**Vol. I of II**

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

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SC Court of Appeals

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Appeal from Edgefield County

Honorable Diane Schafer Goodstein, Circuit Court Judge

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THE STATE,

RESPONDENT,

V.

STEVEN LOUIS BARNES,

APPELLANT

APPELLATE CASE NO 2017-002140

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RECORD ON APPEAL

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KATHRINE H. HUDGINS
Appellate Defender

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

ATTORNEY FOR APPELLANT

ALAN WILSON
Attorney General

MARK FARTHING
Assistant Attorney General
Rembert Dennis Building
1000 Assembly Street, Room 519
Columbia, SC 29201
(803) 734-3727

S.R. HUBBARD, III
Solicitor, Eleventh Judicial Circuit
205 E. Main Street
Lexington Judicial Center
Lexington, SC 29072
(803) 785-8352

ATTORNEYS FOR RESPONDENT

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State of South Carolina )
County of Edgefield )
State of South Carolina, )
Plaintiff, )
vs. )
Steven L. Barnes, )
Defendant. )

In the Court
Of General Sessions
Indictment No.: 2005-GS-19-00457
2005-GS-19-00273

Transcript of Record

July 7, 2017

Lexington, South Carolina

BEFORE:

The Honorable Diane S. Goodstein, Judge

APPEARANCES:

Rick Hubbard, Eleventh Circuit Solicitor
Attorney for the State

Jeffrey P. Bloom, Esquire
William McGuire, Esquire
Attorneys for the Defendant

ALSO PRESENT:

Steven L. Barnes

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Whereupon, the following proceedings were had,

BAILIFF: All rise. The Honorable Diane S. Goodstein presiding.

THE COURT: Please be seated and good morning everyone. And thank you all for accommodating me so we can get together and meeting here and letting me drive on the interstate as opposed to having to find my way on all the back roads to Edgefield which are beautiful to drive but this is much easier and thank everyone for being here. I really do appreciate that. And Mr. Barnes is with us. Good morning, Mr. Barnes.

STEVEN BARNES: Good morning. How you doing?

THE COURT: I'm fine. I'm fine. All right. I guess I will at this point, lawyers, I'm gonna turn it over to y'all because I understand that there's some changes to be done and we want to do that on the record is my understanding, right? Right?

MR. HUBBARD: Right.

THE COURT: Yes, sir, Mr. Solicitor.

MR. HUBBARD: Thank you, Your Honor. Your Honor, there's been discussion about whether we would proceed as a capital case or whether we would notice Mr. Barnes for life and proceed in the more traditional fashion of just a regular murder trial. We have opted to do that. We have still got some things to clarify with Georgia but we

are prepared to serve a notice of intent to seek life without parole today. It has not been filed in the Clerk's Office in Edgefield yet but I do have an original copy I would like to on the record to serve on Mr. Barnes.

THE COURT: Okay.

MR. HUBBARD: (Proffering.)

MR. BLOOM: Thank you, Solicitor.

MR. HUBBARD: And I do have two more original copies. I'll make sure each attorney has a copy.

MR. BLOOM: Thank you.

MR. HUBBARD: And I believe Your Honor had talked about we have two terms in Edgefield in October and which ever term would suit Your Honor. We have a term October 9th and October 16th.

THE COURT: All right. Let me ask you before we - I have got a couple things before we move into that. Thank you so much for that. The first thing that I want to ask on the record is previously Mr. Barnes was served with and prosecuted in a death penalty case. Obviously I was assigned to this matter because of the existence of that notice and on the record, Mr. Solicitor, if you would be so kind as to tell me and Mr. Barnes more importantly what is the intention of the Solicitor's Office with regards to the prosecution of this case as a capital case

at this time?

MR. HUBBARD: Your Honor, we are not seeking death on this case at this time. What we are looking at is proceeding life without parole. We have noticed him for a conviction he has out of the State of Georgia. I believe it's a kidnapping out of the State of Georgia. He has some other charges there. We are still verifying those but we do feel confident that under South Carolina law with this notice today that we are serving on him that we can seek life and that is our intent on this charge.

THE COURT: All right. Very well. So what you are telling me --

MR. HUBBARD: It's armed robbery. Excuse me.

THE COURT: All right. So what you are telling me is that --

MR. HUBBARD: I apologize, Your Honor. I think the notice says kidnapping but -- Okay. All right. It's kidnapping.

THE COURT: Kidnapping. Okay. Very well. So really where I am at this point before I shift to the life without the possibility of parole notice, my concern is that it is clear that the notice of an intention to seek the death penalty should the jury number 1, should there be a conviction, and then number 2, go into that

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phase that any intention on behalf of the Solicitor's Office at this time to seek a sentence of death is abrogated at this point. That notice that was previously served on Mr. Barnes is abrogated at this time meaning it is withdrawn?

MR. HUBBARD: That is correct, Your Honor. Your Honor, to clarify too because I was misreading my own service, we have a murder charge and a kidnapping charge. The armed robbery charge under Georgia is what we are basing our notice of life without parole on. But, yes. We are withdrawing the notice and our intent to seek death and in place of that we are seeking life without parole.

THE COURT: Okay. In other words, the first step is that the notice to seek the death penalty is withdrawn. Mr. Barnes as he prepares for trial he need not be concerned with that. That notice is now withdrawn. And do you understand that, Mr. Bloom?

MR. BLOOM: Yes, ma'am.

THE COURT: All right. Very well. And, counsel, you understand that as well?

MR. McGUIRE: Yes, ma'am.

THE COURT: And most importantly, Mr. Barnes, you understand that?

STEVEN BARNES: Yes, ma'am.

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THE COURT: All right. Any questions about that?

STEVEN BARNES: No, ma'am.

THE COURT: Okay. I want to be sure that that is the matter that is clarified first. Now, I'll move onto the next issue and it is my understanding now that the Solicitor has served on Mr. Barnes and his counsel notice of the intention of the State in the event of a conviction to seek a sentence pursuant to 17-45-25, a sentence of life without the possibility of parole. And that's correct, Solicitor Hubbard?

MR. HUBBARD: That's correct.

THE COURT: And that's your understanding?

MR. BLOOM: Yes, ma'am.

THE COURT: Very well.

MR. McGUIRE: Yes, ma'am.

THE COURT: And, Mr. Barnes, if you have any questions about, just about that issue, I want you to take a moment and talk to your lawyers because I want to be sure you're clear about that.

STEVEN BARNES: I'm clear. Trust me.

THE COURT: Got it?

STEVEN BARNES: Got it.

THE COURT: All right. Very well. All right. Now, there are two terms of court in October. One is the 9th. One is the 16th. There has been some conversation about

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trying this case. I know it's been pending for a long time but it's a capital case rather than, I think it's called LWOP is what it's called to use the vernacular but and those two dates have been mentioned. Mr. Bloom, what say you, Mr. Bloom?

MR. BLOOM: We're available either of those weeks or both.

THE COURT: Okay.

MR. BLOOM: And prepared to proceed.

THE COURT: And prepared?

MR. BLOOM: Yes, ma'am.

THE COURT: Very well. Now, do you anticipate that it will take more than one week to try?

MR. HUBBARD: We do not, Your Honor. I would request maybe we look at that first week just in case that way the second week is a backup.

THE COURT: Okay. Very well. Very well. Now, let me share this with everyone. I, of course, was appointed and assigned this case because it was a capital case. Obviously this is not my home jurisdiction and once I have notified the court admini - well, not court administration, the Supreme Court because I have been required and have given reports to the Supreme Court periodically, I will certainly notify the Supreme Court that this matter is no longer a capital matter and then I

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don't know. I have no way of knowing because that's not a decision for me to make whether or not I will remain assigned to this matter or whether or not it will simply go into the normal rotation. There is no way for me to know and I will simply make that report to the Supreme Court and ask them about that.

And then secondly, uhm, with regards to counsel and really, Mr. Bloom, I'm not gonna address this, you stood up but I'm not gonna address this to you. I'm gonna ask Mr. McGuire this. Given the statutory provisions for which you are here for Mr. Barnes in that your office is for the purpose of representing capital defendants do you mind just talking to me about --

MR. McGUIRE: Sure. I can tell you what our policy is. Our policy is to remain on the case and to prepare for trial and try the case. In the past we have taken cases with the Public Defender's Office and we carried most of the water and we just find that it would be unfair to leave and shift that burden to another office. We have done that before. Most recent case would be State versus Benny Brown where we prevailed on the Adkins claim, he was ineligible for the death penalty and our office stayed on the case and tried the case in that situation and that's the position we would always take.

THE COURT: Okay. Thank you for that. That's good

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information for me to have.

MR. McGUIRE: Yes, ma'am.

THE COURT: Mr. McGuire, I don't have intentions of relieving you. Okay. Good. Very well.

MR. BLOOM: Just if I can note, there's precedent for that. There have been other cases in identical situations where for whatever reason the capital notice was withdrawn or became moot and given the length of time and the Sixth Amendment issues the court administration has approved that just to leave the lawyers in place.

THE COURT: It seems to be for so many reasons inefficient and not fair so I don't intend to make any changes.

MR. BLOOM: I understand that. We are prepared to proceed to trial.

THE COURT: I would say the only moving part would be me and the Supreme Court will have to make that determination. Whether I try it or not is so much less important than the fact that, counsel, I think you are making. All right. Now, while we are here may I ask are there any discovery issues that we can or ought to address while we are here together?

MR. BLOOM: If I may, Your Honor.

THE COURT: Yes.

MR. BLOOM: I had mailed it on Monday but I know

it's a holiday week so I don't know if you received it or not, there are four pending motions and a procedural history memo and I have a copy here I can hand up.

THE COURT: I was up, as of yesterday at 5:00 I was up on every piece of mail I had so I may not have.

MR. BLOOM: I'm sorry. It didn't arrive with the holiday weekend. There is filed in the case simply a procedural history memo which doesn't ask for relief. It just outlines the lengthy procedural history. The four motions pending are these. There are three related to discovery and there is one asking the Court to order the Solicitor to respond to each and every defense motion in writing. That motion is withdrawn. And it's specifically motion number 3 in this case. That's withdrawn because the legal basis for that motion is predominately death penalty jurisprudence.

The other three discovery motions are number 1 is a routine discovery motion and Rule 5 motion. Number 2 is a motion to request the Solicitor to certify the discovery has been complied with. And motion number 4 is a specific Brady motion for any state witness with prior conviction records and other potential impeachable information or exculpatory information.

Solicitor Graham and Solicitor Maye and I have met. The proposed discovery compliance is this: Deputy

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Solicitor Graham is going to allow Mr. McGuire and I to come to their office here at the Lexington courthouse. We're gonna work out those dates. They're gonna lay out their whole file. They'll have a paralegal available for us to copy anything we don't have. And we're agreed to that. I don't want them to cut down a number of trees and give us 10,000 more pages of discovery. We have the entire file of the prior two attorneys in the case. Mr. McGuire and I have gone through it with his staff. We have indexed it. So we're pretty familiar with what we have got. We don't need 10,000 more pages of the same stuff so we're gonna designate a date when we can go through their files and they'll copy for us what we need so that would seem to address discovery. I know that was kind of a long explanation.

THE COURT: No. It wasn't.

MR. BLOOM: I wanted to bring that out.

THE COURT: It was perfect. What I would ask you to do and what I want to add is that if you notice that there are differences, you have a file, you have been through that file, it is now indexed, if there is discovery that you either know or believe or you are concerned is new or different, I'm going to ask you to index that differently. Put it on a disk and file it with the court for whatever purposes may be relevant.

MR. BLOOM: Yes, ma'am.

THE COURT: Of course, that would be a duplication of your having it.

MR. BLOOM: Yes, ma'am.

THE COURT: Very well. All right. I believe those were all of the matters that I had on my plate if you will.

MR. BLOOM: I anticipated as well that, Your Honor, assuming that court administration, the Supreme Court leave you on the case, you may want to know what other motions may be filed in the case to anticipate those. I have met with Deputy Solicitor Graham and Solicitor Maye and have let them know there are only two motions that we anticipate filing absent any other circumstances arising. One would be an objection under the Interstate Agreement on Detainers Act, the IAD. In all candor obviously Your Honor knows in Mr. Barnes' first appeal our state Supreme Court addressed two issues.

The second issue they addressed was the IAD issue and they denied that so to preserve that claim and for other purposes we plan to file that motion even in the face of precedent. Mr. Barnes may have some comments here today in that regard. There is a PCR file that is before Judge Keesley on that issue and that was done likewise because we weren't able to reach an agreement

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with the State Attorney General's Office to preserve that claim and we didn't want the time to run so that was done as well. Mr. Barnes has informed Judge Keesley of status conference on that PCR that he desires to proceed to a hearing in that matter as expeditiously as possible so that's the status of that. But we will be filing that motion.

The second motion we will be filing quite frankly is a motion to dismiss the indictments of murder and kidnapping based on speedy trial claims. It will be based directly on the recent Hunsberger case and those are the two motions we anticipate filing. I have told the Solicitor we hope to get that done some time this month in July. They would like a reasonable period to review that and respond. The Solicitor and I were anticipating having a hearing some time in September on that issue.

THE COURT: I'm just putting a note, hearing needed in September. Got it. I'm just asking, do you anticipate that the State will have any pretrial motions that you are aware of? By the way, I'm not holding either side to this. If you have more than that, that's perfectly fine.

MR. HUBBARD: Right now I don't but I do for clarification knowing that this case was reversed because

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Mr. Barnes initially wanted to represent himself, I just wanted that addressed as we are going forward with attorneys so we know how we're proceeding. The other thing was there's also the issue of competency at the time, what level of competency. Is that gonna be an issue that's needs to be addressed? If so, obviously now that we are on a track, I would just like to have that done as well.

THE COURT: Okay. All right. With regards to -- So at this point there are no motions that the State anticipates filing. I do not hold and you understand, Mr. Bloom, Mr. McGuire, I do not hold you to that. You're not bound by that --

MR. BLOOM: Yes, ma'am. Yes, ma'am.

THE COURT: -- to share that with me.

MR. BLOOM: Yes, ma'am. At this stage those are the two motions we anticipate.

THE COURT: Perfect. Perfect. And neither is the State. And I will address this to you if I need to address it, Mr. Barnes. I don't mind doing it at all, but my interest is that you all will be able to remain as counsel for Mr. Barnes unless I hear a motion from Mr. Barnes that he would want to discharge one or both of his very competent lawyers. I would anticipate that we'll cross that bridge when we come to it if that bridge needs

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to be crossed. We have a trial date and, you know, I guess my thought process is that we are going to, absent things that can happen, that we'll anticipate a trial needing to be moved and I notice that this is October the 9th, at least I think we're beyond the hurricane season in South Carolina but you never know. I think we have been flooded in September and October so you never know. The weather could dictate that the trial be moved. But otherwise everyone is anticipating a trial that will begin the week of October the 9th.

And I would, and I guess I'll just address my comments to you, Mr. Barnes, with your permission and just ask you that at this moment I presume you're good to go with having these two gentlemen as your lawyers at this moment and if that changes, you will let me know in some form or fashion?

STEVEN BARNES: Yes. I'll let you know. And I also, if you don't mind, address the issue about the IAD, the interstate. He referenced it.

THE COURT: Yes, sir.

STEVEN BARNES: Since he said something about it. I don't know if you're familiar or not but for the record Steven Louis Barnes versus Henry McMaster, Governor of South Carolina, number 168581, that's filed in the United States Supreme Court, that's my position regarding the

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IAD and I stand by that position. If I can, as a defense exhibit or give it to the Clerk or something, that's got the docket number or whatever is on there.

THE COURT: You want to make that a part of the record for today?

STEVEN BARNES: Yes.

THE COURT: Sure. I have no problem with that.

STEVEN BARNES: To let the Court know that I stand by it.

THE COURT: I'm not taking your only copy now, am I? Because we'll make you a copy. I don't want to take your only one.

STEVEN BARNES: Can you make a copy please? Would it be inconvenient? I don't have any other means.

THE COURT: I'll do my best.

STEVEN BARNES: Okay. If you can.

THE COURT: I can ask. I didn't bring me a copying machine but I bet they've got one in this courthouse that I think they'll let me use.

MR. HUBBARD: We have one right here. Your Honor, I'm very concerned we're going to go down the road of hybrid representation. I understand for purposes of this motion hearing obviously Your Honor has great deference and can give great deference to what's going on. I just want Mr. Barnes to be very clear we will absolutely

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object to his participating as an attorney, filing motions pro-se, we will ignore them if he has his own attorneys. If he wishes to represent himself, he has a right to, if he satisfies Your Honor of that, but otherwise we will absolutely oppose --

THE COURT: Let me tell you how I perceive this and I think it will respond to your concern I hope. Mr. Barnes has filed pro-se a document with the United States Supreme Court and he's to the extent that today is a status conference he is sharing with me that as a pro-se person I gather petitioner/applicant but he has filed a petition with the United States Supreme Court. I'm not quite sure that it would be appropriate for Mr. Bloom to tell me that or Mr. McGuire but I think it's appropriate for Mr. Barnes to say because I have filed this in a pro-se fashion, Judge, I want you to know that this has occurred. Obviously if the United States Supreme Court does something with it that says, you know, Judge Goodstein, hold up, I'm gonna be holding up. But I think that to the extent that today is a status conference, I think that is appropriate.

MR. HUBBARD: Thank you, Your Honor. And I figured that's how Your Honor was going to take this. As we proceed along I just want Mr. Barnes to have that understanding as well.

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THE COURT: Yes. And having had the -- Let me just say this for the record, and from the first hearing that we had where counsel was appointed I think he's extremely bright based on my observation. I certainly think he understands the difference quite clearly. But you certainly are correct that at the point of trial we do not in South Carolina recognize hybrid representation and I'm confident that both Mr. Bloom and Mr. McGuire have had those conversations and I think though that it is good information for both, for all three, for Mr. Barnes and for his lawyers to know that the Solicitor's Office does not intend to respond to pro-se motions that would be filed by Mr. Barnes in the criminal matter that is to be tried in October. If it's something else that very well may be a different situation but vis-a-vis the case to be tried in October.

MR. HUBBARD: Thank you, Your Honor.

THE COURT: Very well. Anything else?

(Whereupon, Defendant's Exhibit #1 marked for identification and entered into evidence.)

MR. BLOOM: The Solicitor also raised the issue of competency. We do not intend to make a competency objection whatsoever. Both Mr. McGuire and I affirm that Mr. Barnes has been able to clearly communicate to us on each and every occasion we have met with him as well as

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in phone calls and letters, what his, Mr. Barnes' desires are in this case, what his rights are, how he wants to assert those rights. And secondly, he has a clear understanding in my humble view as well as Mr. McGuire, his view, that Mr. Barnes has a clear understanding of the court process and meets all the requisite legal standards for competency in terms of understanding the process, how to communicate with us, understanding the prosecutor's role, the punishments available in this case and all the remaining standards. So we don't intend to make that motion. We have no grounds to contest his competency. He clearly understands his Sixth Amendment Right to either have us continue as his attorneys or in a timely manner notify Your Honor of his desire to proceed pro-se if that's his desire at some point.

So I wanted to get that clearly on the record. I understand the Solicitor's concern given some of the history of the case but that would be our position. That he's clearly competent in the three years, almost three years we have been representing him at every stage he's been able to communicate clearly to us. Thank you, Your Honor.

THE COURT: Okay. Very well. I'm sort of satisfied with that as well. Now, one always has to be a little careful to say anything further from the lawyers, but

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Anything further from the State at this time?

MR. HUBBARD: Not at this time, Your Honor.

THE COURT: And from the defense?

MR. BLOOM: No, Your Honor.

THE COURT: All right. Very well. Now, what I will do is I'm traveling for the next couple of weeks but it is my intention to make a report to the Supreme Court and then as soon as I have a response I'll absolutely let you all know. And in the event that I do not remain assigned to the case, you all will just need to let someone know, whoever intends to try the case or during your term in September go ahead and go forward on the motion hearings. But you certainly will know I would like to think in a couple of weeks. Normally I would say that probably the Supreme Court would leave me assigned to the case but there's a concern about travel right now and it's interesting how where your place is in our system the different considerations, travel is a very big consideration for court administration right now. Because of that they may choose to remove me from this assignment. I simply have no way to know. I know there are some concerns about travel. They may choose to do it for that reason but I will let you know when I know. Very well.

MR. HUBBARD: Thank you, Judge.

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THE COURT: Thank you again everyone for coming today and those folks who have assisted in having Mr. Barnes join us here in Lexington. Thank you all so much. I will see everybody soon. Have a good weekend.

MR. HUBBARD: Thank you, Judge.

MR. BLOOM: Thank you, Judge.

WHEREUPON, THE HEARING WAS CONCLUDED.

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CERTIFICATE OF REPORTER

(STATE OF SOUTH CAROLINA)

(COUNTY OF LEXINGTON )

I, THE UNDERSIGNED, Steven E. LeBlanc, Sr., R.P.R., and Official Circuit Court Reporter for the Eleventh Judicial Circuit in and for the State of South Carolina, do hereby certify that I reported the proceedings in the before captioned case in the Court of General Sessions in and for the State of South Carolina on the 7th day of July, 2017.

I FURTHER CERTIFY that the forgoing 22 pages constitute a true and accurate record of said proceedings.

I FURTHER CERTIFY that I am neither related, counsel to, nor of interest to any party hereto.

IN WITNESS WHEREOF, I have hereunto set my hand at Lexington County, this 14th day of October, 2017.

Steven E. LeBlanc, Sr., R.P.R.
Eleventh Circuit Court Reporter
State of South Carolina.

State of South Carolina ) Court of General Sessions
County of Edgefield ) Eleventh Judicial Circuit

State of South Carolina, ) Transcript of Record
)
vs. ) 2017-GS-19-01788
)
Steven Louis Barnes, )
)
Defendant. )

October 9th - 13th, 2017

Edgefield, South Carolina

B E F O R E:

The Honorable Diane S. Goodstein, Judge; and a Jury.

A P P E A R A N C E S:

S.R. Hubbard, III, Eleventh Circuit Solicitor
L. Suzanne Mayes, Deputy Solicitor
David Shawn Graham, Deputy Solicitor
Lucas A. Pincelli, Assistant Solicitor

Attorneys for the State.

Jeffrey Bloom, Esquire
William McGuire, Esquire
Shane Goranson, Esquire

Attorneys for the Defendant

Stacy S. Johnson
Circuit Court Reporter

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(The following proceedings were held October 9, 2017, beginning at 11:40 AM.)

**BAILIFF:** All rise.

**THE COURT:** Thank you very much. Please be seated. Thank you.

Good morning. How are you, Mr. Barnes?

**THE DEFENDANT:** Hanging in there. I know you already addressed what's going on, so whenever you're ready.

**THE COURT:** Okay. The way that -- here's, I think, where it makes an appropriate place to begin. I want to hear about, first of all, discovery. I want to be sure discovery is settled and folks are satisfied with discovery and then I'll hear any motions from the State and then motions from the defense.

**MR. HUBBARD:** And I do have the new indictment, Your Honor.

**THE COURT:** Perfect. Do you want to go ahead and serve that?

**MR. HUBBARD:** If that pleases Your Honor.

**THE COURT:** Sure. Sure.

**MR. HUBBARD:** Your Honor, we have Indictment 2017-GS-19-1788, the State versus Louis -- Steven Louis Barnes, an indictment for murder. This is a new indictment, but still based on that 2001 murder. The purpose for this was he'd gone to trial in 2010, a foreman

in that case had signed guilty on the back, so we thought a new clean indictment would be better. This has been true billed. It was true billed October 4th of this year. We did make some slight language change. We provided a copy with the defense before it even went to the grand jury, but I'd like to -- so this is a true certified copy.

**THE COURT:** Very well.

And, Mr. Bloom, Mr. McGuire, the differences, the change in the language, any concern about those changes?

**MR. McGUIRE:** We have no objection to the indictment.

**THE COURT:** All right. Now -- and do you wish to have Mr. Barnes arraigned on the indictment, on the new indictment?

**MR. BLOOM:** That would probably be appropriate, Your Honor, please. Thank you.

**THE COURT:** Certainly. And you can just stand up right there where you are, Mr. Barnes.

Mr. Barnes, your lawyers have been served with a new indictment. My understanding is that it is consistent with the indictment from the trial in 2010 and the indictment is one which charges you with murder and would you like for me to read you that indictment?

**THE DEFENDANT:** No.

**THE COURT:** All right, sir.

**THE DEFENDANT:** I wouldn't.

**THE COURT:** And have you had a chance to read the indictment?

**THE DEFENDANT:** Yes, ma'am.

**THE COURT:** And how would you plead to that indictment, Mr. Barnes?

**THE DEFENDANT:** Not guilty.

**THE COURT:** And how would you wish to be tried?

**THE DEFENDANT:** By jury.

**THE COURT:** Very well. Very well.

Anything further?

**MR. BLOOM:** Nothing further on behalf of the defense.

**MR. HUBBARD:** Thank you, Your Honor.

**THE COURT:** Thank you so much, Solicitor.

All right. Any other motions from the -- well, actually I want to talk about discovery and then motions. I'm not even following my own rules. With regards to discovery from the perspective of the State, are you satisfied you've given to defense everything you have?

**MR. HUBBARD:** We have, Your Honor. In fact, what I did is had defense come to our office -- to my office, gave them free rein of the conference room to go through the old files. As Your Honor knows, this was a capital case back in 2010 --

**THE COURT:** Yes.

**MR. HUBBARD:** -- so there was voluminous boxes and

documents. We didn't want to just confine them to the guilt phase, so whatever they needed. I think they left with a request for us that we make certain photocopies of things. I think we've done that. The last thing we did there were some GBI reports that were not presented in the first trial. In fact, I don't even think the State even had them at that time. They were all negative reports. We did -- we thought we had turned those over earlier, but we did get those to the defense. So as far as I know they have everything we've had and have and they've had access to everything we have.

**THE COURT:** In other words, you've tried to have an open file policy with the defense?

**MR. HUBBARD:** Absolutely.

**THE COURT:** Okay.

**MR. HUBBARD:** And then basically provided them everything. Without trying to make them swim in paper, we've tried to make sure that they've gotten everything that we've gotten.

**THE COURT:** All right. And it should be unless something pops up. And even with an open file policy and even with a case of this, I guess, seriousness we could say, I know sometimes something can arise that you did not have and you would turn that over.

**MR. HUBBARD:** Absolutely. Absolutely. And if there's

something that they thought they had, in other words, if they have a bad copy of something, we'll do our best to make sure they get what they need.

**THE COURT:** You'll accommodate that. Thank you.

And is that correct, Mr. Broom?

**MR. BLOOM:** That is correct. I concur with the Solicitor, Your Honor. We actually -- the defense team lawyers met at the Solicitor's office on August 17th of 2017. We went through all their files. There were a few items we weren't sure that we had. We made a list of that and requested those and they were provided to us. And I sent a letter -- I believe I sent a letter to Your Honor and copied the Solicitor and copied the Clerk of Court confirming that. As of last week, there were two very short documents we were missing or could not find from the prior trial counsel files. Those were provided to us. One was a five-page search warrant from Georgia and one was a two-page lab report from Georgia, and those were provided to us, I believe, within hours of when I notified the Solicitor's office and requested those. So as of this time, we're in agreement with the Solicitor that we've been provided everything that we believe we need and think the State has.

**THE COURT:** Thank you very much. I appreciate that.

All right. Now -- now that we've sort of concluded

the discovery inquiry, are there any motions from the State?

**MR. HUBBARD:** Not at this time, Your Honor. I believe that the main motion that -- not to jump the gun, but there is that motion to dismiss. I don't know if Your Honor wanted to hear that first. Most everything else we have, I think, pertains to the actual trial itself should we get to that point.

**THE COURT:** Sure. I'll will deal with the motion to dismiss.

In terms of evidentiary concerns I know that there are some on behalf of the defense, but are there any on behalf of the State?

**MR. HUBBARD:** There will be a number of things, some issues with some of the issues, limitations on things that we think should be said and things of that nature, so I don't know if Your Honor wants to --

**THE COURT:** I don't want to do that right now.

**MR. HUBBARD:** I didn't think so. That's why I was kind of couching it that way.

**THE COURT:** Yes. Yes.

And, of course, I'm happy to hear those in limine. I'm particularly happy to hear the concerns so that even if I can't rule on it at this point it's nice to hear in limine that this could come up, that could come up, and

that way I can be prepared and be listening.

**MR. HUBBARD:** Right. Gives you a heads-up.

**THE COURT:** Right. But let's hold that until we've argued the other motion, if that's okay?

**MR. HUBBARD:** That would be fine. Thank you, Your Honor.

**THE COURT:** Thank you.

Mr. Bloom and Mr. McGuire, I'll turn it over to you.

**MR. BLOOM:** All right. If it please the Court, Your Honor, we have four oral motions regarding evidentiary issues we'd like to bring up in limine, but I'll do that last if that please the Court.

**THE COURT:** Thank you. Yes.

**MR. BLOOM:** If I may address the Court now as to the two written motions the defense filed back in August of 2017; one is a written motion to dismiss and/or preserve under the Interstate Agreement on Detainers Act and the second motion is to dismiss for lack of a speedy trial.

As to the motion regarding the Interstate Agreement on Detainers, I'll be very brief. We rely on the memorandum. I acknowledge that the State Supreme Court in the first State versus Barnes appeal, which I've referred to in the memoranda as Barnes 1, addressed and denied that motion. After researching it and reviewing it, we believed the State Supreme Court may not have had

a clear written record of that initial objection; therefore, we proceeded to compile from the Clerk of Court's file and other records what we felt was an accurate paper trail, a written record of that issue. We presented it in our brief and we stand by that.

The second reason for the filing of that motion, quite frankly, Your Honor, is the Defendant was kind of in a procedural limbo since his case was reversed on a separate issue from the Interstate Agreement on Detainers. There appeared no way to preserve that Interstate Agreement on Detainers issue for him and prior to Solicitor Hubbard's involvement in the case in my discussions with the South Carolina Attorney General's Office, they were not agreeable to entering a written document where they acknowledge that issue was preserved for further appellate review if necessary and so we felt it incumbent in order to do that for the Defendant to file this motion and preserve that issue for him. I don't intend to make any further argument on it and I'll stand on our memorandum.

As to the second motion, the motion to dismiss for lack of speedy trial, Your Honor, if I can bring several things to your attention. Again, I'm not gonna repeat everything in the written memorandum, it's rather lengthy, and the Solicitor's response, I think, also, which is in writing addresses the issues that you need to look at. I

would simply highlight several things.

First, the main case on point, the current case for speedy trial analysis in our state, of course, is the Hunsberger case. H-U-N-S-B-E-R-G-E-R. And they, of course, were co-defendants of Mr. Barnes in this very scenario, so I think the Supreme Court analysis that went through in the Hunsberger opinion, clearly that same analysis applies to Mr. Barnes. I would note, again, that the paper record that we've laid out and submitted to the Clerk of Court's office sets forth the timeline and I think in any speedy trial analysis under the Hunsberger case, of course, it's incumbent upon the trial judge to construct and look at the timeline. That's what Hunsberger tells us is that the timeline is important in the first part of the analysis. We respectfully submit in our memorandum the State is responsible for an eight-year and seven-month delay. There are a couple periods in there in our memorandum where we concede under Hunsberger are not attributable to the State, and that's laid out in our memorandum, but we do believe they're responsible for an eight-year and seven-month delay. I would add in that with all due respect to Solicitor Hubbard, it makes no difference who the solicitor was prior to him and who the Solicitor is now. State conduct is State conduct. So the mere fact that there was a prior solicitor in charge of

Mr. Barnes' case and now a different solicitor is irrelevant I would respectfully to submit to your analysis, Your Honor, as to whether the timeline --

**THE COURT:** Let me ask you this question, and I'm gonna interrupt you, and I would like to just say this. I think that the paper presentation that I have seen and read, you would think that I had two of the biggest defense firms in this state on this case and I want to thank you-all for it because clearly an enormous amount of efforts has gone into it. I have -- I have enjoyed it. I cannot tell you how much I've enjoyed reading and studying and what an amazing help it has been to me, but honestly the quality on both sides of the work that I have received has been fantastic, and I want to thank you for it.

So I'm going to -- and I want you both to know that I have studied since the -- the moment that this issue has arrived, my law clerk who, quite frankly, was one of the things I was looking for was for an egghead. I wanted me a smart, smart, bright, fresh law clerk, and Mr. Bailey, I'm delighted, has brought that onboard. He has, I think -- he has lived this issue and has helped me tremendously.

So what I'm going -- I preface that to tell you that we've been reading and studying and actually my former law

clerk hot off the press came running up with the Hunsberger case when it came down, so I am aware of it. I say all of that because I'm gonna be rudely interrupting because -- because I've been thinking about what about this, what about that, what about this, and so forgive me as you go through this.

**MR. BLOOM:** Yes.

**THE COURT:** When you talk about the change in solicitors, if you merely had a change in solicitor, I would agree with that, but it comes to mind, and as you know, the case law talks about there is to be allowed to the solicitor's office, to the State, some period of time to ascertain whether or not a case is going to be a death penalty case or not. And they talk about that in Hunsberger and they talk about the fact that Judge Keesley was pushing the State, okay, you know, come on, we've talked about this twice, what's it gonna be with regards to Hunsberger, and as we know there was an oral communication early on that Mr. Barnes' case was gonna be a capital case.

So when you say that is irrelevant, my question to you is -- and recently I have been tagged for maybe it's not appropriate to look at the reverse, if you have the ability to associate do you not then have the ability to dissociate? I've been living with that. However, I

ponder this question. In this case, you had a new solicitor, if you will, a change of guard, change of theory, change in policy, and in this change there was a decision made, there was a study given, there was a delay, there was the work done, and this case went from a capital case to a noncapital case. So the question I would just pose, and I really do, is that an element that you think under the Hunsberger case the Court would consider?

**MR. BLOOM:** I would acknowledge, yes, that if that is a reason that Solicitor Hubbard proffers, then that is something you can consider under the Hunsberger analysis because I think the Hunsberger analysis gives wide latitude to the trial court to consider the reasons for the delay.

**THE COURT:** Well, and the only -- the only reason I know is just based upon the conversations and the status conferences and the push, and as I recall there was some conversation about we need a couple more weeks because we're trying to make that determination.

**MR. BLOOM:** Right. I would have to acknowledge that. If I did not acknowledge that, that would be disingenuous of me and so I have to do that. I think the point -- the mere point I was trying to make in terms of the change of solicitor is --

**THE COURT:** In and of itself.

**MR. BLOOM:** -- the current prosecutor in and of itself cannot say well, that was somebody else making those decisions, so those aren't attributable to me. I think it is attributable to State conduct and that's the only point I was making. But in your direct question, again, I would have to acknowledge --

**THE COURT:** Exactly. And to that end, interestingly enough, in the case law of the State is considered to be the Court as well.

**MR. BLOOM:** Yes, and I would -- part and parcel to that I would have to acknowledge, too, that this -- let me make sure I phrase this correctly.

**THE COURT:** Yes. I was thinking about how to phrase it.

**MR. BLOOM:** It is a distinguishing factor, so I'm not trying to dance around it, that Mr. Barnes' case started as a capital case and the Hunsbergers never were one. Verbally there was some discussion of that in the transcripts against them, but never did, and so while that -- that also is obvious in the Hunsberger opinion. Having acknowledged that, however, the Defendant's position is that the delay is still excessive and triggers a speedy trial analysis or we wouldn't even, I think, have a basis to make the motion. I think the stronger argument Barnes perhaps has than the Hunsbergers on the tail end is the

prejudice and prejudice can arise not just in the loss of testimony or the fading of memory or the loss of the witnesses, prejudice can also accrue in what a defendant experiences during the period of time while he's waiting to go to trial and in our brief we recite, and these facts are not in dispute, of course, that he had the additional prejudice of being subject to a lengthy period where he was under threat of the death penalty, he had the prejudice of going through a death penalty trial and receiving death, he had the prejudice of then sitting on death row for a substantial period of time. After his case was reversed, shortly after that, he then had the prejudice of being transferred to safekeeper status, which is extremely restrictive incarcerated conditions, so I think Your Honor can look at those factors as well, which the Hunsbergers were not subject to, in terms of the total calculus of the case.

I thank the Solicitor on the record for his decision back in July of 2017 to make this a noncapital case. Be that as it may, I can't just waive Mr. Barnes' right under the Sixth Amendment in exchange for that and -- and so I think the Hunsberger case gives us the construct in which to analyze that both in terms of the delay and the prejudice, and, lastly, whether or not he has asserted that claim. And I would -- you know, I know the factors are

listed in a sequential order, but let me address that one lastly. It's our position that he's asserted at least four times in a pro se manner and those dates are in the record.

**THE COURT:** Let me ask you this question. We do not have hybrid representation in South Carolina and in the Hunsberger case clearly the speedy trial request was made by counsel at trial and at the directed verdict stage or involuntary nonsuit stage, so it was clearly raised by counsel and I am mindful that the Interstate Compact was raised by Mr. Barnes, but at the time Mr. Barnes was pro se, had every right to raise that in a pro se manner, but at the time that the -- I think twice that the speedy trial motion was made he was keeping -- Mr. Barnes was represented by counsel and we do not have hybrid representation. Talk to me about that.

**MR. BLOOM:** Yes, ma'am. I would submit that the first three times Mr. Barnes raised his own pro se speedy trial claims he was not represented by counsel. And if I can throw those --

**THE COURT:** Talk to me about that because I don't know about those.

**MR. BLOOM:** If I could throw those dates out, the first would have been approximately January 2005 when he submitted a request to be -- from Georgia to be tried by

the Interstate Agreement Under Detainers Act, and I'll come back to each of these, but let me lay out the timeline.

**THE COURT:** Okay.

**MR. BLOOM:** The second was May 25th of 2005 when he appeared in front of Judge Keesley after being extradited back to Georgia. The third would be September 8, 2005, when he filed pro se motions in a letter with the Edgefield Clerk of Court. And then the fourth would be November 18, 2005. And, if I may, let me go back now and go through each of those.

**THE COURT:** Okay.

**MR. BLOOM:** The State argues in its written brief that Mr. Barnes never filed a claim under the Interstate Agreement on Detainers such that the January 2005 date should be thrown out. I submit he did fill out a claim under the form and as was required submitted it to the Georgia Department of Corrections, which is what a prisoner is supposed to do, and so the record's clear he was in Georgia Department of Corrections at that period of time for a conviction unrelated to this case. So an inmate request making -- if I can shorten Interstate Agreement on Detainers to IAD?

**THE COURT:** Yeah. Let's do that, yeah.

**MR. BLOOM:** The Act requires when it's a prisoner filing under the IAD, which is what you have to be, they

file with their county jail or the prison they're in. I would submit in good faith that that document has been lost or misfiled. The Solicitor argues it never occurred and he never made the request because it's not in the Edgefield Clerk of Court's file. It wouldn't be because Mr. Barnes, as any inmate, files it with the institution he's at. We've made repeated requests from the Georgia Department of Corrections and have been unsuccessful to obtain a copy. It was done in 2005. They may have purged their file. I don't know. It is obvious to me though that Mr. Barnes filed that somewhere around January of 2005 or possibly February of 2005 because the Solicitor responds and the Solicitor's document, which is in the record, signed by at the time Solicitor Joseph -- or Assistant Solicitor Joseph Mizell, in the section of our records on the extradition documents, use Form 7, and as we -- as the form itself recites at the top, if the inmate hasn't requested to be brought back under the IAD, but you're requesting, use a different form. This is for responding to an inmate form, and that's what they do and they send it back to the warden at the Georgia prison where Mr. Barnes is at. So we know Mr. Barnes filed an IAD claim. The document appears to be lost to the public record. So that's the first time he submits that and we respectfully submit that we understand it's an open question that an IAD claim is identical to a

speedy trial claim, it's made under a statute, but, in essence, a defendant is asking to be tried in a speedy manner under a specific statutory timeline. So we submit it's a distinction without a difference.

**THE COURT:** Well, let me ask -- let me stop you there because the policy behind it is different and the timeline behind it is different and there is -- there is -- and I want to stop and talk about that for just a little bit because I believe that the -- that the reason that the compact exists is to thwart the ability of -- let's use Mr. Barnes as an example, to keep South Carolina from holding onto -- we have this county by county, this would be state by state, and to keep Mr. Barnes from being in Georgia with an outstanding warrant in South Carolina serving -- I'm not gonna use Mr. Barnes, I'm gonna use Mr. Smith. Say Mr. Smith spends twenty years in Georgia while there's an outstanding warrant in South Carolina and lo and behold the South Carolina warrant isn't served on Mr. Smith until after twenty years. I think the Interstate Compact is to remedy that problem and I think that -- and this is -- I'm letting you see the sausage being made so you can address it, and I think that the reason -- one of the reasons that it has the 180-day statement of time is I think that it is also intended for the State of South Carolina, let's say, once that person arrives, you've got

to make a decision. Is this important enough, are you gonna go forward or are you not gonna go forward? And the policy behind that could actually be one set by the Legislature to cause our state to make a determination is this something you're going to prosecute or not because you're dealing with another state, either you are or you're not, which I think probably is the basis by which the Supreme Court upheld Judge Keesley denying the request based on the 180 days because good cause was shown to go beyond the 180 days.

Having said that, having said that, while I believe that the policy is different and while we don't know at this moment even in the face of Hunsberger what is the effect of the IAD vis-à-vis speedy trial, clearly it appears to me -- I won't say clearly because I don't think it's clear, but it appears to me that in its denial of the IAD issue in this case, in Mr. Barnes' case -- we'll call it Barnes 1 and Barnes 2. In Barnes 1, when the Supreme Court talks about the IAD, it talks about the lack of prejudice and that he was unable to demonstrate prejudice up to the trial of 2010. Well, that is an analysis under the speedy trial.

**MR. BLOOM:** Yes, ma'am.

**THE COURT:** But they don't -- and the witnesses. We're talking about the witnesses and we're talking about

lack of prejudice, so there is some indication that -- that the analysis -- the speedy trial analysis did apply to the consideration of IAD. Now the problem is -- and I hate to dump all this on you, but I've been dying to talk about this and Mr. Bailey is tired of me peppering him with questions, but here's the thing, here's the issue. If, in fact, that is correct, then what of the determination by the Supreme Court that as of 2010 there's no prejudice? As of 2010. Now having said that, that doesn't stop the indication of those four facts to include prejudice going forward from 2010 as it relates back.

That was a lot, wasn't it?

**MR. BLOOM:** Two -- I understand your question. I would have two responses. First, I think Your Honor is correct the State Supreme Court's use of prejudice under the IAD clearly indicates that the IAD receives a similar analysis of speedy trial rights and is analogous to speedy trial rights. It's just a statutory claim rather than a constitutionally-based one. Secondly, the Court doesn't give us a recitation of what prejudice Mr. Barnes did not suffer or did at that stage in time, so I think the slate is wiped clean. And now analyzing the speedy trial claim as we stand here today, I think -- I don't think you're bound by the fact that the Court initially found no prejudice under the IAD because it's a more defined

statute. I think Your Honor has a -- has broader discretion to analyze the prejudice prong at this stage. And I won't recite everything that I did before, but I think that weighs into your prejudice analysis.

As to the other dates that Mr. Barnes --

**THE COURT:** Mr. Barnes, I want to share with you -- Mr. Barnes is raising his hand. Hold on a second. Here's what we're gonna a do. Here's what we're gonna do. I know that you are proactive and -- no, no, no. Just -- just hear me out. And I know that unless you have a health concern, and just tell Mr. McGuire, but I want to stop you and I want you to understand this. I am not going to put you in a position where you do not have an opportunity to participate in talking to your lawyers.

**THE DEFENDANT:** In the state action --

**THE COURT:** Let me stop you.

**THE DEFENDANT:** I object on the grounds of the state action because I specifically --

**THE COURT:** I want you to listen to me.

**THE DEFENDANT:** Okay.

**THE COURT:** I want you to listen to me.

**THE DEFENDANT:** And my objection is state action --

**THE COURT:** What I'm not gonna do is that we do not have hybrid representation in South Carolina --

**THE DEFENDANT:** I understand that.

**THE COURT:** -- and I'm going to enforce that. Having said that --

**THE DEFENDANT:** Okay. So I object --

**THE COURT:** Having said that --

**THE DEFENDANT:** Can I object --

**THE COURT:** Hold on a second.

**THE DEFENDANT:** Can I at least put it on the record?

**THE COURT:** Hold on a second. Yes, you can, but hold on a second. What I want you to understand is that you are going to have opportunities in this process this day to talk with your lawyers. I'm not gonna put you in a position of not feeling like you have time to share with them your concerns.

**THE DEFENDANT:** My lawyers are not representing the issue on -- on -- I object on the ground of the First Amendment. I have the right of freedom to speak. I object on the due process ground, the Fourteenth Amendment. State action. I object on the ground that -- on the right to put up a defense because you're not hearing all the factual matters for the record. I'm trying to give you all the factual matters for the record, but you're not trying to hear it. First of all, under --

**THE COURT:** Stop. I need you to stop. I need you to stop. I'm not going to have hybrid representation.

**THE DEFENDANT:** This is not hybrid representation.

**THE COURT:** It is. Yes, it is.

**THE DEFENDANT:** I have a right to speak. I have a First Amendment right to speak.

**THE COURT:** I'm not gonna fuss with -- I'm not gonna debate with you.

**THE DEFENDANT:** Okay.

**THE COURT:** Having said that, you have your hand, you have paper. I want you to make your notes.

**THE DEFENDANT:** How am I gonna be able to do that? You already have my notes. You have the writ of certiori from the United States -- what I filed in the United States Supreme Court that specifically states that my issue is that under the Interstate Agreement on Detainers Act that I wanted to litigate that issue.

**THE COURT:** I'm with you. I know.

**THE DEFENDANT:** Okay. You have that paperwork.

**THE COURT:** I know that.

**THE DEFENDANT:** So under agency principal law --

**THE COURT:** Hold on, hold on.

**THE DEFENDANT:** -- I am liable to anything he say in the court.

**THE COURT:** Hold on. Hold on.

**THE DEFENDANT:** I'm saying understand he's ineffective right now. I'm telling you he's ineffective.

**THE COURT:** Mr. Barnes -- Mr. Barnes, what I'm gonna

do is I'm going to be absolutely sure that you have time to meet with your attorneys --

**THE DEFENDANT:** I already talked to them. You already know the record. You're saying that you don't understand what my issues are.

**THE COURT:** Oh, no, I -- no, sir, I'm just -- you've got to hold on until the end. I'm not making a decision --

**THE DEFENDANT:** All I'm asking is to address the Court and let me explain to you --

**THE COURT:** No, sir, I'm not gonna do that. I'm not gonna do that.

**THE DEFENDANT:** Okay. So, therefore, you're denying me the right to put up --

**THE COURT:** That's hybrid representation.

**THE DEFENDANT:** -- a defense, the right to a speedy -- that's my objection.

**THE COURT:** All right. Mr. Barnes, I'm not gonna do this.

**THE DEFENDANT:** It's for appellate review and I have a right to raise all of that.

**THE COURT:** Stop. Stop. Hold on. Here's what we're gonna do. We're gonna take a little bit of a break. I'm gonna let you go back and I'm gonna let you talk --

**THE DEFENDANT:** You already know my position. The United States Supreme Court.

**THE COURT:** I'm gonna let you go talk to your lawyers a little bit --

**THE DEFENDANT:** You know my position.

**THE COURT:** -- so they can talk to you a little bit about this trial.

**THE DEFENDANT:** This is a state action.

**THE COURT:** Mr. Barnes --

**THE DEFENDANT:** I object for the record.

**THE COURT:** Mr. Barnes -- Mr. Barnes, Mr. Bloom can share with you a little bit about how I flesh out the issues.

**THE DEFENDANT:** I have a right to speak.

**THE COURT:** No, you -- actually you don't in --

**THE DEFENDANT:** I have a First Amendment right to speak. If you're saying that hybrid representation is gonna override my First Amendment right to speak --

**THE COURT:** Mr. Barnes. Mr. Barnes.

**THE DEFENDANT:** -- to explain to you factual matters that's essential to my defense for my case, I object on the grounds of the Fourteenth Amendment, and I object on the grounds that this is a state action because you allowed my counsel to proceed against my interest.

**THE COURT:** Mr. Barnes.

**THE DEFENDANT:** It's a state action.

**THE COURT:** Mr. Barnes, if you don't keep yourself

under control, I'm going to excuse you from the courtroom.

**THE DEFENDANT:** No, I'm gonna be -- I'm gonna be quiet. I'm gonna be quiet after this. I just want to put on the record my objection.

**THE COURT:** I really want you to be here.

**THE DEFENDANT:** State action.

**THE COURT:** I am excited that you care, that you are involved. I think it's really important, but you cannot continue to do that. We do not have hybrid representation in South Carolina.

**THE DEFENDANT:** Okay. Fine.

**THE COURT:** I want you to have lots of opportunities to talk to your lawyers.

**THE DEFENDANT:** As long as afterwards I can put on the record my objections.

**THE COURT:** No, sir.

**THE DEFENDANT:** No, no. Not here. If the -- if the Court --

**THE COURT:** No, we do not have hybrid --

**THE DEFENDANT:** -- do not allow me to put on the record factual matters --

**THE COURT:** We don't have hybrid representation.

**THE DEFENDANT:** Okay. So I told you my objections on the record, so I'm done with that. You know my position.

**THE COURT:** All right. Do you need to take a break

and talk with your lawyers?

**THE DEFENDANT:** No, no. What's to talk about? I told you my objections. It's a state action.

**THE COURT:** Do you -- it's a yes or no. Are you good?

**THE DEFENDANT:** I told you my position. It's on the record. I'm done with it.

**THE COURT:** Okay. Now so, Mr. Bloom --

**MR. BLOOM:** Yes, ma'am.

**THE COURT:** -- you were talking about January of 2005.

**MR. BLOOM:** Yes, ma'am.

**THE COURT:** Okay.

**MR. BLOOM:** And I think I concluded what I needed to say. What I was going to do next is Mr. Barnes has an exhibit or some copies, which I'm glad to make an exhibit. They are a -- let me say this. They appear to be the initial IAD forms he filled out and submitted in Georgia --

**THE DEFENDANT:** No, let me get that.

**MR. BLOOM:** -- and he's had them --

**THE COURT:** Mr. Barnes, you have to be quiet.

**THE DEFENDANT:** No, he's got my paperwork. I'm asking for my paperwork back. That belongs to me.

**MR. BLOOM:** And I will -- I will make a copy of them so he can have them. I didn't initially attach them to --

**THE DEFENDANT:** I'm not giving you, Mr. Bloom, my paperwork for the record.

**MR. BLOOM:** I did not initially attach them to the documents we submitted to the Court because they came from his personal file and so I couldn't document where they came from. They appear to be genuine copies. They have signatures from what appear to be other people, such -- at the Georgia prison, and I'll be glad to make a copy for him during the break and make a copy for the Court and the Solicitor and put them in. I think it does provide a record, what I was saying before, that he did file an IAD claim in a Georgia prison and that's why the solicitor in South Carolina responded, but I had no way to document that these copies he has are genuine. They appear to be, but as an officer of the court I have to say I can't document them since they came from his file. We've been unsuccessful in getting them from the Georgia prison. I think -- it's not a huge point, but that's the point I think he was trying to make. But I would like to make copies so we have them.

**THE DEFENDANT:** No, it was not what I was trying to make at all. That's not my position.

**THE COURT:** Mr. Barnes, you have to be quiet.

**THE DEFENDANT:** For the record, that's not my position.

**THE COURT:** Mr. Barnes, if you keep interrupting, I'm gonna have to have you removed from the courtroom, which I really do not want to do.

**MR. BLOOM:** The other three times we respectfully submit that Mr. Barnes presented his own pro se speedy trial motion and why this Court should consider them is this. First, I fully recognize the Solicitor's argument in his brief and what Your Honor stated on the record, that the Defendant is not entitled to hybrid representation. He either has to represent himself or have the lawyers do so such that pro se motions that are filed don't necessarily need to be considered by the trial court or the appellate court. They can be, but they don't necessarily have to be. I respectfully submit from May 25th, the second time he makes what we say is a speedy trial claim, and then September of 2005 where he makes another pro se speedy trial claim, that the Court was entitled to consider those and is entitled for these reasons. The May 25, 2005 hearing he appears pro se, he is by himself in front of Judge Keesley. There's no appointed attorney, no public defender, so he's having to represent himself. It is his first hearing when he is extradited from Georgia and appears in a courthouse. After that there are documents in here. The supporting documents show that he was appointed to a public defender, Mr. Sturkey.

**THE COURT:** Let me ask this question. So this hearing, the first hearing before Judge Keesley, I know he had the IAD, but he also had a speedy trial motion as well?

**MR. BLOOM:** We do not have a transcript of that hearing. That transcript does not exist. It was never requested and given the date of it, it cannot now be requested. We believe in good faith that at the time he presented to Judge Keesley both a pro se IAD claim and speedy trial, but I can't prove it either way.

**THE COURT:** Okay.

**MR. BLOOM:** Again, I would argue even if it's just an IAD claim, it's our argument that an IAD claim is equivalent to a Sixth Amendment speedy trial claim. So he had no attorney at that. Subsequent to the hearing Mr. Sturkey is appointed. Sturkey is spelled S-T-U-R-K-E-Y. Mr. Sturkey never saw Mr. Barnes in a county jail. It appears from other documents in the record that Mr. Sturkey had informed Mr. Barnes or someone he had a conflict and couldn't represent him, so for about six months Mr. Barnes is in jail without counsel; hence, we believe the September 2005 letter to the clerk is a legitimate pro se request for a speedy trial.

In that letter, and it's filed -- it's in the documents here. It is filed -- the cover page shows September 8th of 2005. On Page 3 Mr. Barnes specifically states, and I'll read, a motion to demand for speedy trial, and on the next page, Page 4, it cites Barker versus Wingo with the U.S. Supreme Court citation. It doesn't get any

clearer than that. I do acknowledge that same month, September 2005, the Court appoints Robert Hart, but I think since that appointment is fairly contemporaneous with Defendant's letter that that pro se document should be considered.

The last pro se document is November 2005. Obviously in the timeline Attorney Hart has been appointed and is representing Mr. Barnes, but I think that's still significant because it is early on in the appointment and Mr. Barnes is trying to preserve his speedy trial right.

Unless you have further questions, that is the gist of our argument. I'm trying hard not to repeat everything in the written brief and I'll turn it over to the Solicitor at this point. Thank you, Your Honor.

**THE COURT:** Thank you so much. So I think the appointment of Mr. Hart -- wait a minute, I've got that. Let me see. It appears based on just the information that we have in our study, and you tell me now if -- if I'm wrong, but it appears that on September the 8th, although the letter is dated September 5, 2005, that it appears probably it was received by the clerk on the -- on September 8th because it says 8:30 AM it was filed, but then it's dated September 5th, and it also appears that the -- that the order of appointment is September 1, 2005, is when Mr. Hart was appointed as counsel, but what you're

saying is correct. It certainly appears to be contemporaneous, but it appears at the time that this letter is filed that Mr. Barnes was represented, it just was the way the dates fell. All right. Thank you.

Yes.

**MR. GRAHAM:** Thank you, Your Honor. I had e-mailed last Friday to you and your clerk -- do you have both of those?

**THE COURT:** Yes. Oh, yes. Oh, yes. I received it, read it. Yes.

**MR. GRAHAM:** I'm gonna ask that they be court exhibits. And then I have a bound volume of the documents that I will provide you.

Which argument do you want me to start with, Your Honor? Oh, I'm sorry.

**THE COURT REPORTER:** Are these two different ones or are they the same?

**MR. GRAHAM:** Two different.

(Court's Exhibit Number 1, 2 and 3 were marked for identification.)

**THE COURT:** Now a couple of questions. As I read it there were a couple of questions. I think that we can all agree that the -- that the threshold is sort of -- as we begin, the threshold has been met under anyone's theory because this matter is twenty-six months old and we know

that at twenty-eight months old we have a case on point that says you do the analysis. So I think we can all agree that given that we're twenty-six months we do the analysis, correct? Yes?

**MR. GRAHAM:** Yes.

**MR. BLOOM:** Yes, ma'am.

**THE COURT:** All right. So even under the State's theory we go through the analysis.

Now one of the questions that I have is, and I probably would want you to answer this question for me first, the Supreme Court in Barnes 1 dealt with what the Supreme Court had before it in terms of the IAD, yes?

**MR. GRAHAM:** Correct.

**THE COURT:** And while I understand that counsel has filed what counsel has filed and if that preserves the record, that's a wonderful thing, but the Supreme Court has dealt with that issue I believe. Now whether or not there's something down the road that happens or is even required we necessarily need it, that's something different whether or not there's a collateral attack, but with regards to what the Supreme Court has done on the IAD I think that -- and that's the position of the State, right?

**MR. GRAHAM:** Yes.

**THE COURT:** All right. The question -- here's the question for the State. The right to a speedy trial is a

constitutional right and so a waiver of that right is a big deal and has to be sort of dealt with straight on. And so even if the speedy trial motion is made in August, and given the case law, why do we not go back and begin the determination with a look back at the time of the public accusation of Mr. Barnes, understanding there's a whole lot that has happened, you know, to include continuances requested by the defense, and why do we not do that? Understanding -- and let me throw out sort of where my head is as well. I think that the determination of the Supreme Court with regards to the IAD, the Supreme Court makes a determination there's no prejudice. I don't know that that determination can be made in a vacuum. In other words, if there a determination of no prejudice with regards to the IAD, then there has to be -- that has to affect the speedy trial motion. Having said that, if the speedy trial motion is made in August you still have to go back to the public accusation and there still can be prejudice shown today or post the appeal that relates back to a time after the accusation.

**MR. GRAHAM:** A couple of points on that, Your Honor.

**THE COURT:** Okay.

**MR. GRAHAM:** My understanding is that the prejudice analysis that was discussed in Barnes 1 was in the dissent. I don't believe that it was in the majority opinion.

Normally the IAD arguments are it's either -- it's a black and white, yes and no, where you're tried within 180 days or it's continued for good cause.

**THE COURT:** Uh-huh. Yes.

**MR. GRAHAM:** I don't believe that the prejudice analysis was a part of the majority opinion. I don't believe --

**THE COURT:** Well, and clearly that occurred. I mean, Judge Keesley clearly found that there was good cause shown to continue it beyond 180 days.

