a statement, yes.

18 Q He gave the statement after you left, right?

19 A Yes. And he may have started the statement before I  
20 left. But I know he gave a statement after. It was  
21 completed after I was already departed from the  
22 scene, from the house.

23 Q You agree with me that he hadn't given a statement  
24 before you got there?

25 A No. I don't agree with you. I don't know.



1 Q So you weren't informed as to what had happened  
2 before you got there?

3 A I wasn't informed if he'd given a statement.

4 Q You were familiar with the facts of this case, right?  
5 And by facts I just mean you know what happened to  
6 who where?

7 A Yes.

8 Q On December 13th?

9 A Yes.

10 Q In fact, you called Mr. Catoe in. He was somewhere  
11 else, and you called him from the scene, right?

12 A No. He would have been called because he was the  
13 investigator on call.

14 Q So you wouldn't have been the one that made this  
15 request?

16 A That would have been done through central  
17 communications.

18 Q Were you at the scene that night?

19 A Yes, I was.

20 Q Did you talk with Mr. Catoe about what to do with Mr.  
21 Cannon Friday night after he gave the statement?

22 A I think we may have had a conversation about it. It  
23 may have been on the telephone, but I'm not sure.  
24 But I think we did have a conversation about that.

25 Q Okay. So you approved leaving Mr. Cannon at home?

1     **A**     Yes, sir.

2             **MR. KENDRICK:** That's all I have, Your Honor.

3             **THE COURT:** Mr. Reuwer or Mr. Riley.

4             **MR. RILEY:** Nothing, sir.

5             **THE COURT:** Redirect?

6             **MR. MEADORS:** No, sir. Thank you.

7             **THE COURT:** All right. You may come down,  
8     Captain. May the witness be excused? Without  
9     objection.

10            **MR. MEADORS:** Ms. McDuffie would like to  
11    approach briefly.

12            **THE COURT:** Approach the bench, counsel. Try to  
13    get a schedule.

14            (Whereupon, a bench conference is had)

15            **THE COURT:** All right, Ladies and Gentlemen.  
16    I'm just trying to get a handle on the length of time  
17    that witnesses -- and the next witness is not  
18    necessarily a long witness but would certainly run  
19    probably past 1:00. So I think the most efficient  
20    use of our time is to go ahead and take a lunch break  
21    at this time.

22            I'll ask you to be back in the jury room at --  
23    well, let's say about 1:45. There is a matter. That  
24    will give you about an hour. There's a matter I can  
25    take up with the attorneys while you're at lunch, and

1 maybe that will streamline some things, too. So have  
2 a pleasant lunch. Don't discuss the case among  
3 yourselves when you return to the jury room or with  
4 anyone else over the lunch hour. Thank you very  
5 much.

6 (Jury out at 12:38 p.m.)

7 **THE COURT:** All right, counsel. Is there  
8 anything that needs to be brought up now?

9 **MR. WHITLARK:** Not that I know of, Your Honor,  
10 from McDonald.

11 **THE COURT:** And, Mr. Kendrick, you say you have  
12 a matter of law?

13 **MR. KENDRICK:** Yes, sir. But I guess it would  
14 probably be more efficient -- I don't know what you  
15 want to do, but if they're going to call Crawford, I  
16 don't have an issue.

17 **MR. MEADORS:** We're calling Crawford.

18 **MR. KENDRICK:** Okay. Go ahead and start?

19 **THE COURT:** Go ahead.

20 **MR. KENDRICK:** Your Honor, my concern with  
21 Mr. Crawford testifying is that when he testifies to  
22 the post test statements.

23 **THE COURT:** To the what?

24 **MR. KENDRICK:** The post polygraph test  
25 statements.

1           **THE COURT:** Okay.

2           **MR. KENDRICK:** He says, Your Honor, that my  
3 client makes a statement to him that he kicks the  
4 victim and that he hit the back door I guess at the  
5 same time with everybody else. And those are two  
6 obviously inculpatory statements.

7           Your Honor, those statements are filled in on  
8 the form as post test polygraph statements. Those  
9 statements I think are linked with the polygraph to  
10 such a degree that they shouldn't come in because  
11 they were obviously part and parcel of the polygraph  
12 test.

13          In other words, the investigator says, you know  
14 what, Buddy; you failed this polygraph. And then my  
15 client makes some change to what he said. And I  
16 think that's important. To give the jury a full view  
17 of what that statement means they would have to know  
18 in what context it was taken.

19          Now, you've been very clear, Your Honor, that  
20 polygraph is not going to come in here without an  
21 expert. I am not seeking to admit the polygraph and  
22 agree with Your Honor. You haven't heard me talk a  
23 whole lot about it. I agree it's confusing to the  
24 jury. I don't believe in polygraphs and I don't  
25 think they work.

1           So, because this statement, those two particular  
2 things, Your Honor; and then I guess there's a third  
3 thing where he writes down things that were taken. I  
4 would, you know, depending on how the State wants to  
5 do it, Your Honor, I believe I could concede that  
6 that third statement I mentioned is not so  
7 intertwined with the polygraph that it falls within  
8 the same class I'm talking about.

9           **THE COURT:** You talking about where he admits  
10 certain items?

11           **MR. KENDRICK:** Yes, Your Honor. He lists some  
12 things out. I would agree that I still think it's  
13 linked, but it's not as strongly as the other two  
14 admissions that Your Honor --

15           **THE COURT:** But they're all at the same time.  
16 What you're saying --

17           **MR. KENDRICK:** Yes, sir. And I guess my problem  
18 with -- so we'll link them all together, Your Honor.  
19 I was trying to see if I could give us any room to  
20 work here. But let's say all three statements are  
21 given based on a finding of deception in the  
22 polygraph. I mean, I think we've talked about that.  
23 And again, Your Honor, you haven't heard me talk  
24 about that polygraph or want to bring it up too much.  
25 I've wanted the records for whatever it is I do with

1       stuff when I go home at night. But I'm not seeking  
2       to admit it. I think those statements should stay  
3       out, Your Honor. And I don't think it's prejudicial  
4       to the State's case. They've got an admission my  
5       client was there according to their evidence.

6               **THE COURT:** What's the difference in the listing  
7       of items taken?

8               **MR. KENDRICK:** Your Honor, I changed my position  
9       on that. There is no difference. It was all part of  
10      the same post test interview.

11              **THE COURT:** Let me just understand. Do you take  
12      the position that those responses were induced by the  
13      information given to him from the officer that he was  
14      not being truthful?

15              **MR. KENDRICK:** Yes, sir. Your Honor, what  
16      happens in a post test interview is that the  
17      defendant or suspect is informed of whether or not  
18      deception was indicated. Now, again, you haven't  
19      heard me argue too much about that polygraph because  
20      I've probably got a similar position as Mr. Meadors  
21      as far as what we've been talking about whether or  
22      not deception is indicated.

23              But clearly my client is told deception was  
24      indicated and then immediately gives a statement that  
25      changes a little bit what he said. And I don't think

1 we can get a full picture of those statements without  
2 talking about the polygraph which I think not only  
3 adds a long time to this trial but just isn't worth  
4 it.

5 And again, I don't think we prejudice the State,  
6 because all that does is change the statement they  
7 already have a little bit. But it changes it  
8 directly in response to him being polygraphed on that  
9 statement.

10 **THE COURT:** All right. Let me hear from the  
11 State.

12 **MR. MEADORS:** Yes, sir. With all due respect,  
13 we have had the Jackson v. Denno hearing, and this  
14 was one of the statements we went through that Your  
15 Honor ruled was admissible, that we was advised of  
16 his rights. I've already said it in my opening that  
17 testimony is coming out. I just asked Investigator  
18 Catoe about it earlier today. And after he talked to  
19 Crawford, did he tell him he'd also touched his body  
20 and was he then arrested. There were no objections  
21 then. Your Honor ruled on it yesterday.

22 I wouldn't have said it in my opening. We think  
23 it guts the State, quite frankly, because it's after  
24 that we're saying that he was arrested. And I can  
25 and have done it many times. Through Lieutenant

1           Crawford, did you meet with him the next day? Yes, I  
2           did. Did you read him his rights? Yes, I did. What  
3           did he tell you? Did he tell you anything in  
4           addition on his statement? He said I took these  
5           items and then he said I hit him.

6           I've done it several times, and polygraph won't  
7           be even be mentioned, Judge. And he was read his  
8           rights. He understood his rights. He was also read  
9           the polygraph consent. I understand we can't go into  
10          that. But all these statements come after that.  
11          That's just a tool law enforcement uses. And these  
12          were his statements against his interest.

13          And, respectfully, I thought Your Honor had  
14          already -- this objection wasn't made yesterday when  
15          we were going through the statements in Jackson v.  
16          Denno.

17          **THE COURT:** No, it wasn't. It wasn't made on  
18          these grounds. No. It was made on other grounds.

19          **MR. KENDRICK:** And, Your Honor, I mean, I don't  
20          think I need to apologize to the Court. Certainly as  
21          the trial goes on, evidence develops. And I don't  
22          know if we get smarter each day maybe or worse. But  
23          I think that I understand what Mr. Meadors is saying.  
24          But if Your Honor does think those things should be  
25          admitted, then again, I will not talk about a



1 polygraph. But I think I do need to -- I'll be happy  
2 to proffer it, Your Honor. I think John and I can  
3 probably agree on it, to come up with a way to  
4 explain that Crawford had seriously accused my client  
5 of lying; you know, some way to show that those  
6 admissions were made based on Crawford's actions.  
7 They were not spontaneous. I don't think Crawford  
8 did anything improper, but he certainly did something  
9 to influence it.

10 **MR. WHITLARK:** Your Honor, may McDonald be heard  
11 on this? Your Honor, one of the big issues in this  
12 case is --

13 **THE COURT:** Hold it. Wait a minute.

14 **MR. WHITLARK:** Oh, I'm sorry.

15 **THE COURT:** What's McDonald got to do with this?

16 **MR. WHITLARK:** Well, Your Honor, he's  
17 inextricably intertwined with these two gentleman.

18 **THE COURT:** I know that. But what's he got to  
19 do with this issue?

20 **MR. WHITLARK:** Well, because if one of them  
21 goes, they're all going, Your Honor. That's my  
22 understanding.

23 **THE COURT:** No, sir.

24 **MR. WHITLARK:** Well, anyway, Judge, the issue of  
25 whether he voluntarily and freely and without

1 coercion gave this statement about this other stuff,  
2 I mean, obviously this guy is talking to him about  
3 the results of a polygraph urging him, cajoling him  
4 to give us new information.

5 **THE COURT:** Listen. That's what Mr. Kendrick  
6 has told me. So you join in his argument.

7 **MR. WHITLARK:** Yes, sir.

8 **THE COURT:** Thank you. And I assume Mr. Riley  
9 does, too.

10 **MR. RILEY:** Yes, sir.

11 **THE COURT:** All right. I'll think about it over  
12 a double burger.

13 **MR. KENDRICK:** Thank you, Judge. What time do  
14 you want us back?

15 **MR. WHITLARK:** Where do you get those at?

16 **THE COURT:** Quarter to 2.

17 **MR. KENDRICK:** Quarter to 2 you said, Your  
18 Honor?

19 **THE COURT:** 1:45.

20 **MR. KENDRICK:** 1:45. Thank you, Judge.

21 (Whereupon, a lunch break is taken)

22 (WHEREUPON, State's Exhibit No. 106 is marked  
23 for identification.)

24 (WHEREUPON, State's Exhibit No. 107 is marked  
25 for identification.)

1           **THE COURT:** Let's get started.

2           **MS. MCDUFFIE:** Yes, sir, Your Honor.

3           **THE COURT:** With regard to -- if Mr. Crawford is  
4 called, Officer Crawford, I believe that testimony  
5 comes in as long as it doesn't refer to the test, the  
6 polygraph test. It was Mirandized. The officer  
7 could have certainly told him that he didn't believe  
8 him. The witness could have decided it was in his  
9 interest to make certain disclosures at that time.  
10 Unless Mr. Kendrick can show me some authority for  
11 keeping it out, it's been vetted to an extent, not to  
12 the extent that you're asking me to vet it. But  
13 what's your position?

14           **MR. KENDRICK:** Your Honor, if I could just state  
15 for the record that it's my position that because the  
16 polygraph is inadmissible and I wouldn't be able to  
17 fully cross examine Lieutenant Crawford on that  
18 statement and in keeping with your earlier rulings  
19 that because I can't talk about that polygraph, then  
20 I'm somewhat limited in my cross examination. And  
21 that's my only position for the record, Your Honor.

22           **THE COURT:** Thank you.

23           **MR. KENDRICK:** I believe one of my co-defendants  
24 may have an issue with that statement that I'm not  
25 involved with.

1           **THE COURT:** Yes, sir.

2           **MR. SHELDON:** Thank you, Your Honor. May it  
3 please the Court. On behalf of McDonald, we believe  
4 that there is a clear Crawford violation here in  
5 reference to McDonald and also Christopher Whitehead  
6 in that in this statement it is clearly testimonial  
7 as defined by Crawford, that it's taken by a police  
8 officer in the course of an interrogation.

9           **THE COURT:** Assume it's testimonial.

10          **MR. SHELDON:** Pardon me?

11          **THE COURT:** Assume it is testimonial. How does  
12 that affect --

13          **MR. SHELDON:** Because it says that Mr. Cannon.  
14 confessed that all three suspects hit the back door  
15 together but he was still last. And he would be  
16 incriminating both Mr. McDonald and Mr. Whitehead and  
17 we have no chance to cross examine him.

18          **THE COURT:** I agree. Ms. McDuffie.

19          **MR. RILEY:** Judge, we join in that also.

20          **MS. MCDUFFIE:** Your Honor, the statement would  
21 be redacted that he and another and other people hit  
22 the door and he was the last one. Or we hit the  
23 door, however the Court deems it appropriate to  
24 redact that statement.

25          **MR. MEADORS:** He we were planning on doing that.

1 Obviously I just assumed that obviously we'd do it  
2 like we had the oral statements.

3 **THE COURT:** It was properly called to our  
4 attention. Mr. Sheldon.

5 **MR. SHELDON:** In response, Your Honor, we would  
6 just like to point out that we cannot cross examine  
7 Mr. Cannon about who the other people are. And then  
8 that isn't good enough to rise above Crawford in that  
9 the jury would most certainly infer that the other  
10 people were our clients. We have a right to cross  
11 examine any out-of-court statement made by a  
12 declarant that is testimonial.

13 **MR. REUWER:** Your Honor, if I may? Also if they  
14 say another person and another person, then they look  
15 at three here and they've got three there, that --

16 **THE COURT:** Well, is this not the same --

17 **MS. MCDUFFIE:** Your Honor, it is the same thing.  
18 And as long as it doesn't incriminate --

19 **THE COURT:** -- as Bruton?

20 **MS. MCDUFFIE:** -- the defendants on their face,  
21 it would not Violet Bruton according to Richardson.

22 **THE COURT:** Well, he's saying now it's Crawford.

23 **MR. MEADORS:** This is the unique situation we  
24 went through in December. And I think you saw you it  
25 in both issues. But two statements are already in,

1 two that have come in as Your Honor has already  
2 ruled. And there's oral statements read by Catoe  
3 where it was redacted already. And this is just a  
4 statement to Phil Crawford where it will be redacted,  
5 too, and just say I hit the door with another person  
6 and another person or two other persons or however  
7 you want to do it. But it's already all in  
8 yesterday. That's what's in the record.

9 **THE COURT:** All right. Go ahead, Mr. Sheldon.

10 **MR. SHELDON:** Your Honor, if I may, the  
11 statement doesn't -- there is no in quotations  
12 another person, another person. It says hit the back  
13 door together but I was still last.

14 **THE COURT:** They're not going to offer the  
15 statement.

16 **MR. SHELDON:** I am confused as to what he's  
17 testifying to then, that he --

18 **THE COURT:** No. It's my understanding he is  
19 going to testify that this is what he said to the  
20 defendant and this is what the defendant said.

21 **MR. SHELDON:** The defendant said hit the back  
22 door together and I was still last.

23 **THE COURT:** I know. But I'm saying he's not  
24 offering that piece of paper that you're looking at.  
25 Isn't that correct?

1           **MR. SHELDON:** That's correct.

2           **THE COURT:** Yeah. Okay.

3           **MR. SHELDON:** We ...

4           **MR. REUWER:** Your Honor, I still believe the  
5 confrontation clause of Crawford would apply, because  
6 we can't ask him about who they are. And when he  
7 mentions himself, another person and another person  
8 and we see three people lined up here, I would  
9 believe that the whole statement, that either in  
10 written form or oral form, shouldn't be allowed.

11           **THE COURT:** But we've been through that with all  
12 the other statements. And this Crawford argument is  
13 not circa as to any of these other statements. Today  
14 is the first time Crawford -- other than the name of  
15 the officer.

16           **MR. MEADORS:** I just reminded everybody Crawford  
17 and Crawford. But all through yesterday no Crawford  
18 issue was brought up. And I don't see how this is  
19 any different from the statements we've already been  
20 through.

21           **THE COURT:** Why is it different?

22           **MR. SHELDON:** Well, Judge, for the record, I'm  
23 going to go ahead and put on the record that the  
24 other statements should have been suppressed due to  
25 Crawford, too. But this is different because under

1           Crawford we have --

2           **THE COURT:** Why is it different? Why is it  
3           different? Just tell me why it's different.

4           **MR. SHELDON:** Because, Judge, there is no place  
5           that can be -- where he could insert another person  
6           and another person in this. I mean, there is no  
7           written statement whatsoever. It's different I think  
8           because they're defining the confessions as  
9           voluntary. Crawford specifically applies to an  
10          interrogation. And there is no doubt that he was  
11          being interrogated after he was taking a polygraph  
12          after he confessed.

13          Clearly it would be different. They could have  
14          at least argued that he wasn't being interrogated  
15          under Crawford when he gave voluntary statements that  
16          you ruled on. Here he is being interrogated. We  
17          have a right to cross examine.

18          **MS. MCDUFFIE:** Your Honor, but the bottom line  
19          is that what we're dealing with is the confrontation  
20          clause. And there is case law as recent as 2005 in  
21          State v. Fletcher that says redaction in this form  
22          does not violate the defendant's right to  
23          confrontation.

24          **MR. SHELDON:** Your Honor.

25          **THE COURT:** He's not arguing confrontation, I



1 don't think.

2 **MR. SHELDON:** Crawford is a 2006 case.

3 **THE COURT:** I know. I know that.

4 **MR. MEADORS:** Judge, Danny Catoe testified  
5 yesterday in his notes. We redacted the written  
6 statement. In his notes he went through. And there  
7 was some objection to the wording. He said some  
8 other person in the first one and then he said  
9 another person. That's all we're going to do here  
10 with Crawford.

11 **THE COURT:** I understand. I understand that.  
12 I'm trying to understand --

13 **MR. REUWER:** But, Your Honor, in those we lost  
14 the argument regarding the voluntariness, whereas  
15 here, I concur with my colleague, it's in the context  
16 of an actual examination. It's an interview. He's  
17 already arrested.

18 **MR. MEADORS:** But we went through Miranda  
19 yesterday, Jackson v. Denno, the day before. And,  
20 Your Honor, --

21 **THE COURT:** Does it a matter whether it's before  
22 or after the arrest?

23 **MR. SHELDON:** Yes.

24 **MR. REUWER:** Your Honor, I believe it does  
25 because it's a post test comment as opposed to a

1 comment within the context of an interview. And  
2 we're constrained here by the fact that we can't  
3 discuss it.

4 **MR. MEADORS:** Your Honor, actually he wasn't  
5 arrested until after this, now that I'm reminded. So  
6 Miranda was reading -- he came involuntarily, was  
7 read Miranda. Your Honor heard it yesterday. They  
8 cross examined him, Phil Crawford on it. He said he  
9 understood his Miranda. Got anything else you want  
10 to add? I handwrote these notes and then he told me  
11 orally this extra statement. He said all three  
12 subjects hit the back door together but I was last.  
13 He also stated the victim grabbed his leg during the  
14 incident and then he kicked him. And that's what we  
15 went over yesterday with Jackson v. Denno, what I've  
16 told the jury already.

17 **THE COURT:** Go ahead.

18 **MR. SHELDON:** Judge, if I may. As to the  
19 statements yesterday, we may have made a mistake. We  
20 objected to them coming in under Crawford. But I  
21 just want to read the -- and, Your Honor, I think  
22 that statements taken by police officers in the  
23 course of interrogation are testimonial and subject  
24 to the confrontation clause subject under Crawford to  
25 be cross examined when the circumstances objectively

1 indicate that there is no ongoing emergency and the  
2 primary purpose of the interrogation is to establish  
3 or prove past events potentially relevant to later  
4 criminal prosecution. Judge, unless they want to try  
5 to argue that he was not being interrogated, I have  
6 no idea what their argument is.

7 **MR. MEADORS:** Our argument is --

8 **MR. SHELDON:** This is good law.

9 **MR. MEADORS:** -- it doesn't implicate their  
10 client. Bruton doesn't.

11 **THE COURT:** All right. Who is your next  
12 witness?

13 **MR. MEADORS:** Marthers.

14 **THE COURT:** Call Mr. Marthers.

15 **MR. MEADORS:** And, Judge, we have another matter  
16 that we followed up on that we have done some  
17 investigation on we're going to need to talk in  
18 chambers on at some point.

19 **THE COURT:** All right. Bring the jury.

20 **MR. WHITLARK:** Your Honor, before we bring the  
21 jury in, am I to understand they're putting up the  
22 polygraph expert next?

23 **THE COURT:** If you will listen, he just told you  
24 he's putting up Mr. Marthers.

25 **MR. WHITLARK:** Oh, I'm sorry, Your Honor.

1           **THE COURT:** Please bring the jury.

2           **THE CLERK:** Bring the jury.

3           (Jury in at 2:04 p.m.)

4           **THE COURT:** Thank you, Judge. I hope you had a  
5 pleasant lunch. We're now ready to continue with the  
6 trial. Solicitor, call your next witness.

7           **MS. MCDUFFIE:** The State calls Investigator  
8 George Marthers.

9           GEORGE MARTHERS, after being duly sworn,  
10 testifies as follows:

11           **THE CLERK:** Thank you. Please be seated in the  
12 witness chair and state your full name for the  
13 record.

14           **THE WITNESS:** My name is George Marthers.

15                           DIRECT EXAMINATION

16           **BY MS. MCDUFFIE**

17           **Q**     Good afternoon, Investigator Marthers.

18           **A**     Good afternoon.

19           **Q**     Where are you currently employed?

20           **A**     Kershaw County Sheriff's Office.

21           **Q**     And were you employed at the Kershaw Sheriff's Office  
22 in December of 2006?

23           **A**     Yes, I was.

24           **Q**     And what are your duties at the Sheriff's Office?

25           **A**     I'm an investigator.

1 Q And tell the jury what that means?

2 A We assign cases. There is eight of us. We're  
3 assigned cases throughout the county. I work the  
4 Lugoff area and criminal cases. And we're assigned  
5 and then we'll work them.

6 Q And tell the jury a little bit about your background,  
7 education and training?

8 A I've been in law enforcement for 11 years, been in  
9 investigations approximately four years. I've had  
10 some crime scene analysis classes, some fingerprint  
11 classes.

12 Q And did you have occasion to respond to [REDACTED] Ryan  
13 Lane on December the 13th of 2006?

14 A Yes, I did.

15 Q What was that in reference to?

16 A I was notified that there was a death at that  
17 residence and I was responding.

18 Q And what did you observe when you got to the  
19 residence, if anything?

20 A When I arrived it was dark. There were several other  
21 officers on the scene. I met with Investigator Catoe  
22 and Captain Thomley.

23 Q And what were your duties once you arrived there?

24 A I was to assist Investigator Catoe.

25 Q And what did assisting Investigator Catoe entail at

1           that particular time?

2   **A**     Just whatever he needed at the time. He was the lead  
3           investigator. I helped him with photographing the  
4           scene. He took the pictures. I helped him label,  
5           scale the stuff that we was collecting.

6   **Q**     And did you also assist in evidence collection?

7   **A**     Yes, I did. I was the evidence custodian. After  
8           everything was photographed and labeled, I took  
9           everything into my custody and wrote it out.

10   **Q**    I'm going to show you what's been marked as State's  
11           Exhibit 99. Do you recognize this?

12   **A**     Yes, I do.

13   **Q**     And please tell the jury what this is?

14   **A**     This is a wooden ball bat with a black taped handle.

15   **Q**     And where did you collect that from?

16   **A**     That come from [REDACTED] Ryan Lane out of the living room.

17   **Q**     And what did you do with that baseball bat after you  
18           collected it?

19   **A**     I collected it along with the other items that we  
20           took that night. I placed it in the proper  
21           packaging, and the next morning I took it to SLED.

22   **Q**     And did you also take State's Exhibit 100, a purple  
23           gloved finger, to SLED?

24   **A**     Yes, I did.

25   **Q**     And were you at SLED when these items were being

1 processed?

2 **A** Yes, I was.

3 **Q** You watched SLED fingerprint the items?

4 **A** Yes, I did.

5 **Q** You watched them test the items?

6 **A** I watched them fingerprint and retrieve samples.

7 **Q** And did you later learn that they were not able to  
8 lift any identifiable prints from the bat or the  
9 glove?

10 **A** Yes, ma'am.

11 **Q** I'm going to show you what's been marked as State's  
12 Exhibit 106. Do you recognize that, and would that  
13 aid in your testimony?

14 **A** Yes, it will.

15 **MS. MCDUFFIE:** Your Honor, the State would offer  
16 106 into evidence.

17 **Q** Investigator Marthers, I'm going to show you what's  
18 been marked as 107. Did you also learn that they  
19 tested the blood on this baseball bat?

20 **A** Yes, I did.

21 **Q** And who did that blood come back as matching?

22 **A** It come back to the victim, Joshua Zoch.

23 **MS. MCDUFFIE:** The State would offer at this  
24 time 106 and 107.

25 **THE COURT:** Without objection?

1                   **MR. WHITLARK:** Without objection.

2                   (WHEREUPON, State's Exhibit No. 106 is admitted  
3                   into evidence.)

4                   (WHEREUPON, State's Exhibit No. 107 is admitted  
5                   into evidence.)

6   **Q**           Investigator Marthers, you took that evidence to SLED  
7                   on December the 14th?

8   **A**           Yes, I did.

9   **Q**           And did you have the occasion to meet again with  
10                  Investigator Catoe on Friday, December the 15th?

11   **A**           Yes, I did.

12   **Q**           And what were you and Investigator Catoe doing that  
13                  day?

14   **A**           We got together Friday morning at work. I asked him  
15                  what else he needed done. I needed to ride with him,  
16                  and we left the office and proceeded to go speak to  
17                  some people at the Sonic.

18   **Q**           And were you with him when he spoke with Cecile Trapp  
19                  and Pat Heathcoe?

20   **A**           Yes, I was.

21   **Q**           And did you also accompany him that day to Boney  
22                  Road?

23   **A**           Yes, I did.

24   **Q**           Encounter Defendant Christopher Whitehead with  
25                  Investigator Catoe?



1     **A**     Yes, I did.

2     **Q**     And did you have the occasion to speak with Mr.

3             Whitehead that day?

4     **A**     I didn't speak to him directly. I was with

5             Investigator Catoe when he spoke to him.

6     **Q**     Were you also there when he left a card at Derrick

7             McDonald's house?

8     **A**     Yes, I was.

9     **Q**     And what did you do after that?

10    **A**     We left there, went back to the Sonic and spoke to a

11            few other people.

12    **Q**     Allen Brown?

13    **A**     Allen Brown. Yes.

14    **Q**     And Zack and Molly Waltemath?

15    **A**     Yes.

16    **Q**     And did you have the occasion to go back to Derrick

17            McDonald's home?

18    **A**     Yes, we did.

19    **Q**     Do you know about what time that was?

20    **A**     I'm thinking around 5:30.

21    **Q**     And did you speak with Mr. McDonald?

22    **A**     Yes, we did.

23    **Q**     And do you remember the nature of that conversation?

24    **A**     We just asked him if he knew anything about the death

25            of Josh Zoch.

1 Q And do you remember his responses?

2 A He kind of told us that he'd heard about it. And we  
3 talked to him a few minutes. And then he kind of  
4 said he'd like to talk to his mother first.

5 Q And you then left his residence?

6 A Yes, we did.

7 Q And did you go with Investigator Catoe to the  
8 residence of Mr. Robert Cannon?

9 A Yes, I did.

10 Q And were you there when Investigator Catoe read  
11 Robert Cannon his Miranda rights?

12 A Yes, I was.

13 Q I want to show you what's been marked as State's  
14 Exhibit 1. Do you recognize this?

15 A Yes.

16 Q Please tell the jury what that is?

17 A That's a statement of Miranda rights.

18 Q And whose signature is the first one on that page?

19 A The first one would be Danny Catoe.

20 Q And under Mr. Catoe's signature?

21 A Robert Cannon.

22 Q And what does that signature acknowledge?

23 A It acknowledges that he understands his rights and he  
24 is waiving them and making a statement.

25 Q And did you see Investigator Catoe read Robert Cannon

1 his rights?

2 A Yes, I did.

3 Q And please tell the jury how he did that?

4 A He'd start off with the first one. Would you like me  
5 to read each one, ma'am?

6 Q Yes, please.

7 A He'd start off with the first one. "You have the  
8 right to remain silent." Once he read that right he  
9 asked Mr. Cannon if he understood that right. Mr.  
10 Cannon acknowledged by saying yes. Mr. Catoe then  
11 put his initials by it and circled it.

12 The second one was: "Anything you say can and  
13 will be used against you in a court of law."  
14 Mr. Catoe asked Mr. Cannon if he understood that  
15 right, and he replied by saying yes. He then  
16 initialed that one and circled it also.

17 "You have the right to talk to a lawyer and have  
18 him or her present with you while being questioned."  
19 He asked him that one. He also acknowledged by  
20 saying yes. Investigator Catoe then initialed and  
21 circled.

22 "If you cannot afford to hire a lawyer, one will  
23 be appointed to represent you before any questioning  
24 if you wish." He asked him that also. He stated  
25 yes. Investigator Catoe then initialed and circled.

1           The last one: "You can decide at any time to  
2           exercise these rights and not answer any questions or  
3           make any statements." Investigator Catoe asked him  
4           that. He acknowledged by saying yes, he understood  
5           that right. Investigator Catoe then initialed and  
6           signed and circled it.

7    Q       And did also sign at the bottom of that form?

8    A       Yes, I did.

9    Q       And were you there the entire evening with Mr. Catoe  
10           and Defendant Cannon?

11   A       Yes, I was.

12   Q       And were you there when Defendant Cannon gave an oral  
13           statement to Investigator Catoe?

14   A       Yes, I was.

15   Q       And were you there when Mr. Cannon gave a written  
16           statement to Investigator Catoe?

17   A       Yes, I was.

18   Q       And who wrote that statement?

19   A       Investigator Catoe.

20   Q       And why did he write that?

21   A       Mr. Cannon was hungry. He decided he wanted a bowl  
22           of cereal. We told him that was fine. Mr. Cannon  
23           told Investigator Catoe what was going on in the  
24           statement, and Investigator Catoe then wrote for him.

25   Q       And whose words is State's Exhibit 103 in?

1     **A**     That's going to be Robert Cannon's words.

2     **Q**     But Investigator Catoe wrote that for him?

3     **A**     Correct. Written by Investigator Catoe.

4             **MR. KENDRICK:** Your Honor, if I could, we would  
5     offer the same objection that you previously heard to  
6     the statement, any testimony about it.

7             **THE COURT:** Yes, sir. It's a continuing  
8     objection. The objection is overruled.

9             **MR. KENDRICK:** Thank you, Judge.

10    **Q**     And that statement is written in Robert Cannon's own  
11    words?

12    **A**     Yes, ma'am.

13    **Q**     And who signed at the bottom of each of those pages?

14    **A**     Robert Cannon.

15    **Q**     And what does that signature indicate?

16    **A**     That he gave it voluntarily.

17    **Q**     And please read the paragraph right before his  
18    signature?

19             **MR. KENDRICK:** Your Honor, I'm going to object  
20    to that, to the signature unless he gave it  
21    voluntarily. I don't think that's -- he can properly  
22    testify what that signature is.

23             **MS. MCDUFFIE:** I'll withdraw the question, Your  
24    Honor.

25    **Q**     Investigator Marthers, please read the paragraph

1 right before his signature?

2 A "I have made the foregoing statement freely and  
3 voluntarily, without fear, threat, promise or reward  
4 or hope of reward of any kind. This is to certify  
5 that I have read or have read to me foregoing  
6 statement consisting of five pages, and a true copy  
7 has been given to me at this date."

8 Q And did he sign below that?

9 A Yes, he did.

10 Q On the first page?

11 A Yes, ma'am.

12 Q On the second page?

13 A Yes, sir.

14 Q On the third page?

15 A Yes, ma'am.

16 Q On the fourth page?

17 A Yes, ma'am.

18 Q And on the fifth page?

19 A Yes, ma'am.

20 Q And did you also sign each of those pages?

21 A Yes, I did.

22 Q And why did you sign those?

23 A I was a witness.

24 Q You saw Mr. Cannon sign those statements?

25 A Yes, ma'am.

1 Q At any time did Mr. Cannon ask for an attorney?

2 A No, he did not.

3 Q At any time were any promises made to him?

4 A No, there wasn't.

5 Q Any threats?

6 A No, there wasn't.

7 Q Any hopes of reward held out?

8 A No, there wasn't.

9 Q And then you left Mr. Cannon's residence that  
10 evening?

11 A Yes, we did.

12 Q And what did you and Investigator Catoe do after  
13 that?

14 A Once we left the residence we went and made a phone  
15 call to Investigator Bailey who obtained a warrant  
16 for Derrick McDonald.

17 Q Did you also have holds placed on Christopher  
18 Whitehead that evening?

19 A Yes, we did.

20 Q I'm going to show you what's been marked as State's  
21 104. I'm going to show you what's been marked as  
22 State's Exhibit 3. Do you recognize this?

23 A Yes, I do.

24 Q Please tell the jury what that is?

25 A It's another Miranda form.

1 Q And whose Miranda form is that?

2 A Derrick McDonald's.

3 Q And where was the first time Mr. McDonald was given  
4 his Miranda rights?

5 A The first time was in the pick-up truck with myself  
6 and Investigator Catoe.

7 Q And you were at Mr. McDonald's house when he was  
8 arrested?

9 A Yes, I was.

10 Q Did you go in the house?

11 A Yes, I did.

12 Q At any point in time did you hear Mr. McDonald ask  
13 for an attorney?

14 A No, I did not.

15 Q Did anyone promise him anything?

16 A No, they did not.

17 Q Threaten him in any way?

18 A No, they did not.

19 Q Hold out any hope of reward?

20 A No, they did not.

21 Q And Mr. McDonald was arrested and placed in the  
22 truck?

23 A Yes, he was.

24 Q Where was he seated in the truck?

25 A The front seat.



1 Q And who was driving?

2 A Investigator Catoe.

3 Q And where were you seated?

4 A Directly behind Derrick McDonald.

5 Q Was he given his rights in that vehicle?

6 A Yes, he was.

7 Q And who read him his rights?

8 A They was given verbally by Investigator Catoe.

9 Q The same rights that you just read to the court a  
10 second ago?

11 A Yes.

12 Q And did Defendant McDonald acknowledge those rights?

13 A Yes, he did.

14 Q How did he do that?

15 A He verbally Mirandized him. After each one, he  
16 acknowledged yes, he understood that right.

17 Q By saying he understood or nodding his head. How did  
18 he --

19 A He spoke out: Yes, I do.

20 Q And did he say anything to you in the vehicle that  
21 evening?

22 A As we was driving along Investigator Catoe asked him,  
23 you know, if you want to talk us we'll go to the  
24 Sheriff's Office. If not, we'll continue on to the  
25 detention center. Approximately around the

1 Cherokee/Bowen area, at that intersection, he just  
2 abruptly just said, "This is the way we came that  
3 night."

4 Q And did Investigator Catoe ask him any more  
5 questions?

6 A He said, "If you want to talk to us, wait until we  
7 get to the Sheriff's Office."

8 Q Did you ask him any questions?

9 A No, I did not.

10 Q Threaten him in any way?

11 A No, I did not.

12 Q Coerce him in any way?

13 A No, I did not.

14 Q Promise him anything?

15 A No, I did not.

16 Q And where did you all go after that?

17 A Went to the Kershaw County Sheriff's Office. At the  
18 time it was right nextdoor to the courthouse here.

19 Q Right nextdoor to where we are now?

20 A Yes, ma'am.

21 Q And where did you all go once you got to the  
22 Sheriff's Department?

23 A We walked in, went back to Investigator Catoe's  
24 office which was also shared by Lieutenant Crawford  
25 and Investigator Bailey.

1 Q And once you got to the office, was Mr. McDonald  
2 handcuffed?

3 A Once we got there, yes, he was. But they were later  
4 removed.

5 Q And was he then given another waiver of rights by  
6 Investigator Catoe?

7 A Yes, he was.

8 Q And please tell the jury how Investigator Catoe did  
9 the reading him his rights?

10 A The same way, ma'am?

11 Q Please.

12 A Okay. This is Kershaw County Sheriff's Office  
13 Miranda warnings. It says at the top: "You have the  
14 right to remain silent." Investigator Catoe asked  
15 him that right, and he said yes, he understood that  
16 right, initialed and circled.

17 "Anything you say can and will be used in a  
18 court of law." He understood that right by  
19 acknowledging yes. Catoe initialed and circled.

20 "You have the right to talk to an attorney or  
21 have him or her present while you're being  
22 questioned." He answered by saying yes, he  
23 understood that right, and Investigator Catoe  
24 circled, initialed and circled.

25 "If you cannot afford to hire an attorney, one

1 will be appointed to represent you before any  
2 questions." He understood by saying yes, he  
3 understood that right. Investigator Catoe then  
4 initialed and circled.

5 "You can decide at any time to exercise these  
6 rights and not answer any questions or make my  
7 statements." He understood by saying yes, he  
8 understood. Investigator Catoe then initiated and  
9 circled.

10 Q And were you present when Investigator Catoe was  
11 reading these rights to him?

12 A Yes, I was.

13 Q Did you believe that he understood those rights as  
14 Investigator Catoe read them to him?

15 A Yes, I did.

16 Q And did he waive those rights?

17 A Yes, he did.

18 Q Did you also sign the bottom of that form?

19 A Yes, I did.

20 Q Indicating that you saw him sign?

21 A Yes, I did.

22 Q And that he waived his rights?

23 A Yes, I did.

24 Q At any point in time did he ask for an attorney?

25 A No, he did not.

1 Q Did you threaten him in any way?

2 A No, we did not.

3 Q Coerce him?

4 A No, ma'am.

5 Q Hold out any hope or promise of reward?

6 A No.

7 Q Did he then go on to give a written statement to  
8 Investigator Catoe?

9 A Yes, he did.

10 Q Who wrote that statement?

11 A Investigator Catoe.

12 Q If I could show you State's 104. It should be right  
13 in front of you?

14 MR. WHITLARK: Please note our objection for the  
15 record, please, Your Honor.

16 THE COURT: Yes, sir.

17 Q I show you State's 104. Do you recognize this?

18 A Yes, ma'am.

19 Q Please tell the jury what that is?

20 A It's a statement form with Derrick McDonald's name at  
21 the top.

22 Q And were you present when Mr. McDonald gave that  
23 statement to Investigator Catoe?

24 A Yes, I was.

25 Q Were you present the whole time?

1     **A**     No, I was not.

2     **Q**     Tell the jury where you were during --

3     **A**     I had actually got up at one time, maybe twice, and  
4             got Mr. McDonald some water because he said he was  
5             thirsty.

6     **Q**     So you were not present the entire time that  
7             statement was given?

8     **A**     No, ma'am.

9     **Q**     Did you see Derrick McDonald sign the statement?

10    **A**     No, ma'am, I did not.

11    **Q**     At any time when you were present, did Investigator  
12            Catoe or yourself ever threaten Mr. McDonald?

13    **A**     No, we did not.

14    **Q**     Ever promise him anything?

15    **A**     No, we did not.

16    **Q**     Ever hold out hope of reward?

17    **A**     No, we did not.

18    **Q**     Coerce him in any way?

19    **A**     No, ma'am.

20    **Q**     And is it fair to say, Investigator Marthers, that  
21            after this point your role in the investigation was  
22            somewhat limited?

23    **A**     Yes, ma'am.

24    **Q**     Investigator Marthers, can you please identify  
25            Defendant Robert Cannon for the court?

1     **A**     Yes, ma'am. He's sitting at the table; white shirt,  
2             white tie.

3     **Q**     And Defendant Derrick McDonald?

4     **A**     Yes, ma'am. He's sitting there with a blue shirt  
5             with a blue striped tie.

6     **Q**     And Christopher Whitehead?

7     **A**     He's at the end of the table, ma'am, with a brownish  
8             colored suit.

9             **MS. MCDUFFIE:** Your Honor, please let the record  
10            reflect the witness has identified the defendants.

11           **THE COURT:** The record will so reflect.

12           **MS. MCDUFFIE:** No further questions.

13           **THE COURT:** Yes, sir.

14           **MR. WHITLARK:** May it please the Court.

15                               CROSS EXAMINATION

16     **BY MR. WHITLARK**

17     **Q**     Investigator, you say you were present when he signed  
18             this statement?

19     **A**     No, sir, I was not.

20     **Q**     You were there the entire time but not for that?

21     **A**     No. I did not say I was there the entire time.

22     **Q**     Okay. Well, I mean, so you can't actually testify  
23             that Mr. McDonald wasn't threatened with the death  
24             penalty if he didn't sign it, can you? He's going to  
25             be a defendant in a death penalty trial; you're not

1           aware of that?

2     **A**     I never heard that, sir.

3           **MR. MEADORS:** Objection, Your Honor.

4           **THE COURT:** He asked him.

5           **MR. MEADORS:** He just said he was going to be a  
6     defendant in a death penalty trial?

7           **THE COURT:** No, sir. He asked him if he ever  
8     heard that he was -- go ahead. Overruled.

9     **Q**     You all wanted Mr. McDonald and Mr. Cannon to testify  
10    against Mr. Whitehead, didn't you? Witnesses against  
11    Mr. Whitehead?

12    **A**     I never said that.

13    **Q**     You didn't know their names when you went up to the  
14    Sonic, did you? You didn't know anything about them,  
15    right? You found out about them up there?

16    **A**     I think the name had been brought up.

17    **Q**     Well, did you go to the Sonic and find Chris  
18    Whitehead?

19    **A**     Did we go to find Chris Whitehead?

20    **Q**     Yes, sir.

21    **A**     We went to speak to somebody at the Sonic, yes.

22    **Q**     I mean, you all had information. You had run some  
23    license checks and so forth on Mr. Whitehead, right?

24    **A**     We'd run a copy of his DL, yes.

25    **Q**     And that's because you'd been told by Ms. Davy about



1           there might be some trouble between him and the  
2           decedent, right? Previously.

3    **A**    I don't -- I can't recall. I don't know.

4    **Q**    Well, you certainly didn't have Derrick McDonald's  
5           name, did you?

6    **A**    I'm not sure.

7    **Q**    Okay. Now, when you went over to Mr. McDonald's  
8           house, his mother was there, right?

9    **A**    Which time, sir?

10   **Q**   Well, when you went over to arrest him.

11   **A**    Yes, she was.

12   **Q**   And his brother was there, wasn't he?

13   **A**    I assume, sir.

14   **Q**   You were there, right?

15   **A**    I was there, yes.

16   **Q**   You don't remember who was there?

17   **A**    There were some people at the home, yes.

18   **Q**   And when the warrant was read to him and he was  
19           arrested, his brother attempted to go use the  
20           telephone and call a lawyer, didn't he?

21   **A**    I'm not sure, sir.

22   **Q**   Okay. You did hear his mother tell him when you were  
23           putting him in the truck --

24               **MS. MCDUFFIE:** Your Honor, objection to hearsay.  
25           Anything that this witness heard his mother say would

1           be hearsay.

2           **MR. WHITLARK:** Your Honor, he testified he  
3           didn't hear anything about a lawyer being requested.

4           **THE COURT:** Overruled. Go ahead.

5   **Q**    You heard his mother yell that she was going to get  
6           him a lawyer, don't worry, right?

7   **A**    That was on the way to the truck, sir?

8   **Q**    Yes, sir.

9   **A**    Yeah. I heard that.

10   **Q**   Okay. Now, when you first spoke to Mr. McDonald, he  
11           told you that he -- he said, yeah, I think I've been  
12           up to Sonic, right? That night, the night that Mr.  
13           Zoch was killed, he was at the Sonic, right? He told  
14           you that, right?

15   **A**    Yes, sir. I believe he did.

16   **Q**    And he also told you that he spent the night over at  
17           the Rust house, right?

18   **A**    No, he did not.

19   **Q**    He didn't tell you that?

20   **A**    No, he did not.

21   **Q**    You all had a Richland County Sheriff's deputy arrest  
22           Mr. Whitehead for DUS, right?

23   **A**    He was arrested for DUS, yes.

24   **Q**    And you all had called ahead and asked them to do it,  
25           right?

1     **A**     I'm not following you, sir.

2     **Q**     I said did you all call Richland County and say, we  
3             need to get a hold placed on Mr. Whitehead, he's  
4             driving DUS, will you all arrest him?

5     **A**     No, we did not.

6     **Q**     They just happened to come along and find Mr.  
7             Whitehead?

8     **A**     After we stopped and talked to Mr. Whitehead, we knew  
9             he was under suspension, we notified Richland County,  
10            and they came out.

11    **Q**     Okay. So you all did call Richland County, right?

12    **A**     Yes, we did.

13    **Q**     And are you the one who arrested Mr. Adrian Duran?

14    **A**     No, I'm not.

15    **Q**     You know he was in jail at that time, right?

16    **A**     No, I didn't.

17    **Q**     You didn't know that?

18    **A**     No.

19    **Q**     Do you know who he is?

20    **A**     I know of him.

21    **Q**     What do you know of him?

22    **A**     I just know of him.

23            **MS. MCDUFFIE:** Objection, Your Honor, to  
24            relevance.

25            **THE COURT:** Go ahead.

1     **A**     I just know of him, know his name.

2     **Q**     Well, you know that he was a victim of a burglary by  
3             Mr. Zoch, right?

4     **A**     Not firsthand. No, I don't.

5     **Q**     Have you never seen that in the file?

6     **A**     I heard it through the file, but I didn't know it  
7             firsthand, no.

8     **Q**     Okay. You knew that he had stolen \$4,000 from him  
9             during that burglary, right?

10    **A**     No, I did not.

11    **Q**     Okay. Did you ever question anyone else in this case  
12            other than the people you saw at the Sonic?

13    **A**     No, I did not.

14    **Q**     All right. Did you talk to anybody in the  
15            neighborhood around the site where Mr. Zoch was  
16            killed?

17    **A**     No, I did not.

18    **Q**     Okay. Did you speak to any of the employees of Sonic  
19            when you went up there that day?

20    **A**     No, I did not.

21    **Q**     Did you speak to Mr. Cannon when you went over to his  
22            house?

23    **A**     Yes, I did.

24    **Q**     Were you asking him questions, interview questions?

25    **A**     No, I did not.

1 Q You told his mother not to worry and patted her on  
2 the shoulder, didn't you?

3 A No, I did not.

4 Q You didn't? You didn't tell her not to worry?

5 A I may have told her not to worry at that time, but I  
6 did not pat her on the shoulder.

7 Q And, sir, isn't it true that you told both these  
8 young men you wanted them to testify as witnesses  
9 against --

10 A No, it's not.

11 Q -- Chris Whitehead?

12 A No, it's not.

13 Q And not to worry?

14 A No, it's not.

15 Q Are you aware that the parents of Mr. Cannon were  
16 going to go on a trip the next day, the day following  
17 the time you were there interviewing their son?

18 A I don't recall it, sir.

19 Q Did you hear conversation between the chief over here  
20 and Mr. Cannon over at the Cannons' house?

21 A There was no chief there, sir.

22 Q I'm sorry. The captain.

23 A Captain Thomley? No, I did not hear the  
24 conversation.

25 Q Okay. Now, once you got Derrick McDonald into the

1 truck heading back to Kershaw, you do recall that he  
2 wanted his mom present with him after you all started  
3 asking him questions about murder, right?

4 A That was the second time we went by there and spoke  
5 with him.

6 Q But the first time he told you what he had been doing  
7 that night, and then you went back?

8 A Correct.

9 Q He said, I want my mom with me now?

10 A That was the first time, sir.

11 Q And you did hear her say, I'm going to get you a  
12 lawyer?

13 A Yes, I did.

14 Q And when he had was handcuffed and placed in that  
15 truck, you all started driving him, right? Back to  
16 Kershaw?

17 A That's correct.

18 Q You were sitting directly behind him?

19 A That's correct.

20 Q And he told you on his own volition, I want to tell  
21 you all what I know about everything?

22 A He didn't state it like that, sir.

23 Q Well, all right. What did he say?

24 A He said, this is the way we came back.

25 Q So he did want to tell you about his alleged

1 involvement in this, right?

2 A Well, I figure so. Yes, sir.

3 Q He just wanted to volunteer that information?

4 A He said it.

5 Q Sir, wasn't he handcuffed the whole time you all were  
6 interrogating him?

7 A No, sir, he was not.

8 Q He wasn't? What was the reason he didn't write the  
9 statement?

10 A I'm not quite sure, sir.

11 Q Would you agree with me that Investigator Catoe wrote  
12 a lot of statements in this case?

13 A No, sir.

14 Q Well, isn't it true that he wrote both these  
15 statements you all are trying to put into evidence  
16 here, right?

17 A Oh, he did. Yes.

18 Q Catoe wrote them?

19 A Yes.

20 Q He wrote a lot of the summaries of witness  
21 recollections in this case, didn't he?

22 A Summaries? Meaning what, sir?

23 Q Well, whatever a neighborhood witness told him or a  
24 Sonic employee told him, he wrote a lot of those  
25 himself, didn't he?

1     **A**     He took notes, yes.

2     **Q**     Well, he wrote some statements, didn't he, on behalf  
3             of other people?

4     **A**     I don't recall, sir.

5     **Q**     All right. Did you write any statements out for  
6             anybody?

7     **A**     No, I did not.

8     **Q**     For some reason you didn't witness Derrick McDonald  
9             sign this alleged statement he gave here at the  
10            police station that night, right?

11    **A**     That's correct.

12    **Q**     Any particular reason you can tell me that?

13    **A**     It's been almost a year and a half, two years ago. I  
14             can't remember exactly what I done. I know I got up  
15             a couple of times to get him some water.

16    **Q**     You started investigating the death of Mr. Zoch  
17             earlier that day, right?

18    **A**     We did.

19    **Q**     And it was about what, 1:30 in the morning when this  
20             statement was signed by McDonald, right?

21    **A**     Let me -- about 12:24 a.m., sir.

22    **Q**     Was it 12:24? 12:30. It was a long time, a long day  
23             that day, right?

24    **A**     Yes, sir.

25    **Q**     Okay. Well, you had been present for -- at the



1 scene, right, of the death?

2 A Yes.

3 Q You had been present for the Sonic interviews, right?

4 A That's correct.

5 Q Present for going over to Cannon's house, right?

6 A That's correct.

7 Q And then going back and forth to Mr. McDonald's's  
8 house, right?

9 A Correct.

10 Q You rode all the way back sitting behind Mr.  
11 McDonald, right?

12 A That's correct.

13 Q And then you sat there for a lot or the majority of  
14 the interview with Investigator Catoe of McDonald,  
15 right?

16 A I sat there during some of it, yes.

17 Q But you weren't there for the crucial signing of the  
18 document to be a witness?

19 A No, sir, I wasn't.

20 Q Did Catoe come looking for you to come be a witness?

21 A I don't think he did.

22 Q Okay. Did you ever tell either one of these young  
23 men here, that being Cannon or McDonald, that this  
24 could be a death penalty case?

25 A No, I did not.

1 Q Did you tell them that you'd better cooperate and it  
2 will go easy on you?

3 A No, I did not.

4 Q As soon as you started asking McDonald about Mr.  
5 Whitehead and the murder of Mr. Zoch, he said he  
6 didn't want to -- he said, I want my mom present for  
7 this, didn't he?

8 A Mr. McDonald?

9 Q Yes, sir.

10 A At first, yes.

11 Q Okay. So as soon as you all started making  
12 accusations of him being a suspect, he wanted his mom  
13 present, didn't he?

