

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Certiorari to Florence County

Honorable George M. McFaddin, Circuit Court Judge

DAVID G. JOHNSON,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO 2019-000813

APPENDIX

VICTOR R SEEGER
Appellate Defender

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

ATTORNEY FOR PETITIONER

ALAN WILSON
Attorney General

LINDSEY MCCALLISTER
Assistant Attorney General
Rembert Dennis Bldg, Room 519
1000 Assembly Street
Columbia, SC 29201

ATTORNEYS FOR RESPONDENT

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SW - M. BOEHM - CROSS

1 A No.

2 Q Thank you, Ms. Boehm. That's all the questions
3 I have at this time.

4 MR. JEPERTINGER: On redirect.

5 THE COURT: Yes, sir.

6 **R E D I R E C T E X A M I N A T I O N**

7 BY MR. JEPERTINGER:

8 Q I would ask you what Mr. Hoffmeyer touched on.
9 You can't tell the chronology based on the items
10 submitted to you of what happened when; is that
11 correct?

12 A That's correct.

13 Q And once again, in terms of item 1 what was your
14 finding?

15 A DNA profile developed from item 1 is a mixture of
16 at least two individuals. The DNA profile of the
17 major contributor to ---

18 MR. HOFFMEYER: Your Honor, I object to
19 this. This is improper redirect.

20 THE COURT: Mr. Jepertinger, is this in
21 reference to anything covered in cross?

22 MR. JEPERTINGER: Somewhat, Your Honor.

23 THE COURT: Y'all come up here real quick.

24 (WHEREUPON, counsel approached the Bench
25 for an off-the-record discussion.)

SW - M. BOEHM - REDIRECT

1 THE COURT: Overruled.

2 BY MR. JEPERTINGER:

3 Q In terms of the major contributor — and I don't
4 need the number, okay — in terms of the major
5 contributor in terms of that item, it was which
6 individual based on your statistical analysis?

7 A It matched the DNA profile of David Johnson.

8 Q Okay. And you had sufficient samples in regards
9 to Rakim Floyd, Anthony Wilson, Rashawn Bailey, and
10 Gregory Montgomery as well; is that correct?

11 MR. HOFFMEYER: Your Honor, I object to
12 leading.

13 MR. JEPERTINGER: I know I am leading
14 but...

15 THE COURT: You can rephrase it.

16 BY MR. JEPERTINGER:

17 Q Once again, name the subjects you had and
18 including the deceased in the case.

19 A The standards I tested were Rakim Floyd, Anthony
20 Wilson, David Johnson, Rashawn Bailey, Willie Mae
21 Hayes, and Gregory Montgomery.

22 Q And other than David Johnson, was any of those
23 people that you named, were they major contributors
24 to what was on item 1, the steering wheel of the
25 vehicle?

SW - M. BOEHM - REDIRECT

1 A No, sir.

2 Q All right. Thank you. That's all I have.

3 THE COURT: Anything in recross?

4 MR. HOFFMEYER: Nothing further, Your
5 Honor.

6 THE COURT: Thank you very much, ma'am.
7 You may step down.

8 Any objection to this witness' being excused?

9 MR. HOFFMEYER: No, sir, Your Honor.

10 MR. JEPERTINGER: No, sir.

11 THE COURT: All right. Thank you very
12 much.

13 MR. JEPERTINGER: We call Doctor Erin
14 Presnell.

15 THE COURT: Doctor Erin Presnell, if you'd
16 please come around, ma'am. If at any time anyone on
17 the jury needs to take a break get my attention
18 please. We will -- it is important to me that y'all
19 are comfortable. So if any time someone needs a
20 break don't hesitate to get my attention and we'll
21 stop right there and take one, okay?

22 All right, Doctor Presnell.

23 THE CLERK OF COURT: Ma'am, if you would,
24 please place your left hand on the Bible and raise
25 your right hand.

SW - E. PRESNELL - DIRECT

1 WHEREUPON,

2 **ERIN PRESNELL,**

3 having been duly sworn by the Deputy Clerk of Court,
4 testified as follows:

5 THE CLERK OF COURT: Please be seated and
6 state your full name for the record.

7 THE WITNESS: My name is Susan Erin return
8 Presnell, P-R-E-S-N-E-L-L.

9 **DIRECT EXAMINATION**

10 BY MR. JEPERTINGER:

11 Q Doctor Presnell, can you tell us where you work?

12 A I work at the Medical University South Carolina
13 down in Charleston.

14 Q And what do you do at the Medical University of
15 South Carolina?

16 A I'm a forensic pathologist.

17 Q And can you tell the ladies and gentlemen of the
18 jury what a forensic pathologist is please.

19 A What — everyone is kind of getting a little more
20 familiar with forensic pathology, although it's not
21 exactly like it is on TV. But forensic pathology is
22 a subspecialty of the broad field of pathology. And
23 a pathologist, most of them are actually involved in
24 the diagnosis of disease. So if you go like to your
25 doctor and they do a skin biopsy, or for a lady is a

SW - E. PRESNELL - DIRECT

1 pap smear or breast biopsy or get surgery, something
2 is taken out, that tissue goes to pathologist. They
3 look at it, look under the microscope, and then
4 diagnosis whether it's cancer or not, is it
5 infection or not, so what kind of chemical to the
6 disease. So I trained in general pathology but then
7 I also spent time training in the subspecialty which
8 is forensic pathology. In forensic pathology we're
9 not just looking at a piece of tissue or organ
10 that's removed. We're looking at a whole individual
11 that's deceased. We're certainly looking for
12 disease that may have been the cause of death.
13 We're also evaluating trauma in evaluating trauma as
14 well in that death as well. And through our process
15 called the autopsy we're doing external and internal
16 exam. We put all our findings together in autopsy
17 report and then come up with the cause and manner of
18 death in each of the cases.

19 Q Okay. Doctor Presnell, what special training
20 have you received to do what you do?

21 A Well, I'm a forensic pathologist and so I'm --
22 they're physicians so I did -- I attended Clemson
23 for undergrad and majored in microbiology. And then
24 I went to MUSC which is the medical university here
25 down in Charleston and for medical school. After I

SW - E. PRESNELL - DIRECT

1 graduated that I chose pathology as that meant you
2 choose what field you want to go in, like pediatric
3 surgery. I chose pathology which general pathology
4 training was five years, and then I did additional
5 year in forensic pathology. And then through that
6 process I took boards for board certification in
7 general pathology as well as forensic pathology.

8 Q How many autopsies have you conducted through the
9 course of your career, Doctor Presnell?

10 A I would have to give an estimate about two
11 thousand.

12 Q All right. Have you ever testified in court
13 before?

14 A Yes, sir.

15 Q And have you been qualified as an expert in the
16 field of forensic pathology?

17 A Yes, I have.

18 Q Every time?

19 A Yes.

20 MR. JEPERTINGER: At this time, Your
21 Honor, I would move to have Doctor Presnell
22 qualified as an expert in the field of forensic
23 pathology.

24 MR. HOFFMEYER: Your Honor, I'll leave
25 that for the Court. Thank you.

SW - E. PRESNELL - DIRECT

1 THE COURT: I find Doctor Presnell is
2 qualified to testify as an expert in that field.

3 BY MR. JEPERTINGER:

4 Q Doctor Presnell, did you have occasion to perform
5 an autopsy on the body of Willie may Hayes; is that
6 correct?

7 A Yes, sir. I performed autopsy on August 22nd,
8 2008.

9 Q All right. Can you tell the ladies and gentlemen
10 of the jury basically what you when a cadaver comes
11 into your examining room.

12 A Well, we do a lot of photographs. We do
13 diagrams. We document all findings that we see
14 externally. And after we've done that, depending on
15 what kind of case it is we might do x-rays or some
16 other additional studies. And after that we do the
17 internal exam so we look at all the internal organs
18 as well like I mentioned before it could be for
19 trauma but also documenting disease as well. And
20 then we'll sample the tissues and their pertinent
21 tissue. We'll look the under microscope and we'll
22 do that. Once everything comes back then we'll,
23 like I said, decide cause of manner of death.

24 Q All right. As part of your responsibilities as a
25 forensic pathologist do you often collect items to

SW - E. PRESNELL - DIRECT

1 be submitted to SLED?

2 A Yes.

3 Q And did you do that in this case?

4 A Yes, we did.

5 Q Okay. Was there a law enforcement officer from
6 the city of Florence there?

7 A Yes, Officer Chris Moreau.

8 Q Okay. And did you give him the samples to carry
9 at SLED, ma'am?

10 A Yes, we did.

11 Q Now in terms of the examination of the cadaver of
12 Ms. Willie Mae Hayes, can you tell the jury what
13 injuries or you may have found on that body?

14 A Yes. Now she was in a state of myo
15 decomposition. She started to decompose somewhat
16 and so she had some changes associated with that;
17 but we could definitively tell her injuries, which
18 were basically seven stab wounds across the front of
19 the neck. The stab wounds, the tissue had started
20 to soften a little bit and so naturally you could
21 all kind of interconnect them once we reflected the
22 skin to look underneath. But they're also
23 associated with hemorrhage or bleeding under in the
24 muscles of the neck. Of the stab wounds, the
25 deepest one that we could estimate was 3.8 inches or

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1 ----

2 Q Excuse me, go ahead.

3 A Approximately 3.6 inches and that was the deepest
4 one. And of the stab wounds one of them disrupted
5 the jugular vain and most of the bleeding was on the
6 right as well. So she really didn't have any other
7 injuries. And so in consideration of everything I
8 determined her cause of death was due to the stab
9 wound, the stab wounds to her neck with the
10 disruption of the jugular vein.

11 Q And you cannot tell chronologically which wound
12 occurred first, correct?

13 A No, we can't.

14 Q In terms of cause of death what within a
15 reasonable degree of forensic pathological
16 certainty, what would you say was cause of death in
17 this case?

18 A The jugular vein having a stab wound to it.

19 Q And within a reasonable degree of pathological
20 certainty what would you determine and render
21 opinion on as to manner of death?

22 A Pathological certainty or medical certainty you
23 said?

24 Q Medical certainty.

25 A We classified manner of death as homicide.

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1 Q Beg the Court's indulgence one second. Did you
2 determine Ms. Hayes in terms of her cadaver, and I
3 know there's some decomposition you just testified
4 to, but what her general size and weight was at the
5 time?

6 A Yes, we measured that. Her — she weighed
7 approximately 160 pounds and she was 65.5 inches
8 which was 5' 5 1/2, 5 feet 5-and-a-half inches.

9 Q Doctor Presnell, please answer any questions
10 Mr. Hoffmeyer may have for you.

11 MR. HOFFMEYER: Good afternoon, Doctor
12 Presnell. I don't have any questions for you this
13 afternoon. Thank you for coming.

14 THE COURT: Thank you, Doctor Presnell.
15 No objection to Doctor Presnell being excused?

16 MR. HOFFMEYER: No objection.

17 THE COURT: Thank you very much, Ma'am.

18 MR. CLEMENTS: May we approach, Your
19 Honor.

20 THE COURT: Yes, sir.

21 (WHEREUPON, counsel approached the Bench
22 for an off-the-record discussion.)

23 THE COURT: Ladies and gentlemen of the
24 jury, we're going to take a short break while we get
25 set up for the next witness. Before I send you back

SW - E. PRESNELL - DIRECT

1 there let me speak to you real quick about a matter.
2 I'm going to ask someone to serve as the foreperson
3 of the jury, and let me just address that briefly.
4 Ladies and gentlemen, the foreperson of a jury is
5 basically the person that would be the communicator
6 between the jury panel and the Court so that if any
7 time some, any of you on the jury, have a question
8 for the Court it would be the foreperson that would
9 relay that question to the Court. In other words,
10 that would be the spokesperson for the jury. The
11 other role that a foreperson does is that when you
12 do have the case for your deliberations the
13 foreperson would start and stop the deliberations.
14 In other words, any time you have a group of folks
15 who are discussing something somebody needs to
16 start, and I will tell you so that when you are
17 deliberating you must all be present so that if
18 someone has to excuse themselves to go to the
19 restroom or whatever the foreperson would then stop
20 the deliberations, allow that person to do what they
21 need to do, come back and then start back once
22 everyone else is present. The foreperson's vote,
23 the foreperson's opinion, carries no more weight
24 than anyone else on the jury. All of you are equal
25 members of the jury panel. Your vote in this case

1 must be unanimous. You must always agree on the
2 verdict of the jury so you're all equal so the
3 foreperson's decisions or opinions carry no more
4 weight than any one else. But you just need to have
5 a foreperson whenever you are dealing with a jury so
6 that the Court can deal with one individual rather
7 than having to deal with everybody separately. Now
8 having said that, and kind of let you know what that
9 role is, Mr. Nettles, would you be willing to serve
10 in that capacity for the jury? I don't force
11 anybody to do it. I'm just asking if you'd be
12 willing to.

13 JUROR NETTLES: I'd rather not if somebody
14 else would accept but...

15 THE COURT: I have a couple of folks.
16 Ms. Anderson, would you be willing to serve as
17 forelady of the jury, ma'am?

18 JUROR ANDERSON: Sure.

19 THE COURT: All right, thank you. Listen,
20 don't be concerned, it's not a heavy burden or job.
21 It's a pretty easy job. It's just like I said,
22 whenever if at any time the jury has a question for
23 the Court or has any questions you would just write
24 that out and pass it out to me depending on the
25 question. I may just get you to come out and

1 respond to it, or I may have you all come out as an
2 entire group just depends on what the question is,
3 okay? But I'm we're going to take a short break
4 now. I ask you to step back into your jury room.
5 Have no conversation about the case and when you
6 return, as you've been doing sit whenever you like
7 so Ms. Anderson, I'll have you occupy that chair
8 right there. And Ms. Davis, of course, you'll
9 continue to occupy your seat there. So please step
10 back in your jury room and we'll get set up for the
11 next witness. We'll be at ease then for about five,
12 ten minutes.