**MR. GRAHAM:** Correct. I guess my -- and we cited -- I don't think there's any South Carolina directly on point, but there's other case law out there that states -- and the truth is there's a speedy trial under the Sixth Amendment and then there's an IAD --

**THE COURT:** Yes.

**MR. GRAHAM:** -- and so the IAD is statutory.

**THE COURT:** Yes.

**MR. GRAHAM:** I don't think that prejudice plays in there although it was discussed in the dissent.

Going over to the speedy trial side, it's a constitutional right. He can waive that right by not asking for it and that's what he did. Back in the three earlier ones -- I mean, clearly he's requested a speedy trial in August --

**THE COURT:** Well, let me ask you this question. Do you believe there's a difference between acquiescing and waiving? Is there a difference? In other words, let me tell you what -- what I mean by that. There can be -- Mr. Barnes could have acquiesced in Barnes 1 and -- which would lead us to a post-Barnes 1 analysis.

**MR. GRAHAM:** I think one the factors under the speedy trial analysis under Barker is how the Defendant requested it. I think -- you know, I don't believe that there are any clear -- his indications for a speedy trial were under the IAD. He never made in my opinion a request under the constitution. Regardless, he got what he asked for and there was no follow-up argument, no follow-up discussion, no appeal. He got his trial. So any argument that he had made a speedy trial, he got it. He didn't continue on saying it should be dismissed. It's only now in 2017 that we're having this argument. I think when you look at how he raised the issue and chose to raise the issue and pursue the issue, which is one of the prongs in the Barker case on looking at the Supreme Court -- excuse me, on speedy trial motions, he's not bringing it up until now. So he -- I don't -- I think there is a difference then.

They're trying to tell me the name of the case. They're citing Hill to me, but I don't know what the case is. New York versus Hill, Your Honor, and I believe we

have a copy of that that we can pass up if Your Honor would like.

**THE COURT:** Hold on. Hold on one second.

**MR. GRAHAM:** I guess what they're -- what I'm trying to understand here, Your Honor, and I'll pass a copy to the defense as well --

**MR. HUBBARD:** She's got it.

**THE COURT:** Well; now I want you to look at the conclusion that comes obviously prior to the dissent of the decision. I want to be clear about that. Looking at the conclusion, and I'm gonna publish it for the record. It's pretty important. Since the Faretta error mandates reversal, we need not reach any of Appellant's other issues save, which means obviously except, that alleging he was entitled to a dismissal of all charges under the IAD Act. On the face of this record, it appears Appellant waived his speedy trial right under this Act and we, therefore, decline to reverse on this ground.

So this is the majority opinion, this is not part of the dissent. This is the majority opinion and I want you to look at the conclusion and tell me if maybe I'm reading it wrong or my pages got mixed up or something because I want you to look at that and tell me whether or not you think that that is maybe a determination -- that that's actually ruled on in the majority opinion in Barnes 1.

**MR. GRAHAM:** My understanding from reading this, Your Honor, and other case law is that there are two separate things. There is a speedy trial component of the IAD that's a statutory part from what I read. There are two different things.

**THE COURT:** Okay.

**MR. GRAHAM:** One is the constitution, which is what we're typically talking about, the prejudice in the delay. This is -- my understanding is the IAD is also called a speedy trial as well, but it's a statutory speedy trial through the Interstate Act.

**THE COURT:** Are you talking about the 180 days?

**MR. GRAHAM:** Yes, Your Honor. Or 120.

**THE COURT:** Okay. Got it.

All right. Now back where you were. I'm sorry for so rudely interrupting. Yes.

**MR. GRAHAM:** So on the speedy -- your last question then on the speedy trial was -- I guess my comment to that, should we consider the whole time, the answer is no; that he waived it by not pursuing it and because there are two separate types he may have pursued the IAD and the speedy trial component of that, but he did not pursue the speedy trial under the constitution of the United States, which is why we're seeing two motions now because they're two distinct individuals -- or two distinct theories.

Second is State's memoranda in opposition to Defendant's motion to dismiss the indictments based on violation of the Defendant's speedy trial rights.

**THE COURT:** So you would say that the -- that the period that would be considered would simply be the last twenty-six months. Is that your position?

**MR. GRAHAM:** Correct, Your Honor.

**THE COURT:** In other words, you could call it acquiescence or you could call it waive or, irrespective, speedy trial has just now been raised because the only speedy trial that has been raised within the speedy trial pursuant to IAD, that's been ruled on, that's done. And while he certainly can raise the speedy trial at this point, the period to be looked at because he received the trial in 2010, the period to be looked at is this twenty-six months.

**MR. GRAHAM:** Correct, Your Honor. Since the remittitur came back.

**THE COURT:** Uh-huh. Yes, which I think was in 2014, January of 2014, or was that -- wait a minute. Let me get my -- January 31, 2014, is when the Supreme Court issued the remittitur remanding the case back to Edgefield general sessions court, okay?

All right. Now talk to me about then the State's position regarding what you think the appropriate timeline

is if you consider just the period beginning January 31, 2014.

**MR. GRAHAM:** The length of the delay, Your Honor, it's my understanding that it would -- based on prior case law we would have to analyze it like we are.

**THE COURT:** Yes.

**MR. GRAHAM:** If you look at the reason of the delay, part of it was it came back to a new solicitor and it was a death penalty case. There was some evaluation because the new elected solicitor wasn't involved in it of what he was going to do and how he was gonna proceed with the case. I don't think that in and of itself goes against the State because I think you're supposed to look at whether they're neutral reasons or negative. I believe that would be a neutral reason. And then you have the status conferences from the time that Your Honor was assigned, I believe, and trying to figure out where we were gonna go and when we were gonna do this.

**THE COURT:** And what period of time do you believe that you're talking about? Because, you know, the findings of fact would require that we actually -- or the Court, I guess, actually attribute a particular period of time to that. What period of time do you think that took?

**MR. GRAHAM:** I believe it would be from -- I would think it would be from the remittitur, Your Honor.

**THE COURT:** Well, now that's January 31, 2014, until what period?

**MR. GRAHAM:** Well, when I say that, then, I guess, there was -- then there was an appeal. I'm trying to think procedurally what happened next. There was an argument about representation and reinstatement of the sentence, so actually it should be further, until all of the appellate work was done.

**THE COURT:** And that return, that came back -- it would have to be from Barnes 2.

**MR. BLOOM:** August 10th of 2015.

**THE COURT:** Thank you. August 10, 2015.

**MR. GRAHAM:** Correct, Your Honor.

**THE COURT:** All right. And it's -- all right. And then how would you then characterize the timeline?

**MR. GRAHAM:** For that time period, I know one of the things -- I mean, obviously there was the regular status motions, there was the attempt to set trial dates. They were looking at the Solicitor's schedule as well as defense counsel's schedule. I know Mr. McGuire was involved with the Dylan Roof case, which would have taken up a portion of that time that can't be attributed to the State.

**THE COURT:** Well, let me -- I want to be sure that the record is clear about that. It wasn't that he was involved in -- he was involved in the Roof case, but he was under an

order of protection and he was under an order of protection from the Supreme Court from -- from July of 2015. It was actually prior to the remitter. Well, July 2015 until December -- let me see. July 17th -- it could be the 27th, but July of 2015 until December the 16th of 2016.

Okay. So you would say that that time is neutral?

**MR. GRAHAM:** I guess it wasn't -- I guess it would be neutral, Your Honor. But, yes, it wouldn't go against the State in any way and obviously the Defendant didn't --

**THE COURT:** In other words, you don't care about the --

**MR. GRAHAM:** The Defendant didn't choose for it, so, correct.

**THE COURT:** All right.

**MR. GRAHAM:** So that pretty much takes us into 2017 because you said December of '16, right?

**THE COURT:** Yes. That an order lifting the protection for Mr. McGuire was issued December the 16th, 2016.

**MR. GRAHAM:** So that leaves us from that day to the present.

**THE COURT:** Yes. And Solicitor Hubbard took office, I think, in January of 2017.

**MR. GRAHAM:** The second week, I believe, Your Honor.

**MR. HUBBARD:** The 11th.

**THE COURT:** Yes, sir. And then there was a period

of time that the Solicitor had under consideration well, what to do with regard to the capital portion at some point and I guess the Solicitor will share -- I need somebody to tell me when it was that that -- I know that the actual documentation was done in July of 2017, the day that the trial was set, but the question is at what period of time was that determination being made?

**MR. GRAHAM:** I guess it was finalized when the document was sent. It was discussed before then amongst his office, as well as with defense counsel as well, Your Honor. I would say that that was probably at least a two to three-month process just on that issue alone.

**THE COURT:** Okay.

**MR. GRAHAM:** I know that we had regular status conferences either by phone or in person because I believe -- I almost felt like they were monthly, Your Honor. Mr. Bloom, if I remember right was --

**THE COURT:** They were.

**MR. GRAHAM:** -- drafting those orders.

**THE COURT:** Yes.

**MR. GRAHAM:** And the rest of it, I would submit, really is just normal scheduling of court dates, and I don't know that there's been any requests from our side or their side because once -- I mean, the date was set, and if I remember right, then that's when he filed his motion,

it was after that. I don't know that that delay -- I don't see in any way how's it's attributed as negative to the State. I think that any of that delay during that time period is neutral as well, so I don't know that any of the period of time from the appellate process for Barnes 1 being finalized until today is anything negative against the State.

**THE COURT:** Got it.

**MR. GRAHAM:** And to the extent that I guess it's beneficial to Mr. Barnes, it should be considered that the death penalty is off the table, Your Honor, which would actually go to his benefit.

That takes care of the first and the second elements, I believe. Unless there's something else that you want me to address on those for the speedy trial analysis, Your Honor, I'll move on to the third.

**THE COURT:** Okay.

**MR. GRAHAM:** When and how he asserted his right to the speedy trial. The State's position is that he just did it in his August filing of this year. That prior to that there is no valid constitutional speedy trial request on the Defendant's behalf. The January 2005 would have been under the IAD component of the speedy trial and not the constitution. The May of 2005, again, was only the IAD. You look at Judge Keesley's order, and it would have been

addressed in his order, and it was not. If the speedy trial had been independently brought in front of Judge Keesley, I believe his order would have reflected that. The September 8th of 2005, at that point, Your Honor, he was represented by counsel, September 1st, and that would -- his pro se filings would be a nullity under case law. So what you have is him vigorously pursuing the IAD speedy trial component which the Supreme Court denied making no further or specific comments under the constitutional speedy trial until this summer. So that would address the third issue.

The fourth issue is the prejudice prong and what I wrote down is Mr. Barnes would have been incarcerated whether he was in South Carolina or Georgia. He had received a life sentence in Georgia, so he was not going to be a free man. He did have the notice of a death penalty over him and although the case was reversed, he had been convicted at the time and had that over his head. That's just a fact, but, I mean, it is what it is as well. I mean, he's charged with a crime, the State chose to seek that penalty and he was convicted.

The safekeeper status that he has been in, the sheriff is in the courtroom and could tell you, Your Honor, the reason he is there is because of his own actions. It's not anything that the State did. It's what he chose to do. If

you look back, he's got continued violations since he's been in custody. Not only what he did in Georgia, he had Richmond County Detention Center, the state prison in Georgia. Just in Edgefield alone between June of 2005 and, let's see, November of 2007, Your Honor, he had write-ups for disruption, throwing rocks from the rec yard, throwing food trays and threats, throwing bodily fluids, disturbances --

**THE COURT:** You're gonna have to slow down a little bit, I know, for our court reporter.

**MR. GRAHAM:** I'm sorry. And I can make this a Court's exhibit, Your Honor. This is a -- this is the -- Sheriff Dobey's affidavit for why he was requesting safekeeping.

Do you want me to make it a Court's Exhibit? And I'll read slower.

(Court's Exhibit Number 4 was marked for identification.)

**THE COURT:** Okay.

**MR. GRAHAM:** And then I have one that I can pass up to Your Honor and one to provide to defense counsel as well.

On the second page of that -- or the third page of that affidavit, Your Honor, it starts to actually list what Mr. Barnes' convictions and infractions are. When you start down in Subsection 6, that's the Edgefield County Detention Center. So you can see on June 16th of 2005

there was a disruption write-up and it continues on from there. Throwing rocks from the rec yard, throwing food trays and threats, throwing bodily fluids, disturbances, threats, flooded toilets, disturbance in August of 2005, throwing food trays in October of 2005, possession of contraband in February of '06, throwing food tray and urine in June and July of '06, refusing to be cuffed up in February of '07, destroying lunch trays in July of '07, attempting to destroy food trays in July of '07, throwing bodily fluids in August of '07. Again, in September of '07. Again, in September of '07. A confrontation with another inmate in October and throwing fluids again in November of 2007.

The prejudice is it's his actions that took him to be a safekeeper and he was going to be incarcerated whether it was in Georgia or here. Our position would be that there's no actual showing of prejudice, Your Honor.

Just -- just one second, Your Honor.

**THE COURT:** Okay.

**MR. GRAHAM:** I'm sorry. Back in April of 2015, I believe he was in Laurens County Detention Center being held there as a safekeeper, or at least on behalf of Edgefield County, and because of problems he was causing there, he asked Edgefield to take him back. I guess it would just to go show -- the State's position is that any

prejudice from the component of being the incarceration conditions he's in, he was going to be incarcerated. Where and the type of confinement is really based on his actions at this point.

**THE COURT:** Okay.

All right. Yes, sir, Mr. Bloom. Any response?

**MR. BLOOM:** We rely on our written memorandum. Mr. Barnes has handed me a pro se document that he wishes to be made an exhibit. It's relating to an appeal before the South Carolina Court of Appeals from the administrative law court and relates to safekeeper and it sets forth in detail what Mr. Barnes feels is the prejudice therefrom.

**THE COURT:** Okay.

**MR. BLOOM:** And so I'll make that an exhibit during the break and put it in the clerk's record and he has a copy for the Solicitor and I'll provide you a copy. Obviously you can consider it or not, but it does set forth the prejudice.

I'll also have the documents from his file regarding the IAD, which I'll make a copy for him on the break and put it in the Clerk of Court's file and a copy to the Solicitor as well.

**THE COURT:** Let me ask you this question. As I'm looking at his pro se -- his letter to the clerk's office of September of 2005, and I was looking for language that

addresses speedy trial as opposed to the IAD speedy trial, and I don't see -- I don't see it raised separately and what we -- and I really ask the question because I don't know at this moment that the Supreme Court has differentiated between the two. I think they have probably differentiated between the speedy trial under IAD and the speedy trial motion pursuant to the statute and pursuant to the constitution and so I'm wanting to just give you an opportunity to direct me to that language in his filings prior to yours obviously that was just filed.

**MR. BLOOM:** So you're asking me where does he ask for a speedy trial in the September of 2005 filing?

**THE COURT:** Yes, and the other ones that -- that you were talking about and what you gave me.

**MR. BLOOM:** Yes, ma'am. In the supporting documents we've submitted, and it's in the section labeled September 2005, Defendant's pro se court filings, the first page shows at the top filed 8:30 AM, September 8, 2005, and that is dated by Mr. Barnes. It's seven pages. The document after that from my review of the Clerk of Court's file was attached, so it would have been filed at the same time. It says the State of South Carolina versus Steven Barnes and he captions a rule nisi, N-I-S-I. Do you see where I am?

**THE COURT:** Tell me what page.

**MR. BLOOM:** On the eighth page of that section, I think.

**THE COURT:** Okay. I came out at five.

**MR. BLOOM:** And the first sentence is objection to the Court's order and not having the Defendant ready for trial pursuant to --

**THE COURT:** Got it. Yes.

**MR. BLOOM:** Okay. If you go to Page 3 --

**THE COURT:** Yes.

**MR. BLOOM:** -- of that at the bottom is where he specifically sets forth the sentence. It's the fifth sentence from the bottom to the right that says a motion to demand for speedy trial and on the next page, Page 4, is where he cites Barker versus Wingo. So we would submit that's a speedy trial claim virtually contemporaneously with his appointment of counsel of Mr. Hart, so it should be considered.

And, Your Honor, I have to acknowledge one thing out of -- out of decency to Mr. Hubbard and as an officer of the court, it is correct that from approximately January 2017 through the July 7, 2017, hearing before Your Honor that Mr. Hubbard and I were meeting on a regular basis often with Deputy Solicitor Graham to discuss the progress of this case, so I feel out of decency I need to acknowledge that. Mr. Graham presented that in the course

of his argument and I acknowledge that.

**THE COURT:** And let me tell you what I know and I think the record ought to reflect. Because we were having continual status conferences I have bothered you-all a lot and I know two things that were going on. I know that Solicitor Hubbard was trying to acclimate himself to a new position and I think that that certainly is just reality, but at the -- at the same time as he was doing that he was also very focussed on this case based on my observation and also based on my observation I believe as being the advocate that you are that you were also taking advantage, Mr. Bloom. I don't know this, but I believe this to be true based on my conversations that you were also taking advantage. As Solicitor Hubbard was getting up on speed on this trial, you were also taking every advantage you possibly could to -- also on behalf of your client to give him the benefit of your advocacy as well, and if I may just make that note since I was meeting and listening to you-all on a regular basis. I think you were meeting with him to talk about this case as many times as he would meet with you.

**MR. BLOOM:** Yes, ma'am.

**THE COURT:** So I think you were giving him the benefit of your opinion. In other words, you were twisting his arm as he was trying to learn about the case.

**MR. BLOOM:** Well, I don't know if I could twist Mr. Hubbard's arm, but he graciously met with me at every opportunity to discuss the case and the progress of the case. I didn't want to hide behind meetings that Mr. Hubbard and I were having --

**THE COURT:** Yes.

**MR. BLOOM:** -- and so I just want to be clear.

**THE COURT:** Absolutely.

**MR. BLOOM:** I've practiced in front of you and the Supreme Court and many courts. I'm not gonna hide behind something. I had very substantive meetings with Mr. Hubbard during those six months --

**THE COURT:** I know that.

**MR. BLOOM:** -- and not once did I say we need to pick a jury next week. At that point Mr. Barnes was still under notice of death penalty and that was a substantive part of my discussions with Solicitor Hubbard and so for that six-month period I'm not gonna hide behind those meetings. We had very substantive discussions on the progress of the case and I understand those six months are in the timeline and I just want to be very candid to the Court in that regard that Mr. Hubbard was giving it his full attention, we were having substantive discussions over those six months and those discussions and meetings led to the July 2017 hearing, and so in the speedy trial analysis I

just out of fairness want to -- I think I should disclose that.

**THE COURT:** And --

**MR. BLOOM:** Am I communicating clearly?

**THE COURT:** You are communicating clearly --

**MR. BLOOM:** Okay. All right. Thank you.

**THE COURT:** -- but what I want to add to that is I'm delighted you've done that for the record, but that happens to be information of which I am apprised. I know that. The reason that I know that is because of the status conferences that we had throughout the process and it was it was certainly abundantly clear to me that while Solicitor Hubbard was getting up to speed that you were also meeting with him and as an advocate on behalf of Mr. Barnes and there's no question in my mind and find that Mr. Barnes clearly is the beneficiary of that period of time; that it was not a period of time that Solicitor Hubbard was simply closeted as he got up to speed, if you will, but it was a period of time also that Mr. Barnes was the beneficiary of advocacy and the result is that death came off the table.

Also I think it's also very important as we look at the time period, and I may have some questions about -- and I think I probably do in a minute have just a few questions of you, but I think that the time period is -- well, I

think probably what I'm a little bit more comfortable doing is I'm -- we will take a little break. I know everybody's ready for a little break and when we take that break I'm gonna come back and I'm gonna share with you what I think the timeline is and whether it's neutral and if it -- if it ought to be registered against one party or the other, and that is from the period of January 31, 2015, until today, and we'll talk about that.

With regards to the administrative proceedings, I'll take that -- I'd like to take that with me. It's been made part of the record, I'll take that with me, and I would ask this question. With regards to the alleged prejudice you've certainly raised in your brief, and I'm gonna review that, but with regards to the prejudice that you have raised this morning, what, if any, prejudice exists that would affect the trial in this case that's scheduled to begin tomorrow?

**MR. BLOOM:** We would rely on Hunsberger itself where the majority found -- the exact same testimony in that case applies to this case because they're co-defendants and the court in Hunsberger discusses some prejudice in terms of witnesses' memory and differences, and we would just rely on the Hunsberger case.

**THE COURT:** Okay. Got it. All right.

**MR. HUBBARD:** Your Honor, just -- just for the record,

I know Your Honor is aware of this, but I want to make sure it's on the record so should it be reviewed, I'm sure it will be reviewed, that the court understands -- the high court understands that although I worked for Solicitor Myers, I had no prior dealings in this case and Your Honor was very gracious early on and so was Mr. Bloom when we met, its understood that I needed -- I had a duty to the victim, I'd never met her before, so I had to go to Augusta and meet her, I had to get with our sheriff here in Edgefield, I had to get with the officers here in Edgefield. There were a lot of people I needed to meet for the very first time dealing with this case. Mr. Bloom was in communication with me throughout the whole time. Obviously I knew, and he argued very hard about taking death off the table and that was a tough decision, and there was a very voluminous file we had to go through to make that, so that did take time, but I appreciate Your Honor letting me put that on the record.

**THE COURT:** Thank you, Solicitor.

All right. We're gonna take a little bit of time. In fact, about twenty minutes.

**MR. McGUIRE:** Judge, if I could just raise one matter before we take a break. It's very, very short. As you can see, I've been sitting next to Mr. Barnes and communicating with him, and this kind of goes back to his exchange with

the Court. He's passed over to me five succinct objections to the IAD speedy trial argument and I think we could avoid maybe any more back and forth with Mr. Barnes and the Court if you'd just accept these five objections on this piece of paper from Mr. Barnes?

**THE COURT:** Sure. Sure.

**THE DEFENDANT:** And I want to apologize. I mean, I wasn't trying to be dis -- may I speak now? No, I'm just --

**THE COURT:** Sure.

**THE DEFENDANT:** You don't have -- I mean, you already know about it, so I'm not gonna be dis -- your ruling was silent.

**THE COURT:** I understand.

**THE DEFENDANT:** But understand I wasn't trying to be disrespectful. I was really trying to interject my grounds on the record just to make that clear and I wasn't trying to be disrespectful. You have been a wonderful judge since I've met you, but you've got to understand the law is the law and if you have a judge that is not gonna listen to you, you've got to do the best you can to get it on the record, you know what I mean, and then, you know, on appeal I can do what I need to do, you know what I mean? It's nothing personal.

**THE COURT:** Well, here's what I want you to know.

**THE DEFENDANT:** Forgive me.

**THE COURT:** Here's what I want you to know and I want to be absolutely clear with you. It is my intention that you have as fair a trial as I know how to give any human being because I think you are 100 percent entitled to that. If you need to take more breaks because you need to communicate with your lawyers, I want you to feel real free to pass him a note and if I can take a break at that time, I'm gonna to do that assuming we go forward, and I haven't -- I've got a little bit of work I've got to do. Assuming we do that, since I'm addressing you, I want you to know that. I want you to understand that. I really mean that to you. You are engaged, you have been engaged, you have been fighting for yourself and that is evident in this record.

However, we do not in South Carolina have hybrid representation. We don't. So when I have someone who's like you, who is, A, bright and, two, you have an opinion, you are participating, I have to honor the fact that we don't have hybrid representation, and the way that I think I can accommodate you and do what I'm supposed to do is to -- is to accommodate you in that way, to give you -- if you need more frequent breaks, ask for them. You have no idea how fine that is. That is so completely and totally okay with me because I need you to be able to feel like through

this process that you are having an ability to communicate with your lawyers and you don't feel the frustration where you feel like you've got to stand up and say it yourself. That's because that's hybrid representation, so I want you to know that I'm gonna do that.

**THE DEFENDANT:** And please may I put this on the record as well? I don't mean to cut Your Honor off because you've been a wonderful judge, and I'm placing that on the record, you know, so when the courts do read it they hear me saying it, okay? I don't have a problem with my defense team. Jeff is a wonderful dude, Bill is a wonderful dude. This dude here is full of junk, but, you know, it's a great -- and let me make sure I put that on the record, okay, or they'll think I'm joking.

But anyway, back to what I was getting it at, the only position that we differ from is what I'm trying to present to the Court and I laid it out in the objections if you're about to read the other things and --

**THE COURT:** I'm going to read it. Yes.

**THE DEFENDANT:** So, you know, otherwise than that we -- we really don't have no -- just like when I was talking to my lawyer a few days ago or whatever or I think it was last week, if I'm not mistaken --

**THE COURT:** Well, don't tell me what you said.

**THE DEFENDANT:** No, no, no, no. You know I know how

-- you know I know how to talk, but -- I'm sorry, but anyway, you know, to make a long story short, you know, I told him we're men and, you know, whatever we differ from, you know, let's just, you know, hash it out like men and then it's over with.

**THE COURT:** Right. Or people.

**THE DEFENDANT:** Or people. Okay. So -- and just the same thing with you. Just because -- keep in mind I had to get it on the record, so I'm trying to let you know for the record I wasn't trying to be disrespectful. I was just trying to get my grounds on the record because just like they say according to law if you have a -- correct me if I'm saying the word wrong. I think it's recaltent -- recalcitrant, if I'm saying that right. That means like a mean judge or who don't want to hear your issue. I'm not calling you a mean judge, but when you have a judge that's being adversarial -- not adversarial. If you have a judge that don't want to hear your point of view at the time when you're -- when you're arguing.

**THE COURT:** I know that's frustrating, but you know what, one of the ways -- just so you know, one of the ways I get educated is to push and push and push and push because I've done -- you know, I've done homework, so I've got some all right, tell me this, tell me that, and that's the way that -- that I learn is to push because I'm

concerned about that and I push and that -- it can be a little maddening, how can you be thinking that, I get it. But -- but going forward, going forward, I'm really serious about this, if you need more breaks -- because typically we take a morning break, we take a lunch break, we take an afternoon break and then we're done for the evening. If you need more breaks because you feel like you need to communicate with your attorney -- and let me tell you why. Because I don't want you to do it in front of the jury, assuming we go forward, but I don't want you to do that in front of the jury. Send a note that you need to take a break and they'll let me know and we'll take that break, okay?

**THE DEFENDANT:** I think that's fair.

**THE COURT:** All right. Well, now we're gonna take a break. We're gonna take an hour to get something to eat. I'll see you-all at 2:15.

(Court's Exhibit 5, 6, 7 and 8 were marked for identification.)

(Whereupon, a luncheon recess was taken.)

**BAILIFF:** All rise.

**THE COURT:** I'm so sorry to keep everyone waiting, but I -- you know, this is important and I was determined to get through it and I'm sorry to say that I've come back with questions and so I'm gonna ask my questions and then

I'm gonna move on to the other issues. Some -- I'm gonna ask my questions. That's where we'll start.

Okay. And I'm gonna direct this to the Solicitor. Tell me what was the -- and I'm looking in general -- what was happening in the case from May of '08 until November of '10? I've looked at the timeline and the timeline wasn't particularly all that helpful. One -- and let me just say -- let me say this and tell you what I do know and I don't know any more than this. I know that during that period of time the case had been assigned to Judge Maddox, that Judge Maddox in the order granting continuance says that the matter will be continued until it is set by the Court and it's -- and then I have looked at the date, but at some point Judge Maddox is -- Judge Maddox apparently is relieved from this case, it's reassigned to Judge McMahon on the basis of Judge Maddox having a conflict. It seems like I remember seeing that somewhere and I don't -- I can't put my hands right on it and so I know something was going on. I don't know if there were hearings being held and --

Oh, and let me -- but even before we do that I want to tell you-all -- I just want to let you-all know -- on both sides know that I wanted to look at some of the filings, I wanted to look at the originals of some of the filings, and I didn't want -- I didn't want to just handle

the file myself, the original file, and so I asked Ms. Modena to come into chambers with the file. She's, of course, with the clerk's office. Because I didn't want there to be -- I didn't want to -- quite frankly, I didn't want to accidentally with my papers take the original paper out of the file, so I asked Ms. Modena to come into chambers just for the purpose of helping me find documents and seeing the file and maintaining the file to ensure that neither my law clerk or me accidentally removed something and kept it. I did look at several pieces of papers, but Ms. Modena was kind enough to take those back. She didn't make any comments, she didn't -- she didn't -- other than just Ms. Modena, can you hand me this paper, can you hand me something with this date, and that was it. If you-all have any questions that you want to ask of Ms. Modena, she is right here. She was wonderfully helpful and patient with me, and I'm very grateful, but I asked her to do that specifically because I wanted to be really careful that I didn't -- my bench likes to eat things and always has and I didn't want to accidentally take it from the original file.

So just if you-all have any questions, I want you to be able to ask that. And if there are questions, please feel free to do that, but if there are no questions, what was happening?

**MR. GRAHAM:** None of the attorneys currently working on the case worked on the case back then, so what we can do is look back at the documents, Your Honor.

**THE COURT:** Okay.

**MR. GRAHAM:** The -- Judge Maddox signed the order May 13th of '08 granting the continuance made on the motion of defense. That's -- the trial date had been set and Mr. Barnes' attorney made a motion for continuance and it was granted. Shortly after that, about two weeks later about on May 30th, it looked like from -- Judge Maddox signed another order which basically looked like it put Georgia Department of Corrections on notice that these attorneys were working with him and gave -- and just let me pull it and I'll tell you what it says.

**THE COURT:** Okay.

**MR. GRAHAM:** It says upon motion -- this is 45, I think, because that's 46. Upon motion of counsel for Defendant for good cause -- that's granted. So 46 is the order. Do you have a copy of that one, Your Honor? That would be at Tab -- or Page 46, I guess, of that handout we gave you.

**THE COURT:** Hold on.

**MR. GRAHAM:** In the gray bound one that's --

**THE COURT:** In the gray bound --

**MR. GRAHAM:** It looks like that.

**THE COURT:** Okay. Yes, this one. Got it. All right. Got it. Page 46. Okay. Wait a minute now. Okay.

**MR. GRAHAM:** I'm assuming that this is based on the motion for continuance. They're now saying the matter comes before the Court of defense attorneys for Mr. Barnes that certain witnesses in the murder case are incarcerated in Georgia. They've requested to have investigators appointed to attempt to interview those witnesses and it says I find that Carlisle McNair, the investigator for Steven Barnes, should be given the opportunity to interview the incarcerated witnesses and to the extent that Judge Maddox can, he's ordering the Department of Corrections in Georgia to allow the investigator to interview both of the Hunsbergers, Kenya Kennedy, Marsha Rogers, Charlene Thatcher, Keisha Burton, Richard Cave and Antonio Griffin, and that was dated March 17th of '08.

**THE COURT:** Okay.

**MR. GRAHAM:** So my guess would be is there was a continuance and they needed further investigation. Those are some, I believe, penalty -- what would have been penalty and some guilt witnesses as well. I know that during the -- on Page 52 of what we handed up, Your Honor, which is Court's 3, I think, that's the transcript of the 2000 -- November 8, 2010, hearing before Judge McMahon.

I know at the top of Page 52, which was 77 of the original transcript, this is Assistant Solicitor Maye talking to the Court about scheduling the case and addressing the IAD claim and it talks about the State has done everything, the solicitor's office, Solicitor Myers made repeated requests for the case to be tried, Judge Toal appointed Maddox on October 31st of 2005, Solicitor Myers has continually pressed to have a trial date set, it was not done and you were appointed, and we're here this week for the trial of the case.

I don't know -- other than what we have records of, I don't know from the State's side going through the file, we weren't able to find that there were any notes of anything. Just a minute.

**THE COURT:** Okay.

**MR. GRAHAM:** I mean, from experience working with Solicitor Myers, I've been involved with seven capital cases with him. He never once asked for a continuance. I mean, he just didn't. My -- so it's supposition at this part. My guess would be that they asked for a continuance to talk to witnesses and for whatever reason they were never brought back in front of Judge Maddox to set another date, but I don't have any documentation of that, Your Honor.

**THE COURT:** Okay. Got it.

Yes, sir.

**MR. BLOOM:** I don't disagree with that representation of the record.

**THE COURT:** Okay.

**MR. BLOOM:** The only thing I would add is I think Your Honor also asked why the substitution of Judge McMahon. I don't know that for certain, but I think a witness in the sentencing of this original trial in 2010 was Donna Schwartz-Watts, who at some point she and, of course, Judge Maddox married, and I don't know that timeline off the top of my head, but that could have had something to do with it, that Judge Maddox requested of Court Administration --

**THE COURT:** Well, I'm sure that is exactly what happened and is exactly what -- matters of the heart entered this case. Okay. Okay.

**MR. BLOOM:** And obviously that did not -- I would concede that doesn't impact the State or the solicitor's office, the substitution of a judge.

**THE COURT:** Either side, yes.

Okay. All right. What -- and let me -- and just to follow that up in my mind, was she ultimately a witness in the case?

**MR. BLOOM:** She was. She was a defense witness at sentencing on mitigation and mental health matters.

**THE COURT:** Got you. I'm quite certain that's exactly what it was. Okay.

Okay. All right. Now really two questions, Mr. Bloom, that I want to ask. The first question is -- and let me -- let me tell you the reason for my question because I have read -- one of the things that I have gone looking for, quite frankly, is that I have gone looking for a case where both issues were in the case, both the request for speedy trial and the request for speedy trial under IAD, and the case that I have been able to find and look at is -- because I've got several sitting here I want to give you-all and I've looked at both of these cases for reasons -- here it is. State v. Allen. And in the State v. Allen case, Justice Lewis really does treat them separately. He considers them separately and treats them separately and they have independent distinction in this case.

In Hunsberger -- in the Hunsberger case, there is language that talks about raising the issue in a more -- it almost looks -- whereas the State versus Allen case really treats them separately. I'm pondering whether or not you believe that Hunsberger blurs those lines a little bit or is it -- do you believe that it's separate, that there's a speedy trial right under IAD and then a separate speedy trial right under the constitution? First of all, did the

question make sense?

**MR. BLOOM:** It does.

**THE COURT:** And I realize I'm questioning you because I don't think Hunsberger makes it clear.

**MR. BLOOM:** Right. I concur with the Court in that review of Hunsberger. To answer your question, I would say that while the IAD and Sixth Amendment are separate in that one is a statute and one is a constitutional right, the thrust of both of them in terms of bringing a case to a resolution where the Defendant makes it in a timely and speedy manner are the same, so I think they do blur together. The one distinction, quite frankly, in my humble research of the issue is the IAD puts very tight timelines on it because it's -- it's addressing the specific situation where a defendant is already under sentence in another state and has a detainer on him or -- maybe that or a warrant or something pending out there that can impact his classification and service of time in his home state, whereas a speedy trial claim, I think, has a broader swath of considerations for the trial court to consider. There's no tight timeline. It depends on the fact-specific circumstances of the individual case, whereas the IAD it's not fact specific, it's just you've got this timeline and that's it. You either have to get a continuance or recurring continuances or try a person

within that timeline so they can go back to their home state and finish that sentence and not have a detainer on them.

So in sum, while I hope I've answered your question in this particular case, our argument is that when Mr. Barnes asserted his IAD rights they were part and parcel of his speedy trial rights. They undertake different analyses to some degree. I think the prejudice under a Sixth Amendment analysis is broader for a court to consider, whereas under the IAD it's not, it's a more cut and dried prejudice analysis such as have you lost any witnesses or are you somehow impaired at trial, whereas the Sixth Amendment the court can consider factors outside the courtroom. So I hope that answers your question.

**THE COURT:** It does. So let me follow up with this question. If, in fact, that is correct and if, in fact, it is correct that in raising the concern under IAD that also speedy trial is just, then what of issue preservation for the 2010 trial?

**MR. BLOOM:** I think Mr. Barnes preserved it himself through his September 2005 filing where he specifically asked for a speedy trial in that very exact language and then cites Barker versus Wingo, so I think he preserved it for himself that way.

**THE COURT:** But it -- okay. But it didn't get heard.

**MR. BLOOM:** Right.

**THE COURT:** Is that it then?

**MR. BLOOM:** Yes, ma'am. I have no further -- I don't have any response to that because the record is what it is. It did not get argued to the trial court, it did not get raised again, and quite obviously it did not get raised on appeal --

**THE COURT:** Got it.

**MR. BLOOM:** -- in the 2010 case.

**THE COURT:** Got it.

All right. Very well. Now I'm going to -- I'm going to percolate a minute, so I want to talk about the other issues, if that's okay with you-all?

**MR. BLOOM:** Yes, ma'am. And if I can, just to bring this section of the argument to a close --

**THE COURT:** Sure.

**MR. BLOOM:** -- the Solicitor has marked four exhibits, which are court exhibits, and during the break -- and they are the Solicitor's two reply motions to our case, their gray covered timeline, and then the Court Exhibit 4 for the State is Sheriff Dobey's documents under the Safekeeper Act, which the Solicitor read the infractions.

**THE COURT:** Okay.

**MR. BLOOM:** The defense also during the break marked three court exhibits and they are -- Court's Exhibit 5 is

Mr. Barnes' -- what purports to be from his files the original IAD claim submission to the prison in Georgia, which I addressed during my presentation. Court Exhibit 6 are his pro se notes and objections which he made this morning in handwriting in court and we informed you of before the break. And Court's Exhibit 7 are Mr. Barnes' pro se recent filing in an administrative law court action, which he believes recites some of the prejudice. So we made those court exhibits.

**THE COURT:** I want to address that because I know there's some concern about whether or not the documents exist or doesn't exist and the like from Georgia or filed with the clerk, but the matter began with the IAD. I would just say that given the reaction, specifically Judge Keesley's initial hearing, and the responses -- just as you argued earlier, given the responses it had to have been filed. I don't know where it is. I know that Mr. Barnes has shown some copies, but clearly it was filed. It had to have been filed. The fact that we don't have it is okay, but just given the documented reactions and responses it had to have been filed. I just -- I don't know. I just felt I want to move that out as being an issue and I think we've all actually -- I feel like we've dealt with the fact it existed, it didn't not exist, there was the extradition, but there also was an IAD, I believe, in the file.

**MR. BLOOM:** I agree with the Court. I don't think it's a huge turning point in the case, but I concur with the Court.

As to the other motions, if I can move on, Your Honor, and I think in our discussions with the solicitor's office we're not necessarily seeking a ruling from you at this time. We want to highlight and place certain matters ahead of time on the record --

**THE COURT:** I like that. It's of help.

**MR. BLOOM:** -- so as those witnesses come up we'll take that objection up with you just so you can kind of see what's coming. Of all their exhibits and photos we have an objection to one photo. It's not yet marked, so I can't identify it for the record, but it appears to be a high school photo of the deceased victim, Samuel Sturrup, in the case, and we would specifically object to that.

There is a case we believe directly on point and I would ask Mr. Goranson to e-mail it to your law clerk so you have that, and the case is State versus Tyson, T-Y-S-O-N, Langley, L-A-N-G-L-E-Y. It is a South Carolina Supreme Court opinion. The cite I have is 334 S.C. 643 and the year is 1999. In that case, the Court reversed a murder conviction solely on the issue of a photograph of the victim in life being admitted in a noncapital murder trial. It called attention to the character of the victim,

possibly character traits and other things, and just wasn't relevant to anything in the case, and so we would interpose an objection to that photograph and at that point in the case if the State decides to introduce that photograph, we'll have to take that matter up. But we would call the Court's attention to State v. Langley.

I don't know if the State wants me to go through the whole list of our things or --

**THE COURT:** Well, let me just for -- if I can just share with the State, I urge you, is you have cited State versus Langley.

**MR. BLOOM:** (Nods head.)

**THE COURT:** There was a case in 2000 -- I mean, actually in 19 -- either late '97, early '98, and you should remember it. It was out of the Fourteenth Circuit. I urge you to take a look at it because in my early career I tried a case that had been tried by Judge Smoak at the time, and that was one of the precise issues and it had to do with showing a photograph of the alleged victim and the question or the decision says unless identity is in question there's a relevancy issue.

So I just -- I commend that to everyone. Even though you've given a more recent case, that case was one that I had to retry, so I had to deal with that issue, so I just commend that to you as well.

**MR. BLOOM:** And I would note the defense is not contesting the identity of the victim in this case. We'll stipulate to that.

**THE COURT:** I got it. I would just have you-all take a look at that case.

**MR. BLOOM:** The next few objections we would have during the trial are along the vein of 401 and 403 objections, relevance and then more prejudicial than probative, and I'll let Mr. McGuire address those each in turn.

**THE COURT:** Okay.

**MR. McGUIRE:** Judge, the first one I would take up is Number 2 on our sort of universal cheat sheet or summary sheet --

**THE COURT:** Sure. Yes.

**MR. McGUIRE:** And I'll have to give you about a five second or ten second recap of the facts, if I could. There's evidence available to -- available to the State to support a case that Mr. Barnes believed that the victim, Sammy Sturrup, had stolen some money from him and that Mr. William Harris, Mr. Barnes' half-brother, was instructed by Mr. Barnes to go pick up Mr. Sturrup and bring him to a house located on Cherry Street in Augusta, Georgia, and that at this house on Cherry Street Mr. Sturrup was beaten by a number of people; Mr. Richard

Cave, Antonio Griffin, Mr. Barnes, Mr. Harris and Charlene Thatcher, and that after -- after Mr. Sturrup sustained a beating for some time he admitted taking some money and then said it was at his mom's house and then allegedly Mr. Barnes made the statement "If we go to your mom's house and the money's not there, I'm gonna kill all of the people in the house". So we would move to keep that statement out, the statement about killing innocent people at another house. Now we know it's not hearsay, it's a statement of a party opponent. It's just a 403 analysis.

Now our understanding is that the State wants to get into the fact that there's some evidence indicating that Mr. Barnes ran an escort service, which was a prostitution ring, called AA Angels in Georgia, and that our position is it's not relevant at all to a misunderstanding about money being stolen. It doesn't have anything do with the context of an escort service or a prostitution ring. This is just did Sam Sturrup while riding with Mr. Barnes steal some money and that's it. So relationships between people, the fact that their identities -- I mean, essentially labelling Mr. Barnes a pimp, you know, evokes a very violent gun-toting, enforcer-type image that's not relevant to the case at all.

**THE COURT:** I understand. Yes.

**MS. MAYES:** Yes, Your Honor. First, as to the

statement made by the Defendant Barnes, that statement about killing everyone in the house if the money isn't there is part of an hour-long interrogation, which the State would provide testimony around in which the Defendant Barnes confronted the victim about the stolen money, the victim continuously denied it and then at some point says it's at my mom's house, take me there, which the State, part of our theory is that, of course, that's a false admission just so he can get out of this situation with him being threatened and being beaten. As a result, the Defendant threatens him further and ultimately when the victim cannot produce the money he is then kidnapped, taken here and murdered, and all of our witnesses will confirm that the motive for the murder was this missing money. And so the statement that is made by Mr. Barnes about killing everyone at the house if the money's not there certainly relates to his motive, his intent, his state of mind to get the money and carry out this murder, and, most significantly, it's proof of malice.

And so for all of those reasons the State contends that that is an admissible statement. It also falls under the res gestae theory. It is clearly evidence that would fragment our case if the jury doesn't hear that. All of the witnesses confirm that that was sort of the turning point in his aggression. He's already angry with the

victim, demanding the money, but when the victim says well, it's at my mom's house but then can't produce it and then retracts that statement, all of the witnesses say it was shortly thereafter that the kidnapping occurred, he seemed angrier, and then the murder occurs immediately.

So, again, the State's position is that that statement and all of those actions would be admissible pursuant to the res gestae theory and that it is an integral part of the crime and is needed for the jury to understand the full context of the events that night.

Secondarily, Your Honor, as to the matter of the relationship between the female co-defendant, her name is Charlene Thatcher, she was a teenager at the time of this murder. She is a co-defendant who is charged with the assault, the kidnapping, ultimately pled guilty to those charges in Georgia. She was present for the murder. She actually fires the first shot in this case, the first shot that strikes the victim and brings him to his knees. All of the witnesses, as well as Ms. Thatcher herself, will testify that Barnes held the gun actually in her hands and aimed that gun for her. So certainly we expect and anticipate that the defense will argue why did she comply, why did she go along with this, why did she take part in this murder at his direction or pursuant to his orders, and what's relevant to the State's case is that it's because

she was a prostitute working for him.

Now as to the name of that escort agency, AA Angels or whatever it was, that's not something we intend to offer. He had a list of rules, I believe, that were confiscated from his house that all of the prostitutes had to follow. There were more prostitutes than just Ms. Thatcher. Again, that's not evidence that we would intend to offer. What we intend to offer is what her relationship was with him, that dynamic, and the basis of that relationship is what explains why she went along with his demands and his urging that night that she participate in this murder. So it's relevant and, again, under the res gestae theory would explain the context of the relationship and her role in this murder.

**MR. McGUIRE:** If I could add a little bit more to that, Judge. To put it in context --

**THE COURT:** Well, let me -- let me stop you because I want to talk about what now is out.

**MR. McGUIRE:** Sure.

**THE COURT:** What is out is any mention that he is involved in any sort of ring or running any sort of ring of prostitution. I think he has -- he's the kingpin, the ringleader or whatever, we're -- what we're down to at this point is the fact that I gather this woman would testify, I guess, that I was under his dominion and control

because I worked for him, I was a prostitute who worked for him, I guess is what I'm hearing, so we're limited to that now, okay? So I just didn't want you to have to go back now to the whole ring because you're down now to just -- just to that, okay?

**MR. McGUIRE:** Okay. And when you say we're down to that, it's just that she's a prostitute working for Mr. Barnes?

**THE COURT:** As I understand it, that she would say if asked why were you -- why would you do that, she would say I was a prostitute, that I worked for him, I was afraid of him. Whatever she says, she says.

**MR. McGUIRE:** And that's -- that's what I need to add. In the former testimony, there's -- there's evidence that Mr. Barnes at one point accused Ms. Thatcher of taking this money and that they left the Cherry Street house with Mr. Barnes, Mr. Cave, Mr. Griffin, the victim Sam --

**THE COURT:** Mr. King?

**MR. McGUIRE:** Mr. Cave.

**THE COURT:** Mr. Cave. I'm sorry.

**MR. McGUIRE:** I'm sorry. That a party had left the Cherry Street house after the beating with Sam Sturrup over this missing money and the group that went out to the railroad tracks would be Mr. Barnes, Charlene Thatcher, Richard Cave, Antonio Griffin and the victim Sam Sturrup,

and that Thatcher at one point had been accused by Mr. Barnes of taking the money as well and there was an ultimatum put forward by Mr. Barnes; well, one of you is going to die, one of you will shoot the other one because I want my money, and that is plenty motive to go along with the plan to make sure that it's Mr. Sturrup and not you that's killed. The relationship as a prostitute or Mr. Barnes being her pimp, to use the vernacular, doesn't add anything to that. They have sufficient reason why she would go along with this plan and it would be simply to survive. In fact, she testified at a number of these trials the reason she pulled the trigger was because Barnes made it clear that it was either going to be Sturrup and if you didn't fire a shot at Sturrup, then you would be killed. So being a prostitute or working for Mr. Barnes doesn't add anything to that.

**THE COURT:** Okay. Yes.

**MS. MAYES:** Lastly, Your Honor, I'll add that it does add something to it because she's under his control, she's living with him, he's providing her a home, he's providing her income so to speak. Again, she is a teenager at the time. She also knows him to carry weapons on his person at all points in time and will play into her testimony as well. We're gonna lay that foundation during the course of her testimony leading up to this and leading

up to that dynamic between them and why she felt the need to comply, as well as why she feared him and knows him to carry weapons, and that's information that she has because of that unique relationship of being a prostitute that works for him. They weren't just social friends or acquaintances. And, again, I believe that under the res gestae theory the jury would be entitled to understand the full context of that relationship.

**THE COURT:** Okay. All right. I've got it. I'm not going to make a determination today. I do want you to do this for me though. Let me know when that's coming. Obviously it doesn't need to be in opening statements, but just let me know and I may or may not take some testimony outside the presence of the jury.

**MS. MAYES:** We will, Your Honor. And one of the most recent cases on point is State versus McGee. This is 408 S.C. 278. It's a 2014 case. I'll pass one up to Your Honor.

And the State has some motions in limine as well.

**MR. McGUIRE:** Okay. Whenever you're ready to hear the rest.

**THE COURT:** I'm ready.

**MR. McGUIRE:** So sort of in that vein, there at the Cherry Street house where this beating is allegedly to have occurred a search warrant and arrest warrants were

served on Mr. Barnes there and there would be, as I understand, the testimony that Mr. Barnes tried to flee from the house or run away when the warrants were executed. Now this house has sort of a fortified exterior with bars on the windows, a steel bar on the door and video cameras, and we would object to any portrayal of a sort of fortified bunker. We've seen the photographs of the house, they have some bars there. We don't object to that, but any additional testimony about hi-tech security cameras and the nature of these bars and bars on the door we would object to that. It just makes it look like it's a kingpin's fortified bunker and it's not necessary or relevant.

**MS. MAYES:** And so, Your Honor, when that arrest warrant was served on Mr. Barnes, it was in 2002. This is months after the actual murder has occurred. Now law enforcement is investigating and the testimony's gonna be that Mr. Barnes' half-brother was the last person to be seen with the victim. So in addition to law enforcement potentially asking questions, the mother of the victim is also confronting Mr. Barnes, asking him where's my child, do you know where my child is. So after the victim's body is found, Mr. Barnes still hasn't been arrested, so we're moving four months later now into January of 2002. On that date when law enforcement did show up and ultimately he was arrested, he did have working video surveillance,

and this would have been 2002 which not everyone had back then, but as one of the eyewitnesses to this event can corroborate from her testimony he's aware from the working video surveillance that law enforcement has approached the premises, he then flees out of a window and is ultimately apprehended in the backyard in flight as the testimony will support. But the fact that he had the working video surveillance the State maintains is evidence of guilty knowledge, as well as an attempt to avoid apprehension, and we think that's admissible pursuant to State versus Pagan, as well as other cases on flight. And I believe the video surveillance just corroborates the evidence of flight there.

**MR. McGUIRE:** I don't have anything to add to that.

**THE COURT:** Okay. All right. Again, let me just know that that's coming. Just let me know when it's coming, okay?

**MR. McGUIRE:** Okay. So the next motion that we would have would be to go into the fact --

**THE COURT:** I'm sorry, Mr. McGuire. Let me stop you, I'm sorry, because really it occurs to me we're dealing with a couple of issues. You were concerned about the statement about the video cameras being present and also depicting this location as a bunker and what I heard from the State is they're interested -- their interest is the

video cameras as corroboration to flight rather than they want to depict this as being some sort of bunker. Am I correct in that?

**MS. MAYES:** Yes, Your Honor.

**THE COURT:** That it's more limited so you don't have to worry about bunker or reference to his house as being some sort of bunker, but we're limited to the testimony about video cameras.

**MR. McGUIRE:** Okay. We would still maintain our objection.

**THE COURT:** I know.

**MR. McGUIRE:** It's just that it's unclear as to how much would come in based on reading prior transcripts. For instance, when the warrants were executed they had a tow truck hook up a chain to the front door to pull it off to gain access. There's also some testimony mostly in the penalty phase about Mr. Barnes using these steel bars and doors to control people, not letting people out of his house, not letting people in the house, that sort of thing, making statements like the police are never going to get in here, so it's hard to tell what's -- I mean, if we're just limited to here's a photograph of the house and it's clearly got some bars on it and you also have a video surveillance system, if it's limited to that and it's not a detective saying well, I guess if I thought somebody was

gonna serve warrants on me for criminal activity, I might fortify my house, too. If it's gonna be just limited to a photograph, which we've already seen and don't object to, and additional statements saying the house was also equipped with a video surveillance system, I think we would be satisfied with that.

**THE COURT:** Let's see how it goes. Yeah, just -- let's see where it goes. I'm less concerned about that. With regards to testimony about it took a while to gain entrance, that may be relevant with regards to the ability to give time to flee as opposed to testimony that Mr. Barnes may have been out behind his house gardening. I mean, you know -- I mean, really people go outside their house for all kinds of reasons and so there may be more of the relevance with the -- with the tow truck in terms of the temporal opportunity to actually get out and flee as opposed to being outside gardening. I don't know that at this point.

**MR. McGUIRE:** Sure.

**THE COURT:** I'm not gonna let there be any general observation; I know that I would have all of that if I thought somebody was coming to my house to arrest me. I'm not allowing that and they don't -- they don't propose to put that in. I'm not going to allow that and I'm not going to allow any kind of bunker language or testimony so that

this jury is to speculate that this is some sort of den of inequity in general. I'm not gonna allow that. It's gonna have to have some significant relevance and I'll deal with that when it gets here.

**MR. McGUIRE:** Yes, ma'am.

So the next issue ties into what we've already discussed, which would be the escort service. There's a motion by the State to not allow us to present third-party guilt evidence against Mr. William Harris, and we do not intend to do that. However, we do want to go into the fact that Mr. Harris -- well, for you to understand this, let me --

**THE COURT:** Now Mr. Harris is the half-brother of Mr. Barnes?

**MR. McGUIRE:** Yes, ma'am.

**THE COURT:** Okay.

**MR. McGUIRE:** He's alleged to have picked up Mr. Sam Sturrup at his house and when his momma saw him last in life he was with Mr. Harris. Mr. Harris -- there will be testimony from Charlene Thatcher that Mr. Harris did, in fact, bring Mr. Sturrup to this house, that he -- that Mr. Harris assaulted Charlene Thatcher with a broomstick, violently assaulted her, and that he assaulted the victim Sam Sturrup, including producing a pistol and putting it in Mr. Sturrup's mouth and saying say that statement one

more time and I'll pull this trigger. If you say that statement one more time, go ahead and say it, I'll pull this trigger, and threatened to kill him.

Now there's also testimony in the transcripts to indicate that Mr. Harris also ran this escort service and that the number that one would call to arrange a date with an escort, the phone number, was in Mr. Harris' name and that when Mr. Harris first had contact with law enforcement he lied, he gave himself an alibi listing his girlfriend. He later recanted that, admitted he had lied and then gave a statement saying this is what happened, this is what Barnes told me, and essentially he sort of threw Mr. Barnes under the bus, that's who you need to be looking at. He said he would take a polygraph examination and then his girlfriend called the investigator and said he's changed his mind about that, he will not do that. Then they found -- law enforcement found a receipt for a storage unit in one of these search warrants and it was Mr. William Harris' storage unit. In this storage unit they found three checks that they believe to have been stolen, they contacted the owner of the checks and he indicated that he had used the AA escort service before and it appears as though the checks were stolen by a prostitute and they had three different signatures on the signature line indicating that they were likely frauds or that somebody intended to forge

his signature. They also found about $1,300 in cash in the storage unit and when they contacted Mr. Harris for his explanation he said well, Mr. Barnes gave me the checks that were apparently stolen by prostitutes, but the cash is mine.

Now we would want to go into the fact that there were a number of red flags putting law enforcement on notice that Mr. Harris should have been thoroughly investigated and that would include the fact that he declined to take a polygraph examination. We don't want to get into any results of the polygraph examination because there aren't any. Just the fact that when somebody has this much involvement in the case, tries to alibi themselves, is clearly lying to law enforcement and then refuses to take a polygraph after they agree to take one, that these are red flags that law enforcement officers should have followed up on. This is just fundamental general impeach the integrity of the investigation.

**THE COURT:** Okay.

**MS. MAYES:** And, Judge, just to clarify, where William Harris is concerned, he was involved initially in the Georgia aspect of this case in that he transported Samuel Sturrup to the residence that Barnes was at on that particular day, which is gonna be [redacted] Cherry Street in Augusta, Georgia. He was present when the assault of the

victim took place and did also take place in that to some extent. He was not present by all accounts for the kidnapping of the victim from Augusta. He certainly was not present for the transporting of the victim over to South Carolina and then, again, was not present here in Edgefield County at the crime scene when the murder took place. So it wouldn't rise to the level of any type of third-party guilt because it's mere conjecture at best when no witness actually puts him here.

With that said, if we call -- if the State calls Will Harris and there's a certain statement that he made or did not make that they want to pursue, we can take it up at that time. If they call Will Harris, then certainly it could become admissible at that point, but otherwise I believe everything that's been referenced by Mr. McGuire would be a hearsay statement and would not admissible as to what he may or may not have told other co-defendants or law enforcement or anyone else. And so unless he's called as a witness in the case, I can't imagine that this issue would even arise.

**THE COURT:** Well, let me ask you this question because this is where I can see it coming up. I don't know who your lead investigator is, but your lead investigator takes the stand, cross-examination, what do you know about Mr. Harris; did you do this, did you know this, did you do

this, did you do this, did you do this, did you do this, you know, you learned this, why didn't you follow up on that, things such as that, you would object at that point on the issue of relevancy, correct?

**MS. MAYES:** We would, Your Honor, if it relates to a polygraph examination or if it relates to any statements allegedly made by Mr. Harris. I believe that would have to come by Mr. Harris himself. Now was he looked at as someone present at the scene, certainly that's a fair question for any investigator in the case. Did they interview him without getting into the context of what he said, yes, he was interviewed, yes, he was looked at as a suspect.

**THE COURT:** Okay. We'll just handle it when it comes.

**MR. McGUIRE:** And I should add to that that the specific little small pieces of evidence that would link Mr. Harris to AA Angels, the prostitution/escort service, our plan was to not go into those specific details as we were hoping to keep the whole --

**THE COURT:** Not to open the door.

**MR. McGUIRE:** Exactly. So the fact that there were checks that were clearly or apparently stolen by a prostitute and given to Mr. Harris, we didn't plan on going into that. We also did not plan on going into the

fact that the phone number of the escort service is in his name. We were gonna leave all of that out.