14 A Yes.

15 Q And, sir, isn't it true that he said, when you all  
16 came in and executed that murder warrant on him that  
17 he said, I want a lawyer?

18 A No, sir.

19 Q What did he say?

20 A He didn't say a whole lot of nothing.

21 Q So he wouldn't talk with you?

22 A Not that I know of, sir.

23 Q Did he open his mouth at all?

24 A He may have said something to his mother or  
25 something. I don't recall it.

- 1 Q Did he appear to be terrified to you?
- 2 A Definition of terrified, sir.
- 3 Q Huh? Well, was he wide eyed?
- 4 A I'm pretty sure he was nervous. But as far as
- 5 terrified, I'm not sure.
- 6 Q Okay. And so he just got in the truck and started
- 7 saying, you know, let me tell you what we did or this
- 8 is the way we came. He didn't ask for any help or
- 9 anything, just told you all whatever --
- 10 A That's what he told us, sir.
- 11 Q -- was in the statement? Did you say that you had
- 12 helped collect some of the evidence in this case?
- 13 A Yes, I did.
- 14 Q Okay. How many times did you send that back to SLED?
- 15 A I sent it once, sir.
- 16 Q Do you know if it went a second time?
- 17 A No, sir, I do not. I don't think it did.
- 18 Q Did you help with the investigation in 2007 and 2008?
- 19 Have you done anything on this case in 2007?
- 20 A No, I have not.
- 21 Q 2008? All right. Did you hear Investigator Catoe
- 22 tell Mr. McDonald that if he would sign this he could
- 23 be the witness and go home?
- 24 A No, I did not.
- 25 Q Mm-hmm (affirmative). How many pages is his

1 statement?

2 A Four, sir.

3 Q And you didn't witness any of that, right?

4 A No, sir.

5 Q And, sir, you all didn't make a recording of this on  
6 a tape recorder, did you?

7 A No, sir.

8 Q And you didn't make a videotape of it, did you?

9 A No, sir.

10 Q But you do have those facilities at the Sheriff's  
11 Department, don't you?

12 A At this time we do, sir. At that time we did not.

13 Q You all didn't have a tape recorder?

14 A Not that I know of, sir.

15 Q You didn't have a tape recorder at the Sheriff's  
16 Department in the year 2006?

17 A Not that I know of, sir.

18 Q Well, you had a video machine, right?

19 A A video machine? Specify.

20 Q A videotape. You know, a video movie camera.

21 A I have never seen one, sir.

22 Q Have you ever done a DUI case?

23 A Yes, sir. When I was on the road, sir.

24 Q You all have got a camera for that, don't you?

25 A That was at the jail, sir.

1 Q Do you have them at your department?

2 A We do now, sir.

3 Q Okay. So you didn't have a tape recorder or a  
4 videotape at that time in the year 2006 at the  
5 Kershaw County Sheriff's Department?

6 A There again, I don't know, sir. I didn't see one.

7 Q Have you ever taken a recording of a witness or a  
8 defendant in any case you've ever done?

9 A No. No, sir, I have not.

10 Q You've never recorded anybody's voice?

11 A Since we got the new equipment, yes, I have.

12 Q Is that what you all do now?

13 A Yes.

14 Q So you record everything now?

15 A Yes. We've got the capabilities now, sir.

16 Q Beg the Court's indulgence. I'm about done, Your  
17 Honor. Sir, didn't you tell Mrs. McDonald, or did  
18 Catoe tell Mrs. McDonald when you all were taking her  
19 son off that you all were just going to take him to  
20 the Kershaw County jail, that he could get a lawyer  
21 later?

22 A I did not, sir.

23 Q Did you hear that said?

24 A No, sir, I did not.

25 Q She asked you where you were taking him, didn't she?

- 1    **A**    She didn't ask me, sir, no.
- 2    **Q**    Did you hear her ask --
- 3    **A**    No, sir.
- 4    **Q**    -- where her son was being taken?
- 5    **A**    No, I did not.
- 6    **Q**    Well, she was frantic, wasn't she?
- 7    **A**    I imagine so.
- 8    **Q**    Well, did you see her?
- 9    **A**    Yes, I saw her.
- 10   **Q**    She appeared frantic, didn't she?
- 11   **A**    She was upset.
- 12   **Q**    But you don't remember her saying, "Where are you
- 13       taking my son?"
- 14   **A**    I didn't stay in the house. After we arrested him, I
- 15       walked outside with him.
- 16   **Q**    Did you do any other investigation on anyone else in
- 17       this case other than Mr. Whitehead's lead?
- 18   **A**    Me myself, no.
- 19   **Q**    Do you know about other people being investigated?
- 20   **A**    We talked to some other people, yes.
- 21   **Q**    Who did you talk to?
- 22   **A**    I talked to no one, sir.
- 23   **Q**    But you know that you all did talk to some other
- 24       people?
- 25   **A**    I heard that there was some other people talked to,

1           yes.

2       Q     Who did you hear that were talked to? Who did you  
3           all talk to? Who else?

4       A     Just several different people throughout Sonic.

5       Q     Okay. Do you remember their names?

6       A     A Cecile Trapp, Molly Waltemath, Zack Waltemath,  
7           Mr. Brown, Ms. Pat.

8       Q     Who interviewed Mr. Davy, Melissa Davy's father?

9       A     I'm not sure, sir. It wasn't me.

10      Q     Who interviewed the grandparents of Mr. Zoch?

11      A     I'm not sure.

12      Q     Okay. Have you read through the file at all?

13      A     It's been a while since I looked through it.

14      Q     Would you agree with me, sir, that other than the two  
15           statements written by Investigator Catoe you really  
16           don't have any other evidence in this case at all, do  
17           you?

18      A     Other than these two statements?

19      Q     Right.

20      A     And witnesses? No, sir.

21      Q     Thank you. That's all I have, Your Honor.

22           **THE COURT:** Mr. Kendrick.

23           **MR. KENDRICK:** Thank you, Judge.

24                   CROSS EXAMINATION

25       **BY MR. KENDRICK**

1 Q Good afternoon, Investigator Marthers.

2 A How you doing?

3 Q How you doing?

4 A I'm doing fine.

5 Q Okay. You were assisting Investigator Catoe on this  
6 investigation, right?

7 A That's correct.

8 Q So you were at the scene the night that this  
9 happened?

10 A Yes, I was.

11 Q The night the body was found I guess?

12 A Yes, I was.

13 Q The next day you took evidence to SLED up in  
14 Columbia?

15 A Yes, I did.

16 Q Okay. So you weren't present for any of the  
17 statements that Investigator Catoe took or didn't  
18 take on Thursday?

19 A If he took any, I wasn't there that morning, no.

20 Q So you don't really know what happened on Thursday?

21 A No.

22 Q And when you got back from Columbia, was it  
23 afternoon? Was it night? Was it --

24 A It was kind of late in the afternoon.

25 Q Did you go back to work, or did you go straight home?



1     **A**     I went back to see what else needed to be done.

2     **Q**     Did you meet up with Catoe and ask him how the  
3             investigation had progressed?

4     **A**     I think we met back at the office and talked and I  
5             told him what I'd done.

6     **Q**     And what? You told him you had taken the bat to SLED  
7             in Columbia?

8     **A**     Exactly.

9     **Q**     The next morning you all do a few things throughout  
10            the day, and you ended up at my client's house,  
11            right?

12    **A**     Correct.

13    **Q**     And you were there the whole time?

14    **A**     Yes.

15    **Q**     Were you there for all the conversations that law  
16            enforcement had with Mr. Cannon?

17    **A**     Except for the one with Captain Thomley.

18    **Q**     A minute ago the State asked you some questions about  
19            the statement. I think they asked you two different  
20            ways. They asked you if you made any threats,  
21            promises or inducements to my client, right?

22    **A**     Correct.

23    **Q**     And your answer to that is no?

24    **A**     That's correct.

25    **Q**     The second question they asked you was, have any

1           threats, promises or inducements been made to my  
2           client, right?

3    A     As far as my knowledge, no, they haven't.

4    Q     But you can't actually say no to that, right?

5    A     I assume not.

6    Q     What's that?

7    A     I assume not.

8    Q     And all I'm trying to get is that you don't actually  
9           know what happened at certain times with my client,  
10          Mr. Cannon?

11   A     Correct.

12   Q     And what you're telling me, just so we're clear,  
13          you're sitting with Investigator Catoe at the kitchen  
14          table, right?

15   A     That's correct.

16   Q     And he's questioning my client, right?

17   A     That's correct.

18   Q     My client is denying involvement in this situation  
19          that you're asking him about?

20   A     At first.

21   Q     Is that the same as yes?

22   A     At first he had denied it, yes.

23   Q     When you're sitting at the kitchen table he is  
24          denying it?

25   A     At first, yes.

1 Q Then he goes outside, right?

2 A He had mentioned that he knew something, that he knew  
3 some things about it and he would like to talk with  
4 us outside of his parents.

5 Q He told you that when you got outside, right?

6 A No. He told us that before we walked outside.

7 Q Were his parents still there when he said that?

8 A Yeah, they were.

9 Q Did they hear him say that?

10 A I can't say that.

11 Q Did he say it loud enough that it's logical from your  
12 experience as a police officer that they might have  
13 heard it?

14 A Well, he said it loud enough that I could hear it.

15 Q All right. Where were you sitting?

16 A I was sitting right there beside him.

17 Q Where were his parents sitting?

18 A Well, I can't recall that. They was in the home in  
19 the kitchen and living room area.

20 Q So you actually don't know whether or not they heard  
21 that?

22 A That's correct. I couldn't tell you.

23 Q And you don't have any recollection of how he made  
24 that communication to you?

25 A He just said, I'd like to speak to you all outside

1           without my parents.

2    Q       And he went outside?

3    A       That's correct.

4    Q       He had a meeting at some point with Captain Thomley  
5           who is your boss?

6    A       That's correct.

7    Q       You have no idea why he had that meeting?

8    A       Well, I don't. No, sir.

9    Q       And you have no idea what was said in that meeting?

10   A       No, I do not.

11   Q       And when he got back from that meeting, is it fair to  
12           say he gave the statement that you were referring to  
13           on your direct examination?

14   A       He started talking to us, yes.

15   Q       Right after that meeting with Captain Thomley?

16   A       Yes.

17   Q       You told I believe Mr. Whitlark a second ago that you  
18           told my client's mother not to worry?

19   A       I might have mentioned to her, don't worry, you know,  
20           everything is going to work out.

21   Q       Okay. What was your definition of "everything is  
22           going to work out"?

23   A       That was just a general statement. There wasn't no  
24           definition there.

25   Q       Okay. So it really didn't mean anything?

1     **A**     No, sir.

2     **Q**     When you in general tell someone not to worry about  
3             something, is that always what it means?

4     **A**     It depends on how you take it.

5     **Q**     When you tell somebody not to worry about something,  
6             do you have some feeling you're trying to convey to  
7             them?

8     **A**     I just told her, don't worry, everything should work  
9             out. You know, I don't know the circumstances of  
10            what was going on at that time as far as what was  
11            going to be said.

12    **Q**     But today in this trial where my client is sitting on  
13             trial, that statement doesn't mean anything to you,  
14             right?

15    **A**     At this point in time?

16    **Q**     Right.

17    **A**     Right now it doesn't.

18    **Q**     Okay. So you're telling him not to worry right now  
19             in this courtroom doesn't mean anything?

20    **A**     Right. I'm not telling him that.

21    **Q**     There isn't any notes from you in this investigative  
22             file, right?

23    **A**     No, there is not.

24    **Q**     And A minute ago you testified that this was a long  
25             time ago and you don't really remember much about it,

1 right?

2 **A** I didn't say I didn't remember a whole lot about it.

3 But it's been a while. Some of the things --

4 **Q** And you would agree with me that a majority of  
5 responses to myself and Mr. Whitlark's questions have  
6 been you don't recall?

7 **A** I didn't count each one. No, I did not. I don't  
8 know.

9 **Q** You don't remember that either?

10 **A** I remember some of the stuff I don't recall.

11 **Q** That's all I have, Judge.

12 **MR. RILEY:** Your Honor.

13 **THE COURT:** Yes, sir.

14 **MR. RILEY:** May it please the Court?

15 **THE COURT:** Certainly.

16 CROSS EXAMINATION

17 **BY MR. RILEY**

18 **Q** Investigator Marthers, you may have already been  
19 asked and answered this; and, if so, I apologize.  
20 Why is it that you did not sign Mr. McDonald's  
21 statement as a witness?

22 **A** I wasn't in the room when he signed his name.

23 **Q** All right, sir. Okay. On the day, Friday, the 15th,  
24 when you and Investigator Catoe made contact with  
25 Christopher Whitehead, at that particular spot, from

1 start to finish, how long were you there?

2 A I didn't look at a clock. Don't know. Maybe 45  
3 minutes, something, an hour.

4 Q And during that time period was Mr. Whitehead free to  
5 leave?

6 A He couldn't leave. He was under suspension.

7 Q I'm sorry, sir?

8 A He could have walked off.

9 Q How do you mean that?

10 A Because he was driving under suspension.

11 Q I understand. Thank you.

12 **THE COURT:** Yes, ma'am. Anything further?

13 REDIRECT EXAMINATION

14 **BY MS. MCDUFFIE**

15 Q At any time when you were present, were any promises  
16 ever made to any of the defendants?

17 A No, they were not.

18 Q Any threats?

19 A No, there was not.

20 Q No coercion?

21 A No, there was not.

22 Q Were you present when Robert Cannon made his  
23 statement?

24 A Yes, I was.

25 Q You were present when he said these words to

1 Investigator Catoe?

2 **A** Yes, I was.

3 **Q** And you saw him sign at the bottom of the page?

4 **A** Yes, I was.

5 **Q** You were present when he said that another person  
6 said he was going to pull one of my moves and kick  
7 the door?

8 **A** Yes, I was.

9 **Q** You were present when he said that another person  
10 picked up a glass lamp?

11 **MR. KENDRICK:** Your Honor, I'm going object to  
12 her going through the statement word,by-word. The  
13 witness might be able to do that, but she can't just  
14 tell him leading questions like that.

15 **THE COURT:** It's been the method of the  
16 proceedings for three days now.

17 **MR. KENDRICK:** I know, Your Honor. And at some  
18 point it's got to get back on track with the rules.  
19 And I apologize for not objecting, but now I object  
20 to the leading.

21 **THE COURT:** Just ask him a question. You don't  
22 have to read from the statement. Whatever you're  
23 trying to elicit from the witness.

24 **Q** Investigator Marthers, were you present when Derrick  
25 McDonald said that he picked up a bat and hit Josh



1           Zoch with it?

2     **A**     Yes, I was.

3     **Q**     That bat?

4     **A**     Yes.

5           **MS. MCDUFFIE:** No further questions.

6           **MR. WHITLARK:** Just one, Your Honor.

7           **THE COURT:** Sure.

8                           RE CROSS EXAMINATION

9     **BY MR. WHITLARK**

10    **Q**     Investigator, were you present when the alleged story  
11           of Mr. McDonald was that he had taken all his clothes  
12           and his rubber gloves and the DVD's and all the stuff  
13           taken from the house and burned it in a barrel in his  
14           backyard?

15    **A**     Yes, I was.

16    **Q**     Okay. But you all never went over there to look in  
17           there, did you?

18    **A**     I don't know if anybody went or not. I didn't go.

19    **Q**     As part of your training as a professional police  
20           officer, wouldn't that be a wise thing to do in a  
21           case where no evidence is present?

22    **A**     Yes. But I did not go.

23    **Q**     Sir, is it your testimony that the entire time you  
24           all were talking to Cannon and McDonald you never  
25           said, we want you to be a witness against Chris

1 Whitehead?

2 **A** Once again, I did not say that.

3 **Q** And you never heard Investigator Catoe say it?

4 **A** I did not hear it.

5 **Q** And the words, this is going to be a death penalty  
6 trial, that sentence was never said?

7 **A** No, it was not.

8 **Q** They just offered up this information to be what,  
9 truthful and just give you, you know, a murder  
10 confession. Is that right?

11 **A** I guess. That's what they gave us. That's their  
12 statement.

13 **Q** Is it your testimony they weren't coerced at all?

14 **A** They was not coerced.

15 **Q** They weren't promised anything at all?

16 **A** They weren't promised anything at all, to my  
17 knowledge.

18 **Q** Okay. And both of them denied this before you got  
19 them alone, didn't they?

20 **A** Yes.

21 **MR. WHITLARK:** That's all I have, Your Honor.

22 **MR. KENDRICK:** I think it will just be one  
23 request in direct response, Your Honor.

24 RECROSS EXAMINATION

25 **BY MR. KENDRICK**

1 Q The State went through some lines of that statement  
2 with you and asked you if you were present when my  
3 client wrote those down. Right, Investigator?

4 A I was there.

5 Q You were there when he wrote that?

6 A When Investigator Catoe wrote some of it, yes.

7 Q You were there when my client was denying his  
8 involvement, right?

9 A Yes.

10 Q The meeting with Captain Thomley that happened  
11 inbetween his denials and his admissions, that's what  
12 you were not present for, right?

13 A I was in the yard but I wasn't standing beside them  
14 when they was speaking.

15 Q Let's assume that when I say present I mean did you  
16 hear what happened in that meeting?

17 A No, I did not hear the conversation.

18 Q Thank you.

19 THE COURT: Anything further?

20 MR. RILEY: Nothing further for this witness,  
21 Your Honor.

22 THE COURT: All right. You may come down, sir.  
23 Thank you very much. Next witness.

24 MR. MEADORS: Phil Crawford.

25 MR. KENDRICK: Your Honor, before he gets

1           started, if I can just renew earlier what we  
2           discussed earlier with regard to this witness.

3           **THE COURT:** All right. Let him take the stand.

4           PHILLIP CRAWFORD, after being duly sworn,  
5           testifies as follows:

6           **THE CLERK:** Thank you. Please have a seat in  
7           the witness chair and state your full name for the  
8           record.

9           **THE WITNESS:** Phillip Crawford.

10          **THE COURT:** Counsel, approach the bench, please.  
11          (Whereupon, a bench conference is had).

12          **THE COURT:** All right. Ladies and gentlemen,  
13          this will be a short break. I do have to clear up  
14          one thing on the record. And the reason for these  
15          breaks, and I hope you'll understand, is sometimes  
16          I've got to put something on this permanent record  
17          that is really not jury information. And by that I  
18          don't mean I'm hiding something from you. I'm  
19          certainly not. But there are legal matters that I --  
20          there is case law that we're dealing with that deals  
21          with these statements and things like that.

22          You've heard a lot of talk about Miranda and  
23          various other cases. So I've just got to make  
24          decisions as we go through this trial about various  
25          types of evidence that are presented because I'm

1 bound by not only what are called the rules of  
2 evidence but what the U.S. Supreme Court says that we  
3 must do to protect the rights of citizens.

4 So I do need to put something on the record, and  
5 I hope you'll bear with me. We're moving along.  
6 This will take just a few minutes. So just relax for  
7 a minute. Don't discuss the case among yourselves  
8 while you're in the jury room.

9 (Jury out at 2:55 p.m.)

10 **THE COURT:** All right, counsel. As I said at a  
11 side bar and might as well make it part of the  
12 record, it is my opinion that a properly redacted  
13 statement; that is, the statement that was taken by  
14 this officer, Crawford -- it's not a pun -- does not  
15 offend Crawford if it is properly redacted.

16 And as -- in other words, I'm not -- I can't  
17 say; I certainly don't want to say that Bruton and  
18 Crawford address the same issues. But I think  
19 because your clients, if it's a properly redacted  
20 statement, does not involve or does not implicate  
21 either of the other two defendants, then I think it's  
22 admissible. That's what I think. I may be wrong but  
23 I've been wrong before.

24 **MR. MEADORS:** Your Honor, in that light, the  
25 proposed redaction, I have it, if everybody has got

1           it, the statement reads: "He confessed that all  
2           three subjects hit the back door together but I was  
3           still last. He also stated that the victim grabbed  
4           his leg during the incident and he that he kicked  
5           back." That's the extent of it. So I have a  
6           proposal, either, "We all three" or "we hit the back  
7           door but I was still last", is the first sentence.

8           **THE COURT:** Well, you could also do it the way  
9           Mr. Kendrick suggested and said: "I hit the door  
10          last."

11          **MR. MEADORS:** I missed it when he said that,  
12          but --

13          **THE COURT:** That was his earlier argument.

14          **MR. MEADORS:** Well, I did miss it.

15          **THE COURT:** It ought to be singular.

16          **MR. KENDRICK:** I don't know that I made that  
17          argument, Your Honor.

18          **THE COURT:** Certainly you did.

19          **MR. KENDRICK:** I did?

20          **THE COURT:** It's right here.

21          **MR. KENDRICK:** Oh, yeah. You're right. I guess  
22          that was the way. But I think you overruled my  
23          proposal.

24          **THE COURT:** I did.

25          **MR. KENDRICK:** I want to honor your earlier

1 ruling.

2 **THE COURT:** I did.

3 **MR. MEADORS:** But, Your Honor, consistent with  
4 the other oral statements that have already been in  
5 evidence which said "another person" or "some other",  
6 either "some other" -- I think "we" is about as  
7 generic as you can get. It doesn't say three of us,  
8 so it cuts down on the number. "We hit the back door  
9 but I was still last." And that's in context of what  
10 he said and fair and doesn't implicate them,  
11 certainly not as much as "another person and another  
12 person". Or we could say "another person and another  
13 person and I kicked the back door but I was still  
14 last". Or I would just say that taking out that  
15 whole -- it just wouldn't make sense. We would  
16 suggest: "We hit the back door but I was still last.  
17 And then after that the victim grabbed my leg during  
18 the incident and I kicked him."

19 **THE COURT:** Well, there's no objection to that,  
20 that part of it, except from --

21 **MR. MEADORS:** Just that once sentence.

22 **THE COURT:** -- Mr. Kendrick.

23 **MR. WHITLARK:** Your Honor, could I say something  
24 about that, what he just said? Your Honor, there are  
25 inconsistent evidence in here about how many people

1 hit this door. I mean, it's not a known fact that  
2 there was three, two. There's various versions of  
3 how the door was kicked.

4 **THE COURT:** Well, all we're talking about is  
5 what Thomas said (sic).

6 **MR. WHITLARK:** Well, I know that.

7 **THE COURT:** I mean Cannon said. I don't know  
8 why I keep saying Thomas. I'm as bad as you.

9 **MR. WHITLARK:** Your Honor, according to the --

10 **THE COURT:** Cannon.

11 **MR. WHITLARK:** -- Bruton case and the Crawford  
12 case, any implication of the other --

13 **THE COURT:** It doesn't say that.

14 **MR. WHITLARK:** -- defendant -- well, I mean, but  
15 --

16 **THE COURT:** It doesn't say any implication.

17 **MR. WHITLARK:** Well, what's the difference  
18 between we did it and us three did it? I mean, I  
19 don't see any difference, Your Honor. We're already  
20 sitting here together. I mean, it's just -- it's  
21 like not -- it doesn't -- it's not going to be  
22 anything masking anything. I mean, the jury is going  
23 to know --

24 **THE COURT:** There was no motion for severance.  
25 We've been down these roads before.



1           **MR. WHITLARK:** The cases still apply, Your  
2 Honor.

3           **THE COURT:** The cases absolutely apply. And I  
4 said in my opinion that a properly redacted statement  
5 that does not implicate the other two defendants,  
6 certainly directly; your position that it implicates  
7 him indirectly. Or maybe your position is it  
8 implicates him directly. But that's the way we're  
9 going.

10           **MR. WHITLARK:** Yes, sir.

11           **THE COURT:** Now, whether it's a "we" or Mr.  
12 Kendrick would probably prefer it be an "I"; in other  
13 words, redacted to the singular --

14           **MR. REUWER:** Mr. Whitehead would prefer the  
15 redactions in the singular.

16           **THE COURT:** I'm sure. I mean, I understand.

17           **MR. REUWER:** And, secondly, we would prefer "we"  
18 to "another person and another person". Although  
19 we'd like to make our continuing objection for the  
20 record, Your Honor.

21           **THE COURT:** Sure. I understand.

22           **MR. MEADORS:** And we'd like "we three". But I  
23 think the compromise and consistent with all three,  
24 what we've done yesterday would be "we", would be  
25 generic. "We hit the back door but I was still

1 last."

2 **MR. MOAK:** That would not change the meaning of  
3 the statement.

4 **MR. MEADORS:** That would not change the meaning  
5 of the statement. Thank you, Mr. Moak.

6 **THE COURT:** Would not what?

7 **MR. MEADORS:** Mr. Moak had a comment. I was  
8 thanking him. That wouldn't change the context as to  
9 what happened to make it more fair to Mr. Cannon  
10 actually if you did it that way.

11 **THE COURT:** All right. Anything further?

12 **MR. REUWER:** Your Honor, I don't like the word  
13 "confessed" versus the word "said" or --

14 **THE COURT:** What are you talking about?

15 **MR. REUWER:** It's in that still same sentence:  
16 "He confessed that we".

17 **MR. MEADORS:** I don't think we're going to say  
18 that. And I'd like to, Your Honor, make a copy of  
19 this and give it to the lieutenant just so there  
20 won't be any mistake.

21 **THE COURT:** Let Mr. Moak do it.

22 **MR. MEADORS:** I need to use the restroom real  
23 quick. We've got a couple of witnesses. We have one  
24 matter we've got to talk to Your Honor in chambers  
25 about.

1           **THE COURT:** I understand that. But somebody has  
2 got to get this witness started.

3           **MR. MEADORS:** I'm ready.

4           **MR. KENDRICK:** Your Honor, before we pull the  
5 jury back in, if I could just for the purposes of  
6 being absolutely contemporaneous, if I could just  
7 relate back my argument that I made relating to I  
8 feel like my cross examination of this witness is  
9 being hampered, and I think his testimony should be  
10 suppressed. I just want to make sure I'm making that  
11 as he testifies under the rules. Thank you.

12           **THE COURT:** All right.

13           **MR. WHITLARK:** Your Honor, can I ask the Court a  
14 question? This is the deception machine expert,  
15 right. Isn't that right?

16           **THE COURT:** That's your statement.

17           **MR. WHITLARK:** Well, I'm just saying he's the --

18           **THE COURT:** You know who he is.

19           **MR. WHITLARK:** Yes, sir. And, Your Honor, this  
20 is a murder case, and the implication of this, this  
21 statement they're getting ready to put in is directly  
22 related, as we've talked about, to him looking at him  
23 and talking about, well, you didn't do too good on  
24 this thing. And, Your Honor, I mean for us not to be  
25 able to get into that is --

1           **THE COURT:** If he crosses that line, I'll allow  
2 you to get into it.

3           **MR. MEADORS:** Your Honor, if they want to get  
4 into it, here.

5           **MR. WHITLARK:** These things are inextricably  
6 intertwined. The reason he said that to him, the  
7 reason that this statement that we're talking about  
8 is coming in is because he showed deception on his  
9 result. And this guy said this to him, and then they  
10 got this response, Judge. I mean, you're getting  
11 half of it in. The jury doesn't have the advantage  
12 of the full view of what happened. I mean, this is a  
13 murder case and these young men are on trial for  
14 their life, as we all know. And I think we should be  
15 allowed to go into why and what the cause of him  
16 saying that and how it came about.

17           **THE COURT:** The State's position.

18           **MR. MEADORS:** Judge, number one, I don't think  
19 the polygraph is admissible. If it's admissible on  
20 this and it comes in, that does not open the door to  
21 any other polygraph. If he wants to bring it up in  
22 this alone and this testimony here, Mr. Kendrick may  
23 object to that. But if they're going to confine it  
24 just to this witness and nothing else, you know, I  
25 clearly don't think it's admissible. I'm not going

1 to be on the record agreeing to a polygraph coming in  
2 even if it helps me, because I don't think it's the  
3 law, quite frankly. And it should come in under  
4 expert --

5 **THE COURT:** What about that? If you could fully  
6 examine him as to everything he did and in his  
7 opinion the results were deceptive --

8 **MR. KENDRICK:** I think my problem, Your Honor,  
9 is partially; I don't know, I think maybe I agree  
10 with everybody on this one. I don't think he should  
11 be able to testify because I can't go into the  
12 polygraph. But at this point I can't go into it  
13 because you prevented us from going into it with  
14 other people. A polygraph is admissible or  
15 inadmissible. I don't think it should be admissible  
16 against the defendant but inadmissible against other  
17 suspects. And that's my problem, Your Honor.

18 **THE COURT:** But you're the one that wanted to be  
19 able to explain why he elicited the answers that he  
20 did, that it did.

21 **MR. KENDRICK:** Right. But Your Honor was very  
22 clear that in the past we couldn't talk about why  
23 other people were questioned in the same kind of  
24 vein. And this is what it comes down to, Your Honor.  
25 There is an ability of him to tell someone I think

1       you're deceiving me. And he writes a little report  
2       at it. Those reports we have not -- and Your Honor  
3       has been very strict. We are not allowed to bring  
4       that up.

5               My problem is that we can't talk about it when  
6       these people aren't there. I guess that's a little  
7       bit different. Now that we're here, I still can't  
8       talk about it. And it's not something where you can  
9       say, sure, we'll let in the polygraph that your  
10      client was being deceptive, but we can't say that the  
11      two people we've also mentioned -- I mean, if you  
12      want to let it all in, Your Honor, I think we let it  
13      all in, that we can ask him --

14             **THE COURT:** I just asked the question. I just  
15      wondered what your opinion is.

16             **MR. KENDRICK:** My opinion, Your Honor, is it's  
17      all or nothing. If you're not going to allow us to  
18      talk about it on other suspects, then it can't come  
19      in against the defendant. However, that ruling  
20      affects my ability to cross examine someone. And I  
21      don't think you can partially undo that ruling now  
22      that it's to my detriment.

23             We covered this polygraph bridge a while back.  
24      And I think Your Honor was -- again, I accepted your  
25      ruling. I think you were very strict about it, that

1 if the word comes up, somebody in this courtroom was  
2 going to be in a lot of trouble. I believe we got  
3 that impression.

4 **THE COURT:** Yes, sir.

5 **MR. KENDRICK:** So I accepted that ruling, Your  
6 Honor. But after looking at -- and you have to  
7 understand, some of the polygraph results I got I've  
8 gotten in the last couple of days. So Your Honor  
9 knows we've been running from 9 to 6. And what I've  
10 done on this I've done on my own time. No time is my  
11 own time in trial. But late at night or early in the  
12 morning. So this isn't something that I'm cooking up  
13 at the last minute to confuse the issue.

14 But I think again that I have a two-part  
15 argument. Because I can't explore -- and part of  
16 this would be if we had talked about those other two  
17 witnesses, then we could say, you know, you've got  
18 two other people that were in the same boat. And  
19 that's why I'm hampered, Your Honor. And I'm  
20 hampered because I want to comply with the Court's  
21 rulings and the rules but also zealously represent my  
22 client. And at this point I can't do that. And I'm  
23 stating that for the record, and I accept your  
24 ruling.

25 **THE COURT:** No. I understand. What about the

1           Miranda issue? The State takes the position that  
2           this is a free and voluntarily statement after being  
3           advised of his right to counsel and he did not accept  
4           that offer.

5           **MR. KENDRICK:** I mean, I think that was in the  
6           pre-trial stuff. And I guess I need to put that on  
7           the record so we don't have to do it in front of the  
8           jury.

9           **THE COURT:** Well, but you're arguing -- at first  
10          the question was whether it was a voluntary  
11          statement.

12          **MR. KENDRICK:** Right.

13          **THE COURT:** We really never went into all this  
14          when the officer testified the first time. But the  
15          question was whether it was a voluntary statement.  
16          Now you say it's an involuntary statement because his  
17          thought process was changed somewhat by the results  
18          of this test and that -- I think I used -- what's the  
19          word I used earlier? That his testimony was somehow  
20          induced, I guess was the word.

21          **MR. KENDRICK:** Your Honor, I guess I'm not  
22          viewing this as black and white as what you just  
23          described. My position is there are factors that  
24          went into why he felt my client was lying and then  
25          what happened as a result of that. Now, we haven't



1           been able to explore that with other witnesses, very  
2           strictly. So I am operating under the assumption I  
3           certainly can't explore it with him. Now to say that  
4           the polygraph can come in against Mr. Cannon and no  
5           one else --

6           **THE COURT:** I didn't say that. I just --

7           **MR. KENDRICK:** What I mean is I don't want to  
8           make it --

9           **THE COURT:** What's the State's situation?

10          **MR. MEADORS:** I want the record to be clear that  
11          he has specifically, just as to exploring with Mr.  
12          Crawford about the polygraph as to why there may or  
13          may not have been extra comments made, he does not  
14          want to do that, that is all that can come in? So he  
15          doesn't want to take this opportunity to cross him on  
16          the polygraph as to why he gave it, if the other  
17          stuff came in? Just let the record reflect he is not  
18          saying he does not want to do that. Just -- and that  
19          alone --

20          **THE COURT:** He's saying he's complying with my  
21          ruling that the polygraph results would not be  
22          admissible during the course of this trial as to any  
23          witness.

24          **MR. MEADORS:** Yes, sir. And I think then,  
25          respectfully, I think for the record, and I don't

1 want the Court to be boxed in either, also the  
2 inquiry Your Honor made to him --

3 **THE COURT:** I'm not boxed in. I either say it's  
4 in or out.

5 **MR. MEADORS:** Right. If he had the opportunity  
6 to just do it for his client at this stage to explain  
7 the statements, if he had that opportunity just with  
8 his client and only his client as to this, he is  
9 declining to do that.

10 **MR. KENDRICK:** That's not exactly what I said.

11 **MR. MEADORS:** Okay. Well, I'll ask him then.

12 **MR. KENDRICK:** Sure.

13 **MR. MEADORS:** If it's just to that, without the  
14 others coming in to explain it, I think he's saying  
15 he doesn't want to do that, if he can't do the  
16 others.

17 **MR. KENDRICK:** Your Honor, it would probably be  
18 easier if I just explained it, Your Honor, for the  
19 record. Maybe I was confusing. I certainly  
20 apologize.

21 **THE COURT:** No. I understand your position.

22 **MR. KENDRICK:** The context is what's important.  
23 That's why the other two not coming in is a big deal.

24 **THE COURT:** How about the totality of the  
25 circumstances? It's pretty good, too, isn't it?

1           **MR. KENDRICK:** What's that?

2           **THE COURT:** I said that's pretty good, too,  
3 isn't it?

4           **MR. KENDRICK:** Yes, sir. It must be. Everyone  
5 around me is saying yes.

6           **MR. MEADORS:** I have written it out specifically  
7 just so there wouldn't be any confusion.

8           **THE COURT:** Well, we're not there yet.

9           **MR. MEADORS:** Yes, Your Honor, it's our  
10 position -- I don't know if we're going back -- I  
11 thought you all had been through about the statement.  
12 The Miranda we did go through yesterday these  
13 statements very freely and voluntarily given.

14           **THE COURT:** Well, he says --

15           **MR. MEADORS:** And I'd already argued that to the  
16 jury.

17           **THE COURT:** He says that this is different.

18           **MR. MEADORS:** But he didn't yesterday, Judge.  
19 When we went through it, and I've already put in the  
20 record and told them this was coming out and asked  
21 one of the witnesses about it. And they said, yeah,  
22 he told him that after he was arrested. And there  
23 was no objection. That's already been in there  
24 twice. No objection whatsoever. And I said it in my  
25 opening. And we had Jackson v. Denno yesterday.

1           That's the time to make these objections.

2           **MR. KENDRICK:** Well, just to be fair to me, Your  
3 Honor, --

4           **MR. MEADORS:** Whoa. Can I finish, please?

5           **MR. KENDRICK:** Oh, I'm sorry. I thought you  
6 were, John.

7           **MR. MEADORS:** That is the time to make them. We  
8 were talking about statements, admissibility and  
9 voluntariness of statements. That's what a Jackson  
10 v. Denno hearing is. And we spent all day on it.  
11 And then based on that, and we did it prior to  
12 openings, I conveyed to the jury he's going to be  
13 coming up and saying what he's saying right now. I  
14 asked one of the investigators, is it going to come  
15 through after he admitted he touched the body --  
16 those were my exact words -- of Josh, did you all  
17 arrest him? Yes, we did. And that was all based on  
18 the fact Your Honor said it was admissible after the  
19 Jackson v. Denno hearing. And they all cross  
20 examined him.

21           **MR. KENDRICK:** Your Honor, I just --

22           **THE COURT:** Go ahead.

23           **MR. KENDRICK:** Could I add that -- and something  
24 I don't want to bring up. But, I mean, obviously we  
25 need to bring to the Court's attention that all the

1 results that are the polygraph information other than  
2 a one-page summary, which to be honest with you, I  
3 think I have a different argument on, this came in  
4 this week. And, you know, I got up -- I don't want  
5 to get too into privilege what I've done on behalf of  
6 my defense, Your Honor. But I was provided with the  
7 underlying data on my client I guess -- I don't know  
8 what today is -- Wednesday or Thursday, on I guess  
9 Tuesday.

10 And, you know, we -- as Your Honor knows, we  
11 didn't go to lunch and we didn't get out of the court  
12 until about 6:30. I think I very diligently took  
13 care of what I needed to take care of and then  
14 realized that night that there were two other  
15 polygraphs, that I didn't have the information on  
16 those. I got those yesterday afternoon. So, it's  
17 certainly --

18 **THE COURT:** Not your client.

19 **MR. KENDRICK:** Those were not of my client.

20 **MR. MEADORS:** And nobody charged on trial in  
21 this case.

22 **MR. KENDRICK:** What's that?

23 **MR. MEADORS:** Nobody charged and on trial in  
24 this case.

25 **MR. KENDRICK:** Well, sure. And, Your Honor,

1 we've got all kinds of information about people who  
2 aren't charged in this case. And I just -- I didn't  
3 bring that up because, Your Honor, I know how things  
4 get. You get busy. You're getting ready for a big  
5 trial and you forget stuff. You know, I know  
6 Mr. Crawford gave my subpoena to the State and it's  
7 just there was miscommunication. But I have brought  
8 that up as --

9 **MR. MEADORS:** That is not true.

10 **MR. KENDRICK:** Well, I haven't brought that up  
11 as anything, you know, I've tried to take advantage  
12 of. But I certainly think that now what we're saying  
13 is that we -- basically I'm in a bad position,  
14 because I can either win or lose my argument either  
15 way. I'm either not going to cross examine him or  
16 I'm going to be able to cross examine him. The State  
17 is going to go into a limited explanation of how my  
18 client failed a polygraph that two other people also  
19 failed.

20 And I just got those drafts yesterday. It's  
21 Thursday. I don't want to ask for a continuance on  
22 this matter, but I think I'd be entitled to it, Your  
23 Honor. And I'll be honest with you. I don't know at  
24 this point up until what's just happened that it  
25 weighed enough for me to get out of this case and try

1 to do that. I certainly have an issue now where I've  
2 got discovery that came late. I'm not explaining  
3 about why, Your Honor, but it did happen.

4 I don't really think that there's any standard  
5 that if there was a certain reason why it came late  
6 it's treated differently. But I do think I get some  
7 benefit of the doubt. And, Your Honor, I think the  
8 easiest thing is, you know, he doesn't testify.

9 **THE COURT:** Is what?

10 **MR. KENDRICK:** He doesn't testify. It complies  
11 most closely with all the rulings that have been made  
12 in this trial.

13 **MR. MEADORS:** Your Honor, he's back-dooring in  
14 the statement. He was in the Sheriff's Department  
15 two doors down from Phil Crawford last Thursday for  
16 five hours and didn't call him up on these.

17 **THE COURT:** Those issues are not in front of me.

18 **MR. MEADORS:** Okay. And those two polygraphs  
19 are not relevant. They'd never be admissible.

20 **THE COURT:** That issue is not in front of me.  
21 The question is --

22 **MR. MEADORS:** Well, it kind of is. Because he's  
23 saying if he had that it would be different. But  
24 those would never be relevant unless he got Adrian  
25 Duran in here, those witnesses in here, all of that

1 stuff. We say they can't. And this statement that  
2 we went over in detail yesterday, forget the poly --  
3 it's whether the statement is freely and voluntarily  
4 given. That's what it was, and he testifies it was.

5 **THE COURT:** That's his objection, it was not  
6 freely and voluntarily given.

7 **MR. MEADORS:** But Your Honor ruled it was  
8 yesterday after hearing everything.

9 **THE COURT:** He didn't raise this issue, and you  
10 know that. He did not raise this issue and I did not  
11 rule on that issue. I ruled simply on the Miranda  
12 and the argument that was made at the time. This is  
13 a different argument.

14 **MR. REUWER:** Your Honor, if I may add. The most  
15 telling part of the totality of the circumstances is  
16 that these post test comments were only made after  
17 the results were given. That statement was clearly  
18 made by the State.

19 **MR. MEADORS:** Your Honor, short of you keeping  
20 them out, I'd rather give them some time to look at  
21 these polygraphs. I've had somebody look at them. I  
22 saw them after he did, and I can assure you --

23 **THE COURT:** Well, --

24 **MR. MEADORS:** Because I have conveyed to this  
25 jury that that's coming out based on Your Honor's



1 ruling that they were admissible and had a witness to  
2 testify. I think that's crucial to the State's case  
3 and to these victims and their families.

4 **THE COURT:** This is --

5 **MR. WHITLARK:** And of course my position is I  
6 would like to go into all three polygraphs with this  
7 fellow. He's the expert. That was his part of the  
8 investigation. And what the results were, where they  
9 went with them.

10 **THE COURT:** All of this could have been done  
11 pre-trial, you know.

12 **MR. WHITLARK:** I just found out about this  
13 yesterday, Your Honor.

14 **THE COURT:** I know. I think you knew that --

15 **MR. KENDRICK:** Your Honor, and I understand  
16 that. But --

17 **THE COURT:** -- that Duran had been polygraphed  
18 well before Monday.

19 **MR. KENDRICK:** But, Your Honor, if I request  
20 information that I know has to exist in order to get  
21 to an end result and that information is not given to  
22 me because it doesn't exist, then the end result is  
23 not coming into this trial. However, the law is  
24 clear that I don't have the responsibility to follow  
25 up on my discovery request if they are known to any

1 agent of the state. I think it's Kyles v. Whitley.  
2 But I forget these names.

3 **THE COURT:** You're right.

4 **MR. KENDRICK:** And I haven't said anybody did  
5 anything wrong, Your Honor. That's what kind of  
6 bothers me about that. Because it may have been an  
7 oversight. But again, this is a big trial. And  
8 while oversights may happen, they do have to be  
9 corrected before we get to a verdict. I'll accept  
10 whatever ruling.

11 **THE COURT:** I'm going to let him testify based  
12 on the fact that this -- I understand that this is a  
13 different argument. It could have been contemplated  
14 when the officer was first examined during the  
15 Jackson v. Denno. You knew what it was. You knew  
16 who he was.

17 I cannot stop this trial and will not stop this  
18 trial to go back and review all the polygraph  
19 reports. And you're talking about a whole -- you're  
20 talking about a Council/Dalbert hearing on the  
21 admissibility of polygraph evidence which requires  
22 expert testimony.

23 And I know of only one case. And it's not  
24 reported I don't believe -- it may be reported in  
25 South Carolina -- where polygraph results have been

1       admissible, held admissible. But in that case both  
2       the State and the defendant agreed that it would be  
3       admissible.

4               So I am not going to go back into all of that at  
5       this stage of the proceedings. I'm going to let him  
6       testify. It may be unduly prejudicial to your  
7       client, but I have no -- I have no reason to exclude  
8       that testimony at this point.

9               **MR. KENDRICK:** Okay. Your Honor, if I could  
10       just state again for the purposes of the record that  
11       because this information that we specifically just  
12       discussed was disclosed after the start of the trial,  
13       I think that --

14               **THE COURT:** Tell me for the record what was --

15               **MR. KENDRICK:** The underlying polygraph data  
16       that we're discussing that would go to whether it was  
17       admissible was disclosed to me, Robert Cannon's  
18       attorney and the rest of the defense, in the middle  
19       of the trial. And I just need to put that on the  
20       record.

21               **THE COURT:** As to this test or all tests?

22               **MR. KENDRICK:** This test information was  
23       disclosed I believe on Monday afternoon or Tuesday.  
24       Tuesday afternoon. As to the other two people, that  
25       information was disclosed on Wednesday. Even though

1 I did properly --

2 **THE COURT:** That is a very appealable issue.

3 **MR. KENDRICK:** I hope it doesn't matter, Judge.  
4 But thank you.

5 **MS. MCDUFFIE:** Your Honor, I'd also like to put  
6 it on the record that I met with Mr. Kendrick and Mr.  
7 Whitlark last Thursday at the Kershaw County  
8 Sheriff's Department. They viewed the original  
9 investigator's file. They had copies of the  
10 polygraph report, and at no time did anyone ask me  
11 for underlying data. They reviewed all the stuff  
12 that we had, and I asked if there was any other stuff  
13 they were missing and at no time did Mr. Kendrick ask  
14 me for that data.

15 **MR. MEADORS:** And they have had the polygraph  
16 results for a long, long, long time. The results,  
17 they have had those.

18 **MR. KENDRICK:** I think my subpoena is in the  
19 record, too, but I just want to be sure it's --

20 **MR. MEADORS:** And I'd like to mark these, too,  
21 for the record.

22 **THE COURT:** What are they?

23 **MR. MEADORS:** Your Honor, these are the  
24 polygraph report results that they've had since last  
25 year.

1           **THE COURT:** Well, mark them Court's Exhibits,  
2 not State's or Defendants'.

3           **MR. KENDRICK:** I don't know. Your Honor, I had  
4 subpoenas marked. I assume that will got to the  
5 record if I just marked it for I.D. pre-trial.

6           **THE COURT:** I don't know. Let me see you at the  
7 bench, please. Approach the bench.

8           (Whereupon, a bench conference is had)

9           (WHEREUPON, Court's Exhibit No. 2 is marked for  
10 identification.)

11           **MR. WHITLARK:** This is Marcus Whitlark on behalf  
12 of the defendant, Mr. McDonald. Your Honor, we make  
13 a motion to exclude the testimony of the witness,  
14 Lieutenant --

15           **THE COURT:** Crawford.

16           **MR. WHITLARK:** -- Crawford on the grounds that  
17 apparently we've got a pre testimony order not to  
18 mention some of his testimony regarding his expertise  
19 as part in his investigation involving the machine  
20 that calibrates and measures truthfulness, Your  
21 Honor. So we want to exclude his testimony and make  
22 a motion to do so. And also because we didn't get  
23 the information regarding the truth detector of Mr.  
24 Cannon until yesterday. And that would be the date  
25 of the 7th of May. Thank you, Your Honor.

1           **THE COURT:** All right.. The motion is denied.

2 Ready for the jury?

3           **MR. MEADORS:** Yes, sir.

4           **THE COURT:** Bring the jury.

5 (Jury in at 3:25 p.m.)

6           **THE COURT:** All right, Solicitor.

7           **MR. MEADORS:** May it please the Court.

8                           DIRECT EXAMINATION

9 **BY MR. MEADORS**

10 **Q** Lieutenant Phil Crawford, have you been sworn yet?

11           **THE COURT:** He was sworn. Yes, sir.

12 **Q** Good afternoon.

13 **A** Good afternoon.

14 **Q** Lieutenant, please tell this jury about Lieutenant  
15 Phillip R. Crawford, where you're from, your  
16 background, your training and just a little bit about  
17 you, who you are?

18 **A** I'm originally from North Carolina. I went into the  
19 Air Force in 1980. I spent 12 years in the Air  
20 Force, most of it as law enforcement, got out of the  
21 Air Force from Shaw Air Force base, went to work at  
22 South Carolina Law Enforcement in 1992. I graduated  
23 from the South Carolina Criminal Justice Academy that  
24 same year. I have been in law enforcement ever since  
25 then; two years with the City of Bishopville, three

1           years in Lee County, and since then I've been with  
2           the Kershaw County Sheriff's Office. I attended St.  
3           Leo College while I was in the Air Force. I also  
4           have attended numerous hours of advanced training,  
5           homicide investigation, burglary investigations,  
6           photography, a number of other advanced courses.

7    Q       And in addition to that, do you all have continuing  
8           training every year?

9    A       Yes, sir. We certainly do.

10   Q       And you've been to the Criminal Justice Academy?

11   A       Yes, sir, I have.

12   Q       Now, Lieutenant, right now you're a lieutenant. What  
13           does that mean?

14   A       It's actually I'm the lieutenant in investigations.  
15           I fall directly under Captain Thomley.

16   Q       And going back to December 2006 which is on State's 8  
17           which I think is probably pointed toward you, the  
18           calendar there, what was your job then with the  
19           Sheriff's Department?

20   A       I was also the lieutenant of criminal investigations.

21   Q       Let me -- on December 16th of 2006, on State's 8, do  
22           you recognize that to be a Saturday?

23   A       Yes, sir, I do.

24   Q       And on that date did you have an occasion to talk to  
25           Robert Cannon?

1     **A**     Yes, sir, I did.

2     **Q**     Where did that take place?

3     **A**     Actually here in the courthouse.

4     **Q**     And about what time was that?

5     **A**     About 11:00.

6     **Q**     And when you met with Mr. Cannon, did you have an  
7           occasion to read him his Miranda rights?

8     **A**     Yes, sir, I did.

9     **Q**     And was it your practice then, is it your practice  
10          now, did you use a form?

11    **A**     Yes, sir, we do.

12    **Q**     And I'll show you what's marked State's 5 at this  
13          time. Do you recognize this, and does it relate to  
14          what you are fixing to talk about?

15    **A**     Yes, sir, it does.

16    **Q**     All right. And what is that?

17    **A**     That a Kershaw County Sheriff's Office Miranda  
18          warning form.

19    **Q**     Please tell these folks, these ladies and gentlemen  
20          of this jury, did you have an occasion to read the  
21          Miranda warnings to Mr. Cannon on December 16th --

22    **A**     Yes, sir, I did.

23    **Q**     -- 2006?

24    **A**     I did.

25    **Q**     Would you explain to them how you did it? What's



1 your procedure?

2 **A** My procedure for this is, I of course let them know  
3 that I am going to read them their Miranda warning.  
4 I often refer to it as it's the same, almost the same  
5 rights that you see on TV. It does not necessarily  
6 mean you're under arrest. But I read you those  
7 rights before I talk to you so that you understand  
8 them.

9 And then I go on with the rights. I will tell  
10 them you have the right to remain silent. I check it  
11 and I wait for a response. Of course they normally  
12 will tell me yes, they understand that. In this case  
13 Mr. Cannon said, yes, I understand.

14 **Q** He indicated to you that he understood?

15 **A** Yes, he did.

16 **Q** Did he do that orally?

17 **A** Yes, he did.

18 **Q** What happened next?

19 **A** I went to number two. It says: "Anything you say  
20 can and will be used against you in a court of law."  
21 I looked at Mr. Cannon. I said, "Do you understand?"  
22 He said yes. I checked it.

23 I moved on to number three. "You have the right  
24 to talk to an attorney and have him or her present  
25 with you while you're being questioned if you wish."

1 I again, the same thing. Number four --

2 Q When you say the same thing, did he indicate that he  
3 understood?

4 A Yes, he did. He indicated he understood that. I put  
5 a check mark beside it.

6 Q Did you have any trouble, Phil, Lieutenant,  
7 understanding him when he told you, I understand  
8 that?

9 A No, sir, I did not.

10 Q What's next?

11 A I went to number 4. It states: "If you cannot  
12 afford to hire an attorney, one will be appointed to  
13 represent you before any questioning if you wish." I  
14 looked at him, solicited a response. He gave me one,  
15 an appropriate response, and I checked it off.

16 Q And would that be that he understood?

17 A He understood it. I went to number 5. "You can  
18 decide at any time to exercise these rights and not  
19 answer any questions or make any statements." I  
20 looked at him. I said, "Do you have any question  
21 about any of the rights that I've given you? If so,  
22 I'll be glad to explain them to you." He said, "No.  
23 I understand them." So I signed my name and put my  
24 range after it.

25 Q Is that your practice and what you did this day?

1           After you read the rights and check them, you sign  
2           it?

3   **A**    Yes, sir.

4   **Q**    And underneath that is, I think we all know now, is a  
5           waiver of rights. Did you have occasion to read  
6           those to Mr. Cannon on December 16th? And, if so,  
7           would you do it as you did it that day?