13 (WHEREUPON, the jury was removed
14 from the courtroom at 3:46 p.m., and the following
15 proceedings commenced in open court.)

16 (WHEREUPON, a recess was taken from the
17 proceedings.)

18 THE COURT: Solicitor, is the State ready
19 to proceed?

20 MR. CLEMENTS: We are, Your Honor, waiting
21 on my — I'm waiting to see where Sergeant Brandt
22 went.

23 (Pause.)

24 THE COURT: Is the State ready now?

25 MR. CLEMENTS: Yes, Your Honor.

1 THE COURT: Defense is ready.

2 MR. HOFFMEYER: Yes, sir, Your Honor.

3 THE COURT: Mr. Propps, would you please
4 ask the jury to join us.

5 (WHEREUPON, the jury was returned to the
6 courtroom at approximately 4:08 p.m., and
7 the following proceedings commenced in
8 open court.)

9 THE COURT: All right, we'll now resume,
10 ladies and gentlemen.

11 Solicitor, you may call your next witness,
12 sir.

13 MR. CLEMENTS: Thank you, Your Honor. We
14 call Sergeant Mike Brandt.

15 THE COURT: Sergeant Brandt, if you'd
16 please come around to be sworn.

17 THE CLERK OF COURT: Please place your
18 left hand on the Bible and raise your right hand.
19 WHEREUPON,

20 **MICHAEL CHRISTOPHER BRANDT,**
21 having been duly sworn by the Clerk of Court,
22 testified as follows:

23 THE CLERK OF COURT: Please be seated and
24 state your full name for the record.

25 THE WITNESS: Good afternoon. My name is

SW - M. BRANDT - DIRECT

1 Mike, Michael Christopher Brandt.

2 **DIRECT EXAMINATION**

3 BY MR. CLEMENTS:

4 Q Can you please tell this jury where you work

5 A I work for the city of Florence Police

6 Department. I've been employed with the police

7 department for a little over 14 years. For the last

8 9 years I've been assigned to criminal

9 investigations division as a crime scene technician.

10 As the date of this accident in 2008 I've been the

11 supervisor of the unit for about six months.

12 Q And what did you do prior to working with in

13 crime scene investigative department?

14 A I had a short stint in white collar

15 investigations prior to being reassigned to

16 supervise in the patrol division.

17 Q Okay. Now to be supervisor in the crime scene

18 unit have you been to any particular types of

19 specialized training or schools or anything of that

20 nature?

21 A Yes, sir. I have attended the basic law

22 enforcement academy when I was first hired, but I've

23 also attended training through State Law Enforcement

24 Division or SLED for DNA evidence collection along

25 with other of my technicians. And I've also been to

SW - M. BRANDT - DIRECT

1 several of crime scene related trainings through the
2 South Carolina branch of the International
3 Association of Identifiers, topics to include
4 forensic light source training and crime scene
5 reconstruction.

6 Q Okay. So it takes, would it be fair to say or
7 not, that it takes a little more than your normal
8 general law enforcement training to work crime
9 scenes?

10 A Yes, sir, especially in this unit. The basic
11 training we received as a new technician is a four
12 week intensive internship in the unit where you're
13 guided every step of the way with a veteran
14 technician. And they are -- the new technician goes
15 to particular scene. They view what goes on as a
16 technician. They learn the steps and the
17 procedures. And they gradually integrate into the
18 processing of scenes until they have a firm grasp of
19 how to properly process a crime scene.

20 Q Okay. Now you were the supervisor in August of
21 2008?

22 A Yes, sir.

23 Q Okay. And who was working under you in your unit
24 at that time?

25 A The four technicians that -- I'm sorry, the three

SW - M. BRANDT - DIRECT

1 technicians that have testified before you, Corporal
2 Bo Myers, Corporal Chris Moreau, Shannon Hill, and I
3 have a new technician Scott Williamson.

4 Q So it was just you and those three until in 2008?

5 A That is correct.

6 Q All right. Now can you please tell this jury
7 when you got notice of this case what kind of case
8 it was related to you that it was and then tell this
9 jury what you did with that information.

10 A My initial involvement was -- I was notified by
11 our headquarters that a technician was needed at 200
12 West Liberty Street in the city of Florence to
13 respond to a burglary and missing person. I had
14 headquarters notify Investigator Hill to respond to
15 that scene. I later learned that the reported
16 missing person's vehicle was found on the next
17 street over so I notified Corporal Chris Moreau
18 respond to the vehicle to secure it, and I also
19 responded, initially responded to the vehicle to
20 make sure that everything was being handled properly
21 by Corporal Moreau. It was raining. We had -- we
22 made arrangements to have the vehicle transported
23 here to the police department to be secured and let
24 it dry so we could process it at a later time in a
25 secure fashion, and I responded to the scene on

SW - M. BRANDT - DIRECT

1 Liberty Street.

2 Q Okay. How did you have it transported from
3 Roughfork Street here to the city-county complex?

4 A We have a tow truck rotation and we utilize them
5 and we supervise them in that capacity, and it was
6 towed. It was placed on a rollback tow truck and
7 towed to the police department. The sally port on
8 the north side of the building that faces Baroody
9 Street was opened and the vehicle was eased down
10 into that, into the bay of the sally port where it
11 was secured.

12 Q Okay. Now when you first looked at the car and
13 knew you had to move it out of the rain what, if
14 anything, did you notice about whether it had been
15 hot wired or anything about the ignition, what did
16 you notice about that at that time?

17 A My initial assessment and later examination of
18 the car, it appeared there was no damage to the
19 steering column or ignition assembly that would
20 indicate that it was hot wired. It would appear
21 that it would have had to have been functioning with
22 a key.

23 Q So someone would you have had to have a key to
24 move it, drive it around?

25 A Yes, sir, based on — based on what I observed.

SW - M. BRANDT - DIRECT

1 I've never seen a car hot wired in that manner.

2 There appeared to be no damage to it.

3 Q Okay, all right. Thank you, sir. All right, so
4 you made sure Corporal Moreau was getting the car
5 moved where y'all could process it later and then
6 you responded where?

7 A I responded to 200 West Liberty Street and met up
8 with Investigator Hill. He walked me through the
9 scene and advised me what he had and where he had
10 begun to process. He was -- he had completed his
11 photographs and was -- had just begun to process for
12 latent prints when I first arrived.

13 Q Okay. So do y'all normally have assistance when
14 you process a team or do you do it solo?

15 A Typically we process scenes of a -- let's say
16 your average burglary, a break-in where there's not
17 a lot to process, there's the point of entry and a
18 few items had been touched. Typically that is
19 handled by one technician. Cases that indicate that
20 there may be higher gravity to it, there may be more
21 serious incident involved, we typically will try to
22 work at least two technicians to have a second set
23 of eyes to make sure we don't miss anything, to be
24 more thorough, and to be able to obtain the
25 additional equipment in our lab in these, for these

SW - M. BRANDT - DIRECT

1 typical, these atypical type cases, these out of the
2 ordinary cases.

3 Q So Investigator Hill testified that you have a
4 certain amount of equipment that stays with you in
5 your vehicle all the time?

6 A Yes, sir.

7 Q But you have additional equipment sometime that
8 you retrieve from your lab here in the complex?

9 A Yes, sir. We don't have the resources to have
10 video cameras and backup cameras for every, every
11 technician so what -- and the standard at that time,
12 I was knew as the supervisor so I had not changed
13 the protocols at all. Typically when you have a
14 major scene of this nature we are redundant. We do
15 more. And one of the things that would be more
16 would shoot 35 milliliter. That was still a
17 standard in crime scene at the time, and that was
18 one of the items that I obtained on that day was a
19 35-millimeter camera and came back to take
20 additional photographs of the scene.

21 Q And so Investigator Hill was using digital
22 photography?

23 A Yes, sir. Yes, sir.

24 Q Now when you said you got there he had finished
25 his photographing?

SW - M. BRANDT - DIRECT

1 A General.

2 Q The general ---

3 A The general photography, yes, sir.

4 Q But not the specific detail?

5 A Correct.

6 Q Is that correct?

7 A Correct.

8 Q So when he started processing then you came in
9 there and joined him and assisted him?

10 A Yes, sir.

11 Q Okay. All right, you talked about being
12 redundant. And not to be redundant here but to make
13 sure that we connect all our dots for the Court, for
14 the jury, and the State and the Defense, what I want
15 you to do is I want you to tell this jury what you
16 did as part of that process and try not to be
17 redundant on Investigator Hill but tell us what you
18 did.

19 A Okay. After I was briefed through the scene I
20 realized that there was more to the story so I went
21 back to the police department and obtained the Nikon
22 M70 35-millimeter camera.

23 Q What exactly made you draw the conclusion there
24 was more to the story, more than a missing person?

25 A Well, it was also a burglary and the television

SW - M. BRANDT - DIRECT

1 missing, the vehicle missing, and the vehicle being
2 found close by. There was more to the story than
3 was obvious so we try to operate at an assumption
4 that worse case scenario so we — we only have one
5 shot to collect all the evidence. That's basically
6 what I'm trying to say, and what we try to do is to
7 obtain all the evidence that is there when we have
8 that one shot so that's our fall-back position.
9 When it's something that seems like it might be out
10 of the ordinary we treat it like it's out of the
11 ordinary, and we go through the extraordinary steps,
12 to be redundant.

13 Q All right. What I'm gonna do, if I may, to help
14 us walk through this, I'm gonna ask you if you would
15 step down and stand to the jury's right. And if you
16 will help me skip over the things that you didn't
17 participate in that Investigator Hill already
18 testified to?

19 A Yes, sir.

20 Q I want to make sure that we get your full
21 involvement in this.

22 A Okay.

23 Q What did you do in regards to when you got there
24 examining the outside of the house?

25 A Well, at the time it was raining. I walked

SW - M. BRANDT - DIRECT

1 around the house briefly where he pointed out the
2 screen at the possible point of entry. And then we
3 went into the interior of the house, and he walked
4 me through, pointed to the window in the den area of
5 the house — or I'm sorry, the dining room area of
6 the house that appeared to be the point of entry.
7 And then he pointed out the back bedroom.

8 Q All right. Now this is — back up here, this is
9 State's Exhibit 4.

10 A Uh-huh.

11 Q Did you participate in dusting that area to try
12 get any latent prints?

13 A No, sir.

14 Q Okay.

15 A Investigator Hill did. You can see the evidence
16 that we were there in the residual latent print
17 powder around it.

18 Q And he had already processed that and pointed
19 that out to you?

20 A Yes, sir.

21 Q Okay, all right. State's Exhibit 5. Is that
22 where you responded to?

23 A Yes, sir, that is 200 West Liberty Street in the
24 City, County of Florence.

25 Q And State's Exhibit 7?

SW - M. BRANDT - DIRECT

1 A Yes, sir.

2 Q Actually that's State's Exhibit 6. Is that the
3 same as State's Exhibit 7?

4 A Yes, sir.

5 Q And what was pointed out to you on that?

6 A This is the areas where he had processed. And if
7 you look closely I can trace out where the latent
8 tape had been, and it appears that there may be a
9 partial lift up there that they're trying to
10 photograph. You can see the change from the haze of
11 the back, of the background of the window, and where
12 the latent tape.

13 Q And that's latent print tape?

14 A Yes, sir.

15 Q Okay. Sergeant Brandt, about how many crime
16 scenes have you been to?

17 A I counted my supplemental reports the other day,
18 and I've been -- I've issued over 2,040 supplemental
19 reports so I'd say better than a thousand crime
20 scenes.

21 Q How often do you find prints fingerprints as
22 opposed to not finding fingerprints?

23 A It really depends on the circumstance. Latent,
24 latent prints are delicate things. They're made up
25 of skin cells and dust. If you think of your

SW - M. BRANDT - DIRECT

1 fingers as an ink pad to leave something behind you
2 need ink, and that will be skin cells, sweat, dirt,
3 or grease, something of that nature. If it's a very
4 cold day or there are certain circumstances where
5 your skin is not oily, wet, dirty, things like that,
6 you may not leave fingerprints. And there's a lot
7 of cases that we go respond, and we make every
8 effort to recover any latent prints and a lot times
9 we come up empty. A lot of times we come up without
10 fingerprints.

11 Q How often do you find latents that aren't
12 identifiable?

13 A That's frequent. Latent prints, like I said, are
14 delicate. And even when there is a substance on my
15 fingers, if I slide across this surface I'm not
16 going to leave a significant distinguishable ridge
17 detail that can be compared to my ink role
18 fingerprints. So a lot of times if you consider
19 handling items, especially in a hurry on a muggy
20 August day you will find that typically your hands
21 slide across items more than you just touch them.

22 Q Okay, all right. Let's look at State's Exhibit
23 8. What is the significance about that picture and
24 what do you remember about that?

25 A This is a followup photograph of the scene. Here

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1 this is a picture of the rear door, the south entry
2 exit of the house. It is barred. This picture is
3 to show that when we left the scene we left it
4 secure.

5 Q All right. And how did you find it when you
6 first came to the house?

7 A I was advised by Investigator Hill that this door
8 was open, and the cross bar was out so the door was
9 not secure.

10 Q Okay. What did you do to participate with
11 collecting any evidence outside of the house and
12 general area, if anything?

13 A I had limited — I was briefed that Investigator
14 Hill recovered a bag containing these pillows, and I
15 went over behind the apartment complex in which he
16 found, that he showed them to me and photographed
17 them.

18 Q Okay.

19 A He actually collected them and brought them to
20 the twelfth floor of this building where they could
21 be air dried and samples could be collected in a
22 secure manner.