**THE COURT:** Okay. I'm with you. And I think you're correct. I think at that point you would have opened the door.

**MR. McGUIRE:** I would agree with you. Yes.

**THE COURT:** All right. Now what's next?

**MR. McGUIRE:** Let's see. We had a -- well, there's the State's motion to limit our examination of Ms. Thatcher with regard to an inappropriate relationship with Sheriff Roundtree. The current sheriff is the -- used to be the lead investigator for homicide cases in Augusta. He's now the elected sheriff. There was some evidence that Ms. Thatcher was checked out of the jail and went to his office on approximately seven times and in her own testimony -- we had Ms. Thatcher interviewed a number of times and she admitted that, yes, they were alone a number of times. However, she's -- some of these questions have been put to her in former trials, in either the Hunsbergers or Mr. Barnes, and she's denied any inappropriate relationship with Mr. Roundtree, the elected sheriff, the investigator in Georgia. We had intended to stay away from that, but if the prostitution issue comes up, then there is a -- there's an amount of evidence to indicate that Ms. Thatcher was trading favors

at the jail for beneficial treatment and some jailers were actually fired because of that. Roundtree was actually investigated and investigators interviewed Ms. Thatcher and their relationship and we would -- if the prostitution thing comes up, then we would go into this to show that she is in a culture where she trades things to get things that would include jailers and why not Mr. Roundtree. There's some evidence that she was escorted out alone with Roundtree.

**MS. MAYES:** And, Your Honor, just briefly, as indicated, Investigator Roundtree is now sheriff. He's the sheriff of Richmond County, which is the county in which Augusta is the county seat there in Georgia. Not only has Charlene Thatcher denied that to us and in her testimony in any previous trials, but the defense also had their own private investigator go out to the Department of Corrections in Georgia and sit down with Ms. Thatcher and interview her there and that's been within the last year and she has continued to deny it, as well as, of course, Investigator Roundtree, who has not been charged or ever implicated in any wrongdoing.

So the State's position is that there would be no good faith basis to even pursue that line of questioning knowing that Ms. Thatcher denies it and has always denied it. Now she did engage in some improper conduct, I

believe, with a detention center guard over in Georgia and that guard was fired and, I believe, also prosecuted. So that is part of her history that she's acknowledged and has been forthcoming about, but as to any alleged wrongdoing with Sheriff Roundtree, Your Honor, the State maintains that it's highly prejudicial and there's no good faith basis to support it.

**THE COURT:** Okay. You know, at this point I don't know -- I don't know what relevance it has. It may, I guess, could become relevant, but we'll just see where it goes. At this point I don't know why it would be relevant, but before you go into it let me know.

**MR. McGUIRE:** Yes, ma'am.

**THE COURT:** All right.

**MR. BLOOM:** If I could look at my checklist for a moment to make sure we --

**THE COURT:** Absolutely. And I -- you know, again, I appreciate this from everyone simply because so many things are a vacuum to me at this point and you learn pretty early if you ever rule, particularly on an evidentiary matter before you've heard much of anything, you tend to regret that, so.

**MR. BLOOM:** I think the few remaining things from the State's side, I conferred with Madam Solicitor Mayes and the State was concerned whether the defense in our opening

and closing or any cross-examination would get into the time delay in this case and try to infer to the jury that the State is somehow to blame since this incident occurred in 2001 and it's now 2017. We don't intend to do that. I think that's inappropriate. That's a legal matter for Your Honor and not one for the jury, so we're not gonna do that.

I think Solicitor Mayes was also concerned that we may try to bring out to the jury the Hunsbergers' murder convictions were dismissed in State versus Hunsberger. Again, that's a legal matter and not one for the jury, it's inappropriate, and we tend to agree with that.

I think that addresses the last of the issues between the two sides. If I'm wrong, I'll let Solicitor Mayes correct me, but the last two things we have is a proposed voir dire question to hand up to Your Honor.

**THE COURT:** Okay.

**MR. BLOOM:** And a lastly Mr. Barnes has a medical matter he just wants me to bring your attention and we would save that for the very end.

**THE COURT:** Okay.

**MS. MAYES:** Yes, Your Honor, that is correct. The State has proposed motions in limine, first, regarding any reference by counsel, whether that's in opening or closing or during questioning of witnesses, that relates

to the delay in the time. In other words, it is going to be an obvious question. It is 2017. This crime occurred in 2001. We just want to make sure that there's not any reference that would somehow impugn that the State is responsible for the delay in this situation.

And then, secondly, as to the disposition of the Hunsberger case, it was dismissed following their convictions in this murder case and so, of course, we move to exclude any reference to that disposition.

**MR. BLOOM:** We intend to abide by those things.

**MS. MAYES:** Finally, Your Honor, I believe there have been some stipulations as to the chain and results of the analyses that were done by the labs, both at the State Law Enforcement Division and GBI, the Georgia Bureau of Investigation, they have their own internal crime lab, and the results of certain analyses, forensic analyses, that were done in this that case. It looks like we're gonna be able to stipulate that those results would be admissible and can be testified to by the CSI persons, both in Georgia and South Carolina, without actually bringing in those forensic analysts.

**MR. BLOOM:** We agree on both those points; both the lab reports and the chain of custody.

**THE COURT:** Got it. Okay.

**MR. BLOOM:** The last two things, we have a proposed

voir dire question that I would hand up to the Court, if I may approach?

**THE COURT:** Have you-all seen it?

**MR. HUBBARD:** Is this a new one?

**MR. BLOOM:** No, no. It's the same one. Here, I've got an extra copy.

There have been five prior trials in this courthouse, in this community, involving either Mr. Barnes or the two Hunsberger brothers. Both the Hunsberger brothers were tried for murder here in 2012. Mr. Barnes was tried for murder in 2010. Mr. Barnes was also tried for throwing bodily fluids in 2009, I believe, and then, again, in 2015, and so the question we propose to Your Honor is we can't come right out and ask the jurors has anybody's previously sat on a jury for Mr. Barnes, so what we've done is list all the co-defendants' names, along with the two Hunsbergers. It's obvious Ms. Thatcher, Mr. Griffin and Mr. Cave haven't ever had a trial, but I think to protect Mr. Barnes if we list everybody together then it will appear to the jury to be a more general question; have they ever sat on a jury with any of these people, list them all, including -- and then including the Defendant; have any of their co-workers, friends, neighbors; have they talked to anybody about it.

And, lastly, it's a case involving law enforcement

from Richmond County, Georgia and here, and so hopefully if any jurors have had any contact with prior jurors in this case since it's a small community, it may ring a bell.

**THE COURT:** Got it.

**MR. BLOOM:** So we've tried to word the question as neutrally as possible. I've kind of summarized it orally here, but the written motion sets it out.

**THE COURT:** All right. Have you-all had a chance to --

**MR. BLOOM:** And I'm open to any suggestions from the Court or the State in terms of addressing this issue so we don't get a juror who says oh, my goodness, I was -- I was a juror on that case, but I've since gotten married, I've changed my name or whatever. And so if they have any suggestions, I'm open to that in terms of how to word it.

**MS. MAYES:** On its face, Your Honor, the State has no objection.

**THE COURT:** Okay. Great. All right.

**MR. BLOOM:** Thank you.

**THE COURT:** Absolutely.

**MR. BLOOM:** The last thing, Mr. Barnes has requested if the Court could request of the Edgefield County jail to have someone with medical check on two items. He has an ear infection in his left ear and some pain in his right leg below the knee. I can tell the Court Mr. McGuire and

I are familiar with his medical records since we've collected them from SCDC over the years when we were preparing this as a capital case. He has recurring ear infections, so when he tells me that's bothersome I do take him at his word. The Department of Corrections would often just give him over-the-counter Benadryl to alleviate it.

**THE COURT:** And was that -- did that work?

**MR. BLOOM:** It was helpful. He himself says that's helpful and that that may be it all he needs. I don't -- you know, I don't know.

**THE COURT:** You want to stay away from being the medical doctor and stay a jurist doctor. You don't want to prescribe.

**MR. BLOOM:** Whatever's -- I'm not -- I don't want to prescribe it, you know, I don't want to run to Rite Aid and get him a thing of Benadryl, I don't want to be in the middle of that obviously, but he does express some pain in his left ear and that has been a recurring thing. He has also -- it's in his SCDC records he has recurring pain in his right leg between the knee and the ankle. And off the top of my head I cannot recall what SCDC would prescribe for that. I think just over-the-counter Tylenol for the pain and maybe a hot or cold compress, I'm not sure.

(Discussion between the Defendant and counsel.)

**MR. BLOOM:** I know sometimes SCDC, again, for his leg pain would just prescribe an over-the-counter muscle relaxer cream, too, so I don't know if either of those two things the jail is able to address. The ear issue concerns me because I know ear infections can become very distracting and painful.

**THE COURT:** Okay. He's gone. The sheriff was right here. We've lost the sheriff.

Yes. So do you think you could address this in someway?

**INVESTIGATOR DORAN:** Yes, Your Honor. We have a -- we have a nurse that comes in every day. Mr. Barnes probably hasn't had a chance to see her yet. He came in late Friday afternoon and he's been up here all day, but we have a nurse that comes in every morning.

**THE COURT:** So she'll -- okay. But what time does she come in?

**INVESTIGATOR DORAN:** Around 8:00. Around 8:00.

**THE COURT:** Okay. If you will endeavor to see if you can get him whatever his circumstances address, that would be great.

**INVESTIGATOR DORAN:** Yes, ma'am.

**THE COURT:** We've got right leg and left ear. And maybe -- I'm sure they've got Tylenol around and probably Benadryl maybe that they can -- with his permission give

him some Tylenol and maybe a little Benadryl --

**INVESTIGATOR DORAN:** Yes, ma'am.

**THE COURT:** -- just for this evening and then she'll see him in the morning and if he needs something additional have that happen, but maybe for this evening just those very, very limited conservative measures to see until she can get there in the morning if he wishes. And he may not wish them, but if he does I'd like for him to have those things, okay?

All right. Now -- all right. Now back to the speedy trial and pursuant to the Hunsberger case I am going to make findings of fact and I'm going to begin with the period January 31, 2014, until the present time. In general, I will tell you that I am going to work on this evening my findings of fact with regards to 2008 to 2010. I believe that based upon the case law as I have read it that that would be the applicable period because of the waiver that occurred in 2008 with regards to the -- with regards to the request for continuance. Having said that, I also think that it is a compelling argument that is made by the State that issue preservation is critical. There's acquiescence in the trial and if the matter wished to be raised it should have been raised and the issue that was clearly raised, which is the violation of the IAD, certainly was addressed by the Supreme Court, so. But I'm

going to attempt to make specific findings of fact, if you will, as -- if that argument is insufficient to deal with the time limitations from '08 to the trial in '10 and you-all, I think, addressed that and -- but I'll make specific findings of fact.

I am prepared though to make the specific findings of fact with regards to January 31, 2014, through the present time. I think and find that from January the 31st to June of 2014 that that time period is neutral and it's neutral for this reason. January the 31st is the time that the remittitur was issued by the Supreme Court back to Edgefield County and subsequent to that there was the appointment -- there was the hearing and the appointment of counsel by Judge Keesley and then there was -- that order was vacated, the matter was then sent to Judge McMahon and then in June assigned to me. At that point it's neutral because of the -- the movement of this particular case through three judges, so I think it's neutral under the Hunsberger determination or under the Hunsberger case.

I think that the period from June when it was assigned to me to August is also neutral. For the record, beginning in July of 2014 I was involved in the trial -- a nonjury trial for three weeks and was unavailable during that period of time which puts us into our hearing in August and

also during that period of time we were trying to get a number of folks obviously there. I do believe though, and I would put on the record, that it is my understanding and my belief that Mr. Bloom and Mr. McGuire had met Mr. Barnes and had had to some extent some communication so he wasn't completely without counsel during that period of time.

I think it's important to note that at the time of the appointment of counsel which occurred in July or August, let me think -- no, wait a second.

**MR. BLOOM:** Appointment of counsel in this case, Your Honor?

**THE COURT:** Yes.

**MR. BLOOM:** It was September 11, 2014.

**THE COURT:** September 11th. All right. September 11th of 2014 was when the order was -- was that when the order was signed?

**MR. BLOOM:** That was the hearing.

**THE COURT:** That was the hearing date?

**MR. BLOOM:** That was the hearing. The order -- the written order came later.

**THE COURT:** All right. At that point there was a presentation that was made and -- and this really becomes relevant, I think, later. It's clear that Mr. McGuire was involved, as I understand. I went back and looked at the communication in the motion from Mr. McGuire and some

enclosures in that motion from Mr. Barnes and there was an established attorney/client relationship between Mr. McGuire and Mr. Barnes, and I think Ms. Best, as well. I think she was involved in the appeal; is that right?

**MR. McGUIRE:** Yes, Your Honor.

**THE COURT:** But didn't she leave to go into private practice?

**MR. McGUIRE:** She did.

**THE COURT:** Okay. And Mr. Barnes would have -- I think would liked to have had her involved, but since she had gone into private practice that wasn't a possibility. He had had some meetings with Mr. Bloom and based on the communications and arguments that I heard I appointed counsel and appointed Mr. McGuire and Mr. Bloom. It's clear to me, particularly as I looked back, that there was a very positive attorney/client privilege-type relationship between Mr. McGuire at that point and also there was a very good relationship with Mr. Bloom, too, although that was less -- that was less lengthy, I think, at that point, and I think that becomes important later on.

And so very shortly, almost contemporaneously with the appointed counsel, there was the appeal. We'll call that Barnes 2 where the State appealed the appointment of counsel because of the reversal of Barnes 1 on Faretta and the Faretta issues and the -- the appeal was made in the

original jurisdiction of the Supreme Court and the Supreme Court took the appeal, collateral argument, and as I'm sure all of you have experienced if the Supreme Court believes that it has granted an appeal or cert improperly they have no problem saying so even after oral argument, and they did not do that in this instance. So I do not believe it would be appropriate to consider the appeal, and I call it Barnes 2, against the State. I think it's also neutral because obviously the Supreme Court found it to be a meritorious appeal and a meritorious issue raised or they would not have granted the appeal, the very unusual appeal, in its original jurisdiction and heard oral arguments and issued a decision if they felt otherwise and would note that it was clear if you listen to the argument that it was a matter that was -- had robust consideration, I think, by the Supreme Court and so it certainly was not appropriate that you take that time and tag that time against the State.

With regards to the appeal, that returned -- that accounts for August or, I guess, September of 2014 through July of 2015, and there was a motion for re-hearing, but even by the time that the remittitur came back on Barnes 2, at that point, Mr. McGuire, you were protected as a result of the Roof matter, the Dylan Roof case.

**MR. McGUIRE:** Yes, ma'am.

**THE COURT:** Yes. And at that point we were having status conferences and it was very clear to me that not only was the case stayed, but that Mr. Barnes wanted you to remain as his lawyer and he wasn't interested in, based on my understanding, having you relieved. He wanted you to remain on the case. So given that reality, that protection existed from July of 2015 until December of 2016. And I think also as I make findings of fact it's important to note that at this time Mr. Barnes' case was a capital case. The reason that I think that is important is that while you may have co-counsel in a noncapital case where one lawyer can proceed to do work if another lawyer is otherwise occupied, in a capital case both lawyers have to participate fully and you cannot just relinquish responsibility as your responsibility is to the capital defendant and while that ought not be done I'm sure in any case in a capital case there is an independent obligation for counsel to be a lawyer -- be the lawyer for a capital defendant and they have two "the lawyers" for the capital defendant, and I think our law's pretty clear about that. And I think that probably in one of our status conferences as I'm being pushy-pushy, Mr. Bloom, you probably would want to do that, but he's entitled to two lawyers. But in any event -- and I don't even think, Mr. McGuire, necessarily you asked for that protection, yet it existed.

So you got it whether you wanted it or not.

**MR. McGUIRE:** We asked for time and instead we got protection.

**THE COURT:** Yes. As I remember that original order, it was to exist until ninety days following the disposition of the Roof trial or the disposition of the Roof matter, I guess.

**MR. McGUIRE:** That's correct.

**THE COURT:** Okay. And what occurred was in December of 2016 the Supreme Court had received communications, updates. There wasn't a whole lot to update once the stay had been -- the protection had been given, which was -- in effect, was a stay; although I think it's important to note that certainly Mr. Bloom continued to work on this matter and I'm certainly aware of that, there was -- in effect there was a stay.

I think it's probably also relevant as a finding of fact that at the time of the appointment of counsel in September of 2014, Solicitor Myers made a comment that he was ready to go to trial in the next week, which would not have given counsel for Mr. Barnes very much time to prepare, so that's been important also to make that finding of fact.

That moves me forward really to December of 2016 and at that time I had communication with the Supreme Court

-- well, actually with Chief Justice Pleicones the time with regards to the progress of the case and in that conversation shared with him the stay and shortly thereafter there was relief granted from the stay for Mr. McGuire with an order from Justice Pleicones that was dated the 16th -- the 16th of December that said -- 12-16-16 that said that preparation of this case may resume was the term that he used in his order and the protection for Mr. McGuire was insofar as Mr. Barnes was concerned ended at that point. That time, if it's not neutral, it would have to be counted, if you will, against Mr. Barnes.

Now after the order in December was issued by the Supreme Court, I began to have regular status conferences with both sides and there was a request of Solicitor Hubbard for a limited -- a very limited period of time to -- just as he spoke earlier to familiarize himself with the file, with the case, and meet with the folks that he's already indicated. And based on the -- obviously what I knew from the status conferences based on what I've had to -- really just to cement what I learned in the status conferences, there was representation of Mr. Barnes with the solicitor's office during the period of time that Solicitor Hubbard was -- as you were getting up to speed, and ultimately in July of 2017, which is where we are now, it enured, I think, to the benefit of Mr. Barnes in that

Solicitor Hubbard through his prosecutorial discretion took -- revoked the notice of death penalty and served the notice and the intention to seek the penalty of life without the possibility of parole. I believe that, A, the consideration and, B, the representation of counsel, of Mr. Barnes, enured to his benefit. I certainly would not weigh that time against either side. I think that would be inappropriate. And also during this period of time it is clear that Mr. McGuire and Mr. Bloom continued to prepare for trial, which until -- which until July was a death penalty case, and that certainly is reasonable under all of these circumstances.

In July of 2017, the case was set for trial. And, of course, it was after the case having been set for trial that the motion for speedy trial was made and the motion with regards to the IAD was also made. Insofar as the period from January 31, 2014, through today's date I find that there is no violation of Mr. Barnes' constitutional right to a speedy trial.

I will make specific findings of fact before we begin tomorrow, but I want to have a little bit more time because while I am familiar with it I do want to put my thoughts together on those findings of fact and I would address those in the morning with you and put those on the record as well.

Anything further from the State at this time?

**MR. HUBBARD:** Not at this time.

**MR. BLOOM:** No, ma'am.

**THE COURT:** I thank you-all so much for today. It took, I think, probably a lot longer than we anticipated. A lot of that had to do with my need to look at different things.

I will see you-all in the morning. The jury is coming at 9:30. By the time they have a chance to check them in, that will probably be closer to being ready at ten. I don't know where they hold the jurors. Do you-all hold them outside?

**THE CLERK:** No, right out here in here.

**THE COURT:** Okay. I just -- and my concern is just I don't want Mr. Barnes to in any way -- you know, I don't want them having any indication he's coming from anywhere other than from off the street.

**MR. BLOOM:** Mr. Reel and I have discussed that and we'll discuss that with Mr. Barnes afterwards.

**THE COURT:** Okay. You think you have a resolution?

**MR. BLOOM:** We have a plan.

**THE COURT:** Okay. Good. Excellent. Excellent. And if there's any objections, I'll hear about that. And thank you for doing that.

All right. And then I'll see you-all in the morning.

I'll try to get here a little bit before ten and make those findings.

**MR. McGUIRE:** Thank you, Judge.

**MR. HUBBARD:** Thank you, Judge.

(Whereupon, the proceedings were concluded for October 9, 2017, at 5:05 PM.)

(The following proceedings were held October 10, 2017, beginning at 11:56 AM.)

**BAILIFF:** All rise.

**THE COURT:** Thank you so much, everyone. Please be seated.

All right. Ladies and gentlemen, at this time I am going to call on the Solicitor to please call our first case for trial this week.

**MR. HUBBARD:** Thank you, Your Honor.

**THE COURT:** Solicitor Hubbard.

**MR. HUBBARD:** The State calls Indictment 2017-GS-19-1788, the State versus Steven Louis Barnes, charged with murder.

Your Honor, this indictment's been true billed, and I'm passing up a witness list.

**THE COURT:** Very well.

All right. Ladies and gentlemen of the jury, I want to explain to you what has just occurred and then I want to talk to you about what an indictment is and what it is not,

**MR. BLOOM:** First, I was present on behalf of defense every time you excused or transferred a juror. I heard those reason, wrote them down. The defense had no objection to any of those excusables or transfers. Secondly, I just want to note for the record it's obvious the defense did not use all our strikes and did not use a lot of our strikes. We would note there were approximately seven jurors we felt for various reasons we had to excuse. As fate would have it, they were not called in that sequence so we did use our strikes as we saw fit, but I wanted the record to reflect given the type of case it's unusual where the defense doesn't use all their strikes, and that was the reason. We were holding them back for particular jurors.

Lastly, the Defendant's handed me a three-page pro se letter. If I could mark it as a court exhibit.

**THE COURT:** All right. Yes, you may mark it.

**MR. BLOOM:** And I understand Your Honor can or cannot consider them. I just would like to make them a court exhibit.

**THE COURT:** We can certainly do that. I don't intend to review it or look at it, but certainly it's fine. And please understand once it is marked as a Court's exhibit, it is -- the Solicitor, of course, is free to take a look it. If the Solicitor or anyone in their office wishes to

view it, they are authorized.

All right. Now I -- that's all? Anything from the State?

**MR. HUBBARD:** No, Your Honor. And, Your Honor, I will say I think this is probably the second time they put something in for Defendant. I know there is some case law out there, so I'd just make an objection to preserve anything on appeal for that under State versus Jones, but I certainly understand why you're making it a Court's exhibit and I think Your Honor said you're not gonna review it, so -- so there shouldn't be any harm. Thank you, Your Honor.

**THE COURT:** Very well. I'm not going to look at it or review it. And obviously, I just want it to be clear that once it's in, I don't know what's in it --

**MR. HUBBARD:** Right.

**THE COURT:** -- certainly it's for your perusal if you wish to do so.

**MR. HUBBARD:** Thank you, Your Honor.

**THE COURT:** And I want -- I hate to do this, but I do need to -- let me see counsel for two minutes and we'll do it right up here so I don't slow you all up. I want you to be able to get some lunch, but I do want to do that, and that's it.

(Proceedings held at the bench; not reported.)

(Whereupon, a luncheon recess was taken.)

(Court's Exhibit Number 8 was marked for identification.)

**BAILIFF:** All rise.

**THE COURT:** Thank you so much. Please be seated.

All right. As I told you-all, I wanted to go forward and talk about the two motions that I had addressed yesterday; the Interstate Agreement on Detainers and then the speedy trial motion, but I wanted to do it more fully and today I'm prepared to do that. I am actually going to ask for the State to draft for me an order, a written order. And I have a memoranda prepared for both sides, if you want them, although there will be some changes even as I go through, so it will be only for the use in drafting the order. I certainly don't want it to be verbatim. And obviously I'll issue the oral order and the written one may vary a little bit.

But in any event, I'm gonna give the Interstate Agreement on Detainers. The reality is that that issue was fully disposed of in the Supreme Court's decision in Mr. Barnes' first appeal. I'll call that Barnes 1, and by Barnes 1, I am talking about the decision where Mr. Barnes' conviction in the capital case was reversed. There's been no new evidence presented justifying or questioning that decision and I knew there was no new IAD detainer action

commenced subsequent to the Supreme Court's decision in, if you will, Barnes 1 where the capital case was reversed. Now that -- I am now finished talking about the IAD.

With regards to the speedy trial motion, and to begin with I think it is important to note that obviously there is some connection to the Hunsberger case and, therefore, one must look at the Hunsberger case because it is our Supreme Court's latest determination of a claim for a constitutional speedy trial and it certainly is the Supreme Court's attempt to -- with some detail to go through the analysis that ought be utilized in addressing motions for speedy trial under the constitutional speedy trial circumstance and that, of course, is when someone, a defendant, makes a motion under the -- speedy trial under the constitution.

Now I'm gonna go over the timeline. I did that yesterday. I'm gonna go over it again in a little bit more detail. On January the 31st, 2014, the remittitur came back from the Supreme Court remanding the case to Edgefield County. At that point clearly Mr. Barnes was aware of the formal charges against him and the pending likelihood of facing trial. At that time he was under arrest and he still faced official accusations of murder, kidnapping. The Supreme Court's decision reversed the murder and the kidnapping provisions, it vacated the death

sentence, and in that decision declined to reverse the trial court's determination that the Defendant had waived his speedy trial rights under the IAD statute.

On April the 23rd, 2014, Judge Keesley holds an appointment of counsel hearing for the Defendant. The State objects to the appointment. On June the 9th, 2014, there's an order designating jurisdiction to me. On September the 11th, 2014, I appointed two lawyers as required in a capital case; Mr. McGuire at the request of Mr. Barnes, and also Mr. Bloom.

On September the 17th, 2014, the State in objecting to the appointment of counsel based upon the Faretta issue presented as the underlying decision in the appeal in Barnes 1 and the Supreme Court on November the 14th, 2014, granted the State's petition for appeal and at that point, of course, the Supreme Court finds jurisdiction of this case.

On April the 28th, 2015, Mr. Barnes was transferred to the South Carolina Department of Corrections under Safekeeper status. And on July the 1st, 2015, the Supreme Court denied the State's appeal, affirming the trial court's appointment of counsel. On July the 14th, the State files a petition for rehearing to the Supreme Court, and approximately July 27th, 2015, the Supreme Court issues an order of protection for the Defendant's requested

counsel, Mr. McGuire, in order for him to represent Dylan Roof in the matter of the State versus Roof, which is also known as the -- the killings of the folks in Charleston at Mother Emanuel.

I have used the July 27, 2015, order. It may have actually been on July the 17th, but I've used the later date in certain -- in order to ensure the protection of the Defendant's right to a speedy trial.

August the 6th, 2015, the Supreme Court denies the State's petition for rehearing in view of Barnes 2. On August the 10th, 2015, the Clerk of the Supreme Court issues a remittitur returning jurisdiction to Edgefield County.

From December of 2016 until July of 2017, the trial court holds a number of status conferences with the attorneys for the State and the Defendant. On December the 16th, 2016, the Supreme Court issues an order lifting Mr. McGuire's protection as to the representation of Mr. Barnes and resumes the trial preparations in the present case.

On July the 7th, 2017, the trial court held a status conference and in that on the record with all parties present the State withdraws its notice of intent to seek the death penalty and serves its intention to seek a life without the possibility of parole under the two strike

statute in the event that Mr. Barnes is convicted, and the trial date was set on July the 7th, 2017, for October the 9th, 2017.

On August the 14th, 2017, the Defendant filed motions to dismiss alleging violations of Defendant's speedy trial rights under the IAD Act and the constitutions of South Carolina and United States. On October the 9th, 2017, pre-trial motions were heard and today, October the 10th, 2017, the jury reported for trial. At this moment we have selected the jury, but they have yet to be sworn.

The starting point for this timeline is based upon the remittitur issued by the Supreme Court, which represented the final disposition of the issues presented in Barnes 1, the issue of whether the Defendant's speedy trial rights failed to be raised in Barnes 1 and, thus, was not ruled upon by the Supreme Court, although it could have been if it had been preserved. Without question the Defendant raised the IAD claim; however, any other attempts to raise the issue would have been done by letters of Mr. Barnes and at the time the letters were written he was represented and we do not recognize hybrid representation. The one that comes to mind is the September the 1st or the letter I should say that he wrote in September of 2005 just after he was appointed counsel and it's simply unclear to me while he clearly had been appointed counsel at the time this

letter was written I do not know whether he was aware that counsel had been appointed, although the order of the Court says that he is to be notified immediately. In the event that that could be considered an appropriate request for speedy trial, and I will just state it looks more like it was a request under the Interstate Compact, but in any event it's considered to be otherwise, it was not ruled upon as a speedy trial motion under the constitution, was not raised in the trial or subsequently raised for the Court to rule on it and then preserve it for appeal, so it is not and was not presented to the Court, nor was it preserved for appeal in Barnes 1.

Now I do not believe that the issue then of whether the Defendant's speedy trial rights under the constitution was raised, I do not believe it was ruled upon and I do not believe it was preserved for presentation to the Supreme Court in Barnes 1. I do not believe that the Defendant's IAD claim is sufficient to raise the speedy trial -- or a speedy trial right under the constitution. Therefore, the Defendant failed to preserve the issue, did not -- and did not properly assert his speedy trial rights, either directly or on appeal, so I am beginning the timeline at the time at which the State and the Defendant were on notice that preparations for a new trial had commenced and as for the remittitur in January of 2014.

Delay on its face from January 31, 2014, to October the 9th, 2017, is slightly more than three years and seven months of which two years and three months are attributable to the State and sixteen months attributable to Mr. Barnes are subtracted. This is the type of calculation which is attributable to Hunsberger.

Precedent shows that the amount of time represents a presumably prejudicial delay sufficient to trigger the speedy trial analysis. For example, Langford is 23 months, Waites is 28 months. I believe we're dealing with 26, 27 months. While the length of this delay is significantly less than the extraordinary delay analyzed by the Supreme Court in Hunsberger, the Defendant was continuously in custody and available for trial in South Carolina, so this factor weighs slightly against the State.

January the 31st, 2014, to November 14, 2014, nine and a half months, is a period that is attributable to the State and that, of course, is the period of -- from when the remittitur was issued and until the Supreme Court acquired jurisdiction after the appointment of counsel. While death penalty cases are inherently complex, the State had already prepared and tried this case and so the State's need to prepare was not particularly -- is not particularly strong, the State was aware of the witnesses and the evidence. It's true there was a new judge appointed. It's

true that there was new defense counsel that had to be appointed and had to be given time to prepare for a capital trial and so if there's any weight against the State it would only be weighed slightly against the State for the period of the duration.

With regard to November the 14th, 2014, to July the 1st, 2015, which is seven and a half months, it really isn't attributable to either party because the Supreme Court had jurisdiction deciding the issues under what I call Barnes 2 regarding the appointment of Counsel. The granting of the appeal indicates that the action had merit and seeking the determination of the issues that controlled the decision in Barnes 1 was a valid reason which justified this appropriate delay. So it's -- in other words, that was the argument that was presented to the Supreme Court; that if Mr. Barnes' inability to represent himself was a violation of Faretta he ought not be appointed counsel in Barnes -- in the subsequent representations and in the subsequent trial.

July the 1st, 2015, to July the 27th, 2015, is attributable to the State and that is the period of time from the denial of the appeal to Mr. McGuire's protection. The Supreme Court had issued denial of the State's appeal, so the period waiting for the denial of the petition for rehearing falls on the State; however, this does not --

does not rise to the level of a deliberate attempt to delay trial as a means to hamper the defense, so it's -- it's not weighed heavily against the State.

July the 25th, 2015, to August the 10th, 2015, is a two-week period that is not attributable to either party. Mr. McGuire is under protection at the time same time the Supreme Court retained jurisdiction. Both parties are responsible in part for the delay during this period, so it's neutral.

August the 10th, 2015, to December the 16th, 2016, which is a period of one year and four months, is attributable to the Defendant. The Defendant's requested attorney was under an order of protection issued by the Supreme Court. The Defendant chose to retain Mr. McGuire while knowing he had protection. The reason the delay's attributable to the accused must be weighed against the accused.

From December the 16th, 2016, to August the 9th, 2017, which is -- let me back up. Having said that, having said that, there is the line clearly of cases that say that a person and their desires for counsel, you have to consider that where there is a faith placed in counsel, and there clearly was a very positive attorney/client privilege which had been established between Mr. McGuire and Mr. Barnes. And so while the State at the time was stating it was

prepared and could go forward, the delay clearly was as a result of Mr. McGuire's other responsibilities and the desire of Mr. Barnes to have Mr. McGuire represent him, it would be unfair to attribute that delay to the State.

December the 16th, 2016, through October the 9th, 2017, which is a period of nine months and three weeks which is attributable to the State, that is the period from the order lifting the protection until trial. Setting the trial -- setting the case for trial is ultimately the responsibility of the State, but there is absolutely no evidence in this record indicating that there was any deliberate attempt to delay this trial so that the period of delay, if it weighs, it weighs very, very slightly against the State. I think both sides have absolutely been very clear that it was a very productive period of time. Ultimately Mr. Barnes benefitted from this period of time in that the notice of death penalty was withdrawn on July the 7th, 2017, and I think there is clear evidence that the State was genuinely considering the decision whether to continue to seek the death penalty during this period in which new Solicitor Hubbard was beginning, it was a legitimate reason for the delay of which Mr. Barnes benefitted. And, further, it allowed a period of time for Mr. McGuire, who had previously been involved in the Roof case and other matters, to begin to have time to work on

this file. Not that he hadn't, but obviously to be able to focus more heavily.

Further, defense counsel has acknowledged that both sides, the defense also, that they were using this period of time to adequately and thoughtfully prepare for what was until July scheduled to be a capital case. The justifications for delay that have been asserted by the State are supported by evidence and there is nothing in this record to suggest that there has been an intentional attempt to delay this trial in order to handle the defense. Therefore, under the Hunsberger analysis if we have to attribute it to one or the other it gets attributed to the State.

Okay. Now I want to address the other factors. The other factor assertions. The Defendant first asserted his right to a speedy trial under the United States and state constitutions on August the 14th, 2017, with the filing of the motion now before the Court. I addressed a few minutes ago the filing that was in 2015 after he was appointed counsel. If you give that a broad reading, you could say that it maybe was raised in a letter that was sent to the clerk's office. He was represented by counsel at the time and maybe he knew it, maybe he didn't know it, but in any event it was never ruled on by the Court as a constitutional speedy trial motion, nor was it addressed at

trial as such.

The Defendant alleges that he asserted the right four times. His proposition that his asserting a claim under the Interstate Agreement on Detainers Act constituted an assertion of a constitutional speedy trial claim is flawed. Without a contemporaneous constitutional claim, then the assertion of rights under the IAD Act is just that, an assertion of the statutory rights. When both the IAD and the speedy trial claims were asserted by the defendant in State v. Allen, the Supreme Court analyzed each claim independently under their respective tests. And on the contrary, the Supreme Court in Barnes 1 only analyzed the IAD claims asserted by Mr. Barnes indicating that there was no claim for speedy trial rights under the constitution before them. Therefore, the Defendant's initial assertion and renewal of his IAD claim do not constitute an assertion of the constitutional right to a speedy trial.

Next, South Carolina does not allow for hybrid representation, and I've addressed the September the 1st, 2005, which certainly could and was a submittal of a letter under a hybrid representation, therefore, none of the four instances noted by Defendant constitute a valid assertion of the right to a speedy trial under the constitution and even if any of these four instances were to constitute the required assertion, all occurred before the original trial

and subsequent trials, the issue was never raised in either setting, but was available to the Defendant throughout those proceedings and would have been appropriately raised at that time, but failure to do so means that he failed to raise and have the Court rule on and preserve the issue at the first trial. Because of the failure to preserve the issue, the only motion for speedy trial that can be considered today in my mind is the one filed on August the 14th, 2017, regardless of whether of any of the instances alleged by the Defendant constitute a legitimate assertion.

Like the other Barker factors, the assertion of the right is neither necessary nor sufficient to determine whether a defendant is entitled to relief; however, it is entitled to strong weight in determining whether the accused has been deprived of the right. Mr. Barnes' failure to assert the right until shortly before a trial date and -- after the trial date has been set, but prior to the trial date actually beginning, makes it more difficult for him to carry the burden of proving that he was denied a speedy trial. That is because his desire for a speedy resolution was not expressed until less than two months before the resolution was to be reached. This silence of more than three years goes to the weight of this factor. Because the Defendant only asserted his

right to a speedy trial after a trial date had been set and shortly before that trial was to be commenced, this factor weighs neutrally in the Court's analysis.

Prejudice. Now the -- Mr. Barnes has asked the Court to take -- consider the prejudices that which was discussed under Hunsberger. I think that's not appropriate. I think that's not appropriate because -- first of all, because this is a retrial and Mr. Barnes' case, Barnes 1, if you will, was tried in 2010, some two years before the Hunsberger trial was had and the reality is that for this trial Mr. Barnes has the benefit of testimony in the Hunsberger cases, testimony in his case and any statements that would have been given and in the event that there is a divergence of prior testimony, the ability to cross-examine with no less -- no less than three opportunities for individuals to have testified under oath, and as I understand it the witnesses are the same witnesses or nearly the same witnesses, that the ability for witness -- for the testimony of witnesses to be prejudicial is greatly lessened because they're under oath and he has that ability to cross-examine and to impeach with potentially three different instances of testimony given under oath. I think that is a dramatic difference from the Hunsberger trial.

The Defendant also contends that at the time in which

-- let me stop. I have not heard -- there's been no presentation to me that there are witnesses who could not be reached, who are not available that were available and who are needed by the defense. Obviously if witnesses are currently not available, there is the testimony from the prior trial.

The Defendant also contends that the time spent in SCDC as a Safekeeper represents actual prejudice due to the restrictions imposed upon inmates with this classification. While the Court recognizes the inherent prejudicial effect of any incarcerated individual, including Mr. Barnes, of public accusation of a crime and the time spent in jail awaiting trial, as these are among the serious negative impacts sought to be minimized by the right to a speedy trial, the fact that Mr. Barnes is incarcerated on another offense is immaterial to the fact that these prejudices attach to him as he awaits trial.

However, as to the specific allegations that his Safekeeper status results in increased prejudice, it should be noted that Mr. Barnes attained such status at the request of the Edgefield County Sheriff's Department due to a laundry list of infractions, which I have reviewed, which accrued during his incarceration, including but not limited to, assault, possession of a weapon and throwing of bodily fluids.

Further, the Court recognizes that the time between the arrest and the present trial can be presumed to compromise reliability -- perhaps I'm gonna think I've addressed that in that -- in that this is the second trial, not the first trial of Mr. Barnes, and he has the benefit of not having been prejudiced by testifying under oath.

Now while the Court maintains that all issues involving the speedy trial and IAD were either disposed of in the original Barnes trial, Barnes 1, and subsequent appeal or not preserved by the Defendant, the Court recognizes that the assertion of speedy trial rights after a conviction has been entered and then overturned on appeal is a novel legal issue in South Carolina. Therefore, this Court will consider speedy trial analysis with the assumption, arguendo, that failure to raise a constitutional speedy trial claim did not result in the failure to preserve the claim. If that is the case, the analysis should begin with the date Mr. Barnes was indicted, arrested or otherwise officially accused, then the analysis of the Barker factors would change in some ways. Unless otherwise indicated, the analysis for the period beginning January the 31st, 2014, remains unaffected.

The timeline. January the 25th, 2002, was the arrest warrant for murder. March the 7th, 2002, was the

extradition sought by South Carolina and the Defendant waived the right to extradition. December 2003, convicted -- he was convicted and sentenced for offenses in Georgia. January of 2004, is when he was transferred to the Georgia Department of Corrections. December of 2004 to January of 2005 was his first claim under the IAD Act, which was filed. May the 18th, 2005, he was extradited to South Carolina and the arrest warrant was served. May the 25th, 2005, he had his first hearing in South Carolina, notice of intention to seek the death penalty was served or discussed. I'm not quite as clear about that, whether or not there was an oral representation or whether or not it was actually served on that day, but, in any event, it was an apparent issue, and an IAD claim was submitted to the court.

On May the 27th, 2005, the circuit court issued an order denying the IAD claim. September the 1st, 2005, the trial court appointed Robert Harte as lead counsel for the Defendant. September the 8th, 2005, the Defendant renewed his IAD objection and written pro se motion or letter was filed with the Edgefield Clerk of Court and served on the State. October the 31st, 2005, the Supreme Court issues an order designating Judge Maddox with jurisdiction. November the 18th, 2005, the Defendant filed a pro se document with the Edgefield Clerk of Court renewing an IAD

claim and making a speedy trial request and to do that clearly was hybrid representation. December the 13th, 2005, he was served with a written notice of the intent to seek the death penalty, so the earlier one I mentioned was the -- was the oral representation.

February the 8th, 2006, the Court appointed David Tarr as co-counsel. On May the 16th, 2006, trial was scheduled for January to February, 2007, at a court hearing. On March the 12th through 13th, of 2008, the Defendant was tried on an unrelated charge. On April the 17th, 2008, a court order setting trial for June of 2008 was set, and that was when the capital trial was set. On May the 13th, 2008, there is a court order continuing the case from the June 2008 term upon request from the defense counsel for the continuance. There's subsequent orders which are issued by the Court in that May time period where it -- where the Court is assisting defense counsel in obtaining cooperation of individuals, Department of Corrections and the like, in Georgia, to allow for the defense to interview many witnesses, which indicates very clearly to the Court that -- that the request for a continuance obviously was borne out of the need for further preparation.

January the 25th, 2010, the Supreme Court issues an order designating Judge McMahon jurisdiction and rescinding the prior order as to Judge Maddox because of a conflict

that was created by the defense having retained an expert and with that expert having been retained that created a conflict for Judge Maddox, therefore, he had to step down from his designation. I do not for one moment believe that that was done ever with the purpose of anything other than this Defendant obtaining a very competent and needed expert for his trial and do -- absolutely do not want to communicate that I in any way, shape or form think that the retaining of that expert had anything to do with any sort of an intent to have Judge Maddox recused. In fact, it -- it may have happened without any knowledge on behalf of the defense counsel whatsoever.

November the 8th through 17th, 2010, trial and conviction for capital murder and also a sentence was rendered sentencing the Defendant to death, obviously followed by an automatic appeal to the Supreme Court. January the 15th, 2014, the Supreme Court issued a decision in Barnes 1 that reversed the Defendant's murder and kidnapping convictions, vacated the death sentence and declined to reversed the trial court's determination that Defendant had waived his speedy trial rights under the IAD statute.

Now the triggering factors, length of delay and reasons for delay. Under this analysis, the period from March of 2002 until the trial date of October 2017

represents a fifteen and one-half year delay of which the State is responsible for three years and nine months. This is clearly presumptively prejudicial which triggers the analysis under the Barker factors among the totality of circumstances.

January the 25th, 2002, to May the 13th of 2008, which is six years and four months which is attributable to the Defendant. By requesting a continuance, the Defendant waived his right to dismissal of the charges under the speedy trial act. The Supreme Court in Barnes 1 ruled that this was the effect of the Defendant's IAD claim, although the two types of claims are not analyzed the same. The fact that a continuance was sought necessarily reflects that the defense was not ready for trial and I do not believe and I find that the defense was not ready for trial, but under the case law it is clear that when there is a request for continuance that there -- that there is a waiver of the dismissal request under speedy trial for the period up to the present or continuously. It doesn't mean that the constitutional right is gone, it's just at that time the right to have the charges dismissed is waived. Now -- so the waiver -- the Defendant's waiver results in a delay attributable to the Defendant and must be weighed against him.

From May the 14th, 2008, to May -- to November 2010

is eighteen months attributable to the State. That is the time between the Defendant's continuance and trial. There is no evidence that the -- that the State intentionally delayed trial during this period, but ensuring that the trial proceeds is ultimately the State's responsibility. Both sides were using this time to prepare for trial, so this period of delay does weigh to some extent against the State, but clearly at this point in time based upon the order that I have seen issued by Judge Maddox it is clear there were many witnesses in May of 2008 that counsel simply had not been able to interview, prepare for, et cetera.

Now from November of 2010 through January the 31st, 2014, there is no delay attributable to either party. It's the time period covering the Defendant's trial and direct appeal to the Supreme Court. The reason is the underlying trial and automatic appeal to the Supreme Court, which follows all capital convictions, constitutes a valid reason for delay.

Having been through the alternative analysis, even assuming that that is the way that the Court is to proceed, which I do not believe based upon the issue present day that I have already discussed, but as an alternative. While I am mindful of the Court's position in Hunsberger, I do not believe that based on the totality of the

circumstances that the speedy trial right of the Defendant occurred based upon the Barker factors as I have been through them based on the request for continuance and the like.

Noting -- noting the exception of the defense, yes? And I'm gonna ask for a written order, okay? And I'll get you-all this. There are a few typos in it, but I'm not -- I'm expecting the order to be drafted using it only as a reference.

All right. Anything else before we bring the jury out from the State?

**MR. HUBBARD:** Not at this time. I know I probably need to get a few more things in the back and my trial partner is back there, so I was gonna get her, too.

**THE COURT:** Okay. Anything from the defense?

**MR. BLOOM:** Nothing on behalf of the defense. Thank you, Your Honor.

**THE COURT:** Okay. Great.

**MR. HUBBARD:** Thank you, Your Honor.

**THE COURT:** Thank you. Go ahead and -- go get your stuff and Ms. Mayes.

(Pause in proceedings.)

**THE COURT:** Okay. Now are we ready?

**MR. HUBBARD:** Yes, Your Honor.

**THE COURT:** Okay. Let's bring in the jury.

Oh, notes. Nobody's asked me if they can take notes. Do you-all have any issue with taking notes?

**MR. BROOM:** I'm sorry. The question?

**THE COURT:** Notes. Are you-all okay with the jury taking notes?

**MR. BROOM:** We have no objection to the jurors taking notes.

**MR. HUBBARD:** The Court's discretion.

**THE COURT:** I should mention I'm of the opinion that's a little bit not fair, however, I'll let them take notes if they want to.

(Pause in proceedings.)

(Whereupon, the jury enter the courtroom at 3:32 PM.)

**THE COURT:** Ladies and gentleman, I certainly hope you had a wonderful lunch. I apologize for keeping you in your jury room. There was just a matter that I had to attend to.

And at this time I'm going to ask you to please stand and be sworn as the jury in this case.

**THE CLERK:** Please raise your right hand.

(Whereupon, the jury was duly sworn by the Clerk of Court.)

**THE CLERK:** You may be seated.

**THE COURT:** And was there anyone who failed to take the oath? If so, please stand.

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

**THE COURT:** From the defense?

**MR. BLOOM:** None, Your Honor. Thank you.

**THE COURT:** Ladies and gentlemen, at this time I ask that you please draw close as we listen to the opening statements.

Ms. Mayes.

**MS. MAYES:** May it please the Court?

**THE COURT:** Yes.

**MS. MAYES:** Time always reveals the truth. No matter what efforts he took to hide it, to conceal it, to threaten others not to talk, time always reveals the truth, and that's what led us here today. The victim in this case, Sam Sturrup, he was sixteen years old, a freshman at Glen Hills High School in Augusta. A normal kid who lived at home with his mom and his sister. And you will hear he was planning to go to a cookout, a Labor Day cookout, and just before he left that house he saw his mother for the last time. He was happy-go-lucky. Just a normal teenager with no way of knowing what would lie ahead over the next few hours of his life.

Instead of going to a cookout, that sixteen-year-old kid ended up being beaten by this Defendant, his life threatened by this Defendant, and ultimately kidnapped. Sam was forced into a trunk in Augusta, carried across the

Savannah River and ended up right here in Edgefield County. And you will hear that in the final moments of his life, the excruciating details of those final moments of his life, lay in the hands of one man. The Defendant sitting right there.

And you will hear that he was marched into the woods just over a hayfield, it was nighttime, under a September moon right here in Edgefield. And in that wooded area you will hear that Sam begged for his life as he had done numerous times throughout that night. You will hear this Defendant told him he was going to die. That statement of express malice being one of many Steven Barnes made to Sam that night. And in the end Sam was defenseless, unarmed, nowhere to go and no way out.

And you will hear that in those final minutes of his life he sustained multiple gunshot wounds; one being a gunshot wound to the back of the head. He was executed. Again, at the hands and by the decision and by the actions of this one man, Steven Barnes. Executed and then left alone in the woods to die.

And what I'm sure you may ask from the outset, what could possibly be the motive for such a cold and calculated murder? It was one thing. One thing that matters to Steven Barnes over everything else. Money. You see, he had falsely come to the conclusion Sam had taken some

money from him and as a result he spends that entire night, Labor Day, interrogating Sam, torturing Sam and bringing others into the fray. And repeatedly over and over again Sam told him I don't have your money, I don't have your money. He could not produce the money because he didn't have it. But it didn't matter to Steven Barnes. He had already made up his mind before he ever left Augusta Sam was gonna die over that money.

But Steven Barnes, his name was Big Man, and that's how he was known. He wasn't a teenager, he was much older, but he surrounded himself with teenagers, kids who were followers like Sam and like some other teenagers you're gonna hear about; Richard Cave, Charlene Thatcher, Antonio Griffin. Teenagers who were lured into his world of destruction and violence.

And he calls himself Big Man and wants other people to call him Big Man. He decided the best way to set an example as the Big Man is to teach Sam a lesson that everyone else would see. He believed his money had been taken, that he had somehow been crossed. He murdered that kid that night right here in Edgefield County.

You will hear from those teenagers that I told you about. Teenagers who are no longer teenagers because they spent years in prison paying the price for a crime that he orchestrated, he planned and he carried out. You will hear

about how he lured them into that woods just along with Sam. You will hear from one of them, Richard Cave, he told Richard Cave to take his jewelry off before they went into the woods. Richard Cave thought his jewelry was being ordered to be taken off because he was gonna be killed, too. There they end up in the woods surrounding Sam as he continues to plead for his life, telling him he didn't have the money. Steven Barnes pulls out a gun, the same gun he's had with him throughout the night, and not only does he end up shooting that gun, but he forces those teenagers to also take part in this crime. And you will hear about the threats he made to them that if they don't participate, if they don't fire that gun, they're gonna end up right there with Sam. And you'll hear about all the efforts he took following that murder to hide it, conceal it and destroy evidence, and continual threats to those teenagers if they say a word, ever speak a word to police or anyone else, they're gonna end up back in the woods with Sam.

You'll hear -- as I said, time always reveals the truth. You'll hear Sam's body lay in those woods far beyond that night until it disintegrated, the blood and bones, and weeks turn into months, until finally the animals here in Edgefield County carried his remains away.

And they ended up in the yard of Mr. Grover Dais, a citizen here in Edgefield. When Mr. Dais finds Sam's

remains, he places a call to Edgefield County Sheriff's Department. Sheriff Dobey, Lieutenant Doran, they're both out there that day, and that's how this investigation began, ladies and gentlemen, with the skull of Sam Sturrup laying in the yard of Grover Dais. And they search all around and still don't find the body. The next day they come back with a search party, you'll hear, and they end up in the woods and that's where they find additional evidence.

You'll hear that as those weeks and months went by Shirley Sturrup, Sam's mom, underwent a frantic search. Her son had gone to a cookout so she thought and never came home. She goes to law enforcement in Richmond County. She even goes to the media. No one knows where Sam is. He's a missing person. To the police he's even considered a runaway, but in her heart she knows her child didn't run away. He had no reason or cause to. She knows for him to have disappeared something's gone terribly wrong. And so in her frantic search she ends up going to his house, to the house of Steven Barnes. Why? Because that day of the cookout, when Sam was supposed to be leaving to a cookout, Will Harris, a neighborhood acquaintance, had been the one she saw with Sam, the one she saw Sam leave with, and Will Harris is the younger brother of Steven Barnes.

So by natural consequence she knows to ask Steven

Barnes have you heard or seen anything from Sam? Where could he be? And you'll hear the testimony. He coldly lied to her. He gave a calculated response planned to evade the truth. He tells her first I don't know where Sam is and then eventually he ends up telling her oh, Sam, Sam's run off with a little girl, Sam's run off with a little girl, but he can't give a name, he can't give a place. It's all designed to point the finger away from him. That's the response he gives to Sam's mom knowing all along, all the while, Sam was exactly where he left him in those woods right here in Edgefield.

When we talk about the law, the law is actually quite simple. And Your Honor will charge you at the close of this case on exactly what the law is when we talk about murder, but it's exactly what you think it is. Murder is the intentional killing of another person with malice aforethought. Malice. Malice is hatred, ill will, hostility towards another. Aforethought, some degree of thinking, of intent. Malice aforethought can come at just the second one pulls the trigger. In this case, I submit the evidence is overwhelming, uncontradicted, I submit, that this was planned, as I said, before they ever left Augusta. He knew he was going to kill Sam. So malice aforethought was present all the while as he crossed that bridge and as he entered Edgefield County.

Another element of the law the judge will charge you on and you'll take into account at the close of this case is what's known under South Carolina law as the hand of one is the hand of all. And, again, that's also a very simple legal theory. Under our law if two people or more agree to participate in a crime together and carry that crime out together, then both are guilty. For example, you could have a scenario where two people agree to commit a crime but only one pulls the trigger, but under our law both are equally guilty. And so hand of one hand of all is something to keep in mind throughout this case because as he had Sam there in the woods, as he had those other teenagers participating in the crime, they're guilty, hand of one hand of all, because he orchestrated it and because he conducted it. And, likewise, every single time he forces one of them to pull that trigger that night, he's guilty under hand of one hand of all and I submit no one would even be in this courtroom but for the actions and decisions of that man and that man alone, Steven Barnes.

It's the evidence that lights the path and leads us here. It's the evidence that has led the path throughout this case from start to finish and throughout it all one thing stands out like a stain. He did it, he planned it and he carried it out.

You'll hear from the eyewitnesses who were there

from beginning to end. You'll hear from the eyewitnesses who heard his statements of express malice to that sixteen-year-old that he was going to die. And you'll hear his statements after the fact as he got rid of the evidence, including the gun he had on him, at least one gun, as he ordered others to burn their clothes and destroy any traces that could be led back to him. Throughout it all he's calling the shots. He's Big Man. That's who he wanted to be that night. That's who he wanted to be known as. He did everything possible to live up to it in the eyes of those teenagers and, again, when what it all came down to for him was the money, greed, and that child's life was taken.

In the end you will have heard the testimony of numerous witnesses in this case, not only the eyewitnesses who were there, but law enforcement who investigated this case. And this investigation crossed the river and went over into Richmond County. It involved GBI, the Georgia Bureau of Investigation, as well as the State Law Enforcement Division, SLED. And as I stated, all of the evidence leads directly and squarely back to Steven Barnes. After all is said and done I submit the State will meet its burden of proof abundantly, and that is beyond a reasonable doubt that Steven Barnes is guilty of murder, the murder of Sam Sturrup many years ago, but time always reveals the

truth. Thank you.

**THE COURT:** Thank you.

Yes, sir.

**MR. BLOOM:** May it please the Court, Solicitor, Madam Solicitor?

**THE COURT:** Yes, sir.

**MR. BLOOM:** First off, I want to take a moment, and I'm not gonna talk about the case. I just want to thank you for being here and I mean that sincerely because we're different from many other countries and this, looking at the twelve of you plus the alternates, is what our justice system is about. Without you this doesn't work, and so I want to thank you for letting us pluck you out of your daily lives, your homes, wherever you're employed, and your families, to serve this week as the good citizens of Edgefield County in this case, and I mean that sincerely.

I'm the father of a veteran and my son has served overseas and it means a lot to me when I see jurors here protecting our system of justice that he's fought for, so I mean that sincerely. Thanking you for being here and letting us, as I say, pluck you out of your daily lives and your homes and your families.

As Judge Goodstein may have told you during the initial selection this will not be a long case. You're not gonna be here three or four weeks. This isn't like

California where a case goes on and on and on, and hopefully we may conclude by the end of this week or a little bit into next week. I think the judge has indicated you're not gonna be in motels, you're going be able to go home to your families at night, but I ask you this, to caution you about using your cell phone or the Internet, and reaffirm that. You know, we're curious in these things with all these electronic devices we have and I just ask you to please abide by Judge Goodstein's instruction to learn everything you need to do in this case and the decision you'll be asked to make from this witness stand and the evidence.

And so now let me talk about that a little bit. There's two legal principles Judge Goodstein has mentioned that she'll revisit with you at the end of the case that are critical in what you do as jurors. And, first, before I even do that I want to apologize. One thing our system doesn't allow is you can't raise your hand and ask us questions and when a witness is testifying our rules don't allow you to say wait a minute, Judge, I've got a question I'd like to ask that witness that nobody's thought of, and we may not, and so our system just doesn't allow that. So feel free to take notes as Judge Goodstein has said. Unfortunately, you have to stand mute for the next few days while we get to talk to you and witnesses talk to

you and that's just how it works unfortunately.

But the two legal principles I want to call to your attention that Judge Goodstein talked about are the presumption of innocence and beyond a reasonable doubt. And I know you've all heard those, you've watched TV shows, movies, perhaps real crime dramas on TV, and you know -- through schooling and your life experience you know what those are, but let me emphasize why they're bedrock principles on what you're doing and what you're called to do as citizens this week.

The presumption of innocence is very important because it's not just Mr. Barnes, but any citizen called into court and charged with a crime, especially one as serious as this is, as that phrase says very plainly, presumed innocent. And what that means is the State, the prosecution, has to bring you evidence which convinces you beyond a reasonable doubt that that person isn't innocent anymore. Mr. Barnes or any person over there, whether it's a shoplifting case or a traffic ticket or something as serious as this, never has to prove their innocence. Other countries with dictatorships and other forms of government have that, where a citizen has to prove something, and the reason is sometimes a person -- you can't prove the negative. And so what our system of justice has adopted is a standard called beyond a reasonable doubt. You have to be convinced

of a person's guilt. Again, whether it's shoplifting or something as serious as this, that the evidence to you persuades you to rip off what we sometimes say is a cloak of innocence and say yes, that person is guilty beyond a reasonable doubt or no, that person is not guilty beyond a reasonable doubt.

And what does that phrase mean? Again, Judge Goodstein will define it to you by the end of the case, but it simply means what it says. If you can give a reason for something and say I'm not gonna vote guilty because of this reason, because this witness said A, B or C or this piece of evidence didn't make sense to me. I can attach a reason to my not guilty verdict, I can attach a reason for why I don't believe this person is guilty. And it's not the appearance of guilt, it's not someone might be guilty. It might not be the glass half full. You have to be persuaded beyond a reasonable doubt. Can you give a reason to stop and say whoa, I'm not sure this person is guilty.

I'm not gonna go through all of the evidence with you and tell you what -- who's gonna say what or who's gonna not say what, but let me highlight two things to you. Solicitor Mayes mentioned three names to you and it's my belief from their witness list that you're gonna hear from those three people, and that's Richard Cave, Antonio Griffin and Charlene Thatcher. Let me say that again.