8   **A**    Yes, sir. What I do is start off by saying: "This  
9           is called a waiver of rights. It does not  
10          necessarily mean that you are giving your rights  
11          away. You always have those rights and you have the  
12          right to invoke those rights at any time which means  
13          you don't have to answer anything you don't want to  
14          answer."

15                I then went on to say: "This is to certify that  
16                I have read or have read to me the above statement of  
17                my rights. I understand each of these rights, and  
18                having these rights in mind, I waive them and  
19                willingly make a statement. No promises or threats  
20                have been made to me and no pressure or coercion of  
21                any kind has been used against me." And I asked him  
22                if he understood that. He indicated to me that he  
23                did and I checked it.

24   **Q**    And did he further tell you, Lieutenant, that he  
25           understood those rights on that form? And, if so,

1           how?

2   **A**    Yes, sir; he did. And he signed it.

3   **Q**    And did you see him sign it?

4   **A**    Yes, sir, I did.

5   **Q**    And look as these folks, Phil. In your training,  
6           your experience and being there that day with Mr.  
7           Cannon, did he understand them?

8   **A**    Yes, sir.

9   **Q**    Did he appear to understand them?

10   **A**   He did.

11   **Q**   And did he tell you he understood them?

12   **A**   Yes, sir, he did.

13   **Q**   Based on your experience and training as a police  
14           officer and just everyday living here, did he appear  
15           to be under the influence of alcohol or drugs or any  
16           other intoxicant that may have affected his  
17           understanding that day?

18   **A**   No, sir, he did not.

19   **Q**   Did you smell anything?

20   **A**   No, sir, I could not.

21   **Q**   Were his responses to your questions not only  
22           appropriate but timely? And appropriate I mean as to  
23           subject matter?

24   **A**   Yes, sir, they were.

25   **Q**   And did he appear to you to understand your questions

1 by the content of his answers?

2 **A** Yes, sir, he did.

3 **MR. MEADORS:** And, Your Honor, at this time we'd  
4 offer State's 5 officially into evidence.

5 **MR. KENDRICK:** Your Honor, I think this would be  
6 subject to my earlier objections.

7 **THE COURT:** Subject to defendant's earlier  
8 objection, it's admitted.

9 (WHEREUPON, State's Exhibit No. 5 is admitted  
10 into evidence.)

11 **Q** Did you promise him anything?

12 **A** No, sir, I did not.

13 **Q** Did you threaten or coerce him or hold out any hope  
14 of reward whatsoever, Phil?

15 **A** No, sir, I did not.

16 **Q** And after that did you ask him if he wanted to add  
17 anything to his statement?

18 **A** I had asked him if he wanted to talk to me about it.  
19 Yes, sir.

20 **Q** And I want to show you what's marked State's 7 for  
21 right now. Do you recognize this?

22 **A** Yes, sir, I do.

23 **Q** And at the top, whose name is at the top?

24 **A** Robert Cannon.

25 **Q** And whose name is at the right? Strike that. I'm

1           sorry. What's at the right?

2   **A**    His social security number.

3   **Q**    And did he fill that out?

4   **A**    Yes, sir, he did.

5   **Q**    Did he appear to you to have any trouble filling that  
6           out?

7   **A**    No, sir, he did not.

8   **Q**    And date of birth?

9   **A**    Yes, sir. His date of birth and age.

10   **Q**   And underneath here is listed different items: DVD  
11           player, presents, DVD's, hair clippers, some old  
12           cellphones that were laying around, and the house  
13           phone. Correct?

14   **A**    Yes, sir. That's correct.

15   **Q**    Explain how -- well, is that his signature at the  
16           bottom, too?

17   **A**    Yes, sir, it is.

18   **Q**    Is that yours there?

19   **A**    Yes, sir, it is.

20           **MR. MEADORS:** Before I publish it, Your Honor,  
21           the State would offer State's 7 now.

22           **THE COURT:** Subject to the defendant's  
23           objection, prior objection.

24           **MR. KENDRICK:** Yes, sir.

25           **MR. WHITLARK:** And McDonald, Your Honor.

1           **THE COURT:** And McDonald and Whitehead.

2           (WHEREUPON, State's Exhibit No. 7 is admitted  
3           into evidence.)

4   **Q**    Explain what that is, how that got there and how that  
5           information was obtained?

6   **A**    I gave him an additional statement form. It's just a  
7           blank statement form that I handed him. Once he told  
8           me he had some information that he wanted to give me,  
9           I gave it to him. And I just sat there and watched  
10          him while he wrote it. And he wrote this list. He  
11          then signed it and I signed it. He gave it back to  
12          me.

13   **Q**    What did he tell you this list was?

14   **A**    It was a list of items that they took out of the  
15          residence.

16   **Q**    And the residence being [REDACTED] Ryan Lane?

17   **A**    Yes, sir.

18   **Q**    DVD player, presents, DVD's, hair clippers, some old  
19          cellphones that were laying around the house phone?

20   **A**    Yes, sir.

21   **Q**    And did you make him sign this?

22   **A**    No, sir, I did not.

23   **Q**    Did you tell him what to put down there?

24   **A**    No, sir, I did not.

25   **Q**    Did you say, hey, put DVD's down there, Robert, and

1           then put hair clippers after that?

2   **A**   No, sir, I did not.

3   **Q**   And underneath the -- above his name, does it have

4           the statement: "I have made the foregoing statement

5           freely and voluntarily"?

6   **A**   Yes, sir, it does.

7   **Q**   "Without fear, threat, promise of reward or hope of

8           or reward of any kind"?

9   **A**   Yes, sir, it does.

10   **Q**   And did he read over this, and did you read over it

11           with him?

12   **A**   Yes, sir. I had told him to make sure he read over

13           it, over all the information that was there, and he

14           understood it.

15   **Q**   And, Lieutenant, did you promise him anything for him

16           writing this down?

17   **A**   No, sir, I did not.

18   **Q**   Did you threaten him at all?

19   **A**   No, sir.

20   **Q**   Did you make him put down here DVD's?

21   **A**   No, sir, I did not.

22   **Q**   Did you know what had been taken from there?

23   **A**   No, sir, I did not.

24   **Q**   And underneath that, whose name is there?

25   **A**   Robert Cannon.



- 1 Q And who is over here to the right?
- 2 A Phillip R. Crawford.
- 3 Q And, Lieutenant, after that, did the defendant,
- 4 Robert Cannon, tell you anything about the knowledge
- 5 of the case? Or did you ask him anything else? And,
- 6 if so, did he tell you something else?
- 7 A We continued to briefly talk and he made one other
- 8 statement to me.
- 9 Q And what was that statement?
- 10 A He stated: "We hit the back door but I was still
- 11 last. The victim grabbed my leg during the incident
- 12 and I kicked him."
- 13 Q And prior to that, in his earlier statement, he had
- 14 not mentioned that he'd actually touched Josh Zoch,
- 15 had he?
- 16 A No, sir, he had not.
- 17 Q So that was additional information from the statement
- 18 that he had given the previous day?
- 19 A Yes, sir.
- 20 Q And the statement he'd given the previous day, you
- 21 had that?
- 22 A Yes, sir, I did.
- 23 Q And did he ever tell you, that's not my statement?
- 24 A No, sir, he did not.
- 25 Q Did he ever tell you, I didn't say that?

1     **A**     No, sir, he did not.

2     **Q**     Did he ever deny making that statement that he'd made  
3             the previous day at all to you, Phil?

4     **A**     No, sir, he did not.

5     **Q**     And then he added this information of what was taken  
6             in State's 7?

7     **A**     Yes, sir, he did.

8     **Q**     And when you talked with him, he orally told you:  
9             "We hit the back door but I was still last. The  
10            victim grabbed any leg during the incident and I  
11            kicked him"?

12    **A**     Yes, sir.

13    **Q**     Is the person in the courtroom that told you that on  
14             December the 16th, Phil Crawford?

15    **A**     Yes, sir, he is.

16    **Q**     Would you please point him out?

17    **A**     Yes, sir. He's sitting right next to Mr. Kendrick in  
18             the white shirt and the white tie.

19            **MR. MEADORS:** We'd like the record to reflect  
20            he's picked out Mr. Robert Cannon sitting next to his  
21            attorney, Mr. Josh Kendrick.

22            **THE COURT:** The record will reflect the witness  
23            identified Defendant Cannon.

24    **Q**     At any time during this procedure, talking to him,  
25             looking at that statement, him writing down that, him

1 oral orally telling you this, Lieutenant, did you  
2 threaten him at all?

3 **A** No, sir, I did not.

4 **Q** Did you promise him anything?

5 **A** No, sir, I did not.

6 **Q** Did you have any trouble communicating with him?

7 **A** No, sir, I did not.

8 **Q** And he was arrested on December 16th, 2006, correct?

9 **A** Yes, sir. He was arrested later.

10 **MR. MEADORS:** Thank you. That's all.

11 **THE COURT:** Cross examination.

12 **MR. WHITLARK:** May it please the Court.

13 **THE COURT:** Yes, sir.

14 CROSS EXAMINATION

15 **BY MR. WHITLARK**

16 **Q** You interviewed a lot of witnesses in this case,  
17 didn't you?

18 **A** I believe I interviewed three.

19 **Q** You interviewed Ms. Davy, didn't you; a Ms. Davy,  
20 right?

21 **A** Yes, sir.

22 **Q** And Ms. Davy is the one that gave you some  
23 information about Zack or about Chris Whitehead  
24 called Zack, right, that night? She gave you that  
25 information?

1     **A**     She gave me some information about a phone call that  
2             was made in her presence.

3     **Q**     Well, I mean, she said she was present when Mr.  
4             Whitehead called her now boyfriend Zack on the night  
5             of the 13th, right?

6     **A**     Sir, I don't have my notes in front of me. I can  
7             tell that you she gave me some information about a  
8             phone call.

9             **MR. WHITLARK:** Your Honor, may I refresh his  
10            memory?

11           **MR. MEADORS:** Your Honor, did he say the 12th,  
12            December the 12th?

13           **THE COURT:** I don't know what he said.

14           **MR. WHITLARK:** No. He said it was on the night  
15            of the death.

16     **Q**     All right. I'm going to hand you this.

17     **A**     Yes, sir. Yes, sir.

18     **Q**     She told you on the 14th of December, the day after  
19             the discovery of Mr. Zoch's body, that Chris  
20             Whitehead had called a couple of times over to the  
21             house where she was with Zack, didn't she?

22     **A**     Yes, sir, she did.

23     **Q**     Okay. You've been here in this trial this week,  
24             haven't you, sir?

25     **A**     For some of it.

1 Q We now know that's not true, don't we?

2 A I don't know. I wasn't in here for her testimony.

3 Q Well, do you have any evidence of any calls from Mr.  
4 Whitehead to Zack's house that night with Ms. Davy  
5 present?

6 A No, sir. The only thing I have is what she told me.

7 Q All right. And she told you also that in that phone  
8 call Mr. Whitehead threatened to beat Mr. Zoch up,  
9 right?

10 A Yes, sir, she did.

11 Q Okay. And that's on the 14th of December?

12 A Yes, sir.

13 Q Now, you also asked her some questions about her  
14 possible involvement in this, didn't you?

15 A Yes, sir, I did.

16 Q As a matter of fact, you asked her if she knew who  
17 did it, who killed him, right?

18 A Yes, sir, I did.

19 Q And you asked her if she was personally involved,  
20 didn't you?

21 A Yes, sir, I did.

22 Q All right. And you had information that you didn't  
23 believe that, didn't you?

24 A I guess that's a matter of opinion, sir.

25 Q Did you have information in your possession that led

1           you to believe that she wasn't telling the truth?

2     **A**     Yes, sir, I did.

3           **MR. WHITLARK:** That's all I have, Your Honor,  
4           right now.

5           **THE COURT:** Mr. Kendrick.

6           **MR. KENDRICK:** Thank you, Judge.

7                           CROSS EXAMINATION

8     **BY MR. KENDRICK**

9     **Q**     Good afternoon, Lieutenant Crawford.

10    **A**     Good afternoon.

11    **Q**     Investigator Catoe asked you to talk to my client  
12           Saturday morning, right?

13    **A**     Yes, sir, he did.

14    **Q**     Did Investigator Catoe tell you that he didn't  
15           believe my client's statement?

16    **A**     No, sir, he did not.

17    **Q**     Did he give you any information about what had  
18           happened in relation to my client's statement?

19    **A**     He gave me a copy of the statement. And outside of  
20           that, we didn't discuss much of anything.

21    **Q**     Did he talk to you about any conversations he had  
22           with my client the night before?

23    **A**     The only thing he talked to me about was the  
24           statement that he gave me.

25    **Q**     So it was basically him turning that statement over

1 to you and asking you to question Mr. Cannon?

2 A Yes, sir.

3 Q No other kind of information to put it in context?

4 A No, sir. I prefer not to know.

5 Q I hear you. Okay. So you wouldn't be aware of  
6 whether my client had been promised anything the  
7 night before or anything like that, right?

8 A No, sir. I can only speak for myself.

9 Q He basically told you that that statement was his  
10 story, right?

11 A Yes, sir.

12 Q And you told him you didn't believe that?

13 A Told who I didn't believe that?

14 Q You told my client that you didn't believe that was  
15 the truth?

16 A I spoke with Mr. Cannon about his statement. Yes,  
17 sir.

18 Q You said he was lying?

19 A No. I never told him he was lying.

20 Q Did you tell him that you did not believe him?

21 A I told him at a point that I did not think he was  
22 being totally truthful.

23 Q Okay. And then he changed his story a little bit?

24 A He talked to me a little bit about it.

25 Q Okay. He wrote down a list of things that were taken

1 from the house?

2 **A** That was prior to me talking to him about that.

3 **Q** He just wrote that for you right when he got there?

4 **A** We were discussing some information about him, that  
5 kind of thing, and he added that part to his  
6 statement.

7 **Q** Okay. And did you ask any follow-up questions about  
8 that part of the statement?

9 **A** About the list?

10 **Q** Yes, sir.

11 **A** No, sir, I did not.

12 **Q** So you didn't ask him where the stuff was?

13 **A** No, sir, I did not.

14 **Q** To your knowledge, has anybody from your department  
15 ever followed up to find any of this stuff that was  
16 taken?

17 **A** To my knowledge, no, sir.

18 **Q** Is there anything on that list that we know for sure  
19 was taken from the house?

20 **A** Nothing other than what Mr. Cannon has said that I  
21 know of.

22 **Q** But no person who has ever been in the house has  
23 verified that any of those items were missing from  
24 the house?

25 **A** I have not talked to them, sir, about it. I don't



1 know what was missing.

2 Q Okay. So we don't have any way to gauge whether  
3 those items really were taken, right?

4 A I suppose one of the other investigators could say.  
5 But I don't know. I've never been to the house.

6 Q You're the last investigator that dealt with this  
7 case, right?

8 A No, sir. They were dealing with it after I finished.  
9 I just spoke with three of the individuals that they  
10 wanted me to talk to.

11 Q So I'm clear, when you're working on this case, who  
12 to your understanding is also working on it? Which  
13 investigators?

14 A Investigator Catoe and Investigator Marthers.

15 Q And no one else that you know of?

16 A Not that I know of. But then I don't know all that  
17 they do on their cases.

18 Q Oh, sure. So you basically told us everything you  
19 knew?

20 A Yes, sir. I've told you everything I know.

21 Q And you didn't learn anything else from these guys?

22 A No, sir, I did not.

23 Q All right. Beg the Court's indulgence, Your Honor.  
24 You said you interviewed three people in this case,  
25 right?

1     **A**     Yes, sir, I did.

2     **Q**     I think my co-counsel asked you about a Ms. Davy.

3             Who is the third person?

4     **A**     A young man by the name of Adrian Duran, I believe is  
5             his name.

6     **Q**     Who asked you to question Mr. Duran?

7     **A**     Investigator Catoe.

8     **Q**     And you questioned him about his involvement?

9     **A**     Yes, sir, I did.

10    **Q**     In the death of the victim?

11    **A**     Yes, sir.

12    **Q**     And he denied his involvement, right?

13    **A**     Yes, sir, he did.

14    **Q**     And you didn't believe that that was true either, did  
15             you?

16    **A**     Not necessarily. No, sir.

17             **MR. KENDRICK:** That's all I have, Your Honor.

18             Thank you.

19             **THE COURT:** Anything from --

20             **MR. REUWER:** Just one. Your Honor.

21                     CROSS EXAMINATION

22    **BY MR. REUWER**

23    **Q**     Good afternoon, Investigator Crawford.

24    **A**     Good afternoon.

25    **Q**     You don't know of any other collaboration of Melissa

1 Davy's statements about our client, do you?

2 **A** No, sir. I just know what I've testified to today.

3 **Q** Nothing else?

4 **A** No, sir, I don't.

5 **MR. REUWER:** Thank you.

6 **THE COURT:** Redirect?

7 REDIRECT EXAMINATION

8 **BY MR. MEADORS**

9 **Q** You had a confession of Robert Cannon, correct?

10 **A** Yes, sir, I did.

11 **Q** And he further told you what he took out of the  
12 house?

13 **A** Yes, sir, he did.

14 **Q** And he further told you that he kicked Joshua Zoch?

15 **A** Yes, sir, he did.

16 **MR. MEADORS:** Thank you.

17 **MR. WHITLARK:** Your Honor, if I may?

18 **THE COURT:** Sure.

19 RE CROSS EXAMINATION

20 **BY MR. WHITLARK**

21 **Q** But you couldn't get a confession out of Adrian  
22 Duran, could you?

23 **MR. MEADORS:** Your Honor, that's not proper  
24 recross.

25 **THE COURT:** Just say did he or didn't he.

1 Q You couldn't get one out of him, could you?

2 A No, sir.

3 Q You have information in your possession that  
4 Mr. Duran was involved in this, don't you, sir?

5 MR. MEADORS: Objection, Your Honor.

6 A No, sir, I don't.

7 Q You didn't believe him when he told you he didn't  
8 know anything about it?

9 A That's a matter of opinion, sir.

10 Q Did you have information in your possession that led  
11 you to believe he wasn't telling the truth when he  
12 said he didn't kill Mr. Zoch?

13 A At the time I talked to him; yes, sir, I did.

14 MR. WHITLARK: That's all I have, Your Honor.  
15 Thank you.

16 THE COURT: Mr. Kendrick.

17 MR. KENDRICK: Nothing further, Your Honor.  
18 Thank you.

19 MR. REUWER: Nothing further.

20 THE COURT: You may come down, sir. May this  
21 witness be excused? Without objection.

22 MS. MCDUFFIE: The state calls Darla Harris.

23 (WHEREUPON, State's Exhibit No. 108 is marked  
24 for identification.)  
25

1 (WHEREUPON, State's Exhibit No. 109 is marked  
2 for identification.)

3 DARLA HARRIS, after being duly sworn, testifies  
4 as follows:

5 **THE CLERK:** Please be seated in the witness  
6 chair. State your full name for the record.

7 **THE WITNESS:** My name is Darla Harris.

8 DIRECT EXAMINATION

9 **BY MS. MCDUFFIE**

10 **Q** Good afternoon, Ms. Harris.

11 **A** Good afternoon.

12 **Q** Where are you employed?

13 **A** I am employed with Wal-Mart.

14 **Q** And what Wal-Mart are you employed with?

15 **A** I am employed with Wal-Mart 1339 at 10060 Two Notch  
16 Road in Columbia, South Carolina.

17 **Q** And what is your position with the Wal-Mart on Two  
18 Notch?

19 **A** I'm an asset protection coordinator.

20 **Q** And what is that? Tell the jury what that means?

21 **A** What that is is I mostly investigate internal theft  
22 with our store as far as our associates. I also  
23 investigate external theft. And I also investigate  
24 like problems on the grounds, if we have fights, that  
25 kind of thing. Mainly security is basically what it

1 is.

2 Q And as part of your duties, do you have access and  
3 control of the video monitoring and also receipts and  
4 records of the store?

5 A Yes, ma'am, I do.

6 Q And those are in your control?

7 A Yes, they are.

8 Q In the regular and ordinary course of business?

9 A Yes, they are.

10 Q I show you what's been marked as State's Exhibits 108  
11 and 109. Do you recognize these, and would they aid  
12 in your testimony?

13 A Yes, I do.

14 MS. MCDUFFIE: Your Honor, the State would offer  
15 108 and 109.

16 MR. KENDRICK: Your Honor, relevancy.

17 MR. WHITLARK: I don't even know what it is.

18 THE COURT: Well, let's find out.

19 MR. KENDRICK: A whole bevy of things.

20 THE COURT: Why don't you look at it.

21 (Pause)

22 MR. WHITLARK: I object to this, Your Honor. I  
23 object. And we need to have a hearing.

24 THE COURT: What is it? I don't even know what  
25 it is.

1           **MR. KENDRICK:** You can look at them, Your Honor.  
2           It might be easier for you to look at them. I think  
3           you'll understand what our problem is.

4           (Pause)

5           **THE COURT:** I sustain the objection.

6           **MR. MEADORS:** Judge, could we be heard outside  
7           the jury?

8           **MR. REUWER:** Your Honor, for the record, we  
9           would join in that objection, too, Whitehead.

10          **MR. MEADORS:** Can we be heard outside the  
11          presence of the jury, please?

12          (Whereupon, a bench conference is had)

13          **MR. KENDRICK:** Your Honor, is there an argument  
14          we need to be involved in?

15          **MR. MEADORS:** Can we approach?

16          **MR. KENDRICK:** Is it okay if we approach, Your  
17          Honor?

18          **THE COURT:** Oh, sure.

19          (Whereupon, a bench conference is had)

20          **THE COURT:** All right. Ladies and gentlemen of  
21          the jury. Once again I need to take a matter of law  
22          up with the attorneys on the record. There are  
23          numerous objections to this witness's testimony.  
24          I'll get to the bottom of it and call you in just a  
25          minute. Take a short break. Please don't discuss

1 the case among yourselves while you're in the jury  
2 room.

3 (Jury out at 3:53 p.m.)

4 (WHEREUPON, State's Exhibit No. 110 is marked  
5 for identification.)

6 **THE COURT:** All right, Ms. McDuffie.

7 **Q** Ms. Harris, what are these receipts for?

8 **A** The receipts, the first one is for Latex gloves. The  
9 second receipt is for a three-hole mask.

10 **Q** And what time were these items purchased?

11 **A** They were purchased at about 20:00 hours, about 30  
12 seconds apart.

13 **Q** At 22 -- I'm sorry. You need to look at them for the  
14 time?

15 **A** Yes. That's fine. The first one was at 22:43 and 29  
16 seconds and the second one was 22:43 and 53 seconds.

17 **Q** And, Ms. Harris, how many boxes of purple Latex  
18 gloves were sold at the Wal-Mart on Two Notch on  
19 December the 12th of 2006?

20 **A** That is the only box that was sold that day.

21 **Q** And do you carry multiple brands or multiple skews of  
22 purple Latex gloves?

23 **A** No, ma'am. That is the only box that we carry.

24 **Q** I show you what has been marked as State's Exhibit  
25 110. Is this the only brand of purple Latex gloves



1       sold at Wal-Mart on Two Notch Road?

2     **A**     Yes, ma'am, it is.

3               **MS. MCDUFFIE:** Your Honor, we would offer  
4     State's 108, 109 and 110.

5               **THE COURT:** Do the math.

6     **Q**     How many masks were sold on that day?

7     **A**     That is the only mask that was sold on that day.

8               **THE COURT:** That one mask?

9               **THE WITNESS:** That one mask, yes.

10              **THE COURT:** Is that it?

11              **MS. MCDUFFIE:** Your Honor, we would offer 108,  
12     109 and 110 into evidence.

13              **MR. MEADORS:** Beg the Court's indulgence.

14     **Q**     Ms. Harris, does anyone have access to the system so  
15     that they could change those records in any way?

16     **A**     No, ma'am, they do not.

17     **Q**     No one has access to be able to change sales receipts  
18     in any way?

19     **A**     No, ma'am.

20              **THE COURT:** Cross examination.

21              **MR. KENDRICK:** Your Honor, I think I can make  
22     the argument without even crossing.

23              **MR. WHITLARK:** Go ahead and cross her.

24              **THE COURT:** Well, you're going to have to make  
25     some argument.

1           **MR. WHITLARK:** Go ahead.

2           **THE COURT:** I mean, some basis for your  
3 argument.

4                           CROSS EXAMINATION

5 **BY MR. KENDRICK**

6 **Q**     Where did the exhibits go? How you are you doing?  
7         Tell me your name again?

8 **A**     My name is Darla Harris.

9 **Q**     Ms. Harris, I'm Josh Kendrick. I represent one of  
10        these defendants. What is this piece of paper?  
11        That's not what the receipt from the register looks  
12        like, right?

13 **A**     No, it is not. That is a duplicate that we print  
14        from a Genacom printer.

15 **Q**     Okay. And where are these records stored?

16 **A**     These records are stored in our Smart System on our  
17        hard drive on computers in the store.

18 **Q**     And you were employed by Wal-Mart in December of  
19        2006?

20 **A**     I was, but not at this store.

21 **Q**     Where were you employed then?

22 **A**     I was employed at 1123 in Seneca, South Carolina.

23 **Q**     Okay. Do you know when this particular printout that  
24        I'm holding in my hand was printed out?

25 **A**     Yes. It was printed -- I'm not sure of the exact

1 date. It was a few weeks ago when Ms. Duffie (sic)  
2 came to get some documents together.

3 Q And before that, are you aware of anybody ever asking  
4 for this?

5 A No, sir.

6 Q And this second receipt is for one ski mask, correct?

7 A Yes. A three-hole mask.

8 Q Okay.

9 MR. WHITLARK: I've got a question.

10 MR. KENDRICK: I think we're out of order, Your  
11 Honor, but I think there may be other cross. I've  
12 gotten what I need.

13 THE COURT: That's all right.

14 CROSS EXAMINATION

15 BY MR. WHITLARK

16 Q Are these the original receipts that came out of that  
17 computer?

18 A No, sir. It is not the original.

19 Q Are you the keeper of these types of records  
20 yourself? Or are these kept in another the state?

21 A These are kept in a hard drive on our computer.

22 Q All right. Where are the actual original documents  
23 stored?

24 A The original document is given to the customer at  
25 time of purchase.

- 1 Q You have a carbon copy of that though, don't you?
- 2 A No, we do not.
- 3 Q You have no hard copy original record of this
- 4 transaction?
- 5 A That is the only copy that we have that we pull from
- 6 our Smart System.
- 7 Q I'm asking you, are you the keeper of these records?
- 8 A No, sir, I am not.
- 9 Q Who is the keeper of the records?
- 10 A Like I said, they stay in the Smart System on a hard
- 11 drive in the computers at our store.
- 12 Q All right. Who is in charge of that office?
- 13 A They are in all the computers in the back offices.
- 14 All management has access to those computers.
- 15 Q You don't have an original of a copy of this receipt?
- 16 A No, I do not have an original.
- 17 Q And you're not the keeper of the records?
- 18 A No, sir.
- 19 Q All right. And when these records here were
- 20 printed -- oh, by the way, what store do you work at?
- 21 A Right now I work at store 1339 on Two Notch Road in
- 22 Columbia, South Carolina.
- 23 Q How long have you been working there?
- 24 A I have been there ten months.
- 25 Q Okay. These records here are a computer copy, a

1 computer generated copy, right?

2 **A** Yes, sir.

3 **Q** And does it have on there -- and I'm not trying to --  
4 don't worry. I'm not trying to give you a hard time,  
5 ma'am.

6 **A** No. That's fine.

7 **Q** I mean, it just says Wal-Mart stores on here. Do  
8 y'all have an official stamp or some sort of chain of  
9 custody of these records where you stamp them as a  
10 true copy of Wal-Mart records?

11 **A** No. But if you notice at the top of the receipt,  
12 there is an ST number. That is our store number.  
13 That means that receipt came from that store in  
14 particular.

15 **Q** I understand that. But the actual -- if I wanted to  
16 go make sure that somebody hadn't written this or  
17 something else, I'd have to go over there and get it  
18 stamped out of a certain machine, wouldn't I?

19 **A** You'd have to pull it from the computer. Yes, sir.

20 **MR. WHITLARK:** Your Honor, I've got some  
21 objections to this on that basis.

22 **MS. MCDUFFIE:** I'm sorry. Those are my notes.

23 **MR. WHITLARK:** Oh, I'm sorry. Hang on. Hang  
24 on. Hang on. You don't want mine?

25 **MS. MCDUFFIE:** No. I don't.

1           **MR. REUWER:** We've got some questions, Your  
2 Honor.

3           **THE COURT:** Go ahead.

4                               CROSS EXAMINATION

5 **BY MR. REUWER**

6 **Q** Ms. Harris, do shoppers take things from your store?

7 **A** Do you mean do they steal?

8 **Q** Yeah. Do some people steal?

9 **A** Yes, they do.

10 **Q** In fact, your job is loss prevention?

11 **A** Yes.

12 **Q** Okay. Do employees sometimes take things from your  
13 store?

14 **A** Yes, they do.

15 **Q** Do they sometimes take them without asking or paying  
16 for them?

17 **A** Yes, they do.

18 **Q** So it's possible that on that day that people, other  
19 people got a pair of those gloves?

20 **A** It is possible that someone else purchased a pair of  
21 gloves, but that is the only transaction of gloves  
22 that was sold that day.

23 **Q** But it's also possible a shopper took some, stolen or  
24 taken?

25 **A** Yes. But if they stole them, they wouldn't be on a

1 receipt.

2 Q Right. But it's possible?

3 A Yes, it is possible.

4 Q And it's possible that an employee may have taken  
5 something to use in the store area?

6 A Yes, it is.

7 Q Do other Wal-Mart stores sell those gloves?

8 A Yes, they do.

9 Q How many Wal-Mart stores around Columbia sell -- or  
10 Camden -- sell those gloves? Or Lugoff?

11 A I'm not 100 percent sure how many stores. We have  
12 six stores in Columbia.

13 Q Thank you. You didn't sell those gloves as alleged  
14 on that receipt, did you?

15 A No, I did not.

16 Q Okay. Nothing further.

17 MS. MCDUFFIE: Briefly, Your Honor.

18 THE COURT: Sure.

19 REDIRECT EXAMINATION

20 BY MS. MCDUFFIE

21 Q Ms. Harris, you are the custodian of the records at  
22 the Wal-Mart on Two Notch currently?

23 A All management can look at records.

24 Q And part of your job is to keep those records and  
25 access those records for your duties?

1     **A**     Yes, I do.

2     **Q**     And there is no way anyone can change what is in your  
3             computer system?

4     **A**     No. There is no way it can be changed.

5     **Q**     And how long do you keep those records for?

6     **A**     They are kept for seven years.

7             **THE COURT:** Let me ask. Are these sales records  
8             or loss records?

9             **THE WITNESS:** Those are sales.

10            **MS. MCDUFFIE:** These are sales records, Your  
11            Honor.

12            **MR. WHITLARK:** We object to it, Your Honor, on  
13            several grounds.

14            **THE COURT:** Go ahead. Put it on the record.

15            **MR. WHITLARK:** First of all, I don't even know  
16            what store you're --

17                                RE CROSS EXAMINATION

18     **Q**     How many stores do you have? Six?

19     **A**     In Columbia there are six stories.

20     **Q**     Okay. And where are they located? Can you tell me?

21     **A**     We have one in West Columbia. We have one on Bush  
22             River Road. We have one on Forest Drive. We have  
23             one on Harbison Boulevard. My store on Two Notch  
24             Road. We have one on Killian Road.

25     **Q**     Okay. But you don't keep the records for any of



1           those stores, right? I mean, you're not a records  
2           keeper, are you?

3   **A**    No. I only work at my store.

4   **Q**    Okay. All right. And what does Virginia have to do  
5           with keeping of records from Wal-Mart? Anything at  
6           all? Do they keep something up in Virginia, the  
7           state of Virginia?

8   **A**    Yes. They keep all our cash office. Well, it's in  
9           Virginia and Louisiana.

10   **Q**   And that's where this record would be, isn't it?

11   **A**    No, sir.

12   **Q**    Would you say cash?

13   **A**    Our cash office. Yes, sir. They keep checks. They  
14           also keep like credit card slips and that sort of  
15           thing.

16   **Q**    Okay. But the cash registers are kept somewhere  
17           else? The cash transaction is kept somewhere else?

18   **A**    In a hard drive on the computer at the store.

19   **Q**    Do you all have any way of verifying who bought these  
20           things as far as a videotape or anything of that  
21           nature?

22   **A**    No, I do not.

23   **Q**    All right. Thank you.

24               **MS. MCDUFFIE:** Your Honor.

25               **THE COURT:** Anybody else? Now, you said you had

1 an argument.

2 **MR. WHITLARK:** Yes, sir. First of all, Your  
3 Honor, these things are unreliable for several  
4 reasons. Number one is, is that we have a very hotly  
5 disputed case as to whether or not these men went  
6 anywhere and about whether they didn't write these  
7 statements. And we're saying that the subject of  
8 these things was learned by Investigator Catoe and  
9 that he had -- you know, that he had learned where  
10 they went.

11 Now, the fact that there may be a chance at an  
12 hour that couldn't be this, it says it was 11:30 or  
13 something like that, it wouldn't fit anyway. But  
14 that goes to the weight. But, Your Honor, it's too  
15 inflammatory to put this in because it's just not  
16 certain enough. There is no proof that these guys  
17 did this other than a circumstance of they said they  
18 went to a Wal-Mart and bought some masks and some  
19 gloves.

20 I don't know. I have had no chance to  
21 investigate anything. I'm sure Darla is a nice  
22 person, but I have had no chance to investigation  
23 whether or not this is true. My clients will deny it  
24 of course. But if they want to hit them with the  
25 weight of it and cross examine them with it, that's

1           one thing. But to take it into evidence on this  
2           basis, that is not the best evidence, it's not the  
3           originals, there is no videotape or anything else,  
4           it's too inflammatory, Your Honor.

5           **THE COURT:** What is it?

6           **MR. WHITLARK:** And I don't think they should be  
7           allowed to do it. If they want to cross them about  
8           it, that's one thing. But not this.

9           **MR. KENDRICK:** I guess I'll join in on that,  
10          Your Honor. The only thing I would add is that I  
11          think the State's argument is that because of the  
12          statements that have been entered into evidence that  
13          lends some extra credence to this evidence. The  
14          statements say that two people bought ski masks.  
15          Now, I guess it's depending on whether you believe  
16          the statement or not. I don't know why only some  
17          people would have ski masks and other people  
18          wouldn't. I think that lends to the fact that a one  
19          ski mask purchase is probably not relevant to this  
20          case. The danger here, Your Honor, --

21          **THE COURT:** Why is it not relevant?

22          **MR. KENDRICK:** What's that?

23          **THE COURT:** Why is it not relevant?

24          **MR. KENDRICK:** Because I believe the statements  
25          said that two people bought the ski mask.

1           **THE COURT:** Well, doesn't that go to the weight  
2 of the evidence instead of the admissibility?

3           **MR. KENDRICK:** Well, Your Honor, the  
4 admissibility here is -- I mean, I think it's a  
5 tenuous connection at best.

6           **THE COURT:** Well, what's the rule say? What  
7 does 401 say?

8           **MR. KENDRICK:** Well, I believe under 403 --

9           **THE COURT:** We haven't talked about 403. But  
10 401 says any evidence. It means evidence having any  
11 tendency to make the existence of any fact that is of  
12 consequence to the determination of the action more  
13 probable or less probable than it would be without  
14 the evidence. That is a broad rule.

15           **MR. KENDRICK:** Right.

16           **THE COURT:** As to the relevance of evidence  
17 presented.

18           **MR. KENDRICK:** And then I'll keep going, Your  
19 Honor. That under 403 you have a prejudicial versus  
20 probative. I don't -- I mean, this doesn't really  
21 prove anything, Your Honor. I think that if you link  
22 it with all the other evidence -- and that's what  
23 they're saying. They're saying that the evidence  
24 already in the record suggests that the statement  
25 links these gloves to the statement and vice versa.

1 Well, if you were to look at the phone records --

2 **THE COURT:** Well, why would it not?

3 **MR. KENDRICK:** What's that?

4 **THE COURT:** If the statement says I or we went  
5 to Wal-Mart and bought gloves, why would it not make  
6 it relevant? Could it not make it relevant?

7 **MR. KENDRICK:** Well, Your Honor, I guess it goes  
8 both ways. Because in one of these statements where  
9 the person clearly says, oh, you know, Mr. Whitehead  
10 called Zack. And then we've had all kinds of  
11 testimony about whether or not that call was made,  
12 that call under Zack's testimony, under all the  
13 people who think they might know and under the actual  
14 phone records they have entered doesn't come close to  
15 the timeframe that those receipts reflect.

16 So if they're saying that one fact in the  
17 statement makes those receipts more reliable, well,  
18 I've got another fact that makes them less reliable,  
19 Your Honor. I think we get the benefit of the doubt.  
20 And, in fact, Your Honor sustained the objection  
21 originally until -- I don't know what happened. But  
22 I think if this --

23 **THE COURT:** Which?

24 **MR. KENDRICK:** What's that?

25 **THE COURT:** What did I sustain?

1           **MR. KENDRICK:** I mean, the objection was  
2 originally sustained when we first made it, Your  
3 Honor, on the relevancy.

4           **THE COURT:** As to this? Well, it's been fleshed  
5 out now.

6           **MR. KENDRICK:** Yes, sir. And I'm telling you  
7 that once we flesh it out, that the State's fleshing  
8 out was the statement adds credibility to this  
9 testimony. I can show Your Honor that that same  
10 statement takes away credibility from this.

11           **THE COURT:** Well, isn't that a jury issue?

12           **MR. KENDRICK:** Your Honor, I think in this case  
13 no. Because you're basically putting in evidence  
14 that -- you're putting in evidence that they are  
15 going to use to say that makes the statement more  
16 true. It actually makes it less true. Why should it  
17 come in at all? I think we just leave it alone.

18           **THE COURT:** I think it's for the jury.

19           **MR. KENDRICK:** Thank you for listening, Your  
20 Honor.

21           **MR. REUWER:** Your Honor, Whitehead joins in on  
22 the objection, too. Your Honor, the only thing I  
23 would add to my colleagues is that its indicia of  
24 relevance is still outweighed by its reliability. If  
25 these were to be allowed, then we should have every

1 cash transaction from that store on that evening  
2 within the timeframe of the circumstance and from the  
3 five other stores that this person is going to  
4 testify to that belonged and could even be within the  
5 reach of the alleged allegations of any or one or  
6 more of our clients doing it. That's the only way to  
7 see. There has to be some chain of the circumstance  
8 within which these are given.

9 **MR. WHITLARK:** We agree with that, Your Honor.

10 **MR. REUWER:** Thank you, Your Honor.

11 **MR. WHITLARK:** We agree with that.

12 **THE COURT:** Well, you're either arguing  
13 authenticity or that it's hearsay and not an  
14 exception to the hearsay or does not comply with the  
15 exception to the hearsay rule, which is the business  
16 records which is what 803 what 6, something like  
17 that.

18 **MR. WHITLARK:** Well, I've already objected about  
19 that, Your Honor.

20 **THE COURT:** Sir?

21 **MR. WHITLARK:** I've already objected about that.  
22 She's not a keeper of the records and there's no way,  
23 the chain of custody and therefore --

24 **THE COURT:** You know, we are never, today and in  
25 the future, we are never going to have any more the

1           keeper of the records unless we bring Remington Rand  
2           in here and IBM because they are now the keepers of  
3           the records. She keeps the computer. She keeps the  
4           computer records. I think it's admissible.

5           **MS. MCDUFFIE:** Thank you, Your Honor.

6           **THE COURT:** Bring the jury.

7           (Jury in at 4:09 p.m.)

8           **MS. MCDUFFIE:** May it please the Court, Your  
9           Honor?

10          **THE COURT:** Yes, ma'am.

11                                   DIRECT EXAMINATION

12   **BY MS. MCDUFFIE**

13   **Q**   Once again, Ms. Harris, what is your job with  
14           Wal-Mart?

15   **A**   I'm a asset protection manager which is basically the  
16           same thing as security.

17   **Q**   And as part of that job, do you keep the records from  
18           the store?

19   **A**   Yes.

20   **Q**   Control the records?

21   **A**   Yes, I do.

22   **Q**   And how are those records kept?

23   **A**   They are kept on a hard drive computer.

24   **Q**   And who has access to those records?

25   **A**   Me and any other salaried member of management.



1 Q And does anyone have the ability to go back and  
2 change those records in any way?

3 A No, ma'am.

4 Q No one at the Wal-Mart has the ability to go back and  
5 change those records?

6 A No, ma'am.

7 Q I show you State's 108 and 109. Do you recognize  
8 those?

9 A Yes, I do.

10 Q Would they aid in your testimony?

11 A Yes.

12 MS. MCDUFFIE: Your Honor, we move State's 108  
13 and 109 into evidence.

14 THE COURT: Subject to the defendants'  
15 objections.

16 MR. REUWER: Thank you, Your Honor.

17 (WHEREUPON, State's Exhibit No. 108 is admitted  
18 into evidence.)

19 (WHEREUPON, State's Exhibit No. 109 is admitted  
20 into evidence.)

21 Q Ms. Harris, can you please tell the jury what those  
22 are?

23 A These are duplicate receipts of a three-hole mask and  
24 gloves.

25 Q And what is a three-hole mask at your Wal-Mart?

1     **A**     A three-hole mask like a ski mask with the eyes and  
2             the mouth cut out.

3     **Q**     And the gloves?

4     **A**     The gloves are Latex gloves.

5     **Q**     I'm going to show you what's been marked as State's  
6             110. Do you recognize this?

7     **A**     Yes, I do.

8     **Q**     And what is this?

9     **A**     That is Latex gloves, the same as that's on the  
10            receipt.

11    **Q**     And are those the kind sold at Wal-Mart?

12    **A**     Yes, they are.

13            **MS. MCDUFFIE:** Your Honor, the State would move  
14            State's 110 into evidence.

15            **THE COURT:** Subject to the same objection?

16            **MR. KENDRICK:** Yes, sir, Your Honor. Thank you.

17            **MR. REUWER:** Thank you.

18            (WHEREUPON, State's Exhibit No. 110 is admitted  
19            into evidence.)

20    **Q**     Ms. Harris, how many different kinds of purple Latex  
21             gloves does the Wal-Mart sell, the Wal-Mart on Two  
22             Notch sell?

23    **A**     That is the only kind.

24    **Q**     And the receipt that you have is for what?

25    **A**     For purple Latex gloves.

1 Q The kind being in front of you?

2 A Yes, ma'am.

3 Q And what date are those receipts from?

4 A 12-12 of 2006.

5 Q And what are the time on those receipts?

6 A The gloves is 22:43 and 53 seconds, and the

7 three-hole mask is 22:43 and 29 seconds.

8 Q That would be 10:43 p.m.?

9 A Yes, ma'am.

10 Q On 12-12-06?

11 A Yes, ma'am.

12 Q In the Wall on Two Notch Road?

13 A Yes, ma'am.

14 Q How many Wal-Marts are there on Two Notch Road?

15 A That is the only one.

16 Q You one you work at?

17 A The one I work at. Yes, ma'am.

18 Q How many boxes of purple Latex gloves were sold at

19 the Wal-Mart on Two Notch on 12-12-06?

20 A That is the only box that was sold on that date.

21 Q That is on the receipt?

22 A That is on the receipt.

23 Q And how many three-hole masks or ski masks were sold

24 at the Wal-Mart on Two Notch on 12-12-06?

25 A This is the only ski mask that was sold on 12-12 of

1           2006 at my store.

2    **Q**   And both of items were sold at what time?

3    **A**   One was at 10:43:53 and one was at 10:43:29.

4    **Q**   And how were those items paid for?

5    **A**   They were paid for by cash.

6    **Q**   And does your Wal-Mart have video surveillance  
7           capabilities?

8    **A**   We do.

9    **Q**   And back in December of 2006, did you?

10   **A**   Yes, we did.

11   **Q**   And how long did you keep those videos for?

12   **A**   They are only kept for a month. In 2006 they were.  
13           We had VHS surveillance system then. At the end of  
14           every month it was taped over.

15   **Q**   So those records could -- the videos could not have  
16           been gotten if they were requested after 30 days?

17   **A**   No, ma'am.

18   **Q**   And did I come and ask you for these records about a  
19           month ago?

20   **A**   Yes, ma'am, you did.

21   **Q**   Is that the first time anyone has come to you and  
22           asked you for those records?

23   **A**   Yes, ma'am, it is.

24   **Q**   And once again, how many boxes of purple Latex gloves  
25           were told at the Two Notch Wal-Mart on 12-12-06?

1     **A**     Only one box.

2     **Q**     And what time was that?

3     **A**     That was at 10:43:53.

4     **Q**     That's p.m.?

5     **A**     P.M.

6     **Q**     And how many ski masks were sold at the Wal-Mart on  
7             Two Notch on 12-12-06?

8     **A**     One.

9     **Q**     And what time was that?

10    **A**     That was at 10:43:29 p.m.

11             **MS. MCDUFFIE:** No further questions, Your Honor.

12             **MR. KENDRICK:** May it please the Court, Your  
13             Honor?

14             **THE COURT:** Yes, sir.

15                     CROSS EXAMINATION

16    **BY MR. KENDRICK**

17    **Q**     Hello, Ms. Harris.

18    **A**     Hi.

19    **Q**     Hello again. I know we just talked about this about  
20             a second ago. How many gloves are in this box?

21    **A**     I'm not a hundred percent sure how many, what the  
22             count is on it.

23    **Q**     They're all the same?

24    **A**     I'm not sure if they're all the same size. I think  
25             it's all three different sizes in the same box.

1 Q All the same color?

2 A Yes.

3 Q Who came out and looked for these?

4 A I'm sorry?

5 Q Who came out and looked for this receipt?

6 A Joanna McDuffie.

7 Q Did she give you a list of what she wanted?

8 A She told me that some gloves were sold and maybe a  
9 mask and asked if I could pull receipts of any that  
10 were sold on that day.

11 Q And she just said purple gloves and the ski mask?

12 A Yes, sir.

13 Q Just one ski mask?

14 A She said any that were sold on that day.

15 Q So you looked for all the gloves that were sold,  
16 period, at Wal-Mart?

17 A All the purple Latex gloves, yes.

18 Q Okay. I want to show you what's -- wait a minute.  
19 Did you ever mark this one?

20 MR. MEADORS: I think that's in. I think  
21 there's one that's already in. We've got no  
22 objection.

23 MR. KENDRICK: I don't want to put anything in.  
24 Beg the Court's indulgence.

25 Q And you obviously can't testify who bought these

1 gloves, right?

2 **A** No, I cannot.

3 **Q** And it's highly unlikely anyone at your store could  
4 testify who bought those gloves, right?

5 **A** Only the cashier that rung them up.

6 **Q** Who was the cashier?

7 **A** I am not sure. The operator number was 5522.

8 **Q** Did you try to locate that cashier?

9 **A** No, I did not.

10 **Q** Okay. Did the State or the prosecutors or the cops  
11 or anybody ask you if you could locate that cashier?

12 **A** No.

13 **Q** Did you guys try to locate any videotape?

14 **A** Yes. She asked me if we had videotape. We only  
15 carried videotape at that time for 30 days.

16 **Q** Then it loops back or erases?

17 **A** Yeah. We tape over the tape after 30 days. Or they  
18 did when they had VHS surveillance system.

19 **Q** How big is the parking lot at Wal-Mart, the Two Notch  
20 Road Wal-Mart?

21 **A** I'm not a hundred percent sure. There's 11 rows.

22 **Q** And of course this receipt shows that somebody  
23 purchased those gloves with cash at 10:43, right?

24 **A** Yes.

25 **MR. KENDRICK:** That's all I have.

1                   **MR. REUWER:** May it please the Court?

2                                   CROSS EXAMINATION

3           **BY MR. REUWER**

4           **Q**     Govern afternoon, Ms. Harris. Ms. Harris, how does  
5                   the -- do you have the receipts?

6           **A**     Yes, sir.

7           **Q**     Or copies of them?

8           **A**     Yes.

9           **Q**     Is there also a cash receipt?

10          **A**     What do you mean a cash receipt?

11          **Q**     Copies of cash receipts, like the tape, what you  
12                   would call the tape at the register?

13          **A**     No.

14          **Q**     They're not made at Wal-Mart?

15          **A**     No. There's only one copy that's given to the  
16                   customer.

17          **Q**     And nothing except the computer form for the store?

18          **A**     Correct.

19          **Q**     Okay. And that's what these are allegedly copies of?

20          **A**     Correct.

21          **Q**     Okay. How do you note the -- is there a bar code on  
22                   the box of this granted?

23          **A**     Yes. There's a UPC.

24          **Q**     And how do you reflect the model or the brand to the  
25                   tape?



- 1    **A**    To the receipt?
- 2    **Q**    To the receipt or copy of --
- 3    **A**    By the UPC number.
- 4    **Q**    Is that -- would you show me that?
- 5    **A**    Yes. It's right here. I'm sorry. 3600 --
- 6    **Q**    You can say it loud, please.
- 7    **A**    3600053340 is what is on the box. On the receipt
- 8        it's the same.
- 9    **Q**    Okay. Does the S at the end mean anything on the
- 10       receipt?
- 11   **A**    It's just a code for pharmacy product.
- 12   **Q**    Thank you, Ms. Harris.
- 13   **A**    You're welcome.
- 14   **Q**    Just a couple of other questions. How many gloves,
- 15       purple gloves, were sold the day before
- 16       December 12th?
- 17   **A**    I'm not sure. I did not pull that.
- 18   **Q**    You didn't pull that?
- 19   **A**    No, I did not.
- 20   **Q**    Okay. How about how many gloves or boxes were sold
- 21       the day after?
- 22   **A**    I did not pull that either.
- 23   **Q**    How about the week before?
- 24   **A**    No, sir.
- 25   **Q**    And how many stores are located in and around the

1 Columbia, Lugoff, Elgin, Camden area?

2 **A** Total of the Lugoff, Camden and Columbia, there are  
3 seven I believe.

4 **Q** Seven Wal-Marts?

5 **A** Yes.

6 **Q** And do you know how many boxes or individual gloves  
7 were sold from any of the other stores?

8 **A** No, I do not.

9 **Q** Do you know how many were sold on the day of  
10 December 12th?

11 **A** No, I am not.

12 **Q** Do shoppers take things from your store?

13 **A** Yes, they do.

14 **Q** Without paying for them?

15 **A** Yes, they do.

16 **Q** Do employees take things from the store without  
17 paying for them?

18 **A** Yes, they do.

19 **Q** And sometimes do employees -- I don't mean stealing.  
20 Do they take things like a pair of gloves to clean up  
21 a mess or something?

22 **A** Yes. When they take something like that, it's for  
23 store use.

24 **Q** They're supposed to mark that down, right?

25 **A** Yes. We have it on a record for store use.

1 Q Okay. Do you have a record of those on  
2 December 12th?

3 A I do not.

4 Q Is it possible some were used on December 12th?

5 A No, it's not.

6 Q Why not?

7 A Not for associates using them. Because we have an  
8 order system called 989 supplies. That is what we  
9 use for inside our store. We are not allowed to use  
10 the purple gloves in our store for associates. We're  
11 only allowed to use the clear ones.

12 Q But, Ms. Harris, listen to my question carefully,  
13 please, because I just want you to tell me what you  
14 do now.

15 A Yes, sir.

16 Q Did you check for that code for use of these purple  
17 gloves by employees on the inside on that day?

18 A No, I did not.

19 Q That's all. Thank you, Ms. Harris.

20 A Thank you.

21 **THE COURT:** Redirect.

22 **MR. MEADORS:** Procedural question real quick?

23 **MR. SHELDON:** We don't have any motions for this  
24 witness.

25 **MS. MCDUFFIE:** Then there's nothing further,

1 Your Honor.

2 **THE COURT:** Thank you. You may come down. May  
3 this witness be excused? Hearing no objection, the  
4 witness is excused. Yes, sir.

5 **MR. MEADORS:** Could we all come up now, please?

6 (Whereupon, a bench conference is had)

7 **THE COURT:** You all got any half opened Cokes  
8 back there? All right. Well, go drink the other  
9 half. Just don't discuss the case among yourselves  
10 while you're in the jury room.

11 (Jury out 4:24 p.m.)

12 **THE COURT:** Yes, sir.

13 **MR. MEADORS:** Your Honor, Ms. McDuffie --

14 **THE COURT:** Yes, sir.

15 **MR. MEADORS:** Just one second, Judge.

16 (WHEREUPON, State's Exhibit No. 111 is marked  
17 for identification.)

18 (WHEREUPON, State's Exhibit No. 112 is marked  
19 for identification.)