23 Q And what was done with the mattress that was in
24 the house?

25 A We wrapped it in — we have brown craft paper

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1 that we use to package evidence and keep it secured
2 to make sure that the biological evidence that's on
3 it stays on it and doesn't get transferred to other
4 things, but also that nothing else is added to that
5 piece of evidence. You can see some of that brown
6 paper there, but we also -- that's one of the extra
7 items that we typically don't carry on a regular
8 basis in our vehicle. It's one of the things that I
9 obtained from the police department and brought to
10 the scene. That -- the mattress that was recovered
11 from the back bedroom with the red stain on it was
12 packaged in the brown craft paper and transport it
13 to the police department by me in the mobile command
14 vehicle.

15 Q Why don't you wrap it in plastic?

16 A Plastic holds moisture in. And moisture, just
17 like with food, with evidence, when that moisture is
18 maintained on the surface you have mold and mildew
19 start to form in a very short time. We're in South
20 Carolina; humidity is high in most items. And if
21 you wrap it in plastic those items are going to
22 start to mold and mildew, and that could potentially
23 render our evidence useless so we make every effort
24 that we can to preserve that evidence so we have the
25 best possible results to render.

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1 Q All right. And can we move ahead to State's
2 Exhibit Number 14. You see something down on the
3 floor here on State's Exhibit 14?

4 A Yes, sir.

5 Q Sergeant Brandt, what is that?

6 A That's a scrub brush.

7 Q What is that by?

8 A That's by the trash can in the kitchen.

9 Q Did you help in the collection of that, or direct
10 Investigator Hill what to do?

11 A I directed him to collect that piece of evidence
12 because at the time I did not know it's value. I
13 believe that we tested that at the scene, and it
14 gave a negative result presumptive for blood, the
15 phenolphthalein presumptive blood test that
16 Investigator Hill talked about earlier. But I did
17 not know its significance at the time so we
18 collected it along with the trash can.

19 Q All right. What else did you do as far as
20 assisting with processing in that house?

21 A After I'd taken my 35-millimeter photographs I
22 went through the house with Investigator Hill and
23 assisted him by conducting some of the presumptive
24 tests in the -- all of the sink drains and handles
25 in the -- throughout the residence.

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1 Q How many drains were there?

2 A Two sink drains here in the kitchen. You have a
3 sink drain in the bathroom and you have a shower tub
4 drain in the bathroom as well. All of those were
5 tested for the presence of blood using the
6 presumptive blood test kit. All tested negative
7 with the exception of this right kitchen drain.

8 Q And what do you do after you find a positive
9 presumptive test? What do you do with that? Where
10 do you submit that to?

11 A To collect that positive, collect a specimen from
12 that area we take a set of sterile cotton tip swabs.
13 We open them up. In most cases we will moisten them
14 with deionized water to loosen up any — to try to
15 collect the best possible specimen from that. We
16 want to get as much of the material that's there so
17 sometimes if things are dry we use that ionized
18 water, deionized water, to collect all the material
19 in that location that we possibly can to get the
20 best possible DNA standard. We will let that air
21 dry, place it in an evidence envelope, place it in a
22 Manila envelope, and those are sealed. And after
23 they're logged into evidence they're logged out and
24 submitted to the State Law Enforcement Division
25 forensic laboratory for DNA analysis.

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1 Q Did you get a positive back on that drain for
2 giving DNA?

3 A This particular drain, or this drain tested
4 positive on the scene presumptively for blood but
5 the DNA results from SLED indicate that it was not
6 human blood.

7 Q Okay. Nothing positive on the other drains?

8 A Nothing, no presumptive positives on the other
9 drains.

10 Q Why is it important — why do y'all always test
11 drains and you said the knobs on the faucets? Is
12 that what you said earlier?

13 A Yes, sir.

14 Q Why do y'all test that?

15 A In some instances, especially in a scene that is
16 so neat there's the possibility of a cleaning that
17 occurred. And when you clean, I mean, if you're
18 dirty you wash your hands. And that's one of the
19 things that, you know, that's a potential. So
20 that's one of the reasons why we test the drains,
21 the areas in that. Even if we don't see it this
22 presumptive test can take a trace amount, it can
23 detect a trace amount of blood and give the
24 indication where to the naked I can't see that
25 there's anything on that swab I have received the

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1 positive presumptive test and submit it to SLED.

2 Q And do you do that because water dilutes it and
3 therefore you might not see it with your naked eye?

4 A There are a myriad of different things that are
5 possibilities why I would not see it but.

6 Q Okay. Now let me ask you this, what did you do
7 to check on the floor? I know you said one door was
8 open. Did y'all check and track from the bedroom to
9 that back door? What did y'all do to see if there
10 was any blood anywhere else in the house other than
11 the drains?

12 A We physically examined the entire house. We --
13 if I'm not mistaken we left the house after 9 p.m.
14 We started -- I think I arrived on the scene around
15 3, 3:45 in the afternoon roughly after I met with
16 Corporal Moreau. So we spent close to six -- I
17 spent close to six hours. Investigator Hill was on
18 the scene a lot longer than that. And we went
19 through this house thoroughly. We did in visual
20 inspection of the entire house, but also after we
21 found the mattress with the red stain on it I
22 utilized a searchy forensic light source. It's a UV
23 van or single -- it takes only a single band of
24 light, and I searched for biological material in the
25 room to see if there were any additional biological

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1 standards that we weren't getting with the naked
2 eye.

3 Q So let me be sure I understand what you said.
4 You get a special kind of light, UV light, and you
5 go shine that everywhere in the room and look for
6 blood?

7 A Uh-huh, correct. It's akin to a black light.
8 Most people understand what a black light is for
9 cultural reasons or if you own a lizard, you know,
10 that, you know, different reasons you — most people
11 understand what a black light is. It looks purple
12 and it makes things fluoresce. Well, with a special
13 lens we can see a color shift in that florescence to
14 see whether or not there's biological specimens
15 there that are particular to humans.

16 Q What did you find using that light as far as
17 blood in the house?

18 A We found nothing additional to what we had
19 already found with our visual examination.

20 Q Okay, all right. How thorough would you say
21 yours and Investigator Hill's examination in
22 processing of that house was?

23 A Very thorough.

24 Q State's Exhibit 41, do you recall what you
25 noticed and what stood out to you when you walked in

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1 this bedroom?

2 A Investigator Hill brought to my attention that he
3 thought it was odd that the mattress was bare,
4 especially since that was a utilized bedroom.
5 That's where the victim was reported to sleep. He
6 felt that that was odd. And we checked the washing
7 machine; it was empty.

8 Q No bed clothes?

9 A No bed clothes in the washing machine. If you
10 look you can see that there are bar patterns, but
11 there's also little square patterns that don't quite
12 match completely with the quilting of the top. I
13 just looked at that, and it looked odd to me. And
14 so we removed the glasses and then if you go to the
15 I think it's the next one.

16 Q State's Exhibit 42?

17 A I lifted it up and that's when we found the red
18 stain.

19 Q And what are these?

20 A These are what I refer to as springs, and then
21 these brown bars are the support bars that go across
22 as well and —

23 Q What match did that have to what was on the other
24 side of the mattress?

25 A These particular cross bars appeared to match

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1 with the brown stains and impressions on the other
2 side of the mattress.

3 Q So those made impressions on the mattress?

4 A It -- yes, sir, if natural body weight, you're
5 going to push down soft object on something hard
6 it's going to somewhat conform it's gonna shake to
7 whatever it's pressing against that a whats appeared
8 to be.

9 Q And when you relieve that pressure what's going
10 to happen?

11 A It's gonna retain some of that shape.

12 Q Okay, all right. But were there any spring
13 impressions on this side of the mattress?

14 A There is an accurate representation of what I
15 saw, and there is no real impression there. That
16 indicated to me that it was recently flipped over.

17 Q Okay, all right. And you or Investigator Hill
18 tested that red stain?

19 A Yes, sir. I believe we have a picture of that
20 where we have the positive presumptive test. When
21 we take photographs, I'll kind of explain something,
22 the reason why we do what we do, we take photographs
23 that series if a picture tells a thousand words we
24 want to try to tell the entire story so we take a
25 series of photographs from coming in and we will go

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1 in and photograph the entire room in our general
2 series and then we will just kind of stair step
3 through in our general. So we can represent to you
4 how this room is, at least in two dimensions. We
5 can be able to show you step by step where we
6 stepped in the room where you can take the
7 photograph, you can see the view of what
8 Investigator Hill is seeing at that moment in time.

9 Q Can you turn to State's Exhibit 44?

10 A And then as we progress there are certain things
11 that we will photograph to help show you the
12 progression of our investigation. In this we
13 discovered that there was blood spatter here on the
14 bed rail.

15 Q Did the light help you with that or could you see
16 that?

17 A This was through visible, visible examination.

18 Q Okay.

19 A But there were blood spatter here, blood spatter
20 here, there's the staining here, and then there's
21 the blood -- excuse me, the stain, looked like
22 transfer stain there on the lower edge of the --

23 Q Go to State's 45. What is a transfer stain?

24 A A transfer stain is a contact where two items
25 meet. I think of a traffic collision. If you have

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1 a fender bender, you transfer paint. That rubbing
2 transfers from one, something from one item to the
3 next. So when we talk about transfer that's going
4 to be blood from one item transferring on to the
5 other item. It's going to be a swipe kind of
6 collision or transfer.

7 Q So 1, 2 and 3, what are those?

8 A 1 appears to be seepage where it seeps through.
9 It just absorbs and then passes through whatever
10 it's absorbing. 2 and 3 are circular drops of blood
11 that had dried. We call that blood spatter. And it
12 can be from a few different types of activities, but
13 typically it's from blood leaving with some velocity
14 and objects to transferring to another place.

15 Q So if you hit something and blood kind of sprays
16 or spatters?

17 A If blood is on a surface and you hit it it can
18 spatter.

19 Q What's cast off?

20 A Cast off would be when there's movement from a
21 weapon or a fist; that the energy of the movement
22 causes the blood to move with it. And then when
23 there's a change in direction that blood tends to
24 want to continue on in the same direction. So you
25 have that transfer where it moves off of the object

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1 through the air and then lands.

2 Q Go to State's Exhibit 46. And 4, is that a
3 transfer or swipe as called?

4 A Yeah. This would be a transfer because you can
5 see — you can see that there's in this pattern
6 there is a kind of a swoop, swirl. I'm at a loss
7 for words with it right now, but it just indicates
8 the movement with this directional pattern right
9 here.

10 Q Okay. Was there any other blood, yes or no, that
11 y'all were able to find by your naked eye or with
12 the light aided source that you found in the house?

13 A There was no other blood in the house. It was
14 contained to this room and then the what's probably,
15 you know, from groceries, some sort of meat or
16 something in the kitchen and in that kitchen drain.
17 Other than that kitchen drain everything was
18 isolated to the victim's bedroom.

19 Q No drippage, no, nowhere on the way out?

20 A Not even on the carpet were we able to locate any
21 additional blood.

22 Q Who processed the car?

23 A I did.

24 Q And what blood, if any, did you find in the car?

25 A There was no blood in the car.

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1 Q None whatsoever?

2 A None whatsoever. I — the first thing I did when
3 we started to process the vehicle was I put on a
4 protective suit, a Tyvek suit, basically to
5 incapsulate me, protect me from anything that would
6 be in the vehicle but also to protect me from
7 shedding my skin cells, my saliva, anything inside
8 that vehicle. Mask, had it — the suits that we
9 wear have a hood to contain all of our hair. And
10 that was the first thing that we did. I had
11 corporal Moreau take my photographs because I did
12 not want to transfer anything from the cameras that
13 we used to the inside of that vehicle. So as we --
14 as we went through I would direct him to take
15 photographs from distance so we can -- so we would
16 cross contaminate or bring something, be additive to
17 the crime scene which is the vehicle in this case.

18 Q State's Exhibit 86, what is that?

19 A That is the trunk of the victim's car.

20 Q And how thoroughly did you examine that?

21 A Very thoroughly. We went through every --

22 Q Did you use your light source?

23 A Yes.

24 Q And did you find any evidence or any suspicion of
25 blood in that trunk?

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1 A No.

2 Q None?

3 A No.

4 Q Okay. Were there stains in the trunk, I mean, in
5 the car?

6 A Yes, there were many stains in the car.

7 Q What did you do to test those for blood or
8 biological material?

9 A Well, when we work with a vehicle the first thing
10 that we go after is main usage type items. If you
11 think about how you use your vehicle, you put your
12 hands on the steering wheel. You put your hands on
13 the gear selector, the shift down here, or on the
14 column, but you also use the door handles.

15 Q How about seatbelts?

16 A Seatbelts. And the first thing that we do is we
17 go in and we collect possible touch DNA standards or
18 specimens from the steering wheel, the gear shift
19 or, and those door car handles. That right there
20 can tell us who is in the, car. And that's
21 typically the best that we're gonna be able to do.
22 But we don't stop there. What we do is we go in and
23 examine the interiors of the trunk and the interiors
24 of the passenger compartments; and each stain that
25 we come to, we'll take samples and we'll take a

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1 sample from that and test it using the
2 phenolphthalein presumptive blood test kit. We want
3 to make sure there's no blood in there. When
4 there's no indication of blood, we don't have
5 another way to tell whether it's somebody's spilled
6 a soda or whatnot. In this case I wasn't sure what
7 we had so by default I collected samples from that.
8 I did that in case we got further information to
9 lead us down another path. We did not get any
10 further information.

11 Q All right. And how thorough were you in
12 examining the interior of that car?

13 A Very thorough. I believe that we had a total of
14 19 sets of swabs from the vehicle itself, and that
15 is not typical for our crime scenes. This is more
16 than we normally do on your average neighborhood
17 burglary or convenience store burglary and robbery.

18 Q I want to show you State's 94. What did you do
19 other than swabbing?

20 A After we collected the swabs and the standards
21 from all of the stains on the interior of the
22 vehicle, we then moved to the latent print
23 processing.