Richard Cave, Antonio Griffin and Charlene Thatcher. We know they did unspeakable things to young Sam Sturrup. We know they beat him, hit him and did unspeakable things. We know the three of them shot him. And how do we know that? Because they're gonna tell you they did. All three of those people are gonna say yes, I did those things to Samuel Sturrup and then they're gonna put blame on Mr. Barnes. I'm gonna tell you right up front they're gonna do that. And so what I want you to do is not just listen to the questions and the answers that the solicitor asks of these three witnesses and others that come from here, but keep an open mind and listen to the questions we ask of those three witnesses as well as others and their demeanor and their responses because here's the other thing. I told you there were two things I want you to think of. Physical evidence. And if at the end of the case Judge Goodstein in her own language, I don't want to put words in her mouth -- in fact, it will be her instruction, but you can consider in a case both the evidence you hear and the evidence you don't hear and what you're not gonna hear is any physical evidence in any shape or form linking that man, Mr. Barnes, to anything. You're not gonna hear any DNA evidence that links him to what tragedy befell young Mr. Sturrup, you're not gonna hear any fingerprint evidence that links him to Mr. Sturrup, you're

not gonna hear any ballistic evidence that links him to Mr. Sturrup and you're not gonna hear any blood evidence or any physical evidence; hair, fiber, anything, that links him to what happened to Mr. Sturrup. You'll have the word of Charlene Thatcher, Antonio Griffin and Richard Cave. And so I ask you to listen not just to the evidence but to the lack of evidence. I ask you to weigh those three people's testimony very carefully, very rigorously and beyond a reasonable doubt. Thank you.

**THE COURT:** Thank you so much.

All right. Ladies and gentlemen, anybody need to take a comfort break?

All right. Is everybody ready to go? Very well. We will continue. Call your first witness, please.

**MS. MAYES:** The State calls Shirley Sturrup.

**THE CLERK:** Raise your right hand and place your left hand on the Bible.

(Whereupon, Shirley Sturrup was duly sworn by the Clerk of Court.)

**THE CLERK:** Thank you, ma'am. Please be seated. State your full name and spell your last name for the record.

**THE WITNESS:** Shirley Sturrup, S-T-U-R-R-U-P.

SHIRLEY STURRUP,

having been duly sworn, testified as follows:

DIRECT EXAMINATION

BY MS. MAYES:

Q. Good afternoon, Ms. Sturrup.

A. Good afternoon.

Q. Can you tell us a little bit about yourself? Where are you currently employed?

A. Richmond County Department of Children and Family Services.

Q. All right. And Richmond County Department of Family and Children Services, is that similar to what we call DSS here in South Carolina?

A. Yes, it is.

Q. All right. How long have you been an employee there in Richmond County with their version of DSS?

A. About twenty-four years.

Q. I want to take you back to the timeframe of September of 2001. Can you tell us about your son Sam? How old was he back then?

A. Samuel was sixteen years old.

Q. And where were you residing?

A. I was residing in McDuffie Woods on Dublin Drive.

Q. All right. And Sam, did he attend school?

A. Yes, he did.

Q. What school was he at that fall?

A. Glenn Hills High School.

Q. And what year was he in school?
A. Ninth grade.
Q. All right. Now I know you said he was sixteen and sixteen in ninth grade. Was there a year or a grade that he had been held back?
A. Well, fourth grade was the year, and that was my decision. And fourth grade is sort of a challenge. That's the grade just before you get into your upper level before high school and he had had some challenges with that and I said well -- I felt like he needed to be stronger academically before he goes on.
Q. All right. And leading up to his time as a freshman in high school, how would you describe Sam in terms of his interaction with his peers?
**MR. BLOOM:** Judge, I'm gonna have to object. I mean no disrespect to Ms. Sturrup, but we're in into 404(b) -- 404 evidence and I would object.
**THE COURT:** If counsel would approach.
(Proceedings held at the bench; not reported.)
BY MS. MAYES:
Q. There in your neighborhood, Ms. Sturrup, did Sam have acquaintances?
A. Yes, he did.
Q. How long had y'all been living there at that Dublin Street address?

A. Since 1985. Sam was born right, you know, there.
Q. So that's the only neighborhood he had ever known?
A. Yes.
Q. All right. Can you tell us whether or not there was an older acquaintance by the name of Will Harris?
A. Yes. Yes.
Q. All right. And about how old would Sam have been when he first became acquainted with Will Harris?
A. I would say around twelve. Will played basketball with Sam in my yard.
Q. Okay. And you remember him being as young as twelve or thirteen when he first would have been introduced to Will Harris?
A. Yes.
Q. All right. Now there in that area of Dublin Road, do you know whether or not the Defendant, Steven Barnes, also had a connection to that neighborhood?
A. Well, his -- his parents lived in the neighborhood.
Q. All right. And was Will older than Sam or younger than Sam?
A. Will was older.
Q. All right. And what about the Defendant, Steven Barnes?
A. Older. Much older.
Q. All right. So I want to take you specifically to

Labor Day weekend, and Labor Day being Monday, no school that day. What do you recall about of the last time you would have seen Sam there at your home?

A. Well, it was a holiday. I was off work and my daughter was off and it was one of those days where you kind of do house -- housecleaning, and that's what we were doing. And Will came, you know, and he had Sam with him, and Will just came in the house and sat on my couch.

Q. Was that usual or unusual?

A. Very unusual. I don't have people in and out of my house. So he came in and he sat on the couch. In the meantime, Sam took a shower and put his clothes on and then he said well, mom, I'm going to a cookout.

Q. All right. Now when you say that Will came into the house and sat on the couch, was it normal or not normal for Will to come over?

A. Not normal.

Q. All right. You said before that he knew Will, but would you -- how would you describe Will? Was he a close friend or an acquaintance?

A. He was an acquaintance. They were not friends.

Q. All right. So that was unusual for Will to be at your home and inside of your home?

A. Yes.

Q. And then I know you mentioned that Sam said that they

were going to a cookout. How was his behavior or demeanor as he left?

A. Nothing unusual. Just his -- just his -- you know, just himself. He was just himself.

Q. Did he give any appearance that anything was wrong?

A. Not at all.

Q. Did he appear worried or concerned or afraid in any way?

A. Not at all, and -- and I didn't feel anything different, you know. I didn't feel anything different. He just left like he would normally leave home, you know, if he was going somewhere.

Q. And did they leave in a vehicle?

A. Yes.

Q. And whose vehicle would that have been?

A. I presume it was Will's. Will was driving.

Q. All right. And was it still daylight to the best of your recollection when Sam left your home that day?

A. Yes, it was.

Q. Can you describe to us, Ms. Sturrup, what occurred over the next hours and days?

A. Well, as time passed, you know, overnight Sam didn't come. A few days had passed, I hadn't heard -- or, you know, I had not heard from Sam, and I started to worry. And I contacted Richmond County Sheriff's Department, so

they said well, he probably ran away from home; give him a few days, he probably ran away from home. I said no, my son didn't run away from home, he would not have run away from home, and I started to drive around, you know, looking and asking, and I even approached Steve a couple of times, you know. No, ma'am, Ms. Sturrup. If I hear anything, I'll let you know.

Q. All right. So I want to ask you some more about that momentarily. When you say that you knew Sam didn't run away, had there been any cause or reason for him to run away?

A. No.

Q. Had there ever been an occasion where he stayed away from home before?

A. Just one time and he called me the next morning.

Q. And on this occasion did anyone call you to explain where Sam was or his disappearance?

A. Not at all.

Q. And you say that you spoke with Steve. When you say "Steve", who are you referring to?

A. Steven Barnes.

Q. The Defendant in this case, Steven Barnes?

A. The Defendant, yes.

Q. And how did you go about trying to locate him for information about Sam while Sam was missing?

A. Well, I went to his dad's house because Sam had showed me that that's where Steve lived and that's how I knew. At his dad's house.

Q. I'm gonna start, Ms. Sturrup, by asking you what occurred when you went to speak with Mr. Barnes?

A. When I went to his dad's house --

Q. Go on.

A. -- I asked his dad if he had seen or spoken with Steve and he said no. I said well, where does he live? He says I don't know where he lives.

Q. All right. I'm gonna show you a diagram and ask you whether or not you recognize what's in this aerial photograph or diagram?

A. Yes.

Q. All right. And do you recognize that as a particular neighborhood?

A. McDuffie Woods Subdivision, yes.

Q. And is your home depicted in this aerial?

A. Yes, it is.

Q. And the home that you went to in order to speak to Steve Barnes?

A. Yes, it is. Right here. Cairo Court, yes.

Q. Is this a fair and accurate representation of the neighborhood as you know it?

A. Yes, it is.

**MS. MAYES:** Your Honor, this would be State's Exhibit 1, I believe.

**MR. BLOOM:** No objection.

**THE COURT:** Very well. State's Exhibit 1 in evidence without objection.

(State's Exhibit Number 1, an aerial photograph, was marked and admitted into evidence.)

BY MS. MAYES:

Q. Looking here, Ms. Sturrup, where would your home be located?

**THE COURT:** Let me tell you what I'm going to do. I'm going to hand the witness -- they used to be called laser pointers. They are now cat toys. I'm going to hand you that. I'm right behind you. See where you just press that button and you can point to where you need to. If you want to just practice it.

**THE WITNESS:** (Witness complies.)

**THE COURT:** There you go.

BY MS. MAYES:

Q. All right.

A. This is where my home is located, Dublin and Capetown.

Q. All right.

A. And Steven Barnes' parents is right here, Cairo Court.

Q. All right. So that's a short distance away?

A. Yes.

Q. And this home here at Cairo Court, can you tell us whether or not that's the residence in which you spoke with the Defendant, Steve Barnes?

A. Yes, it is.

Q. Now, Ms. Sturrup, the first time that you spoke with Steve Barnes to inquire about Sam and his whereabouts, what answer did he give to you?

A. He said he didn't know where Sam was. He said if he heard anything that he would let me know.

Q. And did you have another occasion to follow up and speak with him to inquire about Sam?

A. Yes, I did.

Q. And what occurred?

A. I went to his dad's house and I said -- you know, I asked if Steve was there or if he knew where he was. He said --

**MR. BLOOM:** Objection to hearsay.

**THE COURT:** Sustained.

BY MS. MAYES:

Q. All right. And not what his dad said, but I ask you about did you have an occasion on that visit to speak directly to the Defendant himself?

A. Yes, I waited right there at his dad's house and Steve did drive up.

Q. All right. And did you inquire again about Sam?

A. Yes. I asked him if he had heard from or seen my son.
Q. And what was his response?
A. He said no, ma'am, Ms. Sturrup. He's probably with that little white girl.
Q. And what did you say to that?
A. I said how old is she and he said eighteen.
Q. And did you inquire further?
A. Well, I said that if she's contributing to the delinquency of a minor, it's gonna be hell to pay.
Q. All right. Now when he made this statement to you that he's probably with that girl, did you know of any girl that Sam had a relationship with or would have been with?
A. Not at all.
Q. Did you know of any eighteen-year-old girl that he had a relationship with?
A. No, I did not.
Q. Was Steven Barnes able to give you a name of this girl?
A. No.
Q. Or a location or address where she would have resided?
A. Nothing further.
Q. And so with that, Ms. Sturrup, in addition to reaching out to law enforcement, did you also reach out to the media?

A. Yes, I did.
Q. How so?
A. I stopped by Channel 6 with my son's picture and attempted to speak to the news anchor person at that time who was Raphael James.
Q. And what was your reason for doing that?
A. Well, I was trying to find out exactly what's going on or if anybody knew of anything, anybody had seen him. Just reaching out to try and see if I could find out what could have possibly been going on or if anybody knew anything.
Q. All right. And up until this time other than Mr. Barnes telling you -- other than the Defendant, Steven Barnes, telling you that he had run off with some girl, did you ever have a firm lead or indication as to where Sam was?
A. No, not at all.
Q. And ultimately, Ms. Sturrup, can you tell us whether or not you were contacted by Lieutenant Doran with the Edgefield County Sheriff's Department on or about November 19th or November 20th?
A. Yes. I was contacted by Lieutenant Doran and he said Ms. Sturrup, we're pretty sure that we found the remains of your son.
Q. Did Sam have any connections to Edgefield County,

Ms. Sturrup?
A. Not at all.
Q. His life and school was in what city?
A. I'm sorry?
Q. His life and his school was in what city?
A. Augusta, Georgia.
Q. I'm gonna show you two photographs, Ms. Sturrup, and ask you whether or not you recognize the items depicted in these photos? We'll start with that one.
A. Yes. Yes.
Q. (Handing.)
A. Yes. My son's jeans.
Q. All right. And also is there a belt or belt buckle?
A. Yes, there is.
Q. Do you recognize that?
A. Yes, I do.
Q. Whose belt was that?
A. My son Sam's.
**THE COURT:** You need to identify those exhibits by ID.
**MS. MAYES:** Yes, ma'am, Your Honor. If there's no objection, we're gonna offer them at this time as evidence.
**MR. BLOOM:** No objection.
**THE COURT:** All right. Very well.
**MS. MAYES:** 2 and 3.
**THE COURT:** 2 and 3 in evidence.

(State's Exhibit Numbers 2 and 3, photographs, were marked and admitted in evidence.)

BY MS. MAYES:

Q. I want to look here, Ms. Sturrup, at the jeans that you've identified, the belt and belt buckle as being Sam's.

A. Yes.

Q. And then also here, State's Exhibit 2, in the upper right-hand pocket is an item. What is that item?

A. A key chain.

Q. Ms. Sturrup, do you recognize this item?

A. Yes. A Bi-Lo card.

**MS. MAYES:** I beg the Court's indulgence.

**THE COURT:** All right.

BY MS. MAYES:

Q. All right. And now?

A. Okay. Those are keys to my house. That's the regular lock and the double lock. And this is a key chain. He loved old cars and my husband did refurbish old cars and Sam, you know, enjoyed watching him and he knew how to work on them as well, so that was one of his favorites.

Q. And the insignia on that says Monte Carlo. Do you recognize that?

A. Yes.

Q. And then finally there are two cards attached to the key chain. Do you know -- can you tell us what those items

are and how you recognize them?

A. Okay. Those are store cards. One is Bi-Lo and one is Kroger.

Q. All right.

A. Bonus cards.

Q. All right. And the Bi-Lo card would have been obtained by who?

A. By me.

Q. Okay.

A. Yeah, by me.

Q. And as a mom, you get the Bi-Lo card and does it apply to other people in the family as well?

A. Yes, it does.

Q. And as a result did you give the Sam the Bi-Lo card?

A. Actually, it was my daughter's, and we had enough for everybody.

**MS. MAYES:** This would be State's Exhibit 4.

**MR. BLOOM:** No objection.

**THE COURT:** All right. State's Exhibit 4 in evidence without objection.

(State's Exhibit Number 4, a key chain and store cards, was marked and admitted into evidence.)

BY MS. MAYES:

Q. Ms. Sturrup, other than those two conversations that you had with Steven Barnes when you were looking for Sam,

did he ever provide you with any further explanation as to what happened to Sam?

A. No, ma'am.

**MS. MAYES:** Nothing further.

**THE COURT:** All right. Cross-examination.

**MR. BLOOM:** If it please the Court?

CROSS-EXAMINATION

BY MR. BLOOM:

Q. Ms. Sturrup, I'm genuinely sorry for your loss. I only have a handful of questions, ma'am. You had mentioned Willie Harris. Willie Harris lived in the neighborhood somewhere, too, I take it or close by?

A. His -- I don't know where Will lived. His parents -- his dad. I know his dad lived in the neighborhood, but I do not know where Will lived.

Q. All right. His dad lived in the neighborhood. Fair enough. And you said Willie Harris was older. Was it correct Willie Harris would have been about four years older than Samuel? Is that about fair to say?

A. Probably.

Q. All right. So Willie would have been about twenty when Sam was sixteen roughly?

A. I believe so.

Q. All right. And the last time -- and I hate to ask it this way. I don't know how else to do it. The last time

you saw your son Samuel, he was in the company of Willie Harris?

A. Correct.

Q. And Willie Harris was driving the car that Samuel left in?

A. Correct.

Q. And that was Labor Day weekend of 2001?

A. Yes, sir.

Q. Do you know if it was Friday, Saturday, Sunday, Monday? What --

A. It was Monday.

Q. Thank you so much, ma'am. And it was Willie Harris. No one else was in the car, just Willie and your son Samuel that you could see; is that fair to say?

A. I couldn't swear --

Q. You don't know?

A. I could not swear to that.

Q. All right. But it was definitely Willie Harris driving?

A. Definitely Willie Harris, right.

**MR. BLOOM:** Thank you. Thank you so much, Ms. Sturrup.

**THE COURT:** Re-direct?

**MS. MAYES:** Nothing at this time, Your Honor, from the State.

**THE COURT:** All right. Very well. Yes, ma'am, you can step down.

**THE WITNESS:** Thank you.

(Witness excused.)

**THE COURT:** Call your next witness, please.

**MS. MAYES:** The State calls Grover Dais.

**THE CLERK:** Place your left hand on the Bible and raise your right hand.)

(Whereupon, Grover Dais, Jr., was duly sworn by the Clerk of Court.)

**THE CLERK:** Please be seated. State your full name for the record and spell your last name.

**THE WITNESS:** Grover Dais, Jr. Last name Dais, D-A-I-S.

GROVER DAIS, JR.,

having been duly sworn, testified as follows:

DIRECT EXAMINATION

BY MS. MAYES:

Q. Good afternoon, Mr. Dais.

A. Yes, ma'am.

Q. Could you tell us a little bit about yourself? What county do you reside in?

A. Edgefield County.

Q. All right. And for how long would you estimate you've been a resident of Edgefield County?

A. All my life.
Q. A life-long resident?
A. Yes, ma'am.
Q. All right. I'm gonna move this just a little bit further and ask you to speak you up.

**MS. MAYES:** If I may approach the witness?

**THE COURT:** Please. Thank you.

BY MS. MAYES:

Q. Mr. Dais, does your family, dating back even to your father, do you have property here in Edgefield County?
A. Yes, ma'am, we do.
Q. And what is the location or area of Edgefield County in which your family owns property?
A. [redacted] Community Road.
Q. All right. Community Road?
A. Off Highway 25.
Q. Off Highway 25?
A. Yes, ma'am.
Q. Okay. I'm gonna show you some photographs and ask you if you can give us a little bit more information about that.

All right. And, Mr. Dais, I might have to ask you to step down, if that's all right?

**MS. MAYES:** If the Court permits?

**THE COURT:** Absolutely. I just need you to keep your

voice, sir, real loud so that our court reporter will be able to hear you.

**MR. BLOOM:** I'm sorry. No objection. I moved over here.

**THE COURT:** Did you see both? There are two of them.

**MR. BLOOM:** Yes, ma'am. Yes, Your Honor. No objection.

**THE COURT:** All right. And before they're shown, can we mark those as --

**MS. MAYES:** State's 5 and 6.

**THE COURT:** -- State's 5 and 6.

(State's Exhibit Number 5 and 6, photographs, were marked and admitted into evidence.)

**MS. MAYES:** All right. Mr. Dais, if you could step down.

**THE WITNESS:** (Witness complies.)

**THE COURT:** Be mindful. One of the things that's very difficult to do is not to block the members of the jury.

**MS. MAYES:** All right. And I tell you what, Mr. Dais, if you stand right there and keep your voice up, the court reporter will be able to -- right there is just fine -- the court reporter will be able to catch everything you say.

**THE COURT:** And, ladies and gentlemen, I can't -- I'm trying to watch your faces, but if you find yourself where you cannot see, just raise your hand for me because you

need to be able to see.
BY MS. MAYES:
Q. All right. I'm gonna hand this to you, Mr. Dais, and if you could take us through what we're looking at, what roads we're looking at and where all of this lies within Edgefield County in relation to Highway 25.
A. Let's see which direction this is.
**THE COURT:** You've got to keep your voice up, sir. I'm sorry.
A. This is -- this is Highway 25.
**THE COURT:** You can't see? I think we have jurors who cannot see.
A. This is Highway 25.
Q. Do you recognize your home on here?
A. My home is --
**THE COURT REPORTER:** I'm sorry. You're gonna have to --
**THE COURT:** Here's -- both of you need to stop. What's happening is you're both hovering now over the board and none of the jurors can see anything and our court reporter cannot hear, so.
**MS. MAYES:** We're gonna move onto State's Exhibit 6.
**THE COURT:** Okay. And he needs to -- the witness needs to back away from the board and use the pointer.
**THE WITNESS:** Okay. This is Community Road here.

**THE COURT:** No, ma'am. No, sir. You've got to move back. You're blocking -- turn around and you'll see the jurors can't see. There you go.

**THE WITNESS:** This is Community Road here. This is my house, which is located here.

BY MS. MAYES:

Q. All right. Okay, sir. All right. So this is your house right in here?

A. Yes, ma'am.

Q. This is Community Road?

A. Yes, ma'am. That's Community Road.

Q. All right. Now what about this area back in here?

A. We own -- we own -- well, the family owns this property here. This is the property right here in which we own this section here, which is 12.3 acres.

Q. All right. Do you own this particular hayfield?

A. No.

Q. All right. Now, Mr. Dais, can you take us to the time period of November 19, 2001.

A. Well, several -- several days before the 19th in this pine tree here noticed by this lady here, Minnie Jackson, who was my next door neighbor, she had discovered what I had seen when I come out of my driveway here is simply there was several vulchers in this big pine tree that sits here and I didn't pay it any attention at the time, but

several days later when I got to cleaning is when I discovered the skull right here.

Q. All right. And you have depicted an area off the roadway and in the yard?

A. Ma'am?

Q. You depicted -- you've shown us an area that's off the roadway and actually in your yard?

A. Yes. Yes, ma'am. It's about maybe 150 feet from the highway.

Q. All right.

A. Yes, ma'am.

Q. And what, if anything, was it that caused you to take specific note of that remains?

A. After -- after -- after discovering it, it looked what to be a human skull because of the teeth, it was rolled over. So after -- I took a stick -- I reached down and picked up a stick and turned it over and it had a hole in the back of its head, so I stopped what I was doing and put the stick down and went inside and I dialed 9-1-1. And the first officer arrived and when he arrived he got out and took a look at it and he made another phone call. When the second officer arrived, they both took a look at it with discovering it was a human skull. And when the third officer arrived, he had, in turn, discovered that it was a crime scene because it was a human skull and immediately

the area was taped off, concealed off. I think the next person that I talked to was Mr. Doran and he said that it was a crime scene and they began to do a broader search of the area and I think they discovered other bones right across here, around this house here, but it was getting dark, so they called it -- they called it quits for the night. I was notified by, I think, Investigator Doran and Sheriff Dobey that this was a crime scene and I was actually escorted off the property after they had sealed it off and so I locked up the gate and then I rode back -- I went back to Aiken and stayed with my friend, which the next afternoon I got a call from Investigator Doran asking me if I could meet him over to the property. We got to the property and we came through this gate here and down in this area here to this oak tree is where he showed me he discovered the body. Upon the vulchers sitting here it was where the body was lying. So this here -- when I got there, this area here was also -- we didn't go inside. He just showed me the area because it was already sealed off.

Q. Okay. Thank you, Mr. Dais. You may return to your seat.

A. (Witness complies.)

(State's Exhibit Number 7, 8 and 9 were marked for identification.)

BY MS. MAYES:

Q. For identification only at this time, Mr. Dais, I'm gonna show you some additional photographs. I'm gonna show you three additional photographs and ask you whether or not you recognize what's in the photos?
A. Yes, ma'am.
Q. All right. Can you tell us whether or not that's a fair and accurate representation of the scene, your yard and the remains you found on that date, November 19, 2001?
A. Yes, ma'am.
Q. And can you tell us whether or not this area remained in that same condition up until officers including, Sheriff Dobey, arrived?
A. Yes, ma'am.
Q. Did you alter or change anything about what is depicted in these photos?
A. No, ma'am.
Q. You left the evidence as you found it?
A. Yes, ma'am.

**MS. MAYES:** Your Honor, I believe this is going to be 7 and 8 and 9 for evidence.

**THE COURT:** You're offering them as 7, 8 and 9; is that correct?

**MS. MAYES:** (Nods head.)

**THE COURT:** Any objection?

**MR. BLOOM:** No objection, Your Honor.

**THE COURT:** All right. 7, 8 and 9 are in evidence without objection, three photographs.

(State's Exhibit Number 7, 8 and 9, photographs, were admitted into evidence.)

**MS. MAYES:** Nothing further of witness at this time, Your Honor.

**THE COURT:** Cross-examination?

CROSS-EXAMINATION

BY MR. GORANSON:

Q. Good afternoon, Mr. Dais. My name is Shane Goranson. I just have a couple of questions for you. You live at [redacted] Community Road?

A. Yes, sir.

Q. And that's a -- is the name of the road indicative of how it is out there, you know your neighbors?

A. Yes, sir.

Q. Do you know who lives at [redacted] Community Road? Elsa Richardson?

A. [redacted]?

Q. Yes, sir. Do you know Elsa Richardson?

A. No, sir.

Q. Okay. You cooperated with law enforcement in this case, right?

A. Yes, sir.

Q. And you gave them all the information you had about

this case?
A. Yes, sir.
Q. And that pertained to the things you found in your yard, right?
A. Yes, sir.
Q. And there wasn't anything else you left out to the police, right?
A. No, sir.
Q. You've never seen Steven Barnes out there, right?
A. No, sir.

**MR. GORANSON:** Thank you.

REDIRECT EXAMINATION

BY MS. MAYES:

Q. And just to follow up a little bit more, Mr. Dais, do you have any knowledge or relationship with Steven Barnes at all?
A. No, ma'am.
Q. Had you ever met or heard of Steven Barnes before -- before the investigation of this case?
A. No, ma'am.

**MS. MAYES:** Nothing further.

**THE COURT:** Recross?

**MR. GORANSON:** Nothing further.

**THE COURT:** I'm going to presume this witness is under subpoena. Is he free to leave?

**MS. MAYES:** Yes.

**THE COURT:** Any objection?

**MR. BLOOM:** No, Your Honor.

**THE COURT:** Thank you, sir. You are free to go.

(Witness excused.)

**THE COURT:** And that's going to conclude what we're going to do today, all right?

Now, ladies and gentlemen, in just a moment I am about to dismiss you for the day and I need to give you some instructions. You will be going home, I presume. Anybody going to work? Anybody working at night? Everybody works during the day, all right, so don't worry about going to work at night. It's not fair to you or to these parties to have you try to stay awake and pay attention and listen and also to work all night.

You will be going home. No doubt somebody's gonna be curious about what you have been up to. It is perfectly fine and appropriate to say that you went to court pursuant to your assignments and it's certainly all right to indicate that you were selected on a jury and the next question usually is, is it civil matter or a criminal matter. You may say it is a criminal matter, but that must be the end of your discussion. You cannot tell or talk to whomever is curious about what kind of criminal matter it is, who is the defendant in the matter. You cannot at

that point discuss the matter. Now I certainly do not want anybody upset with my jurors. You put it on the judge. Tell them the judge has instructed you not to discuss it.

Now I will tell you that when you have been discharged from your service on this jury by me, and there will be no question in your mind when that time has come, you will be at liberty to discuss this matter and will talk about it specifically, but until that time has come you cannot talk about this matter and that includes your family or friends, co-workers or anyone, your fellow jurors.

Now I want to remind you that you cannot do any sort of investigation. Do not look up anything on the Internet. Do not access social media with regards to this matter or anyone that has anything to do with it. Don't listen to any news accounts, either the radio, television or the Internet. Do not read anything about this matter, and that, of course, is the Internet or the newspaper. You must receive all of the information from which you will make up your minds here in court while court is in session, and so I want to remind you to be mindful of that.

Please remember to leave your cell phones somewhere other than at the courthouse in the morning. If you forget and you bring it with you, please remember to turn your cell phone over to one of our bailiffs for safekeeping.

You must not have a cell phone in your possession while you're serving on a jury. And remember if you happen to see someone who is associated with this matter and they do not even say hello in either coming or going from the courthouse, please remember that they have been instructed not to interact with you. Should someone try to talk to you about this case, please get their name or a description and report that to me upon your return.

Ladies and gentlemen, that will conclude my instructions. We're gonna start in the morning at 9:45. At 9:45. More likely than not on Thursday and Friday we're going to begin earlier, but tomorrow we're gonna start at 9:45. Have a very good evening. Leave your notepads. Go ahead and cover them back up and leave your notepads in your seat and we will secure them over the evening and then we'll get them to you tomorrow.

Thank you so much. You may go with the bailiffs.

(Whereupon, the jury was excused for the evening at 5:01 PM.)

**THE COURT:** All right. Anything from the State before we adjourn for this afternoon?

**MR. HUBBARD:** Nothing from the State, Your Honor. Thank you.

**MR. BLOOM:** Nothing, Your Honor. Thank you.

**THE COURT:** Very well. I'll see you-all in the

morning.

(Whereupon, the proceedings were concluded for October 10, 2017, at 5:02 PM.)

(The following proceedings were held October 11, 2017, beginning at 10:19 AM.)

**BAILIFF:** All rise.

**THE COURT:** All right. Anything from the State before we bring our jury out?

**MR. HUBBARD:** Not at this time, Your Honor.

**THE COURT:** From the defense?

**MR. BLOOM:** No, ma'am.

**THE COURT:** Very well.

All right. Thank you so much.

(Whereupon, the jury enter the courtroom at 10:23 AM.)

**THE COURT:** Good morning, ladies and gentlemen. I so hope that you-all had a very pleasant evening and just everyone take a moment and make sure that you have your notepad. Yes? Everybody good to go? Wonderful. Wonderful.

Now while I sort of mentioned it during one of the witnesses yesterday, if you have trouble hearing or seeing at any point in time I want you to raise your hand and let me know or let one of the bailiffs know. I tend to not stare at you, but one of the bailiffs or me or my law clerk. I'd like to introduce you to Steven Bailey, who is

my lawyer, my law clerk. And if you have trouble seeing or hearing, I want you just to gesture and please let me know if you cannot hear or just let me know if you cannot see because it is so important that you are able to see and hear everything. And it is very easy, particularly for the lawyers, to get very engrossed in what they're doing and they certainly don't mean to block anything and keep you from seeing, but that's sort of easy to happen. So if I miss it, please just gesture because I do need you to be able to hear and see everything.

Very well. At this time we're going to continue with the State's case. If you-all will call your next witness, please.

**MR. HUBBARD:** Thank you, Your Honor.

**THE COURT:** Yes, Solicitor.

**MR. HUBBARD:** The State calls Lieutenant Randy Doran.

**THE CLERK:** Place your left hand on the Bible and raise you right hand.

(Whereupon, Randy Bobby Doran was duly sworn by the Clerk of Court.

**THE CLERK:** Thank you, sir. Please be seated. State your full name and spell your last name for the record.

**THE WITNESS:** Randy Bobby Doran, D-O-R-A-N.

**THE COURT:** Your witness.

RANDY BOBBY DORAN,

having been duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. HUBBARD:

Q. Lieutenant, will you please tell the jury where you work?

A. I work for the Edgefield County Sheriff's Office.

Q. How long have you worked for the Edgefield sheriff's department?

A. Twenty-six years and ten months.

Q. What's your position now?

A. I'm the chief investigator.

Q. And you have the rank of lieutenant?

A. Yes, sir.

Q. Now how long -- has your entire law enforcement career been here or have you worked somewhere else?

A. It's been here in Edgefield.

Q. And did you have an occasion back on November 19, 2001, to go to Community Road?

A. I did.

Q. Can you tell us about that?

A. Yes, sir. It was about 3:30 in the afternoon on November 19th. I received a phone call from my supervisor, which was Roger -- Captain Roger Lowe. He advised me he needed me to come to [redacted] Community Road; that they had an incident at that location that I needed to be involved in.

Q. What was your rank back then or what were your job duties back then?
A. I was a sergeant. I'd just came in and did investigations in June of that year.
Q. Okay. So you became an investigator around that time?
A. Yes, sir.
Q. And being called out there, are you now in charge of this investigation?
A. Yes, sir.
Q. When you get out to Community Road, what residence do you go to?
A. It was Mr. Grover Dais. The address was [redacted] Community Road.
Q. Is he the man that testified yesterday?
A. Yes, sir.
Q. And I believe we put in State's Exhibit Number 6, an aerial photo. Whose residence is this right here?
A. That's Mr. Grover Dais'.
Q. And this road that we see, what road is that?
A. That's Community Road.
Q. When you get out there, Lieutenant, what did you find?
A. I found a human skull laying in the front yard out close to Community Road in Grover Dais' front yard.
Q. I want to show you some photographs that have already been placed into evidence; 7, 8 and 9. I'll put these up

on the TV screen. Can you see them from where you are?
A. No, sir.
**MR. HUBBARD:** With Your Honor's permission, may he step down a little bit?
**THE COURT:** Absolutely.
**MR. HUBBARD:** I'm afraid if we turn the TV that the jury might not be able to see.
**THE COURT:** Exactly. Exactly. And I'm not worried about his volume either.
**MR. HUBBARD:** Okay. Well, I was gonna remind him.
**THE COURT:** He's got better volume than the microphone does.
**MR. HUBBARD:** Our clerk, I think, has played with the sound system.
**THE COURT:** He would like you to say he perfected the sound system.
**MR. HUBBARD:** That's what he did. He perfected it.
**THE CLERK:** Right.
BY MR. HUBBARD:
Q. All right. So, if you'd just speak up. Now what do we see on State's 7 there?
A. This is showing a photograph. Actually I was standing on Community Road looking back at Grover Dais' yard and you can actually see his trailer and a shop in the back of that property.

Q. And what do we see right here in the front?
A. Right in the front there is a human skull.
Q. I want to show you State's 8. I'll lay it right over top here. Is that another photo of the same thing?
A. Yes, sir.
Q. A different angle?
A. That's right.
Q. And then finally, State's 9. Did you take that photo as well?
A. Yes, sir.
Q. What do you see about that skull?
A. You can see a hole in the back of the head and also the bottom jaw part of the skull is missing.
Q. You see that the bottom jaw is missing?
A. Yes, sir.
Q. And you distinctly see the hole?
A. That's right.
Q. You can have a seat again.
A. (Witness complies.)
Q. I'll probably get you up and down, so I apologize on the front end, but it's just kind of hard.
When you saw the hole in the head, as an investigator what's your first concern?
A. A gunshot wound.
Q. Do you think crime?

A. Yes, sir.
Q. The hole where it is positioned there, is it in the front or the back?
A. The back of the skull.
Q. Okay. Now from there did y'all search around the property?
A. Yes, sir. We searched Grover Dais' property a little bit more thorough. He actually had a little bit of wooded area around his property and we searched that area and didn't find anything else on his actual property at that particular time. We searched probably about 45 minutes or so on his -- around his property.
Q. All right. Let me ask you this. When you're using the term "we", when you got out there was there already members from your law enforcement agency?
A. Yes, sir. As I said, Captain Lowe was already on the scene, Deputy Marty English was on the scene, and Sergeant Chris Ashton.
Q. When y'all had this human skull, did this become a crime scene?
A. Yes, sir.
Q. What eventually did y'all ask Mr. Grover Dais to do?
A. We advised him that he needed to leave the property because it was an actual crime scene and we was gonna be taping the place off and searching the area.

Q. On this day, on the 19th, did you find anything else?
A. Like I say, once we didn't find anything on his property, Deputy English had actually crossed over and was searching across the road from Grover Dais' residence and he located a -- what we thought at the time to be a leg bone, a femur bone, that was in the actual driveway to the left. It was in the ditch of [redacted] Community Road.
Q. Okay. What I'm gonna do now and I'll probably need to make use of this chart here. Bear with me.

**MR. HUBBARD:** And, Your Honor, there's not a real convenient place to put this in the courtroom, so I know defense counsel might want to see.

BY MR. HUBBARD:
Q. Lieutenant, I'm gonna have you come down again.
A. (Witness complies.)
Q. Okay. Let me show you another chart. Is this chart also an aerial of this area?
A. It is.

**MR. HUBBARD:** Your Honor, I offer this at this time. No objection from the defense.

**MR. BLOOM:** No objection, Your Honor.

**THE COURT:** Very well. It will be marked as State's 7?

**THE COURT REPORTER:** 10.

(State's Exhibit Number 10, a aerial photograph, was

marked and admitted into evidence.)
BY MR. HUBBARD:
Q. All right. Looking at State's 10, can you orient the jury of what we're looking at right here? And just speak up.
A. Yes, sir. This -- this is actually Highway 25. Actually if you're coming from the North Augusta end of Edgefield County, this is Highway 25.
Q. Okay.
A. And this is actually Highway 25. That's Groves Nursery right there. It's been there for years. And if you come on down 25, this is Community Road right here.
Q. Is this Community Road right here?
A. Yes, sir.
Q. Okay.
A. Or Community Road actually starts right here and you take a right off of 25 and Community bears to your right and comes down to this area.
Q. All right. What road are we looking at right here?
A. That's -- once it gets to this intersection right here, it turns into Lakeview Road and it comes down to a 90-degree turn and then it comes over to Community Road.
Q. So Lakeview branches off of Community Road?
A. That's correct.
Q. And down at the bottom of Lakeview, is there a

Lakeview Extension?

A. Yes, sir. Right here at this 90-degree turn, it actually turns into a dirt driveway, and if my memory's right there's like three houses to the right as you come down this dirt road.

Q. Now using Community Road, do you see Grover Dais' residence?

A. Yes, sir. It's right here.

Q. This small trailer right here off of Community Road?

A. Yes, sir.

Q. And this little area around here is his residence?

A. That's right.

Q. And going back to State's 6, are we seeing the same thing but in a blow-up view?

A. That's correct.

Q. Okay. And I notice using State's 6 you've got Grover Dais' residence?

A. Yes, sir.

Q. What are we seeing here?

A. A wooded area.

Q. And then what are we seeing here on the far right of State's 6?

A. A hayfield.

Q. And you even see some bales?

A. Yes, sir.

Q. Now just for the jury, too, just to orient them, you showed us Highway 25. If you were to leave this courthouse, how would you get to Grover Dais' residence?
A. You'd would -- if you leave the courthouse, you stay straight out in front of the courthouse, which is what we call Augusta Road. August Road goes all the way down to Trenton. At the red light is Billy's Superstore. You've got Highway 121, Highway 19 and Highway 25, they join right there. You fork off to the right and take Highway 25 about twelve miles or so and you come down to the four-way, it's a four-way highway, and once you get onto the four-way you go down maybe about another mile and Community Road turns off to your left.
Q. Okay. Using State's 10, would you be coming from the right or the left from the courthouse?
A. You'd be coming (indicating).
Q. Coming from the right?
A. Yes, sir.
Q. Okay. I want to show you another chart.
**MR. BLOOM:** No objection.
BY MR. HUBBARD:
Q. Is this a drawn diagram of that area?
A. It is.
**MR. HUBBARD:** Your Honor, without objection I'm offering this as well.

**MR. BLOOM:** No objection.

**THE COURT:** Very well.

(State's Exhibit Number 11, a hand-drawn diagram, was marked and admitted into evidence.)

**MR. HUBBARD:** Your Honor, this is State's 11.

**THE COURT:** Very well. Thank you.

BY MR. HUBBARD:

Q. All right. Lieutenant, I'm showing you a drawn diagram. Is this a blown-up version of what we were just looking at?

A. Yes, sir.

Q. If you would, over here in the left-hand corner of State's Exhibit 11, what are we looking at?

A. This is Community Road.

Q. Do you see Grover Dais' residence on this map?

A. Yes, sir.

Q. Can you point that out for the jury?

A. Right here.

Q. On the back side here of this exhibit, what road are we looking at right here?

A. The back dark brown is the -- that's Lakeview Extension, which is the dirt road I was mentioning earlier.

Q. Okay. And just to orient the jury, again, you see a field and a field. Are those the hayfields?

A. Yes, sir.

Q. What's all in here?
A. This is wooded area.
Q. And this is the property here that we were talking about with Grover?
A. Yes, sir.
Q. Can you point out to the jury about where you found that skull?
A. Yes, sir. Approximately in this area right here.
Q. With the Court's permission I'd like you to place a sticker.

**THE COURT:** Very well. And just ask him to initial it. Just his initials.

**MR. HUBBARD:** Can he initial right beside it? It's very small.

**THE COURT:** He can initial it right beside it.

**MR. HUBBARD:** Thank you, Your Honor.

BY MR. HUBBARD:
Q. Here's a pen and here's a sticker. If you can put your initials right there.
A. (Witness complies.)
Q. Now, Lieutenant, if you'll step back just a little bit so these jurors can see, you found the skull and you placed it right out from this property there?
A. Yes, sir.
Q. Now you mentioned a femur bone or a leg bone.

A. Yes, sir.
Q. Where about, using State's Number Exhibit 11, did you find that leg bone?
A. This is the driveway right here at [redacted] Community Road and it was on the left-hand side and in a ditch area off of this driveway.
Q. If there's no objection, I'm gonna have you place a sticker called "leg bone" and have you initial it as well.
A. (Witness complies.)
Q. Thank you, sir. So you've got a leg bone and a skull. What day are you doing that?
A. That was on November the 19th.
Q. Okay. Now I'm gonna ask you to go ahead and take your chair again.
A. (Witness complies.)
Q. The bones that you found, the skull we see in State's 7, 8 and 9, and the leg bone, who took possession of those?
A. I did.
Q. Now is there a reason why y'all did not continue to search that area on the 19th?
A. Yes, sir. It started getting dark on us and because of darkness we had to call it off.
Q. Did y'all come back another time to continue the search?
A. Yes, sir. Well, when I left that afternoon, before I

went back to the office, I contacted the chief fireman at -- the chief fireman at the Merriweather Fire Department and also the fireman at the County Line Fire Department to get assistance the next morning to search the whole area of the property.

Q. All right. So the next day being the 20th?

A. The 20th. Yes, sir.

Q. So you were back out there?

A. Yes, we was out there at 8:00. I met with them at 8 AM.

Q. When y'all started that search, what part of the property were y'all looking at?

A. At first we went back to [redacted] where we found the leg bone on the 19th. We searched that area first. Probably searched it a good hour or so and didn't find anything, so we crossed back over Community Road to behind Grover Dais' property and started searching that area.

Q. What, if anything, did you find back there?

A. Well, after about thirty minutes of the search I was informed that a pair of blue jean pants were located.

Q. I'm not gonna put it back up on the big chart, but using this diagram, State's 11, would you step down one more time?

A. (Witness complies.)

Q. Where about, using this chart, did you see the blue

jeans?
A. It would be in this area right here.
Q. Okay. Is that still in a wooded area?
A. Yes, sir.
Q. Okay. And as you're down there, do you see anything else?
A. Yes, sir. Like I say, when we got down there we was trying to find a better location to get to the actual crime scene because we knew we had a crime scene at that point. We noticed a metal gate down here at this hayfield, which was only probably about 30 or 40 yards from -- maybe not quite that far -- from where the actual blue jeans were.
Q. Yeah.
A. So we noticed this gate. So I'm not sure which officer it was, but we was able to locate this hay -- this hayfield and was able to come in from --
Q. The back side?
A. Yes, sir. We actually -- we taped the scene off, but we needed to get equipment, you know, out there to the crime scene and so we taped the place off and then after we got it taped off, we went back -- some of us went back to Community Road and came back out by Grover Dais' house, got on Community Road, went down Community, took a right on Lakeview Road, came on down to where that 90-degree turn is and made a right-hand turn on Lakeview Extension and

followed Lakeview Extension on down, came down through another little metal gate in this area right here, and once we came through here this hayfield to the right started opening up and you could tell it was a hayfield.

Q. So this little triangle area on State's 11 is a hayfield?

A. Yes, sir.

Q. Did y'all drive out to that hayfield?

A. Yes, sir. We made a -- came to this area right here and made a right-hand turn and came on down across the hayfield and we noticed when we got right here there was a smaller dirt road with trees on both sides. We followed that small dirt road and came on down and noticed this hayfield here started opening up.

Q. So a second -- it opened into a second hayfield?

A. Yes, sir. And once we got through that wooded area coming on here, you could -- you could already see the gate, so we just kind of went straight on down to the gate.

Q. And that gate, that comes up on the back side of whose property?

A. Grover Dais.

(Whereupon, the witness returns to the witness stand.)

BY MR. HUBBARD:

Q. Okay. And let me just ask you a few more questions. I'm going to end up having you down again. I'm sorry. But

you're using law enforcement and firemen to help you out?
A. Yes, sir.
Q. And you mentioned some blue jeans. Let me show you State's 3 and 2. State's 3, do you recognize what we're looking at right there? You might as well come down and hang out with me.
A. (Witness complies.) Yes, sir.
Q. What are we looking at?
A. That's the blue jean pants that we -- that I mentioned earlier that we had located behind Grover Dais' house.
Q. State's 2, is that a close-up of the same thing?
A. Yes, sir, it is.
Q. Now looking at that, is that a belt buckle we're seeing right here?
A. Yes, sir. It was a pretty large belt buckle.
Q. And what are we looking at right here?
A. That was actually a key ring with some keys on it. It had a Bi-Lo bonus card, a Kroger bonus card and it had a -- the key ring had a Monte Carlo emblem on it.
Q. I want to show you what's been marked yesterday as State's 4. Do you recognize what we're looking at right there?
A. Yes, sir. This is the keys, the Bi-Lo bonus card and --
Q. The keys in State's 4 is what we're seeing in that

photograph?
A. Yes, sir.
Q. Did you take possession of that?
A. I did.
Q. What, if anything, else did you find in those blue jeans?
A. We noticed in his right back pocket he had -- there was a $1 bill that was soaked with body fluid, I guess.
Q. I want to show you this item.
**MR. HUBBARD:** Defense counsel?
**MR. BLOOM:** I'm sorry, Solicitor. No objection.
BY MR. HUBBARD:
Q. Lieutenant, do you recognize what I'm showing you?
A. Yes, sir.
Q. What is that?
A. That's the $1 bill I mentioned.
Q. That you found in those pair of jeans?
A. In the right back pocket.
**MR. HUBBARD:** Your Honor, I offer this into evidence.
**THE COURT:** All right.
(State's Exhibit Number 12, a one dollar bill, was marked and admitted into evidence.)
**MR. HUBBARD:** State's 12, Your Honor.
**THE COURT:** Thank you.
BY MR. HUBBARD:

Q. So in the jeans you find a dollar bill and this key chain?

A. Yes, sir.

Q. Now let's talk about that area where you find the jeans. Did you notice anything else in that area? And, again, using State's 11, where about are you?

A. In this area right here.

Q. Okay. Just in the wood line off of the hayfield?

A. Yes, sir.

Q. Okay. I tell you what. Right now you can take a seat.

A. (Witness complies.)

Q. And I shot a rubber band somewhere. I apologize. I want to show you some more photographs --

**MR. BLOOM:** No objection.

**THE COURT:** Very well.

Q. -- and see if you recognize these.

A. Yes, sir, I do.

Q. What are these photos of?

A. This is the actual -- well, this is the crime scene and that's -- these photos show the -- there was a real dark stain in that area and we figured that that's where the body had been laying and the body fluid had soaked into the ground.

Q. Okay. That's good.

**MR. HUBBARD:** Let me offer these into evidence at this time, Your Honor.

**THE COURT:** All right.

(State's Exhibit Number 13, 14 and 15, photographs, were marked and admitted into evidence.)

**MR. HUBBARD:** State's 13, 14 and 15.

BY MR. HUBBARD:

Q. Lieutenant, let me show you State's 13. This area here, what is this?

A. That's the dark stain I was talking to you about earlier.

Q. Now I see leaves on the ground. What time of year is this?

A. This is in November. November 20th.

Q. State's 14, a little different view, what are we seeing here?

A. It's the same dark stain.

Q. Now I notice there's some yellow -- looks like yellow tape with lettering on it. What is that?

A. Each piece of tape that you see in this picture here was a -- was a bone. Some of them were large bones, some of them were small bones, but each -- each piece of tape was representing a human bone that we found.

Q. Let me ask you -- I'll point to one of those pieces of tape. Is that what we're seeing right here, a bone?

A. Yes, sir.
Q. And here as well?
A. That's right.
Q. State's 15, a close-up. Again, you see some dark area?
A. Yes, sir.
Q. What are we looking at down here?
A. A human bone.
Q. That's in the corner of State's 15?
A. Yes, sir.
Q. I'm gonna ask you to place one more sticker on our board with the Court's permission --
**MR. BLOOM:** No objection.
Q. -- just to mark the bones.
A. (Witness complies.)
Q. And if you would initial that as well.
A. (Witness complies.)
Q. So, Lieutenant, standing up -- if you'd stand on the other side of the board, you've got -- whose property is this?
A. This is Mr. Grover Dais'.
Q. Would you please show the jury where the skull is?
A. The skull was in this area.
Q. And then across the street down Community Road, what did you find?

A. A leg bone.
Q. And then in the wooded area, please show us where you found these bones.
A. Right here in this area.
Q. These are the bones that we see in State's 13, 14 and 15?
A. Yes, sir. And this is all on Grover Dais' property.
Q. Thank you, sir.
(Whereupon, the witness returns to the witness stand.)
BY MR. HUBBARD:
Q. Now let me go back to these jeans, State's 2. Lieutenant, you talked about the belt and the belt buckle. What, if anything, did you find on the belt?
A. On the -- when we lifted the pants up, on the back side of the pants -- well, the belt, there was -- "Samuel" was engraved in his belt, and at that point we also noticed that there was a leg bone in the right leg of those pants.
Q. Of these jeans?
A. (Nods head.)
Q. Now when you found this, what, if anything, did you do after you collected this -- this stuff?
A. After I collected --
Q. The jeans and all. Did you reach out to other law enforcement agencies?
A. Yes, sir.

Q. There we go again. I think we need some new rubber bands, Your Honor. We're gonna put somebody's eye out.

Let me talk to you about a few more things out on that scene. Did you find -- let me show you State's -- well, I don't have it marked yet. Do these photographs look familiar to you also from the crime scene?

A. Yes, sir.

**MR. BLOOM:** No objection --

**THE COURT:** All right. Thank you.

**MR. BLOOM:** -- to these photos.

**MR. HUBBARD:** Your Honor, I offer these in evidence as additional crime scene photos.

(State's Exhibit Number 16, 17 and 18, photographs, were marked and admitted into evidence.)

**MR. HUBBARD:** 16, 17 and 18, Your Honor.

**THE COURT:** All right.

BY MR. HUBBARD:

Q. Out in this same area as the blue jeans and bones, looking at State's 16, what are we looking at?

A. A yellow cigarette lighter.

Q. Did you ever determine who that belonged to?

A. No, sir.

Q. But it was right there at the same scene?

A. Yes, sir.

Q. State's 17. What are we looking at right there?

A. That's a brass 40-caliber shell casing.
Q. Is that what we're seeing where my finger's pointing in the middle of this photo on 17?
A. Yes, sir.
Q. Let me show you another picture, State's 18. Is that the same photo, a close-up of the same thing?
A. Yes, sir.
Q. This object here?
A. Yes, sir.
**MR. BLOOM:** No objection.
BY MR. HUBBARD:
Q. Detective, I want to show you an object. Do you recognize this object?
A. Yes, sir. That's the brass shell casing I located that day and took it into evidence.
Q. What we're seeing in State's 18?
A. Yes, sir.
**MR. HUBBARD:** Your Honor, I offer this into evidence.
**MR. BLOOM:** No objection.
**THE COURT:** Very well.
(State's Exhibit Number 19, a shell casing, was marked and admitted into evidence.)
**MR. HUBBARD:** State's 19. Your Honor.
**THE COURT:** Very well. In evidence.
BY MR. HUBBARD:

Q. And, again, what we see in -- State's 19 is the casing that we see in State's 18, the photograph?
A. Yes, sir.
Q. Now going back to these keys, which is State's Number 4, that we found in the blue jeans, what, if anything, did you do with these keys that you see in the photograph, State's 2, excuse me, and the actual physical item here, the keys? What did you do with these keys?
A. After we removed them -- after I removed them from the pair of pants, I noticed, like I said, one of them was a Bi-Lo bonus card, one was a Kroger bonus card, and each card had a barcode on it. I recorded the barcode off of both cards and when we left -- when we cleared up from the scene that day, I travelled over to North Augusta, which is in Aiken County, where there was a local Bi-Lo there off of Edgefield Highway and went to that Bi-Lo to determine who this bonus card belonged to.
Q. You did get a last name?
A. I did.
Q. What last name did you get?
A. Sturrup.
Q. So from the cards you get the last name Sturrup and from the belt you get the first name of what, Samuel?
A. The first name?
Q. Yes, sir. From the belt.

A. Yes, sir. Samuel.
Q. What did you do with that information?
A. I went and talked to his mother.
Q. Well, let me ask you this. Did you check around local agencies to see if anybody heard of this fellow, Samuel Sturrup?
A. Yes, sir. I know -- I knew at the point Edgefield County hadn't had a missing person, so we were right up real close to the Aiken County line, so I called Aiken County Sheriff's Department to see if they had anybody and they came back with no, they did not.
Q. At some point did you reach across the river into Georgia?
A. Yes, sir.
Q. Who did you contact over there?
A. At first -- well, at first I contacted Richmond County dispatch to see if they had anybody missing with the last name of Sturrup.
Q. Did you get any -- did you end up talking to any investigators at any time with Richmond County?
A. Yes, sir. I ended up talking to Lieutenant Frank Francisco.
Q. Okay. Were you able to confirm there was a missing person or not out of Georgia?
A. I was.

Q. By that name Sturrup?
A. Yes, sir.
Q. Okay. You can have a seat right now.
A. (Witness complies.)
Q. Now the skull and the bones you found, what did you do with those?
A. I collected those.
Q. And at some point did you take them somewhere?
A. I took them to the pathologist in Newberry, Dr. Sexton and Dr. Ross.
Q. Dr. Sexton and Dr. Ross up in Newberry?
A. Yes, sir.
Q. And you said a pathologist. Are they the ones that do autopsies?
A. That's correct.
Q. Did you take anything else with you when you went up there to see Dr. Sexton and Dr. Ross?
A. Yes, sir. Like I say, we took the skull, the leg bone that we had found on the 19th and all the bones that we was able to find on the 20th that was in that area.
Q. What day did you go up to see Dr. Sexton and Dr. Ross?
A. November 21st.
Q. Okay. So it was the very next day after this search?
A. Yes, sir.
Q. Did you take anything else with you to assist

Dr. Sexton and Dr. Ross?

A. Yes, sir. When I had made contact with Lieutenant Francisco out of Richmond County, he had informed me that he had some dental records. They collect dental records on their missing persons, so he --

Q. He provided those to you?

A. -- he provided those and I took those with me also.

Q. And did you provide all of that to Dr. Sexton and Dr. Ross?

A. I did.

Q. Did you stay for the autopsy?

A. Yes, sir.

Q. Were photos taken at autopsy?

A. Yes, sir.

Q. At some point now you had mentioned you talked to Ms. Sturrup. Is that Shirley Sturrup?

A. Yes, sir.

Q. Samuel Sturrup's mother?

A. That's right.

Q. Do you remember about when you talked to her?

A. It was November 23rd, which was a Friday.

Q. Okay. Did you talk to her by phone or face-to-face?

A. Well, I found her by phone first to set up an appointment where I could come by and talk to her about the case and we agreed to meet on 23rd.

Q. Where did you go to meet her?
A. At her residence at [redacted] Dublin Road in Augusta, Georgia.
Q. What was your purpose in going to talk to her?
A. To see what she could tell me about her son being missing.
Q. Did you let her know what y'all had found?
A. Yes, sir.
Q. Did you let her know that you thought you found her son?
A. Yes, sir.
Q. Now I want to ask you -- I have a calendar here. Lieutenant, I'm gonna ask you to step down.
A. (Witness complies.)
Q. Does this calendar shows September, October, November, December of 2001 through January of 2002?
A. Yes, sir.
Q. What day for the jury, again, did you find that first bone and the skull?
A. November 19th.
Q. And y'all did a search that day?
A. Yes, sir.
Q. So on the 19th you did a search. The next day, the 20th, what did y'all do?
A. We did a more full search of [redacted] and [redacted] Community

Road.
Q. The 21st, what did you do that day?
A. That's the day I went to see Dr. Sexton in Newberry.
Q. Is that the day of the autopsy?
A. Yes, sir.
Q. And what day did you go see Ms. Shirley Sturrup?
A. Friday, the 23rd.
Q. Okay. Lieutenant, having found what you found and made contact with Georgia, who else were you working with on this case at that time?
A. At that time it was Investigator Roundtree of the Richmond County Sheriff's Office.
Q. At some point on the South Carolina side, did y'all call in another agency as well?
A. Yes, sir, we called the State Law Enforcement Division. What's know as SLED.
Q. All right. Now let me ask you this part. Georgia's got an investigation and you've got an investigation?
A. Yes, sir.
Q. Do you have authority to go into Georgia and investigate things and make arrests?
A. I do not.
Q. Okay. Does Georgia have authority to come into South Carolina and make investigations and arrests?
A. They do not.

Q. Is that why y'all were working together?
A. Yes, sir.
Q. Your authority is for this county?
A. Yes, sir.
Q. And this state?
A. Yes, sir.
Q. All right.

**MR. HUBBARD:** I beg the Court's indulgence.

**THE COURT:** All right.

BY MR. HUBBARD:

Q. If you'll take your seat one more time -- well, wait a second. I think I'm gonna go through some photos with you, if you don't mind. I want to back up. I did have some other photos?

Going back to that field, y'all spent some time out there?

A. Yes, sir.

**MR. HUBBARD:** Counsel?

**MR. BLOOM:** No objection to these photographs.

BY MR. HUBBARD:

Q. Do you recognize these photos as being from out in that area?

A. Yes, sir, I do.

**MR. HUBBARD:** Your Honor, I offer these into evidence at this time.

**THE COURT:** Very well.

(State's Exhibit Number 20, 21 and 22, photographs, were marked and admitted into evidence.)

**MR. HUBBARD:** Your Honor, we have State's 20, 21 and 22.

**THE COURT:** Very well.

BY MR. HUBBARD:

Q. Now, Lieutenant, looking at State's 11, you mentioned a first field and a second field. Where about did you see a gate?

A. In this area right here.

Q. Okay. When you go through that gate, is that where you end up seeing the bones?

A. Well, there was a gate here. The bottom part of the fence came all the way down and it had actually a barbed wire fence that was in there, too.