20 (WHEREUPON, State's Exhibit No. 113 is marked  
21 for identification.)

22 (WHEREUPON, State's Exhibit No. 114 is marked  
23 for identification.)

24 **THE COURT:** You know, some of this may -- let  
25 me -- Mr. Meadors, this may not be something I can

1 rule on without the doctor's testimony.

2 **MR. MEADORS:** I don't disagree, but I want to  
3 show them right now what isn't in disagreement.

4 (Pause)

5 **THE COURT:** Counsel, let's try to move this  
6 along, please. I said let's try to move this along.  
7 I don't think the defendants are going to agree to  
8 anything.

9 **MR. MEADORS:** Actually I think we have, Your  
10 Honor.

11 (Off the record)

12 **THE COURT:** All right, sir. Let's do this.

13 **MR. MEADORS:** I think we've got it.

14 **THE COURT:** Without objection?

15 **MR. MEADORS:** There are three we need to argue  
16 about.

17 **THE COURT:** Well, we're not going to argue about  
18 anything without Dr. Sexton saying they're necessary.  
19 We've already got pictures of the scene and the body  
20 in evidence.

21 **MR. MEADORS:** One picture of the body.

22 **THE COURT:** Yes, sir. I know that. And that's  
23 all they need.

24 **MR. MEADORS:** No, sir. Well, respectfully, --

25 **THE COURT:** Let me just state that's all they

1       need to see the position of the body. Now, if Dr.  
2       Sexton can tell us how these pictures relate to the  
3       cause of death, then they may be admissible. But  
4       until he gets up here and goes through this, you all  
5       can talk all you want to and we're not getting  
6       anywhere.

7               **MR. MEADORS:** You're right. Can I put on the  
8       record what we have agreed to?

9               **THE COURT:** Yes, sir.

10              **MR. MEADORS:** State's 35, out of all those  
11       panoramic pictures, that's the one we've agreed to.

12              **MR. WHITLARK:** Okay.

13              **MR. MEADORS:** 80.

14              **MR. WHITLARK:** Yeah. We agree. That's right.  
15       I'm sorry. We don't agree on 35. It's the number --

16              **MR. MEADORS:** 35 is out. And I apologize. It's  
17       39.

18              **MR. WHITLARK:** 39 we agree on.

19              **MR. MEADORS:** I apologize to the court reporter.  
20       92. 95. 95 and 88. And there are only two other  
21       pictures that aren't in evidence that we will try to  
22       get in through the doctor.

23              **THE COURT:** All right. Call the doctor.

24              **MR. MEADORS:** Oh, do it?

25              **THE COURT:** Yeah. Absolutely.

1           **MR. MEADORS:** Dr. Joel Sexton.

2           DR. JOEL S. SEXTON, after being duly sworn,  
3 testifies as follows:

4           **THE CLERK:** Thank you. Please be seated in the  
5 witness chair and state your full name for the  
6 record.

7           **THE WITNESS:** I am Dr. Joel Steven Sexton,  
8 S-E-X-T-O-N:

9           **THE COURT:** Any objection to Dr. Sexton's  
10 qualifications?

11          **MR. WHITLARK:** No, sir.

12          **MR. KENDRICK:** No, sir.

13          **MR. WHITLARK:** No. We'll stipulate to his  
14 expertise.

15                           DIRECT EXAMINATION

16 **BY MR. MEADORS**

17 **Q** For these purposes only, Dr. Sexton, we have two  
18 pictures I'd like you to look at. Did I come up and  
19 meet with you last week?

20 **A** Yes, you did.

21 **Q** Week before last? And did we go through a series of  
22 pictures?

23 **A** We did.

24 **Q** And are you aware that the -- you did the autopsy  
25 obviously?

1     **A**     Yes, I did.

2     **Q**     And you've seen pictures of the instrument that's  
3             alleged to have been used in this, correct?

4     **A**     I have.

5     **Q**     And you also have seen a glass bowl or potpourri  
6             bowl?

7     **A**     Yes, I have.

8     **Q**     And pictures of a potpourri bowl that's been broken?

9     **A**     I have seen that also.

10    **Q**     And looking at State's 112 and State's 111, would  
11             these pictures aid you in describing the injuries  
12             that were inflicted upon one Joshua Zoch and the  
13             extent of those injuries?

14    **A**     One of these, this is No. 111, certainly has  
15             information on it telling me something about the  
16             condition of the body at the time the injury was  
17             inflicted here on the back of the head.

18    **Q**     And would that aid you in your testimony about the  
19             specific injuries that were inflicted on Mr. Joshua  
20             Zoch's head?

21    **A**     Yes. It indicates that these injuries on the back of  
22             the head were inflicted when he was in a position as  
23             you see him in this photograph because there are  
24             blood spatters down his back that came from that head  
25             injury to the back of his head.



1 Q And that would -- okay. And then that's number what?

2 A 111.

3 Q All right. And 112, Doc, were there other injuries  
4 on the back of the deceased's head?

5 A There was another injury, correct, on the back of his  
6 head.

7 Q And is that depicted in 111?

8 A It is.

9 Q And would that picture aid you in explaining to the  
10 jury the injuries that were inflicted upon Joshua  
11 Zoch's back of his head?

12 A Yes, it would; if these are the only ones available.  
13 We took clean ones at the time of autopsy.

14 Q And do you have a picture of your clean one there? I  
15 know we do somewhere.

16 THE COURT: Mr. Whitlark.

17 MR. WHITLARK: Yes, sir.

18 (Pause)

19 THE COURT: Mr. Meadors, he has the pictures  
20 here.

21 MR. MEADORS: Yes, sir.

22 THE COURT: He can match you up.

23 MR. MEADORS: I was just trying to --

24 THE COURT: I know. But he knows where they  
25 are.

1                   **MR. MEADORS:** Yes, sir.

2   **A**    This shows a close up of each of these two. And then  
3       this one shows a close up of these on the back.

4                   **MR. MEADORS:** Your Honor.

5   **A**    There's another one.

6   **Q**    And you have cleaned up photos of Mr. Zoch's head  
7       which may not depict as much blood is what you're  
8       saying?

9   **A**    Correct. This is a close up of each of these. This  
10       is a close up of that one. And this shows all three.

11   **Q**    And do you also have autopsy pictures of the face of  
12       Joshua Zoch?

13   **A**    I do.

14   **Q**    And do those show injuries depicted on his face?

15   **A**    They do.

16   **Q**    And specifically, would those pictures aid you in  
17       determining or explaining to the jury the nature and  
18       extent of the injuries on Mr. Zoch?

19   **A**    Yes, they would.

20   **Q**    And at this point State's also 113, Doctor, is that  
21       one of the face of the decedent?

22   **A**    Yes, it is.

23   **Q**    And as we discussed last week, Doctor, was there  
24       another injury also on the cheek or the side of the  
25       victim as depicted in 114?

1   **A**    Yes.  There were injuries, multiple injuries on the  
2           face; some on the right side, some on the forehead,  
3           and some on the left side.  And this particular  
4           Exhibit 114 shows the right side of the face and  
5           shows the injuries there.

6   **Q**    And also were there some injuries on the legs of the  
7           deceased?

8   **A**    There were.

9                   (WHEREUPON, State's Exhibit No. 115 is marked  
10           for identification.)

11                   (WHEREUPON, State's Exhibit No. 116 is marked  
12           for identification.)

13   **Q**    Specifically looking at 115?

14   **A**    115 shows injuries on the right knee.

15   **Q**    And 116?

16   **A**    It shows injuries on the other knee, the left knee.

17                   (WHEREUPON, State's Exhibit No. 117 is marked  
18           for identification.)

19   **Q**    And finally, Doctor, State's 117?

20   **A**    117 shows the blood on top of the decedent's socks  
21           that has been smeared there.

22   **Q**    Will that aid you in explaining to the jury the  
23           nature of these injuries, these injuries and what  
24           occurred at the residence of [REDACTED] Ryan Lane?

25   **A**    Yes.  These photographs would that we've introduced

1           so far.

2                   **MR. MEADORS:** Judge, I'm just looking for one  
3           final clean up picture that we have of the back. I  
4           know he has it, but we have the -- that may be it.

5   **Q**   And finally, Doctor, you described earlier it may  
6           have been one of your smaller pictures. If it  
7           wasn't, I'm sorry.

8                   (WHEREUPON, State's Exhibit No. 118 is marked  
9           for identification.)

10   **Q**   State's 118, does that depict injuries to Mr. Zoch's  
11           head?

12   **A**   This shows all of the injuries that were on the back  
13           and side of the head and on top of the head. So it's  
14           a photograph that shows all of the injuries primarily  
15           on the head itself as opposed to the face.

16   **Q**   So that would show -- 118, would it show all the  
17           injuries of the back?

18   **A**   It would. Some of these others simply show the  
19           details of the individual injuries.

20                   (WHEREUPON, State's Exhibit No. 119 is marked  
21           for identification.)

22   **Q**   Finally, State's 119 -- it's the last one I'll show  
23           you; I promise -- does that show a better view of the  
24           top and the back? Or a different view? Let me just  
25           say that.

1     **A**     It shows a different view.

2     **Q**     All right.

3             **THE COURT:** All right. Let me get it straight  
4     now. Give me the numbers of the photographs that the  
5     doctor says -- and let me ask one other question,  
6     Doctor. Will they aid you in assisting -- I mean,  
7     will they assist you in assessing -- or did they  
8     assist you in determining the cause of death?

9             **THE WITNESS:** Yes, sir.

10            **THE COURT:** All right.

11            **MS. MCDUFFIE:** 111 and 118 is what he just said.

12            **THE COURT:** So that's 111.

13            **MR. REUWER:** 111 to 119.

14            **THE COURT:** 111, 112, 113, 114, 115, 116, 117,  
15     118 and 119. Is that correct?

16            **MR. WHITLARK:** Well, we have objections of  
17     course.

18            **THE COURT:** Yes, sir. Let me get where we are  
19     first. How about 119?

20            **MR. MEADORS:** That's it.

21            **THE COURT:** Okay. 111 through 119. All right.  
22     Now, are you finished with the doctor?

23            **MR. WHITLARK:** I'm not.

24            **MR. MEADORS:** Yes, sir. Yeah. Just for those.  
25     I've narrowed out of all these, just those.

1           **THE COURT:** These are all you plan to introduce?

2           **MR. MEADORS:** Except what already has been in.

3           He's going to go over some of those. Yes, sir.

4           **THE COURT:** I'm not worried about that. That's  
5           not the issue. All right. Do you have any questions  
6           of Dr. -- here, Doctor. These are the ones they say  
7           they plan to use. So, Mr. Whitlark.

8           **MR. WHITLARK:** Yes, Your Honor. May it please  
9           the court.

10                                   CROSS EXAMINATION

11           **BY MR. WHITLARK**

12           **Q**   Dr. Sexton, you have been handed a number of  
13           photographs here, and you said that you need them to  
14           explain -- what is it that you need to explain again?

15           **A**   The photographs that I took at autopsy show the  
16           findings on the body that relate to the cause of  
17           death and the circumstances surrounding his death.

18           **Q**   Yes, sir.

19           **A**   As far as whether it could have been self inflicted  
20           or whether it was by the hands of another, two of the  
21           photographs that I see here, one is of the body at  
22           the scene. As a matter of fact, both of them are.  
23           One is the one that I said would be okay if we didn't  
24           have cleaner ones. So it might be excluded. The  
25           other one does show the position of the body at the

1 time of the injuries on the very back of the head.

2 At least one or more of them was inflicted.

3 Q Yes, sir. There's no issue that he self inflicted  
4 anything in this case. Don't you have drawings  
5 depicting the injuries to this man?

6 A We always make drawings. That's correct.

7 Q What would be the problem with using those drawings  
8 instead of these gruesome pictures?

9 A The drawings do show in some detail but not as  
10 accurately as the photographs the nature of the  
11 wounds.

12 Q All right. And to what point? I mean, what's the  
13 point of putting those in front of the jury? I guess  
14 I'm not understanding your testimony.

15 A So that they would understand the findings that I  
16 might give to them and it makes sense to them. I try  
17 to teach the jury by explaining what I found and what  
18 it means in such a way that they can then hopefully  
19 believe the testimony because it sounds reasonable.

20 Q Right. Well, I understand that. But again, don't  
21 you have drawings of all of these wounds?

22 A Yes.

23 Q They less gruesome than this?

24 A I have drawings of the locations that are not as  
25 detailed as the photographs. But, yes, I have

1 drawings.

2 Q Right. I mean, you know, as a matter of fact of  
3 explanatory, can't you use those to show where the  
4 location of the wounds to the jury through drawings  
5 instead of gruesome pictures?

6 A Certainly I could show the locations. I could not  
7 show the details that are shown in the photographs.

8 Q All right. I guess what I'm saying, Doctor, if my  
9 objective was not to make the jury sick or nauseous,  
10 is there any really any reason that you couldn't use  
11 the drawings other than photographs? I mean, since  
12 there's no issue about him self inflicting.

13 A Well, that was just one of the comments I made as far  
14 as documenting with the photographs, that the  
15 locations and the extent are such that it would have  
16 to be at the hands of another or others.

17 Q All right.

18 A But again, all I can tell you is just what I said,  
19 that it's much more clear to the jury when you have  
20 detailed photographs.

21 Q Right. Well, I understand that. And I guess there's  
22 no issue that he did this to himself. Is there any  
23 other purpose for which you would put them in other  
24 than to say they weren't self inflicted?

25 A Well, it's not to show that just they're not self



1           inflicted. It shows the type of instrument that  
2           might have caused the injured, and in one case the  
3           position of the body at the time the injury occurred.

4           **MR. WHITLARK:** Excuse me, Your Honor. We don't  
5           have any dispute about these things. I don't know  
6           why he'd have to put photographs in. They're  
7           extremely gruesome, Your Honor. The inflammatory  
8           nature of them, I don't even have to tell you about  
9           that.

10           If he's going to explain where he is, he's got  
11           drawings of the same thing. And they're a lot tamer  
12           than these colored photographs. And I don't -- you  
13           know, as a matter of making the jury horrified, I'd  
14           rather use drawings. I mean, I don't see why we have  
15           to put these in.

16           And there's a number of pictures of him. And  
17           we've already agreed to have one in for the position  
18           of the body in the room, if he needs to discuss any  
19           issues with that. But other than that, there is no  
20           issue about him being dead or wounds being self  
21           inflicted. And I don't think there's any reason to  
22           put any of them in.

23           **THE COURT:** What's the one that shows the  
24           position of the body in the room?

25           **MR. MEADORS:** That's the distant photo he's

1 talking about, Your Honor.

2 **MS. MCDUFFIE:** Your Honor, that would be State's  
3 11 I believe.

4 **THE COURT:** Oh, I know that. But I'm talking  
5 about which one of these shows the position of the  
6 body.

7 **MR. MEADORS:** I don't think that's what he was  
8 referring to.

9 **THE COURT:** Sir, answer my question.

10 **MR. MEADORS:** Oh, I misunderstood you, Judge. I  
11 didn't mean --

12 **THE COURT:** Which of these photos depict the  
13 position of the body in situ in the room?

14 **MR. MEADORS:** 111 and 112. And then the only  
15 ones --

16 **THE COURT:** Could I finish?

17 **MR. MEADORS:** I didn't mean to interrupt.

18 **THE COURT:** Let me have it.

19 **MR. WHITLARK:** Yes, sir.

20 EXAMINATION

21 **BY THE COURT**

22 **Q** Dr. Sexton, would you look at -- all right. I'll  
23 trade with you. You look at that one already. Let  
24 me ask you now. Despite the -- just take out the  
25 obvious blood; you know what I'm talking about in

1           this one, can you explain your testimony with the use  
2           of that photograph as opposed to these two  
3           photographs?

4   **A**    I'd be able to at least tell where the body is in the  
5           room. But the value of the 111 is that it shows  
6           blood spatters which are directional, indicating the  
7           position of the body at the time at least one or more  
8           blows was rendered to the back of the head.

9   **Q**    How about 112? Is this any more beneficial to you?

10   **A**    It doesn't have any additional information for me.

11                **THE COURT:** All right. Well, we'll exclude 112  
12           then.

13                **MR. WHITLARK:** Your Honor, I don't really  
14           understand what issue it is that's in controversy  
15           here. No one is --

16                **THE COURT:** Maybe if you listen to the doctor's  
17           testimony you will hear it.

18                **MR. WHITLARK:** Yes, sir.

19                **MR. MEADORS:** Your Honor, as far as the other  
20           ones, just going through these, these other are  
21           pictures taken which depict the injuries to the front  
22           of Mr. Zoch's --

23                **THE COURT:** I think the doctor will testify.  
24           You don't need to testify. All right. Leave them  
25           right there. Are you ready for the jury?

1           **MR. MEADORS:** Yes, sir.

2           **MR. WHITLARK:** Can we have one last bathroom  
3 break before the end of the day? No?

4           **THE COURT:** Sir?

5           **MR. MEADORS:** He wanted a bathroom break.

6           **THE COURT:** Do you need one?

7           **MR. WHITLARK:** Yes, sir.

8           **MR. MEADORS:** I can be back in 30 seconds.

9           (Whereupon, a break is taken)

10          **THE COURT:** Is the State ready to proceed?

11          **MR. MEADORS:** Yes, sir. Appreciate your  
12 patience, too.

13          **THE COURT:** Is the defense ready to proceed?

14          **MR. WHITLARK:** McDonald is ready.

15          **MR. REUWER:** Whitehead is ready, Your Honor.

16          **THE COURT:** Thank you. Bring the jury, please.

17          (Jury in at 4:59 p.m.)

18          **THE COURT:** Thank you very much, ladies and  
19 gentlemen. Solicitor, you may proceed.

20          **MR. MEADORS:** If it pleases, Your Honor. The  
21 State of South Carolina would call Dr. Joel S.  
22 Sexton.

23          DR. JOEL S. SEXTON, after being duly sworn,  
24 testifies as follows:

25          **THE CLERK:** Thank you. Please be seated in the

1 witness chair and state your full name for the  
2 record.

3 DIRECT EXAMINATION

4 **BY MR. MEADORS**

5 **Q** Dr. Joel Sexton?

6 **A** That's correct. I'm Dr. Joel Steven Sexton,  
7 S-E-X-T-O-N.

8 **Q** Good afternoon, Dr. Sexton.

9 **A** Good afternoon.

10 **Q** Would you please relate to the jury your background,  
11 your training, your expertise and in particular the  
12 expertise in the field we're asking you to testify to  
13 today?

14 **A** I attended the University of Virginia and graduated  
15 from there with a bachelor's degree in chemistry.  
16 That was in 19 and 58. I then served in the Navy for  
17 three years as a line officer because I was on a  
18 Naval scholarship while going through school. I then  
19 attended the Medical College of South Carolina in the  
20 field of chemistry. I majored and received a  
21 master's in chemistry from the medical college,  
22 finishing that in 19 and 64 when I entered the  
23 medical school which then became a Medical University  
24 in 1964.

25 And in 1968 I became licensed to practice

1 medicine, having received an MD degree from the  
2 Medical University of South Carolina. I then trained  
3 in the field of pathology first as an intern and then  
4 a resident. And in 1972, having finished that  
5 training, I became nationally board certified in  
6 anatomic pathology, clinical pathology and forensic  
7 pathology.

8 I then taught at the Medical University until  
9 1983. I was responsible for the forensic pathology  
10 section of the department of pathology, and in 1983  
11 moved to Newberry where I'm now the director of  
12 pathology in the Newberry County Memorial Hospital.  
13 And myself and my associate in our practice do about  
14 720 autopsies a year for about 25 of the county  
15 coroners at our end of the state.

16 In the training process in the forensic area we  
17 were trained first in chemistry. We received  
18 training just to understand how various procedures  
19 were done. This happened to be the toxicology  
20 department of the Medical College at that time. So  
21 we received training in toxicology as well.

22 In the field of pathology we learned how to  
23 recognize disease or illness, whether it's under a  
24 microscope when someone is in surgery and the surgery  
25 is being completed and we let them know whether there

1 is cancer or some other condition present so they  
2 know how to complete that surgery or how to further  
3 treat the patient later.

4 We also supervise the laboratory where various  
5 tests are done on blood, urine, spinal fluids so make  
6 sure the tests are done accurately and to help your  
7 individual physician interpret the results of those  
8 tests.

9 In forensic pathology, as in hospital pathology,  
10 we do autopsies. In the case of a hospital autopsy,  
11 it's to learn more about that disease or illness to  
12 help your physician and other physicians treat that  
13 condition in the future and to answer questions for  
14 the family.

15 In forensic pathology it's to learn more about  
16 the individual's cause of death and manner of death.  
17 The manner has to do with the circumstances  
18 surrounding the death. Could it be a self inflicted  
19 injury; is it an injury that was accidental; or is it  
20 a natural disease process; or is it a violent death.  
21 And we're trained in recognizing what those injuries  
22 were inflicted by or what causes various injuries in  
23 the body.

24 A lot of times this information is useful in  
25 examining the scene of death to determine how the

1 injuries occurred at that scene of death. So we for  
2 years, from 1968 to '70 -- I'm sorry. From 1968 to  
3 '83 I traveled around the state with our SLED agents  
4 going to the scenes before we did the autopsies.  
5 Currently, because we're in the private practice and  
6 take care of live patients during the day, we no  
7 longer go to those scenes. But I have training in  
8 how to examine scenes and to interpret them.

9 **Q** And you love your job, don't you, Doc?

10 **A** I do.

11 **Q** And how many times have you been offered as and  
12 accepted as an expert in the field of forensic  
13 pathology in courts of record of this state?

14 **A** Over 700 times.

15 **MR. MEADORS:** Your Honor, at this time we would  
16 offer Dr. Joel S. Sexton as an expert in the field of  
17 forensic pathology.

18 **THE COURT:** Any voir dire or objection?

19 **MR. WHITLARK:** Oh. There's no objection. We  
20 agree to it. We stipulate to it, Your Honor.

21 **MR. RILEY:** Yes, sir.

22 **THE COURT:** All right.

23 **MR. MEADORS:** Thank you.

24 **Q** Dr. Sexton, in what condition do you like to -- in an  
25 ideal world, in what condition would you like the



1 body to be when you first look at it?

2 **A** We ask that once death has been pronounced that the  
3 body be left as it is and brought straight to us so  
4 that we can see any evidence that might be on the  
5 body before we start examining it further by removing  
6 clothing and washing the body as well as to  
7 understand the circumstances surrounding that death.

8 **Q** And, Doctor, did you have an occasion to conduct an  
9 autopsy on the body of one Joshua Zoch?

10 **A** I did. That was on December 14th of 2006.

11 **Q** And as far as this county, Kershaw County, you do a  
12 lot of the autopsies for this county, correct?

13 **A** That's correct.

14 **Q** And you mentioned it in your background. But is the  
15 body brought to you?

16 **A** It is. The bodies are brought to us so that we can  
17 be more efficient. We use our own morgue facilities,  
18 x-ray equipment, photograph equipment and storage.

19 **Q** And your office as far as these purposes is where?

20 **A** In Newberry County Memorial Hospital.

21 **Q** And when you first received the body of Joshua Zoch,  
22 can you tell these ladies and gentlemen of the jury  
23 what you did? What's your practice usually and what  
24 you did in this case, Doctor?

25 **A** What we do first is photograph the body externally

1 from both sides as it arrives, and then we look for  
2 any injuries on the body or any evidence on the body.  
3 Then if there is something there, we photograph that  
4 before we then undress the body and look further for  
5 evidence before we then cleanse the body and  
6 photograph what we have after we've cleaned the body  
7 up both externally and if there is any injury  
8 internally. And then we document each of those  
9 injuries with photographs and sometimes diagrams and  
10 charts depending on what type of injuries it might  
11 be.

12 **Q** And, Doctor, in this case can you tell the jury the  
13 initial examination when Mr. Zoch was brought in,  
14 what you observed?

15 **A** There was a lot of blood particularly around the head  
16 region. There were obvious injuries on the head.  
17 There were some facial injuries. When we undressed,  
18 we found also some injuries on the legs. But the  
19 primary injuries were about the head and face with  
20 the more serious ones being on the back, top and left  
21 side of the head.

22 **Q** And can you conduct the autopsy for us right now,  
23 kind of go through like you did and explain it to the  
24 jury?

25 **A** Well, like I say, we photographed all these findings.

1 We undressed the body. We looked for evidence. We  
2 cleansed the body. And then we started taking  
3 individual or photographs of individual areas of  
4 injury. And these included starting on top of the  
5 head a large laceration, abrasion and contusion on  
6 top of the head.

7 Recognize that a laceration is where the skin is  
8 split apart not as you would with a knife but with  
9 some hard object squeezing that part of the skin  
10 between the hard object and the bone underneath. We  
11 recognize that because the edges are not clean. They  
12 are ragged. And there are little pieces of tissue  
13 that bridge the gap from one side to the other.

14 The laceration is often associated with surface  
15 abrasion which is scraping of the skin as you might  
16 get if you fall on a tumbling mat and skin your leg  
17 or your knee. And that tells us something about the  
18 size of the object and the shape of the object.

19 If you fall and hit your head on a flat surface  
20 like the floor, you'll have a round abrasion and you  
21 may have a stellate or star shaped laceration. But  
22 if you're hit with a linear object, you tend to have  
23 some abrasion on either side of the one straight  
24 laceration that might have some little tailing tears  
25 at one end.

1           And that's the type of injury we saw here on top  
2 of the head with scraping of the skin on either side  
3 of a laceration with bruising which we call  
4 contusion, bruising of the skin underneath, breaking  
5 of the little tiny capillaries that cause blood or  
6 allow blood to leak out between the cells so it  
7 cannot be washed away; the same type of bruise you  
8 get if you hit your arm on something or with  
9 something.

10           In addition, underneath, particularly the  
11 injuries to the very back of the head and behind the  
12 left ear were fractures of the skull. One of these,  
13 one in the very back was a linear fracture that  
14 followed the same path as the linear lacerations and  
15 contusions and abrasions.

16           Behind the left ear was what we call a  
17 comminuted fracture. Comminuted is like taking a  
18 hard boiled egg and striking it a few times so that  
19 you see multiple little areas of broken shell that  
20 are attached to each other but they're small. There  
21 are individual fractures all the way around small  
22 portions of that egg or in this case of the skull.

23           Underneath that injury on the left side of the  
24 head behind the left ear, and it was a linear  
25 laceration as well, with linear abrasions on either

1 side, there was bruising of the brain underneath.  
2 They say that you can take an egg yoke and put it in  
3 water in a mason jar that's completely full and you  
4 cannot break the egg yoke because of the buffering  
5 effect of the water. I've tried this and it actually  
6 works.

7 The brain is protected in a similar fashion.  
8 Inside the brain, the choroid plexus which is a  
9 section of capillaries in a cavity called a ventricle  
10 in the brain produces fluid that's really the fluid  
11 from the blood stream and it's only the fluid part  
12 without the red cells that goes into those  
13 ventricles, out the bottom of the brain and circles  
14 the brain and then is reabsorbed through the  
15 arachnoid granulations on top of the brain.

16 What that does, it provides a buffer so the  
17 brain is completely encased without any air, just  
18 fluid. So it takes a tremendous force to disrupt the  
19 brain capillaries or veins that go from the brain to  
20 the covering surface inside the skull called the  
21 dura, the dura mater.

22 But when a person is struck hard enough, as we  
23 mentioned, this produced fractures and the ones back  
24 here produced fractures, it actually shakes the brain  
25 to the point that the little vessels bridging that

1 gap are torn loose. And they produce what we call  
2 contusions or bruises of the brain.

3 In addition, if they're just torn a little bit,  
4 the blood seeps into a space between the brain and a  
5 surface lining called the arachnoid lining and this  
6 produces subarachnoid hemorrhage. There is also  
7 hemorrhage that can occur on the top of the brain on  
8 the outside of that lining but below the dura that we  
9 call subdural hemorrhage.

10 Each of these tend to reflect the degree of  
11 force. Smaller forces sufficient to cause death but  
12 smaller forces produce subdural hemorrhage which was  
13 present. A little greater force and we get  
14 subarachnoid hemorrhage which was present. And with  
15 much greater force you get what we call cerebral  
16 contusion which was also present.

17 So the head had one area here on top of the head  
18 that was at least one blow, maybe two, because at the  
19 posterior end the tear converged like a Y shape. On  
20 the very back of the head that we call the occipital  
21 region there were at least four and probably five  
22 linear blows that produced linear lacerations, tears  
23 in the skin, abrasions along the edge of that  
24 laceration, bruising underneath, fracture underneath  
25 and hemorrhage in the brain including contusion of

1 the brain.

2 Behind the left ear was one linear laceration  
3 with a small amount of abrasion but abrasion present  
4 that produced the comminuted fractures and contusion  
5 of the brain. So all told, at least one or more, one  
6 more, so at least six injuries or blows were  
7 inflicted to the head that were each capable of  
8 causing death.

9 Q May I approach? Doctor, if you would look at State's  
10 111 -- and have you looked at the scene pictures with  
11 me and gone through and looked at them previously?

12 A Yes, I have.

13 Q And does that depict one of the scene pictures that I  
14 have gone over with you?

15 A It does.

16 Q And, Doctor, as far as -- and I don't know. At some  
17 point I'm going to ask you -- for these purposes  
18 right now -- and, Your Honor, we'd offer 111. I  
19 think we've gone over all these with objections.

20 **THE COURT:** Over the defendants' objection.

21 (WHEREUPON, State's Exhibit No. 111 is admitted  
22 into evidence.)

23 Q Does 111 show some of the injuries you're talking  
24 about while the body of Josh Zoch was still at the  
25 scene?

1   **A**   Yes. 111 is a photograph of the back of his body as  
2       he was found at the scene. The injuries on the very  
3       back of his head are evident, and the position of the  
4       clothing is evident, and the position of some blood  
5       spatters on the back are evident.

6   **Q**   And I'm going to show you some other pictures of that  
7       back in a moment. But just sticking with the head,  
8       Doctor, of Joshua Zoch, you have described the  
9       injuries up, back and to the back, correct?

10  **A**   Yes. That's correct.

11  **Q**   Do 119 and 118 show those injuries?

12  **A**   Yes, they do. And they are duplicates of photographs  
13       that I took at the time of autopsy showing the  
14       injuries that I described to you a moment ago on the  
15       back of Mr. Zoch's head.

16  **Q**   And specifically, 118 -- and you said the most force  
17       would have caused which -- which injury would the  
18       most force have been used on, with the top, back and  
19       side being referenced?

20  **A**   Of the three areas of injury, the one behind the ear  
21       exhibited the most force because it actually --  
22       that's part of the bone that's the thickest here  
23       behind your ear. And that portion of bone was broken  
24       into multiple little comminuted pieces as opposed to  
25       a single linear fracture.



1 Q And the injury you described in the back of the head?

2 A The question?

3 Q The force necessary to cause that.

4 A Recognize that when you hit a person in the head it's  
5 similar to hitting, say, a baseball in one sense.  
6 And yet in another sense it's not because the head is  
7 attached to the body and can move. So unless the  
8 head is fixed in some sort of position against some  
9 object, it's been my experience, and from the  
10 literature, it's very difficult to fracture the  
11 skull. And it's very difficult to cause a fatal  
12 injury although it can occur.

13 I can remember a number of cases, at least five  
14 to ten, where a person was hit directly on top of the  
15 head while standing and it did cause a fracture. But  
16 generally speaking, if you hit the head at an angle,  
17 say, from the rear, it's going to bob forward and  
18 unlikely cause a fracture.

19 As I mentioned, there were fractures on the back  
20 of the head in the area here where there are at least  
21 four injuries, and there were fractures here on the  
22 left side of the head. So it's most likely that he  
23 was against some surface at the time those occurred.

24 Q Would it be consistent, those injuries, with your  
25 training and reviewing the pictures with you with his

1 head down?

2 **A** Well, not necessarily the position as far as up or  
3 down, but he would have to be against some surface in  
4 my opinion to receive the serious injuries on the  
5 back of the head and behind the left ear.

6 **Q** Would it be consistent with laying down with your  
7 head on a pillow?

8 **A** A pillow would probably give too much for that. The  
9 one on the top of the head could have occurred on  
10 that occasion. But I would think that -- and of  
11 course recognize there are at least four different  
12 blows on the back of the head. So one or more could  
13 have occurred while he had his head on the pillow.  
14 And the one that caused the fracture would in my  
15 opinion more likely be against the floor or some  
16 firmer surface.

17 **Q** Would the injuries from the back that have been  
18 depicted on 119, would that have come from behind  
19 though?

20 **A** Well, that's relative. It hit him in the back of the  
21 head. But certainly if he is down on the floor  
22 somebody could stand beside him and hit him in the  
23 back of the head. So I can't say that the person  
24 doing the striking was behind him as opposed to one  
25 side of him.

1 Q And the injuries on the top of the head you've also  
2 described are depicted here, correct?

3 A Yes. That's correct.

4 Q And explain to us, this head appears to have been  
5 cleaned. After you make your pictures, do you  
6 cleanse the body and then take pictures?

7 A We take pictures before and after cleansing the body.  
8 Before you cleanse the body the blood may hide  
9 abrasions, may hide other findings depending on  
10 what's present. Or if the object that's used to  
11 strike him is something that comes apart, then some  
12 of that might be in the wound, that would be detected  
13 after we wash the wound.

14 MR. MEADORS: And, Your Honor, that was State's  
15 118 and 119 we're offering.

16 THE COURT: Over the defendants' objections.

17 (WHEREUPON, State's Exhibit No. 118 is admitted  
18 into evidence.)

19 (WHEREUPON, State's Exhibit No. 119 is admitted  
20 into evidence.)

21 Q And any one of those six -- did you say six or seven  
22 blows?

23 A At least six, possibly eight.

24 Q Could those blows have caused the death of Joshua  
25 Zoch? The proximate cause? Could they be?

1     **A**     I cannot distinguish which of those did not cause the  
2             injury internally. All of them were of sufficient  
3             degree as far as the external damage to the skin to  
4             in my opinion have caused his death. It's just some  
5             were much more intense, causing more damage.

6     **Q**     Doctor, you examined the back of Mr. Zoch's head.  
7             Can you tell the jury, did you look at the front of  
8             him, his face?

9     **A**     Yes.

10    **Q**     And could you describe what injuries you -- just tell  
11             them what you saw, found?

12    **A**     Examining the front of the face, there were some  
13             abrasions. On the right side of the face were some  
14             abrasions that were consistent with some object  
15             striking a sort of glancing blow. There were a  
16             number of cuts on the face that were consistent with  
17             something like glass causing that particular cut  
18             because it was sharp edged as opposed to a  
19             laceration. And there were some lacerations on the  
20             face. So there were combinations of breaks in the  
21             skin that we call lacerations, cuts and scrapes on  
22             the front of the face.

23    **Q**     And looking at State's 113, does that depict the  
24             front of the face of Joshua Zoch and the injuries he  
25             received on the front of the face?

1     **A**     It depicts those that were on the very front and the  
2             left side. And on the forehead you can see some  
3             lacerations and scrapes and some cuts around the left  
4             eye on the lower lid.

5     **Q**     And you said these could be consistent with glass?

6     **A**     The cuts could be consistent with glass.

7             **MR. MEADORS:** Your Honor, we'd offer State's  
8             113.

9             **THE COURT:** Over the defendants' objection.

10            (WHEREUPON, State's Exhibit No. 113 is admitted  
11            into evidence.)

12     **Q**     You also mentioned an abrasion also. In looking at  
13             State's 114, does that directly relate to your  
14             testimony?

15     **A**     114 shows the right side of Mr. Zoch's face and it  
16             shows an abrasion and contusion on the right cheek.  
17             Your cheek bone is right there just under the skin,  
18             and that's where the abrasion/contusion is located,  
19             as well as some abrasions and bruising or contusion  
20             on the right forehead.

21     **Q**     And for identification only at this point, was this  
22             brought to your office with Investigator Austin  
23             previously?

24     **A**     Yes, it was. Well, one like that. I don't know  
25             whether it was that one.

1                   (WHEREUPON, State's Exhibit No. 120 is marked  
2                   for identification.)

3    Q   State's 120 for identification?

4    A   Yes.

5    Q   Could this be consistent, an item like this, a  
6           potpourri bowl, a metal and glass potpourri bowl,  
7           consistent with the injuries on -- what's that  
8           number, Doc?

9    A   On 114.

10   Q   114?

11   A   They could. Because when I examined the object, it's  
12           quite heavy. The glass is crazed glass, meaning it's  
13           already cracked a little bit and so it would easily  
14           break and cause the cuts on the face. Certainly the  
15           object is heavy enough to cause the abrasions and the  
16           lacerations on the face.

17           I might mention there was no pattern injury.  
18           Sometimes if a person is hit, say, with a crescent  
19           wrench, they'll leave an outline of that object. So  
20           I can't say specifically it was that object, but  
21           certainly that object could have caused these  
22           injuries..

23   Q   And, Doctor, looking at State's -- and we'd offer  
24           State's 114 if we haven't already.

25

1 (WHEREUPON, State's Exhibit No. 114 is admitted  
2 into evidence.)

3 Q Did you ever observe any other injuries on the body  
4 or legs of the decedent, specifically 115 and 116?

5 A Yes. These are copies of the photographs that we  
6 took of the scrapes that were on the decedent's  
7 knees. On the right knee there were two below the  
8 right knee. And on the left knee, there was one on  
9 the knee and two below it. And they are depicted in  
10 115 and 116.

11 MR. MEADORS: We'd offer 115 and 116, Your  
12 Honor.

13 THE COURT: Over the defendants' objection.

14 (WHEREUPON, State's Exhibit No. 115 is admitted  
15 into evidence.)

16 (WHEREUPON, State's Exhibit No. 116 is admitted  
17 into evidence.)

18 Q Doctor, before I ask you to get down and look at some  
19 other pictures of the scene, can you finish the  
20 examination of the body for the jury? What else did  
21 you observe from Joshua Zoch's body?

22 A We did an internal examination and found all the  
23 organs to be normal and to be healthy. We collected  
24 blood and other fluids that were sent for toxicology.  
25 We examined the rest of the body externally, and the

1           only other findings we saw were the abrasions that I  
2           just mentioned on the legs on the front of the knees.  
3           So the only serious injuries, as I mentioned earlier,  
4           were those to the head that I discussed earlier.

5           **MR. MEADORS:** With the Court's permission, would  
6           the doctor step down, please?

7           **THE COURT:** Yes, sir. You may step down.

8   **Q**     And, Doctor, if you'll get over here please, sir, and  
9           I'll get this way. Doctor, you've already been  
10          accepted as an expert. Part of that is reviewing  
11          crime scenes. And you like to do that, don't you?

12   **A**     I do.

13   **Q**     And you use that in coming to an opinion, correct?

14   **A**     That's correct.

15   **Q**     I think previously and earlier in your career you  
16          have actually been out to crime scenes. And in a  
17          real perfect world, you'd like to do that every time,  
18          wouldn't you?

19   **A**     I would. Very definitely.

20   **Q**     Now, you observed State's 39 before, correct? You  
21          weren't at the scene. But have I come and met with  
22          you and showed that to you?

23   **A**     Yes, I did.

24   **Q**     And initially, just as a forensic pathologist, what  
25          does that show to you, Doctor?



1     **A**     Basically 39 shows a location of the body here in the  
2             middle of the room. It shows a lamp overturned here  
3             behind the body. It shows a part of a sectional sofa  
4             overturned. It shows a Christmas tree overturned.  
5             It shows the body lying face down with the shirts  
6             that are on the back pulled up to the top of the  
7             shoulders.

8     **Q**     And, Doctor, looking at State's 37, does the couch  
9             appear to you to be altered?

10    **A**     Yes. As I mentioned earlier, in addition to the lamp  
11             being overturned on the couch, I think you can see  
12             that this segment of this segmented couch is flipped  
13             backwards. You can see it's a type of couch where  
14             the footrest will rise so that you can rest your feet  
15             on it. So the footrest is up very high up above the  
16             rest of sofa and is turned backwards. So it's tilted  
17             back. So the back of the sofa from this and from  
18             other photographs I've seen was actually against the  
19             floor instead of the legs being against the floor,  
20             and the footrest is very high in the air.

21             **MR. MEADORS:** And, Your Honor, we'd offer  
22             State's 39 and State's 37. Ms. McDuffie tells me we  
23             have not. So I do that now.

24             **THE COURT:** Over the defendants' objection.

25

1 (WHEREUPON, State's Exhibit No. 37 is admitted  
2 into evidence.)

3 (WHEREUPON, State's Exhibit No. 39 is admitted  
4 into evidence.)

5 Q And, Doctor, have you looked at State's 65 before?

6 A I have. State's 65 which has this large G marker for  
7 the scene people to recall where this is located  
8 shows blood on the back of the sofa that's turned  
9 upside down. So that here is the back of the sofa  
10 against the floor. You can see part of the footrest  
11 is up in the air here. So this is looking down over  
12 the back of that sofa toward the floor seeing blood  
13 on the back cushion.

14 Q And 66?

15 A 66 shows a little wider view of that same area. You  
16 can still see the blood here on the back of the sofa.  
17 Here is the seat of the sofa facing in-vertical. So  
18 we're looking across the seat. And here is a piece  
19 of wood that's on the footrest. And this is 66.

20 Q You have viewed State's 80 before, Doctor?

21 A Yes, I have.

22 Q And can you tell the jury what that is?

23 A 80 is a pillow that has blood on it. It's over near  
24 the hearth. It's the L shaped sofa, the short end of  
25 the sofa is to the left of this.

1 Q Doctor, what's blood spatter?

2 A When blood has pooled and then something strikes that  
3 area where the blood has pooled, it spatters out in  
4 different directions. Blood is viscous, meaning it's  
5 sort of sticky or thicker than water. So when the  
6 drops of blood hit a surface, most of the blood  
7 sticks to the surface. A little portion continues on  
8 to give sort of an arrowhead effect showing the  
9 direction the blood is going. Sometimes a portion  
10 will break off and skip a little beyond and it looks  
11 like an exclamation point where you'll have the  
12 widest part, the thickest part; then it's a tailing  
13 edge with a little dot beyond it.

14 MR. MEADORS: Your Honor, for the record,  
15 state's 80 we offer, I believe without objection.

16 (WHEREUPON, State's Exhibit No. 80 is admitted  
17 into evidence.)

18 Q Looking at State's 67, do you see any blood spatter?

19 A Yes. 67 shows the board that's present near the  
20 footrest. And you can see a cellphone here for  
21 reference later. And you can see some spatter here.  
22 The spatter that's most significant as far as being  
23 able to see it here is this one that has that  
24 exclamation point appearance that I mentioned or sort  
25 of arrowhead. It's going towards the upper right

1 corner of this photograph. You can see that it's  
2 sort of oval but has a trailing portion that's going  
3 towards the upper right portion of the photograph,  
4 this particular spatter. The others are similar but  
5 they're smaller and harder to see. But it's going in  
6 this direction based on the shape of that particular  
7 spatter.

8 Q And, Doctor, let me if I can refer you back to  
9 State's 39 for a moment. Do you recognize these  
10 pictures and that door? And have you looked at that  
11 before?

12 A Yes. As I mentioned earlier, you've got the L shaped  
13 sofa with one of the portions of that sofa turned up  
14 backwards. Sort of to the left of that as we look in  
15 the photograph is a French door or a set of double  
16 doors with some louvers on it, and there are pictures  
17 on either side of the door. There are spatters in  
18 close up photographs of those areas on the blinds  
19 that are on the doors and on the pictures that are on  
20 the walls.

21 Q And let's kind of move in there closer if we can to  
22 what you just said, Doctor, in State's 70?

23 A 70 shows the top of that L shaped sofa, the top of  
24 the sofa and the double doors that are right behind  
25 the short end of that sofa. Double doors, L shaped

1       sofa, and you can see the part that's turned up so  
2       that the back is lying on the floor.

3       Q     Doctor, do you recognize 72?

4       A     I do. 72 shows the blinds on that door. And you can  
5       see some spatter on the blinds. And the spatter has  
6       a direction. Notice that these are oval spatters.  
7       This particular one, you all will have to see it  
8       close up later, shows a little bit of the blood spot  
9       going beyond. This one you can see two little pieces  
10      of blood spot going beyond that, indicating the  
11      spatter is coming in not tangential to these blinds  
12      but a little bit at an angle so that it's a little  
13      fatter than if it were going tangential. It's a  
14      little shorter. But you see the little trailing dots  
15      beyond it, indicating the blood is coming in at an  
16      angle from somewhere to the left of this photograph  
17      which is where the portion of the sofa is turned  
18      upside down. It shows the spatter that's going in  
19      this direction that's coming in at an angle on these  
20      blinds that are on the door.

21      Q     And, Doctor, I'm going to get further out of your way  
22      and show you 71, 73, 74, 75, 76, 77 and 78 which I  
23      believe are in order from when we met before. Would  
24      you go through those with the jury calling out the  
25      number before you do it, Doctor?

1     **A**     First looking at 71, and I'll go over it with this  
2             end of the jury and then the other end, 71 shows the  
3             blinds to the left of the photograph and the edge of  
4             the door. Which is as we're in the sofa, it's to the  
5             right of the sofa. And you can see that there are  
6             directional spatters here as well. This one is a  
7             fairly fast movement and it's going way over there  
8             and going in that direction.

9             Some of these have finished their arch and are  
10            starting to come down. And so instead of going this  
11            way, this one is going like that. This is a little  
12            further. This one is almost going straight down. So  
13            the blood drops, you can see one here on the blind,  
14            are coming -- going to the right from the sofa. As  
15            you can see here, they're going to the right across  
16            this photograph. That shows the wall beyond the edge  
17            of the door and part of the blinds with spatters  
18            going to the right.

19    **Q**     Doctor, what kind of -- I mean, what kind of force  
20             does it take to get spatter up on the wall like that  
21             or on the blinds?

22    **A**     Well, it has to be a fast moving object. It doesn't  
23             require a heavy object to do that, but it's got to  
24             have blood pooled, which means it's not the first  
25             blow. It's got to be after a blow occurred and then

1 blood immediately pooled in that area. And so a  
2 second blow would then force blood out. And it's not  
3 practical to try to say how much force. It could be  
4 just as much as I'm doing now in order to do the  
5 spatter. The spatter just shows the direction or the  
6 location of the source of the blood. It doesn't say  
7 much about what sort of force was used to create it.

8 Q Thank you.

9 A Hang on a second. Let me make sure these are in  
10 order. All right. Now we're going back to the other  
11 side of the sofa, the corner.

12 Q If you'd call out that exhibit, Doctor?

13 A This is Exhibit 73. If I am here standing where the  
14 upturned part of the sofa is, we look at some  
15 spatters to the right of the sofa, these spatters are  
16 to the left of the sofa in the corner. This  
17 photograph -- let see the other photograph for  
18 reference, the distant photograph.

19 Q State's 39?

20 A State's 39 shows that this picture that's on the wall  
21 near the corner is this picture. So it's above and  
22 somewhat to the right in the photograph if this is  
23 the sofa to the left. And you see here up in the  
24 corner, here is the picture, here up in the corner  
25 are spatters that are going up in that direction,

1. some across the ceiling, some here in the corner,  
2 they're going up and ending up here in this corner  
3 above and to the left of the blood on the sofa.  
4 Under this ruler in this location are some spatters  
5 that are seen here on this close up.

6 Q That's State's 73 you're looking at now?

7 A Right. 73 has the spatters up in the corner. 74  
8 shows some of those same spatters but shows them in a  
9 little more detail, including this larger one that  
10 has the drops that are carried on beyond it helping  
11 indicate the direction is going up toward that  
12 corner.

13 I'm not sure that 75 contributes. Now, the  
14 photograph that's in that corner, there are two  
15 photographs. Both have blood on them. Let me make  
16 sure I am showing you the correct one. This is the  
17 one in the corner. There is this photograph in the  
18 corner. It is depicted in 76. And you can see that  
19 the blood is traveling here in this location, again  
20 up towards the corner. You can see a drop that's  
21 oval with carryover up in this direction to my left  
22 and to the left of where it was on the sofa.

23 This shows that same picture. You can see some  
24 of the same items that are in the picture, and again.  
25 here under the ruler are some drops that are going up



1           towards the corner. Here is another one down at this  
2           location, rounded, down to the left and pointed up to  
3           the right.

4           And this has the same photograph, the same  
5           picture, just some more drops at a different place on  
6           the picture, again going up and to the right. Let me  
7           illustrate that for this end. Where are these same  
8           photographs? What did you do with the photographs so  
9           I can show this end of the jury?

10       Q       Oh. I'm sorry. I apologize.

11       A       Again, to refresh your memory, two photographs.  
12           There are blood spatters in on this one in the corner  
13           and there are blood spatters on the door and just  
14           beyond the door on the wall. And they're illustrated  
15           in these photographs.

16           These three, 78, 77 and 76, all show blood  
17           spatters going up and to the right. You can see them  
18           going across the photograph here or the print here,  
19           here and there. These are a little easier to see  
20           that it's rounded on the back side and pointed on the  
21           front.

22           This is some of the same thing pointed up to the  
23           right. This is in the upper portion of that same  
24           print, picture on the wall. And here is another area  
25           again showing the tailing of that blood spatter, also

1 here, showing that these spatters are coming from the  
2 sofa headed up to the corner that's illustrated on  
3 73. And that corner is here; this corner of this  
4 picture is, and the corner of the sofa.

5 And you can see the spatters up here. You can  
6 see some of them that are a little easier to  
7 recognize here on a close up that shows those same  
8 spatters that are illustrated here on the wall. And  
9 you can see some of the little tailing drops that  
10 indicate that the blood is going upwards that corner.

11 Now, on the other side of the sofa, here on the  
12 doorframe and on the blinds that are on the door, and  
13 notice it's on the frame away from the sofa itself,  
14 you can see blood droplets here that are going in  
15 this direction, pretty much up and to the right.

16 Here is one that's hitting a surface that's  
17 curved, so it's more rounded, and then here are  
18 others that are hitting the wall, on beyond. This  
19 one is starting to come down a little bit. This one  
20 is, too. These two are coming down a lot. Those are  
21 largely together that far before they started  
22 trailing downwards.

23 Q Doctor, thank you. And I just want to show you some  
24 pictures of the interior of this living room, just a  
25 few more pictures. Again, State's 63, does that

1 depict a closer view of State's 39?

2 **A** It does. It shows the bloody picture or bloody  
3 pillow. So 63 shows the bloody pillow near the  
4 hearth near the right end of this segmented sofa.

5 **Q** And State's 19 is just a close up of that, right?

6 **A** That's correct. This is 79 I believe.

7 **Q** I'm getting tired. 79 I apologize. 79.

8 **A** 79 and 63 show the pillow.

9 **Q** All right. And, Doctor, State's 61, do you recognize  
10 that?

11 **A** I do. State's 61 shows the bottom support for a  
12 circular glass coffee table. The glass top is off  
13 and over to the right of this photograph.

14 **Q** And can you see the glass top in State's 39?

15 **A** Yes. If you look carefully in 39, just beyond the  
16 deceased's body, you can see the edge of the glass  
17 top for that coffee table, whereas the bottom support  
18 is over here next to the left end of the sofa. So  
19 the glass top of the coffee table is here. The  
20 support is here near the left end of the sofa. Glass  
21 top, support for the coffee table.

22 **Q** And, Doctor, just in these next series of photos I'd  
23 just like to move in closer to that. 62, 81, 82, 83  
24 and 84, can you explain to the jury what those are if  
25 you're familiar with them? You've looked at them

1 before, correct?

2 **A** Yes.

3 **Q** And how -- why are they significant to you, and what  
4 do they show?

5 **A** Well, first, 62 shows the relationship of the bottom  
6 support to the upturned sofa segment. You can see  
7 the bottom of that sofa segment here on 62. On 81  
8 you start to see blood that is smeared and blood  
9 droplets that are here on the support.

10 **Q** What do you mean smeared?

11 **A** That some object that was wet with blood wiped across  
12 that area, whereas the droplets are consistent with  
13 blood just dropping straight down onto that part of  
14 the support. This picture which is 82 shows a closer  
15 view of the smeared blood. And you can see that the  
16 blood is simply wiped on there as opposed to being  
17 any drops, whereas here on 81 you can see the wiped  
18 part but you can see the drops over here on the other  
19 part of the support.