24 Q Is it important to do the swabs first or the
25 latent prints first, or does it matter?

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1 A It matters. And the reason why it matters is
2 when we're collecting DNA standards we want to do
3 everything we can to prevent things to be added to.
4 In latent print processing we're adding to with the
5 latent print dust. It is a carbon based powder just
6 like the ends of the graphite in your pencil, but
7 it's ground up superfine but we're adding to the
8 scene. That's why we have these procedures set
9 forth to where we collect the DNA, the biological
10 standards, the trace evidence, prior to adding
11 anything to the scene.

12 Q So the last thing you would do would be what?

13 A Latent print processing.

14 Q Okay. And who actually did the dusting and
15 attempted to lift the prints on this car?

16 A I did. Typically I will cut the car in half and
17 I will start on the hood and work the exterior of
18 the car all the way around before I enter into the
19 interior of the car. And in this case, literally
20 from the center line, a little bit over the center
21 line of the top of the hood, the top of the roof,
22 and the top of the trunk line, all the way around to
23 the bottom where you collect all the dust and the
24 dirt at the bottom edge of your car, you can never
25 keep that part clean. That's how far down I went.

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1 Q How about your — where you put the gas in?

2 A The gas tank is included in that territory that I
3 process. We try to leave no stone unturned in
4 processing this vehicle.

5 Q How many latent prints did you find or did you
6 lift from this car?

7 A I lifted everything that I found. The — if I
8 remember correctly I had one on the hood, exterior
9 hood of the car. I had one lift that I made in this
10 region which is the driver's front door. If you can
11 imagine sitting in your car with the window rolled
12 down, it would be about where your hand rests if you
13 keep your hand outside the window or about like
14 that.

15 Q That's State Exhibit 93, and you took a lift from
16 that are?

17 A Yes, sir. That, in this picture you can see part
18 of the exterior door handle if that gives you a
19 little bit of a reference.

20 Q Move to State's Exhibit 94 please. All right.
21 Can you tell us anything you found there that's
22 indicated on that photograph.

23 A This is — it's somewhat of a generalized
24 photograph. And if you can — if you can see this
25 will be Corporal Moreau standing on the exterior of

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1 the vehicle, and he had it on a tripod so he's away
2 from the — he's away from the vehicle.

3 Q That reflected in the door?

4 A That's reflected in the door.

5 Q Okay.

6 A But he's taking a picture of where I processed,
7 and this is where that general area is again.

8 Q All right. State's Exhibit 95, tell us what that
9 is.

10 A That is one of the fingerprints. That's a
11 closeup picture. Like I told you before we take
12 general and then gradually step in. This would be
13 from we were just looking at a mid range shot to
14 where we're — I'm trying to give you a frame of
15 reference or where this is. Now this is a closeup
16 shot of one of the fingerprints in that fingerprint
17 lift that I made from the door.

18 Q Sergeant Brandt, earlier you mentioned ridge
19 detail and talked about that and sliding your hand
20 across something. What exactly is ridge detail and
21 is it depicted that that picture?

22 A Yes. Look at your own fingers. You can kind of
23 make out the ridges and furrows or the peaks and the
24 valleys of your fingerprint pattern. And it's
25 represented here with these very light gray lines.

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1 And as I talked about earlier, that little skid,
2 when things are moist one of the things that hinders
3 us in identification fingerprints you can scroll,
4 you can see where some of that skidding occurred and
5 it phases out that print and it makes it difficult
6 to identify. But there are numerous you will hear
7 about later that make identification possible in
8 fingerprints.

9 Q State's Exhibit 94, what is that?

10 A This is a photograph of the driver's front door.
11 It's the interior glass. And if you look, this will
12 be the top section of the door, the top metal frame,
13 and then just below that you got a fingerprint
14 developed. This photograph is actually a little bit
15 out of focus if you go to it.

16 Q State's Exhibit 98?

17 A This was the fingerprint that we were discussing
18 previously on the exterior of the front driver's
19 door. That gives you an indication of where that
20 lift was coming from.

21 Q Okay. And you were able to lift two prints, two
22 latents from there, or is that one piece of tape?

23 A That's one — actually —

24 Q That's the edge I'm looking at. I'm thinking
25 that's like two pieces of tape.

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1 A Actually, that would be lift 8. I believe this
2 would be lift 9.

3 Q All right, State's Exhibit 99. That's 100.

4 A Okay. This is a better picture of what I was
5 talking about earlier. This is the driver's, the
6 interior glass of the driver's front door. And this
7 is several inches down from that top frame that I
8 was talking about earlier, and there is a
9 fingerprint in the midst of that. You can see the
10 ridge detail that is necessary for fingerprint
11 identification.

12 Q State's Exhibit 100?

13 A That is another fingerprint in that, from that
14 lift. Basically what we try to do is when we have
15 multiple lifts. Typically if you leave, if set your
16 hand down you will have fingertips left in different
17 places and space. It's not going to be all —

18 Q How often — excuse me, I'm sorry.

19 A Go right ahead.

20 Q How often do you get one that clean that's on
21 100?

22 A Not too often. We're very pleased to have one of
23 this quality.

24 Q All right, State's Exhibit 101. What does that
25 depict?

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1 A That is lift number 12. You can barely make out
2 the — you can barely make out the tape edge on the
3 corner. That's the frame of the front driver's side
4 door. That's the interior glass.

5 Q Is that tape like in rectangle sections or?

6 A Yes.

7 Q When I think a tape I'm thinking like a rubber
8 roll.

9 A Well, this is from a roll. Basically this is
10 three inch latent print tape. It's three inches
11 wide and it's 180 inches long. And we can roll out
12 what we need, and then we place it on a white latent
13 print backer. It's like photo paper, and it gives a
14 good contrast from the black latent print powder
15 that we have. So when we obtain this kind of
16 fingerprint and we lay that tape on that photo, that
17 white photo paper, the contrast is there for the
18 examiners to be able to make the identification.
19 But what we'll do is we have to lay the tape on to
20 the surface and work it down to make sure we don't
21 get any air bubbles or any tape folds or anything
22 like that that would obstruct the fingerprint, and
23 then we would cut the tape a little bit larger than
24 the card and we do this to stabilize the print when
25 we got to lift it and put it on back of the card.

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1 And then we would lift the tape off the surface,
2 slide that card in, and then work it down flat on to
3 the latent print card.

4 Q All right. And none other than Corporal Moreau
5 you were the only who processed the car?

6 A That's right, yes, sir.

7 Q He just taking pictures?

8 A Yes, sir.

9 Q And was he taking pictures he thought or were you
10 directing him or how did he take the pictures?

11 A Because I was processing the, collecting the
12 evidence, I directed him to take the pictures.

13 Q All right. I want to look at State's Exhibit 50.
14 You remember State's Exhibit 50 and what was
15 significant about that, where that was?

16 A That was approximately two doors to the east of
17 200 West Liberty. There's a -- this would be the
18 back of a singular set of apartments and then a set
19 of three apartments that are in a horse shoe pattern
20 and behind this location was where we found where
21 Investigator Hill found a black trash bag containing
22 the floral colored pillows with the blood on them.

23 Q Now if we could look at State's Exhibit 1 a
24 second. Now if you can, Sergeant, you were talking
25 about where you said there was some apartments and

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1 Ms. Hayes' house. Can you point out to us where
2 Ms. Hayes' house was.

3 A Right here is Ms. House's house. You have the
4 shed in the back. You have the carport, the metal
5 roof carport here. This is a vacant lot. And then
6 you have a set of apartments that you see the back
7 of, and then you have --

8 Q And A duplex?

9 A A duplex for lack of a better term. And then a
10 horseshoe set of apartments right here.

11 Q Okay. And whereabouts was the bag found with the
12 bloody pillows?

13 A Right in there.

14 Q Okay. Where was the swing you just pointed out
15 to us?

16 A If I'm not mistaken the swing is right there.

17 Q Okay. And where was the car found on Roughfork
18 Street?

19 A The car was found right here.

20 Q Okay. What path ways or walk ways did you
21 observe going from Liberty Street to Roughfork
22 Street?

23 A There's a place where the fence is down and it's
24 right in this area.

25 Q Okay. And so you could walk through here and

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1 come up and go this way to these buildings?

2 A Yes, sir.

3 Q Okay, all right. Sergeant Brandt, I want to ask
4 you some questions about chain of custody.

5 A Okay.

6 Q Okay. Who collected the steering wheel swabs
7 from Ms. Hayes' car that were tested by SLED and
8 Agent Boehm testified matched David Johnson?

9 A I collected those swabs.

10 Q Okay. And the buccal swabs from Anthony Wilson,
11 who collected those?

12 A I collected those.

13 Q And why would you collect buccal swabs from
14 Anthony Wilson.

15 A Well, we were given indication there were
16 multiple people involved in this case. And at the
17 direction of the investigators we made contact with
18 them, and we were able to obtain buccal swabs from
19 each individual as well as fingerprints for
20 comparison to all of the standards that we
21 collected, latent print and DNA.

22 Q All right. Who collected buccal swabs from Rakim
23 Floyd?

24 A I did. I collected them.

25 Q Who collected — and why would you collect buccal

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1 swabs from Rakim, same reason?

2 A Yeah, at the time he was indicted to be a part of
3 this incident.

4 Q Now how about Gregory Montgomery. Who collected
5 buccal swabs from him?

6 A I did.

7 Q All right. How about fingerprint cards, did you
8 collect those from Anthony Wilson?

9 A Yes.

10 Q Rakim Floyd?

11 A Yes, sir.

12 Q Gregory Montgomery?

13 A I'm not sure if I collected — I believe I
14 collected from Gregory Montgomery.

15 Q Fingerprint card as well?

16 A I believe so.

17 Q How about buccal swabs?

18 A Yes, sir, I did.

19 Q You know you did that?

20 A I know I did buccal swabs from Gregory
21 Montgomery.

22 Q And the latent prints that were submitted to SLED
23 for analysis from Ms. Hayes' car, who collected
24 those?

25 A I collected those latent prints.

SW - M. BRANDT - DIRECT

1 Q Buccal swabs and fingerprints from Rashawn
2 Bailey, why did you collect those or who collected
3 those?

4 A That was Investigator Hill.

5 Q That was Investigator Hill?

6 A Yes, sir.

7 Q All right. Now let me ask you this, you did
8 swabs attempting to find touch DNA in the car,
9 right?

10 A Yes, sir.

11 Q Did y'all do swabs attempting to find touch DNA
12 in the house?

13 A As I recall we did not, other than the crock pot.
14 As indicated before by Investigator Hill, we had
15 family members in and out of the doors, and we did
16 process them for fingerprints. But when you have
17 that many people in and out, typically you're going
18 to -- you potentially have layer upon layer of
19 samples, and we did not at the entry points, the
20 door handles or anything like that.

21 Q What did that fact play into either processing or
22 not processing the doorknobs for touch DNA?

23 A Well, typically we're gonna -- I believe we're
24 gonna have the better opportunity to get latent
25 prints from the doorways, the entry ways, things

SW - M. BRANDT - DIRECT

1 like that 'cause there's better contact even so
2 brief. There's better contact there. There's
3 potential for DNA to be left behind, but when you
4 have numerous people in and out you tend to have
5 layer upon layer. But we felt that that was the —
6 that was the best route, the best possible evidence
7 to collect at that time.

8 Q Why didn't you test the two-by-four across the
9 back door for touch DNA?

10 A The two-by-four is a porous object and typically
11 what we're trying to do is collect from the surface,
12 and it would not render a excellent profile.

13 Q So it — well, you say porous, it means it's got
14 holes in it?

15 A Yeah, it's gonna absorb. You know, it's gonna
16 absorb what's there and there's —

17 Q Was it what I call raw wood, or did it have a
18 lacquer or paint on it?

19 A It was raw rough board. There was no significant
20 finish to it other than being plain down into the
21 dimensions it was..

22 Q So no lacquer, no paint —

23 A Nothing that would keep a fingerprint and a DNA
24 standard up on the surface.

25 Q Okay. What did you do, if anything, to obtain

SW - M. BRANDT - DIRECT

1 any kind of photo or see a picture of Ms. Hayes?

2 A I have access to the Department of Motor Vehicles
3 member website where we can pull information and
4 driver's license photographs and vehicle
5 information. And part of our case file I included a
6 picture of her since she had not been located.

7 Q And did you actually find, when y'all processed
8 the house did y'all find her driver's license,
9 pocketbook?

10 A I'm not a hundred percent on that. I cannot
11 remember finding her -- we found several
12 pocketbooks, but I don't recall whether or not we
13 found her license in particular.

14 Q Okay. So you don't recall -- you can't say
15 one --

16 A I can't say one way or another. I don't recall
17 that fact.

18 Q With the photograph you had part of your file,
19 did you go to Malloy Street?

20 A Yes, sir, I responded. Investigator Hill called
21 me on the morning of the 27th, the early morning
22 hours of the 27th, and notified me that the body had
23 been recovered. And I responded with the mobile
24 command vehicle, brought lights, and the 35
25 millimeter camera and responded to the scene.

SW - M. BRANDT - DIRECT

1 Q Why would you need to bring lights?

2 A It was in a remote location. There were no
3 street lamps. It was, you know, 1:30, 2:00 in the
4 morning. There was just not a lot of light out in
5 that area so I brought the mobile command vehicle to
6 bring power and work lights to the scene.

7 Q Were you able to make an identification yourself
8 when you saw the body?

9 A Yes, sir. I observed the body, helped remove it
10 from the ditch, and when we uncovered it that was
11 the same picture I saw in Ms. Hayes' DMV photo.

12 Q What did you do to process that scene to hunt for
13 any additional evidence if you found any, and who
14 helped you?