**THE COURT REPORTER:** I'm sorry. You're like mumbling.

**MR. HUBBARD:** You've got to speak up.

A. This -- right at the gate was -- it had actually a barbed fence running from the left to the right of the gate.

Q. Okay. And when you pass through that gate, you go into the wooded area?

A. Yes, sir.

Q. Let me show you State's 20. Do you see the gate?

A. I do.
Q. Is that gate open or closed at that point?
A. It was -- it was open in the picture.
Q. What's that?
A. It was open in the picture.
Q. Yeah. I'll show you State's 21. Again, is that closer up of the gate open?
A. Yes, sir.
Q. Going into the wooded area?
A. That's right.
Q. Let me see if I can show you State's 22. As you cross that gate and get into the wood line, what are we looking at there?
A. We're looking at the path where we found the bones and blue jeans pants in that area.
Q. So that path leads up to -- State's 22 leads up to what we're seeing like in State's 16?
A. Yes, sir.
Q. Got it. We've got one other photo. Do you recognize that photo from the scene as well?
A. Yes, sir. I do.

**MR. HUBBARD:** I offer this into evidence at this time.

**MR. BLOOM:** No objection.

**THE COURT:** Very well.

(State's Exhibit Number 23, a photograph, was marked

and admitted into evidence.)

**MR. HUBBARD:** State's 23 Your Honor.

**THE COURT:** Very well.

BY MR. HUBBARD:

Q. State's 20 shows that open gate?

A. Yes, sir.

Q. Whose vehicle are we looking at there?

A. That's my patrol vehicle. Unmarked.

Q. On the driver's side of your vehicle, can you see the gate right there?

A. Yes, sir.

Q. So is this just another photograph showing that area?

A. That's correct.

Q. And, again, using what was introduced yesterday as State's 6, can you show the jury what we're looking at as far as where that gate is?

A. Yes, sir. This is a hayfield. The gate would have been back in this area.

Q. And then the body stains and the bones, where about was that?

A. That would be in this area back in here.

Q. Okay. You can take a seat back up there.

A. (Witness complies.)

Q. Lieutenant, out in that area you've talked about the jeans being scattered from the bones and you've got a skull

all the way up to Grover Dai's' house, you've got a leg bone across the street. Is that a rural area?

A. It is.

Q. Were you at all surprised to find things scattered about?

A. Actually, I was surprised to find anything because that time of the year, November, the leaves have fallen off most of the trees and there were also pine trees out there and the pine needles and stuff had fallen, and that place was really covered with pine needles and leaves. I mean, it was really -- they just covered the ground all over the place.

Q. What about animal life out there?

A. Yeah, that -- that section of Edgefield County we didn't have animal control at that time and that place was -- it had a lot of wild dogs. The dogs was just wandering around wherever.

Q. So if any person or any animals were out there just open to the wild, you're not surprised any wild animals might scatter them about?

A. No, I'm not surprised at all.

Q. And talking about the leaves and things, when you got out there and you search and you find, for instance, that little casing, that little 40-caliber casing --

A. Yes, sir.

Q. -- you're in a wooded area?
A. Yes, sir.
Q. Something that's a brass color like that, is that easy or hard to find out there in the woods?
A. It kind of sticks out.
Q. Were you -- and you were in a little bit of a clearing?
A. Yes, sir.
Q. Beyond that clearing, what was your real ability to really search?
A. It was -- it was very limited. Like I say, it was -- I mean, it was trees everywhere and bushes and briars and just stuff everywhere.

**MR. HUBBARD:** All right. Lieutenant, I think that's all I've got at this time. Please answer any questions the defense has.

**THE COURT:** Cross-examination?

**MR. BLOOM:** Did you want to take up that matter of law at this juncture, Your Honor?

**THE COURT:** Yes. Yes, I do.

Ladies and gentlemen, there is a matter that I must take up outside your presence. You-all will have another break. Please step into the jury room. Do not discuss this matter or allow anybody to discuss it with you.

(Whereupon, the jury retires to the jury room at

11:12 AM.)

**MR. BLOOM:** Court's indulgence for a moment.

**THE COURT:** Sure.

(Discussion between counsel.)

**MR. HUBBARD:** Your Honor, I would like to say, too, and I didn't say this before I sat down, I would like the Court's permission leave to recall the detective at a later time. What happens is you're gonna hear this Georgia stuff that goes on and then he gets back in involved. And I meant to do that and I did not say that before I sat down.

**THE COURT:** Any objection?

**MR. BLOOM:** No objection.

**THE COURT:** Very well.

**MR. HUBBARD:** Thank you, Your Honor. I do apologize.

**THE COURT:** That's okay.

**MR. BLOOM:** Your Honor, during my cross-examination of Lieutenant Doran, I would propose to ask him whether or not he had scheduled a polygraph with Willie Harris and that Willie Harris initially agreed and then Willie Harris cancelled, and I propose to ask it in that fashion. So there are no polygraph results, a polygraph was never taken, but we would -- it is part and parcel, we believe, of the investigation undertaken both by Lieutenant Doran's agency, as well as the agency in Georgia that they were working with that you've already heard, and there would be

a series of questions related to Willie Harris, quite frankly, in terms of their contact with him, their interviewing him. Lieutenant Doran interviewed with Mike Perry with SLED, there were some other things they did, and I think it goes to the nature of their investigation under Kyles versus Whitley in that regard and so I would propose to ask that series of questions as related to the polygraph.

**THE COURT:** Tell me why that's -- what issue which is of consequence does that make more probable or less probable?

**MR. BLOOM:** When Mr. Harris cancels the polygraph -- and he actually does it through a third person, he doesn't even call them, he just has a third person call the Edgefield sheriff's department and says Willie's not coming to the polygraph. My next series of questions would be whether or not that caused in Lieutenant Doran's mind a red flag to further investigate Mr. Harris or take other steps with Georgia law enforcement to investigate Mr. Harris.

**MR. HUBBARD:** And, Your Honor, I don't mean to interject. If I re-call him, we were gonna get into the Georgia stuff and that might assist Your Honor even more. That's why -- I'm sorry to jump in, but I was gonna re-call him later. After Georgia makes arrests, we're bringing

Lieutenant Doran back in and that might clarify things even more from my position anyway because then you're gonna be hearing about the names of the people from Georgia who are arrested and people who are arrested here in Edgefield, and I don't know if that bears at all with Your Honor in making that decision, but what we would do is put him up later for that purpose.

**MR. BLOOM:** If I may offer then, if they're stating that they definitely intend to re-call him in regards to things that occurred in Georgia, I may hold that portion of the cross-examination.

**THE COURT:** I'm with you.

**MR. BLOOM:** And then if they don't call him, I would move to have him re-called on cross-examination to allow me to do that.

**THE COURT:** Are you comfortable with that?

**MR. HUBBARD:** I'm fine with that, Your Honor. I think that -- and I apologize again.

**THE COURT:** That's fine.

**MR. HUBBARD:** I just think it's probably Your Honor will have more information at that time.

**THE COURT:** Sure. Absolutely. In other words, just so everybody's clear, in the event that the State for whatever reason -- as you know at trial, where are they going, a trial is a dynamic experience. If for whatever

reason you choose not to re-call this witness, do you object then to the defense re-calling this witness specifically for cross-examination purposes?

**MR. HUBBARD:** I do not. Particularly if --

**THE COURT:** Then there's no problem.

**MR. HUBBARD:** -- particularly if Your Honor has ruled that he can get into that stuff as well. So, I mean, I understand that.

**THE COURT:** Okay. So he's gonna hold -- he, being Mr. Bloom, is gonna hold then the issue with regards to the polygraph?

**MR. BLOOM:** And I have a whole -- just so I'm clear, I have a whole series of questions regarding Mr. Harris beyond just the simply polygraph. I mean, obviously I didn't want to blurt out in front of the jury the word "polygraph" without having this discussion in-camera, so I have a series of questions regarding Mr. Harris that I'm not waiving that are separate and apart from the polygraph. And I'll hold them all.

**THE COURT:** You're gonna hold them all?

**MR. BLOOM:** Yes, ma'am.

**THE COURT:** In other words, you're not gonna just hold off the polygraph, but many questions regarding Mr. Harris?

**MR. BLOOM:** Correct.

**THE COURT:** Okay.

**MR. BLOOM:** Thank you.

**THE COURT:** Any problem with that, Solicitor?

**MR. HUBBARD:** No, Your Honor.

**THE COURT:** Okay. Since they're out for a minute, would you-all like to take a little comfort break? Because otherwise I'll bring them right back in. Would you-all like to take a minute?

**MR. HUBBARD:** Sure. That would be fine.

**MR. BLOOM:** Thank you.

**THE COURT:** We'll take about five minutes to stretch your legs.

(Recess taken.)

(State's Exhibit Number 24, 25, 26, 27, 28, 29, photographs, 30, a shock absorber, and 31, a photo enlargement, were marked and admitted into evidence.)

**BAILIFF:** All rise.

**THE COURT:** Thank you.

**MR. BLOOM:** Judge, before we start back, I just want to clarify for the record with some of the -- with the witness coming after Mr. Doran and some of the other witnesses. The State intends to talk about and introduce evidence from three separate residences in Georgia and normally we would have Fourth Amendment objections when the search occurred of a residence. There are specific

reasons why we are not doing that in this case and the reason is I don't think we have a valid objection to make, so I'm not going to waste the Court's time on an issue --

**THE COURT:** That's always a good reason.

**MR. BLOOM:** -- where we don't have a valid objection, and I'll address them as they come up. The first one with the next witness is of a property referred as the "Green House". And it has a green roof. The photos are somewhat flushed so the house appears white, but everybody will call it "The Green House" or the house on Cherry Street. We are not making a Fourth Amendment objection there because it was not Mr. Barnes' residence, so he would not have standing.

Secondly, there is a house of one of the co-defendants the State will refer to through a witness where some of the materials were burned and they'll be referring to a "burn barrel". We have no Fourth Amendment objection there because it was not Mr. Barnes' residence, it was someone else's. So, again, he would not have standing.

The third residence is a house on Cairo Court in Georgia, and that was Mr. Barnes' residence, but the Richmond County Sheriff's Department had a valid search warrant, and I believe at the same time an arrest warrant for Mr. Barnes. Those have been litigated in the Georgia courts and the last appellate court in Georgia to rule on

that affirmed that search warrant. So I think I'm bound by that ruling unless I could find a U.S. Supreme Court precedent that would overrule the Georgia Supreme Court, and we have not. So I just wanted to make it clear as those properties get testified about in case the Court looks at me as if we're having a Fourth Amendment objection motion and we don't for those reasons stated.

**THE COURT:** Thank you so much. Okay.

**MR. HUBBARD:** And, Your Honor, I wanted to also put on the record we have marked some photographs while you were out. On is the Cherry Street residence that Mr. Bloom was talking about. We have four photos. 24, 25, 26 and 27.

**THE COURT:** All right.

**MR. HUBBARD:** We have two photos that were taken at that residence involving a shock absorber. Those photos are 28 and 29. We have actually the physical item, which is now marked as State's 30. And, Your Honor, I've got one more marked, but I was gonna ask Mr. Bloom about a second board. It will be State's 31.

Mr. Bloom, do you have any objection to this one as well, this blowup?

**MR. BLOOM:** No objection.

**MR. HUBBARD:** Okay. And this would be 32.

(State's Exhibit Number 32 was marked, a photograph

enlargement, and admitted into evidence.)

**MR. BLOOM:** And all of those exhibits as I understand -- I'll wait for the court reporter. I'm sorry. Those exhibits the Solicitor just referred to, including the shock absorber, were all found, it's my understanding, at Cherry Street, and I've already stated my reasons why we don't have standing to object.

**THE COURT:** Very well. And so they will come in without objection.

**MR. BLOOM:** Correct.

**THE COURT:** The photographs, the two large blowups and shock absorber?

**MR. BLOOM:** Yes, ma'am.

**THE COURT:** All right. Very well. Okay.

**MR. HUBBARD:** And, Your Honor, if you'd like, we can go ahead and call our witness out here so when the jury comes we can just put him up.

**MS. MAYES:** The next witness after Mr. Doran.

**THE COURT:** Very well. And then -- you go right ahead and then when we've got that witness in, then I think we're ready to start; is that correct?

**MR. BLOOM:** Yes, ma'am.

**THE COURT:** Very well. We'll bring the jury in as soon as this witness is in. Okay. And there he is.

**MR. HUBBARD:** Thank you, Your Honor.

**THE COURT:** Uh-huh.

(Whereupon, the jury returns to the courtroom at 11:45 AM.)

**THE COURT:** All right. Ladies and gentlemen, at this time we will continue with the State's case and with cross-examination of our witness.

**MR. BLOOM:** May it please the Court?

**THE COURT:** Yes, sir, Mr. Bloom.

CROSS-EXAMINATION

BY MR. BLOOM:

Q. Lieutenant Doran, were you able to determine whose property it was that the hayfield belonged to or was owned by?

A. Yes, sir.

Q. And whose property was that, the hayfield area as shown in State's Exhibit 6 and some of the other maps and charts we've seen?

A. Gerald Richardson.

Q. All right. Gerald Richardson. And did you ever have an opportunity to go talk to him or interview him?

A. Yes, sir.

Q. All right. And I'm not gonna ask you what he said because that would be hearsay. Did you learn through the course of your investigation that his wife or at some point ex-wife was an Elsa or Elba Richardson?

A. That may be right. I'm not sure.
Q. Okay. Did you learn at some point through your investigation that his wife or at some point ex-wife was the mother of a Julio Hunsberger?
A. Yes, sir.
Q. And did you learn that she, Ms. Richardson, was also the mother of an Alex Hunsberger?
A. Yes, sir.
Q. All right. And did you learn then through your investigation that Ms. Richardson lived at some place on the Richardson property in a trailer?
A. Yes, sir.
Q. All right. And did you learn through investigation that her sons, Alex and Julio Hunsberger, would on occasion visit her there?
A. Yes, sir.
Q. So Alex and Julio knew this property then since their mother lived there?
A. Yes, sir.
Q. All right. Let me ask you next, Lieutenant Doran, of the physical items of evidence you collected such as State's Exhibit 19. This is the 40-caliber cartridge casing you found at the scene?
A. Yes, sir.
Q. All right. And so the jury understands, and please

correct me if I'm wrong, you're familiar with firearms obviously being a law enforcement agent?

A. Yes, sir.

Q. And you've gone through firearms training?

A. Yes, sir.

Q. Which the jury may not know, but you have to go through the South Carolina Police Academy and be familiar with firearms, right?

A. Yes, sir.

Q. And learn how to operate them, correct?

A. Yes, sir.

Q. All right. And, of course, you're issued a firearm which you carry and use during the course of your duties with the Edgefield sheriff's department?

A. Yes, sir.

Q. What we commonly as lay people refer to as a bullet comes in a -- what the jury will see when they have this, a cartridge casing, correct?

A. Yes, sir.

Q. And this cartridge casing, actually if you look in it, is hollow, correct?

A. Yes, sir.

Q. And that's where the bullet would be contained, correct?

A. Yes, sir.

Q. And when this cartridge casing with the bullet is put in a firearm and you pull the trigger, it's the pin in the firearm that hits the back of the cartridge casing, correct?

A. Yes, sir.

Q. And that shoots the bullet out of the gun, right?

A. Yes, sir.

Q. And the cartridge casing doesn't go with the bullet though when the bullet comes out of the gun, correct?

A. That's correct.

Q. The cartridge casing -- let me ask it this way because I'm getting ahead of myself. And, again, I'm not a firearms expert, so you stop me if I state something incorrect.

There are basically two types of what we would call handguns when it comes to their cartridge casings and bullets; is that fair to say?

A. Yes, sir.

Q. Are a revolver and a semiautomatic?

A. That's right.

Q. All right. And a revolver is what we're all familiar with in the old-time cowboy movies that has a cylinder that pops out of the gun, correct?

A. That's correct.

Q. And if a revolver is used that has that cylinder,

those cartridge casings are not ejected; is that fair to say?

A. That's correct.

Q. You have to open that up and dump it out on the ground or take them out, right?

A. That's correct.

Q. A semiautomatic weapon, on the other hand, the cartridge casings are ejected; is that fair to say?

A. Yes, sir.

Q. All right. So when you found this cartridge casing, you knew from your investigation that you were dealing with a semiautomatic firearm?

A. Yes, sir.

Q. All right. And, in fact, imprinted on the back is the number 4-0, correct?

A. Yes, sir.

Q. And that tells you it's a 40-caliber --

A. Yes, sir.

Q. -- semiautomatic? Thank you.

And then the two other things you found were the actual bullets; is that correct? Or no? Were there two bullets or -- was your testimony one or two bullets were found, mangled bullets?

A. That was at a later date.

Q. All right. I'll leave that alone. Was that at the

autopsy or was that at a later date?
A. There was one found at autopsy, yes, sir.
Q. All right. And that bullet found at the autopsy to be fair to you and your investigation was, for lack of a better word, mangled or misshaped?
A. Yes, sir.
Q. All right. But this cartridge casing is made of brass, correct?
A. That's correct.
Q. And it has a smooth surface?
A. Yes, sir.
Q. And a round surface?
A. Yes, sir.
Q. All right. To your knowledge, were any fingerprints taken off of this cartridge casing that matched Mr. Steven Barnes?
A. No, sir.
Q. All right, sir. And other items were submitted to SLED, correct?
A. Yes, sir.
Q. And as you've told the jury, SLED stands for State Law Enforcement Division, right?
A. That's correct.
Q. And that's in Columbia, right?
A. Yes, sir.

Q. And they have senior investigators there, correct?
A. That's correct.
Q. And they also have labs there, correct?
A. Yes, sir.
Q. And they have labs that cover everything from ballistics, right?
A. Yes, sir.
Q. To fingerprints, right?
A. Yes, sir.
Q. To DNA, right?
A. Yes, sir.
Q. To blood, right?
A. Yes, sir.
Q. Hair fiber, right?
A. Yes, sir.
Q. Other fiber?
A. Yes, sir.
Q. And so samples go to them that their lab technicians can examine and then give that information back to you in your investigation, right?
A. Yes, sir.
Q. And to your knowledge there's no fingerprint evidence from any of the things you collected and submitted to SLED that matches Steven Barnes, right?
A. That's correct.

Q. There's no DNA evidence from anything collected and submitted to SLED that matches Steven Barnes, right?
A. That's correct.
Q. No blood evidence that either matches Mr. Sturrup's blood to Mr. Barnes, correct?
A. Correct.
Q. Or any blood evidence from Mr. Barnes connected to anything of Samuel Sturrup's, correct?
A. Correct.
Q. And no hair fiber of Samuel Sturrup connected to Mr. Barnes?
A. Correct.
Q. No hair fiber of Mr. Barnes connected to Mr. Sturrup, right?
A. Correct.
Q. Nor any other physical or laboratory evidence linked to Mr. Steven Barnes, correct?
A. No, sir.

**MR. BLOOM:** Thank you, Lieutenant.

**THE COURT:** Redirect?

REDIRECT EXAMINATION

BY MR. HUBBARD:

Q. All the items that you recovered, including the casing, the jeans, everything, they've been out in the open, out in the sunshine, rain, snow for months?

A. Yes, sir.

Q. Okay.

**MR. HUBBARD:** Your Honor, I have no further questions at this time, but I would ask for leave to re-call at a later time.

**THE COURT:** Any recross?

**MR. BLOOM:** No, and no objection --

**THE COURT:** And no objection to him being re-called?

**MR. BLOOM:** No objection.

**THE COURT:** Very well. Thank you. You may step down.

(Witness excused.)

**THE COURT:** Call your next witness, please.

**MR. HUBBARD:** The State calls Richard Cave.

**THE CLERK:** Place your left hand on the Bible and raise your right hand.

(Whereupon, Richard Cave was duly sworn by the Clerk of Court.)

**THE CLERK:** Thank you, sir. Please have a seat. State your full name and spell your last name for the record.

**THE WITNESS:** Richard Cave, C-A-V-E.

**MR. GORANSON:** Your Honor, may we approach for just one second?

**THE COURT:** Yes. Sure.

(Proceedings held at the bench; not reported.)

**MR. HUBBARD:** I beg the Court's indulgence.

RICHARD CAVE,

having been duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. HUBBARD:

Q. Mr. Cave, where do you live?

A. Augusta, Georgia.

Q. How long have you lived there?

A. All my life.

Q. And how old are you now?

A. 35.

Q. How old?

A. 35.

Q. Okay. You just speak up. You don't have to lean into that microphone. It will catch you.

Are you married?

A. Yes. Yes, sir.

Q. Do you have any kids?

A. I have three.

Q. Girls or boys?

A. All girls.

Q. All girls?

A. Yes, sir.

Q. How old are your girls?

A. I have one fifteen, I have a two and a newborn.

Q. A two-year-old and a newborn?
A. (Nods head.)
Q. When was the newborn born?
A. Labor Day.
Q. Labor Day of this year?
A. Yes, sir.
Q. Are you working now?
A. Yes, sir. I've got two jobs.
Q. Where do you work?
A. Cushman Paint and Body and Lewis Paint and Body.
Q. Back in September of 2001, how old were you?
A. 17.
Q. Were you in school?
A. Yes, sir.
Q. What year were you?
A. What year? In my senior year.
Q. Where did you go to school?
A. Lucy Laney.
Q. Lucy Laney?
A. (Nods head.)
Q. Where's that?
A. It's in Augusta, Georgia.
Q. Were you involved in any extracurricular activities at school?
A. I was in the marching band.

Q. The Lucy Laney marching band?
A. Yes, sir.
Q. Is that a band that's pretty well-known?
A. Yes, sir.
Q. Is that a band that travels?
A. All the time.
Q. Is that a band that's pretty competitive to get in?
A. Yes, sir.
Q. A lot of practice?
A. Always.
Q. What did you play?
A. Snare drum. Snare drum.
Q. Did you travel with the band?
A. Yes, sir.
Q. So you're in school, you're in band. Were you working at the time?
A. I was working at KFC. KFC.
Q. Okay. So you had a pretty busy schedule?
A. Yes, sir.
Q. Where were you living and who were you living with?
A. My mom, step-daddy and my three siblings.
Q. In Augusta?
A. Yes, sir.
Q. Did you know a fellow by the name of Antonio Griffin?
A. Yes, sir.

Q. Who's he?
A. I went to school with him.
Q. Did you consider him a friend or an acquaintance?
A. He's a friend.
Q. Did y'all come through school together, high school?
A. Yes, sir.
Q. Was he in the band?
A. Yes, sir.
Q. At one point did he work with you?
A. Yes, sir.
Q. Where did he work?
A. At KFC.
Q. Do you know a Steven Barnes?
A. Yes, sir.
Q. Do you see him in the courtroom today?
A. Yes, sir.
Q. Can you, please, point him out for the Court?
A. Right there.
Q. Let me ask you this. What's he wearing? What color?
A. A black shirt with glasses.

**MR. HUBBARD:** Your Honor, for the record I'd like to note that the witness has pointed out Mr. Barnes.

**THE COURT:** It so reflects.

BY MR. HUBBARD:

Q. How did you come to meet Steven Barnes?

A. I met him at a birthday party through Tony.
Q. Through Tony?
A. Yes.
Q. Are we talking about Antonio Griffin?
A. Antonio Griffin, yes.
Q. Was Antonio dating anybody at that time?
A. Yes, he was. He was dating a female named Areeka.
Q. And was that the connection to Mr. Barnes?
A. Yes, sir.
Q. At some point did y'all go to a club with Mr. Barnes?
A. Yes, sir.
Q. You?
A. Yes, sir.
Q. Tony?
A. Yes, sir.
Q. Now we're talking about Mr. Steven Barnes. Did you know his name?
A. No, not at that time.
Q. What name did you know Steven Barnes by?
A. Big Man.
Q. Big Man?
A. Yes, sir.
Q. Now looking at him today, does he look like he did back then?
A. No. No. No.

Q. How did he look back in 2001?
A. Kind of heavyset. Had a lot of weight on him.
Q. Die he wear glasses?
A. No.
Q. Did everybody call him Big Man?
A. Yes, sir.
Q. How did he refer to himself?
A. Big Man.
Q. Big Man. When did learn that his name was Steven Barnes?
A. When I got locked up.
Q. On this case?
A. On this case.
Q. Now Sam Sturrup, had you ever met him before?
A. No, sir.
Q. When you went to this nightclub or this club --
A. Uh-huh.
Q. -- you, Tony, who did y'all go with?
A. Big Man.
Q. Was there anybody else?
A. Yes, Sam was there, Tony Griffin and Charlene Thatcher.
Q. Were there other people as well?
A. Yeah, a little bit.
Q. So it was a big group?

A. Uh-huh.

**THE COURT:** That's a yes? Is that a yes?

**THE WITNESS:** Yes, sir. I mean, yes, ma'am.

**THE COURT:** All right. Thank you.

BY MR. HUBBARD:

Q. Did you meet Sam Sturrup or get to know Sam Sturrup?

A. I didn't get to know him, but he was there.

Q. Had you ever seen him before?

A. No, sir.

Q. Who paid to get into this club?

A. Big Man.

Q. What club was this?

A. A club called County Line.

Q. County Line?

A. Yes, sir.

Q. Did he just pay for you or did he pay for everybody?

A. He paid for everybody.

Q. So he had money to pay?

A. Yes, sir.

Q. Whose car did you ride in to get to this club?

A. Big Man's.

Q. Was there more than one car that night?

A. Yes, sir.

Q. Whose cars were those?

A. Big Man's.

Q. Did you see some nice cars?
A. Yes, sir.
Q. One in particular you had your eye on?
A. Yes, sir.
Q. What was that?
A. A box Chevy.
Q. What is a box Chevy?
A. It's a eighties model -- eighties model Chevy.
Q. Eighties model Chevrolet?
A. Caprice, yes, sir.
Q. Back then they were boxy?
A. Yes, sir.
Q. Are those cars back in the eighties law enforcement issues?
A. Yes, sir.
Q. Now you wanted to buy one of those?
A. Yes, sir.
Q. Now the way you fix them up, you don't make them look like police cars?
A. Oh, no. No.
Q. What are you talking about if you get a box Chevy?
A. Do you mean like what I --
Q. How would you fix it up? I mean, what --
A. You could put a paint job on them, better tires, rims.
Q. Nice rims, nice paint job?

A. Clean it up.
Q. How many box Chevys did you see out there?
A. One.
Q. Okay. Was it nice?
A. Yes, sir.
Q. Did you hope to buy that car?
A. Yes, sir.
Q. Did you ride in that car?
A. Yes, sir.
Q. And so y'all went to this club?
A. Yes, sir.
Q. You said it was the County Line?
A. County Line.
Q. So you got a group of people?
A. Yes, sir.
Q. Several cars?
A. Yes, sir.
Q. And he's paying?
A. Yes, sir.
Q. You're 17?
A. Yes, sir.
Q. What did you think about that?
A. Time of my life at that time.
Q. Now did there come a time y'all leave that nightclub and go somewhere else?

A. Yes. We went to another club called Up Street Bar and Grill on Damascus Road.

Q. En route from one club to the other club, what were you doing?

A. Racing.

Q. Now were you driving?

A. Yeah.

Q. What happened to the car?

A. The car overheated.

Q. What does Big Man or Mr. Barnes do?

A. When we got to the club on Damascus Road, he told Sam to go retrieve another car.

Q. Was it clear to you -- you had just met Mr. Barnes, Big Man?

A. Yes, sir.

Q. Was it clear to you from watching their interaction Sam and Big Man, Mr. Barnes, already knew one another?

A. Yeah, they had to.

Q. So Sam goes to get another car?

A. Yes, sir.

Q. Does anything else happen that night?

A. No, that night went smooth.

Q. Now I want to take to you Labor Day weekend. How long from the club to Labor Day?

A. The next day.

Q. Okay. In your memory it was the next day?
A. Yes, sir.
Q. So Labor Day weekend --
A. Uh-huh.
Q. -- I want to take you to Sunday. Labor Day's Monday?
A. Yes, sir.
Q. Do you end up at some point talking to Mr. Barnes or Mr. Big Man on the phone?
A. Yes, sir.
Q. Do you remember if you called him or he called you?
A. He called me that evening.
Q. Where were you?
A. At home.
Q. In Augusta?
A. Yes, sir.
Q. Who were you with?
A. Tony Griffin.
Q. What's he want you to do?
A. To come to the house on Cherry Street.
Q. So Barnes wants you to go to a house on Cherry Street?
A. Yes, sir.
Q. Now did you have a car?
A. No.
Q. Did you have a cell phone back then?
A. No.

Q. Did he tell you what y'all were gonna be doing when you get to Cherry Street?

A. No, sir.

Q. What did you and Tony think about what you might be going to?

A. Continue partying like we did that night before.

Q. How do you get to Cherry Street?

A. I asked my step-dad to drop us off.

Q. And he does that?

A. Yes, sir.

Q. Now is it daytime or nighttime when you get to Cherry Street?

A. It was night.

Q. I want you to show you some photos, State's 24, 25, 26 and 27. I'm probably gonna have to ask you to step down here with me so you can see because they're gonna be on that TV screen, okay? So if you'd come on down.

A. (Witness complies.)

**MR. GORANSON:** No objection.

**THE COURT:** All right. Very well.

BY MR. HUBBARD:

Q. If you'd step down right here and I'm gonna ask you to speak up because this lady here is a court reporter that types everything.

A. No problem.

Q. Do you recognize State's 24?
A. I do.
Q. What residence is that?
A. That's Cherry Street.
Q. Is that the residence you went to that day?
A. Yes, sir.
Q. Now did it sometimes go by another name?
A. The Green House.
Q. I want to show you a photograph, 25. Does it look a little bit more green in that one?
A. Yeah.
Q. Same residence?
A. Same residence.
Q. Now was this house right on the road or at the end of the road?
A. It was at the dead end of the road.
Q. I'll show you State's 26. Speak up for me a little bit. Does that show the dead end?
A. No, that shows -- no, that's the backyard.
Q. Okay. Going into the back. Is this another one, 27, a close-up showing the back?
A. Yes, sir.
Q. Okay. All right. This is the last house on the block?
A. Yes, it is.

Q. All right. You can have a seat.
A. (Witness complies.)
Q. Now when you're going to this house on Cherry Street, who all goes with you to Cherry Street?
A. Me and Tony Griffin.
Q. And, again, who takes you?
A. My step-dad.
Q. Does he just drop you off or does he stay?
A. He dropped us off.
Q. When you get there, who do you recall seeing?
A. I seen Samuel Sturrup and Steven Barnes.
Q. And you mentioned Samuel Sturrup. Did you know his name at that point?
A. No, sir.
Q. What, if anything, is going on at this house on Cherry Street?
A. An argument.
Q. An argument between who?
A. Steven Barnes and Samuel Sturrup.
Q. What's that argument over?
A. Money.
Q. Money -- money missing, money that needed to be paid?
A. Missing money.
Q. What is Mr. Barnes saying?
A. Where is his money.

Q. Who's he directing that to?
A. Samuel Sturrup.
Q. What's Sammy saying?
A. He don't have the money.
Q. As you listen to them, does that argument have anything to do with that night at the nightclub?
A. Yes, it does.
Q. Tell me about that.
A. Supposedly when Sam went to retrieve the car, that's when the money came up missing out of the car.
Q. So that's why Mr. Barnes --
A. Was questioning Sam about the money.
Q. Okay. Did you see at any time Mr. Barnes hit Sam?
A. I did.
Q. When you and Tony walked up to that house -- because y'all don't get dropped off right at the house, do you?
A. No, it was a little up the street so my step-dad could make a U-turn.
Q. So you had to walk down the street to the dead end?
A. A little bit. Yes, sir.
Q. When you get up to the house, what, if anything, does Barnes ask y'all to do?
A. Jump on Samuel Sturrup.
Q. Jump on him meaning what?
A. Fight him.

Q. What happens?
A. Sam defended himself and Sammy Sturrup and Antonio Griffin started fighting.
Q. So how long did that fight go on?
A. Not long.
Q. Who separated them?
A. Steven Barnes.
Q. Did Tony or Sam get the best of one another?
A. No.
Q. When Mr. Barnes separates Tony and Sam, what does Mr. Barnes do?
A. Continues to ask him where's his money.
Q. And does Mr. Barnes do anything?
A. Yes. He went and grabbed a shock absorber.
Q. A shock absorber?
A. Yes, sir.
Q. And what does he do with that shock absorber?
A. He hits Samuel Sturrup on the arm.
Q. Did you see any damage to Sam Sturrup's arm?
A. Yes, his arm started bleeding.
Q. I want to show you two more photographs. State's 29 --

**MR. BLOOM:** No objection to these photographs.

BY MR. HUBBARD:

Q. Come on down here.

A. (Witness complies.)
Q. Let's start with State's 28. State's 28. Do you see an item up there next to the ladder?
A. I do.
Q. Do you see a red item?
A. Yes, I do.
Q. What's next to it?
A. The black shock absorber.
Q. The close-up in 29. Do you see that shock absorber again?
A. Yes, I do.
Q. Is that what this item is right here?
A. That's it right there.
Q. You can have a seat again.
A. (Witness complies.)
Q. I want to show you what's marked as State's Exhibit 30. You do you recognize this?
A. Yes, I do.
Q. What is this?
A. It's a shock absorber.
Q. This is the shock absorber you saw that night?
A. Yes, it is.
Q. It's the shock absorber you saw who use?
A. Steven Barnes.
Q. Who did he use it against?

A. Samuel Sturrup.
Q. And you say you saw blood after he struck Samuel?
A. I did.
Q. As a result of being hit, what does Sammy say?
A. He changed his story and say he don't have the money.
Q. Because at some point is Sammy -- the whole time throughout this whole thing, is he saying he has the money or doesn't?
A. First he says he has the money and then when he got hit with the shock absorber he says he didn't have the money -- I mean, he has the money.
Q. All right. Let me back you up because I'm getting confused. When you walk up on them at the house, you and Tony, Mr. Barnes is accusing him where's my money?
A. Uh-huh.
Q. What is Sammy saying that whole time?
A. I don't have the money.
Q. I don't have the money?
A. Yes, sir.
Q. After he gets hit with the shock absorber, what --
A. He says he has the money.
Q. He has the money. Where does he say it is?
A. At his momma's house behind the toilet.
Q. Okay. I want to stop right here a moment.
**MR. HUBBARD:** Your Honor, there's a matter that Your

Honor wanted to take up.

**THE COURT:** All right. Ladies and gentlemen, there's a matter that I must take up outside your presence. I'm gonna ask you to step into your jury room. We won't be particularly long, but please be mindful of my instructions and do not discuss this matter with anyone.

Please step into your jury room.

(Whereupon, the jury retires to the jury room at 12:12 PM.)

**THE COURT:** All right. I think what I'd like to do is I'd like you to go ahead and examine him and that way I have --

**MR. HUBBARD:** Listen to the response?

**THE COURT:** Precisely.

**MR. HUBBARD:** Yes, Your Honor.

DIRECT EXAMINATION (In-Camera)

BY MR. HUBBARD:

Q. All right. Richard, just to back you up, you just testified Sammy Sturrup gets hit by Mr. Barnes with the shock absorber?

A. Yes, sir.

Q. At that point he says I have the money at my momma's house behind the toilet?

A. Behind the toilet.

Q. What, if anything, does Mr. Barnes say to Sammy at

that point?

A. At that time he says if we go to your house and find out there's no money behind the toilet, I'm gonna kill you and your family.

Q. Okay.

**THE COURT:** I'd like to hear the next question.

BY MR. HUBBARD:

Q. What did Sammy say in response to that?

A. He changed his story again and said that he don't have the money.

Q. Let me ask you this. What is Sammy's demeanor at this point in time?

A. Scared.

Q. Can you describe how he looks?

A. Frightened.

Q. You were an observer to all of this?

A. Yes.

Q. How did it appear to you or what appeared to you to be going on with Sammy?

A. He was trying to find the best way to get out of the situation he was in from getting beat.

Q. Trying to avoid getting beaten?

A. Yes, sir.

Q. So the whole thing about the money's at my momma's house?

A. Yeah, he just wanted to stop getting beaten.
Q. And you believe Sam was afraid?
A. Oh, yeah. Most definitely.
Q. Sam's bleeding?
A. Yes.
Q. He's just been hit?
A. Yes.
Q. How is he in relation in size to Big Man?
A. Small. He was small.
Q. Did you have any idea how old Sammy was?
A. No, not at that time.
Q. Based on your observations, you believe Sammy was afraid of getting hit again?
A. Of course.

**MR. HUBBARD:** That's the main thing, Your Honor.

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

**MR. BLOOM:** Do you mind if I handle this one?

**THE COURT:** Whoever is gonna do the examination.

**MR. BLOOM:** Mr. Goranson is gonna do the cross-examination.

**THE COURT:** Okay. And if you want to ask questions on this issue or this point, I'm gonna let you do that.

**MR. BLOOM:** No questions. Just argument.

**THE COURT:** All right. Just argument is fine. Okay.

**MR. BLOOM:** Do I argue or would you like to hear from

Mr. Goranson?

**THE COURT:** I want to hear argument. As I understand it, you believe that statement ought to be excluded?

**MR. BLOOM:** Yes, ma'am. And I'll let Mr. Goranson make that argument.

**MR. GORANSON:** The probative value of that statement in this case, whether it tends to prove Mr. Barnes killed Mr. Sturrup that day, is very little because obviously he's talking about other people, innocent people, and obviously taking about killing innocent people, especially if he's talking about Mr. Sturrup's mother, could be highly inflammatory to the jury for them to find out about that. It also to me sounded like they were talking about excited utterance. I think Ms. Mayes made reference to excited utterance the other day. If Your Honor was thinking of admitting it under that theory, I think the idea behind excited utterance is that you don't --

**THE COURT:** It's not excited utterance. It's an admission by a party opponent is what it is.

**MR. GORANSON:** Okay. Well, I --

**THE COURT:** It's not excited utterance. It's an admission by a party opponent.

**MR. GORANSON:** That was what I was getting ready to say. I don't believe it is.

**THE COURT:** It doesn't matter whether it is or it

isn't, it's an admission by a party opponent, so it's in for that reason.

**MR. GORANSON:** Okay. So I would then say under 403 that the probative value of whether it shows that Mr. Barnes is guilty of killing Mr. Sturrup --

**THE COURT:** Talk to me about whether or not it has any relevance regarding malice. State of mind and malice.

**MR. GORANSON:** I mean, it could I would say. I don't -- I really think that --

**THE COURT:** So do you believe then that the -- do you believe that the probative value is substantially outweighed by the prejudicial effect?

**MR. GORANSON:** I do. I do.

**THE COURT:** Why?

**MR. GORANSON:** Well, Mr. Cave has already testified to the assault and battery upon Mr. Sturrup. I think that there will be other witnesses who will testify along the same lines and I just don't think that this adds any more to the State's case without risking substantial unfair prejudice to Mr. Barnes.

**THE COURT:** Okay. Response?

**MR. HUBBARD:** Yes, Your Honor. Obviously we believe this is express malice. What we're presenting is a crescendo; a coming, coming and coming that leads -- where malice is growing and it leads a man directing people to

shoot a man in the field and then he takes the final shot to this poor victim's head. So it's express malice, but also what it is, too, Your Honor, it's res gestae. If this jury is to understand what's going on, why in the world would they drive a man to Edgefield and shoot him, what's going on, this is the whole story that cannot be understood. And we're relying on State verses McGee. I'll pass that up. For the record that is 758 S.E.2d 730.

**MR. GORANSON:** Can I take a look at that? I'm sorry.

**MR. HUBBARD:** It's a court of appeals case in --

**MS. MAYES:** We gave you a copy yesterday.

**MR. HUBBARD:** -- 2013. Specifically, Your Honor, the portion of res gestae. Evidence is relevant and admissible if it intends to establish or make more or less probable the matter in controversy. That's relevance. Res gestae theory recognizes evidence of other bad acts may be an integral part of the crime, aid the factfinder in understanding the context in which the crime occurred. Res gestae theory recognizes evidence of other bad acts may be an integral part of the crime with which the defendant is charged or may be needed to aid the factfinder in understanding the context in which a crime occurred.

Your Honor, we're clearly showing there's a controversy over money, there's denials, there's a beating, there's an admission, now there's another denial.

It's building. All of this is clearly relevant. It's extremely probative to show the motive. It's extremely relevant to show malice. It's express malice. As far as whether we have enough to prove that, well, that's always the objection, the State's putting too much in. That's my job. And if there's malice there, Your Honor, it's my job to present it. When such evidence, to quote McGee, furnishes part of the context of the crime or is necessary to a full presentation of the case or so intimately connected with and explanatory of the crime charged against the defendant and is so much a part of the setting of the case and its environment that its proof is appropriate in order to complete the story of the crime on trial by providing its immediate context or the res gestae or the undercharged offense is so linked together in point and time and circumstance with the crime charged that one cannot be fully shown without proving the other, part of the res gestae -- and part of the res gestae of the crime charged.

I'm kind of fumbling through reading that, Your Honor, but I know you're reading it, too.

**THE COURT:** Sure.

**MR. HUBBARD:** I'm just doing that for the record.

**THE COURT:** All right. Yes. Yes, sir.

**MR. GORANSON:** Sorry. I'll be brief. I think what

we also need to look at in 403 is the glass analysis once we've got through all these other rules, including res gestae. We'd still do a 403 analysis afterwards. As the Solicitor mentioned, we are gonna be talking -- they're gonna be talking about what happened in the field later on with -- in regards to shooting Mr. Sturrup and killing him and when you look back from there what does this statement add, I think that demonstrates the low probative value -- the lower probative value of those statements and I don't believe that it's really fully integrated or an integral part of the crime for this one statement. I would submit that kidnapping, transporting him and all those other things are all integral parts of the crime. The statement itself is not an integral part and I don't think you need this to prove what happened that day, this one statement concerning Mr. Sturrup's family.

**MR. HUBBARD:** My response, Your Honor, is obviously I could pick apart each little piece of evidence I put up. This is the first time the Defendant expressly states what he's going to do or he's capable of doing and that's gonna build, and he actually carries through on it. So this is the first time he expresses "I will kill you and others", and then what happens in that field he actually tells others "You're gonna shoot this man or I'll kill you", and then he takes the final shot. It is the first time he

expresses I can kill this man, I will kill this man, I'm willing to kill others, and you're gonna hear that again. It's a crescendo that ends in a field.

**THE COURT:** I understand. Okay.

All right. Now, of course, as we all know the issue isn't one of prejudice because if the State's gonna offer it, obviously it is prejudicial. I think they would contend their evidence would be prejudicial against your client. The question is whether or not it is unfair prejudice. That's the question that must be analyzed. One of the reasons that I wanted the State to go beyond just that statement was this. It appears that the testimony is -- is that there was a changing of stories by the victim; I don't have the money, I have the money, I don't have the money, and the reaction of Mr. Barnes to those changing stories. The State must prove malice. Malice is defined under the law as a wicked, depraved heart, and the question then gets to be whether or not, number one, is that statement a statement of express malice? The answer clearly is yes. Because if we go to that house and the money's not there, I'm going to kill everybody in the house is the statement, correct? Do I have that right?

**MR. HUBBARD:** Yes, Your Honor.

**THE COURT:** Well, obviously the victim would be

somebody in the house, so it is a statement of express malice as against the victim. The question then in that he includes other people along with the victim, well, we know that that didn't occur, but the question is, is it unfair, unfairly prejudicial, in that the -- in addition to saying I'm gonna kill you, I'm gonna kill others, the question is, is that unfair prejudice? I think the answer is no and the reason is, is that it's twofold. Number one, it is express malice with regards to the victim, and additionally it is probative and not unfairly prejudicial as it relates to the level, if you will, of perhaps angst as the victim admits, denies, admits the taking of this money, so I do not find it to be unfairly prejudicial. It's prejudicial, but it's not unduly prejudicial. So I think it's admissible.

It's also in the context of the middle of, if you will, the interrogation that is on-going between the victim and the Defendant, and so because of all of those matters I do not find it to be unduly prejudice and note the exception. Objection overruled.

**MR. GORANSON:** Thank you. And you will not require an objection from us? You're fine with it?

**THE COURT:** I'll note it.

**MR. GORANSON:** Thank you.

**THE COURT:** All right. Very well.

**MR. HUBBARD:** Your Honor, before they come out, can I show one more picture to the defense just to see if we can get it marked before the jury comes back in?

**THE COURT:** Sure.

**MR. HUBBARD:** I just thought just while the jury's out.

**MR. BLOOM:** No objection.

(State's Exhibit Number 33, a photograph, was marked and admitted into evidence.)

**MR. HUBBARD:** Thank you, Your Honor.

**THE COURT:** All right.

Okay. Let's have the jury.

(Whereupon, the jury returns to the courtroom at 12:32 PM.)

**THE COURT:** All right. Ladies and gentlemen, thank you for your patience. At this time we will continue with the State's case and the direct examination of Mr. Cave.

You may proceed.

**MR. HUBBARD:** Thank you, Your Honor.

BY MR. HUBBARD:

Q. Richard, I'm gonna back up a little bit. After Tony and Sam fight --

A. Yes, sir.

Q. -- and who breaks them up?

A. Steven Barnes.

Q. What does Mr. Barnes do? Tell us a little bit about that.
A. After the fight, he asked him about the money.
Q. Asked who?
A. Asked Sam Sturrup about the money.
Q. What's his tone and demeanor when he's asking?
A. Furious. I mean, he wanted his money.
Q. What's Sam's demeanor?
A. Scared, frightened, don't know what's gonna happen. You can see it in his face.
Q. He's asking for money. What's Sam telling him?
A. I don't have the money.
Q. I don't have the money?
A. Yes, sir.
Q. What does Mr. Barnes do?
A. He hit him with the shock absorber.
Q. That's the shock absorber we put in, State's Exhibit 30?
A. Yes, sir.
Q. So when Sam says I don't have the money, he takes this object I've got in my hand, State's 30 --
A. Yes, sir.
Q. -- and hits Sam?
A. In the arm.
Q. In the arm?

A. Yes, sir.
Q. When he hits him in the arm with this shock absorber, what do you see with Sam?
A. His arm started bleeding.
Q. Could you tell if Sam was in pain?
A. A little bit.
Q. How did Sam appear?
A. Frightened.
Q. Well, after he got hit by that shock absorber, what did Sam say?
A. The money's at his momma's house.
Q. That his money's at?
A. His momma's house.
Q. Did he say where at his momma's house?
A. In the bathroom behind the toilet.
Q. What did Mr. Barnes say?
A. If we go to your mom's house and the money's not there, I'm gonna kill you and your family.
Q. Kill you and?
A. And your family.
Q. What was Mr. Barnes' tone when he said this?
A. It was -- it was deep. You could tell he meant it.
Q. What was Sam's reaction? How did he appear?
A. Scared, so he changed his story and said he didn't have the money.

Q. You were observing all of this?
A. Yes, sir.
Q. How did that -- what Sam was saying, what did that strike you as?
A. He was just trying to find a reason to get out of the beating, so that's why he said the money was at his house.
Q. He's just saying whatever to --
A. Anything to stop the beating.
Q. When he says I don't have the money again -- when Barnes threatens him and then Sam says I don't have the money, what happens to Barnes? What's his demeanor at that point?
A. He was mad.
Q. Would you say he was more mad at that point or less mad or the same?
A. No, he was more mad. He was furious.
Q. By Sammy saying I don't have the money and then saying wait a minute, I do, it's at my house and then denying it, did that change that situation?
A. It made it even worse.
Q. How would you describe it?
A. You could see it was like everything got quiet. You could see it in Steven's face because he was mad.
Q. Steven being Mr. Barnes?
A. Yeah. He still couldn't get no answer for where his

money was at.

Q. Who all was present to your memory at that time?

A. It was me, Tony Griffin, Charlene Thatcher, Samuel Sturrup and Steven Barnes.

Q. And Charlene, you haven't mentioned her. Where did she come from?

A. She came from out of the house.

Q. I want to show you State's 25. That house on Cherry Street?

A. The Green House on Cherry Street.

Q. Okay. How long does this back and forth arguing go on while y'all are at Cherry Street?

A. I want to say about two hours.

Q. Other than that one time when Sam says the money's at my house, what does Sam continually say?

A. He wants to go home.

Q. And when it comes to the money, what is he saying?

A. I don't have the money.

Q. After the strike and then Sam denies everything and then admits it and denies everything again, do y'all move from Cherry Street or move from the house?

A. Yeah.

Q. Where do y'all go?

A. We go to the railroad tracks.

Q. Whose decision was that?

A. Steven Barnes.
Q. How does that come about? Can you tell me?
A. He told Sam to walk towards the railroad tracks. Me, Tony and Charlene was to follow.
Q. Sam's got to walk out front?
A. Yeah, and he was following behind us.
Q. I'll show you what's been marked State's Exhibit 31. Do you see the house on Cherry Street?
A. Yes. Right here.
Q. Right here. When you -- is this Cherry Street right here?
A. Yes, sir.
Q. And where's the dead end you're talking about?
A. That's the dead end right there.
Q. Do you see some railroad tracks?
A. That's the railroad tracks. They go all the way down.
Q. I'll give you a broader view. State's 34. Do you see the house -- Cherry Street? Show us Cherry Street.
A. This is Cherry Street right there. That's the house on Cherry Street, that's the dead end and the railroad tracks.
Q. And what road is this?
A. That's I-20.
Q. Okay. Is it daylight or nighttime when you were out there?

A. It was night.
Q. When y'all go to those railroad tracks, how far down the tracks do you go?
A. Not far.
Q. Now let me ask you this. Do you have a lot of memory of what happened down on those railroad tracks?
A. Not as I'm real clear.
Q. At some point do y'all come back to Cherry Street?
A. Yes, we did.
Q. So y'all come back to that house?
A. To the same house.
Q. Is that house sometimes called the Green House?
A. Yeah, that's what we know it as.
Q. As y'all were coming back to that house or when you get back to the house, what, if anything, do you know of Mr. Barnes doing?
A. He's on the phone.
Q. He's on the phone?
A. Yes, sir.
Q. Now you didn't have a cell phone?
A. No, sir.
Q. Did Tony have a cell phone?
A. No, sir.
Q. Was Mr. Barnes using a cell phone?
A. Yes, sir.

Q. Where do you see him using that cell phone?
A. Outside.
Q. Do you know who he's calling?
A. No, sir.
Q. After he hangs up that phone, what happens?
A. The Hunsbergers showed up.
Q. The Hunsbergers?
A. Yes, sir.
Q. Julio and Alex Hunsberger?
A. Yes, sir.
Q. Had you ever met them before?
A. No, sir.
Q. Did you know who they were?
A. No, sir.
Q. And at night, looking again at State's 31, is it dark down that road or is it well-lit?
A. It's dark.
Q. Now when these fellows show up, are they in one car or two cars? How do they get there?
A. No, they came in one car.
Q. At any time that night did you hear the Hunsberger brothers speak?
A. Not at all.
Q. What did Mr. Barnes do when the Hunsbergers got there?
A. They started talking among themselves.

Q. Did they appear to know him?
A. Yes.
Q. While this is going on, what does Sam say he wants?
A. To go home.
Q. Is that all he's wanting?
A. Yeah.
Q. And what does Mr. Barnes say to him?
A. That he's gonna take him to his house.
Q. So Sam says I want to go home and finally Mr. Barnes says I'm gonna take you to your house?
A. Yes.
Q. What does he tell you and everybody to do?
A. To get in the car.
Q. How many cars do y'all get into?
A. It was two cars.
Q. Whose car do you get into?
A. Steven Barnes.
Q. What kind of car is that?
A. It was a bubble Chevy.
Q. A bubble Chevy?
A. Uh-huh.
Q. Is this also a Caprice?
A. Yes, sir.
Q. A little bit newer model?
A. Yes.

Q. Who gets in that car with you?
A. Steven Barnes, me, Tony Griffin and Charlene Thatcher.
Q. Where that car's parked, do you see who's getting in the other car?
A. No, sir.
Q. Who drives this bubble Caprice that you get in?
A. Steven Barnes.
Q. And when y'all leave out, where do you think you're heading?
A. To Sammy Sturrup's house.
Q. To Sam Sturrup's house?
A. Yes, sir.
Q. Do you think it's all over at this point?
A. At that time, no, I didn't know what was going on. I thought we were heading towards Sam's house.
Q. Okay. Do y'all -- are y'all leading the way or are y'all following?
A. We're following the Hunsbergers.
Q. Did you see who got in their car?
A. No, sir.
Q. As y'all are driving, does there come a time when y'all are crossing the river into South Carolina?
A. Yes, sir.
Q. Did you know where Sam lived?
A. No.

Q. Did it concern you at that point?
A. Where he lived?
Q. No, that you're coming into South Carolina?
A. At that time I was kind of concerned, but I didn't know where he stayed at, so.
Q. Okay. You didn't know where you were going?
A. No.
Q. Is there any talking in the car while Mr. Barnes is driving?
A. No, it was quiet. Besides the music nobody was doing no talking.
Q. Just music. You cross into South Carolina. At some point do y'all turn off a paved road?
A. Yes, sir.
Q. What do you turn onto?
A. An open field.
Q. You drive in the field. What happens?
A. We got out of the car.
Q. What's that?
A. After he drove us in the field, he told us to get out of the car.
Q. Who tells you to get out of the car?
A. Steven Barnes.
Q. Are the Hunsberger brothers there as well?
A. Yes. We followed them.

Q. You followed them?
A. We followed them.
Q. Are they getting out of the car as well?
A. Yes, sir.
Q. At what point do you see Sam?
A. When they got him out of the trunk.
Q. Out of whose trunk?
A. The Hunsbergers' trunk.
Q. So the entire time from Cheery Street, crossing the river into South Carolina --
A. Yes, sir.
Q. -- and coming into Edgefield into that field --
A. Yeah.
Q. -- Sam rode in the trunk?
A. Yeah.
Q. Of the Hunsbergers' car?
A. Yes, sir.
Q. When you saw Sam in the back of that car -- in the trunk, what was your thought?
A. I'm not -- I'm not allowed to cuss, but I knew it was -- I ain't -- it was bad. I knew it was bad.
Q. You were afraid?
A. Yeah.
Q. You were afraid something was gonna happen to Sam?
A. Of course. He got out of the trunk.

Q. Who all's there out in that field when they're getting Sam out of the trunk besides Sam?
A. Steven Barnes, me, Tony Griffin, Charlene Thatcher and the Hunsbergers.
Q. And the Hunsbergers?
A. Yeah.
Q. Okay. Whose telling people what to do at that point?
A. Steven Barnes.
Q. What's he telling everybody?
A. To take your jewelry off.
Q. To take your jewelry off?
A. Yes, sir.
Q. Do you take whatever jewelry you have off?
A. Yes, sir. I did.
Q. Where do you put your jewelry?
A. Inside his car.
Q. Did that concern you?
A. Of course.
Q. Why?
A. I thought I was gonna die tonight, too, now.
Q. Well, let me ask you. You say you thought you were gonna die. Did you see a gun?
A. Yes.
Q. Who had a gun?
A. Steven Barnes.

Q. Did you see any other gun?
A. The Hunsbergers had one also.
Q. Steven Barnes has a gun, the Hunsbergers have a gun?
A. Yes, sir.
Q. Are the Hunsbergers threatening anybody?
A. No, they was quiet the whole time.
Q. What does it appear to you they're doing?
A. It's like enforcing.
Q. Enforcing for who?
A. Steven Barnes.
Q. What does Steven Barnes tell y'all when you're standing out in that field?
A. He told -- he told Sammy to walk toward the gate and told Charlene, me and Tony Griffin to walk behind him and they followed behind us.
Q. All right. Well, I want to show you some pictures. I want to show you State's 33. You might need to come on down. And, again, you're gonna have to talk loud.
A. (Witness complies.)
Q. Do you recognize State's 33?
A. I do.
Q. What is that?
A. That's the fence.
Q. That's the fence and the gate?
A. Yes, sir.

Q. In that field?
A. Yes, sir.
Q. State's 20, is that the open gate?
A. That's the open gate.
Q. I want to show you State's 23. Obviously that's not the vehicle, but --
A. No. There's a gate right there on the side there.
Q. Which side of the vehicle is the gate on?
A. It's on the driver's side.
Q. The driver's side?
A. Yeah.
Q. Speak up.
A. Yeah, right there on the left-hand side.
Q. State's 21, is that with the gate down as well?
A. Yes, sir.
Q. Now when y'all got -- when y'all got there, did y'all open the gate or go over the gate?
A. Go over the gate.
Q. Over the gate?
A. Yes, sir.
Q. Did anybody tell you to go to over the gate?
A. Steven Barnes told us to go over the gate.
Q. After you got over the gate, what did you see?
A. A wooded area and then we were told to walk along the path.

Q. Let me show you State's 22.
A. That's the path.
Q. That's the path you walked?
A. Yes.
Q. Who's walking out front?
A. Sam.
Q. Where did that path lead to?
A. An open area in the woods.
Q. Let me show you State's 14.
A. That's the open area.
Q. Again, State's 13.
A. The open area.
Q. Open area?
A. (Nods head.)
Q. Okay. You can have a seat again.
A. (Witness complies.)
Q. Now it's nighttime?
A. Yes, it is.
Q. But can you see out there?
A. Yeah, you could. It had a good little bit of moonlight.
Q. So you could see by the moonlight?
A. Yeah.
Q. What about when you walked into that clearing, could you still see by the moonlight?

A. Yeah, you could see a little bit. You wasn't blinded, but you could see.
Q. As you're walking, what are you thinking? How do you feel?
A. I -- I was -- I didn't know what was gonna happen. I was scared for myself, but I didn't know what to think truthfully.
Q. What were you thinking might happen to Sam?
A. He was gonna get shot at least. I know that much.
Q. You knew that much?
A. (Nods head.)
Q. The gun that you saw Mr. Barnes with, do you know what type of gun generally speaking? Was it a revolver, a semi-auto?
A. A semi-auto.
Q. You say the Hunsbergers had a gun, too?
A. Yes, sir.
Q. As Sam walks into that clearing, who's following behind him?
A. Charlene, Tony and me.
Q. And whose coming in at the tail end of this line?
A. The Hunsbergers and Steve.
Q. When y'all get to that clearing, what, if anything, does Mr. Barnes ask Sam?
A. He asked him again where's his money.