20 And as I mentioned to the other end of the jury,  
21 this just shows the relationship of that support for  
22 the coffee table with the upturned segment of the  
23 sofa. Here you can see a ruler in place showing that  
24 this is the bottom of that support for the coffee  
25 table. And you see some of these droplets. You can

1 see they're elongated and going downward. Here is a  
2 nice illustration of that elongation and sort of the  
3 exclamation point with the dot below it. And the  
4 others here are smaller but show the same thing,  
5 indicating blood droplets are falling from some  
6 source above that particular support.

7 Q And does that mean it's heading down?

8 A Heading down. So sometime after the coffee table top  
9 was off of the support blood was leaking onto that  
10 area and being smeared on that area.

11 Q And the smear -- I can understand the drops, Doctor.  
12 But the smear, does that mean something was either  
13 rubbed by it or taken by it or went by it like that?

14 A Something that was wet wiped across it. And this  
15 last one which is 84 again shows a closer view of the  
16 center portion of the support where you can see drops  
17 that are coming straight down which are round and  
18 some that are a little oval and having trailing dots  
19 behind them. So drops are coming straight down on  
20 that support for the coffee table.

21 Q I've just got a couple more, Doctor. State's 60,  
22 Doctor, would you look at that? State's 69?

23 A This is 68.

24 Q I'm sorry.

25 A And this is 69. Both of these show a portion of the

1       sofa and they show what looks like potpourri and  
2       fragmented glass as well as a portion of the top of  
3       this container that had potpourri in it. That's on  
4       68. 69 shows just the glass that's fragmented and  
5       the potpourri on the sofa.

6       **Q**   And, Doctor, you mentioned spatter and you talked  
7       about it some, that there's got to be an initial blow  
8       to be a blood pool and then another blow or force  
9       will cause it to blood spatter, correct?

10      **A**   Correct.

11      **Q**   Now, look at State's -- and again, with reference  
12      back to -- excuse me -- 39, do you see how this -- on  
13      39, Doctor, does that depict the body of Joshua Zoch  
14      with his shirt up?

15      **A**   It does. If you look at it carefully, you can see  
16      the pants. You see his socks. You can see his bear  
17      back with a portion of the shirt here still on his  
18      arm. But most of the shirt is up above his shoulder  
19      as far as the back of the body.

20      **Q**   And, Doctor, if you look now at State's 92 which we  
21      now offer into evidence.

22                **THE COURT:** Over the defendants' objection.

23                (WHEREUPON, State's Exhibit No. 92 is admitted  
24      into evidence.)

25      **Q**   In relation to this overall picture and with the

1 shirt being pulled up; what, if anything, did you  
2 observe on the back of the victim, Joshua Zoch? Can  
3 you explain the significance of meaning to you as a  
4 forensic pathologist how this got there?

5 **A** This is a photograph, a close up of the back of Mr.  
6 Zoch as he is lying there at the scene. You can see  
7 that the shirt's pulled up. You can see that the  
8 shirt is pulled sort of at a right angle here on the  
9 left back. There is actually what looks to be blood  
10 smeared underneath that. But what's more significant  
11 are the blood spatters going down to the back. As I  
12 mentioned earlier, a head has to generally be fixed  
13 to render a fatal blow.

14 And notice the spatters are going down the back.  
15 Here is an exclamation point. Here is another one.  
16 There is a smaller one. All of these show that the  
17 blood is coming from a source up near the head and  
18 coming down the back.

19 You can't see it in this photograph, but the  
20 back of the head in this position is where the  
21 injuries are located, one of which is the one that  
22 fractured the skull as well as one behind the ear  
23 which fractured the skull.

24 **Q** In your opinion and with your field of expertise,  
25 from looking at these pictures, would those -- the

1 fact that there's spatters, would that -- those  
2 pictures, does that indicate from the spatter the  
3 shirt was on or off when he received that spatter?

4 **A** Obviously the shirt had to be pulled into position it  
5 is now in order for those spatters to occur, because  
6 they are small droplets of blood that are coming from  
7 the injury after a previous injury. So the blood is  
8 pooled and then they stream down the back or spatter  
9 down the back. So that indicates to me in my opinion  
10 within reasonable medical certainty he was in this  
11 position when at least one of those blows was  
12 rendered with the clothing in the position it is now.

13 **Q** And Doctor, State's 95 which we'd now offer.

14 (WHEREUPON, State's Exhibit No. 95 is admitted  
15 into evidence.)

16 **Q** You've explained some injuries to the back. Does  
17 this show a side of the victim?

18 **A** It does.

19 **Q** And explain to the jury what that's allowing you to  
20 tell them, if anything?

21 **A** Well, there also is an abrasion or scrape that I  
22 failed to mention earlier when I was talking about  
23 the, quote, other injuries, other than the head  
24 injuries. Here is a scrape or an abrasion on the  
25 left side of the abdomen just above the belt line



1           that you can see in this photograph.

2    **Q**   How could -- what are the different ways that one's  
3           body could receive that, Doctor?

4    **A**   Well, it has to either be falling against something  
5           that's rough and scrapes that area or being struck  
6           with something that's rough and strikes that  
7           particular area.

8    **Q**   Could this be inflicted by kicking or hitting?

9    **A**   It could be, depending on the type of shoe. But most  
10           shoes are rough enough that you could get that type  
11           of injury from being kicked.

12   **Q**   And, Doctor, this is State's 117.

13   **A**   117 shows the top of the socks as we photographed  
14           them at autopsy. Notice in our photographs we'll  
15           have a label with an autopsy number and six-inch  
16           ruler. And we try to always put that in position so  
17           the top of the ruler points towards the top of the  
18           head so we can orient it if we're doing a close up.  
19           But you can see blood smear on top of this the white  
20           socks in this photograph. And again, that's because  
21           some bloody surface was wiped across this or the  
22           socks were wiped across a bloody surface.

23   **Q**   Would it be consistent with your opinion if the body  
24           has been dragging? Could he have gotten that blood  
25           in that position on the socks from other blood?

1     **A**     Could be by being dragged or could be by crawling.

2     **Q**     Doctor, if you'd have a seat, please. I think that's  
3     all the pictures I want to show you.

4             **MR. MEADORS:** 117 we'd now offer in evidence. I  
5     apologize.

6             **THE COURT:** Over the defendants' objection.

7             (WHEREUPON, State's Exhibit No. 117 is admitted  
8     into evidence.)

9     **Q**     Doctor, reviewing all these pictures and your  
10    examination of the body, do you have an opinion to a  
11    reasonable degree of medical certainty how these  
12    injuries occurred and what the proximate cause of  
13    death was?

14    **A**     Yes, I do.

15    **Q**     Could you please tell these ladies and gentlemen of  
16    this jury?

17    **A**     From looking at the scene photographs of where  
18    there's blood on the couch and the couch is turned up  
19    on its back and the spatters are up on either side of  
20    that location of this couch; in my opinion, at least  
21    two injuries, two blows would have been inflicted  
22    while he was on that couch. Thus, there was blood  
23    pooled a little bit on the couch. There were  
24    spatters in each direction.

25             Then he came off or was pulled off of the left

1 end of the sofa so as to knock the top off of the  
2 table there, the glass topped table, because the  
3 glass topped table is on beyond that off to the left  
4 of the photograph and there is blood dripping on that  
5 support for the table and smears on the support for  
6 the table.

7 He then ended up in the floor or standing and  
8 was struck more to the point where he was on the  
9 floor. And at least one of the fatal blows, one  
10 which in my opinion probably caused the fracture in  
11 the back and perhaps the other one that caused the  
12 fracture behind the ear in my opinion were probably  
13 rendered when he was on the floor. So it would be a  
14 firm enough surface to allow fracturing of the skull.

15 And the object would be something that was  
16 cylindrical and linear. When a rounded or  
17 cylindrical object strikes a surface, you don't see a  
18 complete outline of that object. You see the imprint  
19 of the leading edge of that object, so that something  
20 that might be four inches wide might only give you a  
21 two-inch abrasion on either side of the laceration.  
22 And so some linear type object in my opinion caused  
23 the laceration, fracturing, contusion and abrasions  
24 of the back of the head, the top of the head and  
25 behind the left ear.

1 Q And, Doctor, as far as State's 68 that I showed you  
2 earlier; and you reviewed these and see this is in  
3 the sofa?

4 A Correct.

5 Q Is there anything on his body that would be  
6 consistent with in your opinion to a reasonable  
7 degree of medical certainty of making at least one of  
8 those injuries on his face?

9 A Yes. The fact that that material, the broken glass  
10 and the other portions of that potpourri bowl were on  
11 the sofa and the fact that he has cuts and abrasions  
12 and lacerations of his face are consistent with that  
13 injury occurring there while he's on the sofa with  
14 that type of object and probably with that object.

15 Q And, Doctor, you said a cylindrical object as far as  
16 the head injuries. Looking at State's 99, in your  
17 opinion based in your training, looking at these  
18 pictures and examining Josh's body, is State's 99,  
19 could this in your opinion have inflicted the  
20 injuries you've described to his head?

21 A Definitely could, because it's a linear, cylindrical  
22 type object. The leading edge is sufficient to cause  
23 the type of narrow abrasion that we see on either  
24 side of the lacerations of the scalp.

25 Q Doctor, are you able to tell -- I know I've asked you

1           this before. But can you say how long he would have  
2           lived after receiving these injuries?

3       **A**    Cannot. Head injuries are very difficult to evaluate  
4           as far as how long a person can live. There are  
5           people who shoot themselves or get shot in the front  
6           part of the brain and survive for years. There are  
7           people that will have devastating looking injuries  
8           but because of how they occurred can survive. And  
9           yet there are people who will have a very small  
10          injury that will not look very bad externally, like  
11          this one behind the left ear doesn't look very bad,  
12          but the skin there is very thin. The bone is very  
13          thick. So your object doesn't penetrate very far.

14                So it looks like just a short little laceration  
15          with scraping on the edge and yet it caused the most  
16          serious injury. And all we can say is that in this  
17          case and in any case with this type injury, we expect  
18          the person to be immediately unconscious after the  
19          fatal blow and that they may or may not live for a  
20          period of minutes or hours or even days before they  
21          die.

22                When have you cerebral contusion, usually that's  
23          enough to cause death within a matter of minutes, but  
24          there's no way to accurately say within reasonable  
25          medical certainty how long a person might live with

1           that type injury.

2    **Q**    So, for the record, cerebral contusion due to a  
3           closed head injury blunt head trauma was the  
4           proximate cause of death?

5    **A**    That is correct.

6    **Q**    And finally, Doctor, you've also explained your  
7           experience in toxicology. And can you tell us what,  
8           if anything, the victim had in his system?

9    **A**    You say in his toxicology report?

10   **Q**    Yes, sir.

11   **A**    Let me refresh my memory here just a moment. There  
12           were some metabolites of cocaine. Benzole-conine is  
13           the chemical that's produced in the body as cocaine  
14           is metabolized. There is no free cocaine. So that  
15           means he's had some sometime in the past, hours,  
16           maybe even longer. And marijuana was there along  
17           with the metabolite of marijuana.

18   **Q**    How long can marijuana be detected in your -- and  
19           this is through blood?

20   **A**    This is blood that we're referring to.

21   **Q**    Are you able to tell how long it was before a person  
22           inhaled or smoked marijuana based on that?

23   **A**    I would not feel comfortable saying that this was on  
24           or about the time of death, but it may have been. It  
25           may have been much earlier. The same with the

1 cocaine. It may have been near the time of death  
2 because cocaine can metabolize very quickly. But the  
3 fact there's no cocaine present suggests it's at  
4 least a matter of minutes and maybe hours.

5 **Q** And as far as the marijuana, could that go back even  
6 longer than that?

7 **A** Possibly.

8 **Q** Even days?

9 **A** In some cases. But usually in the blood it might be  
10 out of the blood by that time. It might be in urine  
11 and other areas. But it certainly can be longer than  
12 a day.

13 **Q** Thank you. That's all we have, Doctor. I appreciate  
14 it.

15 **THE COURT:** Cross examination.

16 **MR. WHITLARK:** May it please the Court.

17 CROSS EXAMINATION

18 **BY MR. WHITLARK**

19 **Q** Doctor, how many pools of blood did you find or did  
20 you see in the room where he was?

21 **A** My recollection is there is a smear of blood between  
22 the coffee table and where the body was found.

23 **Q** Yes, sir.

24 **A** There also is a smear on the pillow --

25 **Q** Yes, sir.

1     **A**     -- which may have been on the sofa at the time that  
2             that injury occurred. There was blood pooled under  
3             the head.

4     **Q**     Yes, sir.

5     **A**     And there was one other area that I think was near  
6             the top to the coffee table, the glass top.

7     **Q**     Doctor, this was extremely hard hits with this object  
8             or whatever it is, right?

9     **A**     At least two, the one to the back of the head and the  
10            defendant one here on the left side, were extremely  
11            hard. The others may have been but the head may have  
12            moved to the point where it cushioned it some.

13    **Q**     Right. Well, I heard you mention in your testimony  
14            that the killing blow had to be probably when his  
15            head was against the floor you think?

16    **A**     The worst blows would have been with his head against  
17            the floor, and in my opinion probably those two would  
18            have been the ones that would have been fatal.

19    **Q**     Yes, sir. But I believe you told me any six of them  
20            could have done it?

21    **A**     Conceivably. Because as I said earlier, we can't in  
22            medicine even say how long they would survive. And  
23            it's very difficult to say whether these others may  
24            or may not, because I've had some where the history I  
25            was a person hit over the head with a pool cue while



1 standing up and it made a groove in their skull. So  
2 it depends on the force. It depends on the position  
3 the head is in. So it's certainly possible the other  
4 could have. But certainly the two, the one here, one  
5 of the ones in the back and one of the ones behind  
6 the ear in my opinion within reasonable medical  
7 certainty are the more likely or most probably the  
8 ones that were fatal.

9 Q All right. Now, you had mentioned that it could be  
10 he was standing during part of this, right?

11 A Correct.

12 Q And, Doctor, when somebody gets hit this hard, I  
13 mean, could any one of these six have knocked him  
14 out?

15 A Yes. Any one of the six could have knocked him out.

16 Q All right. And I'm not going to keep you long here,  
17 Doctor. But he was in the position you think he was  
18 in when he was killed, right?

19 A The position he was in at the time the photographs  
20 were taken in my opinion was a position he was in at  
21 the time the fatal blows were rendered.

22 Q Okay. In other words, you don't believe that he  
23 moved again after the position that you see in these  
24 pictures?

25 A Correct.

1 Q Okay. Because there is very little likelihood of  
2 that, is there, sir?

3 A In my opinion, very little likelihood of that.

4 Q Was he completely motor dead as far as moving his  
5 body around at all?

6 A You'd have to ask people at the scene. We can't tell  
7 that once the body gets to us.

8 Q I understand. I understand. Did you get any idea of  
9 how much blood he lost?

10 A We were able to get adequate samples for the  
11 toxicology. Head injuries tend to be fairly bloody,  
12 but they're not as bloody if the heart stops right  
13 away. So, in that sense, considering how little  
14 blood we saw there at the scene, he probably died  
15 fairly soon. His heart probably stopped sooner  
16 because head injuries tend to bleed profusely.

17 Q I know you're used to looking at this kind of thing.  
18 But anyway, would you look at that picture there? Is  
19 that a fair depiction?

20 THE COURT: What's the number?

21 MR. WHITLARK: Oh, I'm sorry, Your Honor. It's  
22 No. 38.

23 Q Do you see that? Is that what you -- and to a  
24 reasonable degree of certainty, based on your  
25 expertise, that's probably the way he was lying when

1 he died?

2 **A** Yes. In my opinion, this is the position he was in  
3 at the time of death.

4 **Q** Okay. Doctor, how fast do you think he died?

5 **A** Well, as we just discussed, the fact there was not  
6 much blood at the scene, probably a matter of  
7 minutes. But again, I can't say with accuracy.

8 **Q** I'm going to hand you some photographs and have you  
9 take a look at them if you would for me if you don't  
10 mind. I don't know if you've got a magnifier. Can  
11 you just take a look through those, please, without  
12 showing them to the jury?

13 (Pause)

14 **Q** I just wanted you to make a quick review and if you  
15 don't mind --

16 **MR. MEADORS:** Your Honor, can we just identify  
17 them for the record in some way?

18 **THE COURT:** They're not marked?

19 **MR. WHITLARK:** I haven't marked them yet.

20 **THE COURT:** They appear -- well, I don't know  
21 what they are. There's a lot of them.

22 **Q** That's not one of them. I'm sorry. Those aren't.  
23 No. No, none of those are in there. I'm sorry.

24 **A** That's all right.

25 **Q** Do you see this picture? Could you take a look at

1           this picture for me real quick? Do you see that one?

2           Do you see that picture?

3   **A**     I do.

4   **Q**     All right. Now, he's been turned over in that  
5           picture?

6           **MR. MEADORS:** Mr. Whitlark, may I look at them?

7           **MR. WHITLARK:** Yeah. I'm sorry.

8   **Q**     Doctor, I'm going to ask you very quickly here, do  
9           you see this picture here? Will you take a look at  
10          that? Is that a picture of --

11          **MR. MEADORS:** Your Honor, that's not the picture  
12          he showed me. I'm sorry. He shuffled them.

13   **Q**     Take a look at this one. Yeah, go ahead. Do you see  
14          those, Doctor?

15   **A**     Yes, I do.

16   **Q**     All right. Do you see what he's clutching in his  
17          hand in those pictures?

18   **A**     It looks like some type of bow from the Christmas  
19          tree that's been -- or is across him.

20   **Q**     Okay. I'm going to show you this photograph here.  
21          Do you see? He's clutching that in his hand, isn't  
22          he?

23   **A**     That's correct.

24   **Q**     All right. Do you see this? Do you see that? Is  
25          that a ribbon that's on the tree?

1     **A**     There's a ribbon similar --

2                 **MR. MEADORS:** Your Honor, I tried to get these  
3 earlier and they objected to these specific pictures  
4 coming in. If he'd mark them.

5                 **THE COURT:** If he's offering evidence from those  
6 pictures, I'm going to have to allow them to be  
7 admitted into evidence.

8                 **MR. MEADORS:** Yes, sir. We'd ask they be marked  
9 and admitted.

10                **MR. WHITLARK:** I haven't done anything yet, Your  
11 Honor. I'm sorry. I'm just --

12                **THE COURT:** Well, just stop, Mr. Whitlark. Just  
13 come down for a minute.

14                **MR. WHITLARK:** Yes, sir.

15                **THE COURT:** You're asking him questions about a  
16 picture. He's describing certain things in a picture  
17 that this Court does not know what they are. The  
18 jury doesn't know what they are. If you're going to  
19 offer them in evidence, that's fine. Otherwise, he  
20 can't testify from them and draw conclusions from  
21 them.

22                **MR. WHITLARK:** I know. I understand. I'm just  
23 asking, he's got a bunch of photographs and I don't  
24 know what he's got, Your Honor. I'm just going to  
25 ask him does he have these.

1           **THE COURT:** You gave him specific photographs  
2           and you have asked him questions about those  
3           photographs. Now, if he is going to offer an opinion  
4           about the position of the body or what's in the  
5           body's hand or where it is or what's lying beside it,  
6           you're going to have to put them in evidence. That's  
7           it. You can't --

8       **Q** All right. Let me ask you some questions. May I ask  
9           him? I'm going to take these pictures back. Sir,  
10          when somebody dies and they're holding onto something  
11          in their hand and they have like a grip on it, do you  
12          see what I'm talking about? Have you seen that  
13          before in your profession with people holding onto  
14          stuff?

15       **A** When people die, particularly of head injuries,  
16          sometimes they have seizures. And having the  
17          seizure, sometimes they have contractions of the  
18          hand. It's extremely rare for somebody to keep  
19          something in their hand as opposed to grabbing  
20          something after death.

21               The head injuries, say, with a gunshot wound,  
22          it's very rare to find the gun in the hand of the  
23          person that shoots themselves because the body  
24          becomes completely limp, including the hands. But  
25          with head injuries, it's not uncommon for persons to

1 go into at least a minor seizure and grab or clench  
2 their fists. So if something is in that location, in  
3 this instance there are bows there on the floor, that  
4 he in this case apparently gripped with his hand at  
5 the time he was dying.

6 Q What hand did you see it gripped in? Was it the left  
7 or right? Do you remember?

8 A I don't recall.

9 Q All right. Doctor, do you know whether or not  
10 anybody from the Sheriff's Department told you what  
11 they thought the instrument was that was used to kill  
12 him with?

13 A At some point in time we were told that a bat was  
14 found. I don't recall under the circumstances. At  
15 the time of autopsy we told them that we felt like it  
16 was a cylindrical object that would be large enough  
17 and long enough to give a significant force, enough  
18 to crack the skull. Usually that's something like a  
19 bat or a pool cue or something of that sort. And  
20 because of the uniformity of particularly the  
21 injuries on the back and top of the head, we  
22 suggested a bat. I don't recall at what point we  
23 were told they had found a bat.

24 Q Did you put baseball bat in your report?

25 A I don't recall whether I said baseball or just bat.

1 In fact, I'm not sure it's in the report. That may  
2 just be what we told them after we looked at the  
3 injury and saw that it was consistent with a  
4 cylindrical object.

5 Q And he died in the early a.m. hours of December 13th.  
6 Is that what you believe?

7 A We were given a time when it was thought he died.  
8 When we used to go to scenes, we would examine the  
9 body and try to estimate the time of death from  
10 examining the rigor mortis first in the wrists, the  
11 hands, the elbow, the shoulders, starting out in the  
12 ankles and working up to the hips and then finally in  
13 the abdomen and back and could get some sort of  
14 estimate of time of death if we see the body at the  
15 scene. But we don't do that any more. And the  
16 bodies are often refrigerated before we get them.

17 So we simply either agree that the time of death  
18 is consistent. Or if there's something totally  
19 inconsistent with it, we say so, and they try to  
20 establish a better time of death. But we were given  
21 that time of death and it's not inconsistent with the  
22 findings.

23 Q Early a.m. hours of December 13th?

24 A Correct.

25 Q Now, does that mean between like 1 and 5 or 3 and 7



1 or any time in there?

2 **A** A.M. is from just after midnight 'til noon. So early  
3 a.m. is generally somewhere between midnight and six  
4 in the morning.

5 **Q** Okay. You can't determine anything other than that  
6 range?

7 **A** That's correct. Cannot.

8 **MR. WHITLARK:** I think that's all I have, Your  
9 Honor.

10 **THE COURT:** All right. Mr. Kendrick.

11 **MR. KENDRICK:** No questions, Your Honor.

12 **THE COURT:** Mr. Riley?

13 CROSS EXAMINATION

14 **BY MR. RILEY**

15 **Q** Excuse me. Doctor, would a time of death of the  
16 afternoon of December 14th be consistent with your  
17 findings?

18 **A** Based on the history we're given of the condition of  
19 the body as it was found, may not have been. I  
20 cannot address that accurately because I don't have  
21 those findings here with me at this time.

22 **Q** Thank you, sir.

23 **A** You're welcome.

24 **THE COURT:** Redirect.

25 REDIRECT EXAMINATION

1 **BY MR. MEADORS**

2 **Q** And, Doctor, it could have been a few hours before  
3 you were told, correct?

4 **A** Certainly.

5 **Q** Thank you.

6 **THE COURT:** Now, anything else?

7 **MR. WHITLARK:** Your Honor, may we have a bench  
8 conference, please?

9 (Whereupon, a bench conference is had)

10 **MR. WHITLARK:** Thank you, Your Honor. That's  
11 all we have, Your Honor.

12 **THE COURT:** All right. You may come down,  
13 Doctor. May the doctor come down without objection?  
14 Hearing none.

15 **MR. WHITLARK:** No objection, Your Honor.

16 **THE COURT:** Have a nice trip back to Newberry,  
17 Your Honor.

18 **THE WITNESS:** Thank you, Your Honor.

19 **THE COURT:** All right, ladies and gentlemen.  
20 That will conclude the testimony for today, and we  
21 will reconvene again tomorrow. Is 9:00 all right  
22 with everybody? We've been running hard and we're  
23 going to keep running hard because I think we're  
24 moving right along. I can't tell you, because I  
25 don't know, what tomorrow will hold. But we'll

1 reconvene at 9:00. Again, do not discuss the case  
2 among yourselves -- let me just say this in  
3 addition -- among ourselves or with anyone else over  
4 the evening hours.

5 Really I caution you not to have contact with  
6 anybody else other than your regular family and  
7 friends. And there may be -- because, as you know,  
8 if you live in the Camden vicinity, the newspaper  
9 comes out triweekly. So there'll be an edition  
10 tomorrow. And the press has been present and  
11 probably will have some report because the trial may  
12 be of some public interest.

13 So again I'm going to ask you and caution you  
14 not to read press accounts of the trial. You've  
15 heard it, seen it. Whatever you read would be  
16 somebody else's interpretation of what's been going  
17 on in the courtroom. And you are 13 intelligent  
18 people. You've been taking your own notes. So thank  
19 you very much. I would appreciate it if you'd  
20 refrain from any press coverage. Have a pleasant  
21 evening. We'll see you in the morning.

22 (Jury out at 6:18 p.m.)

23 **THE COURT:** All right, counsel. Let me see you  
24 in chambers, please, as soon as the jury leaves.  
25 Take a comfort break if you wish. But I need to see

1 all counsel in my chambers.

2 (Whereupon, the proceedings are concluded for  
3 the day, to be reconvened tomorrow morning)

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Friday, May 9, 2008

(WHEREUPON, State's Exhibit No. 121 is marked for identification.)

(WHEREUPON, State's Exhibit No. 122 is marked for identification.)

(WHEREUPON, State's Exhibit No. 123 is marked for identification.)

(WHEREUPON, State's Exhibit No. 124 is marked for identification.)

(WHEREUPON, State's Exhibit No. 125 is marked for identification.)

(WHEREUPON, State's Exhibit No. 126 is marked for identification.)

(WHEREUPON, State's Exhibit No. 127 is marked for identification.)

**THE COURT:** The State ready to proceed?

**MR. MEADORS:** Yes, sir. Your Honor, I guess we have to proffer this. Michael Jenkins.

**MR. SHELDON:** Judge, we're going to object before he calls him to the stand to his testimony.

**THE COURT:** All right. On what basis?

**MR. SHELDON:** Crawford. Another Crawford issue, Judge.

**MR. MEADORS:** Michael Jenkins.

**THE COURT:** All right. I guess I have to

1       overrule it because I don't really understand what it  
2       consists of at this point.

3                   **MR. SHELTON:** Judge, if we could argue it after  
4                   the statement is proffered.

5 **THE COURT:** That's fine.

6           MICHAEL JENKINS, after being duly sworn,  
7   testifies as follows:

8                   **THE CLERK:** Thank you. Please be seated in the  
9                   witness chair. State your full name for the record.  
10                  Right this way, please, sir.

11 DIRECT EXAMINATION

12 BY MR. MEADORS

13 Q Good morning, Mr. Jenkins.

14     **A**     Good morning.

15 Q Just talk down in this thing right now just so the  
16 Judge can hear you. You don't have to get too close.  
17 Where are you from?

18 **A** From here in Columbia.

19 Q I won't go totally over your background at this  
20 point. But were you picked up on a bench warrant  
21 sometime early in January of 2007?

22     **A**     Yes, sir, I was.

23 Q And --

24                   **THE COURT:** I'm sorry. What did you say?

25                   January?

1 Q Were you picked up on a bench warrant sometime in  
2 January of 2007? And those are bench warrants for  
3 what?

4 A They were for not paying court costs on bounced  
5 checks.

6 Q Fraudulent checks, court costs not being paid?

7 A Yes, sir.

8 Q Had you paid the checks off?

9 A Yes, sir. I just didn't pay the court costs.

10 Q And from what county were they?

11 A Kershaw County.

12 Q And where were you initially housed when you got  
13 picked up?

14 A I was in Lexington County and they brought me over to  
15 Kershaw from Lexington County.

16 Q And when you came in the Kershaw County Detention  
17 Center, Mr. Jenkins, where did you go?

18 A I went to D pod.

19 Q And approximately what time period was that?

20 A It was about mid-January, early to mid-January.

21 Q And a lot of people in jail?

22 A There was a few, probably 20 something.

23 Q All right. And while you were in D pod one evening,  
24 did an individual get arrested for DUI?

25 A Yes.

1 Q Please tell the judge about that. What happened when  
2 this person for DUI got arrested?

3 A Well, he'd come in. He was still kind of intoxicated  
4 a little. We had the TV on and he just got kind of  
5 complaining about the noise and wanted us to turn it  
6 off. And I told him, I said, "This ain't Holiday  
7 Inn, you know. This is jail."

8 Q You said, "This ain't the Holiday Inn, this is jail"?

9 A Yeah. And so he got upset and kind of put his finger  
10 in my face and we got into it and they this sent me  
11 to A pod for a night.

12 Q Sent you to A pod for a night?

13 A Yeah. Cool off some, let him cool off and get out of  
14 there the next day.

15 Q Prior to that had you ever been in any trouble at the  
16 jail?

17 A No. No, sir.

18 Q And do you remember what cell you were in in the A  
19 pod?

20 A It was A2.

21 Q And how many nights were you in A pod?

22 A Just overnight.

23 Q You're now in A pod, a2 in A pod. What did you do  
24 when you got in there? Like you say, it's not the  
25 Holiday Inn. What did you do?



1     **A**     Yeah.  There's not much to do.  Just situps,  
2             push-ups, just kind of trying to kill time.

3     **Q**     What, if anything, did you hear while you were in A2  
4             of the A pod of the Kershaw County Detention Center?

5     **A**     Well, in the cell next to me to the right of me there  
6             was -- I heard some talking over there.  And I  
7             happened to hear Josh's name and Rocky Branch and  
8             someone talking about a piece of shit trailer that  
9             was easy to get into and --

10    **Q**     A piece of shit trailer easy to get into?

11    **A**     Yeah.

12    **Q**     All right.

13    **A**     And he started talking about how when he went back to  
14             school and went in the cafeteria jaws were going to  
15             drop.  They was going to be respected because he was  
16             a killer now, and just pretty much bragging about the  
17             whole thing.

18    **Q**     Did you recognize the name Joshua?

19    **A**     Yeah.

20    **Q**     And the Rocky Branch area?

21    **A**     Mm-hmm (affirmative).  I knew who they were talking  
22             about then.

23    **Q**     And saying when he goes back to school they're going  
24             to be heros?

25    **A**     Yeah.  Bragging about how they were going to be

1           feared and respected and stuff like that.

2    Q       And did he say anything about they didn't have

3           anything on us?

4    A       Yeah.

5    Q       What was it?

6    A       They were careful. They didn't have anything on

7           them. They were going to get off and go back and --

8    Q       Be heros?

9    A       -- be heros. Yeah. Or pretty much feared and

10           respected. They were killers. So --

11   Q       Feared and respected. And how did that make you feel

12           when you heard that?

13   A       Pretty disgusted, angry.

14   Q       How many nights were you in A pod?

15   A       Just overnight.

16   Q       Where did you go after A pod?

17   A       Back into D pod.

18   Q       Did you -- and let me just show you what's marked for

19           these purposes as 121. Do you recognize that?

20   A       Mm-hmm (affirmative).

21   Q       And if you don't mind just saying yes or no for the

22           record.

23   A       Oh. Yes. I do.

24   Q       And where is A2?

25   A       It's to your right when you walk in the second door.

1 Q Will you point to it here for His Honor?

2 A Right here.

3 Q And you heard these noises or these voices saying,

4 I'm going to be a hero, they ain't got anything on me

5 when I get out from where?

6 A From to the right of me. It would be A3.

7 Q A3. Now, here's another picture of 123. Can you see

8 A2 and A3 in here?

9 A Yes, sir, I can.

10 Q Point to where you were. Point to where the sounds

11 were coming from. Is there any doubt in your mind

12 they were coming from that cell?

13 A No, sir.

14 Q And is this the inside of a door in the A pod? 124?

15 A Yes.

16 Q And do you know whether or not that door was opened?

17 A It was closed.

18 Q Okay. And you didn't have any trouble hearing

19 nextdoor?

20 A No.

21 Q And is this a full length one? 122, is that a

22 picture of the A pod going down from the door down

23 the whole hallway?

24 A Yes, sir, it is.

25 Q You said you were disgusted about it. Did you learn

1           who was in A3?

2   **A**    Yes, I did. I was curious as to who was saying these  
3           things and I asked the C.O. on duty that night,  
4           Harvey.

5   **Q**    C.O. Harvey?

6   **A**    Yes. Who was next to me. And he said that it was  
7           Chris Whitehead.

8   **Q**    Is there a chapel there or some type of place of  
9           worship?

10  **A**    Yeah. Yes, sir. There is a -- they used the  
11          multi-purpose room.

12  **Q**    And did you go there and see Chris Whitehead in the  
13          multipurpose room in the chapel area at some point  
14          after that?

15  **A**    I did. But I didn't know -- I had never seen him  
16          before. I didn't know who he was. I didn't know  
17          until after the service. I was speaking with  
18          Reverend Nash.

19  **Q**    For these purposes now you can tell what happened in  
20          there.

21  **A**    Okay. I was -- well, during the thing I had  
22          mentioned something about it, how I was having a hard  
23          time dealing with that and the anger issue.

24  **Q**    You mentioned this to the reverend?

25  **A**    Yes.

1 Q What you'd heard?

2 A Yes, sir. And at the end I was speaking to him about  
3 that issue and other things going on. And there is a  
4 little notebook that you come up, you sign prayer  
5 requests and your name on. And when he walked by me,  
6 like I said, I didn't know who he was, never seen him  
7 before or anything. And I glanced down after he left  
8 and I saw Chris Whitehead, and I was like, wow, you  
9 know, that was him in here the whole time.

10 Q So was he in there when you were talking to the  
11 priest telling him what you'd heard?

12 A Yes, sir.

13 Q Bothering you?

14 A I don't recall him coming back after that.

15 Q And had he put on that book asking he wanted to ask  
16 for forgiveness for something?

17 A Yes, sir. That he had done something bad he needed  
18 forgiveness for.

19 Q That's the second time you've had an encounter,  
20 either voice when you were told who was nextdoor, and  
21 now this time you see the name of Whitehead?

22 A Yes, sir.

23 Q Did you have an occasion to see him again either in  
24 the multi-purpose room or somewhere else?

25 A The last time was during our -- we were taking blood

1 tests, blood samples for -- just the random tests  
2 that they have in there for diseases and stuff.

3 Q From whatever. That's fine.

4 A Yeah. And I had seen him again. They had brought  
5 him up there. He was a few people up in line of me  
6 in an orange jumpsuit. And I heard him again talking  
7 about Josh and Rocky Branch and everything.

8 Q Did it sound like the same voice to you?

9 A Yes, it did.

10 Q Did he have an unusual voice?

11 A I recognized his voice. I recognized his face after  
12 that once I had put the face with the voice.

13 Q Did he have a distinctive voice?

14 A Yeah. I'd say pretty distinctive. I can recognize  
15 voices pretty good. He had kind of an accent, you  
16 know, talking kind of thuggish.

17 Q Accent, talking kind of thuggish?

18 A Yeah.

19 Q And at that point you recognized his voice?

20 A Mm-hmm (affirmative).

21 Q And you've now also seen him in the chapel?

22 A Mm-hmm (affirmative).

23 Q And what did he say then that caught your attention?  
24 Did he say Josh? Or what else did he say?

25 A Yeah. I heard him talking about it again, him

1 talking about Josh and Rocky Branch. And --

2 Q Tell the judge, --

3 A -- he actually mentioned a couple of things.

4 Q -- what you did then?

5 A I got pretty upset, kind of went for him. I wanted  
6 to -- you know, I was upset about hearing it, just  
7 disgusted about the whole thing.

8 Q And did go put your hands on him?

9 A Yes. I wanted to hurt him.

10 Q And they stopped you?

11 A Yeah. Pulled us apart, took me out, Jenkins, Officer  
12 Jenkins.

13 Q And did you see him any more after that?

14 A No, sir.

15 Q Had you ever met me until the last month or so?

16 A No, sir.

17 Q And when you got through with your -- had anybody in  
18 my office, Solicitor Giese's office -- excuse me --  
19 ever help you or even know about your charges?

20 A No, sir.

21 Q And you finished out your charges here. Did you have  
22 some charges in another county?

23 A In Richland County. They moved me from Kershaw to  
24 Richland. I had a driving under suspension charge  
25 there.

1 Q And did you get through with all of those before I  
2 even knew you existed on the face of this earth,  
3 right?

4 A Oh, yeah. I got out, moved to Alabama, got married,  
5 came back.

6 Q And if you know, somewhere through the family or  
7 somebody your name came to us, correct?

8 A Yes, sir.

9 Q And is that Mark "Dog" Austin who got in touch with  
10 you?

11 A Yes, sir.

12 Q Investigator Austin?

13 A (Nods head affirmatively).

14 Q And did you come and relay to us basically what  
15 you've just told His Honor?

16 A Yes, sir.

17 Q Beg the Court's indulgence. Is Chris Whitehead in  
18 here?

19 A Yes, sir.

20 Q Can you tell us where he is? Tell the judge.

21 A On the end of the table right there.

22 Q With the tie and white shirt?

23 A Yes, sir.

24 Q Now, you don't mind being here today, do you?

25 A No. I don't.



1           **THE COURT:** Just for clarity, sir, when you say  
2 you recognize him, there's two guys with a white  
3 shirt and tie over there.

4           **THE WITNESS:** Inbetween the other two boxed in.

5           **THE COURT:** Not the blonde headed fellow, the  
6 other guy in the middle?

7           **THE WITNESS:** Yeah. In the middle.

8           **THE COURT:** The record will reflect the witness  
9 identified the defendant, Whitehead.

10          **MR. REUWER:** I'm in the jail a lot, Your Honor.

11          **THE COURT:** I understand.

12          **MR. MEADORS:** Thank you.

13          **THE COURT:** Cross examination.

14                           CROSS EXAMINATION

15   **BY MR. WHITLARK**

16   **Q**   Mr. Whitehead, when is the last time you were in  
17       trouble with the law?

18   **A**   It's been quite a good little while since I out I'd  
19       say. I've been staying out of trouble since then.

20   **Q**   Do you remember the last time you had a problem, a  
21       legal problem in court with the solicitor?

22   **A**   I had just went to court December 5th for a driving  
23       under the influence and simple possession. But that  
24       was from 2003. It was just a late court date.

25   **Q**   Who prosecuted the case?

- 1    **A**    I'm not sure of the judge. Or it was just a, you  
2           know, magistrate office court thing.
- 3    **Q**    All right. Was it a Highway Patrolman?
- 4    **A**    No. It was a deputy.
- 5    **Q**    Okay. How many times have you been arrested?
- 6    **A**    Well, in my younger days I had a couple of  
7           misdemeanors. Probably four or five times.
- 8    **Q**    How many times have you been arrested for bad checks?
- 9    **A**    Two times.
- 10   **Q**   Two?
- 11   **A**   Yes, sir.
- 12   **Q**   I'm going to hand this up to you and ask you to take  
13          a look at it. Would you?
- 14   **A**   Yes, sir.
- 15   **Q**   I'll just tell you right now, that's your record. I  
16          want you to take a look at it. How many times have  
17          you been arrested for writing bad checks?
- 18   **A**   I have only been picked up twice.
- 19   **Q**   Mm-hmm (affirmative).
- 20   **A**   The last time there was like 14 checks but I was only  
21          picked up once.
- 22   **Q**   You had warrants issued in -- let's see. Let me go  
23          through it with you. One, two, three, four. I'm  
24          counting 19. Does that sound about right?
- 25   **A**   That's probably how many checks there were, yes. I

1           wasn't picked up 19 times though. Is there maybe  
2           dates on there you can look at?

3    Q    Mm-hmm (affirmative). And have you been -- what were  
4           you in jail in Kershaw for when this occurred  
5           allegedly?

6    A    I had some bench warrants for the bounced checks. I  
7           didn't pay the court costs on them.

8    Q    Is that one of the two times or three or four times  
9           you've been arrested for?

10   A    That was the second time I had been arrested for  
11          that, yes.

12   Q    In Kershaw?

13   A    Mm-hmm (affirmative).

14   Q    How did you get involved in this case again? I mean,  
15          how did it come about that you're here today? I  
16          mean, originally, how were you contacted, the first  
17          person you ever talked to about testifying?

18   A    I was contacted by Mark Austin.

19   Q    And what were you told?

20   A    That they just wanted to meet with me.

21   Q    Okay.

22   A    Asked me about what I knew.

23   Q    What was the date?

24   A    I don't remember the exact date. It was February  
25          maybe.

1 Q This past February?

2 A Yeah.

3 Q Did you know anybody involved in this case? Do you  
4 know any of the personalities involved?

5 A Do you mean like --

6 Q Individuals. Did you know any of the individuals in  
7 this case?

8 A Yeah. Well, I had knew Josh in the past. I hadn't  
9 talked to him for a couple of years since then.

10 Q Were you good friends with him?

11 A I just knew him. More so I knew friends of his.

12 Q Did you purchase drugs from him?

13 A No, sir.

14 Q Okay. Have you ever been over to that house before?

15 A No, sir.

16 Q Where did you meet Josh, Josh Zoch?

17 A For the first time or just --

18 Q Yeah.

19 A It's hard to say. Probably at a get together at  
20 somebody's house or something maybe.

21 Q Okay. So would you say you were friends with him?

22 A What's that?

23 Q You were friends with him?

24 A Yes. He was my friend. I'd consider him a friend.  
25 He was a good person, had a good heart.

1 Q Okay. All right. Were you under any charges when  
2 you were contacted by Mark Austin?

3 A No, sir, I was not.

4 MR. WHITLARK: That's all I have, Your Honor.

5 THE COURT: Mr. Kendrick.

6 CROSS EXAMINATION

7 BY MR. KENDRICK

8 Q Mr. Jenkins, you said that on the times you heard Mr.  
9 Whitehead talking you overheard him talking to  
10 someone else, right?

11 A Yes. I don't know who he was talking to though.

12 Q You don't?

13 A No, sir.

14 Q How many people were these people that he was talking  
15 to around him?

16 A It sounded like just one.

17 Q What did they look like?

18 A I have no idea. It's hard to see behind a wall.

19 Q You knew what dorm or pod they were in, right?

20 A Yes, I did.

21 Q So you could have found their names out the same way  
22 you found out Mr. Whitehead's name?

23 A Yes, I could have.

24 Q But that didn't happen, right?

25 A No. I was only curious as to know who was speaking

1 next to me bragging about it.

2 Q Your focus was on Mr. Whitehead, on the person that  
3 you claim you heard talking?

4 A Well, my focus was on the person next to me that I  
5 heard talking. I didn't know at the time it was Mr.  
6 Whitehead until after I was told.

7 Q At the time that you ran into him at the chapel and  
8 then another time at I guess a blood testing, you all  
9 were in different pods?

10 A Yes. We were.

11 Q In Kershaw County do they mix people from different  
12 pods to go do stuff like this?

13 A Sometimes. There are some things ran a little  
14 backward there sometimes there in my opinion.

15 Q You said the first person you ever talked to about  
16 this case was Mr. Austin, right?

17 A Yes, sir.

18 Q And Mr. Austin is an investigator for Mr. Meadors,  
19 right?

20 A Yes.

21 Q How did he get the information that led to you? How  
22 did he get your name?

23 A I don't know.

24 Q You never talked about that?

25 A No.

1 Q He just called out of the blue and said, we have  
2 determined that you overheard our suspect in the  
3 jail?

4 A Well, they had heard it from someone else involved in  
5 the case I'm sure. And I told them that, yeah, that  
6 was true and I didn't any problem cooperating.

7 Q How is it possible they could have heard it from  
8 someone else in the case if he was the first person  
9 you ever talked to?

10 MR. MEADORS: Your Honor, objection.

11 A He was the first person I ever talked to. But he may  
12 have talked to someone else that knew about it.

13 Q Okay. I think he's answered. You understand when I  
14 say who did you talk to about what you overheard, I  
15 mean who did you talk to? And you said the first  
16 person was Mr. Austin. No one else? I mean, did you  
17 talk to anybody about this?

18 A Oh, okay. I thought you were saying involved in this  
19 case. No. I had mentioned it to someone, Chris  
20 Kaywood that I was locked up with at the time. I  
21 had --

22 Q Who is that?

23 A A friend of mine I was locked up with at the time,  
24 Christopher Kaywood.

25 Q Who is Christopher Kaywood?

1    **A**    He is just someone else that was in D pod with me  
2           then.

3    **Q**    So you talked to him.  Who else did you talk to about  
4           it?

5    **A**    That was pretty much it that I can remember.

6    **Q**    So Mr. Kaywood was the only person you ever told  
7           about what happened?

8    **A**    It's the only person -- well, I mean, since then I've  
9           spoken with other people, yeah.

10   **Q**    Sure.  Absolutely.  Once you got involved, you told  
11          everybody, right?

12   **A**    Oh, yeah.  Sure.

13                **MR. KENDRICK:**  That's all I have, Judge.

14   **A**    Okay.

15                **MR. REUWER:**  May it please the Court.

16                **THE COURT:**  Mr. Reuwer.

17                **MR. REUWER:**  Thank you, Your Honor.

18                                CROSS EXAMINATION

19   **BY MR. REUWER**

20   **Q**    Good morning, Mr. Jenkins.

21   **A**    Good morning.

22   **Q**    Mr. Jenkins, when were you in the Kershaw County  
23          Detention Center?

24   **A**    I was there for about four months.  I was picked up  
25          in January and I was let out maybe May.  It's hard to



1 tell and keep track of time in there. A day feels  
2 like week. A week feels like a month, you know.

3 Q So you were there for approximately how long?

4 A I was there for at least three to four months.

5 Q Okay. How many pods are there at the Kershaw  
6 County -- oh, have you ever seen me down at the jail?

7 A I don't think so.

8 Q We've never talked either, right?

9 A No, sir.

10 Q How many pods are there at the Kershaw County jail?

11 A I don't know exactly. It's A, B, C, D, E, H.

12 Q A, B --

13 A I've never seen the whole layout of the jail or  
14 anything.

15 Q But tell me what they are. A, B, C, D, H?

16 A There's H, F pod, G I believe. I'm not sure of the  
17 rest of them, to be honest.

18 Q Okay. Let me direct your attention to A pod where  
19 you allege -- how long did you spend in A pod?

20 A Just overnight.

21 Q One night?

22 A Yes, sir.

23 Q Out of your four months there?

24 A Mm-hmm (affirmative).

25 Q Okay. What color uniforms do they wear in A pod?

1    **A**    It's whatever uniform you have on.  They don't  
2           usually change your uniform.

3    **Q**    Okay.  What pod is above A pod?

4    **A**    I think maybe F could be.

5    **Q**    Okay.  What color uniforms do they wear in F pod?

6    **A**    Red.

7    **Q**    Do you know what night that you were in A pod; you  
8           know, that you've said you heard this?

9    **A**    Yeah.  I mean, not the exact date or time.  I know it  
10          was in January, probably mid-January, late January.

11   **Q**    In January?  Okay.  You had never met Chris Whitehead  
12          before January?

13   **A**    No, sir.

14   **Q**    What I mean before, up through the night you heard  
15          this?

16   **A**    Yeah.  I'd never seen him before.

17   **Q**    Okay.  You had never heard him talk, Chris Whitehead  
18          talk before?

19   **A**    No, sir.

20   **Q**    Okay.  You had -- no one had pointed out to you  
21          before January that this is Chris Whitehead?

22   **A**    That's correct.

23   **Q**    You hadn't heard a tape of his voice before?

24   **A**    No, sir.

25   **Q**    And you're not a voice expert by any means?

1     **A**     No, I'm not.

2     **Q**     Mr. Jenkins, do some people sound alike, like other  
3             people?

4     **A**     I think everyone is pretty distinctive in their own  
5             voice. I haven't heard anybody that sounds like me  
6             or someone that sounds like you, you know.

7     **Q**     You don't think people -- you know how bodies --  
8             would you agree that people's bodies fall into  
9             categories?

10    **A**     Sure.

11    **Q**     Okay. Would you agree that people's voices can fall  
12             into similar -- categories of similarity? I'm not  
13             looking for perfection here. I'm just --

14    **A**     Well, yeah. I mean, sure. Somewhat, you know.

15    **Q**     So people's voices can sound alike?

16    **A**     Sound like alike, yeah. God made us all unique. We  
17             each have our own voice. But sure they could sound  
18             alike.

19    **Q**     Okay. How many people were -- how many cells are  
20             there in A pod?

21    **A**     There was like four or five. I think it's five.

22    **Q**     Five cells or four?

23    **A**     I believe it's five.

24    **Q**     Five? And how many people are in each cell?

25    **A**     Usually just one. Because when you're put in there

1           it's, you know, solitary.

2    Q       Okay. So you're not aware that there are three to  
3           four people in a cell in A pod?

4    A       I've only been in there one time and I was by myself.  
5           And from what I've heard, you go in there by  
6           yourself.

7    Q       Okay. Have you -- you're locked in your cell?

8    A       Mm-hmm (affirmative).

9    Q       Yes?

10   A       Yes. I was locked in there.

11   Q       Is there space below the door and above the door?

12   A       A little. And there's a little flap.

13   Q       So you can hear through the doors?

14   A       Yeah. I mean, you can hear pretty good in there.

15   Q       Is there anything else in the cell? Are there vents  
16           in the cell?

17   A       Yeah. There's vents.

18   Q       How many vents in the cell?

19   A       Probably I think just one.

20   Q       Just one vent per cell?

21   A       Mm-hmm (affirmative).

22   Q       But every cell has those openings in the door and a  
23           vent in it?

24   A       Mm-hmm (affirmative).

25   Q       And you said you could hear outside? When you're in

1 the cell you can hear voices outside?

2 **A** Oh, yeah.

3 **Q** Can you hear -- did you hear more than one -- can you  
4 hear more than one person talking at once?

5 **A** Yeah. At that time there was basically just one loud  
6 voice and --

7 **Q** But you can hear more than one person at a time?

8 **A** Yeah. If there's more than one person talking, I'm  
9 sure you can.

10 **Q** Does some of the noise come through the door?

11 **A** It's just kind of like an echo in there. I mean, you  
12 can hear.

13 **Q** Do some voices come through the vent?

14 **A** Yeah. I'm sure they come through a vent or --

15 **Q** Can you tell --

16 **A** -- anywhere there's an opening.

17 **Q** I'm sorry.

18 **A** Anywhere there's an opening, I'm sure you can hear  
19 through it, you know.

20 **Q** Okay. And do you know if the vents are connected to  
21 other vents in cells elsewhere in A pod?

22 **A** No. I don't know. I don't know the outlay at the  
23 jail, like I said.

24 **MR. REUWER:** Well, for purposes of  
25 identification only on Whitehead I'd like to have

1           this marked, please. And this one. These are  
2           diagrams of A pod. Your Honor, I won't make this too  
3           long. May I have these two marked for I.D. only,  
4           please.

5                   (WHEREUPON, Defendant Whitehead's Exhibit No. 3  
6           is marked for identification.)

7                   (WHEREUPON, Defendant Whitehead's Exhibit No. 4  
8           is marked for identification.)

9    **Q**    I want to show you -- first what I'm showing you is a  
10   schematic of the jail. Can you identify where A pod  
11   is on that? And we've labeled it as Whitehead No. 4  
12   for I.D.

13   **A**    It's hard to read any of this. It's pretty --

14                   **MR. MEADORS:** There's a picture of it up there  
15   if you want to --

16   **Q**    Well, I want him to see the schematic. Mr. Jenkins,  
17   aren't there six cells in A pod?

18   **A**    Okay. Yeah. I see now. You've got it circled here.

19   **Q**    Six cells?

20   **A**    Yeah. It looks like there's six in there.

21   **Q**    Did you know that some of the cells have two vents in  
22   them each?

23   **A**    No. I couldn't remember that from one night what  
24   they look like.

25   **Q**    Okay. You don't know if the vents are connected to

1 other cells outside A pod, do you?

2 A No, I don't know if they are.

3 Q So voices you hear could be -- voices when you're in  
4 A pod could come from other pods if they're connected  
5 by those vents, couldn't they?

6 A I'm pretty sure it was coming from next to me.

7 Q How are you sure?

8 A Pretty sure.

9 Q No. I'm talking about how are you sure?

10 A It's just common sense. I mean, you can tell. I  
11 mean, you'd have to be there really. But common  
12 sense can tell you where it's coming from.

13 Q I've actually been in A pod. Let me ask you this.

14 A Okay.

15 Q How do you -- do you know of whether the vents in A  
16 pod are connected to vents in pods elsewhere in the  
17 jail?