15 A That location we weren't a hundred percent sure
16 whether or not that was still in the city in that
17 case. We notified the Sheriff's Office. They were
18 already helping us look anyway. But their forensic
19 services came out, Lieutenant Lutcken, Von Lutcken,
20 and Corporal Adam Moore responded from their
21 forensic unit. They took photographs as well.
22 Duplicated — we basically function very, very
23 similarly so everything that we did we duplicated
24 each other and —

25 Q What was the need to do that?

SW - M. BRANDT - DIRECT

1 A In case there were some jurisdictional aspect. I
2 tend to fail on the safe side so if we're gonna do
3 something we're gonna do too much of something
4 instead of not enough. I want to make sure that we
5 accurately and adequately documented the scene so we
6 involved the Sheriff's Office as well to cover our
7 bases as far as jurisdictions were concerned.

8 And when the body was removed we functioned,
9 the four of us functioned as a unit in documentation
10 and removal of the body. We brought it on to the
11 road surface and documented the unwrapping of the
12 body and made preliminary visual examinations for
13 wounds, identification, and any other evidence with
14 inside the cocoon of bed clothes that were knotted
15 up around her. And then Corporal Moore and myself
16 got back into the ditch, and we searched by hand
17 through elbow deep water for any additional
18 evidence. We searched an area greater than the
19 length of her body, timing, you know, basically it's
20 probably a 12-foot section that we searched by hand
21 in the water beyond where the weeds and growth were
22 disturbed to try to find any additional evidence
23 that was there.

24 Q Were you able to find anything pursuant to those
25 efforts?

SW - M. BRANDT - DIRECT

1 A No, sir. No, sir, we were not.

2 Q What amount of blood, if any, was on the outside
3 of the bed clothes she was wrapped in?

4 A There was not a tremendous amount of blood on the
5 exterior of the bed clothes or the sheets and
6 comforter, but that was — also she was left in
7 standing water in the ditch and covered up for
8 several days or for at least a couple of days, and
9 that could tend to wash away some of what was there.

10 Q What effect would that have on maybe anything
11 seeping through from the inside to the outside?

12 A It would dilute anything that was there.

13 Q All right. Beg the Court's indulgence. Agent
14 Brandt, what if anything, did you ever to do with
15 retrieving any evidence or logging in any evidence
16 from Stackley Street?

17 A Stackley Street I had a minimal contact with the
18 evidence itself, but I directed Investigator Hill in
19 his examination and additional evidence collection
20 from the clothing and the knife and the earrings.
21 With the earrings I was specifically looking for
22 ownership, the touch DNA, but in the ownership realm
23 because I was in hopes that that was some jewelry
24 that had been taken from the victim and finding a
25 profile there would be very helpful.

SW - M. BRANDT - DIRECT

1 Q Was there a profile found there?

2 A There was a profile that developed from those
3 earrings, but it did not match the victim.

4 Q Ms. Hayes?

5 A And then the presumptive blood test that were
6 collected from the knife were negative for blood.
7 There was no blood found on the clothing item.

8 Q So what, if anything, was there that linked any
9 of the items at Stackley Street to Ms. Hayes or her
10 home?

11 A To my knowledge there were — there was nothing
12 to link those items.

13 Q All right, thank you. Please answer any
14 questions Mr. Hoffmeyer has.

15 **CROSS - EXAMINATION**

16 BY MR. HOFFMEYER:

17 Q You never went to Stackley, did you?

18 THE COURT: Whoa, whoa.

19 MR. HOFFMEYER: I'm sorry.

20 THE COURT: Y'all come up here.

21 (WHEREUPON, counsel approached the Bench
22 for an off-the-record discussion.)

23 THE COURT: Ladies and gentlemen, I think
24 we're gonna — Mr. Hoffmeyer, obviously, it's time
25 for his cross-examination. And I don't want to — I

SW - M. BRANDT - CROSS

1 was just talking to him and the Solicitor, and I
2 don't want to handcuff him or limit him in any way.
3 I want him to have his full cross-examination. And
4 in doing that I'm looking at the time and I'm
5 thinking, you know, it might be a good thing to stop
6 at this point and let's start back in the morning.
7 And we'll start back with Mr. Hoffmeyer's
8 cross-examination and then he can take whatever time
9 he needs. So we're going to do that. He has — Mr.
10 Hoffmeyer has no problem; the Solicitor has no
11 problem so we're going to do that. Ladies and
12 gentlemen, please continue to refrain from any — if
13 something is in the paper don't look at it. If
14 something is on TV don't look at it. Don't look on
15 the computer and just continue to protect your
16 ability to remain fair and impartial and what we'll
17 do is start back at 9:30. Family members and all,
18 friends, let them know that the case is continuing,
19 you still can't talk about it, but you will tell
20 them what they want to know once it's concluded.
21 Okay. So if everyone else will remain seated,
22 ladies and gentlemen, we'll see you back here at
23 9:30 in the morning please.

24 (WHEREUPON, the jury was removed from the
25 courtroom at 5:16 p.m., and the following

1 proceedings commenced in open court.)

2 THE COURT: All right. Officer Brandt, if
3 you would just have no conversation with anybody
4 about your testimony, okay? You can certainly talk
5 to folks but don't discuss your testimony.

6 THE WITNESS: Yes, sir.

7 THE COURT: We will resume at 9:30 in the
8 morning. Is there anything else we need to deal
9 with today?

10 MR. CLEMENTS: No, sir, Your Honor, not
11 that I'm aware of.

12 THE COURT: Okay. Mr. Hoffmeyer,
13 anything?

14 MR. HOFFMEYER: No, sir, Your Honor.
15 Thank you.

16 THE COURT: All right. Thank y'all.
17 We'll start back first thing in the morning.

18 (WHEREUPON, the proceedings were concluded
19 for the day to be reconvened on February
20 15, 2012.)

21 (WHEREUPON, State Exhibit No. 119 was
22 marked for identification only.)

23 THE COURT: Now I know we're at Mr.
24 Hoffmeyer's cross, but is there anything we need to
25 take up before we get started from anybody?

1 MR. CLEMENTS: Nothing I know of, Your
2 Honor.

3 MR. HOFFMEYER: Nothing I know of, Your
4 Honor. I believe that Your Honor has been routinely
5 asking the jury if they have heard anything about
6 the case. I know there's been some amount of
7 coverage of this.

8 THE COURT: Yeah, I've seen that and I'll
9 continue to do that throughout.

10 So Mr. Propps, would you ask the members of
11 the jury to join us please.

12 And Officer Brandt, come on up and...

13 THE WITNESS: Yes, sir.

14 (WHEREUPON, the jury was returned to the
15 courtroom at approximately 9:46 a.m., and
16 the following proceedings commenced in
17 open court.)

18 THE COURT: Welcome back. We hope
19 everyone had a good evening and well rested and
20 ready to go back to work today. Let us know — I
21 told you earlier if you needed a break if anyone
22 needed ad break at any time, and I mean even in the
23 middle of question to the witness. If you need a
24 break let me know and we'll stop. Also, let me know
25 how it is as far as temperature wise. I can't

1 promise you I can help you on that. I can tell you
2 that I can try, but I don't know what the truth is
3 because I've worked in this building now for I guess
4 13 years, and I'm told all kind of different
5 stories. I'm told that the heating/air is
6 controlled out of some place up in Virginia or
7 Atlanta. It's somewhere other than here oddly
8 enough so but I think we have some degree of
9 control, not a lot. So if it's really uncomfortable
10 for you let me know, and we'll see what we can do,
11 okay? I can't promise you we can help you but we'll
12 try.

13 Before we get started back let me ask, is
14 there any member of the jury who has heard anything,
15 read anything, seen anything about this case since
16 you were here yesterday?

17 (There was no response.)

18 THE COURT: No one? Okay, wonderful. All
19 right, ladies and gentlemen, if you recall yesterday
20 we were — Mr. Clements had completed his direct
21 examination, and we are now going to hear from Mr.
22 Hoffmeyer with his cross-examination so we'll go
23 ahead and pick up with that.

24 Mr. Hoffmeyer.

25 MR. HOFFMEYER: Thank you, Your Honor.

CROSS - EXAMINATION

BY MR. HOFFMEYER:

Q Good morning, Sergeant Brandt. I just have a few questions for you I believe.

A Yes, sir.

Q Now you indicated previously I believe on direct that you were looking for evidence in the car as you described it all over the car; is that correct?

A Yes, sir.

Q And you indicated that you were looking -- one of the things that you looked for was touch DNA, right?

A Yes, sir.

Q Now you also in your testimony indicated that that may help you to figure out who was in the car; is that right?

A Yes, sir.

Q Now obviously someone can leave touch DNA without driving a vehicle, right?

A Yes, sir.

Q And somebody can leave touch DNA without riding around in a vehicle, right?

A That would be possible, yes.

Q If I walked out right now into the parking lot and touched a vehicle and kept on walking I could potentially leave touch DNA, right?

SW - M. BRANDT - CROSS

1 A Potentially, yes, sir.

2 Q Okay. As far as — and we have heard from the
3 DNA lady earlier, other than some touch DNA that was
4 found on the steering wheel there was no other touch
5 DNA found of my client; is that right?

6 A Other than inside the vehicle that is correct.

7 Q Okay. And of course, that would mean the trunk,
8 correct?

9 A Correct.

10 Q The interior of the trunk?

11 A Correct.

12 Q That would mean the stick shift or perhaps it was
13 a regular drive vehicle, whatever you call that.

14 A That item was not tested; and based on what was
15 discussed earlier through my testimony and
16 Ms. Boehm's with SLED DNA, that was not ruled out --
17 I mean, that was not tested because of the
18 parameters in which we can submit evidence. And
19 typically, the — what you find is a correlation
20 between the gear shift which we did swab. There's a
21 correlation between the gear shifter and the
22 steering wheel because of usage. We in collection
23 of our touch DNA try to use reasonable and logical
24 collection methods based on usage patterns; and if
25 you would consider the general usage patterns, who

SW - M. BRANDT - CROSS

1 would be in control of that vehicle, we would make
2 collections from those areas where people would be
3 in control of that vehicle in entering and exiting
4 the vehicle as well as usage of the vehicle.

5 Q You have to put the car in drive to drive it,
6 correct?

7 A Yes, sir.

8 Q Every time somebody drove it they'd touch that;
9 wouldn't they?

10 A Yes, sir.

11 Q And from what you just told us on direct the
12 short answer to my question is, no, you didn't
13 submit anything from the gear shift thing, correct?

14 A We submitted it to SLED, but we decided not to
15 test that based on those parameters.

16 Q I got you. Now as far as the house itself, the
17 screen did you do any touch DNA analysis on the
18 screen?

19 A No, sir, we did not do any touch DNA on the
20 screen. Based on the environmental conditions we --
21 and the limited usage of the screen itself, we
22 decided that it was likely a higher probability to
23 obtain latent print identifications from the screen
24 as opposed to the single -- instead of the single
25 touch rendering of low percentage of DNA we would

SW - M. BRANDT - CROSS

1 hope for better possibility with the fingerprint
2 identification from that singular touch.

3 Q You didn't get any fingerprint information off of
4 that, right?

5 A We processed it but were unable to get
6 fingerprints from that.

7 Q Can't you do both?

8 A You can. However, as I discussed earlier, latent
9 print, the latent print process is an additive
10 process. Once we have gone in and processed it for
11 latent prints we have added to, and that further
12 contaminates the sample and can even further limit
13 the abilities of the DNA identification.

14 Q Can't you do parts of the door for the prints and
15 parts of the door for touch DNA, or the screen
16 rather?

17 A That is possible; however, when we're doing touch
18 DNA we are not swabbing something that we don't, you
19 know, we don't know that there's usage of. And once
20 you swab something, if you think back to my earlier
21 testimony, when you swab you're wiping away so it's
22 basically a one shot deal one way or the other. And
23 what we try to do is go with the higher percentage
24 of the potential identifications.

25 Q That was point of entry, correct, point of entry?

SW - M. BRANDT - CROSS

1 A Yes, sir.

2 Q Very important?

3 A Very important.

4 Q And in addition to that, that wood that was moved
5 you described as being porous I believe but that was
6 something that clearly was touched or likely touched
7 by whoever was in that house, right?

8 A Yes, sir.

9 Q Didn't do any touch DNA on that, right?

10 A Again, we —

11 Q Could you answer my question first. Did you do
12 any?

13 A No, no, we did not. We did the latent print
14 processing which, again, higher probabilities of
15 identification in that manner.

16 Q Now with regard to the Stackley Street address,
17 now as you got involved in this investigation you
18 became aware because you were the head and still are
19 I believe, Sergeant, you're the head of this unit,
20 correct?

21 A Yes, sir. Yes, sir.

22 Q You became aware that a suspect in this murder
23 investigation was found having shaved his head
24 hiding at 525 Stackley Street; is that right?

25 A I'm not a hundred percent on those details, but I

SW - M. BRANDT - CROSS

1 am aware of a suspect from 525 Stackley Street.

2 Q Well, you would certainly agree and tell this
3 jury you are aware that a suspect in a murder case
4 was found at 525 Stackley, you know that?

5 A Yes.

6 Q All right, sir. You never went to that scene,
7 did you?

8 A No, sir.

9 Q And of course, when we are — or y'all are
10 rather, when y'all are look for evidence one thing
11 that you would look for is evidence from the victim
12 such as blood from the victim, correct?

13 A Yes.

14 Q Now with regard to Stackley Street there were
15 clothes found with that suspect on Stackley Street;
16 is that correct?

17 A Yes, sir.

18 Q You did not do any analysis to try to — well,
19 let me ask it this way. You told this jury earlier
20 about the knife that was found there.

21 A Yes, sir.

22 Q That there was a presumptive blood test, correct?

23 A Yes, sir.

24 Q Okay. And I believe you told us that it didn't
25 show any — it didn't — wasn't positive; is that

SW - M. BRANDT - CROSS

1 right?