Q. What's Sam say?
A. I don't have any money. I just want to go home.
Q. How does Sam appear?
A. Very scared at that time.
Q. How does Mr. Barnes appear?
A. Mad. He was furious.
Q. And when you're looking at Sammy, you say he's scared, is he doing anything?
A. He's crying.
Q. He's crying. Does he say anything else besides I don't have your money?
A. Don't kill me.
Q. So he's asking not to die?
A. Oh, yeah.
Q. What does Mr. Barnes say to that?
A. Everybody's gonna shoot or you're gonna die with him.
Q. Everybody's gonna shoot or you're gonna die with him?
A. Everybody's gonna shoot, yeah.
Q. Let me ask you this. You're a young guy. Why didn't you run?
A. I would have been laying right there with Sam with a bullet in my back.
Q. At any point along the way once you got out of that car, did you feel like there was a way you could have gotten out of there?

A. I didn't know where I was, so there's no way I could have run.
Q. When's the first time you saw guns when y'all got out of the car?
A. The first time was when we were in that field.
Q. In the field?
A. (Nods head.)
Q. So even before you got to the woods?
A. Uh-huh.
Q. When y'all were walking to the gate, where's Mr. Barnes?
A. Behind us.
Q. What does he have in his hand?
A. A gun.
Q. The Hunsbergers are with who?
A. Steve.
Q. What do they have?
A. A gun.
Q. Do you, Tony or Charlene Thatcher have a gun?
A. No. Unh-unh.
Q. At any time did you see Sammy with a gun?
A. No. No. No. Unh-unh.
Q. Who's directing y'all to walk in this field?
A. Steven Barnes.
Q. You say he says -- Mr. Barnes says everyone's gonna

shoot the gun?
A. Yes, sir.
Q. And what happens if you don't?
A. You're gonna die.
Q. At some point does he turn to Charlene Thatcher?
A. Yes, sir.
Q. And does she have a nickname?
A. China.
Q. Had you ever met her before?
A. No.
Q. So, again, this is a stranger?
A. Again.
Q. What, if anything, does he say to her?
A. You're gonna shoot first.
Q. You're gonna shoot first?
A. (Nods head.)
Q. What's her reaction? Describe her.
A. She was scared and started crying.
Q. What did he do?
A. He helped shoot the gun.
Q. Describe that for me. Tell me what -- tell me what he does.
A. He stood behind her, wrapped his arms around her and helped her like you're playing golf.
Q. So he comes up behind her and puts his arms around

her kind of like you would if somebody was playing golf?
A. Yeah. And helped her aim.
Q. Helped her aim?
A. Yes.
Q. What is she doing this whole time?
A. Crying.
Q. Crying?
A. Yeah.
Q. Did it appear to you that she was willing to shoot or not?
A. No, she didn't want to shoot.
Q. Did he threaten her?
A. He threatened everybody out there.
Q. Including her?
A. Yes, sir.
Q. Did Charlene fire that gun?
A. Yes, sir.
Q. Did you see it hit Sam?
A. I did.
Q. Where?
A. In the stomach.
Q. What did Sam do?
A. He hit the ground.
Q. When you say he hit the ground, did he fall flat?
A. Fell on his knees.

Q. Where was his hands?
A. On his stomach. Holding his stomach.
Q. When this happened, what were you thinking?
A. It was over with. It was -- I didn't know how it was gonna end, but I knew it wasn't good for nobody out there.
Q. How did you think it was gonna end with Sam?
A. That was the end.
Q. He's still alive at that point though, right?
A. Yes.
Q. Did somebody put that gun in your hand?
A. Steven gave me the gun, yes.
Q. Okay. Are you told to fire that gun?
A. Yes, sir.
Q. Did you want to fire that gun?
A. No.
Q. Did you even know Sam Sturrup?
A. No.
Q. Did you have any issue with him?
A. No. No.
Q. Did somebody else still have a gun?
A. Does somebody else have a gun?
Q. Uh-huh.
A. The Hunsbergers.
Q. The Hunsbergers have a gun?
A. Uh-huh.

Q. What do you do when you get that pistol?
A. I stepped forward and I shot the gun.
Q. You stepped forward and pulled the trigger?
A. Yes.
Q. What, if anything, did you shoot at?
A. I shot at the ground.
Q. At the ground?
A. Yes, sir.
Q. After that, how did you feel?
A. Numb.
Q. Numb?
A. Yeah. I -- I wasn't much thinking at all. I was like a zombie, you know.
Q. Like a zombie?
A. (Nods head.)
Q. Had you ever fired a gun before?
A. No.
Q. Had you ever seen anyone get shot before?
A. That was my first time.
Q. Did you willingly pull that trigger?
A. Not willingly. I was forced.
Q. Did you willingly miss Sam?
A. Yeah, I tried my best.
Q. After you fired that shot, what do you do?
A. I passed the gun.

Q. And then what do you do?
A. I was told to walk towards the car.
Q. Who told you that?
A. Steven Barnes.
Q. You're still following his orders?
A. Of course.
Q. Are you scared?
A. Yeah.
Q. When y'all get back to the car, who's still out there that you remember?
A. Steven Barnes and the Hunsbergers.
Q. At some point do you hear another shot?
A. I did.
Q. Who comes out last?
A. Steven Barnes.
Q. When everybody comes out, do y'all go to the field or where do y'all go?
A. We go -- the car was in the field. We go back to the field where the cars were parked.
Q. What does Barnes tell y'all to do?
A. What he told us to do or what he said?
Q. Once y'all get out in that field, does he tell you what to do?
A. Get back in the car.
Q. Okay. What car do you get in?

A. Back in the bubble Chevy.
Q. Who else gets in that car with you?
A. Tony Griffin, Charlene Thatcher and me.
Q. Does Barnes get in that car, too?
A. Yes. He's the driver.
Q. As y'all get moving along, do you remember Tony asking Mr. Barnes a question?
A. I do.
Q. Do you remember what it was?
A. Yes.
Q. What was it?
A. Tony asked him how do you know Sam's not gonna get up and do anything? He said you don't have to worry about him getting up because I shot him in the head.
Q. So Tony asked him how do you know Sam's not gonna get up and do what?
A. Get up and run or anything and Steven said you don't have to worry about that, I shot him in the head.
Q. When you left Sam, was he still alive?
A. Yeah.
Q. What does Mr. Barnes say to that question now?
A. I shot him in the head.
Q. And that you don't have to worry?
A. You don't have to worry.
Q. How are you feeling at this time?

A. I didn't have a feeling at that time.
Q. Huh?
A. I said I didn't have a feeling. I was -- I was numb as best I can describe. I was just numb.
Q. Do you even remember where y'all went after that, right after that?
A. Not clearly. I don't know if I blacked out a couple of times or what, but --
Q. Do you remember ever going to a trailer right after this?
A. We probably did. I don't remember.
Q. You probably did, but you don't remember?
A. Yeah.
Q. At some point did y'all head back to Augusta?
A. Yes, sir.
Q. Do you remember stopping at any time along the way?
A. We stopped at the bridge.
Q. What bridge was that?
A. The I-20 bridge.
Q. What do you remember happening at the I-20 bridge?
A. He told Tony to throw the gun over the bridge.
Q. Who told Tony to do that?
A. Steven Barnes.
Q. Did Tony do it?
A. Yes.

Q. Did he have to get out of the car to do that?
A. Yes.
Q. When he got back in the car, where did y'all go?
A. Back to Cherry Street.
Q. What happens at Cherry Street after that?
A. We was told to stay there.
Q. You were told to stay there?
A. Uh-huh.
Q. Who told you to stay there?
A. Steven Barnes.
Q. How long do you stay there?
A. Until daylight.
Q. Do you remember how you got home?
A. Steven dropped us off.
Q. Did he stay there all night with you guys?
A. I'm not -- I don't recall. He wasn't in the house with us. We was left alone.
Q. Was there a phone in the house?
A. No.
Q. This house on Cherry Street, was anybody living in there?
A. It didn't look like it. It was completely dark. No electricity, no nothing.
Q. No phone?
A. No phone.

Q. The next day Mr. Barnes takes you home?
A. Yeah.
Q. What, if anything -- or who's in the car when he's taking you home?
A. Tony Griffin, Steven Barnes and me.
Q. What, if anything, does he tell you and Tony at that time?
A. Don't say nothing to the police. Keep everything to ourself.
Q. Does he tell you to do anything else?
A. He told us to burn the clothes.
Q. Burn your clothes?
A. Yes.
Q. Did you do that?
A. Yes.
Q. How did you go about doing that?
A. I gave my clothes to Tony and Tony burned them in his backyard.
Q. And about going to the police, what did Mr. Barnes tell you?
A. If you go to the police, he knew where we stayed at and he was gonna kill us and our family.
Q. So he dropped you off at your house?
A. Yes, sir.
Q. And he dropped Tony off at his house?

A. Yes, sir.
Q. He knows where you live?
A. Yes, sir.
Q. After all this happened, did you ever hang out with Mr. Barnes again?
A. No.
Q. Did you have any contact with him?
A. No.
Q. Did he ever come by your house?
A. Yeah.
Q. Were you there?
A. No.
Q. After all this, did you and Tony hang out much together?
A. Not really. We slowed down.
Q. This night changed it?
A. A lot.
Q. At some point do officers in Georgia, the Richmond County Sheriff's Department, do they come to you?
A. Yes, sir.
Q. Where are you when they come to you?
A. At home.
Q. When is this?
A. It's in January of the next year.
Q. January of 2002?

A. Uh-huh.
Q. Did you get arrested?
A. Yes, sir.
Q. Do you talk to law enforcement?
A. I did, yeah.
Q. Now initially when you were initially interviewed, did you -- were you very forthcoming or not?
A. No, I wasn't at first.
Q. Why?
A. Because I was told to keep my mouth closed. I was thinking about my family.
Q. Were you scared?
A. Yes.
Q. Do you get charged in Georgia?
A. I did.
Q. What did they charge you with?
A. Aggravated assault. Kidnapping and pandering.
Q. At some point did you plead to one of those charges?
A. I did. I pleaded to aggravated assault.
Q. For what happened at Cherry Street?
A. Yes, sir.
Q. Did you ever hit Sam?
A. No.
Q. Did you have a lawyer when you pled?
A. I had a public defender.

Q. Why did you plead?
A. It was about the best choice I could make for myself and my family.
Q. Why?
A. Because I wanted to go home as quick as I can to my family, so I knew if I was to go to trial I wasn't gonna win. They wouldn't want to hear my story.
Q. While you were in the jail waiting in Georgia, do you see anything that makes you -- helps make up your mind, a news article or anything?
A. Yeah. I mean, they slandered all our names all in the paper, so I knew they labeled us as a gang, they were gonna pursue the RICO Act, so I knew I wasn't gonna go up against that, so that's why I pleaded out to aggravated assault and made my chances better, too.
Q. Were you part of a gang?
A. No.
Q. Did you ever run with Mr. Barnes before all this?
A. No.
Q. Were you involved in any of these other crimes or anything that you're reading about?
A. No. Nothing. All of it was lies.
Q. How much time did you get?
A. I did eleven. I got eighteen years, but I did eleven.
Q. So you're sitting here today as a man who's done over

eleven years?
A. Yeah.
Q. Are you on parole today?
A. Yes, I am.
Q. What state?
A. Georgia.
Q. In talking to you today, have I made any promises with you?
A. No.
Q. You understand I'm in South Carolina?
A. I do.
Q. You understand I don't have any authority in Georgia?
A. I do.
Q. The night this happened before Labor Day, Labor Day, during all that time, who was in control?
A. Steven Barnes.
Q. Who was the only one making threats?
A. Steven Barnes.
Q. Who was telling people what to do?
A. Steven Barnes.
Q. Who was the only one there angry at Sam?
A. Steven Barnes.
Q. When did you learn Sam Sturrup's full name?
A. In the paper.
Q. In the paper?

A. Yeah.
Q. Were you already arrested by then?
A. I was already arrested.
Q. You had no issue with Sam Sturrup?
A. None whatsoever.
Q. Since all of this has occurred, what's happened to you?
A. It changed my life. Every day. When Labor Day comes up, you have no choice but think about what happened. I had my baby on Labor Day, you know, so it affected me to the fullest.
Q. Did it change your plans?
A. Yeah, of course. I had a scholarship.
Q. A scholarship where?
A. To go to Morris Brown. It's in Atlanta.
Q. It's in what?
A. It's in Atlanta. A college in Atlanta.
Q. What were you gonna do there?
A. I had a band scholarship.
Q. A marching band like at Lucy Laney?
A. Yeah. Yes, sir.
Q. Has there ever been a moment where you haven't thought about how this changed your life?
A. I think about it a lot.
Q. Thank you, Richard. Just to -- South Carolina

initially looked at you for murder; did they not?

A. They did.

Q. Did you ever get prosecuted over here?

A. No.

**MR. HUBBARD:** Richard, please answer any questions the defense has. Thank you.

**THE COURT:** Very well.

Ladies and gentlemen, we're gonna take our lunch break now. It's a little after 1:00. We're gonna start back at 2:15. 2:15.

Over the lunch break, please leave your notebooks in your chair. Be mindful. Do not discuss this matter or allow anyone to discuss it with you. If you use your cell phone over the lunch, please remember to leave it somewhere, please, other than the courthouse. If it follows you back here, please relinquish it to one of our bailiffs who will take good care of it this afternoon.

Do not read anything or listen to anything about this case; radio, television, Internet. Don't do any social media. Do not do any research and don't listen to or read anything about this case that might be on the Internet or otherwise in print or radio or television.

Have a good lunch and I'll see you at 2:15. Go with your bailiffs.

(Whereupon, the jury was excused for lunch at

1:08 PM.)

**THE COURT:** All right. Mr. Cave, over the lunch break you must not discuss your testimony with anyone. Do you have any questions about that?

**THE WITNESS:** No, ma'am.

**THE COURT:** Very well.

All right. I will see everyone back here at 2:15 unless y'all have something you need to take up.

**MR. HUBBARD:** Your Honor, just so the defense knows, we'll make sure that Mr. Cave gets some lunch here so he's not out and about.

**THE COURT:** That's perfect. That's sounds great. I appreciate it.

All right.

(Whereupon, a luncheon recess was taken.)

**THE COURT:** All right. Anything before we bring the jury out from the State?

**MR. HUBBARD:** Yes, ma'am, Your Honor. We're ready.

**THE COURT:** Ready?

**MR. GORANSON:** The defense is ready.

**THE COURT:** Very well. Thank you.

(Whereupon, the jury returns to the courtroom at 2:22 PM.)

**THE COURT:** All right. Ladies and gentlemen, I hope you had a very pleasant lunch. At this time we will

continue the State's case and the cross-examination of Mr. Cave.

Yes, sir. You may proceed.

**MR. GORANSON:** Thank you, Judge.

CROSS-EXAMINATION

BY MR. GORANSON:

Q. Hi, Mr. Cave. My name is Shane Goranson. I'm representing Mr. Barnes. I want to talk to you about William Harris. You know who William Harris is, right?

A. Yes.

Q. You saw him at Cherry Street on the day we're talking about, right?

A. Yes.

Q. And he was mad at Mr. Samuel Sturrup, wasn't he?

A. Yes.

Q. And I think at one point you said that you saw Mr. Harris -- Mr. William Harris put a pistol in Sam Sturrup's mouth?

A. Yes.

Q. And he was angry because Mr. Sturrup had said something about Mr. Harris may have taken something?

A. Yeah, probably so.

Q. And at that point you were thinking maybe Mr. Harris was gonna kill Samuel Sturrup?

A. I did, yeah.

Q. Back in 2006 you testified in a trial regarding this case, right?
A. Yeah, I did.
Q. And during that trial you were sworn in under oath?
A. Yeah.
Q. And you were sitting on the witness stand, correct?
A. Yes.
Q. And you swore to tell the truth?
A. Yes.
Q. And you told what happened that night?
A. I did.
Q. And you said that you got there, to the house on Cherry Street?
A. I did.
Q. It was dark?
A. Uh-huh.
Q. There was a fight going on?
A. Uh-huh.
**THE COURT:** I need you to answer with a yes or a no or with words, please.
A. Yes.
Q. And you saw Mr. Harris put a pistol in Samuel Sturrup's mouth?
A. Yes.
Q. You also testified you went to the store?

A. I did.
Q. You went to get some chips and a drink?
A. I did.
Q. Now when you went to the store, nobody stopped you from leaving Cherry Street, right?
A. No.
Q. And when you got to the store, the store was open, right?
A. Yeah.
Q. You went inside?
A. Uh-huh.
Q. You grabbed some items?
A. Uh-huh.
**THE COURT:** Was that a yes?
**THE WITNESS:** Yes.
**THE COURT:** All right.
BY MR. GORANSON:
Q. And you went and paid for the items?
A. I did.
Q. And naturally you'd give that money to a clerk, right?
A. Yes.
Q. You didn't tell the clerk what was going on on Cherry Street, did you?
A. At that time there was no more arguing going on when I went to the store.

Q. But you didn't tell the clerk what was going on?
A. Of the argument, no.
Q. You didn't ask the clerk if she could call 9-1-1?
A. Not over the argument, no.
Q. You didn't say hey, can I stay here and give my parents a call so they can come pick me up?
A. Not over an argument, no.
Q. You didn't do anything besides walk back -- you got your chips and you got your drink?
A. I did.
Q. You walked back down to the house on Cherry Street?
A. Yeah.
Q. And you ate your chips?
A. I did.
Q. And you drank your drink?
A. I did.
Q. While all this was going on on Cherry Street?
A. No.
Q. Well, you just -- you testified earlier that there was a fight going on on Cherry Street the whole time, right?
A. The fight happened after the store.
Q. It happened after the store?
A. Yeah.
Q. Okay. You testified earlier that the fight was going on when you arrived.

A. The argument was going on. There was an argument. That's what I testified earlier to.
Q. Okay. And then you saw William Harris put a pistol --
A. That was later on that night.
Q. Later on that -- okay.
All right. So you were questioned in this case? You were arrested --
A. I was.
Q. -- January 22, 2002?
A. I was.
Q. And you were questioned by Investigator Roundtree?
A. I was.
Q. That was at the Richmond County sheriff's office?
A. Yes.
Q. And the interview was recorded?
A. Yes.
Q. And he asked you some questions about -- just to sort of identify yourself for the recording, right?
A. Yes.
Q. Like he asked you to confirm it was 7:30 PM?
A. He probably did. I don't remember.
Q. You stated you're at the -- he stated stuff like you're at the Richmond County sheriff's office?
A. Yes.
Q. What's your name, what's your birthday, that sort of

thing?
A. Yes.
Q. And he talked to you about giving up your Miranda rights?
A. Yeah.
Q. He advised you of your rights and he asked you if you wanted to give them up and talk to him?
A. He did.
Q. And then the first question he asked you was how do you know Steven Barnes, right?
A. He did.
Q. Okay. Now you've had time to review the transcripts from this case over the years?
A. Over the -- I mean, over the years you don't think about it, especially after I was released. I didn't go over it.
Q. You've testified several times?
A. But over the time -- are you saying like it's in my property? No.
Q. No, I'm not asking if you studied it every day. What I'm saying here is you've testified several times --
A. Yes.
Q. -- in relation to this case?
A. Yeah.
Q. And part of that at some point was reviewing

transcripts?

A. Yeah. Correct.

Q. And also during this interview you were given a chance -- the interview with Sheriff Roundtree or Investigator Roundtree, you had a chance to fill in any other details that you left out, right?

A. After that time -- he didn't want to talk to me after that time.

Q. When you were talking to him that day --

A. That day, yes.

Q. -- he said, you know, is there anything else you want to add to this?

A. He probably did, but I don't remember.

Q. And you didn't say anything to him about William Harris putting a pistol in Samuel Sturrup's mouth, did you?

A. I don't think so. Probably not.

Q. Would it refresh your recollection if I showed you the transcripts?

A. Yeah.

Q. The transcript is somewhat lengthy, but take all the time you need and show me whatever part you think says that you told Sheriff or Investigator Roundtree --

A. Do you want me to point it out?

Q. Yes. About William Harris putting a pistol in Samuel Sturrup's mouth. Here you go.

A. (Reading.)
Q. Have you had enough time to review that transcript to answer my question?
A. No, it's not in there.
Q. The name Willie Harris is not in there?
A. Unh-unh.
Q. So you would agree with me that you also did not tell Investigator Roundtree about the assault that Mr. Harris committed on Charlene Thatcher on Cherry Street that night?
A. No.
Q. Did you see Willie Harris bring Samuel Sturrup to that house on Cherry Street?
A. No, sir.
Q. You got there after Mr. Harris brought him?
A. I mean, I was -- when I got there Samuel was already there.
Q. Okay. I want to talk to you a little bit about the Georgia charges now, okay?
A. No problem.
Q. You were charged in Georgia for aggravated assault?
A. Yes, sir.
Q. That's like hitting somebody with a weapon, right?
A. Yes.
Q. And you were also charged with kidnapping?
A. Yes.

Q. And you cooperated --
A. Yes.
Q. -- with the Government? You made a deal with the Government, right?
A. Yes.
Q. And the deal was that you would plead guilty to aggravated assault?
A. Yes.
Q. And they would what's called "dead docket" the kidnapping charge, right?
A. Yes.
Q. And what dead docketing means is that they take it off of the active charges and the hold it off to the side?
A. Yeah.
Q. And they want to see if you're gonna cooperate?
A. Uh-huh.
Q. And if you don't cooperate, they can bring the charge back?
A. True.
Q. And kidnapping in Georgia carries up to a life sentence, right?
A. I don't know.
Q. You're not sure?
A. No. I know at the time it was twenty years, so if it changed it may be life now, so I don't know.

Q. So you thought it was another additional twenty years that you were facing?
A. Yeah.
Q. And you -- as a result of that deal you plead guilty to the aggravated assault?
A. Yes.
Q. You got an 18-year sentence?
A. I did.
Q. And that was followed with two years supervision?
A. Probation.
Q. Probation. And you're still -- you're being supervised on parole right now, correct?
A. Yes.
Q. So you're facing -- still you could be sent back to the penitentiary for the rest --
A. At any time, yeah, I could.
Q. Any time, right?
A. Yeah.
Q. For up to twenty years?
A. It's possible.
Q. To the twenty year mark?
A. Yes, it is possible.
Q. And the kidnapping charge is still dead docketed, right?
A. I'm not sure. I don't know.

Q. But it may be?
A. Yeah.
Q. Okay. So you -- all right. So that is also still pending.
All right. You served eleven years in prison?
A. I did.
Q. And I think before you were -- before you went to prison you were living with your mom, your family?
A. Yes.
Q. And your brothers and sister?
A. I was.
Q. And you had a daughter before all this stuff happened?
A. Uh-huh. I had a female.
Q. So I imagine one of the first things you did when you got out of prison was go see them?
A. Of course.
Q. All right. And you probably ate some real food --
A. Yeah.
Q. -- for the first time in a long time?
A. Yeah.
Q. When you're in prison you don't get to do that?
A. No.
Q. You've got to live by their rules?
A. Yeah.
Q. You've got to live in a six by eight cell?

A. Yeah.
Q. You have to share that cell with somebody?
A. Yeah.
Q. And part of sharing a cell means sharing a bathroom?
A. Yeah.
Q. And you couldn't see your family whenever you wanted to?
A. No.
Q. They couldn't come visit you any time?
A. No.
Q. They had to follow the prison rules?
A. Yeah.
Q. It could even be difficult for them to get to the prison, right?
A. Yeah.
Q. And as a result of all of that, you couldn't spend time with your family like you really wanted to?
A. True.
Q. You missed a lot of birthdays?
A. A lot.
Q. And you don't want to miss anything else, do you?
A. No.
Q. Has the Government here ever promised that you would not be facing prosecution at some point?
A. They never did.

Q. So you know you're facing potentially murder charges in South Carolina?
A. Yeah, I know that.
Q. And the penalty for murder in South Carolina --
A. I know what the penalty is.
Q. What is it?
A. Life.
Q. It's thirty years to life.
A. Life.
Q. And you realize that you could be spending the rest of your life in prison --
A. Life is life.
Q. -- as a result of what happened?
A. Uh-huh.
Q. You've also testified on the record that you shot Samuel Sturrup.
A. I did.
Q. Is there any way to put a dollar value on the amount of years you spent in prison?
A. Put an amount on it?
Q. Yeah.
A. No, I don't think so.
Q. It's priceless, right? Freedom is priceless?
A. Yeah.
Q. Regarding the charges that you're facing in South

Carolina or could be facing --

**MR. HUBBARD:** Objection to that. Your Honor, he keeps saying that. I've already said there are no charges. There will be no charges. We've already done that.

**THE COURT:** Let me hear the question and don't respond to it.

**MR. GORANSON:** The question was regarding the charges you're facing, and I can withdraw that question, I'm happy to, and rephrase it --

**THE COURT:** Okay.

**MR. GORANSON:** -- to could be facing.

**MR. HUBBARD:** Not in South Carolina. I'm saying right now he keeps talking about murder charges. We've crossed that line.

**THE COURT:** Okay. If you want to ask your question.

**MR. GORANSON:** If I may have just a moment?

**THE COURT:** Absolutely.

(Discussion between defense counsel.)

BY MR. GORANSON:

Q. So what I heard earlier was the Solicitor say to you have I promised you anything in this case and your response was no?

A. No promises.

Q. Now what I'm hearing is there are no charges against you.

**MR. HUBBARD:** Your Honor, I'm gonna object again. It's a mischaracterization of what I said because I referred to Georgia; that I had no authority there. I'm really getting irritated here, Judge. I'm sorry. I've just got to object.

**THE COURT:** Let me hear the question again.

BY MR. GORANSON:

Q. What I heard earlier was the Solicitor say that you were not promised anything regarding South Carolina charges; that the Solicitor had no authority over the Georgia charges, there was no promise as to anything here.

A. No promises.

Q. Now what I'm understanding and this is the first time you're hearing that you could not be facing murder charges in South Carolina?

A. I'm -- I'm willing to accept any type of consequence there is. That's the only thing I can tell you about that. Whatever the consequences are. I don't know what's going on at this point.

Q. But you're hopeful today --

A. Of course, yeah.

Q. -- because you're gonna be going home and there will be no more prosecution of you in South Carolina?

A. Of course.

Q. That's what you're hoping for?

A. Yeah.
Q. Now when you spoke to Investigator Roundtree --
A. Uh-huh.
Q. -- after you were arrested --
A. Yeah.
Q. -- back in January of 2002 --
A. Yes.
Q. -- did you hide information about William Harris from Investigator Roundtree?
A. It wasn't willingly. I probably forgot. There was so much going on. Because you've got to think when I'm being investigated, I'm being yelled at, I'm being cussed at and all that, so I've got people in my face. It's not no riveting investigation or interrogation that I was in. You've got people in my face, spitting all in my face, cussing. I was young, 17. Remember that. You know what I'm saying? And I was scared, so you can't forget that.
Q. And you testified earlier on Cherry Street the night of -- the night that we're all here talking about, you saw William Harris put a pistol in Samuel Sturrup's mouth?
A. Yes.
Q. A couple of months later for whatever reason you didn't tell law enforcement about that, right?
A. Exactly.
**MR. GORANSON:** If I may have just a moment?

(Discussion between defense counsel.)

BY MR. GORANSON:

Q. I just want to make sure I've made one thing clear here. Again, we're going back to the trial in Georgia before Judge Fleming, and this is back in 2006, the Julio and Alex Hunsberger trial, you testified, and you said this earlier, that you left to go to the store, right?

A. Yes.

Q. And it's the gas station at the Conner of Pleasant Home Road and Washington?

A. Yes.

Q. Did you buy anything else for anybody else at the store?

A. No, I can't remember if I did.

Q. Okay. And you testified before that you were -- you went to the store by yourself and you weren't gone very long?

A. True.

Q. That's true, right?

A. Yeah.

Q. And you testified before you came back to the house on Cherry Street?

A. Yes.

Q. And the question was put to you where did you come back to and you said the car, correct?

A. I probably did.
Q. And they were -- you were asked where was the car and your response was facing the dead end, the white Caprice, right?
A. Yes.
Q. And so when you came back from the store, you got in the car. That was your testimony.
A. Okay.
Q. And you thought you were going to Sam's house?
A. Yes.

**MR. GORANSON:** No more questions. Thank you.

**THE COURT:** All right. Redirect?

**MR. HUBBARD:** Yes, Your Honor.

**THE COURT:** All right.

REDIRECT EXAMINATION

BY MR. HUBBARD:
Q. Richard --
A. Yes.
Q. -- about going to the store, do you have a lot of memory of what you did at the store or --
A. I just know I went to the store.
Q. Was that early on when you got there?
A. Yes.
Q. When you and Tony got to Cherry Street?
A. Yes, sir.

Q. There was an argument going on?
A. Yes.
Q. It was at night?
A. Yes, sir.
Q. You walked up the road to the store?
A. Yes, sir.
Q. When you come back there's still an argument?
A. Yes.
Q. And that argument turns into a fight?
A. That's when it turned to a fight.
Q. Okay. Let me ask you this. You've been asked about William Harris?
A. Yes.
Q. Do you know him by a nickname?
A. Little Man.
Q. Little Man?
A. That's what I know him by.
Q. So you've got Big Man and then you have Little Man?
A. Yes, sir.
Q. Little Man, that's Big Man's brother, step-brother?
A. Yes, sir.
Q. You witnessed a fight between Little Man and Sam?
A. No, I witnessed him putting a gun in Sam's mouth.
Q. What was all of that over even? When you saw Little Man put a gun in his mouth, what was that about?

A. Steven Barnes' money.
Q. So it was about his brother's money?
A. Yes.
Q. Now did William Harris get in the car with you guys and go to South Carolina?
A. No, sir.
Q. Did he leave later that night?
A. Yeah, he left.
Q. So he didn't direct anybody to come to South Carolina and kill Sam?
A. No, sir.
Q. Who did that?
A. Steven Barnes.
Q. You talked about when you got arrested in Georgia and you were interviewed by Investigator Roundtree --
A. Yes.
Q. -- very early on?
A. Yes.
Q. Were you very upfront and frank with him or were there things you held back?
A. Not upfront. In that interview, I denied I knew anything about it.
Q. Your first interview you denied stuff?
A. Yes.
Q. Why were you not completely honest right out of the

gate with Investigator Roundtree and these other officers?
A. Because Steven told us not to say anything or he would kill us and our family.
Q. You were still living in Georgia?
A. Still living in Georgia.
Q. Your family was still there?
A. They're still there.
Q. At that same house Mr. Barnes took you to that night and dropped you off at?
A. No, they moved.
Q. Okay. But at that time -- -
A. Yes.
Q. -- y'all were still living there?
A. At that time, yes, sir.
Q. And aggravated assault, the charge that you ended up pleading to, before that time, before you got charged with that, had you ever been in any kind of trouble before?
A. None.
Q. Had you even got a speeding ticket before?
A. None.
Q. Now you mentioned missing family time. You missed over eleven years?
A. Yes, sir.
Q. In your mind, in your mind, who took those years from you?

A. Steven.
Q. Why?
A. Hatred.
Q. His hatred of you or what?
A. For Sam.
Q. Would you have been in any trouble if you had not gone out with Steven Barnes?
A. I would have had no trouble. I know that for a fact.
Q. And during all this time have you often thought where you would be if you had not gone out with Steven Barnes?
A. I have constant conversations with my family just imagining how my life would have ended up if I had never got in trouble.

**MR. HUBBARD:** Thank you, Richard.

**THE COURT:** Recross?

RECROSS EXAMINATION

BY MR. GORANSON:

Q. It's true that William Harris never got arrested in relation to this case, isn't it?
A. He never did.
Q. Where does William Harris live?
A. I couldn't tell you.
Q. He has lived in Augusta, right?
A. I don't know. I never went to his house.
Q. You said -- you know him from Augusta?

A. I know him from that night.
Q. In Augusta?
A. Yeah.

**MR. GORANSON:** No further questions. Thank you.

**THE COURT:** All right.

**MR. HUBBARD:** I have nothing.

**THE COURT:** Okay. Yes, sir, you are excused.

(Witness excused.)

**THE COURT:** Call your next witness, please.

**MS. MAYES:** The State calls agent Stephen Curtis.

Your Honor, while we're waiting for the witness to be sworn, there's no objection to the upcoming exhibits, so we'll go ahead and mark them.

**THE COURT:** All right. Thank you.

(State's Exhibit Number 34 through 48, photographs, and 49, a sketch/diagram, were marked and admitted into evidence.)

**THE CLERK:** Place your left hand on the Bible and raise your right hand.)

(Whereupon, Stephen Curtis was duly sworn by the Clerk of Court.)

**THE CLERK:** Thank you, sir. Please be seated. State your full name and spell your last name for the record.

**THE WITNESS:** Stephen Curtis, C-U-R-T-I-S.

STEPHEN CURTIS,

having been duly sworn, testified as follows:

DIRECT EXAMINATION

BY MS. MAYES:

Q. And, Agent Curtis, tell us a little bit about yourself. Where are you employed?

A. I am currently employed with the latent print department at the South Carolina State Law Enforcement Division in Columbia. SLED.

Q. All right. Now you mentioned the State Law Enforcement Division in Columbia, commonly known as SLED. How long have you been an agent with the State Law Enforcement Division?

A. Total probably about fourteen years.

Q. And how much of that time, Agent Curtis, has been spent specifically in the area of crime scene analysis or what's known as CSI?

A. I spent eight years, from 1998 until 2006, assigned to the crime scene unit there in Columbia.

Q. And what did you do following your assignment with the CSI unit after 2006?

A. In 2006, I was promoted to lieutenant and was reassigned to the Internal Affairs Division, then I retired from SLED in 2008 and took a teaching position at the criminal justice program at Horry-Georgetown Technical College. I was there for three years and then got a job

in Greenwood with Piedmont Technical College in the criminal justice department over there.

Q. And as an instructor, can you tell us whether or not you also utilized your experience in CSI?

A. That's why they hired me. I mean, I had the requisite education, a graduate degree and everything, and the basis of -- the main basis for my hiring was the twenty some odd years that I spent working in the criminal justice field, specifically the investigation of violent crime and processing of crime scenes.

Q. All right. And since your time as an instructor, have you had the opportunity to go back to the State Law Enforcement Division or SLED as an analyst?

A. Yes, I was asked to come back and work specifically in the latent print department and I've been there for a little over three years now.

Q. And you currently are now?

A. Yes, ma'am.

Q. And when you say latent prints, you're referring to fingerprint analysis?

A. Yes, ma'am.

Q. And you're specifically trained in that area as well?

A. Yes, ma'am.

Q. Now in addition to your on-site experience as a SLED agent going to crime scenes, did you also have an

opportunity to get educational or clinical experience in the field of CSI?

A. Yes, ma'am, I did.

Q. And can you tell us whether or not that was routine during your years with the State Law Enforcement Division?

A. In my time at SLED, I completed the in-house training program within the crime scene department, which also included latent print work. In addition to that, over the course of the eight years crime scene specific training, I probably received in excess of 300 hours in reference to processing of crime scenes. That's photography documentation, the analysis of crime scenes in terms of bloodstain pattern analysis, footwear, latent print development. And in addition to that then the use of latent prints for comparison and identification from crime scenes and also the ability to enter those latent prints into computer databases to make identifications.

Q. And, Agent Curtis, have you testified previously about your findings and observations at crime scenes?

A. Yes, ma'am, I have.

Q. Have you testified previously as an expert in courts of this state?

A. I have.

**MS. MAYES:** Your Honor, at this time the State would offer Agent Stephen Curtis as an expert in the field of

crime scene investigation.

**MR. McGUIRE:** No objection.

**THE COURT:** Very well.

BY MS. MAYES:

Q. Agent Curtis, I want to take you forward to the date of January 23, 2002, and ask you how, if at all, you became involved in a crime scene investigation of an area in Edgefield County off of Community Road?

A. At the time, again, I was assigned to the crime scene unit and the responsibilities of that unit are to respond to various crime scenes around the State at the request of local police and sheriff's offices to assist them with mainly violent crime or death investigations is the vast majority of that. So on that date my lieutenant notified me that he had received a request from one of our field agents, one of the SLED agents that was working with some of the detectives here in Edgefield County, in reference to a found body that turned out to have been the victim of a homicide and they wanted us to come out and assist them to possibly retrieve some projectiles or spent bullets from that crime scene.

Q. All right. And do you have with you your field notes from that occasion?

A. Yes, ma'am, I do.

Q. And can you confirm for us the date in which you

would have gone to that scene to process it?
A. The scene out at Lakeview Road/Community Road out there would have been the 23rd of January, 2002.
Q. All right. The 23rd of January, 2002. I'm gonna go ahead and just mark that here on this board that SLED is at the scene.
Now you mentioned that that scene had already been processed previously by the Edgefield County Sheriff's Department.
A. Yes, ma'am. That's what I was told.
Q. Can you tell us whether it's common or uncommon for the State Law Enforcement Division to sometimes provide a follow-up investigation or follow-up analysis when requested?
A. Yes. One of the aspects of the SLED crime scene unit is to provide expertise or technical equipment that maybe local agencies do not have and so in this particular instance they had done what they thought was appropriate at the crime scene and processed it themselves and specifically were looking for us to come and maybe be able to find some projectiles. Information that they had developed during the course of their investigation indicated that there may have been possibly multiple gunshots in this case and wanted to know if we could come out and look and see if we could find some additional

projectiles that may have been at the scene that they weren't able to locate or didn't have the equipment specifically to try to excavate part of that scene.

Q. All right. So what is the first step when a SLED agent or a SLED team comes onboard to assist in CSI?

A. Well, after meeting at the scene or talking with whoever's there, the investigators, in this particular instance Mike Perry was the field agent from SLED and Sergeant Doran from Edgefield County sheriff's office, would meet and just give us a brief telling what happened, what they were expecting us to do or what they needed us to do.

But the first steps after taking just a general look at the crime scene is to take photographs to try to create a document that may assist later on in the investigation or for presentation in court. So general photographs of the way the scene looks before anything's moved or we start looking or digging or whatever else we're gonna do. Just the way the scene is when we get there.

Q. All right. I want to show you some photographs and they are marked 34 through 40 sequentially and have you take a look at those and tell us whether or not you recognize them.

I'm also gonna pass up with that group 41, 42, 43, 44 and 45.

A. These are all photographs that were taken initially when we arrived at the scene to get a general overview of what was present as we found it when we arrived there.

Q. All right. Starting here with this photograph, State's Exhibit 34, I ask you what is depicted in this photograph? And are you able to visualize from where you are or do you need to step down?

A. Where am I looking at? I'm sorry.

Q. It's on the TV screen.

A. I actually can't see the TV.

Q. All right. I'll have you step down.

A. (Witness complies.)

Q. Whose vehicle would this be?

A. That is my truck, my SLED truck, and that's generally -- this was out in some pastureland and some woods that was adjacent to some pasture or fields, so it really was kind of hard to have any landmarks to kind of get in perspective, but we just took some -- backed away from the focus area we had. So that's one that we kind of drove into the scene. And I don't know if you can make it out in there, but there's a gate back there and we parked in there and the sheriff's office took us back past the gate in there where they wanted us to take a look, but that's just a general scene from outside the perimeter of the pastureland.

Q. All right. What are we looking at here?
A. That looks like the metal gate.
Q. All right. Just beyond the hayfield?
A. Yes, ma'am.
Q. All right. And then this is gonna be State's Exhibit 35.
A. That's just a closer up photo of the actual gate that we ended up going through back in the woods there a little bit to where the body was recovered.
Q. All right. Now this is January. Take us through what we're looking at here in State's Exhibit 41 both in terms of the ground and the surrounding area.
A. Well, the scene -- again, one of the things we're doing is documenting it the way that we found it there, so we're talking about January. As I recall, it was kind of cool, cloudy and misty, raining a little bit, but we went in there and that's a path kind of through the woods through the gate. We started walking the path there. You can see where the crime scene tape was from the original crime scene the sheriff's office had put up, but you can see that there's a lot of leaves and pine straw and stuff on the ground and the trees had shed most of their leaves.
Q. All right. We're gonna look here at 42.
A. This is just another photograph of the general scene as you work your way through. One of the things about

crime scene investigation is -- the way that I've been trained and the way that I've done it for twenty some odd years was to -- you start at the outside of the scene and kind of work your way in. You almost picture it like a big circle. So you kind of look around the outside and then you kind of work your way in. And if you're working a death investigation, typically where the body's located is gonna be the center of the crime scene -- or the center of the circle. Because if you think about it, if you go in there you could be disturbing or destroying evidence as you walk in there, so if you're doing it textbook, so to speak, then you're gonna start working from the outside. So taking pictures and as you're taking pictures and looking, are you seeing things that are out on the perimeter or as you work your way in the middle that may be evidence that needs to be collected or analyzed. Again, this is just another photograph as we kind of worked our way in. You can see there's a path there and, again, you know, this time of year the weather was cold, damp, rainy, you've got a lot of pine straw, a lot of leaves and things on the ground there.

Q. Were you able to actually visualize that path?

A. I mean, it's pretty apparent and you can kind of see on the edge there towards the back that it looks like the ground's a little bit darker and that -- maybe not so many

leaves and pine straw there. But, again, we were being directed. The sheriff's office was telling us this is where we went and we ended up finding most of the remains at this location. And then this kind of --

Q. State's Exhibit 44.

A. I'm sorry. This kind of takes you, again, another few steps forward and we're looking at the dark spot on the ground. It's been my experience from other crime scenes where decomposed bodies have been left outside that as the body breaks down body fluids and stuff start to leak out of the body and they end up being absorbed by the ground. And, again, in this instance you can see the dark -- I mean, it looks like dark, rich soil, but that's whatever body fluids came out and kind of left that stain.

Q. All right. And, Agent Curtis, is it possible for you to estimate how many crime scenes you have worked as an agent for the State Law Enforcement Division?

A. Just a number off the top of my head, I mean, I worked there for eight years within the crime scene unit and there was anywhere from eight to ten of us and we would routinely rotate on-call, so you were on-call at least one week, if not two weeks, a month. I would conservatively estimate 250 to 300 death investigations that I was a part of in the course of my employment.

Q. All right. And can you tell us whether or not that

include situations where a victim is deceased and has been left outdoors?

A. I've worked multiple scenes where they've been outside where someone's been taken into woods or someone's been partially buried, those kinds of things. I can't provide you a number out of the total that I've worked and I've worked many death investigations.

Q. Prior to this -- prior to this investigation in this case?

A. Yes, ma'am. I mean, at this point -- I had been working at SLED for four years at that point, but I also -- I guess I should have said this earlier. Prior to working at SLED, I was a robbery homicide detective at Richland County Sheriff's Office in Columbia and I also spent two years in their crime scene unit as well. So, I mean, I'm very familiar with working death investigations in different environments and outside I've worked several.

Q. Now in working this scene and looking here at the location where -- that you've identified as where the body fluids would have stained the ground, around that area is there an open area within that wooded area?

A. You mean like with -- with the trees separating --

Q. Correct.

A. -- I mean, that kind of thing? This was a little bit of a clearing to me it looked like because we kind of came

through a path. I mean, this wasn't a heavy forest area, but as you come through there's the scrub pines and the trees and some bushes and things like that as you kind of come through the path. And I don't know if maybe cows and stuff might, you know, make their way through that kind of stuff or not, but it was -- there did seem to be a bit of an opening.

Q. Okay. So this clearing here lies within that path?

A. Yes, ma'am.

Q. The path that we had seen earlier?

A. Yes, ma'am.

Q. All right. I'm gonna move on now and ask you how you went about documenting anything that you found at the scene.

A. Okay. Well, we take general overall photographs trying to show the scene as best we can, how we find it, and then after we do that then we go through and if we find pieces of evidence or things that we think are gonna be of value to the investigation or need to be analyzed, we will mark those or put a marker next to those and then take photographs of those, kind of a general photograph to try to orient it with a picture and then we try to go and take a closer picture so you can actually see the detail of whatever items we're focussing on.

Q. All right. And how do you by hand actually document

anything that's been recovered from a scene?
A. Well, through notes and through crime scene sketches.
Q. I'm gonna show you what is currently marked as State's Exhibit 49 and ask you whether or not you recognize it?
A. This is an enlargement of the crime scene sketch that I did from that crime scene. It's got our case number, the location, my name on it.
Q. All right. And you drew that yourself by hand?
A. Yes, ma'am.
**MS. MAYES:** I believe this is already in evidence, Your Honor, without objection.
Q. So this is State's 49, Agent Curtis. I'm gonna ask you to take us through what we are looking at here. I'll move it a little bit closer.
A. One of the purposes of doing the crime scene sketch, even with all of the photography and things that we have available, particularly a scene like this, it covers such a fairly large area that it may be difficult to visualize the relationship of items within the crime scene, so this kind of helps with that. Because, I mean, I could stand out here at the road and take pictures and, you know, I don't know what you'd end up seeing, maybe a few bushes and pastureland. This was pretty extensive from going off the road, through the bushes here and then to the gate, but it kind of ties -- the photographs and then the items and

then my notes kind of ties that together. So, you know, thinking about some of the pictures, my truck was probably parked in this general vicinity and here's the gate. And so we took some measurements just to give an idea of where some items were located. And, again, this is not an architectural drawing to scale or anything like that, but it gives you a rough idea of where the items are kind of in conjunction with the road, how far we went in and some of the distances between some of those items.

Q. All right. And then you mentioned before that you go about actually documenting anything that's found with a placard number and then photographs; is that correct?

A. Yes, ma'am.

Q. And then you also documented it here on this diagram?

A. Yes, ma'am.

(State's Exhibit Number 50 through 60, photographs, were marked and admitted into evidence.)

BY MS. MAYES:

Q. I'm gonna show you some additional photographs. They are marked. If you could just take a look at them. This is State's 46, 47, 48, 50, 51, 52, 53, 54, 55, 56, 57, 58, and 60.

A. These are midrange and close-up photographs of the items that are designated on the crime scene diagram. Like I said, we would have gone through and taken pictures of

them generally and then closer up and then put the placards in and then repeat the same process.

Q. All right. How did you go about actually looking for items and what area were you searching?

A. Again, we were specifically asked to come out and try to assist in finding some projectiles. So as they're leading us in, I think it was Sergeant Doran that took us in, but, we were, you know, walking through and he was kind of saying this way and we ended up finding the body up here and it was obvious from the stain on the ground in the clearing and just, you know, being careful where you walk and look. The time we got out there I think it was 3:00, 3:30, so we had some daylight and we were still doing most of this during the daytime. Just visually looking. And, like I said, this was a specific function that we were doing at this particular crime scene, but we were also looking; is there anything that, you know, we could find that was there that may have been helpful that was overlooked earlier.

Q. All right. So looking behind you State's Exhibit 45, which is currently on the overhead, can you show us what area generally you were searching there?

A. How do you work this thing?

Q. (Demonstrating.)

A. Right here?

Q. Uh-huh.
A. All right. So specifically this area back in here, I don't know if you can see that, right in this area -- I mean, you see how dark that this dirt is? And there's really not much leaf cover or pine straw on that and you can see a little bit of that over here. So this is the area that was pointed out to us that this is where the body was recovered and just through experience looking at that, so that's where we're gonna focus on. Again, our purpose for being there was to try to find additional projectiles.
Q. All right. Was there any search conducted of the entire woods or a one mile perimeter, for example?
A. We did not, but I'm not sure what had occurred before.
Q. Okay. And why is it that you were limited in your search?
A. Well, I mean, we had that specific function. Could you come and do this for us? I mean, you've got the equipment to do this and you-all have done this before, so we had the expertise and equipment to facilitate what they were wanting.
Q. All right. And tell us looking here at your diagram what's the first placard that you mark.
A. Well, coming in past the gate as we're going in, we found -- we marked it with Number 1, but it was some blue

denim material. Again, it might be a little bit difficult to see, but in this particular photograph you can see this right here that obviously was something that wouldn't normally be out there. It looked like it may have been from a blue jean -- a pair of jeans, a jacket, something like that. It appeared to be denim material.

Q. All right. And what's the next item that was marked?

A. And, again, you can see the distance, I mean, just to give us an idea going in, but twenty-six and a half feet and then another seven feet four inches was a second item we found that appeared to be a buckle, so we put a second marker there.

Q. All right. So we're looking at it from a distance?

A. And, you know, you can see how much the leaves and the pine straw are there, so some of this, is this a stick or is this a bone, but in looking at it you can -- you know, it looks like the end of it there is broken off. And here's a closer up view. It looks like a bone to me and it looks like maybe animals or something had been chewing on it as well. So that was something that shouldn't normally be there, so we took photographs of it and collected it.

Q. All right. And what's the next item that you recovered and marked?

A. In moving forward to Placard Number 3 was another piece of something that appeared to be bone.

Q. And here's a distance shot in relation to what you've identified as the bodily fluid stain.
A. And as I say, again, you might be able to just barely see this right here, this white or light colored object right here didn't look like it belonged there.
Q. And a close-up, State's Exhibit 56.
A. And, again, a little bit closer photograph and you can see with the placard number and that appeared to be possibly be a bone or something that we needed to at least take out of the scene.
Q. Okay. And moving now to the next marker, Number 4.
A. Number 4 is another eight feet two inches or so, but that's another piece of bone or something that appeared to be a bone and so, you know, we're moving deeper into the -- or further along the path, to Number 4, right here. Again, something that didn't look like it should have been there. So I think you can see this thing right here.
Q. State's Exhibit 58 is a closer view?
A. Closer up you can see it. It looks like -- again, it's -- to me it appeared to be a bone and you can see maybe where the edges are sharper where something had been chewing on it. It was something, again, that wasn't -- or shouldn't have been there, so. You know, a lot of this is -- during the investigation of crime scenes, you're not sure what may be valuable or what may not be, so out of an

abundance of caution you're gonna take some items that may be of assistance to the investigation later on or may not be. I can't leave it and then go back later, so we went ahead and collected these things.

Q. All right. Now you mentioned that your primary purpose at the scene was to attempt to recover any additional projectiles?

A. Yes, ma'am.

Q. What is the process for doing that?

A. The information that I had been told was that the victim had been shot multiple times. Part of that occurred maybe when he was kneeling or down and so they were particularly concerned was there any of the projectiles or spent bullets in the ground and in doing that, you know, it's not hi-tech equipment, but we had a sieve basically and shovels. So we got the sieve or the sifter as we call it. It's a couple pieces of two by fours with some mesh wire strung across it and we dig -- you know, kind of go slow, but we dig, you know, a shovel full of the dirt, throw it on the sifter and rock it back and forth trying to get the dirt to sift out and any items that were in the dirt hopefully will be left on the screen. And here's a picture we took. This is just an example of the equipment that we were using to dig with.

Q. State's Exhibit 50.

A. And then try to work those through the screen and if the item is hard enough and big enough it won't go through the small openings on the screen and so then we start looking at it closer and it's -- it takes a little while to do, you know, a shovel or two here or there, but we try to do it -- particularly like with this, with the dark stain on the ground, this is where we focussed our attention at and just a couple of shovel fulls at a time kind of working our way down fairly slowly hopefully not to miss anything.

Q. All right. And then looking back here at your diagram of the scene, were any additional projectiles recovered?

A. Yes, ma'am. Placards 5 and 6 over to the left of Placard Number 4 and that would have been in the middle of the dark stain that was on the ground.

Q. Take a look back at 45.

A. In this area here we would have dug -- tried to dug up all of that, like I said, going slowly, a couple of shovel fulls in there and sifting through it and then moving on and then working our way back and forth as we went a little deeper. But those two projectiles were recovered probably about six inches or less in the ground. They weren't very deep. And those were the only two that we were able to find within that small area.

Q. All right. We're gonna take a look at State's 47 and 48. Starting with 47, what are we looking at here?

A. This is a picture of my hand with gloves on and the object in the middle there I'm holding, and I really couldn't think of a better way to do this. As we worked through the little pieces of whatever was in the sifter, this was one of those objects that wouldn't go to through the screen and it was very hard, so we pulled it out and just by looking at it, it appeared to be a projectile or spent bullet.

Q. And throughout your law enforcement career, you're familiar with the appearance of projectiles?

A. Yes, ma'am.

Q. Including fired projectiles?

A. Yes, ma'am.

Q. All right. I'm gonna ask you about State's Exhibit 48.

A. Here, again, that's my hand with gloves on it, but you can see the difference in size, but that is a -- in my opinion was another projectile that we dug out.

Q. And generally what can you tell us based upon your observations about the condition of these projectiles?

A. Just from working crime scenes over the years they appeared to be in fairly good shape. You know, a lot of times they're -- depending on the type of ammunition and manufacturing and stuff pieces of the bullet will splinter and hit something, the copper jacket may come off, that

kind of thing. These appear to me to be, like I said, in fairly good shape and the projectiles seem to be intact.

Q. All right.

A. This is how I picked them up and this is how I left them. I'm not a ballistics expert or firearms examiner, so we collected those and then packaged them up to be taken back to SLED for the firearms department to look at, so I'm not gonna clean them up, try to rub the dirt off or anything like that because that may end up damaging some of the markings on the bullets that the firearms examiner will use.

Q. All right. And based upon your observations they appeared to be without any fragmentation?

A. To me, just looking at them at the time, I mean, they were what I would consider to be in very good shape.

Q. All right. And that's gonna be State's 5. I'm sorry. According to State's Exhibit 49, that's gonna be Items 5 and 6 as depicted here on your diagram?

A. Yes, ma'am, they are.

Q. Located up here?

A. Yes.

Q. And according to the photo we looked at previously within that stained area on the ground?

A. Yes, ma'am.

Q. All right. And moving on now to Item 7.

A. And then Item 7 was just another -- and as you can see, I mean, we went beyond where Number 4 was, which was a piece of bone and two projectiles, kind of to the left about ten feet, a little more than ten feet away. Again, just a general looking, we found another piece of the denim material about fifty feet away from Item Number 4, so we put those in an envelope and brought them back.

Q. State's 59, 60 and 61.

A. And, again, I mean, this was a close-up of placard Number 7 was where this denim material was from and you can see there was a couple of pieces there and they appeared to be torn. Again, I don't know if that was from a pair of pants or a shirt or a jacket or something, but it was obviously something that, you know, was not normally gonna be found out there and then with the information that we knew about the death scene and all that made it probably worth looking at.

Q. All right. And finally, Agent Curtis, looking here, again, at State's 45 you were focussed primarily on the stained area?

A. Yes, ma'am.

Q. Beyond that did you go very fair into an extended perimeter into the woods?

A. No. I mean, you know, you've got that and then we looked -- just generally looked around, but we were not

there to process the crime scene, this had already been done by Edgefield County, and they were requesting us to come out there specifically to try to find the projectiles and then more than likely the projectiles are gonna be where the body is, anything from that, and specifically the information that he was kneeling or laying down when he was shot multiple times would lead me to believe that the projectiles were probably gonna be in the ground, so that's where we're focussing. That was our objective and that's what we were focussing our evidence on.

Q. All right. And then beyond the stained area on into the clearing and beyond, was there any evidence that the foliage that we see there on the ground was freshly laid?

A. Not that I recall.

Q. But you did see evidence of pine straw?

A. Yes. I mean, there was -- you can see the pictures there. And, again, being it was January we're talking about where the trees had shed their leaves. There's always pine straw falling except you can see the difference there where the body had laid versus the area off of that path a little bit. I mean, we looked as we were there. Like I said, just a general looking around, but as far as an in-depth, detailed crime scene search of an area much farther away from the body we really didn't do that.

Q. All right. And looking here at the various branches,

did it appear that the leaves had fallen -- were fallen there?

A. Yes, ma'am. I mean, it was January, so. Again, some of these pictures show you trees. There's not very many leaves on them at all, so you're working in an area that had, you know, quite a bit of pine straw, leaves and stuff like that on the ground.

Q. All right. Thank you, Agent Curtis. You may return.

A. (Witness complies.)

**MR. BLOOM:** Judge, I hate to interrupt. May we request a short bathroom break?

**THE COURT:** Indeed.

**MR. BLOOM:** Thank you.

**THE COURT:** Very well.

We'll take a short break. We'll take about five minutes. Please step to your jury room. Do not discuss this matter or allow anyone to discuss it with you.

(Whereupon, the jury retires to the jury room at 3:28 PM.)

**THE COURT:** All right. I'll just remind you, you can take a break, too. You just can't discuss your testimony.

**THE WITNESS:** Thank you.

(Recess taken.)

(State's Exhibit Number 61, 62 and 63, photographs, were marked and admitted into evidence.)

(State's Exhibit Number 64 and 65 were marked for identification.)

**BAILIFF:** All rise.

**THE COURT:** All right. Is the State ready?

**MS. MAYES:** We are, Your Honor.

**THE COURT:** All right. And the defense?

**MR. McGUIRE:** Yes, ma'am.

**THE COURT:** All right. Very well. Bring the jury in, please.

(Whereupon, the jury returns to the courtroom at 3:50 PM.)

**THE COURT:** All right. Ms. Mayes, you may continue.

**MS. MAYES:** May it please the Court?

**THE COURT:** Yes.

BY MS. MAYES:

Q. Agent Curtis, you've taken us now through the recovery of various denim debris, bone from the area, as well as the recovery of two projectiles that we saw in those photographs. What did you do after you photographed the recovery of those projectiles that we saw in those exhibits?

A. We collected those. The process that we used in terms of packaging projectiles from crime scenes is we would wrap them in tissue paper and then place them in a metal tin and seal the tin and put some markings on the

exterior of the tin and take those back to Columbia to the forensic laboratory and route them to the appropriate department and they would do any analysis on them.

Q. All right. Now such as we see here in State's Exhibit 47, looking there at one of the projectiles recovered?

A. (Nods head.)

Q. I'm gonna show you what is State's Exhibit 64 and 65, and if you'd hold onto those for a minute, and tell us whether or not you recognize those items.

A. These are the containers that I would place the projectiles in. The exhibit number's covering part of it, but I can see my initials. And then once they're inside, then we put seal tape around them and my initials and the date of 1-23-02 is on both of the containers.

**MS. MAYES:** This will be 64 and 65 for evidence.

**MR. McGUIRE:** She can put them in, Judge. No objection.

**THE COURT:** Thank you. Very well.

(State's Exhibit Number 64 and 65, projectiles, were admitted into evidence.)

BY MS. MAYES:

Q. Now, Agent Curtis, we've seen these depicted in the photographs, but if you could tell us what we're looking at with the actual item of evidence.