18 A No. I'm sorry. I don't know that.

19 Q Okay. Do you know -- but you said you could hear  
20 voices through them? Sounds?

21 A I said you could, yeah.

22 Q And from the doors?

23 A Mm-hmm (affirmative).

24 Q Now, and there are six cells in A pod?

25 A Yes, sir.

1 Q And, Mr. Jenkins, A pod is right below which pod?

2 A I believe maybe F.

3 Q Okay. F pod?

4 A Is there a diagram here?

5 Q And let me direct your attention to Defendant's  
6 Exhibit Whitehead 3 for I.D. only.

7 A Okay.

8 Q And that's a diagram, a bigger diagram I hold in my  
9 hand of the cells of A cell. Do you see the six A  
10 pod cells?

11 A Yes, sir.

12 Q And above them are six cells in pod which you  
13 correctly identified from the schematic, correct?

14 A Yes, sir.

15 Q And I want to be clear. That F pod is right above A  
16 pod, correct?

17 A Yes, sir.

18 Q Okay. Now, Mr. Jenkins, why are people in A pod?

19 A Either for punishment or protective custody or  
20 something like that.

21 Q And are there restrictions with punishment and  
22 protective custody?

23 A Well, I know I had to leave my canteen items behind  
24 whenever I went in there.

25 Q So, no canteen items are brought in?



1     **A**    Yes, sir.  No visitation or phone calls.

2     **Q**    No phone calls?

3     **A**    No visitation or phone calls.

4     **Q**    No visitation from friends, family or anybody except  
5           staff?

6     **A**    If you're in punishment, I'm pretty sure you don't  
7           get no visitation.  Yeah.

8     **Q**    I'm sorry.  I didn't hear that.

9     **A**    Yeah.  If you're in there for punishment.  I'm not  
10          sure how it works if you're in there for protective  
11          custody or something like that.

12    **Q**    Are you allowed to go to chapel?  Which you said it  
13          was in the multipurpose room?

14    **A**    Mm-hmm (affirmative).

15    **Q**    Are you allowed to go to chapel if you're in A pod?

16    **A**    Once again, I'm not sure of the exact rules.  I mean,  
17          I was only in there with one night.  I didn't stay in  
18          there all week.  But I'm pretty sure you would be  
19          able to.

20    **Q**    You're familiar with rules of the jail?

21    **A**    Somewhat familiar, yeah, with certain things.

22    **Q**    You've been there before?

23    **A**    Yeah.

24    **Q**    On more than one occasion?

25    **A**    Well, I've only spent a good while there one time to

1 know the rules and everything.

2 Q You spent four months at Kershaw County?

3 A Mm-hmm (affirmative).

4 Q Detention Center correct, Mr. Jenkins?

5 A Yes, sir.

6 Q I only want you to tell me the truth so I can  
7 understand, please. Where is the -- there is no  
8 chapel. Where is chapel held?

9 A In the multipurpose room.

10 Q And the multipurpose room is down a hall outside of  
11 the pod's area, isn't it?

12 A Yes, sir.

13 Q Okay. And on -- you said that you first -- I want to  
14 be clear -- that you first saw Chris Whitehead in the  
15 chapel service?

16 A That's when I first saw him, yes.

17 Q Okay.

18 A And actually put a name with a face.

19 Q A name and a face together?

20 A Mm-hmm (affirmative).

21 Q And your testimony is that you did that by seeing him  
22 sign a prayer list for prayer?

23 A Yes.

24 Q Okay. And when did that take place? Before the  
25 chapel service, during the chapel service, or after

1 the chapel service?

2 A After the chapel service.

3 Q So you're still in the chapel service, and it's the  
4 end of the chapel service?

5 A Mm-hmm (affirmative).

6 Q That's a yes?

7 A Yes, sir.

8 Q And who is the minister?

9 A Reverend Nash.

10 Q And this is where people, like in my church, we call  
11 it a prayer line?

12 A Yes, sir.

13 Q So others can pray about it?

14 A Yes, sir.

15 Q And specifically what is written down, not the -- is  
16 it the petition? Do you understand what that word  
17 means? The prayer request?

18 A Yes, sir.

19 Q And then what else is written there that would get  
20 you to identify Christopher Whitehead?

21 A You write your name and then you write your prayer  
22 request.

23 Q And what did you see written there? You don't have  
24 to tell what the prayer request is, but --

25 A I saw his name, Christopher Whitehead. And that's

1           when I realized that he was in there and I saw him  
2           walk out right after he walked out.

3    **Q**     Printed?

4    **A**     Kind of mixed print/cursive type of deal.

5    **Q**     Okay. Had you ever seen Christopher Whitehead's  
6           signature before?

7    **A**     No, sir.

8    **Q**     Had you ever seen Christopher Whitehead write  
9           anything before?

10   **A**     No, sir.

11   **Q**     Now, inbetween the chapel time and going backwards  
12           and the time you first allegedly heard this in A pod,  
13           was there -- you said there was a time you asked a  
14           member of the Kershaw County staff about who was --  
15           what did you ask and who did you ask?

16   **A**     It was while I was in there. I asked C.O. Harvey.

17   **Q**     Okay.

18   **A**     And --

19   **Q**     Is he in the room?

20   **A**     I saw him earlier.

21   **Q**     Okay.

22   **A**     Oh, yeah. He's over here.

23   **Q**     Okay. And what did you ask Officer or C.O. Harvey?

24   **A**     I just asked him who was in the cell next to me.

25   **Q**     Okay. And who did he identify?

1     **A**     Christopher Whitehead.

2     **Q**     Okay. Did he know -- when did you ask him that in  
3             time relation?

4     **A**     It was -- he had come walking through there. It  
5             was -- I want to say that it was the next day,  
6             probably early the next day before I was sent back  
7             over to D pod.

8     **Q**     So it was while you were still in A pod?

9     **A**     Yeah.

10    **Q**     Okay. Were you in your cell?

11    **A**     Yes, I was.

12    **Q**     And were you talking through the door?

13    **A**     Through the little slot thing in the door in those  
14             pictures there.

15    **Q**     The slot thing through the door?

16    **A**     Mm-hmm (affirmative).

17    **Q**     Okay. And did he know which cell you were talking  
18             about?

19    **A**     The one next to him, which to the right of me --

20    **Q**     And which cell were you in?

21    **A**     -- would be A3. I was in A2.

22    **Q**     You were in A2?

23    **A**     Yes, sir.

24    **Q**     But showing you what's been marked as Whitehead's  
25             Exhibit 3 or 4, in fact, there are two cells on

1       either -- there is one cell on either side of A2, is  
2       there not, Mr. Jenkins?

3     **A**    Yes, there is.

4     **Q**    Your Honor, I'm almost finished. So, Mr. Jenkins,  
5       the only -- is it possible that C.O. Harvey didn't  
6       know which cell you were talking about?

7     **A**    No.

8     **Q**    How is that not possible?

9     **A**    Because I was specific.

10    **Q**    Specific in what way, Mr. Jenkins? Help me.

11    **A**    He was in the cell right next to me to my right.

12    **Q**    Oh. You said -- I didn't hear that on your original  
13       testimony. You said it was to your right?

14    **A**    Yes. To my right.

15    **Q**    And there was only one person in that cell?

16    **A**    Yes. I'm sure --

17    **Q**    So the only way -- I'm sorry.

18    **A**    Yeah. Because he would have told me there was more  
19       than one person if there was more than one.

20    **Q**    So help me. To be clear, the only way that you knew  
21       that -- allegedly knew that it was Chris Whitehead is  
22       through what someone else told you?

23    **A**    Yes. That's correct.

24    **Q**    Okay. You don't know whether -- with all respect,  
25       you don't know whether C.O. Harvey told you the truth

1 or not, do you?

2 **A** I don't see why he'd have a reason to lie.

3 **Q** Is it possible he could have not told you the right  
4 person?

5 **A** In my opinion, no.

6 **Q** Why not?

7 **A** I just don't see why he wouldn't.

8 **Q** Well, but people --

9 **A** If someone asked you, would you tell them the wrong  
10 person just cause or --

11 **Q** But I'm asking the questions, Mr. Jenkins. Is it  
12 possible that C.O. Harvey could have told you or been  
13 thinking about a different person? Is it possible?

14 **A** Anything is possible.

15 **Q** Okay. Just like it's possible you can hear the  
16 sounds coming from other places and think it's right  
17 next to your cell?

18 **A** Like I said, I mean, I've -- being in there, people  
19 have communicated through vents before. But you have  
20 to yell pretty loud. And you've --

21 **Q** But they can do it from -- Mr. Jenkins, I'm trying --

22 **A** You have to be right next to them, you know. I mean,  
23 it's just --

24 **MR. MEADORS:** Let him finish.

25 **THE COURT:** The court reporter can't take down

1 both of you talking at the same time.

2 Q I'm sorry, Mr. Jenkins. But I want you to be clear.

3 THE COURT: Finish your sentence. He'll ask you  
4 another question.

5 A I see where you're going with it. But I'm telling  
6 you how I feel. And I'm pretty sure it wasn't coming  
7 from a vent or anywhere else.

8 Q Mr. Jenkins, you know we're here on a very serious  
9 matter. So I'm not as interested in how you feel as  
10 what you knew. Okay?

11 A Okay.

12 Q Please. Is it possible that -- can you hear voices  
13 or sounds from other cells other than the one to your  
14 left of A2 or to the right of A2?

15 A Yes, you can.

16 Q Mr. Jenkins, you've got 19 charges related to crimes  
17 of dishonesty?

18 A Any crime is dishonest I believe. But, you know, I  
19 made a lot of mistakes and I have moved on since  
20 then, got forgiveness for them and bettered my life,  
21 yes.

22 Q And I am glad you did. But back then there is at  
23 least 19 fraudulent checks?

24 A Yes.

25 Q Were you using money that's not yours?



1     **A**     I was young, stupid. Yeah.

2     **Q**     Mr. Jenkins, do I also understand you have an arrest  
3             charge for the manufacture and possession of drugs in  
4             2002?

5     **A**     No. I never had a manufacturing. I had a -- it was  
6             a P.W.I.D. but when I went to court it was dropped to  
7             a possession.

8     **Q**     Okay. Of what?

9     **A**     And I had time served. I spent 40 or about 30 days  
10            in Richland County.

11    **Q**     And that drug was ...?

12    **A**     Marijuana.

13    **Q**     One moment, Mr. Jenkins. One moment, Your Honor.  
14            And then you have the two forgery charges, correct?

15    **A**     They were dropped, dismissed.

16    **Q**     Okay. Mr. Jenkins, I want to be absolutely clear.  
17            Other than whatever a staff member of Kershaw County  
18            told you at some point after, you only noticed, put a  
19            face, to use your words, put a face and name together  
20            of Chris Whitehead from the chapel service that day?

21    **A**     Yes. That's correct.

22    **Q**     Once?

23    **A**     Yes. That's correct.

24    **Q**     And you don't know how long Chris Whitehead was in  
25            the Kershaw County Detention Center?

1     **A**     No. I have no idea.

2     **Q**     You don't know when he got there?

3     **A**     I didn't know anything about the case at the time,  
4             who any of the suspects were or anything.

5     **Q**     Okay. And you don't know for a fact; you didn't see  
6             him in the cell next to you, did you?

7     **A**     No, sir.

8     **Q**     Okay. Mr. Jenkins, thank you.

9     **A**     You're welcome.

10            **MR. MEADORS:** Very briefly.

11                    REDIRECT EXAMINATION

12     **BY MR. MEADORS**

13     **Q**     I think he was asking you about the ventilation and  
14             all. 127, is that a ceiling above A2 where you were?

15     **A**     Yes, it is.

16     **Q**     And is F pod on top?

17     **A**     From what I can remember, I think it is. Yes. He  
18             showed me a diagram showing it was.

19     **Q**     You weren't involved in the construction of the  
20             Kershaw County Detention Center, were you?

21     **A**     No. I didn't know much about the outlay of it.

22     **Q**     And this 126, does this appear to be the same as your  
23             room you were in?

24     **A**     Yeah. It's similar.

25     **Q**     How many bunks are in there?

1     **A**     It's two.

2     **Q**     Two bunks?

3     **A**     Mm-hmm (affirmative).

4     **Q**     And that's 126. Now, this booking sheet shows you  
5             being booked in 1-31-2007. So did this encounter  
6             with him happen after that?

7     **A**     Yeah, it was after that.

8     **Q**     It would have had to have happened after you were  
9             booked in, right?

10    **A**     Yes.

11             (WHEREUPON, State's Exhibit No. 128 is marked  
12             for identification.)

13    **Q**     And again, he asked you about seeing him in chapel.  
14             Did you also hear his voice again after that in the  
15             multi-purpose room when you all were getting some  
16             shots?

17    **A**     Yes, I did.

18    **Q**     And was that the same voice you heard say we're going  
19             to be heros?

20    **A**     I'm pretty sure it was. Yes, sir.

21    **Q**     They ain't got much on us and we're going to be heros  
22             when we get out?

23    **A**     Yeah. It was pretty disgusting.

24             **MR. MEADORS:** 128 for I.D. Thank you.

25             **THE COURT:** Anything further?

1           **MR. WHITLARK:** Nothing further.

2           **MR. KENDRICK:** Just one question in direct  
3 response.

4           **THE COURT:** Sure.

5                           RECROSS EXAMINATION

6 **BY MR. KENDRICK**

7   **Q**    You're not exactly sure what he said, are you?

8   **A**    At what time?

9   **Q**    Both these times you've testified to Mr. Meadors that  
10 you heard bits and pieces?

11 **A**    Yeah. The first time it was pretty clear, you know,  
12 what he was saying. It was bits and pieces, but I  
13 got, you know, the gist of it pretty much.

14 **Q**    Okay. Thank you.

15           **THE COURT:** Anything further?

16           **MR. REUWER:** Not questions, Your Honor. We do  
17 have a motion to exclude.

18           **THE COURT:** I understand. All right, sir. You  
19 pay come down. Just have a seat back in the  
20 audience.

21           **MS. MCDUFFIE:** Your Honor, would you like us to  
22 proffer the testimony of Officer Harvey at this time  
23 or hear the motion?

24           **THE COURT:** Well, if Harvey is here --

25           **OFFICER HARVEY:** Right here, Your Honor.

1           **THE COURT:** Oh, I'm sorry. And he is the one  
2 that allegedly made the statement?

3           **MS. MCDUFFIE:** Yes, Your Honor.

4           **THE COURT:** Well, then why don't you do that and  
5 link it up.

6           **MS. MCDUFFIE:** Thank you, Your Honor. The State  
7 calls Officer Harvey.

8           CRAVEN HARVEY, after being duly sworn, testifies  
9 as follows:

10           **THE CLERK:** Please be seated in the witness  
11 chair and please state your full name for the record.

12           **THE WITNESS:** Craven Harvey.

13                           DIRECT EXAMINATION

14 **BY MS. MCDUFFIE**

15 **Q** Good morning, Officer Harvey.

16 **A** Good morning.

17 **Q** Where are you currently employed?

18 **A** Kershaw County Detention Center.

19 **Q** And what are your duties there?

20 **A** Well, my job title is classification inmate relation  
21 coordinator which consists of, I deal with the  
22 inmates' personal problems, make sure they're in the  
23 right facility, right pod or dormitory, making sure  
24 that their attorneys talk to them, and also making  
25 sure that the paperwork is transitioned in the right

1 places; i.e., Clerk of Court, municipal court, stuff  
2 like that.

3 **Q** And were you employed with the Kershaw County  
4 Detention Center in January of 2007?

5 **A** Yes, ma'am, I was.

6 **Q** And you have not -- and your employment has been  
7 continuous until now?

8 **A** Yes, ma'am, it has.

9 **Q** And do you remember Michael Jenkins?

10 **A** Yes, ma'am, I do.

11 **Q** And Christopher Whitehead?

12 **A** Yes, ma'am, I do.

13 **Q** Can you please identify Chris Whitehead for the  
14 Court?

15 **A** Sure. He is the young gentleman between Attorney  
16 David Reuwer and Neil Riley.

17 **MS. MCDUFFIE:** Please let the record so reflect,  
18 Your Honor.

19 **THE COURT:** The record will so reflect the  
20 witness identified the defendant.

21 **Q** Do you recall having to place Michael Jenkins in A  
22 pod?

23 **A** I do recall that Michael Jenkins was placed in A pod.  
24 Yes, ma'am.

25 **Q** And do you recall whether or not Chris Whitehead was

1 in A pod?

2 **A** Yes, ma'am. He was at that time.

3 **Q** And can you please tell the Court a little bit about  
4 what A pod is?

5 **A** A pod is a dormitory where two types of people are  
6 placed in. One is those who want to be on protective  
7 custody or who we see them as a danger to the  
8 dormitory or a danger to themselves. Also it's a  
9 place where disciplinary. For those who are not  
10 compliant to the rules and regulations in our  
11 facility, they will be placed there for a certain  
12 amount of days.

13 **Q** And A pod is also sometimes referred to as the  
14 solitary confinement?

15 **A** Yes, ma'am, it is.

16 **Q** And how many cells are there in A pod?

17 **A** There are six cells.

18 **Q** And how many inmates are in each cell typically?

19 **A** It all depends on the disciplinary infractions. But  
20 usually it can be one to three people in there, in  
21 each cell.

22 **Q** And how many sets of bunk beds are in each cell?

23 **A** There is one set.

24 **Q** One set of bunk beds?

25 **A** Yes, ma'am. In each cell.

1 Q And so there is two beds in each cell?

2 A Yes, ma'am.

3 Q And how many hours do the inmates spend in their  
4 cells in A pod?

5 A 23 out of 24 hours in there. Monday, Wednesday and  
6 Friday they come out for a one-hour break.

7 Q So some days they're in 24 hours?

8 A Yes, ma'am.

9 Q Do inmates frequently talk between the cells to each  
10 other?

11 A Yes, ma'am, they do.

12 Q And is it easy to hear in A pod anyone else?

13 A Yes, ma'am.

14 Q No problem hearing between cells?

15 A No, ma'am.

16 Q Do you recall when Michael Jenkins was placed in A  
17 pod?

18 A I do recall when he was placed in there. Yes, ma'am.

19 Q And when was that?

20 A That was during the time of January. That was on a  
21 specific date. He was placed there I think  
22 overnight.

23 Q I'm going to show you his booking form, State's 128.  
24 What is the date he was booked into Kershaw County?

25 A He was booked in January 31st, 2007 at 15:43 which is



1 3:43.

2 Q And when was he in A pod?

3 A He was placed in A pod right shortly after that. I  
4 can't remember the exact date.

5 Q So it would have been February?

6 A Yes, ma'am. Sometime in that timeframe.

7 Q And was Christopher Whitehead in A pod at the same  
8 time?

9 A Yes, ma'am, he was.

10 Q And was he in the cell next to Michael Jenkins?

11 A Yes, ma'am, he was.

12 Q Do you remember which cells they were in?

13 A Well, I definitely remember Mr. Whitehead was in A3  
14 and Mr. Michael Jenkins was in A2.

15 Q And do you remember telling Mr. Jenkins who was next  
16 to him in the cell?

17 A No, ma'am. I don't recall that mainly because that  
18 was back in 2007. But it's a possibility that I  
19 could have said it.

20 Q If he asked you, would you have told him who it was?

21 A Yes, ma'am, I would have.

22 Q Would you have withheld that information from him for  
23 any reason?

24 A No, ma'am.

25 Q Would you have you told him a person who was not in

1 the cell next to him for any reason?

2 **A** No, ma'am.

3 **MS. MCDUFFIE:** Nothing further, Your Honor.

4 **THE COURT:** Cross examination.

5 **MR. REUWER:** May I?

6 **THE COURT:** Mr. Reuwer.

7 **MR. REUWER:** Thank you, Your Honor.

8 CROSS EXAMINATION

9 **BY MR. REUWER**

10 **Q** Officer Harvey, we know each other from the jail,  
11 don't we?

12 **A** Yes, sir, we do.

13 **Q** But we've never discussed Mr. Jenkins?

14 **A** No, sir.

15 **Q** Or this case?

16 **A** No, sir.

17 **Q** Did -- I believe that Mr. Jenkins had testified that  
18 he had been in a fight subsequent to this one night  
19 in A pod. You were in the courtroom?

20 **A** No, sir. I wasn't in the courtroom at that time.

21 **Q** Oh, I'm sorry.

22 **A** Yeah.

23 **Q** If he had had a fight, wouldn't he be back in A pod?

24 **A** He would have stayed in there a lot longer than one  
25 day. Yes, sir.

1 Q Or if he had a subsequent fight, discipline issue,  
2 he'd be back in A pod on a separate occasion?

3 A Yes, sir.

4 Q Thank you. Very simply, Officer Harvey, you're  
5 familiar with the construction --

6 A Yes, I am.

7 Q -- from utilizing.

8 A Yes, sir.

9 Q -- and being the C.O?

10 A Yes.

11 Q Do vents in A -- in fact, there are two pods -- there  
12 are two vents in cell number A2, aren't there?

13 A Yes, sir. There is.

14 Q And there are two vents in cell number A3?

15 A Yes, sir.

16 Q And there are two vents in cell number A1?

17 A Yes, sir. That's correct.

18 Q And isn't it true, if you know, that the vents in A  
19 pod connect to the vents in F pod?

20 A They actually do. Yes, sir.

21 Q So using your analysis -- and you can hear noise and  
22 voices through those vents?

23 A Yes, sir. Clearly. Yes, sir, you can.

24 Q Clearly you hear them?

25 A Yes, sir.

1 Q You don't have to just be screaming to hear them?

2 A No, sir.

3 Q In fact, is it possible that a person could be in pod  
4 F, cell F1 -- excuse me -- F6 above and way to the  
5 other side and hear -- be possibly heard in A1, A2 or  
6 A3?

7 A It's a possibility, but that person really would have  
8 to be loud.

9 Q Talking loud?

10 A Yes, sir.

11 Q But you could hear intermingling of noises?

12 A Yes, sir, you could.

13 Q Because the vents are connected?

14 A Yes, sir, they are.

15 Q So it's possible using your analysis that not  
16 withstanding what you hear through the doors, if you  
17 have one to three people in each cell --

18 A Yes, sir.

19 Q -- you could have 12 people talking?

20 A It's possible. Yes, sir, you could.

21 Q So hearing one, you could hear 11 other people?

22 A You could. Yes, sir.

23 Q Or as many as having three people, including somebody  
24 sleeping on the floor, you could have 18?

25 A It's possible. Yes, sir.

1 Q I'm sorry. 36. 36. Is that true?

2 A Yes, sir. That's the truth.

3 Q And you wouldn't -- thank you, Officer.

4 THE COURT: Anything from any of the other  
5 defendants?

6 MR. KENDRICK: I don't have anything for this  
7 witness, Your Honor.

8 CROSS EXAMINATION

9 BY MR. WHITLARK

10 Q Have you all gone back to check the records to make  
11 sure that this guy was there during the time so that  
12 he was near Mr. Whitehead?

13 A Yes, sir. We have went over the records.

14 Q Okay. And you all sat down and did that?

15 A Yes, sir, we have.

16 Q And where was Mr. Whitehead at the exact moment of  
17 this occurrence, this alleged occurrence?

18 A The occurrence of --

19 Q That this fellow asked you or that he had a chance to  
20 hear him allegedly?

21 A Mr. Whitehead was in A3. Yes, sir. He was in there.

22 Q Okay. He was in A3. Okay. Did you all discipline  
23 this fellow for jumping on Mr. Whitehead?

24 A We have no records that that actually happened.

25 MR. WHITLARK: Okay. That's all I have, Your

1 Honor.

2 **THE COURT:** Solicitor.

3 **MS. MCDUFFIE:** Nothing further from this  
4 witness, Your Honor.

5 **THE COURT:** You may come down.

6 **THE WITNESS:** Thank you, sir.

7 **THE COURT:** Anything further on this issue?

8 **MS. MCDUFFIE:** No further witnesses, Your Honor.

9 **THE COURT:** Any motions?

10 **MR. REUWER:** Yes, sir. We'd like to make a  
11 motion. It's already been made, but we'd like to go  
12 first, if we could, Your Honor, on the motion to  
13 exclude this testimony, if I may.

14 Your Honor, of course we have the Bruton issues  
15 here about the implication of the non-testifying  
16 co-defendant. But let me talk about the facts first,  
17 Your Honor. That's probably most important. First  
18 we have a person who has never been able to identify  
19 Chris Whitehead prior to this event. And so the only  
20 identification made is after it. And it's not a  
21 direct identification. It's before the event of the  
22 night the alleged statements were made. It's by an  
23 officer who he talks to saying who was in the cell,  
24 when in fact the reliability issue is very hazy  
25 related to which cell he was talking about. And

1           that's proven, your Honor has heard this, that there  
2           are as many as 36 people that you could hear from,  
3           not counting the movement on the floor and people who  
4           are outside of F pod on their floor. But you can  
5           hear through the vents.

6           The third point is his identification by actual  
7           voice hearing and by actual seeing him placing the  
8           voice together is done by a piece of paper. And I  
9           have two problems with that, Your Honor. He never  
10          testified -- Mr. Jenkins did not testify that he  
11          heard Chris Whitehead praying or talking out loud or  
12          speaking in tongues or doing anything in the chapel  
13          service. He only sees a somewhat written signature  
14          related to him with his name next to it. And of  
15          course when you're signing things, people could --  
16          that isn't totally reliable as to the issue because  
17          the issue is voice identification, not handwriting  
18          and visual identification.

19          My other point that we want to make for its  
20          exclusion here, Your Honor, is, whatever His Honor  
21          considers to be weighed out of that chapel service  
22          should be totally excluded for the priest/penitent  
23          privilege. Now, a normal chapel service by itself  
24          alone doesn't raise the priest/penitent privilege.  
25          But when you're praying for something, which by Mr.

1       Jenkins' statement, is confessional or confessional,  
2       that immediately raises the sacral veil and the  
3       sacredness of the priest/penitent privilege which  
4       can't be used against him if he's praying for  
5       confessions or praying for something otherwise which  
6       he doesn't identify other than its confessional  
7       nature by what the list was for.

8               So we would ask that that has to be absent.  
9       There are very few things left that are sacred  
10       outside of this courtroom, and one of them is the  
11       priest/penitent privilege, even though the sanctuary  
12       issue continues to get chipped away in this country  
13       relating to churches. But the priest/penitent  
14       privilege is still awesome, at least in this country.

15               We also have the Fifth Amendment right, Your  
16       Honor, which is sacrosanct against the right against  
17       self-incrimination. And to slip it in through a back  
18       door by the proffered evidence of a jailhouse person  
19       first raises a question of unreliability. Second,  
20       Mr. Jenkins says he was in a fight later, but there's  
21       no record of that fight. Third, the State doesn't  
22       produce the list to see whether it's confessional or  
23       what kind of list that was, you know, identify the  
24       handwriting with the face to then match it with the  
25       voice.



1           So that veil on the Fifth Amendment right  
2           against self-incrimination has to be protected to the  
3           extent of that innocence. He is cloaked in innocence  
4           first. Especially when you then take into  
5           consideration that Mr. Jenkins has been convicted,  
6           charged with a lot, convicted on several occasions  
7           related to untrustworthy crimes, crimes that deal at  
8           their very heart with trustworthiness.

9           So we have not only his statements made about  
10          that evening. He can't even -- he's in a cell for  
11          over -- even if it's only one day, for 23 or 24 hours  
12          and can't tell me that there's two vents. I mean,  
13          I've been down there. There's not a lot to see. You  
14          know everything that's there, and he says there's  
15          only one when in fact there's two vents in there. I  
16          think he would know the cell really well there.

17          And then of course we have the Crawford issues  
18          of the co-defendants' right to confront, you know,  
19          confront their witnesses against them and the Bruton  
20          issues implicating the non-testifying co-defendants,  
21          Your Honor.

22          So I think based on -- when you add all of these  
23          up, the suspicion raised is so far out of the set  
24          that it should not be considered and must be excluded  
25          because it doesn't even have the indicias of other

1 reliability related to it.

2 The last statement made from my point of view,  
3 Your Honor, is Officer Harvey says he can't recall  
4 when he referenced that statement to him. So, you  
5 know, he's saying who was in the cell, but he doesn't  
6 say when that conversation took place related to Mr.  
7 Jenkins. Thank you, Your Honor.

8 **THE COURT:** What's the State's position?

9 **MR. REUWER:** Oh. Your Honor, I do have one  
10 more.

11 **THE COURT:** Sure.

12 **MR. REUWER:** Just one last thing.

13 **THE COURT:** Yes, sir.

14 **MR. REUWER:** Mr. Jenkins' statement -- I think  
15 I'm correct in this -- Mr. Jenkins' statement is that  
16 they're going to be heros, something like they're  
17 going to be heros when they get back to school.  
18 Well, in fact, Your Honor, Mr. Whitehead is not  
19 even -- this goes to the content of his truthfulness.  
20 Mr. Whitehead wasn't even in school at that time.  
21 I'm not talking about the jail. He's not attending  
22 high school. He is out of high school at that time.  
23 So, you know, the fact that a person is out of high  
24 school and would talk about wanting to go back in  
25 high school, it just adds to the unreliability.

1 Thank you, Your Honor.

2 **MR. KENDRICK:** Your Honor, do you want us to  
3 argue also or let the State go?

4 **THE COURT:** Well, no. I think the defense ought  
5 to have a united front.

6 **MR. KENDRICK:** Yes, sir, Your Honor. What I  
7 wanted to add to that, obviously we would agree with  
8 all their arguments. Certainly with the hand of one,  
9 hand of all being an issue here, we have standing to  
10 also argue that this admission should come out.

11 Your Honor, specifically what I would like to  
12 argue is under State v. Frazier, 357 SC 161. It's a  
13 case from 2004. Your Honor, in this case it's a  
14 murder down in Myrtle Beach. I don't know if you're  
15 familiar with the facts. But, in effect, they had a  
16 co-worker of the defendants come in and say that the  
17 defendant had stormed into a room, gotten on the  
18 phone and said either somebody should kill that  
19 S.O.B. or I'm going to kill that S.O.B.

20 In evaluating that, the South Carolina Supreme  
21 Court said under Rule 602 of the rules of evidence  
22 that the witness may not testify to a matter unless  
23 evidence is introduced sufficient to support a  
24 finding the witness has personal knowledge of the  
25 matter.

1           What they were attempting to do is have this  
2           witness testify that Mr. Frazier who was on trial for  
3           murder had made a comment that would be consistent  
4           with him wanting to kill somebody. What the Supreme  
5           Court said was that they found Sovren's testimony --  
6           Sovren is the person who overheard this -- beyond the  
7           ambit of Rule 602. Basically he didn't know when the  
8           statement was made. He didn't know to whom Frazier  
9           was speaking, couldn't recall the exact content.  
10          Under these circumstances we hold the testimony to be  
11          too speculative.

12                 Your Honor, in the case in front of you, we have  
13           the testimony of the witness that he was not exactly  
14           sure what night he went into this pod. Now, while he  
15           says he was in the jail, we have the time period he  
16           was in jail, that's exactly the same as the Frazier  
17           case. This was a co-worker. So he certainly  
18           knows -- he narrowed it down to a time period about  
19           four weeks, I think maybe a four-week time period.  
20           But he knew that it was when they were in the office  
21           together. They were co-workers.

22                 So the Supreme Court said that's just not  
23           enough. He didn't know who the speaker was or who  
24           they were speaking to. In this case, Your Honor,  
25           again they don't know -- this guy doesn't know. When

1 he hears these things, he doesn't know who this  
2 person is and he doesn't know who this person is  
3 talking to. And that's very important, Your Honor.

4 What we've done is brought in evidence that  
5 identifies what we believe or what the State believes  
6 might be the speaker but nothing about who he was  
7 speaking to. And in a situation like this, Your  
8 Honor, what we have is a person who is overhearing a  
9 conversation. The liability of that conversation  
10 obviously turns on the other part of it. It's highly  
11 unlikely that a conversation would be one-sided, Your  
12 Honor.

13 And then as far as recalling the exact content;  
14 again, in the Frazier case the witness recalled  
15 pretty much what the guy said. He was like, I'm  
16 going to kill this S.O.B. or I want to kill him,  
17 something along that lines. The same thing as here,  
18 Your Honor. What he's saying he heard, he says he  
19 heard the word Rocky Branch and Josh and then he  
20 hears him saying something about, you know, they've  
21 got nothing on us. But he doesn't really he know  
22 what anybody is saying. And I hesitate to say he  
23 doesn't know what Mr. Whitehead is saying because he  
24 doesn't know who was saying it.

25 So, Your Honor, I think that my co-counsel may

1           argue another issue, but I specifically want to argue  
2           that under Rule 602 and State v. Frazier, this just  
3           isn't reliable enough for the Court to find this guy  
4           has personal knowledge.

5           Your Honor, I know you've heard it before, and I  
6           hate to keep repeating it, but this is a serious  
7           matter. And to have somebody come in here who  
8           speculates about what he heard, when he heard it and  
9           links it together in the barest of circumstances,  
10          that it simply isn't proper.

11          **MR. WHITLARK:** May it please the Court. Your  
12          Honor, also relevance. We would object to it on  
13          relevance grounds. We'd also object to it on the  
14          grounds that it is so prejudicial with such a lack of  
15          evidence in this case to bring this fellow in here  
16          who is a friend of the decedent who was in jail for  
17          one or two days or one or two weeks, and to have him  
18          state that although he didn't see this guy, he has  
19          heard him say this; Your Honor, I would just like to  
20          state to you that I heard over and over again in the  
21          last three months of these attorneys, they can't even  
22          get their client to talk to them and they are  
23          presenting testimony. This guy is yelling about his  
24          involvement in a crime. He's a specific clamshell.  
25          They can't even get him to tell them what happened

1           that night.

2           And then for them to be able to bring this kind  
3           of evidence in with such a small amount of evidence  
4           of guilt of these men is extremely, extremely unfair,  
5           Your Honor. And this fellow can't identify him.  
6           It's hearsay at that point. And for him not to have  
7           a clear view of this fellow face-to-face and have him  
8           tell him would be objectionable even then. But under  
9           Rule 404(b) under the rules of relevance and under  
10          the --

11           **THE COURT:** 403, not 404(b).

12           **MR. WHITLARK:** Or 403. Yes, sir. Anyway, Your  
13           Honor, I mean, I consider this to be a -- I mean, I  
14           can bring in 20 or 30 people that heard him yell he  
15           didn't do it. I mean, you know. Thank you, Your  
16           Honor. Now Mr. Sheldon has got a legal argument for  
17           you on the matter of --

18           **MR. SHELDON:** Thank you, Your Honor. May it  
19           please the Court. First of all, just for a  
20           preliminary note, we'd like to object to getting this  
21           witness's NCIC today under Rule 5.

22           But at any rate, on to the Crawford argument.  
23           Judge, we think that this is a clear violation of  
24           Crawford. We heard the proffered testimony. And  
25           what we have here is a lot of we's and a lot of

1       they's. And, Judge, before we get to the testimonial  
2       part, I just want -- these defendants were indicted.  
3       They were all in jail at the time. They were  
4       indicted for murder and burglary. They weren't going  
5       anywhere. Their bond had been denied.

6               So I don't think there is any question that it's  
7       the "we" and the "they" refer to Mr. McDonald and Mr.  
8       Cannon in these statements. I mean, the State can't  
9       even argue that because these guys were already being  
10      -- probably already at some point had had an  
11      appearance and could have been called on the charge  
12      of murder at any time.

13             And as for the testimonial in nature, Judge,  
14      now, I'll agree there is no case on point here. I  
15      believe in February of this year there was an  
16      appendage case that basically had this exact same  
17      situation and it was ruled moot by I believe the  
18      Ninth Circuit because the co-defendant ended up  
19      testifying.

20             But it's -- so, Judge, in my impression, this is  
21      a case of first impression really because what we  
22      have here is we don't know who he was talking to.  
23      You know, in most jailhouse informant cases there  
24      would be a co-defendant talking to the person that is  
25      testifying. He could have been talking to anybody.



1           And --

2           **THE COURT:** That's not the issue. The issue is  
3 voice identification.

4           **MR. SHELDON:** Right. But, Judge, my point would  
5 be that --

6           **THE COURT:** It's not first impression voice  
7 identification, is it?

8           **MR. SHELDON:** No, Judge. But the case, but as  
9 to Crawford it would be. Because if he would have  
10 been talking to somebody that he reasonably expected  
11 that this could be used at that time, then it clearly  
12 is testimonial in nature and would be completely  
13 excluded by Crawford. And I don't -- and we don't  
14 know who that person is. We have had no right to  
15 cross examine Mr. Whitehead on this.

16           And, Judge, I would just also like to say in a  
17 case of this magnitude, I mean, we don't know who  
18 this person is. And if it was made, I mean, he's  
19 clearly the declarant, allegedly, alleged declarant.  
20 He is not unavailable to testify, is not testifying.  
21 We have had no prior chance to cross examine who he  
22 was talking to or anything. And it's being used  
23 against him by the State. And so, Judge -- and I  
24 think it clearly incriminates our clients as well.  
25 And under Crawford, there is no Bruton issue here.

1           It's not a written statement. It's --

2           **THE COURT:** Well, I'm not sure it's testimonial  
3 either.

4           **MR. SHELDON:** Well, the State can argue on that  
5 and we can argue the alternative on Roberts, on the  
6 old standard. But I think it is testimonial in  
7 nature. And under Crawford specifically I found  
8 nothing that has dealt with this situation. And Mr.  
9 Whitlark would just like to point out the Rule 5  
10 issue again.

11           But back to Crawford, in terms of testimony, I  
12 mean, I would agree with the Court that if he were  
13 talking directly to the jailhouse informant that it  
14 would be a lot more towards non-testimonial in that  
15 it's a jailhouse informant. But we don't know who it  
16 was. It could have been law enforcement. I don't  
17 think attorneys are allowed back there. But there is  
18 no way to tell who he was talking to. So we don't  
19 know if it was made in anticipation of litigation.

20           **THE COURT:** Well, that's true. That's true.

21           **MR. SHELDON:** And without being able to cross  
22 examine him, it is horribly detrimental to our  
23 clients.

24           **THE COURT:** All right. Let me hear from the  
25 State.

1           **MR. MOAK:** Your Honor, first of all, we would  
2 submit that Crawford does not apply to this  
3 statement. Mr. Whitehead speaking to somebody in  
4 another cell, Your Honor, I mean, that's clearly not  
5 testimonial in nature. The fact that Mr. Jenkins  
6 heard it, I guess he's alleging it might be a  
7 situation where it was anticipation of litigation,  
8 but he's actually communicating this with other  
9 people outside of his circle intending an audience to  
10 hear it as well. So I would submit that, you know,  
11 he's giving that up by publishing the statement where  
12 others can hear that.

13           But clearly, Mr. Jenkins, we actually had to go  
14 find him. He did not make this story up in  
15 anticipation of testifying. I mean, until we  
16 contacted him, Your Honor, I don't think he had any  
17 intentions of testifying to this. So it wasn't made  
18 to law enforcement. It was not made in an  
19 investigation. So clearly I would argue it's  
20 non-testimonial.

21           Also, you know, it's clearly -- if admitted,  
22 it's clearly a statement against Mr. Whitehead's  
23 penal interest. So it's clearly an exception or  
24 non-hearsay. So clearly it should come in if it's  
25 non-testimonial.

1           Now, going beyond this, I've been sitting here  
2           listening to everybody argue about Crawford and  
3           Bruton. Your Honor, Bruton has a situation where you  
4           have co-defendants that are up for trial who have  
5           given statements that implicate each other, and  
6           because they have a Fifth Amendment right not to  
7           testify, they are not available to be cross examined,  
8           so we redact them. There is clear case law on how to  
9           do that. I think we've complied with that.

10           All Crawford says is, you know, if you have  
11           testimonial evidence which a co-defendant confession  
12           law enforcement would be under Bruton and the  
13           declarant is not available to testify, which if  
14           they're up for trial and decided to exercise their  
15           Fifth Amendment, they're not available, then it  
16           doesn't come in, which is the same issue of Bruton.

17           So I would actually analogize Crawford as  
18           actually extending Bruton, these situations outside  
19           of co-defendants that gave the statements. I mean,  
20           it's essentially on what we have been arguing about.  
21           It is the same issue. So I don't know why they keep  
22           trying to extend it further. Bruton deals with the  
23           Crawford situation that they're talking about.

24           **THE COURT:** He just said it's his -- the  
25           defendants say it's so clear and obvious that their

1 clients are implicated by anything the other one does  
2 because there are three people sitting here, three  
3 people were sitting in jail. There is a very strong  
4 implication that whatever they say when they say "we"  
5 applies to these three defendants. And we've been  
6 dealing with that all week.

7 **MR. MOAK:** But I just wanted to address that  
8 because it keeps popping back up. Your Honor, going  
9 on, on another argument Mr. Reuwer made was it was  
10 unreliable because it involved school. I believe  
11 both Cannon and Whitehead during the Jackson v. Denno  
12 testimony, both testified one of them was in his last  
13 semester, like 18 days from graduating. One of them  
14 was six weeks or a semester from graduating. Both  
15 those two guys were in school.

16 So I would submit that the fact that he's  
17 talking about going back to school being heroes, just  
18 because Mr. Whitehead is not in school any more, the  
19 fact that the other two were in school when they were  
20 arrested, you know, kind of gives you more of a  
21 context of how that would have been brought up.

22 And I'm just right now just addressing the  
23 arguments they made. Mr. Kendrick is basically  
24 saying that our witness is speculating that this is  
25 the voice that he heard. Your Honor, if you listen,

1 the witness said that he heard the voice in the jail  
2 cell. He heard a voice again in the multipurpose  
3 room.

4 **THE COURT:** He said he heard it in the  
5 multipurpose room?

6 **MR. MOAK:** Yeah. And that's who he attacked.

7 **THE COURT:** Do what?

8 **MR. MEADORS:** The voice that he recognized that  
9 he heard before, that's who he attacked. And he  
10 pointed out Mr. Whitehead as the one that he  
11 attacked, the person whose voice he heard.

12 **THE COURT:** This we're talking about when you're  
13 in line for the blood tests?

14 **MR. MEADORS:** Yes, sir.

15 **MR. MOAK:** Yes, Your Honor.

16 **THE COURT:** That's when you're talking about?

17 **MR. MOAK:** Yeah. He didn't hesitate. He said  
18 that is the guy.

19 **THE COURT:** He didn't hear him in the chapel.

20 **MR. MOAK:** No, he did not hear him in the  
21 chapel. So that's addressing Mr. Kendrick's  
22 allegation that this is mere speculation. Now, going  
23 to the case law, we've got, I believe it's State v.  
24 Nelson which was a mid sixties case and a case on  
25 State v. Stewart from 1980 that both address voice

1 identification.

2 **THE COURT:** Yes. I'm familiar with it.

3 **MR. MOAK:** Both of those cases allow --

4 **THE COURT:** I'm very familiar with it. I'm very  
5 familiar with those cases.

6 **MR. MOAK:** In both of those cases, a voice I.D.  
7 was admitted in the trial, was approved of. But the  
8 focus on those cases was the suggested procedure  
9 of -- apparently in those cases they did like a voice  
10 line-up or whatever that was law enforcement  
11 initiated and the complaint was that was initiated.  
12 We don't have that here. We have nothing about law  
13 enforcement that was initiated to create an illusion  
14 or an allegation that this was a suggestive  
15 identification by Mr. Jenkins of Mr. Whitehead.  
16 That's the case law. Other case law I note is  
17 Plyler, State v. Plyler. Also this is directed --

18 **THE COURT:** I've got all that. I know all that.  
19 Read all that. I know what voice identification --

20 **MR. MOAK:** And then on 901(b), basically alleged  
21 you have to have a basis of the opinion. So our  
22 basic argument based on the case law and the rule,  
23 Your Honor, is in that jail cell when he was in A2 he  
24 heard a voice and he heard a voice that he remembers  
25 talking about this case. At that point he did not

1 know Mr. Whitehead was charged in this case. He did  
2 not know he was a suspect in this case. And  
3 Mr. Harvey gave him the name of who was in the cell  
4 beside him, but he did not know that that was the guy  
5 charged in this case.

6 The next time this guy's name pops up is at the  
7 chapel. He still doesn't know he's charged in this  
8 case, does not know, doesn't have a face to that  
9 name, does not hear the voice of that name.

10 **THE COURT:** That's somewhat. I can't accept  
11 that. I mean, if he is in a solitary cell and he's  
12 talking about the death of his friend, there's a  
13 pretty good assumption that that's why he's there.

14 **MR. MOAK:** He didn't know for sure. But still  
15 he doesn't have this guy's face to either hear the  
16 voice or that name when he's in the chapel. And he  
17 doesn't attack him then. But when he did hear that  
18 voice, the voice that he had heard in the jail cell,  
19 he immediately attacks the guy. I mean, when he  
20 heard the voice, that's what he recognized. He  
21 didn't recognize the name. He didn't recognize the  
22 face. He recognized the voice. And that's who he  
23 assaulted as a result of that. And he's testifying  
24 that the guy who is he assaulted and recognized the  
25 voice is Mr. Whitehead. So, I mean, clearly that's



1           what he's testified to.

2           And as to the reliability, he's not currently  
3 charged with anything. I mean, he doesn't really  
4 have anything to gain or lose by coming forward. He  
5 actually did not come forward of his own accord.  
6 We're not paying him to do this. You know, he's  
7 here. Your Honor, I mean, you heard how he  
8 testified. I would submit he's telling the truth.

9           **MR. MEADORS:** Ms. McDuffie has a few comments,  
10 please, sir.

11           **MS. MCDUFFIE:** Your Honor, I would just briefly  
12 like to say that we feel that the testimony provided  
13 complies with Rule 901(b)(5) in that he has a basis  
14 of comparison of Mr. Whitehead's voice. And the rule  
15 only requires that any time it does not require prior  
16 to, he has had the opportunity after hearing the  
17 initial comments to hear the voice that he recognized  
18 as the same voice he heard that night and to be able  
19 to say that that is the same voice he heard that  
20 night and then connect it with the face and Mr.  
21 Whitehead.

22           **MR. MEADORS:** And, Judge, very briefly, as far  
23 as the prior record, I've got some friends who've got  
24 a lot worse record than this. He's got some  
25 fraudulent checks and a simple possession of

1 marijuana. That's it.

2 **THE COURT:** I understand.

3 **MR. WHITLARK:** Your Honor, let me add one thing.

4 **THE COURT:** We've got to bring this to a close.

5 **MR. WHITLARK:** Yes, sir. I know, Your Honor.

6 But I've got a case right there that says -- this is  
7 Ezzel vs. State. It's 2001. It says that when there  
8 is a witness not available for the defense to cross  
9 examine, it's admissible hearsay under Rule 801(c)  
10 and 802 because the evidence of the defendant's guilt  
11 is not overwhelming and the admission of this  
12 evidence was not harmless. So, see, this guy is not  
13 going up. And this is hearsay to us. And so we  
14 can't cross examine the guy. We can't call him to  
15 the stand, Your Honor. We can't call Mr. Whitehead  
16 to the stand.

17 **THE COURT:** I know that.

18 **MR. WHITLARK:** And so we'd ask that it be  
19 excluded as hearsay.

20 **THE COURT:** What rule are you -- I mean, this is  
21 it.

22 **MR. WHITLARK:** I'm sorry?

23 **THE COURT:** What rule are you quoting?

24 **MR. WHITLARK:** Ezzel vs. State.

25 **THE COURT:** What rule?

1           **MR. WHITLARK:** The rule is 801(c) and 802. It's  
2 inadmissible hearsay because --

3           **THE COURT:** I mean, hearsay 801(c) is the  
4 definition of hearsay.

5           **MR. WHITLARK:** Yes, sir. It's inadmissible  
6 hearsay under Rules 801(c) and 802.

7           **MR. MEADORS:** Obviously this is an admission by  
8 the defendant. That's an exception to the hearsay.

9           **THE COURT:** Sure. All right. Here's what we're  
10 going to do. I'm going to allow him to testify. And  
11 my reasoning is, the only thing I'm not certain  
12 about -- and this may be an appellate issue -- is the  
13 issue raised by Mr. Reuwer as to the priest/penitent  
14 privilege although there was no statement given to  
15 a -- in other words, the priest/penitent, the priest  
16 is not disclosing anything that was conveyed to him  
17 by the penitent.

18           He makes a -- puts a signature on a book in a  
19 somewhat public place which in my opinion could act  
20 as a waiver of that privilege if indeed it does  
21 apply.

22           In addition, I think -- I mean, I hate to use  
23 this term, but I think the totality of the  
24 circumstances militates for admission. These two --  
25 there's clear testimony that the two, both Mr.

1       Jenkins and Mr. Whitehead, were adjoining cellmates  
2       in a very restricted area.  Voices, it has been  
3       testified, carried very readily under those  
4       circumstances.

5               And this voice identification, I feel  
6       comfortable in ruling that he has a right and he can  
7       -- if he can say in his mind he positively identified  
8       that voice that he heard, whether from the time he  
9       heard it in the cell 'til the time he heard it in the  
10      blood test line, some of the cases on voice  
11      identification are even less positive than this  
12      witness about recognizing a voice.

13             If what he said in the cell regard with regard  
14      to -- I mean, he could have heard any type of  
15      conversation in that cell, but the fact that he heard  
16      the word Josh and he heard the word Rocky Branch  
17      gives credibility in my mind to the 602 argument that  
18      Mr. Kendrick made.

19             And I'm not worried about this -- I mean, those  
20      are the identifying factors in that testimony, not  
21      necessarily the reference to the trailer or hero or  
22      that sort of thing.  But the fact that he had an  
23      opportunity to hear those identifying characteristics  
24      of this trial -- I mean this killing -- to me makes  
25      that his heightened awareness of what he was

1 listening to more credible.

2 The 403 argument is always there. I can't -- I  
3 can never get around 403. That's a call that I have  
4 to make, whether it more probative than prejudicial.  
5 And the rule -- and I'm going to quote the rule.  
6 "Evidence may be excluded if its probative value is  
7 substantially outweighed by the danger of unfair  
8 prejudice, confusion of the issues", et cetera.

9 There is certainly unfair prejudice in this  
10 case, but it is also probative, probative evidence.  
11 And I am going to admit it. All right. You ready  
12 for the jury?

13 **MR. MEADORS:** If I could just have 30 seconds.

14 **MR. REUWER:** Your Honor, I like to make a  
15 another motion.

16 **THE COURT:** Sure.

17 **MR. WHITLARK:** Your Honor, may we approach the  
18 bench, Your Honor?

19 **THE COURT:** Well, bathroom, approach the bench,  
20 I need another motion.

21 **MR. KENDRICK:** I'll note I'm sitting here  
22 quietly, Your Honor, not causing any trouble.

23 (Whereupon, a bench conference is had)

24 (Whereupon, a break is taken)

25 **THE COURT:** Are you ready for the jury?

1           **MR. MEADORS:** Yes, sir.

2           **THE COURT:** Bring the jury.

3           (Jury in at 11:44 a.m.)

4           **THE COURT:** All right, Solicitor. Call your  
5 next witness.

6           **MR. MEADORS:** May it please the Court. The  
7 State of South Carolina would call Michael Jenkins.

8           MICHAEL JENKINS, after being duly sworn,  
9 testifies as follows:

10          **THE COURT:** Have a seat in the witness box.  
11 State your full name for the record.

12          **THE WITNESS:** Michael Lewis Jenkins.

13                               DIRECT EXAMINATION

14   **BY MR. MEADORS**

15   **Q**    Good afternoon, Mr. Jenkins.

16   **A**    Good afternoon.

17   **Q**    And if you'd just please answer into that microphone,  
18 we'd appreciate it.

19   **A**    Okay.

20   **Q**    And speak up a little bit if you can. Would you  
21 please tell the ladies and gentlemen of this jury  
22 about you very briefly? Where are you from?

23   **A**    I'm born and raised in Columbia, been here pretty  
24 much my whole life.

25   **Q**    In the Columbia area?

1     **A**     Yes, sir. Northeast Columbia. Blythewood.

2     **Q**     Where did you go to school?

3     **A**     Spring Valley High School.

4     **Q**     When did you get out of Spring Valley?

5     **A**     2001.

6     **Q**     What did you do after that?

7     **A**     I just work and that's pretty much it, just stay busy  
8             working.

9     **Q**     Stay busy working?

10    **A**     Yes, sir. Construction.

11    **Q**     What type of work are you in?

12    **A**     Right now I'm a crew leader, foundation specialist.

13    **Q**     And is that pretty much what you do, is correct  
14             foundations?

15    **A**     Pretty much, yeah.

16    **Q**     And are you working with somebody right now?