2 A It gave negative results for blood, yes.

3 Q Now you can't see DNA, can you?

4 A No, sir.

5 Q And you submitted items for DNA analysis to SLED
6 that you had not done any presumptive test on, blood
7 test, is that right, some items?

8 A Some items, yes.

9 Q And you also submitted items to SLED that you had
10 done presumptive blood test on that were negative;
11 is that correct?

12 A Yes.

13 Q But you did not submit the knife to SLED; is that
14 correct?

15 A No, we did not submit the knife to SLED. The
16 knife was not found on the scene. It was found in
17 the custody of another person. It was tested
18 several locations, and it tested negative for
19 presence of blood. Therefore, we did not find that
20 it was probative to this case to submit touch DNA to
21 something from the knife to show that it was owned
22 by the person that we'd recovered it from.

23 Q All right. So the person that we're talking
24 about that you believe owned that knife was Rakim
25 Floyd, right?

SW - M. BRANDT - CROSS

1 A I believe so, yes.

2 Q Now obviously it's your position or what you're
3 telling this jury is you made the determination
4 although you never went to the scene, that the knife
5 was his so no need to test it for touch DNA; is that
6 correct?

7 A That's correct.

8 Q All right. Of course it could have been touch
9 DNA tested for Anthony Wilson's DNA; couldn't it?

10 A It could have been tested for any number of
11 persons.

12 Q So that's a yes?

13 A Yes, it could be tested for any number of
14 persons' DNA, 'however, tieing it back to the
15 original crime that we're investigating, there's a
16 break in the link there that needs to be recognized.
17 You could test ---

18 Q According to you? According to you?

19 A Yes, sir.

20 Q All right. Well, how about as far as Rashawn
21 Bailey, obviously you just told us you test it for
22 DNA. It could have been tested, touch tested for
23 Rashawn Bailey, but wasn't tested for his, right?

24 A Correct.

25 Q And likewise, Gregory Montgomery could have been

SW - M. BRANDT - CROSS

1 touch tested for DNA, wasn't, so don't know, right?

2 A It was not touch tested for — or it was not —
3 no collection of touch DNA was taken from the knife,
4 period.

5 Q Now the presumptive blood test is not a — for
6 lack a of better way to put — it end all be all, is
7 it? There can be blood on an item that doesn't show
8 presumptively for blood, correct?

9 A That is a possibility. That's why we test items
10 multiple times for multiple locations.

11 Q And of course, sometimes DNA analysis can find
12 blood that a presumptive blood test doesn't; isn't
13 that correct?

14 A It can find DNA, yes.

15 Q Well, DNA is found in blood, right?

16 A It is, but it's also found in skin and saliva,
17 things like that.

18 Q Yes, sir, I understand. Now the — I think you
19 may have told me earlier, Sergeant, when I was
20 asking you, I know you told us on direct a little
21 bit about it. But there were no presumptive blood
22 tests done on the clothes that were found at
23 Stackley, right?

24 A I believe there was visual examination for blood
25 and there was none found.

SW - M. BRANDT - CROSS

1 Q My question, Sergeant, is was there a presumptive
2 blood test on any of the clothes at Stackley?

3 A I don't have any direct knowledge of that. I
4 directed for an examination to be done of the
5 clothes by Investigator Hill. You have to refer
6 back to his testimony with regard to that.

7 Q Well, you testified earlier about how the knife
8 was presumptively blood tested; but you didn't have
9 any independent knowledge of that, did you?

10 A I directed him to do that and he testified to
11 that.

12 Q Okay, all right. You didn't direct him to
13 conduct any presumptive blood test on the clothes
14 then, is that fair?

15 A That would be fair, yes.

16 Q Okay. Is it also fair that this backpack that
17 was found with a suspect in a murder investigation
18 there was no presumptive blood test on that backpack
19 either, was it?

20 A No, sir, there was not.

21 Q Did law enforcement provide you with any items to
22 test either for presumptive blood test or touch DNA
23 from the home of Rakim Floyd?

24 A I don't recall other than with regard to the
25 backpack there were earrings that we were, we were

SW - M. BRANDT - CROSS

1 hoping to find the victim's DNA on through
2 ownership. That's the only items that came into the
3 unit that I recall.

4 Q None from law enforcement from Rakim Floyd's
5 house on Liberty Street then?

6 A I don't have any direct knowledge of that. I
7 can't give you a good answer.

8 Q And you don't have any direct knowledge about law
9 enforcement providing you where any items from
10 Rashawn Bailey's house on Liberty Street either, do
11 you?

12 A No, sir.

13 Q Or Gregory Montgomery's house from law
14 enforcement, is that fair to say?

15 A That's fair to say.

16 Q Now if you'll excuse me one second, Sergeant.

17 A Yes, sir.

18 Q You mentioned, Sergeant, that you directed that a
19 visual of the items found on Stackley Street—

20 A Yes, sir.

21 Q —was done. Did you do that or did you direct
22 it be done?

23 A I directed Investigator Hill to do that.

24 Q Did you direct Investigator Hill to use a black
25 light on it?

SW - M. BRANDT - CROSS

1 A I don't think I specifically told him to do so
2 but —

3 Q So you don't know whether he did or he didn't?

4 A I can't testify to that exactly, no.

5 Q If you will excuse me one second, Sergeant.

6 MR. HOFFMEYER: Your Honor, if you'll
7 indulge me just one second.

8 THE COURT: Sure, absolutely.

9 MR. HOFFMEYER: Sergeant Brandt, thank you
10 very much.

11 THE WITNESS: Thank you.

12 THE COURT: Any redirect?

13 MR. CLEMENTS: One moment, Your Honor.

14 THE COURT: Yes, sir.

15 **REDIRECT EXAMINATION**

16 BY MR. CLEMENTS:

17 Q Sergeant Brandt, Mr. Hoffmeyer was asking you a
18 lot about Stackley Street and items you sent to SLED
19 for analysis and asked you about Mr. Montgomery.
20 When did Mr. Gregory Montgomery come to be an issue
21 in this case, what time frame?

22 A It was late last year, the end of the calendar
23 year. If you'll indulge for me one moment in my
24 notes I have. On November 3rd, 2011 at
25 approximately 11:45 I was notified of

SW - M. BRANDT - REDIRECT

1 Mr. Montgomery's involvement in this case and —

2 Q As a result of that what was resubmitted to SLED
3 for analysis?

4 A All of the DNA evidence was packaged together in
5 the SLED packaging, a main container to keep it
6 together organized, and it was submitted along with
7 Mr. Montgomery's standard for comparison.

8 Q Okay. And what, if anything, came back matched
9 to Gregory Montgomery?

10 A If you will indulge me, I believe, from the SLED
11 report the DNA profile from item 54.

12 MR. HOFFMEYER: Your Honor, I object to
13 that. He can't testify to that. The forensic or
14 the DNA analyst would have to testify to that.

15 MR. CLEMENTS: I'll withdraw that
16 question.

17 THE COURT: He can -- okay.

18 MR. CLEMENTS: Your Honor, the DNA analyst
19 did testify to that.

20 MR. HOFFMEYER: If she did I just don't
21 remember. I don't mind if he —

22 THE COURT: Sustained.

23 MR. CLEMENTS: And the report is in
24 evidence, Your Honor.

25 THE COURT: It is, yeah.

SW - M. BRANDT - REDIRECT

1 BY MR. CLEMENTS:

2 Q Sergeant Brandt, what limitations do you have as
3 far as actually submitting items to SLED for
4 analysis?

5 A As we discussed earlier, it was -- it's because
6 of their case load they try to limit it to five
7 unknown standards on the initial submission.
8 Typically they receive cases that are not this
9 scope, and therefore, they try to limit it down and
10 that's why we had to make three submissions or at
11 least three submissions to SLED for DNA analysis.

12 Q So you -- would it be fair to say you made a
13 submission of a limited number of items, then
14 another submission of a limited number of items, and
15 then a third submission of a limited number of
16 items?

17 A Yes, not to mistake that we did not submit all of
18 the items at the same time and each time, but we
19 were limited to the five items to be analyzed per
20 set.

21 Q So you submitted everything you reasonably could
22 submit or not?

23 A I submitted everything within reason.

24 Q Okay. Now in driving a car what is a person
25 going to hold on to the most, the gear shift or the

SW - M. BRANDT - REDIRECT

1 steering wheel?

2 A As a law enforcement officer I would hope it
3 would be the steering wheel.

4 Q So what would be most reasonable to expect you
5 would find touch DNA, on a steering wheel or on a
6 gear shift?

7 A I believe it would be reasonable to be the
8 steering wheel.

9 Q An why would that be?

10 A Because of the contact and motion.

11 Q So it would be more contact, more motion?

12 A Correct, yes, sir.

13 Q Okay, all right. Now in regards to Stackley
14 Street, Mr. Hoffmeyer was asking you about
15 submission of a knife, submission of other items,
16 and I believe you told him about the earrings. What
17 came back connecting that to Ms. Hayes, if anything?

18 A Nothing.

19 Q Nothing?

20 A No, sir.

21 Q And in regards to the submitting the knife for
22 touch — well, let me ask you this. Do you know
23 what is a wild goose chase?

24 A Going down —

25 MR. HOFFMEYER: Your Honor, I object to

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1 the form of that question.

2 THE COURT: Sustained.

3 BY MR. CLEMENTS:

4 Q All right. What was your reason for not
5 submitting the knife found on Stackley Street
6 several days after this incident for touch DNA?

7 A We tested the knife for blood. The blood would
8 tie it back to the scene. And we did not have any
9 positive presumptives from that knife. We did not
10 submit anything further from that because logic
11 reason in our limitations of submission, that's why
12 we didn't submit it.

13 Q Thank you. No further questions.

14 MR. HOFFMEYER: I don't have anything
15 further, Sergeant. Thank you.

16 THE COURT: All right. Thank you very
17 much, sir. You may step down.

18 THE WITNESS: Thank you, sir.

19 MR. CLEMENTS: Your Honor, at this time we
20 call Mr. David Black.

21 THE COURT: All right, Mr. Black, if you'd
22 please come around.

23 WHEREUPON,

24 **DAVID BLACK,**

25 having been duly sworn by the Clerk of Court,

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1 testified as follows:

2 THE CLERK OF COURT: Please be seated and
3 state your full name for the record.

4 THE WITNESS: My name is David Warren
5 Black, last name is spelled B-L-A-C-K.

6 **DIRECT EXAMINATION**

7 BY MR. CLEMENTS:

8 Q And Mr. Black, what do you do now for a living?

9 A After 30 years of law enforcement service to the
10 State of South Carolina I retired from law
11 enforcement. I'm currently working with Mr. James
12 Wilson with Max Fitness Company out of Lexington,
13 South Carolina.

14 Q All right. And you — you said you had 30 years
15 of prior service in law enforcement?

16 A Yes, sir, that's correct.

17 Q Can you please tell this jury where you served
18 the State of South Carolina in law enforcement?

19 A Yes, sir. Primarily between two agencies, the
20 Richland County Sheriff's Department in Columbia
21 South Carolina and also the South Carolina State Law
22 Enforcement Division better known as SLED. Out of
23 those 30 years of law enforcement over 15 years,
24 almost 16 years, were spent as a latent fingerprint
25 examiner, crime scene investigations, and crime

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1 scene reconstruction.

2 Q Now to be employed latent prints, crime scene
3 investigation, do you have any kind of special
4 training or education or experience in those areas?

5 A Yes, sir, I do.

6 Q Can you please tell the jury what your
7 experience, what your training and education is.

8 A Yes, sir. I have a associate arts degree in
9 criminal justice from Florence Darlington Technical
10 College. I continued my education at the University
11 of South Carolina, Columbia, where I received a
12 bachelor of science degree in criminal justice with
13 a minor in sociology. I then began working with the
14 Richland County Sheriff's Department first as a line
15 deputy for four years and then I transferred to the
16 Sheriff's Office forensic laboratory as a forensic
17 Investigator where I was there for three years.
18 After seven years with the Richland County Sheriff's
19 Department I was employed with SLED in the latent
20 print crime scene department for almost a little
21 over 12 years, almost 13 years as a latent print
22 examiner. And as a latent print examiner I had
23 duties of not only doing latent print examination
24 and fingerprints and palm prints, but also footwear
25 and tire tread impressions and also I did processing

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1 of evidence for latent impressions and also
2 processed investigative crime scenes.

3 As far as education I was — it'd be
4 specifically for latent prints. I went to basic
5 fingerprint examiner's school at South Carolina
6 Criminal Justice Academy. I also successfully
7 completed the advance latent techniques course
8 taught by the Federal Bureau of Investigation at the
9 South Carolina Criminal Justice Academy. I attended
10 the North Carolina Criminal Justice Academy through
11 Ron Smith Associates and completed the advance palm
12 print identification. I also went through several
13 other courses through the South Carolina Division of
14 the International Associate for Identification and
15 the International Association. The International
16 Association for Identification, many courses through
17 them both here in South Carolina and other states
18 throughout the country, that dealt with fingerprint
19 identification and also with the processing of
20 evidence for not only fingerprints but other
21 associated evidence with that. By appointment only
22 I attended the FBI Academy in Quantico, Virginia
23 where I successfully completed a three week
24 administrative advanced latent print course. And
25 there have been other courses that I've attended

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1 with other groups specifically for latent print
2 examination.

3 Q How many times have you been called on to testify
4 in state and federal and military courts in the area
5 of latent print examination and identification?

6 A In the almost 16 years with latent fingerprint
7 examiner and general sessions court of the State of
8 South Carolina, United States federal court, United
9 States military courts, I've been called to testify
10 exactly 108 times having been found an expert all
11 108 times in that fields.

12 Q So you've been found an expert 108 times?

13 A Yes, sir.

14 MR. CLEMENTS: Your Honor, we would submit
15 Mr. David Black as an expert in the area of latent
16 print examination and identification.