A. We're looking at one of the projectiles and that's the second projectile. That looks to me like that might be the one that's in that photograph right there.

Q. You may return to your seat.

A. (Witness complies.)

Q. Now, Agent Curtis, upon recovery of both of those projectiles, you mentioned that they were maintained as evidence for potential analysis, but was a gun ever recovered in this case for comparison analysis?

A. No, ma'am, not to my knowledge.

Q. Then I want to move on and ask you a little bit more about the scene. I believe we were looking at State's 44 earlier. Looking here at this particular exhibit, you mentioned that you searched along this area here?

A. Yes, ma'am.

Q. And that's where the sifting was conducted for the recovery of those projectiles?

A. Yes, ma'am, it was.

Q. But if a gun is fired and a projectile doesn't hit a particular objection, how far may it travel at any particular crime scene?

A. I mean, again, I'm not a firearms expert, but just through my experience as a police officer firing guns and target shooting and that kind of thing, I mean, they can travel literally a mile -- more than a mile or so if they

don't strike anything before they're -- the energy dissipates and they're pulled down by gravity. So if someone was shooting at a crime scene here and didn't strike a person or a tree or the ground, I mean, it could be miles away.

Q. All right. Is there any way to know for sure that every projectile was recovered from this scene?

A. No, ma'am. We did not take a backhoe and dig up the entire pasture. I mean, like I said, I was working with a sifter that was probably about yea big and I had a fellow working with me and we had two shovels and were kind of working through a shovel full at a time. So, again, you know, the objective was to try to find the projectiles. They were able to point out the location where the body was, which we confirmed by looking at the dark ground there where the body fluids and -- what appeared to be body fluids had been absorbed into the ground. That's where we're gonna focus. The information that I was provided was that the victim was taken there and shot multiple times or possibly he was kneeling or fell and was shot some more. So, again, looking at that, that's the most likely location that I'm gonna find the projectiles. Again, during a cursory look looking at trees and that kind of thing, we didn't notice anything that looked like it maybe ricochetted or hit on anything like that, so I'm

gonna search the most probable likely area that I'm gonna find those pieces of evidence.

Q. All right. And then this area that would be here around the perimeter, would that area have been sifted?

A. No, ma'am. We're talking about a very large circle and a very large area. You can see just on the items that I put a placard by and measurements where we're talking about walking past the gate roughly a hundred feet in, maybe a little bit more. That's a large area to try to shovel and sift. If there was anything to indicate there may have been some other locations, we would have looked at it, but I couldn't find anything when we did our cursory examination.

Q. All right. So you recovered 5 and 6 right there from the stain in that area?

A. From the darkened area of the ground, yes, ma'am.

Q. All right. Now when it comes to a semiautomatic weapon, we may have casings left behind. Can you tell us what, if anything, may affect your ability to recover casings at a crime scene?

A. Casings -- shell casings that are ejected by semiautomatic guns are a problem. I had seen at one of the trainings I attended a guy that was doing crime scene reconstruction talking about shell casings and stuff. I did a little video where he had a gun shot twenty times

and none of the casings came out and fell in the same location even though he's holding the gun in basically the same spot. It's been my experience even inside a house you'll find casings in all kinds of funny places. You're talking about a fair amount of force behind ejecting them out and whatever they hit they bounce around, and that's if you're using a semiautomatic handgun at this crime scene. If a revolver is used, you're not gonna have any casings.

Q. All right. I'm gonna show you what is State's Exhibit 45. So, for example, if people are here beyond the clearing firing the gun and there are casings, would you necessarily recover those during your search in January?

A. At this point we're talking about, I don't know, two months roughly after the incident occurred. I don't know if they're buried beneath the pine straw, in the leaves. I mean, looking generally we didn't see anything, any shell casings there where they might have flown off where the person's standing and where they might be at.

Q. What are some examples of directions in which a casing may go after a semiautomatic weapon is fired?

A. Well, I mean, generally they come up and they go out and most of them, I think, eject to the right, but, I mean, during firearms training, I mean, I've had them where they fly back over your head. If there's somebody standing there and they hit a person or they hit a tree, they bounce

off of them. I have seen instances where people have walked around in a crime scene and they get home at night and they take their boot off and there's a shell casing lodged in some of the lugs. I don't know if somebody stepped on one and it was pushed into the dirt or if there was any shell casings there at all. Again, if somebody was using a revolver, there would not be any casings there. So the thing with casings ejecting out of a semiautomatic firearm, there's no rhyme or reason has been my experience.

Q. All right. And, again, this area here depicted in State's 45, was this area here beyond the stain searched extensively?

A. Just a visual examination on the top. We didn't, like I said, specifically. Our objective was not to reprocess this crime scene, but to assist them with trying to find projectiles at the point that they knew the body or most of the body had been at that location. And, again, when I got there, I agreed with them that that is the main area because, again, the discoloration indicates as the decomposition occurs, the body fluids are exiting the body and being soaked up into the ground, that's gonna be the best place to find projectiles and that's what we were there for.

Q. And, again, so that visual examination of the surrounding area would have been conducted in January for

a homicide that occurred in September?
A. Yes, ma'am.
Q. Thank you. You may return to your seat.
A. (Witness complies.)
Q. You mentioned that you are currently trained and working as an analyst in latent prints?
A. Yes, ma'am.
Q. During this point in time in which you conducted this examination and processed this scene here in January of 2002, what, if any, opinion did you reach about whether or not any of the items recovered were sufficient for the recovery of latent prints?
A. None of the items that I recovered, the two projectiles or the pieces of denim that we collected and returned back to the forensic laboratory with SLED, would have been appropriate for processing of latent prints.
Q. Why is that?
A. Well, I mean, the denim material is a problem in itself. Latent prints, fingerprints that are left at crime scenes, most of the time are left in sweat and oils off the fingers and so we're talking about a very fragile piece of evidence, but if you're touching like a piece of cloth or something, that's gonna absorb that. And so being able to recover that and enhance that, a fingerprint that would be on a pair of blue jeans or whatever it was; I've never sene

that done. I think that's pretty much impossible.
Q. All right.
A. The problem with the projectiles is if there was any fingerprints on them that would have been placed on there prior to them being discharged from the gun. When the projectile exits the gun, it's basically an explosion, so you're looking at a lot of heat, fire, and then the projectile comes out of the barrel and you're talking about wind friction and then if it strikes a body, a tree or the ground, it's gonna wipe off any if there was any fingerprints on there. I've never processed a fired projectile for latent prints during the course of my career.
Q. All right.
A. It just doesn't seem to make any sense.
Q. And then in discussion of any items recovered from that scene, whether recovered by Edgefield in November, being the casing or the projectiles that you recovered in January, was touch DNA a form of analysis that was available to the State Law Enforcement Division back in 2001 and 2002?
A. No, ma'am, it was not. As a matter of fact, I left the crime scene unit in 2006 and at that point we had not done that. There was not a protocol or process in place, so I never collected any touch DNA material from a crime

scene that I processed during the timeframe that I was in the crime scene unit.

Q. And when we're talking about touch DNA, that's potentially to trace back to anyone who may have handled an item?

A. Yes, ma'am.

Q. And when we're talking about items that have been outdoors in the elements for months at a time, can you tell us whether or not pursuant to SLED's mission guidelines those items would be suitable for further testing such as latent prints or DNA?

A. Well, generally you're looking at the discretion of the investigator or the analyst in looking at it, but for the most part if you're talking about things that would have be found in an outdoor crime scene like these shell casings or something like that, the elements are a real detriment to recovering any latent prints or even DNA material. Exposure to sunlight, heat, humidity, dampness. That day, in particular, it was misty, raining a little bit. Those things are gonna severely inhibit the ability to retrieve prints or DNA material off items. So if something appears to be from a scene that was outdoors and for an extended period of time, generally the chances of getting any of that material off of that is gonna be nil.

Q. All right. And then finally, Agent Curtis, let me ask

you would latent prints or DNA on a casing or a projectile ever tell us who fired the gun?

A. Well, generally when you're looking at latent prints or DNA being on a casing, that's the person that loaded the gun; did they load the magazine or put the bullets in the cylinder. That's not necessarily the person that fired the gun. I mean, if you got a fingerprint or touch DNA off of a trigger, then it's probably gonna indicate that person handled and fired that firearm, but on the bullets, no. I mean, it doesn't necessarily equate to that's the person that fired that weapon.

Q. Okay. And so to identify the person that fired the weapon, you would actually need the weapon for processing and analysis?

A. Yes, ma'am. That would be the best bet.

**MS. MAYES:** Nothing further.

**THE COURT:** Cross-examination?

**MR. McGUIRE:** Yes, ma'am. Thank you, Your Honor.

**THE COURT:** Yes.

CROSS-EXAMINATION

BY MR. McGUIRE:

Q. Agent Curtis, I appreciate your expert testimony. Does anything that you testified about connect Steven Barnes to the death of Samuel Sturrup?

A. Nothing that I personally collected, analyzed or, you

know, had anything to do with was not used in an analysis that would directly connect Steven Barnes to this.

Q. I'll take that as a no.

A. No. That's correct.

Q. All right. I appreciate that. I'm gonna ask you some questions, just general knowledge questions, about shell casings, projectiles, that sort of this. Now you collected two projectiles?

A. Yes, sir.

Q. And you're aware that a shell casing was recovered?

A. Yes, sir.

Q. Okay. And it was a 40-caliber shell casing?

A. I knew a shell casing. I didn't know specifically what caliber.

Q. Okay. And you're aware that the shell casing is a fired shell casing?

A. That's the definition of a shell casing.

Q. Exactly. Now when we're talking about comparing things, and the prosecutor asked you about comparisons of firearms and bullets and such, if you recover a shell casing and you recover a gun you can test fire the gun to see if it's the gun that fired the shell casing at the scene, correct?

A. Yes, sir, you can.

Q. Okay. And that's because when you fire a gun the

gun's gonna put marks on the casing?
A. Yes, sir. When the hammer falls on the back of the shell case -- or the cartridge is what a live bullet is, the tool marks from the hammer striking the back of the cartridge will leave microscope indentations that firearms examiners can use to match up between a casing and a gun or a test-fired casing from a specific gun.
Q. Sure. And when the cartridge is struck and there's an explosion in the barrel, there's also other marks that are put on the shell casing, the back of it?
A. The shell casing, it's my understanding from my limited firearms experience here in reading and working crime scenes, the hammer striking the back of the cartridge will leave a mark, all right, and then when a semiautomatic handgun is used and the shell casing is ejected, there's a piece of metal, I think it's called the extractor rod, will actually pull that and kick it out. That also leaves marks on the shell casing.
Q. Sure. And I know you're not an expert in ballistics or tool mark comparison, however, you are familiar with cases where experts from SLED have testified we recovered this shell casing at the scene, we recovered a pistol someplace else, we test fired it and we can say that's the gun that fired that shell casing?
A. Yes, sir. I'm aware of that, yes, sir.

Q. All right. And with regard to projectiles, the same thing?
A. When a bullet or the projectile is exiting the barrel, it's rotating and it comes out and it will pick up tool marks that are inside the barrel which will transfer onto the projectile itself. It's the same process. If I test fire a gun, I have a test projectile I can look at -- or a firearms examiner can look at that under a microscope and see if they were fired by the same firearm.
Q. Exactly. And you testified that the projectiles that you recovered in this case were in very good shape?
A. To my limited knowledge from crime scenes, they were not splintered and were not fragments. They seemed to be fairly whole.
Q. And they weren't mushroomed out?
A. Not that I could tell, but as you can see in the pictures there was a good bit of dirt and I'm not gonna clean them, again, because what if there's sand and stuff and I start rubbing, am I scratching the surface of the projectile, is that gonna inhibit what the firearms examiner may be looking for? I mean, I don't know. So in that instance, you saw how I had them. It went from my hand like that with dirt. I think even in the cannisters now there's a little bit of dirt still on there. I wrapped them up in the tissue paper and put them in the cannisters.

Q. Exactly. They're in the exact same condition they were in when you put them in this cannister?
A. It seems to be. Yes, sir.
Q. As far as you can tell they've not been altered?
A. Not that I can tell. No, sir.
Q. Or tested?
A. No, sir.
Q. Okay. Now sometimes projectiles at a scene are compared to each other to say that they were fired from a single gun, and that could have been done in this case, right?
A. That I'm not aware of. I don't know. A firearms --
Q. All right. Well, let me back up a little bit.
A. Well, let me explain this. In latent print examination, I'm not gonna compare an unknown to an unknown. That's -- we don't do that, so I don't know if that's a case protocol where firearms examiners don't or maybe they do. That's ignorance on my part.
Q. Sure. Well, if a -- if a projectile is test fired from a pistol to be taken and then compared to another projectile that's fired that's recovered at a crime scene, that is what they're doing, they're comparing one projectile to another to say the same gun fired both, right?
A. That seems to make sense to me, yes, but like I'm

saying protocol-wise I don't know that they would do that or not. I mean, they may and I don't know. I haven't worked in the firearms department, so. Again, I know that we've been asked in a latent print capacity does this fingerprint from this burglary look like the same one? I'm not making that comparison. If you have a suspect, I'll compare both prints to the known suspect, I'll run it through the AFIS database to see, but I'm not comparing an unknown to an unknown. Maybe firearms examiners do that. I am not aware of that.

Q. Okay. So you're not aware of cases where a firearm's used in multiple crime scenes and the examiner looks at it and says the same firearm was used in all four robberies?

A. I personally, no, I don't. I haven't received that kind of information.

Q. So you're personally not aware of that?

A. No, sir. Personally I do not know that.

Q. Okay. Now you are aware, I imagine, that an examiner can take a look at a projectile and tell which guns are capable of firing that projectile and they can generate a list of, say, seven to ten firearms. Are you aware of that?

A. I am aware of that; that there are characteristics that are common among some guns so they may be able to say the gun that fired this was A, B or C brand, that kind of

thing.
Q. Exactly. Like a Glock has a polygonal pattern. Are you aware of that?
A. I see. You're talking about some technical stuff that I'm not aware of, but, yeah.
Q. Fair enough. So when a projectile goes through the barrel and it gets the rifling marks, the lands and grooves on it, that's what they're called, lands and grooves, only certain guns that are manufactured can make those marks, right?
A. Right.
Q. And the examiner can say I've looked at this projectile and I can generate a list and say only these seven firearms could make those marks?
A. I've seen that, yes, sir.
Q. Okay. Was that done in this case?
A. Not to my knowledge.
Q. Okay.
A. But then I would not receive a firearms report. Any reports would have gone out to the investigating agency. So once I turn the evidence in, they're not sending me reports and I'm collating them to different people. I issued my report for what I did and the firearms, if they did anything, would have directly sent that to Edgefield County.

Q. Okay. I'll take that as a no.
A. To my knowledge, there was not a firearms report issued that I'm aware of.
Q. All right. Now in your expert opinion, when shell casings are recovered at a scene and projectiles are recovered at a scene, it's your expert opinion that efforts should be made to collect all firearms possibly involved in the case?
A. That's the way I would proceed, yes, sir.
Q. Okay. Are you aware of any efforts to get firearms from William Harris?
A. No, sir, I'm not.
Q. If his car was searched?
A. I'm not sure.
Q. His house?
A. Again, I don't know about that.
Q. Did you ever receive a physical description of the gun that Mr. Harris used to put in Samuel Sturrup's mouth?
A. No, sir, I did not.
**MR. McGUIRE:** Okay. That's all I have for you. Thank you.

REDIRECT EXAMINATION

BY MS. MAYES:

Q. And, Agent Curtis, you are an agent with the State Law Enforcement Division?

A. Yes, ma'am.
Q. You have jurisdiction in what state?
A. South Carolina.
Q. Do you have any jurisdiction in the state of Georgia?
A. No, ma'am.
Q. Do you have any jurisdiction specific to Richmond County or Augusta, Georgia to conduct investigations over there?
A. No, ma'am, I do not.
Q. Or to interview suspects, subjects, eyewitnesses or any other persons over there?
A. No, ma'am, I don't.
Q. So your involvement in this case was limited to the crime scene in Edgefield County; is that correct?
A. Yes, ma'am.
Q. And just to clarify and follow up a little bit on some of that questioning, in order to conduct ballistics, a true ballistics match between a fired projectile and a gun, that gun needs to be recovered?
A. That's what you -- you're gonna use, yes, because you're, again, comparing an unknown to an unknown and I don't know what that tells you other than I guess you could say they were fired by the same gun, but what gun is it?
Q. And if guns are destroyed or discarded, that would

prohibit the ability of any analyst to make that match, wouldn't it?

A. You're missing a big piece of that equation, yes. So if you can't find the gun, then doing a comparison to say that projectile was fired from this gun is impossible.

**MS. MAYES:** Nothing further.

**THE COURT:** All right. Any recross?

**MR. McGUIRE:** No, ma'am.

**THE COURT:** Thank you so much. Is this witness free to leave or any objection?

**MS. MAYES:** None from the State, Your Honor.

**MR. McGUIRE:** No objection, Your Honor.

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

(Witness excused.)

**THE COURT:** All right. Call your next witness, please.

**MS. MAYES:** The State calls Charlene Thatcher.

Your Honor, may we approach?

**THE COURT:** Of course.

(Proceedings held at the bench; not reported.)

**THE COURT:** Ladies and gentlemen, there's a matter that I must take up outside your presence. And here's my concern. My concern is that we very well may have twenty minutes. I want to let you go home. You-all have been so wonderful and so attentive and I'm so glad you-all

are complying, and so I think what is appropriate is that I give you some instruction, let you go home, let me do the work that I need to do, and it very well may be that it will shorten things up and so that's a good use of our time.

You know, does anybody remember that old television show Ally McBeal? At some point they would say "Can you say it with me", you know, and by the time I've finished giving the jury the instruction about the fourth or fifth time, I almost want you to say it with me.

Do not discuss this matter or allow anyone to discuss it with you. You know, you're gonna go home tonight and you do realize that the curiosity is gonna be heightened about what you have been up to today. Please remember that you cannot discuss this matter. Please don't think oh, nobody will know. The truth of the matter is that it is an abrogation of your duty if you were to talk about this matter, so I'm just going to reiterate that to you. Please though don't anybody get upset with you. Put it on the judge. Tell them it's the judge's fault and let them get upset with me. I don't want anybody upset with my jurors, so. But I will tell you that it is very important that you not discuss this matter or allow anyone to discuss it with you.

Don't do any Columbo, no research, don't go on the

Internet, which I know is difficult because all the information all over the world for everything is right at our fingertips, but that would be also an abrogation of your duty. You must receive all of the information from which you will make up your mind here in court while court is in session or our system will not work correctly, and so I want to remind you of that as well.

Cell phones. Cell phones. Just remember to leave your cell phone somewhere other than the courthouse. If it follows you in in the morning, just please remember to give your cell phone to one of our bailiffs and they will, of course, keep that for you.

Do not communicate about this matter. That means the Internet, social media, as well as face to face conversations over the telephone. And also please do not read anything about this matter or listen to anything about this matter. That could be the radio or the television or the Internet, newspapers, so please do be mindful of that as well.

Ladies and gentlemen, I probably should ask the question. We may have a few things at 9:00 I'm told. I have a few things at 9:00, but we'll be ready by 9:30 though. I'll see you in the morning at 9:30. Have a great evening. If you will leave your notepads in your seats.

(Whereupon, the jury is excused for the day at 4:21 PM.)

**THE COURT:** All right. So just so our record is clear, I have excused the jury for the purpose of listening to the testimony, and the issue is whether or not there is any relevance and if there is any relevance does the prejudicial effect overcome any probative value with regards to the type of employment of the next witness.

What is out is any discussion with regards to any sort of prostitution ring. What is being questioned is whether or not it's appropriate for me to allow her to testify, not that -- and I would not exclude that she works or worked, I should say, for Mr. Barnes. It's just the capacity in which she worked that for me is the issue, okay? It's basically about the employment. I mean, everything else that you-all were concerned about ab initio, those are out?

**MR. McGUIRE:** Yes, ma'am.

**THE COURT:** It's just limited to this.

**MR. McGUIRE:** Yes, sir.

**THE COURT:** All right. Call your witness.

**MS. MAYES:** The State calls Charlene Thatcher.

**THE CLERK:** Place your left hand on the Bible and raise your right hand.

(Whereupon, Charlene Ann Thatcher was duly sworn by

the Clerk of Court.)

**THE CLERK:** Thank you very much. State your full name and spell your last name for the record.

**THE WITNESS:** Charlene Ann Thatcher, T-H-A-T-C-H-E-R.

CHARLENE ANN THATCHER,

having been duly sworn, testified as follows:

DIRECT EXAMINATION (In-Camera)

BY MS. MAYES:

Q. And, Ms. Thatcher, right now we're outside the presence of the jury. We're just taking up a very limited issue, so I'm gonna ask you a few questions --

A. Yes, ma'am.

Q. -- about the time period of 2001. Specifically, September of 2001. How old were you in the first week of September 2001?

A. I was 18 years old, ma'am.

Q. And who were you living with?

A. Barnes, ma'am.

Q. Okay. And when you say Barnes, you're referring to?

A. My co-defendant, ma'am.

Q. All right. And how long had you been living with him?

A. A week, ma'am.

Q. And what were you doing? How did you go about meeting him and coming to live with him?

A. I was prostituting, ma'am.

Q. For who?
A. For him, ma'am.
Q. When you say that -- that you were prostituting, did you have a home of your own?
A. No, ma'am.
Q. Did you have money of your own?
A. No, ma'am.
Q. Who provided money to you?
A. He did, ma'am.
Q. And who provided a home to you?
A. Barnes, ma'am.
Q. And who provided transportation for you?
A. Barnes, ma'am.
Q. And during the course of that employment with him and residing with him, did you know him to possess any weapons?
A. Yes, ma'am.
Q. What type?
A. Guns, ma'am.
Q. Was that one or more than one?
A. More than one, ma'am.
Q. And were you still working in that capacity on the night of September 3, 2001, when you were in Edgefield County?
A. Yes, ma'am.
Q. Were you still working in that capacity when you were

in the woods with Mr. Barnes?

A. Yes, ma'am.

Q. Were you still working in that capacity when he asked you or directed you to fire a weapon at the victim in this case, Samuel Sturrup?

A. Yes, ma'am.

Q. And why did you do that?

A. Because I was afraid of him, ma'am.

**MS. MAYES:** Your Honor, that would be the extent of that line of questioning.

**MR. McGUIRE:** Judge, if I could ask a question or two.

**THE COURT:** Yes, you can.

**MR. McGUIRE:** Thank you.

CROSS-EXAMINATION (In-Camera)

BY MR. McGUIRE:

Q. Ms. Thatcher, my name is Bill McGuire. I represent Steven Barnes. Good afternoon.

A. Good afternoon, sir.

Q. I'm sorry to meet you under these circumstances, but I have to ask you these questions, okay?

A. Yes, sir.

Q. You didn't want to shoot Sam Sturrup?

A. No, ma'am -- no, sir.

Q. You're fine. You're fine. You didn't want to do that at all, did you?

A. No, sir.
Q. And you were out there in that field with your co-defendants, correct?
A. Yes, sir.
Q. And you were resisting pulling the trigger because you didn't want to do it, right?
A. Yes, sir.
Q. And your co-defendants were saying do it, do it?
A. No, sir.
Q. You don't remember that?
A. Barnes was telling me to do it, sir.
Q. Okay. And your status as a prostitute, that's not why you pulled the trigger, is it?
A. No, sir.
Q. I mean, being a prostitute didn't make you shoot Sam Sturrup, right?
A. No, sir.
Q. It was because you were afraid of Mr. Barnes?
A. Yes, sir.
Q. Because he had guns on him that night, right? He had a gun with him, right?
A. Yes, sir.
Q. And he was behind you making you pull the trigger, right?
A. On the -- he had a gun behind my back and he was on

the side of me making me pull the trigger, sir. Yes, sir.
Q. Right. And you didn't pull the trigger on Sam Sturrup because he gave you a place to stay or gave you meals or food or anything like that, right?
A. No, sir. I pulled the trigger because I was afraid of him, sir.
Q. Sure. If you were -- if you worked at McDonalds or were a landscaper or worked at a bank, it doesn't matter what you were doing because you pulled the trigger because you were scared of him?
A. It matters where I worked, sir, because it's a line that he worked in, sir.
Q. Sure. But your status as a prostitute didn't make you pull the trigger.
A. My status as a prostitute made me be in his --
Q. Sure. That's how y'all got together, right?
A. Yes, sir.
Q. Sure. But if you were just there because you came to his house with a friend and you just met him that night, you'd have still been so scared you'd pull the trigger, right?
A. Yes, sir.

**MR. McGUIRE:** Okay. That's all I have. Thank you.

**THE COURT:** Redirect?

REDIRECT EXAMINATION (In-Camera)

BY MS. MAYES:

Q. In follow-up, Ms. Thatcher, you testified that you were living with him, that you -- you were in Edgefield because of him. If you had resisted that direction, what did you believe would happen?

A. I would have died, ma'am.

Q. What makes you believe that?

A. Because he -- during that night he said that somebody was going to die. Barnes stated that somebody was going to die that night, ma'am.

Q. Had you been around him enough to believe a threat if he made it?

A. Yes, ma'am.

**MS. MAYES:** Nothing further. Oh, I'm sorry.

BY MS. MAYES:

Q. Had he ever hurt you prior to that night?

A. Ma'am, no, ma'am.

**THE COURT:** All right. Let me ask you to approach before I rule because I want to ask you about another line of questioning.

(Proceedings held at the bench; not reported.)

**MS. MAYES:** All right. Mr. Bloom has indicated they are not going to contest the arrest of both Ms. Thatcher and Mr. Barnes at the Cairo Court address. That's the address where there was video surveillance. Ms. Thatcher

is a witness to that, as well as the flight issue, but apparently there's no objection at this time.

**MR. BLOOM:** I think Ms. Mayes may have been out of the courtroom earlier when the Solicitor and I were here and I said we're not making Fourth Amendment arguments as to searches at the three residences.

**THE COURT:** Because it wasn't his house.

**MR. BLOOM:** We -- I don't know how far Ms. Mayes intends to go with this witness regarding the arrest at the Cairo Court house. We would still maintain our objection that the State not be allowed to go into the bars on the windows and the video cameras and make it look like a fortress or a bunker or a prison.

**THE COURT:** Well, were you planning to do that with this witness?

**MS. MAYES:** We would, Your Honor. She's a witness to that, as well as the law enforcement officer that conducted the arrest. She was present and was actually arrested at the same incident.

**THE COURT:** I got you. I got you. Well, there are pictures -- I understand there are pictures that show bars on the windows.

**MR. BLOOM:** Right. We don't contest the pictures because they -- anybody might have that.

**THE COURT:** Yeah. This is -- and I've given that

some thought and I don't -- let me -- let me finish with you since you are here and then I'll address that in just a second. They asked me to give a limiting instruction and I have to explain to you the why part, and in my experience when people understand the why, it's easier to not testify regarding what I'm gonna ask you not to testify to.

**THE WITNESS:** Yes, ma'am.

**THE COURT:** You've testified that you worked for Mr. Barnes in the capacity as a prostitute.

**THE WITNESS:** Yes, ma'am.

**THE COURT:** The fact that you worked for him, the fact that you lived with him, the fact that you had no other place to go, you did not have another home, that you did not have money at that time except for that money that was paid to you by him for working --

**THE WITNESS:** Yes, ma'am.

**THE COURT:** -- those issues are irrelevant. The fact that you lived there is relevant. The why you were there is not relevant.

**THE WITNESS:** Yes, ma'am. I understand.

**THE COURT:** Do you understand?

**THE WITNESS:** Yes, ma'am.

**THE COURT:** So you do not need to testify that you were working for him as a prostitute, okay?

**THE WITNESS:** Yes, ma'am.

**THE COURT:** There's no need for you to have to tell this jury that, okay?

**THE WITNESS:** Yes, ma'am.

**THE COURT:** But the other things I think are relevant; that you worked for him, you had no place to go. Those things you can testify to. Do you see what I'm saying?

**THE WITNESS:** Yes, ma'am.

**THE COURT:** So it's just that limited amount of information that you don't have to talk about, okay?

**THE WITNESS:** Yes, ma'am.

**THE COURT:** All right? You got it?

**THE WITNESS:** Yes, ma'am.

**THE COURT:** Very well. And we'll see you in the morning.

**THE WITNESS:** In the morning?

**THE COURT:** In the morning, okay?

I've got another issue I've got to talk about with these folks and do we need to have any sort of limiting instruction? I think if you-all are limited, then she's not going to -- it's not gonna be a problem.

**MS. MAYES:** Correct, Your Honor.

**THE COURT:** Very well. Okay. Thank you so much. Have a good evening.

**THE WITNESS:** You, too, ma'am.

**THE COURT:** And we'll see you in the morning, all right?

(Witness excused.)

**THE COURT:** I've given some thought and I think that you-all will pretty much -- I think you-all were pretty much -- there was some of the areas that there wasn't a disagreement. For example, it was my understanding that the State does not intend to call this residence a bunker?

**MS. MAYES:** Correct.

**THE COURT:** And the photographs show what's on the windows, there are bars on the windows, and there are photographs that are gonna show that. I believe that it is relevant to have whomever testify that there were video cameras on that house. I think it is also relevant to have -- to allow the testimony about the front door was -- I don't want to say barricaded because that's my word, that's not you-all's word, but given -- given the situation which existed on the front door and the tow truck pulled it off, the reason that I think that is relevant is as I understand the law, it is still allowed as testimony the issue of flight, and I understand that the proffer will be that when law enforcement arrested Mr. Barnes in the backyard that he was not gardening, he wasn't hanging up laundry, he wasn't walking the dog, he wasn't doing any of those things, but was in the active movement of flight, yes?

**MS. MAYES:** Correct, Your Honor.

**THE COURT:** All right. So I'm relying on that representation, okay?

**MS. MAYES:** Correct.

**THE COURT:** All right. And with that I think that it's relevant on the issue of flight because why. And I guess the question is why. Well, if you want to have a heads-up because you think you might want to fly -- have flight, you might want to have video and you might want to barricade your door and those would assist in the flight, and for that reason I think it's relevant. It is corroborative more so than anything the fact that he was -- I've got a view for a few seconds and it is corroborative as to those two issues to thwart the idea that he was out walking the dog or hanging laundry or working in the garden.

**MR. HUBBARD:** Thank you, Your Honor.

**THE COURT:** Okay. Noting the exception of the defense.

**MR. BLOOM:** Yes, ma'am. Please note our exception. I understand that the State can testify that Mr. Barnes is found exiting a window in the house and was found in the backyard.

**THE COURT:** Oh, it was a window? All right.

**MR. BLOOM:** I get all of that, that that goes to

flight.

**THE COURT:** I thought they had bars on them.

**MR. BLOOM:** There were some windows that apparently did not or they were -- could be opened from inside. I'm not sure. The police report isn't clear how he gets out a window when some of the windows had bars. I don't know if there were --

**THE COURT:** Hold on. I don't want to get -- I don't want to get blind-sided. You can answer this question for me.

**MS. MAYES:** My understanding is it would not be every window. In terms of the bars on the windows, I don't even know that the photographs depict bars on every window. That's the front entrance of the home. The flight is from the back entrance to the home. It was witnessed by Ms. Thatcher, as well as confirmed by law enforcement.

**THE COURT:** I know. But that's the door. Clearly the door -- talk to me about -- in other words, he's -- I just want to know -- I just want to be sure that I'm making a ruling based upon what the State intends to present. In other words, if he's exiting a window and the bars are on every window on the house --

**MS. MAYES:** I don't know that there would be testimony about bars on every window of the house. I don't know where that's even coming from. I know that there were bars

on the door.

**THE COURT:** Well, bars on a door and bars on a window are very different things.

**MR. BLOOM:** So --

**THE COURT:** So maybe we'll agree to don't testify about bars on the windows. I don't know.

**MS. MAYES:** That's not -- what we were looking to proffer testimony on, and ultimately testimony in front of the jury, was that he had a working surveillance camera system and that there was flight from a window. As to -- as to the bars, I don't know enough about the specifics of that to even offer testimony on that.

**THE COURT:** Okay.

**MS. MAYES:** I believe as Mr. Bloom indicated, there are bars and a camera on a door, but I don't know the specifics of that. I do know that there was forced entry through that door by law enforcement.

**THE COURT:** Oh, I'm with you completely, but I -- I'm chasing windows, not doors. And the reason is I just don't want it to be a problem. So can we --

**MS. MAYES:** We would not be offering any testimony about bars on windows.

**THE COURT:** About bars on windows. Okay. Bars on the front door and surveillance cameras is where we are. We're not going to talk about bars on the windows. We

don't know about the bars on the windows. I'm not so sure that that didn't just raise more questions for you, quite frankly.

**MR. BLOOM:** Well, let me state where our objection is and where our objection is not. First, it is not as to Barnes fleeing the house however he did so and was found in the backyard. I understand that's flight and they're entitled to get into that. I have no basis to object to that. Our objection under 403 is bars on the front door, if that's what the proffered testimony is, and a video surveillance system because that gives the appearance that Barnes is either keeping the people inside in or anticipating law enforcement coming and, therefore, trying to barricade himself therefrom, and there's no testimony of that. There's a search warrant and an arrest warrant. The discovery I've seen is that he did not know police were coming and that's why he's fleeing in the backyard. I think that, in fact, the testimony may reflect he's found in the backyard in his boxer shorts, so he clearly was not anticipating law enforcement's arrival and so the bars on the door and the video surveillance system I think under 403 creates an unfair prejudice that he's either preparing for a day to keep someone out or keeping people in, and it just -- it's not -- actually it's a 401 objection to start with. It's really not relevant to

anything. They can talk about how they enter the house, they've got a search warrant and an arrest warrant and he jumps out of the house however he gets out and is found in the backyard in boxer shorts. I get all of that. They can probably even get into any contraband that was found in the house. It's my understanding a 38 -- two firearms were found in the house, a 22 rifle, I think, and a 38 pistol. The bars on the door and the surveillance camera is my specific 401 and 403 objection.

**THE COURT:** I got you. Here, let me -- here's what I think. In this day and age I do not believe that -- the fact that he has a surveillance camera at his home, I do not believe that that in and of itself in this day and age means anything. You know, there are forty-five ads every night on CNN about the ding-dong when you're having your nails done and looking at who's at your door. So while that may have been true in this house and these jurors' expectations, I just really don't -- I think while -- I just don't think that is where you carry that cachet in the experience of people.

With regards to the bars on the door -- but I will ask this question. It is my understanding based upon the presentation earlier that -- that the knock, knock, knock on the door, that they didn't go up there with a hook and yank it off. My understanding is that there was the

typical knocking at the door and request to come to the door, am I correct, when they have the search warrant and arrest warrant?

**MS. MAYES:** It was a no knock search warrant, Your Honor.

**THE COURT:** Oh. Okay.

**MR. McGUIRE:** And, Judge, I can give you the --

**THE COURT:** That's a different -- well, I did not know that. My picture was different and I apologize. My picture was knock, knock, knock, nobody's coming to the door, and then in order to execute the search warrant, then they had to yank it off.

**MR. McGUIRE:** I mean, I can give you a little bit more background facts --

**THE COURT:** All right.

**MR. McGUIRE:** -- just based on the reports and the prior testimony of officers at the scene where those warrants were executed and that is that they were surreptitiously hooking up the door to a tow to have it pulled off because it was a no knock warrant and they couldn't use a battering ram to go through the door because it was a steel barred door. It's not a full steel door. It's the -- you know, it's the ones you see on houses that sometimes they have designs on them like birds or whatever, it was that kind of door, just bars.

And some of the windows had bars. The testimony of an officer would be that because of the video surveillance system and four separate monitors in a room Mr. Barnes was able to see the officers trying to yank the door off and that's how he got knowledge of it before it actually happened was because of the video surveillance and that officer testified there was food in the room right in front of the monitor area so that he would have had access to the monitors and that's how he saw them and that's why he hopped out the back. He was unarmed when he hopped out the back to run.

**MS. MAYES:** And that is -- that is witnessed by Ms. Thatcher; that she's present, that he's watching the monitors, that when law enforcement arrives he then flees, so that's the essence of what the State wants to get in. And all of this about forcing the door down, that's not even something that we necessarily need. What's important to us is that he has that system, he's monitoring it and when law enforcement arrives he flees.

**THE COURT:** I've just learned so much in the last three minutes. I'm so excited. Thank you so much.

Okay. Thank you for -- thank you both. So here's what's relevant. Absolutely surveillance is relevant, as to the cameras are relevant. The door's not relevant, it was a no knock, but she certainly can testify he had

cameras, he was monitoring, he saw them enter. Not a problem.

**MS. MAYES:** Thank you, Your Honor.

**THE COURT:** Thank you.

**MR. BLOOM:** Thank you, Your Honor.

**THE COURT:** Thank you.

Okay. Anything else we can do this evening? No?

**MR. BLOOM:** Thank you, Judge.

**THE COURT:** Let me -- we're putting together the charge and I just have one very quick question, so I don't want to put -- I'm also trying to get a file. Can you-all just talk to me a bit, just one second on one question, and then we're done.

(Proceedings held at the bench; not reported.)

**THE COURT:** All right. I think we are now done. You-all have been kind enough to answer my questions with regards to the charge. It is our intention to have something for you about midmorning. I will give you hard copies so you can read it at your leisure and make suggestions or corrections as needed. Have a good evening. I'll be here at 9:00.

(Whereupon, the proceedings were concluded for October 11, 2017, at 4:55 PM.)

(The following proceedings were held on October 12, 2017, beginning at approximately 10:07 AM.)

**BAILIFF:** All rise.

**THE COURT:** Thank you so much. Please be seated. Good morning.

All right. Ladies and gentlemen, my understanding is that we have a juror who is concerned about her service and counsel has been kind enough to confer about that. And my understanding is that it has to do with the fact that she's an independent contractor being unpaid by her employer. My issues with that is that that would be true with most of the jurors and so I'm gonna examine her and share with her that if we get into tomorrow and it appears that we have sufficient alternates, I don't mind excusing her unless there's an objection by either side; otherwise, I'm gonna hold onto her because I'm not gonna start a precedent because it could cause us to lose the jury. Because typically four-fifths of every jury panel finds themselves in that circumstance.

So I will hear any objection to proceeding that way first from the State.

**MR. HUBBARD:** No objection, Your Honor.

**MR. BLOOM:** No objection, Your Honor.

**THE COURT:** All right. Will you go get her?

**THE CLERK:** Yes.

(Whereupon, Juror Number 124 enters the courtroom at 10:09 AM.)

**THE CLERK:** Do you want her to just stand in front?

**THE COURT:** Just right here is fine. Very well. Tell me your name again.

**JUROR:** Debbie Neal.

**THE COURT:** Ms. Neal, I just need to be able to make a record. Ms. Neal, it has been shared with me this morning that you are an independent contractor with the postal service?

**JUROR:** Right.

**THE COURT:** And that you are concerned because you learned that the postal service -- that they take the position that they will not pay you while you're going through this; is that right?

**JUROR:** Because I'm a part-time delivery person.

**THE COURT:** I understand. I understand. Let me share with you that it is normal in South Carolina that employers do not pay their employees when they're sitting on a jury. We don't like it, I know, but it's the reality here in South Carolina. So I need to ask you a couple of questions.

**JUROR:** Okay.

**THE COURT:** Given that circumstance you have brought that up today, which says to me that you have concerns about that?

**JUROR:** Right.

**THE COURT:** Tell me why.

**JUROR:** Because I'm losing a lot of money. I work -- you know, I live paycheck to paycheck.

**THE COURT:** Okay. And are you -- is that going to have a distracting -- is that going to distract you from your ability to pay attention and listen?

**JUROR:** I think it has, yes.

**THE COURT:** Okay. You think it has?

**JUROR:** Yes, ma'am.

**THE COURT:** Okay. Well, let me ask you this question. If you were to be discharged today, are you too late to be able to do your work today?

**JUROR:** Yes, ma'am.

**THE COURT:** Okay. Can I ask then of this? Could we compromise?

**JUROR:** Okay.

**THE COURT:** Since if you find yourself in that circumstance today, since you are an alternate and we have three alternates, if, if it appears that we don't need you, we get into tomorrow, my understanding is that we very well may finish the testimony today --

**JUROR:** Okay.

**THE COURT:** -- and maybe we readdress your concerns at the end of the day because I may be in the circumstance at the end of the day where I can very comfortably release

you for the balance of the week. That way at least you can get back to work tomorrow?

**JUROR:** Okay.

**THE COURT:** Is that -- is that okay? Does that work?

**JUROR:** Yes.

**THE COURT:** Terrific. I'm going to ask you to do this for me though. Because -- because whatever the concerns of other jurors are in this regard, it has not risen to the level that it has with you, if that makes sense, where you feel like you have to say something to the Court, so I'm going to ask you not to share with the other jurors our conversations only because so many of them find them self in the same circumstances.

**JUROR:** Okay.

**THE COURT:** All right. And you are different in my mind because we have three alternates and you are an alternate, okay?

**JUROR:** Okay. Thank you.

**THE COURT:** And at this point I think I can probably release you with no problem. Thank you so much.

(Whereupon, Juror Number 124 returned to the jury room at 10:13 AM.)

**THE COURT:** Any objections to anything that has just occurred from the State?

**MR. HUBBARD:** Not from the State, Your Honor.

**THE COURT:** From the defense?

**MR. BLOOM:** Not from the defense, Your Honor.

**THE COURT:** Very well. Anything further before we begin this morning?

**MR. HUBBARD:** No, Your Honor. Just we're going to start with a stipulation when the jury comes out.

**THE COURT:** Anything from the defense?

**MR. BLOOM:** Nothing.

**THE COURT:** All right. Let's bring out the jury.

(Whereupon, the jury enter the courtroom at 10:16 AM.)

**THE COURT:** Good morning, ladies and gentlemen. I so hope you had a very pleasant evening and we are prepared to continue with the State's case.

My understanding is that the first presentation is going to be what is called a stipulation and I wanted to tell you what that was. A stipulation is an agreement of counsel that you should accept the stipulation as fact. They've both looked at it and agreed to it. There's certain areas where stipulations can be entered and you're about to hear a stipulation and I will tell you that as it is published you can accept that as being fact agreed to by both sides.

Yes, sir.

**MR. HUBBARD:** Thank you, Your Honor.

Your Honor, the State and the defense have reached a stipulation to the records of the U.S. Naval Observatory which documents that there was a full moon September 2, 2001, and the face of the moon on September 3, 2001, was a waning gibbous with 99 percent of the moon's visible disk illuminated.

**THE COURT:** Let me ask the question. Obviously an enormous truck that could have posed as a train just drove by. Was there anyone who could not hear that? I thought so. I had trouble hearing myself.

**JUROR:** What date?

**MR. HUBBARD:** A full moon on September 2nd and on September 3rd, 99 percent of the moon was visible and illuminated.

**THE COURT:** One more time. I'm sorry. I can't hear you.

**MR. HUBBARD:** Yeah. There was a full moon on September 2, 2001.

**THE COURT:** Okay.

**MR. HUBBARD:** And on September 3, 2001, 99 percent of the moon was visible and illuminated.

**THE COURT:** Okay. Illuminated?

**MR. HUBBARD:** Yes, ma'am.

**THE COURT:** Thank you. Great. And that's what -- that is what the stipulation is?

**MR. McGUIRE:** Yes, ma'am. Yes, ma'am.

**THE COURT:** Thank you so much.

Okay. Call your next witness, please.

**MS. MAYES:** The State calls Charlene Thatcher.

**THE CLERK:** Place your left hand on the Bible and raise your right hand.

(Whereupon, Charlene Ann Thatcher was duly sworn by the Clerk of Court.)

**THE CLERK:** Thank you, ma'am. Please be seated. State your full name and spell your last name for the record.

**THE WITNESS:** Charlene Ann Thatcher, T-H-A-T-C-H-E-R.

**THE COURT:** Your witness.

CHARLENE ANN THATCHER,

having been duly sworn, testified as follows:

DIRECT EXAMINATION

BY MS. MAYES:

Q. Good morning, Ms. Thatcher.

A. Good morning, ma'am.

Q. Could you tell us a little bit about yourself? How old are you?

A. I'm 34, ma'am.

Q. And we see that you are today in prison garb. Where are you currently incarcerated?

A. Pulaski State Prison in Hawkins, Georgia, ma'am.

Hawkinsville.

Q. Okay.

**MS. MAYES:** Your Honor, if I may approach? I'm gonna move the microphone a little bit closer.

**THE COURT:** Yes, please.

And if you could re-ask that question. I don't know that -- are you-all having trouble hearing? I am. And maybe it's just me. Thank you so much. A number of our jurors are having difficulty hearing, so if you will just start over.

**MS. MAYES:** Yes, ma'am. Yes, Your Honor.

BY MS. MAYES:

Q. How old are you today, Ms. Thatcher?

A. I'm 34, ma'am.

Q. And we see that you're in prison garb. Where are you currently incarcerated?

A. Pulaski State Prison, ma'am, in Hawkinsville, Georgia.

Q. Okay. I'm gonna need you to -- the judge is still having difficulty hearing even as close as she is.

**THE COURT:** Yes.

**THE WITNESS:** I'll speak louder, ma'am.

**MS. MAYES:** So maybe pull in a little bit closer to that microphone, all right?

**THE WITNESS:** Yes, ma'am.

BY MS. MAYES:

Q. You said Pulaski State Prison?
A. Pulaski State Prison in Hawkinsville, Georgia, ma'am.
Q. All right. That prison is in the State of Georgia?
A. Yes, ma'am.
Q. Ms. Thatcher, can you tell us whether or not you have a conviction for aggravated assault?
A. Yes, ma'am.
Q. And that conviction for aggravated concerns the victim in this case, Sam Sturrup?
A. Yes, ma'am.
Q. And the incidents that -- or the incident that occurred on or about Labor Day weekend of 2001?
A. Yes, ma'am.
Q. You have been incarcerated since January of 2002?
A. Yes, ma'am.
Q. Tell us a little bit about yourself, Ms. Thatcher. How is it that you came to the state of Georgia? Where had you been living before that?
A. Massachusetts, ma'am.
Q. And when you came, can you tell us whether or not you were a runaway?
A. Yes, ma'am.
Q. And how old would you have been in September of 2001?
A. 18, ma'am.
Q. What's your actual birthday?

A. [redacted], 1983.

Q. All right. So your birthday is [redacted]. This incident occurred Labor Day weekend. That's roughly less than two weeks from your birthday?

A. Ten days exactly, ma'am.

Q. All right. So you had been 18 for ten days?

A. Yes, ma'am.

Q. How old were you, Ms. Thatcher, when you first became a runaway?

A. 14, ma'am.

Q. Did you have any family or close acquaintances yourself in the state of Georgia?

A. No, ma'am.

Q. So at 18, Labor Day weekend, who were you living with?

A. Barnes, ma'am.

Q. And when you say Barnes, you're referring to the Defendant in this case?

A. Yes, ma'am.

Q. What name did you know him by?

A. Big Man, ma'am.

Q. What name did he introduce himself to you by?

A. Big Man.

Q. And what do you normally call him?

A. Big Man.

Q. Do you see the person in this courtroom today that you

knew as Big Man?
A. Yes, ma'am.
Q. Where is he seated?
A. On my left, ma'am, next to two counsel men.
**MS. MAYES:** Your Honor, if the record may reflect, she has identified the Defendant.
**THE COURT:** Very well.
BY MS. MAYES:
Q. So you're 18, you're living with someone that you know by the name of Big Man. Where were y'all staying? What type of residence were y'all at Labor Day weekend?
A. I was staying at a Howard Johnson's motel room, ma'am.
Q. All right. And who were you staying with at that motel?
A. Myself, ma'am.
Q. All right. Did anyone pay for the room?
A. Yes, ma'am. Big Man.
Q. Who was that person?
A. Big Man, ma'am.
Q. Earlier that weekend before Labor Day, did anything happen regarding going out with Big Man?
A. Yes, ma'am.
Q. Who do you remember going out earlier that weekend?
A. Me, Barnes, Cave, Griffin, Sam Sturrup and a few other people. I can't remember their names, ma'am. Sorry.

Q. And where did y'all go?
A. We went to two different nightclubs, ma'am.
Q. Do you remember what kind of clubs they were?
A. Vaguely, ma'am.
Q. Okay. What city were they in?
A. Augusta, Georgia, ma'am.
Q. And who provided the transportation for everybody to get to the club?
A. The car that I was in, Barnes, ma'am.
Q. All right. You said Cave and Griffin. Did you -- had you ever met Richard Cave or Antonio Griffin prior to that night?
A. No, ma'am.
Q. So the first night you met with them was at that club?
A. Yes, ma'am.
Q. How close in time do you think that visit to the club was in relation to Labor Day?
A. Two days before, ma'am.
Q. You also mentioned Sam Sturrup?
A. Yes, ma'am.
Q. That's the victim in this case?
A. Yes, ma'am.
Q. Who provided transportation for him to get to the club?
A. Barnes, ma'am.

Q. And what about Cave and Griffin?
A. Barnes, ma'am.
Q. Who paid for y'all to get into the club?
A. Barnes paid for us to get in the club, ma'am.
Q. Following that night at the club, Charlene --
A. Yes, ma'am.
Q. -- I want to take you forward to Labor Day. Did you have contact with the Defendant in this case, Barnes, on that day?
A. Yes, ma'am.
Q. What do you remember about him initially making contact with you?
A. He came to my motel room at the Howard Johnson's and told me to come with him, we're gonna go on a mission, ma'am.
Q. And he termed it a "mission"?
A. He said -- yes, ma'am.
Q. And did you know what the mission was about?
A. No, ma'am.
Q. And where did he end up taking you?
A. He took me to this place that we nicknamed The Green on Cherry Street, ma'am, in Augusta.
Q. All right. You called it The Green?
A. Yes, ma'am.
Q. I'm gonna show you some photos already in evidence and

ask you whether or not you recognize this place?
A. Yes, ma'am.
Q. How do you recognize that place?
A. The screen door, ma'am, and the color of the house and just all of it, ma'am.
Q. All right. I'm gonna go ahead and put it up here.
All right. So this is the house that you called or that was termed "The Green"?
A. Yes, ma'am.
Q. All right. Who do you recall actually having access to that house or allowing people into that house?
A. Mr. Vernon Whitaker, ma'am, and Barnes, ma'am.
Q. All right. So there was someone who lived there by the name of Vernon Whitaker?
A. Yes, ma'am.
Q. And your understanding was that Barnes also had access in and out of that house?
A. Yes, ma'am.
Q. And on this particular day, what happened once you arrived to this green house on Cherry Street?
A. Barnes ordered me to go into the house and be quiet and not to be seen or heard and to just sit there until he commands me to come out of the house, so I sat in there, ma'am, with Mr. Whitaker until he told me to come out, ma'am.

Q. Do you remember if anyone else ever arrived at the house on Cherry Street?
A. Yes, ma'am. Shortly after -- I really can't remember how long, but Cave and Griffin showed up.
Q. And when you say Cave and Griffin, you're referring to Richard Cave and Antonio Griffin?
A. Yes, ma'am.
Q. All right. Who else do you remember being there?
A. A short while after things that happened Barnes called his brother to come.
Q. All right. And his brother went by what nickname?
A. Little Man, ma'am.
Q. All right. So Big Man has a brother and he goes by the name of Little Man?
A. Yes, ma'am.
Q. Do you remember if anyone else arrived with Little Man?
A. Yes, ma'am.
Q. Who do you remember?
A. Samuel Sturrup, ma'am.
Q. All right. But you're inside the house; is that correct?
A. Yes, ma'am.
Q. And everyone else is outside?
A. Yes, ma'am.

Q. Did anything come to your attention, did you become aware of anything going on outside?

A. Yes, ma'am. A scuffle happened. Barnes ordered Cave and Griffin to jump and beat up on Samuel Sturrup and Samuel Sturrup got the best of -- I can't remember if it was Griffin or Cave. And I was peeking out the window like I wasn't supposed to and I seen it and after he got the best of them, Barnes ordered them to stop.

Q. All right. You mentioned that you were able to see this out the window. Could you hear an altercation as well?

A. Yes, ma'am.

Q. Based on what you saw and heard, who was speaking?

A. All were speaking, ma'am, but I could not really hear them. All I could hear was Barnes ordering them to stop because they lost control of the fight and Sam proceeded to run around the house away from them, so they had to chase him, ma'am.

Q. All right. And you're referring to Samuel Sturrup?

A. Yes, ma'am.

Q. Could you hear what Barnes was saying to Sam?

A. No. No, ma'am. All he told them was to stop fighting.

Q. And when did you exit the house?

A. Ma'am, I exited the house when Harris was beating me

and I was fighting him back and I went through the screen door and Barnes was yelling at me to come to him, ma'am.

Q. All right. I want to stop you right there. You used the word "Harris". Who was Harris?

A. Barnes' brother.

Q. Little Man?

A. Little Man. Yes, ma'am.

Q. Okay. So Little Man is Will Harris?

A. Yes, ma'am.

Q. And you say at one point he entered the house?

A. Yes, ma'am.

Q. And what occurred when he entered the house?

A. He picked up a broom that was close by towards him and he tried to ram it up me in my private area. I had on really short shorts and he was trying to ram it into my vaginal area, ma'am.

Q. And what happened next?

A. I was kicking and fighting and screaming and Barnes took over and beat me, ma'am.

Q. And what happened next?

A. He proceeded to beat me and asked me where his money was, ma'am.

Q. All right. So at this point Barnes and his brother have entered the residence, this same residence here on Cherry Street, and they're asking you where the money is?

A. No, ma'am. I was outside when Barnes beat me. He did not go inside the residence.

Q. All right. So just to clarify, I think you said it was first that Will Harris --

A. William Harris went inside the residence, ma'am.

Q. All right. And after that how did you end up outside?

A. He beat me and I -- somehow when I was fighting him and he was beating me, I went through the screen door that was already broken because -- it was already broke.

Q. What are we talking about right here?

A. The boarded up part of this, the door.

Q. All right.

A. That was before. It was boarded up, ma'am.

Q. All right. And this would have been the screen door area?

A. Yes, ma'am. There was glass there, but it got shot out.

Q. So you end up outside the residence?

A. Yes, ma'am. On the porch area.

Q. Who has contact with you outside the residence?

A. Harris, ma'am. And then he stopped beating me and Big Man, Barnes, beckoned me to him and when I came to him he started beating me. He was standing by a silver-looking car that had like with no wheels on it. It was being worked on.

Q. And what was he saying? What was Barnes saying to you?
A. He kept asking me where's his money at and that ho's pick pockets.
Q. Do you know what he was talking about when he was asking you where the money was?
A. No, ma'am, I did not.
Q. Had you taken any of his money?
A. No, ma'am.
Q. So he's asking you where the money is?
A. Yes, ma'am.
Q. What happens next?
A. I told him that he could go through my purse and that if I took his money I'd be gone because prior to this we had a deal that --
Q. All right. Let me stop you right there.
A. Sorry.
Q. You gave him access to your purse?
A. Yes, ma'am.
Q. Was the money in your purse?
A. No, ma'am.
Q. All right. What happened next regarding Barnes and the victim in this case, Samuel Sturrup?
A. He asked Sam if he took -- that if I didn't take his money and Sam didn't take his money, then who took his

money, and we both -- Sam was like that bitch took the money.

Q. And what happened next?

A. A little after Barnes told me to prove to him that I didn't take his money, so he handed me this metal wrench-looking thing, object, and he told me to hit Sam with it in his body and -- he told me to hit him in the head and I was like no, can I hit him in the arm, and I -- I hit him in the arm.

Q. Now why did you go along with that at that point in time?

A. I was frightened, I was scared. I was -- at that point I didn't care as long as it didn't happen to me.

Q. And did you strike Sam with the metal object that he gave you?

A. Yes, ma'am. And I struck him very lightly so Barnes asked him if it hurt and he didn't believe that I hit him hard enough and Sam told him it didn't hurt, so I hit him again and he started crying, ma'am.

Q. All right. Now was Sam older than you guys or younger than the rest of you?

A. He looked very much younger, ma'am. I think he was younger than us, ma'am.

Q. Were you aware at that time that he was 16 years old?

A. No, ma'am. Not at all.

Q. You're 18. Were there other teenagers present as well?
A. At that time everybody seemed like they were my age, so I have no clue, ma'am.
Q. All right. Were Cave and Griffin there when this incident occurred --
A. Yes, ma'am.
Q. -- when you were pulled out of the house and questioned about the money?
A. Yes, ma'am.
Q. And then you hit Sam with the object that Mr. Barnes gives you?
A. Yes, ma'am.
Q. What happened next?
A. Barnes ordered Sturrup and I, Sam, to go to the train tracks with him and Cave and Griffin. The train tracks that are on the side of Cherry Street.
Q. I'm gonna show you a photograph, what is State's Exhibit 31. Do you recognize what's depicted in this photograph?
A. Yes, ma'am. Yes, ma'am.
Q. And this would be what area?
A. This would be the Cherry Street house, ma'am. This would be where I was abused at, ma'am, and Sam was right there, and then we were led this way to go here, ma'am.

Q. And where would the train tracks be?
A. We were in this area, ma'am.
Q. Okay. So once you're on the train tracks, what happens?
A. Barnes ordered for Cave and Griffin to walk Sturrup up a little further ahead of him and I --
Q. What you do mean by that?
A. -- and to stop. I mean, I guess he was gonna shoot him, I don't know, or thinking about it. I really don't know what his thoughts were, but he told them to stop.
Q. All right. What happened next?
A. I -- it's hard for me. He told me to shoot Sam. He told me to shoot Sam and I told him I'm not going to, so then he told Sam that he would -- that he could shoot me and Sam was okay with that, so he was fixing to come towards him to grab the gun and I grabbed his arm and I told him nobody's gonna shoot anybody and --
Q. Was this still over the money?
A. Yes, ma'am.
Q. All right. And you're denying that you have the money?
A. Yes, ma'am.
Q. And what is Sam saying about whether or not he has the money?
A. At this time, ma'am, he's saying that he did not have

the money and he was blaming it all on me.
Q. All right. So he's saying he does not have the money?
A. Yes, ma'am.
Q. At any point in time did that change?
A. Yes, ma'am.
Q. What happened to cause that to change?
A. Shortly after he kept saying for one of us to shoot the gun, he -- that he had in his hand, he told Cave and Griffin to bring Sam off the train tracks behind us now and to walk ahead of us back to Cherry Street and he pulled me to the side and told me that I was going to kill Sturrup for him and I told him okay and then we went back to Cherry Street and we sat there and he -- he kept asking Sam where his money's at and Sam said that he had the money in his room under his bed.
Q. All right. And what happened next?
A. Barnes told him that he would take him home and that he would -- he would take him home, but what if his mom and his sister was there and --

**MR. McGUIRE:** Your Honor, I need to interrupt. This would be subject to our previous objection regarding the statements made by Mr. Barnes.