17    **A**     Yes.

18    **Q**     In what area? Do you all work around here? Do you  
19             travel? Where do you go?

20    **A**     Work all around; Georgia, South Carolina, some part  
21             of Florida.

22    **Q**     And you're here under subpoena from the State today,  
23             correct?

24    **A**     Yes, sir.

25    **Q**     We have been talking with your job and telling them

1           where you are, correct?

2   **A**     Yes, sir.

3   **Q**     Now, tell these ladies and gentlemen of the jury, is  
4           there a time you got picked up on some bench warrants  
5           from Kershaw County?

6   **A**     Yes, sir, there was.

7   **Q**     And when was that?

8   **A**     In January. Well, I was actually picked up in  
9           January. I think I was brought to Kershaw at the end  
10          of January.

11   **Q**     You got picked up in January?

12   **A**     In Lexington County.

13   **Q**     So were you in another facility prior to coming here?

14   **A**     Yes, sir.

15   **Q**     That's the Lexington County facility?

16   **A**     Yes, sir.

17   **Q**     And how long were you there before you came to the  
18          Kershaw County Detention Center?

19   **A**     I think I was there for about a week.

20   **Q**     And showing you State's 128, is this your book in?  
21          Were you booked in on January 31st, 2007 at the  
22          Kershaw county Detention Center?

23   **A**     Yes, sir.

24   **Q**     And is that you? Michael Lewis Jenkins?

25   **A**     Yes, sir, it is.



1 Q Mr. Jenkins, tell these folks, what were you booked  
2 in on?

3 A It's for bounced checks, not paying the court costs  
4 on the bounced checks that I had. I had already paid  
5 off the checks, just not the court costs.

6 Q You had paid off the checks but you hadn't paid the  
7 court costs?

8 A Yes, sir.

9 Q So they picked you up?

10 A Yes, sir.

11 Q And did you end up paying the court costs or --

12 A Yes, I did end up paying them. And that's how I got  
13 out of there.

14 Q And how many of the fraudulent checks did you end up  
15 either pleading guilty to or --

16 A Well, there was a -- I think when I went in there was  
17 about ten or more bench warrants, but just one for  
18 each check that there was.

19 Q Fraudulent check?

20 A Yes, sir.

21 Q You paid them off, but you didn't pay the court  
22 costs?

23 A That's right.

24 Q You had not. Excuse me for that. Where did you go  
25 when you first went in the Kershaw County Detention

1 Center? What particular pod or dorm?

2 **A** They put me in D pod.

3 **Q** D pod?

4 **A** Yes, sir.

5 **Q** And did you stay in D pod a while? Or how long did  
6 you stay in D pod before you were temporarily moved  
7 somewhere else?

8 **A** I was in there for a few weeks before. I had an  
9 altercation and was sent to A pod.

10 **Q** And tell the ladies and gentlemen about the  
11 altercation you had in D pod?

12 **A** There was a drunk man that come in there, was  
13 complaining about the TV being on and just being --  
14 you know, wanted us to turn off. And I told him, you  
15 know "This isn't the Holiday Inn and if you want  
16 things different, you've got to go somewhere else.  
17 You know, this is jail." And he got upset about  
18 that, kind of got in my face. We got into it, didn't  
19 have an actual physical fight but separated into A  
20 pod so he could cool off and I could cool off.

21 **Q** And was this an individual who was arrested for DUI?

22 **A** DUI, yeah. He was still kind of intoxicated.

23 **Q** Still kind of intoxicated?

24 **A** Yeah.

25 **Q** And prior to this, had you gotten in any trouble at

1 the jail?

2 A No, sir.

3 Q And as a result of you and this DUI arrestee having  
4 good words or whatever, did you go somewhere else?

5 A Yes, sir. I was sent into A pod.

6 Q And if you said it again, I'm sorry, Mr. Jenkins, if  
7 you said it previously. How long -- you were booked  
8 in on January 31st in this county's jail, Kershaw  
9 County. How long after that did this incident with  
10 the DUI fellow happen?

11 A It was a couple of weeks, maybe three weeks. It was  
12 in February still.

13 Q Do you remember what dorm you were in, what room you  
14 went in in A Pod?

15 A A2.

16 Q A2?

17 A Yes, sir.

18 Q And can you describe that room for these ladies and  
19 gentlemen?

20 A It's not a very big room. There's a sink, toilet,  
21 bunks. It's pretty much a plain jail cell.

22 Q And were you in there by yourself?

23 A Yes, sir.

24 Q You said it's not the Holiday Inn?

25 A Yeah.

1 Q So what did you do that night you were in there?

2 A Just push-ups, sit-ups, just anything to keep from --  
3 make time go by, whatever.

4 Q And how many nights were you in A Pod?

5 A Just overnight.

6 Q One night?

7 A Yes, sir.

8 Q And that was to separate you from the DUI guy?

9 A Yes, sir.

10 Q And while you were in A2 in A Pod, tell these ladies  
11 and gentlemen what, if anything, you heard?

12 A I heard conversation coming next to me, in the cell  
13 next to me, someone was speaking about Rocky Branch,  
14 Josh and how he had a piece of shit trailer that was  
15 easy to get into.

16 Q A piece of shit trailer that was easy to get into?

17 A Yes, sir. And just bragging about how they were  
18 killers now. When they went back to school they were  
19 going to be respected and jaws were going to drop and  
20 all this and just bragging.

21 MR. WHITLARK: Please note our objection to that  
22 testimony.

23 THE COURT: Yes, sir.

24 Q They were bragging about how they were going to be  
25 killers and when they went back to school they were

1 going to be respected?

2 A Yes, sir.

3 Q And you had heard the name Josh?

4 A Yes, sir.

5 Q And Rocky Branch?

6 A Yes, sir.

7 Q And excuse my language. A piece of ...?

8 A A piece of shit trailer that was easy to get into.

9 Q Did this catch your attention?

10 A Yes, sir.

11 Q Did you know Josh?

12 A I had known him. Yes, sir.

13 Q How long had it been since you had seen him?

14 A It had been a couple of years since I had seen him  
15 last.

16 Q And how did it make you feel when you heard that?

17 A Pretty disgusted and angry. You know, if it hadn't  
18 been someone I'd known, it would have still been --  
19 I'd have still been pretty upset about it, just  
20 hearing someone talk like they were.

21 Q And you were in a A2 how long?

22 A Just overnight.

23 Q And I want to show you what's marked State's 127 for  
24 I.D. at this point. Can you show where you were in  
25 this picture?

1     **A**     Right here in A2.

2     **Q**     I'm sorry. And where were the voices coming that you  
3             heard or that you heard say all this, Josh, Rocky  
4             Branch, trailer?

5     **A**     When I'm facing the door to the right of me, it would  
6             have been A3.

7     **Q**     A3? Can you point to A3?

8             (Witness complies)

9     **Q**     Is there any doubt in your mind that's where this  
10            voice was coming from?

11    **A**     No, sir. There is no doubt in my mind.

12            **MR. MEADORS:** We'd offer State's 127.

13            **THE COURT:** Over the defendants' objections,  
14            it's admitted.

15            (WHEREUPON, State's Exhibit No. 127 is admitted  
16            into evidence.)

17    **Q**     And is this another -- 121, does that also depict A2  
18            and where you heard the voice come from?

19    **A**     Yes, sir.

20            **MR. MEADORS:** 121, Your Honor, we'd offer.

21            **THE COURT:** All right. Over the defendants'  
22            objection.

23            (WHEREUPON, State's Exhibit No. 121 is admitted  
24            into evidence.)

25    **Q**     And just let me show you this, 122. Do you recognize

1           this also?

2   **A**     Yes, sir.   That's A Pod.

3   **Q**     Is that a shot down A Pod?

4   **A**     Yes, sir.

5           **MR. MEADORS:**   We'd offer State's 122.

6           **THE COURT:**   Over the defendants' objection.

7           (WHEREUPON, State's Exhibit No. 122 is admitted  
8           into evidence.)

9   **Q**     You got out of A Pod that night?

10   **A**    The next day.

11   **Q**     I'm sorry.   The next day.   And did you find out who  
12           was in A3?

13   **A**     Yes, I did.

14   **Q**     And who was it?

15   **A**     The C.O. told me it was Chris Kaywood.   I mean Chris  
16           Whitehead.   Sorry.

17   **Q**     Chris Whitehead?

18   **A**     Yes, sir.

19   **Q**     And how long after getting out of A2 that night did  
20           you try to find out who was in A3?

21   **A**     It was just right after that, as soon as -- I was  
22           curious whenever I heard it, but I had to wait until  
23           an actual C.O. came by where I could ask him.   It was  
24           the next day, the next morning.

25   **Q**     And who was the C.O. that you learned that

1 information from?

2 A It was Harvey.

3 Q Is he in the courtroom?

4 A Yes, sir.

5 Q Sitting down here? Officer Harvey?

6 A Yes, sir.

7 Q In the black jacket?

8 A Yes, sir.

9 Q That was the only night you were in A Pod?

10 A Yes, sir.

11 Q And you testified you were upset by this?

12 A Yes, I was.

13 Q Did you have an occasion to go and tell somebody at  
14 the jail that this was bothering you?

15 A Yes, I did. I had spoke to a preacher at the jail.

16 Q And did you tell him that this had upset you?

17 A Yes, I did.

18 Q And as you were leaving that room, did you see any  
19 name on a book?

20 A Yes, sir, I did.

21 Q What name did you see?

22 A Chris Whitehead.

23 Q And was Chris Whitehead in that room?

24 A Yes, he was. I didn't know at the time until after  
25 everyone had left.



1 Q Was he in the room when you were talking to the  
2 preacher telling him about this?

3 A Yes, sir.

4 Q And you didn't realize he was in the room until after  
5 he'd gone?

6 A No, not until after he'd gone.

7 Q And at this point you'd heard his voice and knew his  
8 name, correct?

9 A Yes, sir.

10 Q And did you have an occasion sometime after that, Mr.  
11 Jenkins, to hear that same voice again that you heard  
12 from A3?

13 A Yes, sir.

14 Q And what room were you in then?

15 A I was in the multipurpose purpose room. Again we  
16 were there for shots and taking samples.

17 Q You were just there for shots, for these purposes,  
18 correct?

19 A Yes, sir.

20 Q And did you hear a voice say Josh or any reference  
21 that caught your attention?

22 A Yes, sir. It was speaking of the same incident  
23 again.

24 Q The same incident?

25 A Yeah. Just talking about Josh and then Rocky Branch

1 and everything.

2 Q Did you recognize that voice?

3 A Yes, sir. The same.

4 Q Was that the same voice you'd heard from A3?

5 A Yes, sir.

6 Q And at this point who made that statement?

7 A Christopher Whitehead.

8 Q Did you see him then?

9 A Yes, sir.

10 Q Is that the person you had seen but didn't get to  
11 talk to when you were talking to the preacher?

12 MR. WHITLARK: Objection to the leading, Your  
13 Honor.

14 THE COURT: All right. Don't lead your witness.

15 Q I'm sorry. Had you seen him prior to that?

16 A Yes, sir.

17 Q What, if anything, did you do after you heard that  
18 voice again and you now were in the same room with  
19 Christopher Whitehead?

20 A I got -- I was pretty upset. I reached for him, got  
21 pulled apart by Officer Jenkins. He already knew  
22 that I was having issues with that and ...

23 Q So you tried to go after him?

24 A Yeah. I was pulled out. He spoke with me about the  
25 situation.

1 Q And did you see him again after that?

2 A No, sir.

3 Q Hear him again after that?

4 A No, sir.

5 Q And you ultimately or at some point got out of  
6 Kershaw County Detention Center?

7 A Yes, sir.

8 Q And these checks, did you end up paying the court  
9 costs off?

10 A Yes, sir. I paid everything off.

11 Q And out of the ones you were picked up on -- and it's  
12 all checks, right?

13 A Yes, sir.

14 Q Did you plead guilty to four in 2007 and pay court  
15 costs on all of them?

16 A Yes, sir.

17 Q And prior to that did you have some checks in 2006?

18 A Yes, I did.

19 Q And did you end up paying court costs on those?

20 A Yes, sir.

21 Q And that was January of 2006, right?

22 A Mm-hmm (affirmative).

23 Q And that was eight fraudulent checks?

24 A Yes, sir.

25 Q How many times have you been picked up for checks?

1    **A**    I have only been arrested twice for it.

2    **Q**    Twice. And at that time did you have a bunch of  
3           checks out there?

4    **A**    Yes, sir.

5    **Q**    And I want you to tell it all here. Was there a  
6           conviction in 2003 for shoplifting?

7    **A**    Yes, there was.

8    **Q**    That's about three years before this incident you're  
9           telling us about?

10   **A**    Yes, sir.

11   **Q**    After you left here in Kershaw county, did you go  
12           settle up your checks, or did you have something  
13           somewhere else? Tell it all.

14   **A**    Yeah. I got everything settled, taken care of. I  
15           wanted to make sure I had a good clean record so I  
16           could start over fresh. So I got out, got married,  
17           got saved.

18   **Q**    So you got your --

19   **A**    I've been living my life better.

20   **Q**    I didn't mean to cut you off.

21   **A**    I'm sorry.

22   **Q**    What was your last statement?

23   **A**    Just living my life better than my past.

24   **Q**    You had your checks settled?

25   **A**    Mm-hmm (affirmative).

1 Q I don't even know. Was there A D.U.S. in here  
2 somewhere?

3 A I have had a driving under suspension. The last one  
4 was dropped.

5 Q So I didn't even have to ask you. It was dropped?

6 A Mm-hmm (affirmative).

7 Q So you've got checks, shoplifting and this -- I don't  
8 even have to ask you this but I'm going to. Did you  
9 have a marijuana possession, simple possession of  
10 marijuana sometime back in your life?

11 A Yes, sir.

12 Q And that was 2004, prior to this, correct?

13 A Yes, sir.

14 Q And all of this stuff, you paid these checks off?

15 A Mm-hmm (affirmative).

16 Q Got through with all your court stuff, right?

17 A Yes, sir.

18 Q You didn't even know who I was?

19 A No, sir.

20 Q I didn't know who you were?

21 A No, sir.

22 Q As a matter of fact, I just met you a couple of  
23 months ago?

24 A Yes, sir. That's correct.

25 Q So I haven't done anything for you?

1     **A**     No, sir.

2     **Q**     I can't do anything for you, can I?

3     **A**     No, sir.

4     **Q**     How did you come into my world? Did you tell

5             somebody about what you'd heard?

6     **A**     Yes, I did.

7     **Q**     And somehow that information get to me?

8     **A**     Yes, sir. It just traveled through the grapevine I

9             guess.

10    **Q**     And you see this big fellow over here, Mark Austin?

11    **A**     Yes, sir.

12    **Q**     Did Investigator Mark Austin get in touch with you?

13    **A**     Yes, sir, he did.

14    **Q**     As a result of that, did I get in touch with you?

15    **A**     Yes, sir. That's correct.

16    **Q**     You wouldn't have come here otherwise, would you?

17    **A**     No, sir.

18    **Q**     If we hadn't got in touch with you?

19    **A**     No, sir. Probably not.

20    **Q**     And you're under subpoena today? You're under

21             subpoena today?

22    **A**     Yes, sir.

23    **Q**     And you said that -- how many beds are in these A

24             Pods?

25    **A**     It's a bunk bed. So there would be two.

1 Q Two? Now, is the person that you saw and about got  
2 into it and the voice that you heard when you were  
3 getting your shots and you said it was the same voice  
4 you heard when you were in A2, is that person in the  
5 courtroom?

6 A Yes, sir.

7 Q Would you please point him out for these ladies and  
8 gentlemen?

9 A He's at the end of the table over there.

10 Q Inbetween?

11 A Inbetween the two lawyers.

12 Q Inbetween Mr. Riley and Mr. Reuwer?

13 A Yes, sir.

14 MR. MEADORS: Your Honor, we'd ask the record  
15 reflect he's pointed to Mr. Christopher Whitehead.

16 THE COURT: The record will so reflect the  
17 witness identified the defendant, Whitehead.

18 MR. MEADORS: Beg the Court's indulgence. Thank  
19 you. That's all.

20 THE COURT: Cross examination.

21 MR. WHITLARK: May it please the Court.

22 CROSS EXAMINATION

23 BY MR. WHITLARK

24 Q Now, you had some other charges, didn't you? It's  
25 Mr. Jenkins, right?

1   **A**    Yes, sir. Well, just the ones that he said, pretty  
2           much.

3   **Q**    Well, all right. Didn't you have a couple of  
4           shoplifting charges on you?

5   **A**    There was one.

6   **Q**    Okay. And possession with intent to distribute  
7           drugs?

8   **A**    That was dropped to a possession.

9   **Q**    You actually were charged with schedule 1, 2 and 3  
10          type drugs, right?

11   **A**    I don't know what schedule 1, 2 and 3 is.

12           **MR. MEADORS:** Your Honor, objection. That's not  
13          on here.

14           **MR. WHITLARK:** Here it is.

15   **Q**    And you were convicted of marijuana, right?

16   **A**    I was -- I had a -- I was convicted of a simple  
17          possession. Yes.

18   **Q**    How many fraudulent check charges did you think you  
19          had?

20   **A**    I've only been picked up twice, but there was quite a  
21          few checks. I made a lot of mistakes when I was  
22          young.

23   **Q**    You were only picked up twice about it?

24   **A**    Yes, sir. I was only picked up twice.

25   **Q**    Now, you were friends with the decedent in this case?



1     **A**     I knew of him; and, yes, he was my friend. He was a  
2             good person, had a good heart in my opinion. I had  
3             went a different route and hadn't seen him for a  
4             couple of years prior to his death.

5     **Q**     And you all had done drugs together before or sold  
6             drugs together?

7     **A**     I mean, I've been to a party with him before. You  
8             know, in my younger time, I'm sure I probably have.

9     **Q**     And you say that you just wanted to come forward and  
10            talk about Mr. Whitehead's statement. Is that what  
11            you're saying?

12    **A**     Yes, sir. That's the reason I'm here today.

13    **Q**     All right. Were you offered any promises of a deal  
14            or anything on any charges by anybody?

15    **A**     No, sir.

16    **Q**     Okay. And you don't have anything to say about Mr.  
17            McDonald, do you?

18    **A**     No, sir.

19    **Q**     Okay. And when were you notified to come up here and  
20            testify?

21    **A**     I believe sometime February or so.

22            **MR. WHITLARK:** That's all I have, Your Honor.

23            **THE COURT:** Mr. Kendrick.

24            **MR. KENDRICK:** Thank you, Judge.

25                    CROSS EXAMINATION

1 **BY MR. KENDRICK**

2 **Q** Mr. Jenkins, I'm Josh Kendrick. I represent Robert  
3 Cannon. You don't know him, do you?

4 **A** No, sir.

5 **Q** You don't know anything about him, do you?

6 **A** No, sir, I don't.

7 **Q** All right. When you said you were first notified of  
8 this situation in February, why were you notified in  
9 February?

10 **A** Well, I say February. I can't remember the exact  
11 date. I just -- I know I got a subpoena and a phone  
12 number to call the investigator. That was about it.

13 **Q** And they wanted you to come testify in a trial,  
14 right?

15 **A** Yes, sir.

16 **Q** And that trial was rescheduled to this week?

17 **MR. MEADORS:** Your Honor, that's on a motion of  
18 a continuance by them I want the record to reflect.

19 **THE COURT:** Sir, if you've got an objection,  
20 state it.

21 **MR. MEADORS:** Objection.

22 **THE COURT:** Otherwise, don't interrupt. Please.  
23 Go ahead.

24 **Q** And so you came -- you were to testify at a trial in  
25 February, right?

1     **A**     Yes.

2     **Q**     And now you're here. That trial was rescheduled to  
3             this week?

4     **A**     Yeah.

5     **Q**     And you're here to testify?

6     **A**     As far as I know, that's correct.

7     **Q**     What happened last year from January to December?  
8             You didn't want to tell anybody about this?

9     **A**     From when?

10    **Q**     Well, you said this happened in January of 2007,  
11             right? What's that's when you were in jail?

12    **A**     Yes.

13    **Q**     So sometime, it's safe for us to say -- how long were  
14             you in jail?

15    **A**     I was in there for about four months probably.

16    **Q**     Okay. So this happened towards the beginning of the  
17             time you were in jail according to the your story,  
18             right?

19    **A**     Yes.

20    **Q**     So in January or February of 2007 you heard what you  
21             thought was an admission to a crime?

22    **A**     Yeah. Pretty much.

23    **Q**     And you came forward February right before this case  
24             was scheduled for a trial, right?

25    **A**     Yes.

1 Q Okay. So you didn't tell anybody about what you had  
2 heard?

3 A Not really.

4 Q Okay. How did they get your name? How did the State  
5 get your name?

6 A I don't know their business. I don't know how they  
7 got it.

8 Q You didn't tell anybody about what you had heard,  
9 right?

10 A I had told -- yeah. After this was brought forward  
11 and I had told one other person.

12 Q And who was the other person you told?

13 A Christopher Kaywood.

14 Q Who is Christopher Kaywood?

15 A He was in the jail with me.

16 Q So you just said, hey, man, you'll never believe what  
17 I heard?

18 A I don't remember the exact conversation. Something  
19 along that lines.

20 Q Do you think he might have told the State about what  
21 happened?

22 A It's possible he could have told someone who told  
23 someone who told someone.

24 Q Let me get this right. You're just sitting at your  
25 house in Alabama where you live, right?

1     **A**     No. I live here. I had only went to Alabama for a  
2             couple of months.

3     **Q**     I'm sorry. So you live here in Columbia?

4     **A**     Mm-hmm (affirmative).

5     **Q**     And you're sitting in your house and investigators  
6             from the Solicitor's Office call up and say, hey, we  
7             heard you know something about this case?

8     **A**     Yeah. That's right.

9     **Q**     You said sure?

10    **A**     Yeah. I told them that's right.

11    **Q**     And they never discussed with you how they got that  
12             information?

13    **A**     Nope.

14    **Q**     You said that when this happened you overheard a  
15             conversation between who you claim is Mr. Whitehead  
16             and other people, right?

17    **A**     Yes. He was speaking with someone else.

18    **Q**     You don't know who those other people are, right?

19    **A**     No, sir.

20    **Q**     How many people are in jail over there at Kershaw?

21    **A**     I don't have a record or a roster of how many people  
22             is there. I have no idea.

23    **Q**     That's a fair enough answer. Let me ask it to you  
24             another way then. Are there a couple of people in  
25             jail over there or a whole bunch of people? Pick

1           one.

2   **A**    A bunch of people.

3   **Q**    All right. And there is usually a lot of people that  
4           mill around in the jail, right?

5   **A**    You can't go anywhere in jail. You're just there.

6   **Q**    Another good point. If there is a conversation going  
7           on, there are going to be people around, right?

8   **A**    Well, yeah, unless they're talking to themselves.  
9           Which, you know, I don't see too often.

10   **Q**    Okay. Let me figure out a way that -- I guess what I  
11           mean to say is that you're in close quarters at the  
12           jail, right?

13   **A**    Yes.

14   **Q**    You don't have free range. You don't have a lot of  
15           room. You don't get your own big personal space?

16   **A**    That's correct.

17   **Q**    Do you know Mr. Zoch's family?

18   **A**    Well, I just recently met his parents.

19   **Q**    Did you talk to them about this case?

20   **A**    No. Not really.

21   **Q**    You talk to them about this trial?

22   **A**    No, sir.

23   **Q**    Okay. You know Mr. Meadors, right?

24   **A**    Yes, sir.

25   **Q**    You talked to him about this case?

1     **A**     Sure.

2     **Q**     Did you talk to him about this trial?

3     **A**     Sure.

4     **Q**     Did you talk to him about what you were going to come  
5             up here and say?

6     **A**     No, sir.

7             **MR. KENDRICK:** That's all I have, Judge.

8             **THE COURT:** Mr. Reuwer.

9             **MR. REUWER:** May it please the Court.

10                     CROSS EXAMINATION

11     **BY MR. REUWER**

12     **Q**     Good afternoon, Mr. Jenkins. We just met earlier  
13             this morning, right?

14     **A**     Yes, sir.

15     **Q**     Mr. Jenkins, do you ever tell a lie?

16     **A**     Yes. I'm sure I have.

17     **Q**     And have you in fact been involved with charges with  
18             the Solicitor's Office before that deal with  
19             trustworthiness, truthfulness?

20     **A**     Pretty much any crime is going to deal with that.  
21             Yes, sir.

22     **Q**     Well, specifically, you had charges of 19 fraudulent  
23             checks somewhere in your past?

24     **A**     Yes, sir. That's correct. In my past.

25     **Q**     Where you took and used somebody else's checks?

1     **A**     They were my own. Well, I think there was a couple  
2             that was someone else's. But they were my own  
3             checks. They just weren't any good.

4     **Q**     And you have a drug use charge from 2002?

5     **A**     Yes, sir.

6     **Q**     And shoplifting charges?

7     **A**     Yes, sir.

8             **MR. REUWER:** I want to, if I may, please the  
9             Court, have marked Clerk of Court's indexing sheets  
10            for today.

11            **MR. MEADORS:** Your Honor, if he wants to put  
12            them in evidence --

13            **THE COURT:** I understand.

14            **MR. RILEY:** I'd like to have them marked for  
15            identification purposes only, please, ma'am.

16            (WHEREUPON, Defendant Whitehead's Exhibit No. 5  
17            is marked for identification.)

18            (WHEREUPON, Defendant Whitehead's Exhibit No. 6  
19            is marked for identification.)

20     **Q**     Mr. Jenkins, I'm showing you Exhibits 5 and 6 which  
21             are Clerk of Court's status updates of pending  
22             charges.

23     **A**     Mm-hmm (affirmative).

24     **Q**     I'm showing you No. 5. And would you tell me whose  
25             name that is at the top?



1     **A**     That's my name. Michael Jenkins.

2     **Q**     And the charge is a couple of lines down. Would you  
3           tell me what that's for? It says offense charged.

4     **A**     It says forgery.

5     **Q**     And then up at top on the right-hand side, today's  
6           date, what date does it say?

7     **A**     It says 5-9-08.

8     **Q**     And then below that it says status. Would you tell  
9           me what's next to the line status?

10    **A**     Status, it says P.

11    **Q**     Okay. P could mean pending? I'm showing you Exhibit  
12           for identification purposes No. 6. Would you tell me  
13           what name appears?

14    **A**     It says Michael Jenkins.

15    **Q**     And what's the charge, please, sir?

16    **A**     The same thing. It says forgery.

17    **Q**     A different charge though?

18    **A**     I don't know if it's a different charge or not.

19    **Q**     Well, they have -- see the line where it says  
20           warrants?

21    **A**     Yes.

22    **Q**     Okay. Let's just make sure. If you'll double check  
23           me.

24    **A**     Yes. Two different numbers.

25    **Q**     So different forgery charges?

1     **A**     Yes.

2     **Q**     And on the status line for No. 6, please, Mr.  
3             Jenkins, it says?

4     **A**     It says P. Both these charges were dropped,  
5             dismissed.

6     **Q**     But today's date is up at the top?

7     **A**     5-9-08.

8     **Q**     Thank you, sir. For identification purposes, Your  
9             Honor. Let's talk about the Kershaw County Detention  
10            Center. What pod were you in when this alleged  
11            statement was made?

12    **A**     A Pod.

13    **Q**     And how many cells are in A Pod?

14    **A**     There are six.

15    **Q**     And the six -- who goes -- what's the purpose of A  
16            Pod?

17    **A**     It's for disciplinary or protective custody.

18    **Q**     Doing something wrong even when you're inside the  
19            jail?

20    **A**     Yes, sir.

21    **Q**     And are there restrictions when you're in A Pod?

22    **A**     Yes, sir.

23    **Q**     Tell me what those are?

24    **A**     They take your canteen items from you. You don't get  
25            visitation. I don't think you get any phone use.

1 Q No adult education?

2 A I don't know the rest of the rules. I was only in  
3 there for one night, so I didn't become accustomed to  
4 all the A pod rules.

5 Q How many hours were you in there?

6 A I don't know the exact hours. Just overnight 'til  
7 about midday.

8 Q So almost a day?

9 A Something like that, yeah.

10 Q Okay. You said you heard noise. Can you hear noise?  
11 Is that correct?

12 A Yes.

13 Q Could you hear voices?

14 A Yes.

15 Q Okay. Do you hear -- can you hear voices? From  
16 where do you hear them?

17 A From -- well, you can hear them from anywhere. The  
18 particular voice I heard was coming to the right of  
19 me.

20 Q How do you hear the voices? Are they when you're  
21 inside the cell?

22 A Through either the slot in the door. There's a  
23 little --

24 Q So there's a slot under the door?

25 A There's under. And, I mean, the ones above and under

1           aren't very big. But there is a slot in the middle  
2           that's a little rectangular opening.

3    **Q**    Through which you can actually talk to somebody on  
4           the outside?

5    **A**    Yes, sir.

6    **Q**    And then are there any other vents in the cell?

7    **A**    Yes, sir. There are vents in the cell.

8    **Q**    Where are those? Pardon?

9    **A**    Yes, sir. There are vents.

10   **Q**   How many?

11   **A**    There's two.

12   **Q**   Two vents?

13   **A**    Yes, sir.

14   **Q**   And where are those?

15   **A**    They are in the ceiling.

16   **Q**   Okay. Mr. Jenkins, can you hear voices coming from  
17           those vents?

18   **A**    You can. You can.

19   **Q**   And I'm not talking about the specific one you heard.  
20           Can you hear voices coming from those vents?

21   **A**    Yes, sir.

22   **Q**   Can you hear voices coming from under the door?

23   **A**    Yes, sir.

24   **Q**   Can you hear voices coming from the vent in the  
25           middle of the door?

1     **A**     Yes, sir.

2     **Q**     Okay. At times can you hear -- knowing that you're  
3             only there for a day, at times can you hear voices,  
4             more than one voices coming through there?

5     **A**     Sure.

6     **Q**     I am showing you a schematic of the jail which is  
7             marked as identification purposes Whitehead No. 4.  
8             And can you locate for me and the jury where A Pod  
9             is?

10    **A**     It's right here.

11    **Q**     Okay. And what's directly above? What pod is  
12             directly above A Pod?

13    **A**     F pod.

14    **Q**     How many cells are in F Pod?

15    **A**     I'm not sure. I can't read this very well.

16    **Q**     Approximately?

17    **A**     Which one is F?

18    **Q**     Right above it.

19    **A**     Right here?

20    **Q**     Mm-hmm (affirmative).

21    **A**     Six.

22    **Q**     Okay. So there's six pods right above A Pod on a  
23             different floor?

24    **A**     Yes, sir.

25    **Q**     Now I'm showing you what's been marked as Whitehead's

1 Exhibit 3 which is a drawing of the particular cells  
2 and the vents. Do you see that?

3 A Yes, sir.

4 Q Okay. And are you aware that you've told us you can  
5 hear noises and voices through the vents. If you  
6 know, do you know if the vents are connected to one  
7 another?

8 A I don't -- I don't know that, no.

9 Q Okay. But you can hear voices through the vents?

10 A Yes, sir.

11 Q Okay. And how many -- can you tell me how many vents  
12 there would be in A Pod?

13 A There would be 12, six cells two each.

14 Q And how many vents would be in F Pod which is above  
15 it?

16 A Most likely, the same. I don't know. I didn't build  
17 it. But ...

18 Q Okay.

19 A I'm guessing it would be.

20 Q Do you know how many pods there are in the jail?

21 A Not in total. No, sir.

22 Q Okay. Mr. Jenkins, have you ever -- before the night  
23 that you were in A Pod, had you ever known Chris  
24 Whitehead?

25 A No, sir.

1 Q Okay. But you knew Josh?

2 A Yes, sir.

3 Q The deceased?

4 A Yes. That's correct.

5 Q In fact, a while ago you were friends with him?

6 A It's been a few years. Yes.

7 Q Did you do drugs with him?

8 A Like I said, you know, I've been to parties and stuff  
9 in my past. I have smoked weed, and I'm sure at one  
10 point in time I have.

11 Q Did you do alcohol with him?

12 A Sure.

13 Q Had you ever known, heard of Christopher Whitehead  
14 before the night you were in A Pod?

15 A No, sir.

16 Q Had you ever seen Christopher Whitehead before you  
17 were in A Pod?

18 A No, sir.

19 Q Had you ever seen his writing or signature before you  
20 were in A Pod?

21 A No, sir.

22 Q Okay. After you heard this statement, at the time  
23 you heard the statement, you did not know who made  
24 it, did you?

25 A No, sir.

1 Q Okay. In fact, when did you learn who you believed  
2 made it?

3 A I had asked the C.O. when he came through who was in  
4 the cell next to me.

5 Q You asked the C.O., Officer Harvey?

6 A Yes, sir.

7 Q Who was in the cell next to you?

8 A Yes, sir.

9 Q Okay. Is it possible that Officer Harvey may have  
10 been mistaken as to which cell you meant?

11 A No, sir. I had asked him to the right of me.

12 Q I'm sorry?

13 A I had asked him, you know, which cells, who is in the  
14 cell next to me, to the right of me.

15 Q Did you ever ask him who was in the cell to the left  
16 of you?

17 A No, sir.

18 Q Did you ever ask him who else was in the cells on A  
19 Pod?

20 A No, sir.

21 Q Okay. You went to school with Melissa Davy, too,  
22 didn't you?

23 A I don't think she went to school with me.

24 Q But you went to school with Josh?

25 A No. I knew of them at the time they were in school.



1 I'd, you know, hung out with them. But I'm a little  
2 older than they are.

3 Q Is it possible you went to school with Melissa or  
4 hung out with her when she was in school?

5 A I don't even know if she went to Spring Valley. I  
6 think she may have. I was --

7 Q Did you know her before --

8 **THE COURT:** Sir, he was answering the question.

9 **MR. REUWER:** I'm sorry.

10 A She may have gone there. I don't really remember her  
11 being there at the same time I was there.

12 Q Did you know her before this event?

13 A Yes, I did.

14 Q Do you know when Christopher Whitehead was in the  
15 Kershaw County jail?

16 A I don't know exactly when, no.

17 Q You don't know when he first got there?

18 A I know that he was in the cell next to me from what  
19 the C.O. said, but I don't know --

20 Q Only one night?

21 A Yeah. I don't know when he got there or when he  
22 got -- if he's still there or what.

23 Q And did you not testify earlier in answer to the  
24 solicitor that in fact at the chapel -- where is the  
25 chapel service held?

1     **A**     In the multipurpose room.

2     **Q**     At the chapel service you didn't even know  
3             Christopher Whitehead was in there until you looked  
4             at this list?

5     **A**     That is correct.

6     **Q**     And what did you see on the list?

7     **A**     I saw his name and a prayer request.

8     **Q**     Okay. So the only time you could connect the voice  
9             that you heard that night in A Pod to Christopher  
10            Whitehead was through Officer Harvey?

11    **A**     I had heard him speaking a third time in the  
12            multipurpose room again when we were getting shots.  
13            But I didn't find out that it was his name until I  
14            had asked Officer Harvey in A Pod.

15    **Q**     Okay. So you couldn't connect the name with a face,  
16            with a voice until then?

17    **A**     That's correct.

18    **Q**     One moment, Your Honor. You're not a voice expert,  
19            are you?

20    **A**     No, sir, I'm not.

21    **Q**     Okay. Do people -- do some people sound alike to  
22            other people? Voices?

23    **A**     Sure. I mean, you know, it's like I think everyone  
24            has their own unique voice. But I'm sure that  
25            someone -- you know, there's impressionists out there

1           that can sound like someone else. So I'm sure anyone  
2           could sound like someone.

3    Q    Mr. Jenkins, I don't mean that specifically as an  
4           impressionist. I mean, do you know how we call come  
5           in physical shapes and sizes?

6    A    Yes, sir.

7    Q    Would you agree with me that you could put those in  
8           categories; people have the same form and shape?  
9           Similarities in looks?

10   A    Yeah. Similar. Not exactly. Similar.

11   Q    I understand. Would you agree that voices come in  
12          same categories, can come in the same categories or  
13          similarities?

14   A    Yeah. But --

15   Q    Mr. Jenkins, some people talk high?

16   A    Yeah. Some people --

17   Q    Some talk loud. Some whisper and are soft. And even  
18          the tone and intonation can be similar to one  
19          another?

20   A    Sure. But there is usually some distinctive  
21          characteristic.

22   Q    Mr. Jenkins, is there a distinctive characteristic to  
23          Mr. Whitehead?

24   A    Kind of his accent, the way he --

25   Q    I can't hear you. I'm sorry.

1     **A**     Yeah. I would say, you know, the way he talks, kind  
2             of thuggish, gangsta. Well, at that time.

3     **Q**     Okay. Accent, the way he talks, and at that time?

4     **A**     Yes.

5     **Q**     Is it possible that you could have -- you don't know  
6             exactly where the voice was coming from, do you?

7     **A**     It was coming from the right of me, the cell next to  
8             me.

9     **Q**     Do you think that or absolutely know that?

10    **A**     I'm pretty sure of that.

11    **Q**     Pretty sure?

12    **A**     Yeah.

13    **Q**     But voices can come through the vents?

14    **A**     Sure. You can tell, I mean --

15    **Q**     And you don't know who the voice was talking to, do  
16             you?

17    **A**     No, sir.

18    **Q**     Okay. Thank you, Mr. Jenkins.

19    **A**     Thank you.

20             **THE COURT:** Redirect.

21             **MR. MEADORS:** No, sir.

22             **THE COURT:** All right, sir. You may come down,  
23             sir. Thank you very much. Is the witness free to  
24             go?

25             **MR. MEADORS:** Please. Yes, sir.

1           **THE COURT:** Without objection, Mr. Jenkins is  
2 excused.

3           **MS. MCDUFFIE:** The State calls Officer Harvey.

4           **MR. KENDRICK:** Your Honor, I have a matter with  
5 this witness. If we could approach the bench?

6           (Whereupon, a bench conference is had)

7           **MS. MCDUFFIE:** The State calls Officer Harvey.

8           CRAVEN HARVEY, after being duly sworn, testifies  
9 as follows:

10           **THE CLERK:** Please have a seat in the witness  
11 chair and state your full name for the record.

12           **THE WITNESS:** Craven Harvey.

13                           DIRECT EXAMINATION

14           **BY MS. MCDUFFIE**

15           **Q**     Good afternoon, Officer Harvey.

16           **A**     Good afternoon.

17           **Q**     Where are you currently employed?

18           **A**     Kershaw County Detention Center.

19           **Q**     And were you employed at the Kershaw County Detention  
20 Center in January of 2007?

21           **A**     Yes, ma'am, I was.

22           **Q**     And what are your duties at the Kershaw County  
23 Detention Center?

24           **A**     My job title, I'm classification inmate relation  
25 coordinator. I deal with the inmates when they first

1       come in, making sure they're in the right dormitory,  
2       also making sure their paperwork has been processed  
3       correctly and making sure that their paperwork is  
4       distributed to the appropriate people; i.e., Clerk of  
5       Court, municipal court. I also deal with the public  
6       defenders, making sure that they talk to their public  
7       defenders.

8       **Q**   And in 2007, did you have the occasion to meet  
9       Michael Jenkins?

10      **A**   Yes, ma'am, I did.

11      **Q**   And Christopher Whitehead?

12      **A**   Yes, ma'am, I did.

13      **Q**   And could please identify Christopher Whitehead for  
14      the court?

15      **A**   Sure. He is right between Attorney David Reuwer as  
16      well as Neil Riley.

17               **MS. MCDUFFIE:** Your Honor, please let the record  
18      reflect --

19               **THE COURT:** The witness identified the  
20      defendant, Whitehead.

21      **Q**   Officer Harvey, what is A Pod?

22      **A**   A Pod, it's classified for two different people. One  
23      type of person would be those for disciplinary. If  
24      they're breaking some of the rules and regulations of  
25      our facility, they would go there for a certain

1 amount of days. Also it's to distinguish another  
2 type person. If they're a threat to the dormitory or  
3 to themselves, they also go there. Protective  
4 custody. That's what we call it.

5 Q Is it also sometimes referred to as solitary  
6 confinement?

7 A Yes, ma'am, it is.

8 Q And how many cells are there in A Pod?

9 A There are six cells.

10 Q And how many beds in are in each cell?

11 A It's one set of bunk beds, which is two beds.

12 Q And how many people are usually in each cell?

13 A It can be -- it can range from one to three people in  
14 each room.

15 Q And how many hours a day are the inmates in their  
16 cells in A Pod?

17 A Usually 23 out of 24. The only time they come out  
18 for an hour rec would be Monday, Wednesday and  
19 Friday.

20 Q Is it common for the inmates to have conversations  
21 between themselves?

22 A Yes, ma'am.

23 Q And each other?

24 A Yes, ma'am.

25 Q Do they have TV's in their cells?

1     **A**     No, ma'am, they don't.

2     **Q**     Anything to keep them entertained?

3     **A**     No, ma'am.

4     **Q**     So conversations are frequent between inmates?

5     **A**     Yes, ma'am.

6     **Q**     And is it easy to hear between the cells in A Pod?

7     **A**     Yes, ma'am. It is.

8     **Q**     Do you recall whether or not Michael Jenkins was  
9             placed in A Pod?

10    **A**     Yes, ma'am. I do recall that.

11    **Q**     And Christopher Whitehead?

12    **A**     Yes, ma'am, I do.

13    **Q**     Were they in A Pod at the same time?

14    **A**     Yes, ma'am, they were.

15    **Q**     And what cell was Michael Jenkins in?

16    **A**     Michael Jenkins was in A2.

17    **Q**     And what cell was Christopher Whitehead in?

18    **A**     He was in A3.

19    **Q**     Nextdoor to each other?

20    **A**     Yes, ma'am.

21    **Q**     Do you recall whether or not Michael Jenkins asked  
22             you who was in the cell next to him?

23    **A**     I don't recall that. No, ma'am.

24    **Q**     If he asked you that, would you have told him who was  
25             in the cell next to him?



1     **A**     Yes, ma'am. I probably would. Yes.

2     **Q**     Any reason you would not have told him he was in the  
3     cell next to him?

4     **A**     No, ma'am.

5     **Q**     Any reason you would have told him someone different  
6     from who was actually in the cell next to him?

7     **A**     No, ma'am.

8     **Q**     It's not confidential information?

9     **A**     No, ma'am. It's not.

10    **Q**     And so you would have told him had he asked you?

11    **A**     Yes, ma'am.

12    **Q**     Had you remembered he asked you?

13    **A**     Yes, ma'am.

14            **MS. MCDUFFIE:** Nothing, further, Your Honor.

15            **THE COURT:** Cross examination.

16            **MR. SHELDON:** Thank you, Your Honor. May it  
17     please the Court.

18                    CROSS EXAMINATION

19    **BY MR. SHELDON**

20    **Q**     Good afternoon.

21    **A**     Good afternoon, sir.

22    **Q**     So your job is generally just to deal with the  
23     inmates, set them up with their public defenders,  
24     stuff like that?

25    **A**     Yes, sir, it is.

1 Q Move them from one place to another. And so there  
2 are six cells total in A Pod?

3 A Yes, sir.

4 Q They could have anywhere from one to three people?

5 A Yes, sir.

6 Q And conversations are common?

7 A Yes, sir.

8 Q It's easy to hear. But let me ask you something.  
9 You don't recall him telling you -- I mean, I'm  
10 sorry. You don't recall him asking you who was in  
11 the cell next to him?

12 A No, sir, I don't.

13 Q Not at all?

14 A No, sir, I don't.

15 Q Is that a common request?

16 A Well, no, it's not actually.

17 Q It's not?

18 A No, sir, it's not.

19 Q Are you familiar with the charges that inmates are in  
20 jail --

21 A Yes, sir.

22 Q -- for?

23 A Yes, sir. I'm actually the one that oversees all  
24 that. I see every charge that they are brought in  
25 for.

1 Q Okay. And at the time he was just in jail for ...?

2 A Which one? You mean Jenkins or Mr. Whitehead?

3 Q Mr. Jenkins. I'm sorry.

4 A Mr. Jenkins, he had a bench warrant as well as some  
5 other pending charges.

6 Q What were those other pending charges?

7 A I think it was for forgery.

8 Q Okay. For forgery?

9 A Yes, sir. I think so.

10 Q Okay.

11 A Or check fraud, something of that nature.

12 Q So something like forgery or something like that?

13 A Yes, sir.

14 Q Okay. Great. I have no more questions, Your Honor.

15 **THE COURT:** Mr. Kendrick.

16 **MR. KENDRICK:** Just a couple, Judge.

17 CROSS EXAMINATION

18 **BY MR. KENDRICK**

19 Q Officer Harvey, I'm just making sure I heard that  
20 right. You couldn't remember him asking you who was  
21 next to him?

22 A No, sir. I don't remember that.

23 Q And you said he came in there not just for a bench  
24 warrant but also for pending charges?

25 A Yes, sir.

1 Q I think you said those pending charges were forgery?

2 A I think so. Yes, sir.

3 Q Thank you, Officer. I appreciate you coming.

4 A You're welcome.

5 THE COURT: Mr. Reuwer.

6 MR. RILEY: May it please the Court.

7 CROSS EXAMINATION

8 BY MR. REUWER

9 Q Hi, Officer Harvey.

10 A Hey. How is it going, Mr. Reuwer?

11 Q We know each other from the jail, correct?

12 A Yes, sir, we do.

13 Q But we've never discussed Chris Whitehead, have we?

14 A No, sir.

15 Q We've never discussed Mr. Jenkins?

16 A No, sir.

17 Q Officer Harvey, have you heard Chris Whitehead speak,  
18 voice at the jail?

19 A Have I heard his voice? Yes, sir, I have.

20 Q Does he have an accent?

21 A I wouldn't say accent. But it's a distinction to it.  
22 I know that.

23 Q Would you say he's loud or soft spoken?

24 A Soft spoken.

25 Q Officer Harvey, I'm showing you what's been marked

1       for I.D. as Exhibit 3 which is a drawing of the cells  
2       on A Pod.

3    **A**    Yes, sir.

4    **Q**    How many cells are there?

5    **A**    They have six job.

6    **Q**    Okay.

7    **A**    Yes, sir.

8    **Q**    And at times, can more than one person be in an A Pod  
9       cell?

10   **A**    Yes, sir.

11   **Q**    Up to how many?

12   **A**    Up to three, four.

13   **Q**    Okay. So at times the A Pod cell could have as many  
14       as 18 to 24 people?

15   **A**    Yes, sir.

16   **Q**    Okay. And right above A Pod is which pod?

17   **A**    F Pod.

18   **Q**    Okay. And F Pod has how many cells?

19   **A**    The same amount. Six.

20   **Q**    And how many vents are in each one of those cells?

21   **A**    There's two, two vents.

22   **Q**    Two vents?

23   **A**    Yes, sir.

24   **Q**    Are the vents between A Pod and F Pod connected?

25   **A**    Yes, sir, they are.

1 Q Okay. And are the vents between the cells connected?

2 A Yes, sir. They are.

3 Q And at times can you hear noises coming from a cell  
4 through the vents?

5 A Yes, sir, you can.

6 Q Can you possibly hear noise coming from the cell  
7 through the vents other than the cell directly next  
8 to you?

9 A Oh, yes, sir.

10 Q Including voices of people who may be in those cells?

11 A Yes, sir.

12 Q So is it possible that -- it is possible to hear up  
13 to 36 different people in the A Pod?

14 A It's possible. Yes, sir.

15 Q By being inside the cell?

16 A Yes, sir.

17 Q And, in fact, it's connected to the F Pod above it  
18 through the vents?

19 A Yes, sir.

20 Q And that has at least -- how many people are in the  
21 cells in F Pod?

22 A It can be the same amount.

23 Q 36?

24 A Yes, sir.

25 Q So you could have a potential of 72 different voices

1           being heard?

2   **A**     It's possible, if they're all talking real loud.

3   **Q**     Recognizing that you hear them closer if the cells  
4           are closer?

5   **A**     Yes, sir.

6   **Q**     But that would include closer in terms of the  
7           location of the vent right above you, too?

8   **A**     Yes, sir. Vertical. Yes, sir.

9   **Q**     As well as the one next to you. Is that correct?

10  **A**     Yes, sir.

11  **Q**     Do you frequently have more people in the cells above  
12           than in the A Pod?

13  **A**     Yes, sir.

14  **Q**     And that can be -- like, how many are there today?

15  **A**     Right now there is 16.

16  **Q**     Okay. So there's more than one person in each of  
17           those?

18  **A**     Yes, sir.

19  **Q**     One moment, Your Honor. Thank you, Officer Harvey.  
20           Thank you, Your Honor.

21           **MS. MCDUFFIE:** Nothing further, Your Honor.

22           **THE COURT:** All right. You may come down.

23           Thank you very much. May this witness be excused?

24           Without objection. Call your next witness.

25           **MR. MEADORS:** Mark Austin.

1 MARK AUSTIN, after being duly sworn, testifies  
2 as follows:

3 **THE CLERK:** Thank you. Please be seated in the  
4 witness chair. State your full name for the record.

5 DIRECT EXAMINATION

6 **BY MR. MEADORS**

7 **Q** State your name, please.

8 **A** My name is Mark Austin, A-U-S-T-I-N.

9 **Q** Tell these folks a little bit about yourself,  
10 Investigator Austin; where you're from, where you  
11 went to school, your background and training, please?

12 **A** I was born in Union County. I went to University of  
13 South Carolina, graduated. I went to work with the  
14 Richland County Sheriff's Department in 1983. And  
15 then I went to work with the Solicitor's Office in  
16 1995.

17 **Q** And when you were at the Sheriff's Department, what  
18 did you do?

19 **A** I was an investigator.

20 **Q** And you've been with our office for how long?

21 **A** Probably about 13 years.

22 **Q** And as part of that, do you assist in getting cases  
23 ready to go to trial?

24 **A** That's correct.

25 **Q** And at Carolina you played football, correct?



1     **A**     Yes, I did.

2     **Q**     Specifically, were you able to trace a number through  
3             a public database that I asked you to check,  
4             [REDACTED]?

5     **A**     Yes, I did.

6     **Q**     And did that number come back to Alltel?

7     **A**     Yes, it did.

8     **Q**     Tell the jury how you did that?

9     **A**     I went to my computer and through whitepages.com I  
10            entered the number on the reverse number check, and  
11            it came back through to an Alltel number.

12    **Q**     And that's something you commonly do in your practice  
13            and we do now in this day and age?

14    **A**     Right.

15    **Q**     We can go in a public database and show where a  
16            number is --

17    **A**     That's correct.

18    **Q**     And also at my request, did you serve a subpoena on  
19            an Angela Evans with Alltel; and as a result of that,  
20            do you have information that this number did not  
21            provide detailed calling?

22    **A**     Yes. That's correct. After obtaining the number  
23            through Alltel, we subpoenaed the records through  
24            Alltel Corporation and through Angela Evans who we  
25            deal with for a subpoena.

1 Q As a result of that, that number did not provide  
2 detailed calling, correct?

3 A That's correct. No itemized calling information  
4 available.

5 Q And we work with these folks all the time, don't we?

6 A Yes, we do.

7 Q That's all, Investigator. Thank you.

8 CROSS EXAMINATION

9 **BY MR. WHITLARK**

10 Q Good morning, Mr. Austin.

11 A Good morning.

12 Q Mr. Austin, isn't it true that you played the entire  
13 football game with a broken arm against the  
14 University of Michigan?

15 A That's correct.

16 Q And you all won that game, didn't you?

17 A Yes, we did.

18 Q You looked at some phone stuff in this case, right?  
19 Is that what you just said?

20 A I did.

21 Q Some phone materials? I'm going to hand you an  
22 exhibit here and ask you if you recognize it. Would  
23 you take a look at that? That's Exhibit No. 21.

24 A That's correct.

25 Q Do you recognize that?

1    **A**    I'm sorry?

2    **Q**    Do you recognize the number that that's looking at?

3        I'm sorry. I need to get my glasses on, too.

4    **A**    [REDACTED]?

5    **Q**    Yeah. Whose number is that, Investigator Austin?

6    **A**    I don't have that information with me right now.

7    **Q**    Does that sound like it might be Zack -- is it --

8        Waltemath?

9    **A**    It could be.

10   **Q**    Okay. Do you see three numbers in a row at the top

11       of that? Right here at the top here. Right here.

12       Right there. This [REDACTED] number, do you see that?

13   **A**    Yes, sir.

14   **Q**    There's three numbers. Would you read that number

15       out, please?

16   **A**    [REDACTED]

17   **Q**    And are you aware that's the number to Wal-Mart?