17 MR. HOFFMEYER: Your Honor, I leave that
18 to the Court.

19 THE COURT: All right. I find that he is
20 so qualified and can testify as an expert in that
21 area.

22 BY MR. CLEMENTS:

23 Q Mr. Black, were you working at SLED in 2008?

24 A Yes, sir, I was.

25 Q When exactly did you retire from SLED?

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1 A I retired from SLED in July of 2010.

2 Q Okay. Now can you please explain to this jury
3 what SLED's protocol is in regards to the
4 examination of latent prints and the peer review
5 that is required by SLED as part of their protocol?

6 A Yes, sir. Whenever an agency submits any
7 evidence to SLED it goes through first the latent --
8 excuse me, goes through the first evidence log-in
9 area. At the evidence log-in area that case is
10 given a lab number and every item of evidence is
11 given an item number. From there it's then
12 transferred to the appropriate examiner in respect
13 to department. Once that evidence is received it is
14 documented. There are notes written up on it,
15 technical notes, whatever the process the examiner
16 use in examining that evidence. Once the case is
17 complete the SLED latent print crime scene
18 department had complete one hundred percent case
19 review, meaning once that examiner finished that
20 case all the evidence was then transferred to
21 another court qualified latent print examiner and
22 they independently reviewed that case, the case
23 notes, the technical parts, the actual microscopic
24 examination, and the report. And if that examiner
25 agreed with those results, it was signed off on and

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1 then that report was submitted back to the
2 submitting agency and they were then notify the
3 received was ready to be picked up.

4 Q Did you have an occasion to examine any latent
5 print lifts and make any comparisons in a case
6 involving the murder of Ms. Willie Mae Hayes?

7 A Yes, sir, I did.

8 Q And what part did you play in that examination of
9 those latent prints?

10 A I was the reviewing officer in this case. At the
11 time Tom Darnell was lieutenant supervisor of the
12 latent print department. Lieutenant Darnell, Tom,
13 is currently serving in Camp Lebanon, Afghanistan.
14 He's not available for court. I received the 12
15 latent lifts and four sets of major case prints from
16 him. I did an examination of that evidence, agreed
17 with his conclusions, and signed off on the case.

18 Q Okay. And did you make your own independent
19 examination of this?

20 A Absolutely, yes, sir.

21 Q Okay. Did you do it with him present or did you
22 go to incident location and do your own?

23 A I did my own examination at my office. I
24 received the evidence from his office, and then I
25 went to my office which was two doors down from his

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1 on the left-hand side, and I did my own examination
2 independently of him.

3 Q And was that at the SLED lab on Broad River Road
4 in Columbia?

5 A Yes, sir, I was.

6 Q Okay. Now can you tell this jury you said you
7 received how many major case prints.

8 A I received four major case prints, major case
9 prints that were submitted by the Florence Police
10 Department. They were four different individuals
11 including their complete, complete inked finger and
12 palm prints.

13 Q And who were those four individuals?

14 A Rakim Floyd, Anthony Wilson, David Johnson, and a
15 Rashawn Bailey.

16 Q Can you tell us were you able to make any
17 identifications, and if so, what kind in regards to
18 Rashawn Bailey?

19 A There were no identifications made to Rashawn
20 Bailey.

21 Q Can you tell us what identifications, if any,
22 were made to Rakim Floyd?

23 A There were no identifications made to Rakim
24 Floyd.

25 Q Can you tell us what, if any, identifications

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1 were made to Anthony Wilson?

2 A There were no identifications made to Anthony
3 Wilson.

4 Q Can you tell us what, if any, identifications
5 were made to David Gerard Johnson?

6 A Yes, sir. I identified the right middle and
7 right index finger of Mr. David Johnson to a latent
8 lift that's item 20 in the SLED report, and also
9 identified the right ring finger of David Johnson on
10 another latent lift that's marked as item 24 from
11 the SLED report.

12 Q Now item 20, can you tell us -- well first let me
13 ask you this, how many latent lifts were presented
14 to you on this case?

15 A I received 12 latent lift backers in this case.

16 Q And can you please tell this jury so they
17 understand what a latent lift backer is.

18 A Yes, sir. Whenever a crime scene or evidence
19 associated with a crime scene is processed the
20 latent examiner or the crime scene investigator will
21 take a fiber glass brush, will place it in a
22 container of fingerprint powder, which is a carbon
23 powder best. And the best way to describe is like
24 sweeping the floor. My mom has had me sweeping many
25 a times. You just take it, dab it in, rock off

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1 that, ranch off the excess and just glide over a
2 surface. The print that is developed with the
3 fingerprint powder is then lifted using a clear
4 transparent parent tape. When you place the tape on
5 the print it's then lifted off, and it's placed on a
6 latent lift backer. Now what's important to
7 remember with a latent lift backer you have two
8 sides. You have a flat side where you write
9 information down like where the print came from and
10 who lifted the print and date and time. But on the
11 other side is where you place the latent. And that
12 latent is actually placed on the glossy side of the
13 print, of the card. The reason why that is done it
14 gives it a better contrast whenever an actual
15 examination comparison is done. It helps to examine
16 when we get a better contrast when they evaluate
17 that prints.

18 Q Okay. And you had 12 different latent backers
19 presented to you?

20 A Yes, sir. Yes, sir.

21 Q Were they from the same location or different
22 location?

23 A They were all lifted from different locations.

24 Q Okay. Now can you please tell me, you said item
25 20. Where did that latent come from?

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1 A It's one latent lift card marked front driver's
2 door interior window, top of glass, approximately
3 2-inches from latch side.

4 Q And how many impressions did you have on that
5 latent backer?

6 A There were two impressions on that backer. Both
7 were identified to Mr. David Johnson. Again, one
8 was the right index finger and the other was the
9 right middle finger.

10 Q All right. And you said there was another latent
11 that was presented that matched David Johnson. What
12 item number was that?

13 A On the SLED report that was item number 24, and
14 it's one latent lift card marked driver's front door
15 under window molding approximately 10-inches from
16 latch side edge.

17 Q And what did that latent lift match to?

18 A That was identified to the right ring finger of
19 David Johnson.

20 Q Okay. Now there were no other latent lifts that
21 matched any other individuals; is that correct?

22 A That is correct. There was in particular another
23 latent lift that was not identified to Mr. Johnson
24 or the other three gentlemen, but all the other
25 latent lifts were of no value for identification.

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1 Q Can you explain to the jury how robust or how
2 firm are fingerprints and how they can be unsuitable
3 for identification?

4 A In this particular case when I say there are no
5 value for identification, that means they contain
6 insufficient ridge detail; they were partial prints.
7 I can tell you that, yes, someone or someone touched
8 a surface; I just can't tell you who. There's no
9 way to positively identify who actually touched that
10 surface. Latent prints you have to remember are
11 fragmentary impressions. Whenever a touching occurs
12 there usually movement involved, and it's not
13 controlled. You know, when you grasp something you
14 grab it and you do or you touch it and you move on.
15 What you have to remember too is if you take a
16 moment to look at your hands from the tip of your
17 fingers to the base of your palms, you've got lines,
18 you got ridges on this area. This is unique
19 strictly to your fingers and palms and to the soles
20 of your feet, bottom of your feet. These ridges on
21 the top of them have minute sweat pores that are
22 constantly exuding perspiration. Perspiration,
23 99 percent of it is water; the other 1 percent, half
24 is inorganic materials, and the other half is
25 organic materials. It touches whatever surface that

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1 it's on, and because it's water and these materials,
2 a lot of times it will evaporate immediately. So
3 what you're looking for, what you're trying to get
4 the print off of is gone before they even — before
5 the person can get there to process the print for
6 it. Also it's very fragile. You have to take in
7 consideration environmental areas. In this state
8 you've got a lot of humidity, you've got a lot of
9 heat, those can effect it. Also, where it's cold
10 and rain can affect it. Water can wash water away.
11 Again, 99 percent of perspiration sweat is water.
12 So all these factors can come into play. It's a
13 random touching.

14 Q Now where would you most likely be able to
15 successfully get a latent fingerprint lift, from a
16 porous surface or a nonporous surface?

17 A Usually nonporous surface. If you have something
18 like a shiny surface like a glass or shiny metal,
19 that's usually a better surface. But it also
20 depends on the techniques that you're using too. If
21 you have untreated wood, for example, fingerprint
22 powder is not what you're going to use. You're
23 gonna to have actually use some type of chemical
24 like Anhydron to try to bring that print out because
25 what is happening, the contaminants, the water

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1 that's on your hand is actually being absorbed by
2 that wood, that porous material, just like paper.

3 Q Okay, all right. Now when you make the
4 comparison itself how can you explain the technique
5 or the science behind making an identification and a
6 match?

7 A Yes, sir. First off, the fingerprint examiner is
8 through your training and experience. It is years
9 of looking at fingerprints, years of looking at
10 known prints who -- the actual role ink prints,
11 comparing that to the latent prints which are called
12 the unknown. Those prints are from a crime scene or
13 from the evidence associated from the crime scene.
14 You're using your eyeball, your eyes, and you're
15 using a microscope that's approximately four to
16 four-and-a-half times in power in strength. It's
17 like a magnifying glass that you're looking through.

18 Through the comparison process you're looking
19 at the ridge characteristics that are present in two
20 different impressions, and you're trying to
21 determine if those ridge characteristics occupy the
22 same relevant position and area to each other. An
23 identification is made when those ridge
24 characteristics are found to be in the same position
25 and area; they occupy the same unit relationship to

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1 each other. They're also similar in their shape and
2 size and structure, and you also take into account
3 the number of characteristics that are present in
4 both the latent and the known print.

5 Q What, if anything, do you do to chart these out?

6 A If requested by a Court a chart is done by the
7 examiner, and it is brought to court for
8 demonstrative purposes only.

9 Q When you say demonstrative purposes what do you
10 mean? That's to show —

11 A Just to show the jury how an actual comparison,
12 how identification is done. You have two prints.
13 One, you have the known ink print. Then you have a
14 another that's effaced, then photographed. And then
15 you have another photograph of the latent print.
16 Both of them have been enlarged approximately 12
17 times. And with — and they're labeled one as
18 latent print, one is ink print, the known print, and
19 you'll see numbers and lines that actually show what
20 matches between the two prints and how the match is
21 brought about.

22 Q Okay. And for the standard in your field of
23 expertise how many points do you match?

24 A There is no set number. It is based on the
25 totality of the print. Some — in the state of

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1 South Carolina we have no set number. Federal
2 Bureau of Investigation has no set number. There
3 are certain countries or certain departments that
4 may have a protocol they have a policy with that,
5 but we do not have one. It is based on the totality
6 of the print.

7 Q Do you know what some of those protocol numbers
8 may be?

9 A I know, for example, in United Kingdom, Great
10 Britain, they have the standard of 16. However, the
11 way they have it writ with the standard of 16 if
12 they had 16 there's no question it is the person's
13 print. It's accepted that's their print; it can't
14 be questioned.

15 Q Okay. Now were those type charts prepared for
16 this case?

17 A Yes, sir, I did prepare a chart for one of the
18 prints that I did identify.

19 Q Okay. I'm gonna show you what's been marked for
20 identification purposes as State's Exhibit 119. Can
21 you tell me if you can identify this and know what
22 this is.

23 A Yes, sir. This is a fingerprint chart that I did
24 through the SLED photography department, their
25 assistance that I made. And on the back of the

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1 chart on each side you'll see my initials DWB and a
2 L with a circle representing latent. That's
3 something I put on there along with the lab number
4 to identify that the chart that I made.

5 MR. CLEMENTS: Your Honor.

6 THE COURT: All right.

7 (WHEREUPON, counsel approached the Bench
8 for an off-the-record discussion.)

9 BY MR. CLEMENTS:

10 Q All right. Agent Black, this is State's Exhibit
11 119 for demonstrative purposes, okay?

12 A Okay, sir.

13 Q And you said that you prepared this?

14 A Yes, sir, I did.

15 Q All right. I'm gonna ask if you can, with the
16 Court's permission, if you can step down and stand
17 in front of the jury?

18 A May I?

19 THE COURT: Sure. Just please, Mr. Black,
20 speak loudly when you're aware from the mike so the
21 court reporter can hear you.

22 THE WITNESS: My wife says that's not a
23 problem for me. I'm loud all the time.

24 BY MR. CLEMENTS:

25 Q I'm going to ask you to stand on this side so

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1 your voice will be carried to the court reporter.

2 All right. Now you mentioned earlier something on
3 the back here what is that writing there?

4 A Well, this is my handwriting. I put on here the
5 SLED laboratory number was L08-14,000. My initials
6 are DWB. There's an L with a circle which
7 represents latents. Also you'll hear what is known
8 as item 49, David G. Johnson. That is the item
9 number to the major case prints of Mr. Johnson's
10 prints that were submitted to me at SLED.

11 Q Is that the case prints that were taken by the
12 Florence police from him and sent to you?

13 A That is correct.

14 Q Is that what's known as a known —

15 A That is a known ink print; that is correct.

16 Q Okay, all right.

17 A And below that it just identifies which finger
18 this is. This is the right middle finger.

19 Q Okay. Can you please tell us here what we have
20 here on this side.

21 A Yes, sir. What I'm pointing to now on is the
22 what's known as the ink print or the known print.
23 This is the known right middle finger of David, or
24 the fingerprint card of David G. Johnson. It has
25 been enlarged approximately 12 times. On this side

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1 which has been labeled as latent print is the
2 photograph of one of the latents on item 20, the
3 latent lift card. .2, which was put on the latent by
4 the examiner, identifies this particular one.

5 Q There was a .1 and .2?

6 A That is correct. There was a .1 and .2. It was
7 a simultaneous impression meaning that the fingers
8 were placed down at the same time beside each other,
9 okay? And .2 is the right middle finger, .1 being
10 the right index finger.