(Proceedings held at the bench; not reported.)

**THE COURT:** Okay. Overruled.

BY MS. MAYES:

Q. All right. Ms. Thatcher, due to that interruption, we're going to back up a little bit.

A. Yes, ma'am.

Q. I want to go back to what you were saying. Sam said he didn't have the money?

A. Yes, ma'am.

Q. And then at one point after -- who actually had the gun that was presented?

A. Barnes, ma'am.

Q. All right. After a gun is presented, he said the money is at his house?

A. Yes, ma'am. And then his -- then his story kept changing. One minute he didn't have the money, then he did.

Q. All right. So let me ask you this. What did Barnes say to him? What did Barnes say to Sam about going to his house to look for money?

A. He said that he's gonna -- he told him that he would take him home, but somebody's gonna die tonight, and he asked Sam what he wanted to eat for his last meal.

Q. All right. When he said that he would take him home --

A. Yes, ma'am.

Q. -- somebody's gonna die tonight, what did Sam say in response to that?

A. He was frightened. He was crying. He -- he was like I promise you I'll get you back your money, I'll do anything.
Q. All right. So he said he'd do anything?
A. Yes, ma'am.
Q. Ultimately did Sam acknowledge that he didn't have the money?
A. Yes, ma'am.
Q. And after that what happened?
A. After that we just lingered a little bit on Cherry Street. Barnes called somebody to get us like fast junk food from a nearby gas station and we ate junk food and he called the Hunsbergers to come.
Q. When you say he called the Hunsbergers, who made the call to the Hunsbergers?
A. Barnes did on his cell phone, ma'am.
Q. All right. And when you say the Hunsbergers, you're referring to Julio and Alex Hunsberger?
A. Yes, ma'am.
Q. Who are they acquaintances of?
A. Barnes, ma'am.
Q. And you mentioned that he said something to Sam about a meal. What did he say?
A. He said that he was going to -- what did he want for his last meal.

Q. Eventually did the Hunsbergers arrive there at that residence we're looking at on Cherry Street?
A. Yes, ma'am.
Q. What happened after the Hunsbergers arrived?
A. Shortly after the Hunsbergers arrived, Barnes ordered Sturrup to get inside of the Hunsbergers' trunk of their car and --
Q. Let me ask you this. You said that Barnes had a weapon or a gun on him at Cherry Street?
A. Yes.
Q. Did you actually see him order Sam into the trunk of that car?
A. Yes, ma'am.
Q. Did he have a gun on him when he did that?
A. Yes, ma'am.
Q. Sam was aware he had this gun?
A. Yes, ma'am.
Q. Did Sam get into the trunk?
A. Yes, ma'am.
Q. What happened next?
A. They closed the trunk. The Hunsbergers got inside the car and left and Barnes, me, Cave and Griffin all got into his white car and followed behind the Hunsbergers.
Q. All right. So Sam is in the trunk of a car that's driven by --

A. Yes, ma'am.
Q. -- Alex and Julio Hunsberger?
A. Yes, ma'am.
Q. There was a second car that you described as --
A. White, ma'am.
Q. -- a white car?
A. Yes, ma'am.
Q. And that car's driven by who?
A. Barnes, ma'am.
Q. And in that car is you --
A. Cave and Griffin, ma'am.
Q. -- Richard Cave and Antonio Griffin?
A. Yes, ma'am.
Q. And you mentioned earlier that Will Harris, also known as Little Man had been there.
A. Yes, ma'am.
Q. Was Will Harris still there at the point that Sam was put in the trunk?
A. No, ma'am. Slightly after I hit Sam on the arm, he was gone. He got a call on his cell phone and he left.
Q. All right. Did Little Man ever follow behind any of you across the river?
A. Oh, no, ma'am.
Q. So it was the two vehicles; one with the Hunsbergers and Sam in the trunk --

A. Yes, ma'am.
Q. -- and the car driven by Barnes?
A. Yes, ma'am.
Q. Where did y'all go?
A. We went across the -- a bridge and we were in South Carolina and -- at the time I did not know that and I was lying down in the car and I was supposed to have my eyes closed and the other people that were in the car, Cave, Griffin and Barnes, were sitting up, and we went across the bridge to South Carolina into an open field.
Q. All right. So you mentioned that you weren't familiar with that bridge?
A. No, ma'am.
Q. What state are you a native of?
A. I'm a native of Boston, Massachusetts, ma'am.

**MR. McGUIRE:** No objection to the photos, Judge.

**THE COURT:** All right.

BY MS. MAYES:
Q. You're a native of Massachusetts?
A. Yes, ma'am.
Q. Prior to coming to Georgia just before your 18th birthday, did you -- had you ever had any connection to Georgia before?
A. No, ma'am.
Q. Had you ever been to South Carolina before?

A. No, ma'am.
Q. Let's see. You said you end up going across the river and into an open field?
A. Yes, ma'am.
Q. I'm gonna show you some photographs and ask you whether or not you recognize these.
**MS. MAYES:** State's 66 and 67. No objection, Your Honor, and the State offers them as evidence at this time.
**THE COURT:** All right.
(State's Exhibit Number 66 and 67, photographs, were marked and admitted into evidence.)
BY MS. MAYES:
Q. And 33. If you could take a look at those, Ms. Thatcher.
A. Yes, ma'am.
Q. And here's 66. You've described an open field. What happens after you approach the field?
A. Cave, me, Griffin and Barnes get out of the white car and at the same time Julio and Alex are getting out of their car and they pop the trunk and they help Sam out of the car's trunk -- of Julio and Alex's car.
Q. What did Barnes do?
A. Barnes was standing there with me and I was like this place is beautiful and he was like you'll never forget it and Sam started crying and shaking and he was frightened

and he was like this is not home and Barnes laughed at him and he told him it's his home now.

Q. What happened next?

A. Barnes told Sam to go -- I'm sorry. Barnes ordered Sam to go in front of us and -- me, Cave and Griffin and the Hunsbergers and himself, to walk ahead of all of us to the gate that was there.

Q. What, if anything, did Barnes have in his possession?

A. Barnes had a gun.

Q. Was he holding that gun?

A. Yes, ma'am. Yes, ma'am.

Q. Was it visible to all of you there?

A. Yes, ma'am.

Q. What are we looking at in State's 33? Are you able to see that from where you are?

A. No, ma'am. Oh, yes, ma'am. A gate. It's some type of fence, gate thing. Yes, ma'am, I can see it.

Q. And do you remember going over that gate?

A. Yes, ma'am. We all went over the gate, ma'am. Sam first and the rest of us afterwards, ma'am.

Q. At whose direction?

A. Barnes, ma'am.

Q. What happened next?

A. Barnes ordered Sam to pick a place to die and to walk ahead of all of us and just stop wherever he wants to die.

Q. Whose words were those?
A. Barnes', ma'am.
Q. Was Sam saying or doing anything?
A. He was crying like to the point where he was shaking, snot was coming out of his nose. He was just crying, begging to go home to his mom and his sister, ma'am.
Q. And what did Barnes do in response?
A. He just continued to be like in a cynical manner and he was like this is your home now and eventually Sam stopped walking and he just kept begging Barnes. He just kept saying Big Man, please, please let me go home, I'll do anything, I'll give you your money.
Q. What happened next?
A. He kept saying he didn't take the money and he won't -- he didn't say he took it anymore. He stated he didn't take it. And he just kept begging and Barnes put a gun in my hand and he had his hand over my hand and he told me to shoot Sam in the head and I just kept screaming to make it him shut up and -- it was driving me crazy and I put hand over my head -- my eyes and I pulled the trigger and I think I shot him in the stomach. And I don't remember exactly when, but it felt like immediately after he just -- he shot him in the head. Barnes shot him in the head, Sam.
Q. We're gonna back up a little bit.

A. Yes, ma'am.
Q. After the gate, do you know how far y'all went into the woods?
A. Not exactly, ma'am.
Q. I'll show you what's State's 43, State's 42 and State's 44. After the gate, do you remember whether or not there was a path --
A. Yes, ma'am.
Q. -- that you followed?
A. Yes.
Q. And you said eventually everyone stopped?
A. Yes, ma'am. We were like in a -- like a semi C-shape around Sam, ma'am.
Q. What was your initial response when he told you to shoot Sam?
A. My initial response was to do it. I was scared. I mean, he had a gun behind my back and the co-defendant was holding another gun and I had a gun in my hand and I just -- I was all about self-preservation at the time and I just -- I wanted it over and done with. I didn't want to be any part of that, so I did what he told me to do.
Q. So you say that he had a gun that he was holding?
A. Yes, ma'am. And a gun to my back, ma'am. I believe he did.
Q. How long -- I know you said that you had been living

with him since you were 18.
A. Yes, ma'am.
Q. But during the time that you were living with him, did you know him to have a gun or guns?
A. Yes, ma'am. He always had a gun in his glove compartment and his waistband, ma'am.
Q. Did he have one gun or more than one gun?
A. He's always had multiple guns, ma'am.
Q. And that night you've already seen a gun in his hand?
A. Yes, ma'am.
Q. Was anyone else talking in that field, on that path or in the woods other than Barnes and Sam?
A. I really don't know, ma'am. I was so out of it that night. After I shot, everything was like a haze.
Q. Did anyone else give you an order to shoot Sam other than Barnes?
A. No, ma'am.
Q. And who actually handed the gun to you?
A. Barnes, ma'am.
Q. What did he do with his hands and his body?
A. He removed the gun from my back, ma'am, and shot Sam in the head.
Q. So when we're talking about the gun that's handed to you, what did he do once the gun's handed to you?
A. He had his hand over my hand and I shot Sam in the

area -- in his stomach area and he had a gun to my back, ma'am, and he was telling me to shoot him, shoot him in the head, and I kept saying I don't want to shoot him, can I shoot him in the arm, can I shoot him in the leg and he was like no, pop him in the head and pop him in the chest, and I was like I don't want to do that; so I just aimed at him and I aimed at him in the stomach area and I covered my eyes and I shot the gun.

Q. Once you pulled that trigger, what happened to you mentally?

A. I just lost it. I really don't even know. It was like I wasn't even in my body, but I seen everything that I remember.

Q. What's the next thing that you distinctly remember?

A. Honestly because of all that self-preservation I was so scared and just frightened and all I cared about was him and that gun in his hand and I didn't want to get killed, so I just focussed on Barnes.

Q. What do you remember Barnes doing while y'all were still in the woods?

A. After he -- well, he shot Sam and then --

Q. When you say he shot Sam, you're referring to who?

A. Barnes. He shot him in the head and then he just stood there and watched him die for a long time.

Q. Okay. It's nighttime?

A. Yes, ma'am.
Q. How do you know that the gun that Barnes had actually fired?
A. Well, ma'am, after he shot there was like a flash of light, ma'am, coming out of the -- the tip of the gun. I don't know what that's called.
Q. Where did you see him shoot Sam?
A. I seen him shoot him in the head, ma'am. I seen his -- his silhouette.
Q. What did you see Barnes do after he has shot Sam in the head?
A. He just stood there in like a daze just watching him die and I just kept begging him to come with me and let's leave.
Q. Where did you go next?
A. After we went back over that gate thing, we went back into the open field and we went inside the cars and we -- we went to a trailer thing. We drove up to this trailer thing and -- no -- yes, we went up to this trailer thing and we sat in there inside of a living room thing --
Q. All right.
A. -- inside the trailer and the Hunsbergers brought out towels and Ziploc bags to wipe fingerprints off the guns that were involved and we sat down in this living room area with this big huge television and Barnes proceeded to ask

everybody that was present, the Hunsbergers, Cave, Griffin and me, how did we feel when each of us shot Sam and when it got -- all of them said they felt good, it was -- it felt good, and when it got to me I went ahead and said it felt good, too, because I felt stupid not to say it because I wanted to pretend I was down, but I was so scared.

Q. Scared of what?

A. That it would be me next if I didn't do what he wanted me to do, Barnes.

Q. So to the trailer, how many cars went to the trailer?

A. All that I'm aware of, ma'am, is the one that I was in, ma'am.

Q. And who was in that vehicle leaving that field where Sam was murdered to the trailer?

A. Me, Barnes, Cave and Griffin, ma'am.

Q. So, once again, you're in a vehicle with Barnes, Cave and Griffin?

A. Yes, ma'am.

Q. Who left the trailer?

A. Me, Barnes, Cave and Griffin left with the Ziploc bags with the guns inside the Ziploc bags and Barnes ordered me to, again, lay down in the back seat and to keep my head down and to close my eyes so I couldn't see where we were going, but when --

Q. Did y'all stop anywhere?

A. Yes, ma'am. We stopped on the bridge this time and I happened to actually see it because I was peeking up like I was wasn't supposed to and I looked out the window and I seen Barnes and Griffin throwing the gun -- the guns that were inside the Ziploc bag into the river, the water.
Q. All right. Do you believe there was one gun or more than one gun in that bag?
A. Ma'am, I believe it was more than one gun.
Q. What happened next?
A. After they threw the guns into the water, they came back in. Griffin and Barnes came back into the car and Barnes drove us to Cherry Street and we spent the night there.
Q. That's the same house we saw before that's called The Green House?
A. Yes, ma'am.
Q. At this point in time, who were you living with?
A. I was living with Barnes, ma'am, at that point in time.
Q. Who provides money to you?
A. Barnes, ma'am.
Q. Who were you working for?
A. Barnes, ma'am.
Q. Did you stay with him?
A. Yes, ma'am. I stayed with him the whole night.

Q. Did you stay with him after that day?
A. Yes, ma'am. But that next day I stayed at the Howard Johnson's. Yes, ma'am.
Q. All right. So you stayed in contact with Barnes after this -- after what happened with Sam?
A. Yes, ma'am.
Q. Then eventually where were you in January of 2002, four months after this?
A. I lived at [redacted] Cairo Court, ma'am, with Barnes.
Q. You were living with him on Cairo Court four months after this?
A. Yes, ma'am.
Q. Still in contact with him?
A. Yes, ma'am.
Q. Still working for him?
A. Yes, ma'am.
Q. Still getting money from him?
A. Yes, ma'am.
Q. And on January 17, 2002, at that house at Cairo Court, did anyone come to that house?
A. Yes, ma'am. The police came to the house, ma'am.
Q. How do you know the police came?
A. He had surveillance cameras installed, ma'am, and Barnes constantly watched them all the time and at the time of our arrest they were working and he seen them and he

told us he seen them and he flee'd out the window and said bye, China, and left.

Q. Bye, China. Did you have a nickname back then?

A. Yes, ma'am.

Q. What was your nickname?

A. China.

Q. So in January of 2002 there's video surveillance inside that home on Cairo Court?

A. Yes, ma'am.

Q. And he's watching and you learn the police are outside?

A. Yes, ma'am. He could actually see them like from the end of the street, Barnes could, on the camera.

Q. And just prior to him fleeing, he told you bye?

A. Yes, ma'am.

Q. What window of that home did he go out of?

A. He went out of his bedroom window, ma'am.

Q. I want to show you some photographs and ask you whether or not you recognize them.

**MR. BLOOM:** No objection.

BY MS. MAYES:

Q. State's 62 and 63.

A. Yes, ma'am, I remember both, but his bedroom window doesn't show where he went out of in neither of these pictures. It's in the back of here, ma'am.

Q. All right. So the bedroom window -- looking here at 62, the bedroom window would be on the back side of that house?
A. Yes, ma'am.
Q. But that's the house that the police surrounded?
A. Yes, ma'am.
Q. And eventually gained entry?
A. Yes, ma'am.
Q. And you were arrested in that house?
A. Yes, ma'am.
Q. You were arrested inside the house?
A. Yes, ma'am.
Q. Where was he arrested?
A. He was arrested outside the house, ma'am.
Q. All right. You were still present there at the scene, detained by law enforcement, when he was apprehended?
A. Yes, ma'am.
Q. Going back to that night at Cherry Street before you come to South Carolina, who was in control of the events that night?
A. Barnes was in control, ma'am.
Q. Did you have a weapon yourself?
A. No, ma'am.
Q. Did Sam Sturrup have a weapon?
A. No, ma'am.

Q. Did Richard Cave have a weapon?
A. No, ma'am.
Q. Did Antonio Griffin have a weapon?
A. No, ma'am.
Q. Was anyone else giving orders?
A. No, ma'am.
Q. After Sam was put into the trunk and brought to that field here in Edgefield, who was giving orders?
A. Barnes, ma'am.
Q. Did you ever get an order from Cave?
A. No, ma'am.
Q. Or Griffin?
A. No, ma'am.
Q. Or either of the Hunsbergers?
A. No, ma'am. Well, yes, ma'am, I did get ordered by one of the Hunsbergers to leave the scene when Barnes was staring at the body because I stayed with him because I was scared to leave him because he had a gun in his hand, so I stayed with him while he was watching the body and Julio Hunsberger kept asking me to please flee the scene with them -- scene with him and then I grabbed Big Man's arm and I was shaking him and I was begging him to come with me. So, yes, one -- one time, ma'am.
Q. Why were you next to the person with the gun?
A. Because I was so scared that if I turned my back on

him just slightly he would shoot me.
Q. Based on everything that you saw and observed that night in those woods, in your mind what would have happened if you would have run away?
A. I just knew I would die. I felt like he would shoot me, ma'am.
Q. Based on your observations, what would happen if anyone else ran away?
A. They would get shot as well.
Q. What was Barnes, who you knew as Big Man, what was his demeanor or tone from the point those cars arrived in that field?
A. Vicious and just angry.
Q. When Sam pleaded with him, did that have any effect on Barnes at all?
A. No, ma'am. His -- no. No, ma'am.
Q. You've been in prison since 2002?
A. Yes, ma'am.
Q. You pled guilty to your role in what occurred to Sam Sturrup?
A. Yes, ma'am.
Q. Since you've been in prison, have you been diagnosed with any type of mental health issues?
A. Yes, ma'am.
Q. What are those issues?

A. Bipolar, ma'am, and PTSD, post-traumatic stress disorder, ma'am.
Q. Can you tell us whether or not that relates to the events of this night?
A. Yes, ma'am. The PTSD does, ma'am.
Q. And you said the other is bipolar?
A. Yes, ma'am.
Q. Is that something that you take medication for?
A. Yes, ma'am.
Q. Does that medication affect your ability to remember what happened that night in September of 2001?
A. No, ma'am. It just helps me not be so hyperactive, ma'am.
Q. Ms. Thatcher, you were charged with kidnapping and aggravated assault in Augusta, correct?
A. Yes, ma'am.
Q. For all of the charges that you ended up with regarding the murder of Sam Sturrup, were you ever promised anything in exchange for cooperation with law enforcement?
A. No, ma'am.
Q. Were you threatened in any way to cooperate with law enforcement?
A. No, ma'am.
Q. Following your arrest and the arrest of Steven Barnes at that house on Cairo Court January 17th of 2002, did you

meet an investigator by the name of Richard Roundtree?
A. Yes, ma'am.
Q. An investigator for Richmond County in Augusta, Georgia?
A. Yes, ma'am.
Q. Currently the sheriff?
A. Yes, ma'am.
Q. Did Sheriff Roundtree question you about this case?
A. Yes, ma'am. After Scott White did, yes, ma'am.
Q. Did you cooperate with him?
A. Yes, but I did not cooperate with Scott White.
Q. All right. But with Sheriff Roundtree you did?
A. Yes. The only reason why was because he -- he like told me my story. He was like I know that they made you kill him and you need to tell somebody, it's the right thing to do, and because he used that tactic and I did not know it was a tactic, I really thought he knew what he was talking about, so I told him.
Q. You told him what?
A. The truth about the whole murder with me, Sturrup, Cave and Griffin and Barnes and the Hunsbergers.
Q. Do you think you ever would have told anybody in law enforcement otherwise?
A. No.
Q. Had anyone told you whether or not you could talk

about it?
A. No, I've never told anyone. I have, but not in law enforcement, no.
Q. All right. So let's back up. That night after this happens, after the guns were thrown over the bridge, after y'all got back on Cherry Street, was there any discussion about the clothing?
A. Yes, ma'am. When I was at the Howard Johnson's, Barnes made me take off my clothes and he told me he was gonna burn everything I had on, so I had to take off my clothes, including my shoes, and he was gonna burn them. But I didn't know where he was taking them. I didn't know anything.
Q. All right. So did you give him your clothes?
A. Yes, ma'am.
Q. From that point on do you know what he did with your clothes?
A. He told me that he was gonna burn them, but I never witnessed it, no.
Q. All right.
A. Yes, ma'am.
Q. So the last time you saw those clothes they were with who?
A. Barnes, ma'am.
Q. What about whether or not it was okay to talk about

what happened in Edgefield?

A. Barnes, every day I would tell him -- I would ask him questions. I was -- I was scared, so I would ask him questions all the time and he just easily evaded by saying the car's bugged or they're looking for me and just don't talk about it. He would always tell me not to talk about it.

Q. Going back to that interview with Sheriff Roundtree, did you tell Sheriff Roundtree whether or not anyone else pulled the trigger that night in addition to you?

A. Yes, ma'am.

Q. Who did you tell him pulled the trigger?

A. I told him that Barnes pulled the trigger, ma'am, that Cave, Griffin and the Hunsbergers also pulled the trigger.

Q. So you came forward with that information the day after your arrest?

A. No, ma'am. Four days after my arrest, ma'am.

Q. In January of 2002?

A. Yes, ma'am.

**MS. MAYES:** I beg the Court's indulgence.

**THE COURT:** All right.

BY MS. MAYES:

Q. Ms. Thatcher, following that communication with Sheriff Roundtree, your admissions about your involvement, did you ever have the occasion to return there to that

crime scene?
A. Yes, ma'am.
Q. Who brought you back to that crime scene?
A. Mr. Roundtree, ma'am, and another officer with him in the vehicle, ma'am.
Q. All right. And ultimately when you came back to that crime scene, do you recall meeting with Lieutenant Doran?
A. Yes, ma'am.
Q. And do you recall taking those officers to the location in which Sam was shot?
A. Yes, ma'am.
Q. Ms. Thatcher, what caused you to pull that trigger that night?
A. Fear, ma'am, and knowing that I would die that night, ma'am.
Q. Fear of what?
A. Barnes, ma'am, shooting me in my back, ma'am, and my other co-defendant, whoever was holding the gun, shooting me in my head.
Q. Who brought you there?
A. Barnes, ma'am.
Q. Did you have any motive to harm Sam yourself?
A. No, ma'am.
Q. Did you have any issues with Sam Sturrup?
A. No, ma'am.

Q. Who's the person who was angry with Sam Sturrup?
A. Barnes, ma'am.
Q. And who wanted Sam Sturrup dead?
A. Barnes, ma'am.

**MS. MAYES:** Nothing further at this time, Your Honor.

**THE COURT:** All right. Cross-examination?

**MR. McGUIRE:** Thank you, Judge.

**THE COURT:** Yes, sir.

CROSS-EXAMINATION

BY MR. McGUIRE:

Q. Good morning, Ms. Thatcher.
A. Good morning, sir.
Q. I wanted to talk to you a little bit about the day William Harris brought Sam Sturrup to the house on Cherry Street.
A. Yes, sir.
Q. And there is no doubt in your mind that it was William Harris who brought Sam there?
A. No, sir. There's no doubt in my mind that he brought him there, sir.
Q. Okay. And as soon as William Harris got there and brought Sam Sturrup there, Mr. Harris attacks you?
A. No, sir. I can't really recall exactly when he attacked me, but he did. I just can't recall exactly the minute.

Q. Okay. But shortly thereafter Mr. Harris attacked you?
A. Yes, ma'am -- yes, sir.
Q. You're fine. You're fine. And he viciously attacks you with a broom handle, right?
A. Yes, sir.
Q. And you've told Investigator Roundtree and you've testified before that it was a forceful assault with the broom handle. He was trying to stick it inside your body?
A. Yes, sir.
Q. And, in fact, you even said before it actually went up inside you. Do you remember that?
A. No, sir.
Q. Okay. I mean, I know you were wearing shorts, short shorts.
A. Yes.
Q. Okay. But he was ramming this broom handle in your vaginal area --
A. He was trying to get it inside of me, but it didn't go.
Q. Okay. And are you aware that Mr. Harris was never charged with that?
A. No, sir.
Q. Are you learning for the first time from me that he was never charged with that at all?
A. Yes, sir.

Q. Okay. Now after William Harris brought Sam there and after he assaulted you with the broom handle, do you remember Mr. William Harris producing a gun and putting it in Sam Sturrup's mouth?

A. Not that I recall, sir, no.

Q. Okay. Do you remember Mr. Harris producing a gun?

A. Not at all, sir. I do not.

Q. Okay.

A. I'm sorry.

Q. That's okay.

A. I'm sorry. That night my focus was on the one person that had a gun that I seen and that was Barnes, sir.

Q. So you didn't see Mr. Harris with his gun?

A. No, sir, not at all.

Q. And you didn't see Mr. Harris threaten to blow Sam's head off?

A. No, sir.

Q. Okay. Now with regard to Mr. Harris and Mr. Barnes, they actually argued a lot and didn't get along, right?

A. Not really, sir. Just Barnes started becoming suspicious of Harris after the murder and he started patting him down a lot, every time he met up with him. But, no, they did not argue all the time. They did a lot of brotherly stuff together. I'm not allowed to say what they did get together, sir.

Q. Okay. Maybe I misspoke. Do you remember testifying before and you actually used the word "quarreled" a lot. Do you remember testifying that Barnes and Mr. Harris quarreled a lot?

A. No. I'm sorry. I really don't recall.

Q. Okay. Do you remember testifying in proceedings before the Honorable Judge Knox McMahon in November of 2010?

A. That's seven years ago, sir. No. I'm sorry.

Q. That's okay. I'll show you your words and we'll go through it together.

**MR. McGUIRE:** In fact, Your Honor, if I could approach?

**THE COURT:** You may.

**MR. McGUIRE:** And for the prosecutors, it's proceedings in front of Judge Knox McMahon in November of 2010, and Carol Theume was the official court reporter. It would be on Page 1,265, approximately Line 24.

BY MR. McGUIRE:

Q. So what I'm gonna do is I'm gonna show you, if I could, your previous testimony and just let you look at it and see if it might jog your memory, okay?

A. Yes, sir.

Q. So this is Page 1,265 --

A. Yes, sir.

Q. -- and the questions start about right -- about right here. Why don't you just read it and --

A. Where? Line --

Q. Start how about right around Line 23. Just read that and read the next page, if you would, or half a page and just tell me if it makes you remember what you said.

A. Okay. 22 or 21? 21?

Q. How about 23?

A. Yes, sir. It states on this page: Okay. And then -- and they didn't get along very well, did they? And then my answer was: No, sir. And the question -- the next question is: They fought a lot, didn't they? And then I turn the page and I then answered: They quarreled a lot, yes, sir.

Q. Okay. And that's -- that's what you said before?

A. Yes, sir.

Q. Okay. Do you remember that now?

A. No. Sorry.

Q. Okay. You said those words in court before under oath, but as you sit there now don't recollect that?

A. No.

Q. Okay. But you're not quarrelling -- you're not denying that you actually said that back then?

A. No, sir.

Q. So you're saying you did?

A. It's not a tragic event, sir. It's not gonna stand out in my mind, sir, that they quarreled.
Q. Okay. But I'm just saying with regard to that issue you do admit to saying those words back then?
A. Yes, sir.
Q. Okay. I want to ask you a little bit about Richard Cave and Antonio Griffin and what they did to Sam Sturrup, okay?
A. Yes, sir.
Q. Okay. Now they fought Sam?
A. Physically, yes, sir.
Q. And they both -- I think you may have used the word "jumped" him or they both --
A. That's just a term of phrase, yes, sir.
Q. And that means to attack somebody?
A. Attack. Yes, sir.
Q. And both Richard Cave attacked and Antonio Griffin attacked?
A. As far as I'm aware, yes, sir.
Q. Well, you were there for that.
A. Well, I was inside the house peeking out the window, sir. They were chasing -- I heard them chasing him and I seen them with him.
Q. Right.
A. And I seen Sam beating up on one of them. I just

can't remember which one.

Q. Okay. So both Cave and Griffin jumped Samuel Sturrup?

A. Yes, sir.

Q. And Samuel Sturrup actually gets the best of one of them, but you can't remember which one?

A. No, sir.

Q. It could have been Cave, it could have been Griffin?

A. Yes.

Q. Okay. And -- but then at some point both Cave and Griffin start chasing Samuel Sturrup around?

A. Before that, yes, sir.

Q. Before that they had to chase him down in order to jump him?

A. I believe that the fight started and then he ran and then they continued to fight, he got the best of them, and then Barnes ordered them to stop. Yes, sir.

Q. All right. Okay. Now was Richard Cave just sort of sitting by completely innocent just watching all of this or did he participate?

A. He participated, sir, I believe.

Q. That's right. And at some point after Cave and Griffin jumped Samuel Sturrup, do you remember when Richard Cave took a break to go down to the store to get a soda and some chips?

A. I don't remember who went to the store at that point

in time because all I was thinking about was I've got to kill somebody tonight for this man and I didn't want it to happen, so I was just in a daze. I'm sorry.

Q. Okay. But do you remember that one of them, either Cave or Griffin, took a break from beating Samuel Sturrup to go to store?

A. No, sir.

Q. You don't remember anybody leaving?

A. Yeah, I remember William Harris leaving. Yes, sir.

Q. Okay. Sure. And --

A. Not to go to the store and buy us chips though.

Q. Okay. Stay with me.

A. Yes, sir.

Q. Do you remember either Cave or Griffin taking a break from beating Sam Sturrup and going to the store to get soda and chips?

A. No, sir.

Q. Okay. That's fine. Do you remember anybody coming back with soda and chips?

A. I do remember that, yes, sir.

Q. Okay. Who was that?

A. I don't know.

Q. Okay. That's fine.

A. I'm sorry.

Q. That's okay. Now you were actually mad at Samuel

Sturrup as well, weren't you?

A. No, sir. I was mad that I was being blamed for something I didn't do and I was being defensive when he said that bitch took the money, yes. I was being defensive. Yes, sir.

Q. Okay. Do you -- do you remember saying that you were, in fact, very angry at Sam before either in court or to Investigator Roundtree?

A. Yes, sir.

Q. Okay. And you were mad that he said that bitch took the money?

A. Yes, sir.

Q. And I'm gonna take you to the train tracks. When you were out there on the train tracks and Samuel Sturrup was out there, do you remember coming up with the idea and selling it to the group let's kill Sam by putting him on the train tracks? People walk on the train tracks all the time, it will look like an accident. Do you remember you came up with that idea?

A. I remember that I came up that idea before we went to the train tracks, sir. Yes, sir.

Q. Okay. So you actually came up with that idea to kill Sam by putting him on the train tracks before you guys walked out to the train tracks?

A. Yes, sir. Because before we went to the train tracks

Barnes stated that somebody was gonna die tonight and everybody knew but Sam, who was the target.

Q. All right. Let's just be clear. Nobody ordered you to march Samuel Sturrup out to the train tracks, nobody said anything about train tracks until you came up with the idea let's kill Samuel by putting him on the train tracks?

A. Yes, sir.

Q. That was your idea?

A. Yes, sir.

Q. There was a time where Samuel Sturrup wanted to get a gun to shoot you. Do you remember Sam going for a gun saying I'll shoot her?

A. Yes, I remember that out on the train tracks Barnes told Sam and I to shoot one another at different points in time and Sam -- every time he was willing to give him the gun, he was like I'll shoot her. Yes, sir. I remember that.

Q. Now I want to ask you a little bit more about Mr. William Harris. You know that William Harris was Investigator Roundtree's informant?

A. No, sir.

Q. I think you may have used the word "snitch" in previous testimony. Does that sound more familiar?

A. No, sir.

Q. Okay. All right. I'm gonna show you your previous

testimony from proceedings, again, in November 2010 before Judge Knox McMahon and the official court reporter, Carol Theume, transcribed your words.

**MR. McGUIRE:** And for the prosecutor, it's Page 1,265, about Line 8. And I'm just gonna come and show it to you, okay?

**THE WITNESS:** Yes, sir.

**MR. McGUIRE:** If I could approach, Judge?

**THE COURT:** Yes, sir.

BY MR. McGUIRE:

Q. Line 8:

A. William Harris was Investigator Roundtree's snitch, wasn't he? I believe so. You belive so? Yes, sir. Did you --

Q. That's fine.

A. Sorry.

Q. You're fine.

A. Yes, sir.

Q. So you do remember those words now?

A. No. Sorry, sir.

Q. You just don't remember saying that?

A. No, sir.

Q. Okay. But you don't deny that you said it back then?

A. No, sir.

Q. Okay.

A. I was aware of a lot of things once I came into the system because I had a discovery packet and that does not mean when I was at home, living in the streets, that I knew he was a snitch, no, sir. But I was aware probably in the Richmond County -- at the jail.
Q. Okay.
A. Yes, sir.
Q. Okay. And as you're thinking about your case and potentially testifying, you learned that William Harris was an informant to Investigator Roundtree?
A. Reading the discovery packet in the jail, yes, sir.
Q. Okay. And do you know that William Harris after becoming Mr. Roundtree's informant he was never charged for anything? Did you know that?
A. I knew that he told about the murder and Barnes' confession to him about the murder in Applebee's and that's all in my motion of discovery. But, no, I did not know offhand, no, sir. No. I'm sorry.
Q. I'm not sure what you mean before or after. Did you know that -- when you were on the street, did you know that William Harris was communicating with law enforcement and denying any involvement with Sam Sturrup completely? Did you know that?
A. Barnes was so suspicious of him, so --
Q. I'm not asking you about Mr. Barnes. Did you know

that William Harris was going to law enforcement and saying he had nothing to do anything?

A. No, sir, I didn't.

Q. Okay. That's fair enough. I didn't mean to lose my temper with you.

A. That's okay.

Q. Now with regard to Mr. Harris, you -- so you're saying you -- when did you learn that -- after he became this informant and started telling stories to law enforcement, when did you learn that he got a free walk or a free pass on these charges?

A. Well, I really didn't learn. I mean --

Q. Okay. I'm gonna take you now to the car ride from Cherry Street to the woods with Samuel Sturrup, okay?

A. Yes, sir.

Q. Now, if I'm not mistaken, Mr. Barnes' car had a video game system or a video screen in the back. Do you remember if Antonio Griffin or Richard Cave were playing video games in the backseat?

A. I do not remember no video game system in his car, sir. I'm sorry.

Q. That's okay. You might not remember that. Do you remember -- I'm gonna take you now from the car to the -- to the field.

A. Yes, sir.

Q. And I'm gonna be very specific. Do you remember testifying previously that when the gun was in your hand and you were aiming at Samuel Sturrup that your co-defendants were saying do it, do it?
A. Yes, sir. I remember that.
Q. And that would include the Hunsbergers, Cave and Griffin?
A. Yes, sir.
Q. Okay. They were sort of egging you on; do it, do it, right?
A. Yes, sir.
Q. Now you told people, not law enforcement, when you were on the -- when you were free --
A. Yes, sir.
Q. -- you told some people who were not law enforcement about your involvement with Samuel Sturrup, right?
A. Yes, sir.
Q. And your friends told you you should keep your mouth shut because if you got caught for that you will get life?
A. I would get a long time. Yes, sir.
Q. Do you remember testifying previously that you were told that you would get life by your friends? Does that sound familiar?
A. I don't want to say that because I know that was a long time ago. That's all I remember.

Q. Okay. So you knew based on your actions and what you confessed to to law enforcement that you could actually be charged with, convicted and sentenced for murder in South Carolina?

A. I didn't know what state, but, yes, sir, I did know that.

Q. Okay.

A. For a long time. Yes, sir.

Q. And a murder charge, that's a --

**MS. MAYES:** Objection, Your Honor, to any reference to sentencing. Sentencing is within the discretion of the Court solely.

**MR. McGUIRE:** It matters what's in her head.

**THE COURT:** I'm sorry?

**MR. McGUIRE:** It matters what her thoughts are, her perceptions, and that's what I'm asking her about.

**THE COURT:** All right. Don't -- let me hear the question and see everybody up here, please.

(Proceedings held at the bench; not reported.)

BY MR. McGUIRE:

Q. All right, Ms. Thatcher. What I'm gonna do is I'm gonna show you your prior testimony where you talked about confiding in friends --

A. Yes, sir.

Q. -- about your actions in connection with Samuel

Sturrup's death, okay?
A. Yes, sir.
**MR. McGUIRE:** And for the prosecutor, it will be the proceedings in front of Judge Knox McMahon, November of 2010, as transcribed by Carol Theume, court reporter, Page 1,256, approximately Line 11.
If I could approach, Judge?
**THE COURT:** Yes.
BY MR. McGUIRE:
Q. Ms. Thatcher, I'm gonna point your attention to Line 11 right here. Just go ahead.
A. It states: Well, I didn't -- this is me talking. Well, I didn't tell a lot of people, sir, but everyone I told told me not to say anything because I would be in prison for the rest of my life and it scared me because I have a 10-year-old son, so -- and I don't want to be in prison for the rest of my life. But it doesn't say "in".
Q. Okay. All right. You're fine. So does that jog your memory that you did talk to some friends about this?
A. Yes, sir.
Q. And they told you you could get life?
A. They told me I could spend the rest of my life in prison. Yes, sir.
Q. And that was your thought process, too. Like I don't want that.

A. I didn't want to spend a long time in prison, no, sir.
Q. Okay. Now when did you learn -- I'm gonna jump around a little bit here. I apologize for this.
A. Yes, sir.
Q. I want to go back to William Harris for a second. You're now aware, of course, that he was Roundtree's informant, right?
A. (Nods head.)
Q. And if you could say yes or no.
A. Yes, now I'm aware. Yes, sir.
Q. Okay. And in your testimony with the prosecutor, you indicated that you learned that there was a tactic that was used on you and that was when the police came to you and said, you know, we know you didn't want to do this, somebody probably made you do that. Did you know at the time that that was the story that was coming from William Harris?
A. No, sir, I did not.
Q. Okay.
A. I did not have a motion for discovery at that time, sir.
Q. Okay.

**MR. McGUIRE:** I think that might be all I have for you, Ms. Thatcher. If I could have one second, Judge?

**THE COURT:** All right. Sure.

**MR. McGUIRE:** Ms. Thatcher, thank you for answering my questions.

**THE WITNESS:** You're welcome, sir.

**THE COURT:** All right. Redirect?

**MS. MAYES:** Yes, Your Honor.

REDIRECT EXAMINATION

BY MS. MAYES:

Q. Ms. Thatcher, could you take us back to the area of the train tracks and take us through some of those issues that Mr. McGuire was asking you about --

A. Yes, ma'am.

Q. -- and clarify exactly what's going on on the train tracks? Before y'all enter the train tracks, was there already -- was there already an altercation that had occurred?

A. Yes, ma'am.

Q. All right. And that altercation was over what?

A. Money, ma'am.

Q. Whose money?

A. Barnes', ma'am.

Q. And Mr. McGuire was asking you about when you were inside the house the altercation that went on on the outside with Cave and Griffin?

A. Yes, ma'am. While I was on the inside, ma'am, I peeked out the window and I seen it, ma'am.

Q. All right. So when you looked out the window, something was already happening?
A. Yes, ma'am.
Q. So could you see that event in its entirety?
A. No, ma'am.
Q. All right. And based on that, do you know specifically which one actually assaulted or hit Sam?
A. No, ma'am.
Q. And then after the altercation over the money, how do y'all end up on the train tracks?
A. Ma'am, after the altercation with the money, it was pretty clear to everyone involved that Sam was the victim at the time because he stated that he took the money at the time of the event, of him being assaulted, and so instead of me having to shoot him I came up with a fast idea that people, they have accidents every day, so why don't you just hold him at gunpoint on the tracks and wait for a train to come by and run over him instead of us having to kill him with a gun.
Q. Had you already been told at that point that you needed to shoot him?
A. No, ma'am.
Q. So take us back to this argument over the money. You said Sam admitted he had the money. That's when he said it was at his momma's house and to take him there?

A. Right now, ma'am, I'm not sure.
Q. All right.
A. It's all just jumbled together right now.
Q. All right. So take a moment and kind of think about it.
A. Yes, ma'am.
Q. All right. After Sam said he had the money and it was at his house, was he ever taken to his house to get the money?
A. No, ma'am.

**MR. McGUIRE:** Your Honor, I would object. This is beyond the scope of redirect. It's already been asked and answered in direct testimony.

**MS. MAYES:** I can rephrase that, Your Honor --

**THE COURT:** All right.

**MS. MAYES:** -- and clarify it in relation to cross-examination.

**THE COURT:** Thank you.

BY MS. MAYES:

Q. All right. So y'all were on the train tracks after Sam admits he really doesn't have the money. Do you remember that part?
A. I remember him saying that he really doesn't have the money, ma'am. Yes, ma'am.
Q. All right.

A. I just don't remember when he said it, but I remember him saying it, ma'am.

Q. All right. What do you recall Barnes doing next?

**MR. McGUIRE:** Objection, Your Honor. This is beyond the scope of cross -- of redirect. It came out in direct.

**MS. MAYES:** I believe that there were specific questions about the events on the train tracks.

**THE COURT:** I'll allow it. You may proceed.

BY MS. MAYES:

Q. What do you recall Barnes doing next?

A. Ordering Cave and Griffin to walk ahead of us with Sam Sturrup and him pulling me to the side and telling me that I'm going to kill him, Sam, for Barnes, and I said okay.

**MR. McGUIRE:** Your Honor, again, I would just put my objection on the record that that's exactly what she said in direct examination. It's just re-plowing the same ground.

**THE COURT:** I understand. You may proceed.

**MR. McGUIRE:** Thank you.

BY MS. MAYES:

Q. And where were you standing when that conversation occurred?

A. On the side of Barnes, ma'am. On his right-hand side on the train tracks, ma'am.

Q. Now you got a lot of questions about Will Harris. Was Will Harris there when the Hunsbergers arrived and Sam was put in the trunk?
A. No, ma'am.
Q. All right. I believe the specific question was were you aware of whether or not Will Harris was charged with what happened to Sam. Was Will Harris there when Sam was kidnapped in that trunk?
A. No, ma'am.
Q. Was Will Harris there when you entered Edgefield County and Sam was murdered?
A. No, ma'am.
Q. And he was asking you about the relationship between Barnes and Harris. Who called the shots between the two of them, Big Man and Little Man?
A. When I was around, ma'am, Barnes, ma'am.
Q. And specifically he was asking you about the relationship between Harris and Barnes after this happened, after Sam was murdered.
A. Yes, ma'am.
Q. And your response was Barnes was suspicious of Harris and patted him down. Why was he patting Harris down?
A. He thought that he had bugs on him.
Q. Wearing a wire?
A. Yes, ma'am.

Q. Thought he was wearing a wire because Will Harris --
A. He just said that everybody's suspicious. Like he was so -- he was so paranoid all the time.
Q. About people finding out his connection to the murder of Sam Sturrup?
A. Yes, ma'am.
Q. And that included his brother Little Man?
A. Yes, ma'am.
Q. And his concern Little Man was wearing a wire?
A. Yes, ma'am.
Q. And Mr. McGuire was asking you about the fact that Will Harris ultimately was an informant for Sheriff Roundtree, correct?
A. Yes, ma'am, but I wasn't aware at the time, ma'am.
Q. You were only aware that his own brother was worried his little brother was wearing a wire?
A. Yes, ma'am.
Q. And you said by the time Sheriff Roundtree found you after you were arrested at his house, at Barnes' house, on Cairo Court, Sheriff Roundtree already had information about what happened to Sam Sturrup, didn't he?
A. No, I was not aware, ma'am.
Q. Your response?
A. I was not aware that he knew, ma'am.
Q. All right. And you said when you were first

questioned by him he used a tactic?
A. Yes, ma'am.
Q. Was it apparent to you he knew you were involved in the murder of Sam Sturrup?
A. The way he sounded, yes, ma'am.
Q. Was it apparent he knew that Barnes was involved in the murder of Sam Sturrup?
A. No, ma'am. He just said "they". He knew that "they" made me do it.
Q. All right.
A. Yes, ma'am.
Q. And that's because Barnes stayed in contact with his little brother after Sam --

**MR. McGUIRE:** Objection. Leading.

**MS. MAYES:** I'll rephrase it, Your Honor.

**THE COURT:** Thank you.

BY MS. MAYES:
Q. Did Barnes stay in contact with his little brother, Will Harris, after Sam's murder?
A. Yes, ma'am.
Q. Were you present when Barnes made any statements to his little brother about what happened to Sam?
A. No, ma'am.

**MS. MAYES:** Nothing further.

**THE COURT:** Recross?

**MR. McGUIRE:** Nothing further.

**THE COURT:** All right. Very well.

(Witness excused.)

**THE COURT:** Ladies and gentlemen, we're going to take our morning break now. Please step to your room. Do not discuss this matter or allow anyone to discuss it with you. Please leave your notepads in your seats and we're gonna take about somewhere between fifteen and twenty minutes.

(Whereupon, the jury retires to the jury room at 11:43 AM.)

**THE COURT:** All right. Anything before we take our break?

**MR. HUBBARD:** No, Your Honor.

**MR. BLOOM:** No, Your Honor.

**THE COURT:** All right. See you-all in about fifteen.

(Recess taken.)

(State's Exhibit Number 68, 69, 70, 71 and 72 were marked for identification.)

**BAILIFF:** All rise.

**THE COURT:** Thank you so much. Please be seated.

Anything from the State before we bring the jury out?

**MR. HUBBARD:** Your Honor, I believe this next witness, we're gonna bring back Lieutenant Randy Doran, and there is a motion from cross that they want to be able to get into an alleged polygraph that the County wanted to offer

William Harris and that he refused it. So I just wanted to notice Your Honor. I don't know if they want to hear direct first or if they want to argue now or how they want to do it.

**MR. BLOOM:** We can take it up now. We don't need to send the jury out again when I start my cross.

**THE COURT:** Okay.

**MR. BLOOM:** I propose to be able to ask Lieutenant Doran that after they interviewed Mr. Harris they asked him to take a polygraph, Mr. Harris originally agreed and then he declined. It will be a series of two or three questions like that.

**THE COURT:** And from your perspective, tell me what the --

**MR. BLOOM:** I think under Kyles it goes to the nature of their investigation, leads they followed up on, leads they did not follow up on, whatever action they took or did not take in investigating other parties.

**THE COURT:** Well, let me ask it this way. What issue which is of consequence to this matter does that make more probable or less probable? And let me just add to that I'm a little bit concerned because as I understand it he communicated his -- the fact that he was declining to take a polygraph, that came from a girlfriend, that did not come from him, and that bothers me a little bit, too. But go

ahead. What specifically --

**MR. BLOOM:** I don't need to elicit that part, that the declining of the polygraph came through, you know, a girlfriend. I can simply ask and he never appeared for or showed up or did not keep the appointment and made no further contact about it.

**THE COURT:** All right.

**MR. HUBBARD:** Your Honor, the whole thing is. First of all, just relevance. There is no evidence that the man had anything to do with this murder. There are charges -- people were charged in Georgia for things that happened at that house and other things. They didn't charge Will Harris. Lexington County -- I mean, Edgefield County -- excuse me. I forget where I am. Edgefield County had nothing on him whatsoever linking him to this murder, so it's not relevant. In fact, when I put Mr. Doran -- Lieutenant Doran on the stand, he's gonna say all the activity that they had with William Harris was in Georgia. All of it. So if there's information that he put a gun in somebody's mouth, that's in Georgia; beat somebody, that's in Georgia. People were charged for stuff over there. Why Georgia didn't charge him, I don't know, and, frankly, Judge, I don't care because there's no evidence that that man ever crossed the river and was involved in this murder. There's no evidence he helped plan this murder. None. So

it's a giant red herring. So under 403 I think it's zero as far as probative value, but it's very confusing to the jury this theory -- this notion that why isn't this man involved. Well, Judge, we can't charge a man that doesn't commit a crime in this state. So it just -- it throws that little doubt out there, a doubt that doesn't need to be there because it doesn't belong. It's not relevant in this case.

**THE COURT:** Okay. All right. And do you have any evidence that this gentleman was in South Carolina during these events?

**MR. BLOOM:** No, ma'am.

**THE COURT:** Okay. All right. And this was -- this is -- you're asking the question with regards to the South Carolina investigation; is that right?

**MR. BLOOM:** He was supposed to take a polygraph with SLED. Lieutenant Doran and Mike Perry of SLED went to interview him and subsequent to that interview they asked if he would take a polygraph, he agreed, but then either didn't appear or through a third party said I'm not going to.

**THE COURT:** Yes. Got you. Which we know it would be inadmissible even if he had taken it, so it wouldn't be of any evidentiary value at all even if he had taken it.

All right. That question, I am concerned about

injecting that into this trial. I'm gonna ask you to stay away from the issue with regards to the polygraph really for several reasons. Primarily because there is no evidence that Mr. Harris was in South Carolina or committed any offense in South Carolina whatsoever and polygraphs are one of those areas that sort of ponder the evidentiary -- help or hurt when that gets injected into a trial. We know they're inadmissible and -- but the primary reason would be that because there is no evidence and I have heard no evidence that Mr. Harris ever made himself available here in South Carolina. I'm concerned that -- that the purported denial came from a girlfriend. I don't know whether it makes it more probable or less probable and I would grant the State's request with regards to the polygraph.

**MR. HUBBARD:** Thank you.

**THE COURT:** We had some other issues that you wanted to get into. Do we want to handle those at this time with regard to this witness?

**MR. BLOOM:** There will be other questions I have of Lieutenant Doran regarding Mr. Harris. I think they've all -- they've been asked of other witnesses as to Mr. Harris' known participation at the Green House when events started and so I have few other investigative matters that --

**THE COURT:** But nothing that you think we need to go into now?

**MR. BLOOM:** I think it's all information that other witnesses have already said, so I would corroborate it through him. I will abide by Your Honor's ruling obviously and the word "polygraph" will not leave my lips. Thank you. I would note our exception, but I will abide by your instruction.

**THE COURT:** Of course. I understand. Okay.

**MR. HUBBARD:** The only other thing is scheduling. This next witness won't take us hardly long, but the witness following this will take us a good while. So I -- just for planning purposes, I wanted to let Your Honor know that for planning.

**THE COURT:** We'll probably be about 1:00 when this witness has ended and that will be a good time for lunch.

**MR. HUBBARD:** Yes, ma'am. Thank you, Your Honor.

**THE COURT:** All right. Thank you.

All right. Let's have the jury.

(Whereupon, the jury returns to the courtroom at 12:21 PM.)

**THE COURT:** All right. At this time we'll continue with the State's case. Call your next witness, please.

**MR. HUBBARD:** Thank you, Your Honor. The State calls Lieutenant Randy Doran back to the stand.

**THE COURT:** All right.

**THE CLERK:** You're reminded you're still under oath.

**THE WITNESS:** Yes, sir.

RANDY BOBBY DORAN,

having been previously sworn, testified as follows:

DIRECT EXAMINATION

BY MR. HUBBARD:

Q. Lieutenant, I want to ask you back in January, January 22nd of 2002, were you contacted by the Georgia police, Richmond County law enforcement?

A. I was.

Q. Specifically by Richard Roundtree, an investigator at the time?

A. Yes, sir.

Q. Based on that phone call, what did you do?

A. Based on that phone call, I went and met with him at his office in Richmond County.

Q. All right. And was the purpose of that meeting to kind of compare notes and see what he had and sit down and show him what you had?

A. Yes, sir.

Q. Now let me ask you this. Mr. Roundtree, Investigator Roundtree, now Sheriff Roundtree, was he in charge of handling the Georgia side of things?

A. He was.

Q. Who in your office was in charge of the Edgefield side of things?
A. I was.
Q. Okay. The crime scene, for instance, the photo we see here which is -- and I'll show you State's 44.
A. Yes, sir.
Q. Where was this crime scene? What county was it in?
A. Edgefield, South Carolina.
Q. Okay. Now we've heard a lot about a fellow by the name of William Harris, Will Harris, Little Man. As an Edgefield County deputy, could you arrest William Harris for putting a gun in Sam Sturrup's mouth in Georgia?
A. I cannot.
Q. Could you arrest William Harris for attacking Charlene Thatcher with a broom in Georgia?
A. I could not.
Q. If he had done those things here in South Carolina, could you have arrested him?
A. He definitely would have been arrested.
Q. Is there any information or evidence whatsoever that William Harris, Little Man, ever came to South Carolina or was involved in this murder?
A. There's no evidence whatsoever.
Q. If you had any evidence that he was involved in this murder, what would you have done?

A. He would have been arrested.
Q. Now do you have any control over what Georgia does with its investigation?
A. I do not.
Q. Were you asked to lay off any one person on behalf of Georgia?
A. No, sir.
Q. Now January the 23rd, 2002, did you have an opportunity to go back to the crime scene that's depicted up on the screen in State's 44?
A. (Nods head.)
Q. Did you have an opportunity to go back there?
A. Yes, sir.
Q. Do you know about what time of day you went?
A. It was 3:00 in the afternoon.
Q. Did you have anybody with SLED with you out there that day?
A. Yes, sir.
Q. Who was out there?
A. SLED agent Mike Perry, who was assisting me on the case from the beginning, and also I had -- we had the SLED crime scene unit there.
Q. Stephen Curtis?
A. Yes, sir.
Q. Now this is January 23rd. Do you know what date

Mr. Barnes was arrested?

A. He was arrested on January 17th of 2002.

Q. Was he arrested in South Carolina or in Georgia?

A. Georgia.

Q. Was he held in custody in South Carolina or Georgia?

A. Georgia at that time.

Q. Were other people subsequently arrested?

A. Yes, sir.

Q. The Hunsberger brothers, were they arrested?

A. Yes, sir. They were arrested here in Edgefield County.

Q. Okay. What dates?

A. Julio was arrested on January the 22nd and Alex Hunsberger turned himself in on January the 25th.

Q. What about Richard Cave?

A. Richard Cave was arrested in Georgia on January the 22nd.

Q. Antonio Griffin?

A. Antonio was arrested on January the 23rd.

Q. What about Charlene?

A. Charlene was arrested the same day as Mr. Barnes on January 17th of 2002.

Q. And speaking of Charlene Thatcher, on January the 23rd was she also brought over here to go back to that crime scene?

A. She was.
Q. What was the purpose of bringing her back?
A. To see if she could identify the crime scene.
Q. Okay. And did y'all drive up through those fields with her?
A. Yes, sir.
Q. Through the first field and on into the second field?
A. Yes, sir.
Q. Did y'all stop near or about that gate?
A. We did.
Q. Did she get out of that car?
A. Yes, sir, she did.
Q. Now what did she do when she got out?
A. When she got out of the vehicle, she immediately became familiar with the area. She got out in front of us, walked towards the gate, proceeded to go through the gate. At that time we had the gate open. She proceeded to go through the gate and crossed over -- there was a little barbed wire area and she went through that where that path opened up in one of the photographs earlier and she went out -- she actually went to the actual crime scene.
Q. Did she go to this area, this clearing, that's in State's 44?
A. Yes, sir.
Q. Did you direct her?

A. No, sir.
Q. She knew right where to go?
A. Sir?
Q. She knew where to go?
A. Yes, sir.
Q. What was her demeanor? What was she acting like once you got her out of the car and as she came up to that crime scene?
A. She was really nervous and upset.
Q. Did she want to stay there?
A. She did not.
Q. Did she ask to leave?
A. Sir?
Q. She asked to leave?
A. She did.
Q. Did y'all question her there?
A. No, sir.
Q. Okay. Now I want to move on. We've heard about a pistol or pistols that were disposed of in the river. What, if anything, did you do in that regard?
A. Myself and Agent Perry contacted the South Carolina DNR. We had information that there may have been some weapons that were thrown over a bridge and at that time we didn't know exactly which bridge. We knew at the time there was two locations that led back into Georgia, which

was the Fifth Street bridge and the I-20 bridge.

**MR. HUBBARD:** I want to show you some photographs that, Your Honor, have been premarked with approval of --

**MR. BLOOM:** Without objection.

**MR. HUBBARD:** -- without objection.

**THE COURT:** Very well.

**MR. HUBBARD:** State's 68, 69, 70, 71 and 72, Your Honor.

**THE COURT:** Thank you.

(State's Exhibit Number 68, 69, 70, 71 and 72, photographs, were admitted into evidence.)

BY MR. HUBBARD:

Q. All right. Looking at State's 68 and 69, what bridge are we looking at?

A. This is the Fifth Street bridge in Augusta, Georgia.

Q. Okay. I want to show you 70 through 72. What bridge are we looking at?

A. The I-20 bridge.

Q. Okay.

A. That's actually at the South Carolina state line and Georgia line.

Q. So 68 is the Fifth Street bridge?

A. Yes, sir.

Q. Then 69 is also the Fifth Street bridge?

A. Yes, sir.

Q. Now you said you called DNR. What did y'all do?
A. The South Carolina DNR, they have a dive team, and they were called to assist us to do the dive for us.
Q. What day did y'all look at the Fifth Street bridge?
A. The Fifth Street bridge was January 24th early in the morning.
Q. Did they find anything at that time?
A. No, sir. It was -- it was a very cold morning. The water was really muddy. They -- I was informed that you could barely see any -- you could hardly see your hand in front of you while they were in the water.
Q. So if anything was there, they couldn't see it?
A. No, sir. They didn't -- they even advised me they had to feel -- they couldn't even see at certain points. They just had to take their hands and try to feel for certain things.
Q. Okay. I want to show you State's Exhibit 70.
A. Yes, sir.
Q. That bridge, again, is which bridge?
A. That's the I-20 bridge.
Q. And there's an oncoming and -- or --
A. Two lanes going into Georgia and two lanes coming back into South Carolina.
Q. And 71, another shot?
A. Yes, sir.