18   **A**    I do believe a number of Wal-Mart was in this. But

19       as far as me knowing that is, right now I don't know.

20   **Q**    Yes, sir.

21   **A**    Yes, sir.

22   **Q**    Is there a 31-minute phone call from the 865,

23       Mr. Zack Waltemath's telephone, to the Wal-Mart

24       listed on there?

25   **A**    That's correct.

1 Q 31 minutes?  
2 A Yes.  
3 Q On December 12th. Right?  
4 A Yes.  
5 Q There's two other calls to Wal-Mart after that,  
6 aren't there?  
7 A Yes.  
8 Q Thanks.  
9 A All right.  
10 Q That's all I have. Thank you, Agent Austin.

11 MR. KENDRICK: No questions, Your Honor.

12 THE COURT: Mr. Riley. Mr. Reuwer.

13 MR. RILEY: No, sir.

14 REDIRECT EXAMINATION

15 BY MR. MEADORS

16 Q Did you block for George Rodgers the year he won the  
17 Heisman?

18 A I did.

19 Q Thank you.

20 THE COURT: Next witness.

21 MR. MEADORS: Helen Zoch.

22 HELEN ZOCH, after being duly sworn, testifies as  
23 follows:

24 THE CLERK: Please be seated in the witness  
25 chair and state your full name for the record.

1                   **THE WITNESS:** My name is Helen Zoch.

2                                   DIRECT EXAMINATION

3           **BY MR. MEADORS**

4           **Q**     Good afternoon, Ms. Zoch.

5           **A**     Good afternoon.

6           **Q**     I've talked to you previously. Since this is not a  
7                   death penalty trial, you're not allowed to provide  
8                   any victim impact statement.

9           **A**     Okay.

10          **Q**     And do you understand that?

11          **A**     I do.

12          **Q**     Just as I have with every witness you've seen, can  
13                   you just tell a little bit about you?

14          **A**     I was born in Delaware and I have lived in South  
15                   Carolina since 1969. My husband is retired Navy, and  
16                   we were transferred here through Dupont. I have a  
17                   son who was active duty military who was Joshua  
18                   Zoch's father. So Joshua spent a lot of years with  
19                   me.

20          **Q**     And I'll just -- you all currently live where?

21          **A**     Columbia.

22          **Q**     And some of the family members are in the courtroom,  
23                   correct?

24          **A**     Yes.

25          **Q**     So how long had Zoch been -- Joshua been with you?

1     **A**     Joshua had been with us off and on since he was seven  
2             years old. His father and mother divorced in 1995.

3     **Q**     And you currently live in Columbia?

4     **A**     I live in Columbia; but I lived in Elgin, South  
5             Carolina, for over 30 something years.

6     **Q**     Okay. And where did you all live?

7     **A**     We lived on [REDACTED] Veterans Road.

8     **Q**     And initially was Joshua staying with you there?

9     **A**     At times Joshua lived with us there.

10    **Q**     And at some point did Joshua reside at [REDACTED] Ryan Lane  
11             which we have talked about in this trial?

12    **A**     Yes, he did.

13    **Q**     And how was -- whose house was that?

14    **A**     My husband and I purchased the home and we intended  
15             to rent it. Joshua needed a home. I did not tell  
16             Joshua that we owned the home, but I said I think we  
17             can help you rent a place. And that's where he ended  
18             up. And he was renting the house from us. But he  
19             did not realize we owned the house.

20    **Q**     And did you want him to pay rent?

21    **A**     He paid rent.

22    **Q**     I understand that. That's what you had wanted him to  
23             do?

24    **A**     Yes. I wanted him to be responsible.

25    **Q**     Moving straight to the week of 12-10, and State's 8

1 down here, you've seen me show it to other folks; do  
2 you recognize that as a December 2006 calendar?

3 **A** Yes, sir.

4 **Q** Did you see your grandson that week?

5 **A** Yes, I did.

6 **Q** And can you remember the -- let's just go straight to  
7 December 12th, 2006. Did you have an occasion to see  
8 him that day?

9 **A** I did.

10 **Q** And tell these folks where you saw him?

11 **A** Joshua called me at 7:00 that morning and told me  
12 that he had to be in court on Decker Boulevard for a  
13 ticket and he was at Melissa Davy's house but did not  
14 have his automobile with him and would I please come  
15 get him and go to court with him.

16 **Q** This was on December 12th?

17 **A** December 12th.

18 **Q** And did you go over to Melissa Davy's house and get  
19 him?

20 **A** It took me an hour to get ready. And he called me.  
21 I was asleep. I got up and picked Joshua up about  
22 8:00 at the Davys' house.

23 **Q** And where did you go from there?

24 **A** I took Joshua straight to Decker Boulevard to the  
25 magistrate's office.

1 Q And how long were you all at the magistrate's office?

2 A He was due to be there at 9:00. But when his case  
3 was called, the officer, the arresting officer for  
4 that particular ticket was not available. And they  
5 continued Joshua's case and said they would inform  
6 him as to when he would be having to come back.

7 Q Do you know --

8 A So we were not there long. We were there maybe 30  
9 minutes or so, 40 minutes.

10 Q Do you know what the charge was?

11 A I'm not sure what he was stopped for. But in the  
12 midst of being stopped, he was charged with  
13 possession of marijuana.

14 Q And he had a -- I do not mean this bad. But he had a  
15 drug problem?

16 A Unfortunately we were dealing with a troubled  
17 teen-ager.

18 Q Okay. After the officer left, what did you do?  
19 After the officer didn't show up, where did you go?

20 A Well, at Decker Boulevard, the Department of  
21 Transportation is right nextdoor. And Joshua said,  
22 "I need to get my license made over."

23 Q And I apologize for starting you on that. Just take  
24 your time. You all got your license?

25 A So we went nextdoor and he had a driver's license



1           made. But Joshua and I had been talking as we drove  
2           around where I picked him up that morning to the  
3           magistrate's office. And he told me that the drug  
4           problem was very bad. And he said, "I need help."  
5           He said, "I think I need to get some rehabilitation."

6    **Q**    Did you all go to Morris Village?

7    **A**    We did.

8    **Q**    On December 12th, 2006?

9    **A**    On December 12th we went to Morris Village.

10   **Q**   And did you want him to check in that day?

11   **A**    He wanted to check in there.

12   **Q**    Did he check in that day?

13   **A**    No, he didn't.

14   **Q**    Did you sign up or ask if there was a room available?

15   **A**    Joshua did intake with a lady named Pam Wilson. And  
16           Pam told him that she had a room and that he could be  
17           admitted that day. And Joshua said he wanted to be  
18           admitted but that he needed to talk to his girlfriend  
19           first. If Melissa could have been there with me, I  
20           believe Josh would have stayed.

21   **Q**    He did not check into Morris Village that day?

22   **A**    He didn't. But he said, "I'm coming back." He told  
23           Pam Wilson, "I'll come back, but I've got to talk to  
24           Melissa first."

25   **Q**    For timeline, from there did you go to eat something

1 at the Waffle House?

2 A When Joshua wouldn't stay, we left there. And we  
3 did. We went to the Waffle House and had breakfast.

4 Q And after that, did he go -- or did he have a car?  
5 Did you take him to his car?

6 A Joshua had left his automobile sitting on empty at  
7 the General Dollar on Hard Scrabble Road at 7:00 that  
8 morning and caught a ride to Melissa Davy's house  
9 wanting to talk to her that morning first thing.

10 Q And that's where you picked him up from, the Davys'  
11 house?

12 A I picked him up from the Davys' house. But when we  
13 left the Waffle House, we went to the General Dollar  
14 store and picked up his automobile that was sitting  
15 on empty and went to the gas station.

16 Q And he was there. Melissa was not there at that  
17 house that morning, correct?

18 A No. Melissa was not at home that morning. She had  
19 spent the night with her girlfriend, Molly.

20 Q Did you go take him to the car? Joshua?

21 A Yes. We went to the car. And I had Josh drive to  
22 the gas station and I followed him.

23 Q And what gas station did you go to?

24 A We went to the Shell at the corner of Farrow Road and  
25 Hard Scrabble.

1 Q And I want to show you what's marked State's 125.  
2 It's pump number 7. Is that the pump?

3 A That's the last place I saw my grandson.

4 Q This is where -- did you give him some money for gas?

5 A No. I went inside and I paid for the gas myself and  
6 bought him a pack of cigarettes.

7 Q And this was the last place you saw him. This wasn't  
8 taken this that night or that day. You took this  
9 later, correct?

10 A I took it later.

11 Q And after that, Ms. Zoch -- Your Honor, 125, without  
12 objection.

13 (WHEREUPON, State's Exhibit No. 125 is admitted  
14 into evidence.)

15 Q After that, continue for timeline purposes. Did you  
16 all separate?

17 A After I got the gas, Joshua had talked with Melissa  
18 through my cellphone earlier this morning. She was  
19 at work. They had talked for about five minutes.  
20 And as I said, he kept being insistent all morning  
21 that he needed to talk to Melissa.

22 Q And so after you all left the gas station, where did  
23 you go and where did he go?

24 A He went -- he said, "I'm going to go by Sonic and  
25 talk to Melissa." I said, "Okay. I am going home."

1 Which I live out past Sonic off of Hard Scrabble  
2 Road. He left the gas station and we both turned  
3 right. I was ahead of Josh. He was behind me. I  
4 saw him when he got to Sonic. I waved to him goodbye  
5 and I went home.

6 Q He turned in at Sonic? I'm sorry.

7 A He turned into Sonic.

8 Q And you kept going?

9 A (Nods head affirmatively).

10 Q Now, did you get back to your house after that?

11 A I did.

12 Q And later did you get a call from Golf Feed & Seed?

13 A I did.

14 Q As a result of that, was somebody looking for Joshua?

15 A Joshua's work was looking for him.

16 Q At Golf Feed & Seed?

17 A Golf Feed & Seed.

18 Q And after they had called, did you have occasion to  
19 call Joshua?

20 A Yes, I did.

21 Q And as a result of that, did he go to work?

22 A He did.

23 Q Where?

24 A Golf Feed & Seed. That's where Joshua worked.

25 Q Yes, ma'am. And how long did he work this day on

1 December 12th?

2 **A** He worked until 6:00 that night. His boss told me  
3 that him and Katherine said goodbye to him about 6:00  
4 that afternoon.

5 **Q** Now, just a few more questions, Ms. Zoch. On the  
6 13th --

7 **A** Mm-hmm (affirmative).

8 **Q** -- of December, the Wednesday --

9 **A** Mm-hmm (affirmative).

10 **Q** -- did you attempt to call Joshua?

11 **A** I called Joshua every morning at 7:30 in the morning  
12 to be sure he was up and gone to work.

13 **Q** And did you call on December 13th?

14 **A** I did.

15 **Q** And could you get him?

16 **A** I didn't get any answer.

17 **Q** And did you and/or your husband, John Zoch, have an  
18 occasion to go over to [REDACTED] Ryan Lane on the 13th,  
19 December 13th, that morning or early morning or early  
20 afternoon?

21 **A** Early afternoon on the 13th my husband and I were  
22 going to go over to [REDACTED] Ryan Lane and move an  
23 automobile that needed some work done on it. It was  
24 a '96 Buick and it was at Joshua's home. Yes. We  
25 were going to go over there and move the car.

1 Q Was it in the front or the back?

2 A It was in the back. It was behind the little shed,  
3 the little carport there --

4 Q In the backyard?

5 A -- that you've heard referenced.

6 Q And you all went over there. Did you do that?

7 A We went over there but we did not do that.

8 Q Was there anything unusual when you went over there?

9 A When we got over there, I expected when I didn't get  
10 Josh at 7:30 that morning that he had gotten up early  
11 and gone, took off the trash and gone on to work. So  
12 when I got there and I saw Joshua's car backed  
13 into -- this was about 2:00, probably 2, 2:30, and I  
14 saw Joshua's car backed into the carport, I was  
15 afraid he hadn't gone to work that day or that maybe  
16 Melissa had come and they had made up and that they  
17 were there together.

18 So I said to my husband, "Let's not bother him.  
19 He's had a really tired day this last day or two." I  
20 knew he had been off partying the night before, the  
21 morning that I had to take him to court and  
22 everything. And I just knew he was exhausted. I  
23 said, well, maybe he stayed home from work. I knew  
24 my husband would be upset. I said, "Let's just  
25 forget it for today and let's just go on." But I

1 thought with the car backed in, there's something  
2 really unusual going on here today.

3 Q But you didn't want your husband to get upset and you  
4 didn't really didn't want to go inside. And if he  
5 hadn't been at work, you just didn't want to deal  
6 with it right then, right? Is that fair to say?

7 A Well, I didn't know why the phone -- you know, I  
8 didn't know why I wasn't catching him. But I ...

9 Q And so you didn't go inside?

10 A No, we didn't go inside. Unfortunately I didn't go  
11 inside.

12 Q And could you get the car in the back out without  
13 moving the car?

14 A No, we couldn't.

15 Q And the next thing that happens, did you have an  
16 occasion to talk to Melissa Davy later on?

17 A About 6:30 that night I got a phone call from  
18 Melissa.

19 Q And is that when she was calling you, and what's been  
20 testified about, you having to go over. She called  
21 you, felt uneasy, and she's talking to you as she  
22 walks in the home?

23 A She said she was at the house, that she felt there  
24 was something wrong and it was really weird because  
25 all of the lights were out. Joshua's car was backed

1           into the garage where he never parks it in the garage  
2           like that. She just felt funny. And I said, "Is he  
3           there?"

4    **Q**    You had seen that earlier, correct?

5    **A**    I had seen that earlier.

6    **Q**    And you were on the phone with her when she went and  
7           found Joshua?

8    **A**    I was on the -- I said, "Melissa, go in and check on  
9           Joshua and tell me if he's there." She opened the  
10          door and was still on the cellphone with me when she  
11          screamed and said she thought he was dead. And I  
12          said, "Is he breathing?" And she said, "I don't  
13          know." I said, "Well, then you call 911. I'll be  
14          right there."

15   **Q**    And you did come over there?

16   **A**    I did come over there.

17   **Q**    And the officers didn't let you inside?

18   **A**    When I met the --

19   **Q**    And for these -- I mean, the deputy decided and told  
20          you that you needed to stay out outside, correct?

21   **A**    He did. But I met the EMS at the crossroads and I  
22          followed EMS into the driveway. And the police were  
23          all at the front of the house. It was already police  
24          taped off. And I told the police officer I needed to  
25          go in. He said, "No. You can't go in."



1 Q And although you were frustrated, you understand now  
2 why you couldn't go in?

3 A I do.

4 Q Just a few more questions, Ms. Zoch. Is your home  
5 phone number [REDACTED]?

6 A It is.

7 Q And it was at that time?

8 A Yes.

9 Q I've called you on that phone before?

10 A Yes.

11 Q [REDACTED] is that your cellphone?

12 A Yes.

13 Q And [REDACTED], is that John Zoch's cellphone?

14 A Yes.

15 Q And it was at this time, correct?

16 A Yes.

17 Q Just a couple more and I'll be through. Did that  
18 side door -- and I can't find a picture of it -- but  
19 where the metal plate was knocked off?

20 A Yes.

21 Q Had you replaced that door?

22 A Yes.

23 Q Prior to December 12th, 2006?

24 A Yes. We had replaced that door in September when  
25 there had been another burglary at that house.

1 Q All right. What type of door did you put there?

2 A We put steel. It was two-inch steel I believe.

3 Steel doors. Because the door that was broken into  
4 that was so easy to break into in September was like  
5 a glass with panes. And all you had to do was punch  
6 out the door and reach in and open the knob.

7 Q Ms. Zoch, that's all I have. I don't know if they  
8 have any questions or not. But thank you. Wait. I  
9 beg the Court's indulgence. I've just got one other.  
10 Thank you for that. There has been testimony about a  
11 potpourri bowl?

12 A Yes.

13 Q And you were familiar and know exactly what potpourri  
14 bowl was there?

15 A Well, Josh and Melissa had bought one like this for  
16 Christmas.

17 Q And is this the exact same potpourri bowl?

18 A That's the exact same potpourri bowl that I had found  
19 pieces of at the house after the murder.

20 Q And did you collect this and during our investigation  
21 turn this over to Investigator Marthers?

22 A I did.

23 MR. MEADORS: Your Honor, we'd offer State's  
24 120.

25 MR. WHITLARK: No objection, Your Honor.

1           **THE COURT:** Without objection.

2           (WHEREUPON, State's Exhibit No. 120 is admitted  
3 into evidence.)

4           **MR. MEADORS:** That is all I have. Thank you.

5           **THE COURT:** Cross examination.

6           **MR. WHITLARK:** May it please the Court.

7                           CROSS EXAMINATION

8           **BY MR. WHITLARK**

9           **Q**    Ms. Zoch, I want to tell I'm sorry for your loss.  
10           We're sorry for your loss. I know it's terrible.  
11           Did your grandson tell you he was working for the  
12           police?

13          **A**    Yes, he did.

14          **Q**    Did he tell you what he was doing?

15          **A**    Yes, he did.

16          **Q**    Turning in drug dealers?

17          **A**    He is not a drug dealer.

18          **Q**    No, ma'am. No, ma'am. No, ma'am. I didn't say  
19           that. I said he was turning in drug dealers or  
20           giving their names to the police?

21          **A**    I don't exactly know what you call it because I am  
22           not very familiar with drugs myself. He told me that  
23           he was buying from someone that the police wanted to  
24           close down as a dealer.

25          **Q**    That's all I have, Your Honor. Thank you.

1     **A**     He was buying for the police.

2     **Q**     Yes, ma'am.

3             **THE COURT:** Mr. Kendrick. Mr. Riley.

4                     CROSS EXAMINATION

5     **BY MR. RILEY**

6     **Q**     Mrs. Zoch, I am deeply sorry for your loss. I just  
7             have one question. When did Josh first move into  
8             that residence?

9     **A**     I believe it was about February 23rd of '06.

10    **Q**     All right. Thank you, ma'am.

11             **THE COURT:** Any redirect?

12             **MR. MEADORS:** No, sir.

13             **THE COURT:** All right. You may come down,  
14             ma'am. Thank you very much.

15             **MR. MEADORS:** Beg the Court's indulgence.

16             **THE COURT:** Next witness.

17             **MR. MEADORS:** Your Honor, the State of South  
18             Carolina rests.

19             **THE COURT:** All right. Ladies and gentlemen,  
20             the State of South Carolina has rested. In other  
21             words, there will be no more evidence presented by  
22             the State in this case unless something happens later  
23             on. But as far as the primary case of the State,  
24             that's it. You've heard the testimony. You've seen  
25             the evidence. Now the defendants have the

1 opportunity to present a defense also.

2 I need to talk with them for a few minutes  
3 before that process begins, but I'm not going to keep  
4 you here while we do that. So I'm going to at this  
5 time give you a little longer lunch hour than we  
6 normally have because there are some matters I need  
7 take up with these.

8 So I'm going to ask you to be back in the jury  
9 room at 2:30 at which time we'll continue with the  
10 trial. Again, don't discuss the case among  
11 yourselves or with anyone else over the lunch hour.  
12 We'll see you at 2:30.

13 (Jury out at 1:02 p.m.)

14 **THE COURT:** All right. Be seated, counsel. All  
15 right. At this time I'm going to do this before the  
16 lunch hour. And I think you'll understand why I'm  
17 doing this prior to our lunch break. I'm going to  
18 advise each of the three defendants of their  
19 Constitutional rights and then give them the lunch  
20 hour to think about what I tell them.

21 So, from my left to my right, Mr. Whitehead,  
22 will you please stand. Mr. Whitehead, at this time  
23 I'm going to explain to you some of your  
24 Constitutional rights. If you do not understand  
25 anything I say, please let me know. If you want me

1 to explain anything in further detail, please let me  
2 know. Do you understand?

3 **MR. WHITEHEAD:** Yes, sir.

4 **THE COURT:** We have now reached the stage of the  
5 trial where you may present your defense. You have a  
6 right to testify on your own behalf; however, you  
7 also have a right not to testify. I advise you that  
8 you have the right to invoke the protections given to  
9 you by the Fifth Amendment to the Constitution of the  
10 United States and a similar counterpart of the  
11 Constitution of the state of South Carolina.

12 The Fifth Amendment to the Constitution of the  
13 United States provides in part: No person shall be  
14 compelled in any criminal case to be a witness  
15 against himself. This provision of Constitutional  
16 law means that you cannot be compelled or required to  
17 testify in this case.

18 This is a right and a privilege which the law  
19 extends to you. It's a personal privilege, and no  
20 one can waive this right except you. You have the  
21 right not to testify, but you also have the right to  
22 testify. The Court will grant you the right to  
23 consult with your lawyers before you make this  
24 decision.

25 If you elect not to testify, your failure to

1       testify cannot be used by the State as an inference  
2       of guilt, and your failure to testify cannot be  
3       considered by the jury in its deliberations. If you  
4       elect to testify and waive the privilege extended to  
5       you by the Fifth Amendment to the Constitution of  
6       United States, I advise you now that you will then  
7       assume the role of any other witness in this case and  
8       you will waive or give up your Constitutional  
9       privilege against self-incrimination.

10               This means that if you voluntarily take the  
11       witness stand and testify, you will then subject  
12       yourself to the same rules that govern other  
13       witnesses and you may be examined and cross examined  
14       on any relevant issue in this case and you may be  
15       impeached to the same extent as any other witness;  
16       all of which, however, is subject to the rules of  
17       evidence of the courts of the state of South  
18       Carolina.

19               I further advise you that if you elect to take  
20       the witness stand and testify, this decision on your  
21       part must be freely, voluntarily, intelligently and  
22       with knowledge of the protections given to you by the  
23       Fifth Amendment to the Constitution of the United  
24       States and with knowledge of the consequences of your  
25       election to testify.

1           Do you wish to consult with your attorneys  
2 further on this matter?

3           **MR. WHITEHEAD:** Yes, sir.

4           **THE COURT:** All right. Have you discussed it  
5 with your attorneys prior to today?

6           **MR. WHITEHEAD:** No, sir.

7           **THE COURT:** All right. Do you understand what I  
8 have explained to you?

9           (Pause - conferring)

10          **THE COURT:** Do you understand what I have  
11 explained to you?

12          **MR. WHITEHEAD:** Yes, sir.

13          **THE COURT:** Do you have any questions about what  
14 I have explained to you?

15          **MR. WHITEHEAD:** No, sir.

16          **THE COURT:** All right. You may be seated.

17          Mr. Cannon, at this time I am going to explain  
18 to you certain of your rights. If you do not  
19 understand anything I say, please let me know. If  
20 you want me to explain anything further in detail,  
21 please let me know. Do you understand?

22          **MR. CANNON:** Yes, sir.

23          **THE COURT:** We have now reached the stage of the  
24 trial where you may present your defense. You have  
25 the right to testify in your own behalf. However, no



1 one can make you testify. I advise you that you have  
2 the right to invoke the protections given to you by  
3 the Fifth Amendment to the Constitution of the United  
4 States and a similar counterpart provision of the  
5 Constitution of the state of South Carolina.

6 The Fifth Amendment to the Constitution of the  
7 United States provides in part: No person shall be  
8 compelled in any criminal case to be a witness  
9 against himself. This provision of Constitutional  
10 law means you cannot be compelled or required to  
11 testify in this case. This is a right and a  
12 privilege which the law extends to you. This is a  
13 personal privilege, and no one can waive this right  
14 except you.

15 You have the right not to testify, but you also  
16 have the right to testify. As I have said, the Court  
17 will grant you the right to consult with your  
18 attorney before you make this decision. If you elect  
19 not to testify, your failure to testify cannot be  
20 used by the State as any inference of guilt. Your  
21 failure to testify cannot be considered by the jury  
22 in its deliberations.

23 If you elect to testify and waive the privilege  
24 extended to you by the Fifth Amendment to the  
25 Constitution, I advise you now that you will then

1       assume the role of any other witness in this case and  
2       you will waive or give up your Constitutional  
3       privilege against self-incrimination. This means  
4       that if you voluntarily take the witness stand and  
5       testify, you will then subject yourself to the same  
6       rules that govern any other witness in this case and  
7       you may be examined and cross examined on any  
8       relevant issue in this case and you may be impeached  
9       to the same extent as any other witness; all of  
10      which, however, are subject to the rules of the  
11      evidence of the courts of the State of South  
12      Carolina.

13             I further advise you that if you elect to take  
14      the witness stand and testify that this decision on  
15      your part must be freely, voluntarily, intelligently  
16      and with knowledge of the protections given to you by  
17      the Fifth Amendment to the Constitution of the United  
18      States and with knowledge of the consequences of your  
19      election to testify.

20             Have you discussed this matter with your  
21      attorney?

22             **MR. CANNON:** Yes, sir.

23             **THE COURT:** You have? Do you understand what I  
24      have explained to you?

25             **MR. CANNON:** Yes, sir.

1           **THE COURT:** Do you have any questions about what  
2 I have explained to you?

3           **MR. CANNON:** No, sir.

4           **THE COURT:** All right. Thank you very much.  
5 You may be seated.

6           And, Mr. Derrick McDonald.

7           **MR. MCDONALD:** Yes, Your Honor.

8           **THE COURT:** Mr. McDonald, at this time I am  
9 going to explain to you certain of your rights. If  
10 you do not understand anything I say, please let me  
11 know. If you want me to explain anything in further  
12 detail, please let me know. Do you understand.

13           **MR. MCDONALD:** Yes, Your Honor.

14           **THE COURT:** You've reached the stage of this  
15 trial where you may present your defense. You have  
16 the right to testify in your own behalf; however, no  
17 one can make you testify. I advise you that you have  
18 the right to invoke the provisions given to you by  
19 the Fifth Amendment to the Constitution of the United  
20 States and a similar counterpart of the Constitution  
21 of the state of South Carolina.

22           The Fifth Amendment to the Constitution of the  
23 United States provides in part: No person shall be  
24 compelled in any criminal case to be a witness  
25 against himself or herself. This provision of

1 Constitutional law means that you cannot be compelled  
2 or required to testify in this case. This is a right  
3 and a privilege which the law extends to you. This  
4 is a personal privilege. No one can waive this right  
5 except you.

6 You have the right not to testify, but you also  
7 have the right to testify. The Court will grant you  
8 the right to consult with your attorney before you  
9 make this decision. If you elect not to testify,  
10 your failure to testify cannot be used by the State  
11 as any inference of guilt, and your failure to  
12 testify cannot be considered by the jury in its  
13 deliberations.

14 If you elect to testify and waive the privilege  
15 extended to you by Fifth Amendment to the  
16 Constitution of the United States, I advise you now  
17 that you will then assume the rule of any other  
18 witness in this case. You will waive or give up your  
19 Constitutional privilege against self-incrimination.

20 This means that if you voluntarily take the  
21 witness stand and testify you will subject yourself  
22 to the same rules that govern any other witness. You  
23 may be examined, cross examined on any relevant issue  
24 in this case. You may be impeached to the same  
25 extent as any other witness, all of which is subject,

1           however, to the rules of evidence of the courts of  
2           the state of South Carolina.

3           I further advise you that if you elect to take  
4           the witness stand and testify that this decision on  
5           your part must be freely, voluntarily, intelligently  
6           and with knowledge of the protections given to you by  
7           the Fifth Amendment to the Constitution of the United  
8           States and with knowledge of the consequences of your  
9           election to testify.

10          Have you consulted with your attorney on this  
11          matter?

12                 **MR. MCDONALD:** Yes, I have.

13                 **THE COURT:** Do you understand what I have  
14                 explained to you.

15                 **MR. MCDONALD:** Yes, I have.

16                 **THE COURT:** Do you have any questions about what  
17                 I have explained to you?

18                 **MR. MCDONALD:** The only questions I'll ask my  
19                 attorney during the break.

20                 **THE COURT:** All right. Well, I'm going to grant  
21                 all three defendants the lunch hour to discuss this  
22                 matter with their attorneys, and I'll expect an  
23                 answer after the lunch hour. Now, at that time also,  
24                 just do the -- let's take motions after lunch. All  
25                 right?

1           **MR. WHITLARK:** Yes, sir.

2           **THE COURT:** All right. We'll take motions and  
3 then I'll inquire about them testifying.

4           **MR. KENDRICK:** Your Honor, can I put one thing  
5 on the record? I had made an objection at the bench.

6           **THE COURT:** Yes, sir. Mr. Kendrick.

7           **MR. KENDRICK:** I'd like to withdraw that.

8           **THE COURT:** Any other motions at this time?

9           **MR. REUWER:** Not a motion but a correction, Your  
10 Honor. He misspoke on your question about whether or  
11 not he had discussed it ahead of time with us and he  
12 said he did. He said you thought about particularly  
13 testifying as opposed to when you asked about the  
14 Constitutional rights.

15           **THE COURT:** All right. Is that correct,  
16 Mr. Whitehead?

17           **MR. WHITEHEAD:** Yes, sir.

18           **THE COURT:** All right. Yes, sir.

19           **MR. WHITLARK:** Your Honor, I'm sure I'm going to  
20 forget to make a motion to strike the testimony. But  
21 I just want to alert the Court I will have a motion  
22 to strike some testimony that was put in.

23           **THE COURT:** That's fine. That's why we've got a  
24 court reporter.

25           **MR. MEADORS:** Judge, did you say 2:30?

1           **THE COURT:** 2:30.

2           (Whereupon, a lunch break is taken)

3           **THE COURT:** Any motions on behalf of -- take  
4 your pick. In any order.

5           **MR. WHITLARK:** Mine will be the shortest ones,  
6 Your Honor. I'd make a motion for a directed verdict  
7 of acquittal. But I first want to put on there a  
8 motion to strike the testimony of Mr. Jenkins because  
9 of the Rule 5 situation, Your Honor. We didn't  
10 receive a lot of stuff on him until like today.  
11 There have been some other Rule 5 questions. And on  
12 that basis I'd move to strike his testimony. Plus,  
13 the inconsistency of his testimony in the  
14 representations made were not accurate I'll say about  
15 his record and so forth. Motion to strike his  
16 testimony.

17           **THE COURT:** What's the Rule 5 violation?

18           **MR. WHITLARK:** Your Honor, we didn't receive I'd  
19 say at least 14 documents that involved the  
20 polygraph.

21           **THE COURT:** Jenkins?

22           **MR. WHITLARK:** No. No, no. Not on Jenkins.

23           **THE COURT:** Well, you're asking to strike  
24 Jenkins' testimony.

25           **MR. WHITLARK:** Yes, sir. I'm saying I didn't

1 receive documentation about his record until about  
2 five seconds before he testified. Actually there's  
3 nothing in my file about Mr. Jenkins. I heard about  
4 it from one of the other lawyers in here. But I  
5 never received anything on him. Then I got his  
6 record five seconds before he testified.

7 **THE COURT:** Well, it's not unusual to get prior  
8 records from both sides prior -- I don't know whether  
9 there's a rule how far in advance of testimony you've  
10 got to be able to get a rap sheet or criminal record.  
11 But, nevertheless, Mr. Whitlark says he claims a Rule  
12 5 violation with regard to Mr. Jenkins.

13 **MR. MEADORS:** Judge, I told them about Mr.  
14 Jenkins shortly after I heard about it. I've orally  
15 proffered it to him. And I don't know what he  
16 thinks -- the oral proffer I gave him and gave to the  
17 court I thought was pretty close to what he testified  
18 to. And I had told them the same thing prior.

19 **THE COURT:** Well, I know Mr. Riley knew about it  
20 because he filed a motion February 25th of this year,  
21 over two months ago, to exclude his testimony.

22 **MR. WHITLARK:** For the record, Your Honor.

23 **THE COURT:** Okay. All right. Motion is denied.  
24 All right. And you're making a motion for a directed  
25 verdict also?



1           **MR. WHITLARK:** Yes, sir. Your Honor, I'm going  
2 to let Mr. Whitehead's lawyers go first, but I'm  
3 going to join in on a motion for a directed verdict  
4 of acquittal in this case with them.

5           **THE COURT:** I'm just trying to get whoever is  
6 going first.

7           **MR. RILEY:** Josh.

8           **MR. KENDRICK:** This is the order we're going in.  
9 I think they're going to actually finish things up,  
10 if that's all right with you.

11          **THE COURT:** Yes, sir.

12          **MR. KENDRICK:** Your Honor, I'd move for a  
13 directed verdict of acquittal based on the fact that  
14 the evidence here that ties my client to this crime  
15 is a confession and nothing else. Your Honor,  
16 realizing that the State has to prove the Corpus  
17 delicti of the crime, I think that especially I  
18 believe it's the City of Easley v. Portman where  
19 they're normally discussing DUI cases, but that's  
20 where this seems to come up the most.

21               I would just for the record state I think that  
22 when the court is discussing the cases that they  
23 allowed past directed verdict that they have an  
24 ex-judicial statement but they also have some link  
25 between the defendant and the crime scene or the

1 crime that occurred.

2 Your Honor, in this case there is nothing  
3 outside of that confession that links my client to  
4 what happened here. So I'd argue, Your Honor, that  
5 it's such a tenuous connection. Obviously in the  
6 criminal justice system, you cannot be convicted  
7 solely on your own confession. So I would just argue  
8 that based on that, Your Honor, we're entitled to a  
9 directed verdict of not guilty.

10 **THE COURT:** How about that, Solicitor McDuffie  
11 or --

12 **MR. MOAK:** Your Honor, as to Mr. Kendrick's  
13 client, and actually the same as to Mr. Whitlark's  
14 client, we have all three defendants together shortly  
15 before the alleged time of death, Your Honor, when  
16 the incident happened. We have -- from Mr. Whitehead  
17 we have testimony he actually called Zack Waltemath  
18 for the purpose of asking him to come accompany Mr.  
19 Whitehead to go beat Josh's ass and also asked Mr.  
20 Waltemath to check to see if Josh was at his house.

21 We have the statements of both McDonald and  
22 Cannon to the effect that they went to the Wal-Mart  
23 on Two Notch Road, bought purple Latex gloves and a  
24 ski mask. Mr. Cannon was actually seen by several  
25 people at the Sonics wearing a ski mask. And that's

1           when they were seen together that night, Your Honor.  
2           But we have the Wal-Mart ticket showing that only one  
3           ski mask, one box of purple Latex gloves was bought  
4           at that Wal-Mart that day. And as to the numbers,  
5           the box was put in evidence.

6           We have -- at the scene we have the fingertip of  
7           a purple Latex glove similar to, consistent with the  
8           gloves that were bought from the Wal-Mart, Your  
9           Honor. I believe that alone would tend to tie both  
10          Mr. McDonald and Mr. Cannon to the scene inasmuch as  
11          it corroborates their story that they went to the  
12          Wal-Mart, bought those items and proceed to the Zoch  
13          on [REDACTED] Ryan Lane which was Joshua Zoch's home in  
14          Kershaw County and participated in the assault and  
15          battery that resulted in Joshua Zoch's death;  
16          specifically, Mr. McDonald alleging that he actually  
17          used the baseball bat to strike Mr. Zoch. There was  
18          blood that matched Joshua Zoch on the bat.

19                **THE COURT:** We're talking about Cannon now.

20                **MR. MOAK:** And Cannon specifically admitting  
21          to -- he actually gave Investigator Crawford a list  
22          of additional -- I mean, his next to last statement  
23          actually gave a list of items that he stole from the  
24          home that were stolen from the home by them. So he  
25          knew that as well, in addition to the purple Latex

1 gloves, part of which was found at the scene.

2 So we would argue that there is evidence. And,  
3 Your Honor, this is taken in the light most favorable  
4 to the State. There is evidence that tends to put,  
5 corroborate his statement and tends to put Mr. Cannon  
6 as well as Mr. McDonald and Mr. Whitehead all at the  
7 scene committing this crime. And kind of foreseeing  
8 the argument on Mr. Whitehead's part --

9 **THE COURT:** Well, let's wait for that.

10 **MR. MOAK:** Okay. But that's our position, Your  
11 Honor.

12 **THE COURT:** On Cannon. Anything further?

13 **MR. KENDRICK:** Your Honor, just again,  
14 everything he cites raises a slight suspicion.  
15 That's not enough to go to the jury.

16 **MR. WHITLARK:** And for McDonald, Your Honor, I  
17 would say that two of the things he relied upon have  
18 now been proven to be not true. There is no evidence  
19 that there were any phone calls from Chris Whitehead  
20 to Mr. Zack Waltemath. So, I mean, that was the  
21 first thing out of his mouth, was that there is  
22 evidence that they had called. I said, no, there's  
23 not. There is evidence that he did not call. So I  
24 would also say that the absence and the lack of  
25 evidence --

1           **THE COURT:** You take the same position as Mr.  
2 Kendrick does, that based on the fact that confession  
3 alone is insufficient to send a case to the jury, do  
4 you take that position also?

5           **MR. WHITLARK:** Yes, sir.

6           **THE COURT:** Okay. All right. Well, I find  
7 there is sufficient corroborating evidence, although  
8 slight, to link both Mr. Cannon and Mr. McDonald to  
9 the crime scene. Therefore, I respectfully deny your  
10 motion.

11           **MR. WHITLARK:** Thank you, Your Honor.

12           **THE COURT:** As to Mr. Whitehead.

13           **MR. RILEY:** Your Honor, we have with particular  
14 help from Mr. Kirincich, David Reuwer and I have  
15 prepared a memorandum. I've filed it and I've asked  
16 the clerk to hand it up to the Court. I think she  
17 just went to get it now, Judge.

18           **MR. REUWER:** We've got a copy for you now.

19           **MR. RILEY:** The actual oral argument on our  
20 motion for a directed verdict will be handled by Mr.  
21 Reuwer.

22           **MR. REUWER:** Your Honor, if it please the Court,  
23 very briefly. Of course the question is any evidence  
24 or the kind of evidence. But we know that the  
25 standard according to The State v. Cherry which is a

1           2004 case is that it must -- all the evidence must be  
2           competent evidence. And in a case where --

3           **THE COURT:** Must be what?

4           **MR. REUWER:** Competent evidence.

5           **THE COURT:** Competent. Right.

6           **MR. REUWER:** And where they have no direct  
7           evidence, the circumstantial evidence must rise to  
8           the level of substantial circumstantial evidence. I  
9           will say that again slower. Substantial  
10          circumstantial evidence which leads to its  
11          competency.

12                 The Cherry case further says states that the  
13          circumstantial evidence where the State relies  
14          exclusively on such circumstantial evidence and the  
15          motion for a directed verdict is made, the court  
16          continues to be concerned with the existence or  
17          nonexistence of the evidence. The circuit court  
18          could should not refuse to grant the directed verdict  
19          when the evidence merely raises a suspicion that the  
20          accused is guilty.

21                 Your Honor, in the instant case, as it refers  
22          both to the murder and to the burglary to Chris  
23          Whitehead, I would argue or proposition that where  
24          there is no directed evidence, where the  
25          circumstantial evidence is very slight, that where

1           this evidence, where the facts and circumstances end  
2           suspicion begins.

3           And the key case cited in State v. Cherry  
4           regarding suspicion, Your Honor, is suspicion implies  
5           a belief or opinion as to guilt based upon facts or  
6           circumstances which do not amount to proof.

7           So it is not the mere introduction or slight  
8           introduction of some facts or slight facts or some  
9           circumstances or any circumstances; it has to be  
10          substantial circumstantial evidence that arises to  
11          proof. And I know Your Honor knows these cases, so  
12          I'll cut to the facts, if I may.

13          The facts in Lollis which are cited again in  
14          Cherry, Lollis is a 2001 case, was an arson case.  
15          And they found the perpetrator of the arson of a  
16          residential home where he had valuables, and the case  
17          has facts where he hadn't taken out life insurance or  
18          anything like that. He did have a mortgage on the  
19          property. But the homeowner who was the co-defendant  
20          in the arson case in Lollis had the key to the closet  
21          which contained some of the items, some of the items  
22          which may have caused the fire. It was an off site  
23          closet, Your Honor; or the key to the closet of where  
24          all the most important valuables were taken out of  
25          the residence and put into the closet, the storage

1 closet.

2 And so the State in that case introduced  
3 evidence of the key that the owner had, the key that  
4 the owner in fact had gone to the closet that  
5 morning, off site residential, off site of arson, and  
6 used the key. And they said that that circumstantial  
7 evidence though admitted earlier in the trial did not  
8 rise to the level of substantial enough to overcome  
9 the suspicion, that it was still -- because they had  
10 another person and they had some other issues going  
11 on in that trial.

12 So the very containment of a smoking gun, if you  
13 will, in the arson case which was the key to the  
14 valuables and to the closet, storage closet, did not  
15 overcome the heavy burden of suspicion when you're in  
16 the category of circumstantial.

17 And in this case we would purport, Your Honor,  
18 that we're in the category of slightly circumstantial  
19 and we're on the very fringe of evidence as it  
20 directs to Christopher Whitehead. And I want to -- I  
21 know the Court knows this, but I want to keep drawing  
22 the attention.

23 Specifically, for example, there is some  
24 evidence submitted by the State about that he had a  
25 peeve, possibly a peeve with the deceased, Josh Zoch.



1 But there are five other people who had the peeve.  
2 They are Melissa Davy who had lived with him and had  
3 problems with her about fighting and being touched  
4 upon. Then there is Davy's father as a possibility.  
5 We always have the Duran possibility. And then with  
6 all respect we learned of a new possibility of an  
7 earlier burglary that had occurred in this property  
8 when Mr. Josh Zoch had been renting it which had  
9 happened sometime back in September.

10 And then of course we always have the category  
11 of Zack Waltemath himself who is the new boyfriend of  
12 Melissa Davy and is the ex of Josh. So there is at  
13 least five other people who rise to the level of  
14 suspicion or higher from a circumstantial level than  
15 does our defendant, Christopher Whitehead.

16 Your Honor, again, with respect to the evidence  
17 submitted by the jailhouse person, we were very  
18 concerned about his reliability regarding, you know,  
19 whether not only the statement, which I'll get back  
20 to in a minute, but the issue of the alleged  
21 statement. But he can't even tell me how many vents  
22 are in the cell. He did it two different ways. And,  
23 you know, he's in a room for 23 or 24 hours and can't  
24 understand that part.

25 And then we have the other evidence submitted

1       that there is still two pending charges against him  
2       as to his reliability. And it's important to note  
3       that he's a former friend. He admitted to me that he  
4       had done -- he had drank with him on at least some  
5       occasion and done some drug, although he didn't  
6       identify which, with Josh. So of course he would be  
7       upset. You know, on that fringe of circumstantial.

8               I think what's most telling about his piece of  
9       evidence though, Your Honor, his statement deals with  
10      what's going to happen in the future. His statement  
11      has to do with, you know, whoever he is referring to  
12      and whoever he heard and whoever he heard, whoever he  
13      is talking to, his statement has to do with the  
14      future. Oh, we're going to be heros when we go back  
15      to school. It doesn't have to do with the past. It  
16      doesn't say that Christopher Whitehead had anything  
17      to do with it.

18             And I'm not as learned as my colleagues who sit  
19      at this table and feel honored to even be here to  
20      help with this, but it is important to go back to Law  
21      101. The State has the burden through some form of  
22      evidence, either direct, circumstantial or  
23      presumptive, to prove not only the crime, the death,  
24      but they've got to prove a criminal act as it relates  
25      to Christopher Whitehead related to the death of the

1           deceased, as horrible as that death is.

2           And, Your Honor, they've got no direct -- and I  
3           won't read the whole motion because I know Your Honor  
4           can. But they've got no directed verdict summarily.  
5           They've got no -- they only have the slightest  
6           circumstantial evidence. And I believe both pieces  
7           of the slight circumstantial evidence I would submit  
8           to the Court, one is mere suspicion and the other  
9           doesn't even rise to that level.

10           And then of course, Your Honor, we have the  
11           confessory statements by two co-defendants with all  
12           the privileges, et cetera, that have already been  
13           mentioned.

14           So with all due respect, Your Honor, based on  
15           Cherry v. State and State v. Cherry and State v.  
16           Lolis which I've submitted up and State v. Littlejohn  
17           which also goes back; of course the further back you  
18           go, the same issue applies, which is careful  
19           examination of the testimony convinces us, convinces  
20           us, that all the facts and circumstances disclosed by  
21           it considered together fall short of that degree of  
22           substantiality required for fair and logical  
23           inference of guilt.

24           And it's fair and logical inference for guilt as  
25           it relates to Christopher Whitehead. And we submit

1           that the State has failed to meet its burden  
2           altogether there and would move that we get a  
3           directed verdict, Your Honor. Thank you.

4           **THE COURT:** All right.

5           **MR. MOAK:** Your Honor, we respectfully would  
6           strenuously disagree with Mr. Reuwer's argument we  
7           have no circumstantial evidence or direct evidence to  
8           this crime. Your Honor, the phone calls, I  
9           understand Mr. Whitlark is taking the position that  
10          they never happened. But if you read the phone  
11          records, Your Honor, our argument is those last three  
12          phone calls are the ones that Mr. Waltemath testified  
13          to. And again, this is in the light most favorable  
14          to the State.

15                 Our argument is those phone calls took place.  
16                 We have the records of those phone calls. The  
17                 testimony from those phone calls is that Mr.  
18                 Whitehead who is Mr. Reuwer's client in those phone  
19                 calls is asking for Mr. Waltemath to help him go beat  
20                 Josh's ass; and then in the second or third phone  
21                 call to check to make sure Josh is there for whatever  
22                 purpose, Your Honor. So that's our first piece of  
23                 direct evidence.

24                 Other evidence is more circumstantial, Your  
25                 Honor. The door was kicked in. I believe Ms. Zoch's

1 testimony is that is a two-inch steel door that was  
2 kicked in. Mr. Whitehead was seen at work on  
3 Tuesday, the 12th, was not injured when he left, had  
4 no physical injuries, did not have a limp; was seen  
5 later that night by Mr. Brown and another co-worker  
6 at the Sonics when they were kicked out of the Sonics  
7 for being there when they were not working or the  
8 other two co-defendants not being employees at the  
9 time.

10 Again, at that time he was with the two  
11 co-defendants. He is not injured and is not limping.  
12 The next morning, approximately six hours after this  
13 incident took place, Mr. Whitehead has a noticeable  
14 limp. And remember, Your Honor, we have a two-inch  
15 steel door that's kicked in. He also has a visible  
16 mark on his face, Your Honor.

17 He actually has told Cecile Trapp the injury was  
18 sustained while I was playing with friends the night  
19 before. Your Honor, we would submit that the  
20 evidence would show the two friends he was with that  
21 we can show are Mr. Cannon and Mr. McDonald, and the  
22 inference is he's with -- those are the friends he's  
23 playing with that he got injured with.

24 At that point the hand of one, hand of all I  
25 would submit would kick in. And those two actually

1        confessed to going to the home and murdering Mr.  
2        Zoch. And again, you know, his physical injury I  
3        think would be some pretty strong circumstantial  
4        evidence to that.

5                Reading this brief they wrote, Your Honor, I  
6        haven't had a chance to go through it at length. But  
7        I'm looking on page 4. They're actually putting  
8        information in here that's not even on the record.  
9        In the paragraph under corpus delicti, not proved by  
10       circumstantial evidence, they actually put in here  
11       that Mr. Whitehead's car had stock pipes on it.  
12       That's not in evidence, Your Honor. What's in  
13       evidence is that Mr. Baccomo who has a lot of  
14       experience with cars and vehicles testified that it  
15       either was extensions or a malfunctioning muffler.

16               **THE COURT:** Yeah. I know.

17               **MR. MOAK:** And there was another witness who  
18       testified Mr. Whitehead's car was actually loud to  
19       the point of being noticeable which tends to  
20       corroborate what Mr. Baccomo heard of a loud vehicle,  
21       Your Honor. So we have some evidence that Mr.  
22       Whitehead's car was also at the scene leaving the  
23       scene at the same time that we are alleging that this  
24       crime actually occurred, Your Honor.

25               And after all of that, we have Mr. Jenkins'

1 statement, which, Your Honor, State v. Plyler, I  
2 believe that held that the voice I.D. is actually  
3 direct evidence. But I think it's -- it's actually  
4 direct evidence, Your Honor. He's asking saying, we  
5 are going to be heros; they have nothing against us.  
6 So we would take the position that --

7 **THE COURT:** It doesn't matter what he said. It  
8 doesn't matter what he said. The question is whether  
9 his voice was identifiable by the witness. That's  
10 the question. Regardless of what he said. That's  
11 jury argument.

12 **MR. MOAK:** But I understand part of their motion  
13 is we don't have enough evidence, that they're  
14 alleging we don't have enough evidence outside of his  
15 admission that was heard by Mr. Jenkins. I believe  
16 we have sufficient evidence to go to the jury on  
17 that.

18 And in addition to that, to the extent their  
19 motion is not based on that, we have the addition of  
20 that admission, Your Honor. So the State's position  
21 is we do have sufficient evidence in a light most  
22 favorable to the State that tends to prove Mr.  
23 Whitehead is guilty, was at that scene and was an  
24 active participant in this crime, Your Honor.

25 **THE COURT:** All right. I think -- let me make

1       sure. Let me just check one thing. Just respond to  
2       some of the last comments. State v. Plyler, I just  
3       want to check it, that's a 1980 case. As I  
4       previously indicated, voice identification is a  
5       legitimate and competent method to establish  
6       identification in criminal cases. "While there is  
7       contrary authority, it appears to be the general  
8       rule, and we think the sound one, that voice  
9       identification is direct and not circumstantial  
10      evidence." And that's a Supreme Court case.

11           So as to the question of whether it is all --  
12      particularly with regard to Whitehead, whether it's  
13      circumstantial evidence and the level and the weight  
14      of circumstantial evidence that would require the  
15      case to be taken from the jury, I think when there is  
16      direct evidence, I don't think I have a choice as to  
17      what the weight of the evidence is.

18           I mean, if the court said, if I have ruled that  
19      there is voice identification evidence and the courts  
20      have said that that's direct evidence, that's direct  
21      evidence. Whether it's good evidence or not. I  
22      mean, Mr. Reuwer, I think you made an eloquent jury  
23      argument, but as far as whether or not there is any  
24      evidence against your client, there is evidence. The  
25      weight of it is --



1           **MR. REUWER:** Agreed. May I briefly?

2           **THE COURT:** -- not for me.

3           **MR. REUWER:** May I briefly respond to one thing?

4           **THE COURT:** Well, yeah.

5           **MR. REUWER:** Just very briefly. But it still  
6 has to jump the hurdle of competency, Your Honor.  
7 And on the very stand we had some evidence that he  
8 wasn't being trustworthy.

9           **THE COURT:** Well, I think that's a jury issue.  
10 I think it's a jury issue.

11          **MR. REUWER:** Thank you, Your Honor.

12          **THE COURT:** Yes, sir. And I was re-reading  
13 Cherry. Cherry talks a lot about the -- and by the  
14 way, Cherry was a conviction, and there was no  
15 directed verdict motion granted in Cherry. And of  
16 course Cherry, I think the holding of Cherry  
17 primarily is that the Edwards circumstantial evidence  
18 charge is no longer a charge that should be given in  
19 the courts of the state of South Carolina.

20               The Grippon charge which is a 1997 case, Cherry  
21 says that's the charge that must be given to the  
22 jury. And I think that the primary holding of  
23 Cherry. It is certainly -- there is certainly talk  
24 about the directed verdict in Cherry. And they do  
25 talk about if there's any direct evidence or

1 substantial circumstantial evidence reasonably  
2 tending to prove the guilt of the accused and the  
3 appellate court must find the case was properly  
4 submitted to the jury.

5 So, if I find that the evidence is direct, as in  
6 Plyler, then I think I have to submit it to the jury.  
7 As I say, it may be very unreliable but there is  
8 evidence there. So I must respectfully deny all  
9 three motions for directed verdict.

10 **MR. REUWER:** Thank you, Your Honor.

11 **THE COURT:** Now, as to Mr. Whitehead, Mr.  
12 Whitehead, do you plan to testify in this case?

13 **MR. WHITEHEAD:** With due respect; no, sir.

14 **THE COURT:** All right. Thank you very much,  
15 sir. Mr. Cannon, do you choose to testify in this  
16 case?

17 **MR. CANNON:** No, sir.

18 **THE COURT:** All right. And, Mr. McDonald, do  
19 you choose to testify in this case?

20 **MR. MCDONALD:** No, Your Honor.

21 **THE COURT:** All right. Mr. Whitehead's  
22 attorneys, do you plan to offer any evidence other  
23 than the testimony of your client?

24 **MR. RILEY:** No, sir.

25 **THE COURT:** All right. Mr. Kendrick, do you