11 Q Both of those came back matched to David Johnson.

12 A That is correct.

13 Q Okay.

14 A You'll see a series of numbers. In this case
15 numbers 1 through 11 both on the ink print and on
16 the latent print you will see a red line that goes
17 from the number to a particular ridge characteristic
18 that is both represented in the known ink print and
19 the latent print. Honestly, I'm gonna set this
20 laser pointer down. I'm not good with it, and I'm
21 not comfortable with it. I don't want to do
22 anything to hurt anyone.

23 Q That's fine.

24 A One, what's been marked as, 1 I'll start with the
25 latent print, is a dot ridge. It's just that. It

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1 is a ridge, the same thickness of your ridge on the
2 skin, and it's the shape of a dot. That's one of
3 the characteristics that we look for. If you —
4 when I count down one, two, three — excuse me, I'll
5 get this where you can see this better. When I
6 count down, one, two, three, four, five, what has
7 been marked number 2 on the latent is a bifurcation.
8 A bifurcation is where the ridge, one ridge will
9 flow and then it forks like a fork in the road; that
10 fork forming two ridges. One ridge it flows, forks,
11 forms two ridges. That fork is known as a
12 bifurcation. That's another ridge characteristic
13 that we look for as an examiner. And if you count
14 down from it, you follow the bottom ridge over and
15 go down one, you have what is known as a short
16 ridge. A short ridge is just that. It's a short
17 ridge. It's the same length; it's just a ridge.
18 It's on either end. It's like a short dead-end
19 street on both sides. It's just there; it's a short
20 ridge. Some people also call sometimes call it ab
21 island; that's not really correct. It's known as a
22 short ridge. If you look over from the latent print
23 now to the ink print, you will see that one which is
24 a short ridge, you count down to five ridges you
25 have the bifurcation which is number 2. If you go

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1 over and down what's marked as number 3 you see the
2 short ridge. Okay?

3 Now I'm gonna take you back to number one
4 again. You see the dot ridge that's been marked as
5 number 1 in the latent and number 1 in the ink. If
6 you just go straight over, what's been marked as
7 number 11 it's a short ridge. It's represented here
8 both in the latent and the ink print. If you count
9 down from number 11 from both the ink and the latent
10 print, 1, 2, 3, you come to number 10 which is
11 another bifurcation.

12 I've just demonstrated to you five different
13 ridge characteristics, but each one of these go to a
14 specific characteristic. They're in unit
15 relationship to each other. They're similar in the
16 ridge structure, their size, and shape and
17 characteristic. And again, I marked 11 but there
18 were more than 11 present in both the latent to the
19 ink.

20 Q All right. So you marked 11, and that's pretty
21 much as many numbers as you could put on this chart.
22 How many did you count, or where did you stop
23 counting?

24 A I stopped counting at 30.

25 Q So there were — you found at least 30?

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1 A There are at least 30 ridge characteristics that
2 were in the same unit relationship and similarity
3 and the latent print to the known right middle
4 finger of David G Johnson.

5 Q All right. Mr. Black, you can have a seat.

6 A (Witness complies.)

7 Q Now you did the chart on this particular
8 impression and you said it was the right middle
9 finger?

10 A Yes, sir, that's correct.

11 Q And there were at least 30 matching points on
12 that; is that correct?

13 A Yes, sir, that is correct.

14 Q You didn't do a chart on other fingers but did
15 they match?

16 A Yes, sir.

17 Q Okay.

18 A Yes, sir.

19 Q Do you have an opinion to a reasonable degree of
20 certainty in your field of expertise, which is
21 fingerprint latent identification, as to who those
22 latent prints belong to or who they match?

23 A Yes, sir.

24 Q What is that opinion?

25 A In my opinion on the latent lift backer that's

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1 marked as item 20 there are two latent lifts that I
2 identified to David G. Johnson, one being his right
3 index finger and the other being his right middle
4 finger, which was here in the chart. And then on
5 item 24 latent lift I also identified the right ring
6 finger of David G. Johnson.

7 Q And where was that located at on the car?

8 A Both of these, item 20 was from the front
9 driver's door interior window, top of glass,
10 approximately 2-inches from latch side. And item 24
11 states from driver's front door under window molding
12 approximately 10-inches from latch side edge.

13 Q Beg the Court's indulgence, Your Honor. Mr.
14 Black, Thank you for your explanation.

15 A Yes, sir.

16 Q Please answer any questions Mr. Hoffmeyer has?

17 A Sure.

18 **CROSS - EXAMINATION**

19 BY MR. HOFFMEYER:

20 Q Mr. Black, I just have a few questions for you.
21 I believe I think you told us on direct that you had
22 worked for the state, or excuse me, in law
23 enforcement for 30 years; is that right?

24 A Yes, sir, that is correct.

25 Q Okay. And you testified how many times in court?

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1 You gave us a number; it was a large number.

2 A In the area of latent fingerprints ad
3 approximately 16 years 108 times.

4 Q Okay. And each time you testified for the
5 prosecution, right?

6 A No, sir, that's incorrect.

7 Q How many times versus for the defense?

8 A Most of the majority of time was for the
9 prosecution, but I believe five or six of those
10 times were for the defense.

11 Q Okay. So and how -- what was that first number
12 you gave use, the number of times you testified on
13 latent prints?

14 A 108.

15 Q 108. So five -- I'm not very good at math but
16 maybe 5 percent of the time you testified for the
17 defense, right?

18 A If you say so.

19 Q Well, I want you to say so too if you agree me;
20 but if you don't, I don't want you to say so. If
21 you testified a hundred times for the State or the
22 prosecution and five times for Defense that'd be
23 about 5 percent, right?

24 A My response is I've testified as a witness for
25 the Court as a latent fingerprint examiner.

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1 Q Who called you to testify here today, the
2 prosecution?

3 A I was subpoenaed by the prosecutor, yes, sir.

4 Q Yes, sir. And you worked for law enforcement,
5 right, for 30 years?

6 A Yes, sir.

7 Q Okay. And each time you testified that
8 95 percent or whatever it is, you always said it was
9 that was the defendant's or fingerprints, correct?

10 A Yes, sir.

11 Q Now as far as —

12 A Excuse me, in cases it may be, yes, the
13 defendant's prints but also it may be a witness
14 print or a victim's prints. Whoever the case was I
15 identified whatever identification or also, more
16 importantly, in those cases I, as I did earlier in
17 this case, I testified the print wasn't someone.

18 Q Well, let's talk about that for a second.

19 A Sure.

20 Q It looks like on one of these items—

21 A Yes, sir, item 25.

22 Q 25. That you indicated — and I believe this
23 would have been found in the kitchen, the plastic
24 cup that was on the kitchen table; is that right?

25 A Yes, sir, it says one latent lift card marked

SW - D. BLACK - CROSS

1 side of clear plastic cup that was on kitchen table.

2 Q Yes, sir. And you indicate I believe in your
3 report that that did not match my client?

4 A That is correct. It did not match your —
5 Mr. Johnson or Mr. Floyd, Mr. Wilson, or Mr. Bailey.

6 Q Okay. So it didn't match Mr. Floyd, Mr. Wilson,
7 Mr. Johnson, or Mr. Bailey. That's what you just
8 told us, correct?

9 A That's correct, did not match, yes, sir.

10 Q And on that report it has the latent prints that
11 were provided to you; is that right?

12 A Yes, sir.

13 Q You didn't have any latent prints from Gregory
14 Montgomery, did you?

15 A Are you saying latent prints or ink prints?

16 Q Ink prints, I apologize. You didn't have ink
17 prints from Gregory Montgomery, did you?

18 A No, sir, I did not.

19 Q So no way for you, obviously only fairly, no way
20 for you to compare Gregory Montgomery's print to the
21 print that was found on the cup in this lady's
22 house, right?

23 A Yes, sir, that's correct.

24 Q And in that — when you looked at the print, when
25 you find a print that is a latent print, sometimes

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1 is there blood in that latent print?

2 A There possibly may be blood in the print, yes,
3 sir.

4 Q Wasn't in this case though, right?

5 A No, sir. I don't remember seeing any, no, sir.

6 Q With regard to a fingerprint you testified on
7 direct for the State that there are certain factors
8 that influence how long a latent print remains on a
9 particular location; is that fair?

10 A Yes, sir.

11 Q Okay. And there's no way really to tell how long
12 a latent print has been somewhere; is that fair to
13 say?

14 A Yeah, that's absolutely correct. There is no way
15 to specifically age a print; that's correct.

16 Q And I take it because I'm sure you would have
17 told this jury about it, if it had been the case you
18 didn't find my client's latent prints anywhere else
19 on the car, did you? For whatever reason, either
20 the print wasn't any good or whatever the case.

21 A No. The only time I -- I only identified your
22 client three times; that's correct.

23 Q And that was I believe on the window, the
24 driver's side window on the glass; is that right?

25 A Yes, sir.

SW - D. BLACK - CROSS

1 Q And you also I believe reviewed, Mr. Black, items
2 submitted to you — and one, we just discussed a
3 minute ago, the plastic cup that was on the kitchen
4 table that had somebody's fingerprint that you
5 didn't have a, you referred it to I believe as an
6 ink print or case print that matched that? Whatever
7 term, I'm not using the right term.

8 A What are you — are you referring to item 25 of
9 the latent lift from the cup?

10 Q Yes, sir.

11 A Yes, sir. With that, when it was not identified
12 to any of the prints submitted.

13 Q Yes, sir, and you had Ms. Hayes' print as well;
14 is that right?

15 A No. Mr. [sic] Hayes' prints were not submitted.

16 Q I apologize, Ms. Hayes' prints.

17 A No, sir.

18 Q You didn't have anything from them to help you
19 potentially identify the cup related to her?

20 A No, sir, the only prints I received were major
21 case print from a Mr. Floyd, a Mr. Wilson, and
22 Mr. Johnson, and Mr. Bailey.

23 Q And with regard to — and this is really my
24 question that I was getting to, with regard to the
25 inside of the home, for whatever reason, either you

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1 couldn't do it or whatever the case may be, you
2 didn't find any fingerprints that were made by my
3 client or that would match my client's prints in
4 Ms. Hayes' home, did you?

5 A The only thing I received so it's just for the
6 record, I did not actually process the crime scene.
7 The only thing I received were the 12 latent lifts
8 card and four sets of major case prints. And from
9 that are my results of identifying Mr. Johnson three
10 times, one print not being identified to the four
11 submitted, and the others being of no value.

12 Q That's not my question.

13 A Then I misunderstood the question, I'm sorry.

14 Q My question is, let's look at it a second. Let's
15 look at what items were from the home. Item 28 was
16 from the home, right?

17 A I'm going strictly on what's written there and
18 who — I'm going by assumption, yes, it's from the
19 home. That's my assumption.

20 Q Item 29 was from the home, right?

21 A Yes, sir.

22 Q Item 30 was from the home, right?

23 A Yes, sir.

24 Q Item 31 was from the home, right?

25 A Yes, sir.

SW - D. BLACK - CROSS

1 Q And as you indicated previously, I believe, item
2 25 was from the home, right?

3 A It appears to be, yes, sir.

4 Q Item 26 was from the home, right?

5 A Yes, sir.

6 Q Item 27 was from the home, right?

7 A Yes, sir.

8 Q And for whatever reason maybe you couldn't
9 identify them because the science is not good enough
10 or whatever the case may be; but none of those
11 matched my client's fingerprint, did they?

12 A There are no value for identification. The only
13 thing I can tell you that there were -- contained
14 insufficient ridge detail. It was touched by
15 someone; I can't tell you who.

16 Q If you'll excuse me for one second, Mr. Black.

17 A Sure.

18 Q Thank you very much, Mr. Black.

19 A Yes, sir.

20 THE COURT: Any redirect?

21 **REDIRECT EXAMINATION**

22 BY MR. CLEMENTS:

23 Q Mr. Black, in the items submitted to you, what if
24 anything, is submitted that says it came from
25 Ms. Hayes' bedroom?

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1 A I don't see anything that specifically says
2 bedroom on any of the description of the latent
3 lifts.

4 Q So nothing from the bedroom?

5 A Not based on the information I have here, no,
6 sir.

7 Q Okay, all right. And Mr. Hoffmeyer asked you
8 about the plastic cup on the kitchen table, right?

9 A Yes, sir.

10 Q And what did you have, if anything, to compare it
11 to see if it was Ms. Hayes' cup and her fingerprint?

12 A I did not have her prints. I don't know if it --
13 no prints were submitted of her.

14 Q But the four that were submitted you excluded?

15 A That's correct, it is not them. Yes, sir.

16 Q All right. And again, every fingerprint match
17 you made came back to who?

18 A To the card bearing the name of David G. Johnson.

19 Q Thank you.

20 A Yes, sir.

21 MR. HOFFMEYER: Nothing further, Your
22 Honor. Thank you.

23 THE COURT: All right. Thank you very
24 much. Mr. Black, you may step down, sir.

25 Any objection to Mr. Black being excused,

SW - D. BLACK - REDIRECT

1 Mr. Hoffmeyer?

2 MR. HOFFMEYER: No, sir, Your Honor.

3 THE COURT: All right. Thank you very
4 much, sir. You're free to go.

5 THE WITNESS: Thank you.

6 MR. CLEMENTS: Your Honor, our next
7 witness might be a little bit lengthy.

8 THE COURT: All right. We'll take a short
9 break here, ladies and gentlemen. Please let
10 Mr. Propps know if you need anything while you're
11 back there. We'll take ten minutes. Please have no
12 conversation about the case, okay.

13 (WHEREUPON, the jury was removed from the
14 courtroom at 10:50 a.m.)

15 THE COURT: We'll take about ten minutes.

16 (WHEREUPON, a recess was taken from the
17 proceedings and Court's Exhibit Number 4
18 was marked and made a part of the record,
19 requests to charge.)

20 THE COURT: All right. Mr. Hoffmeyer,
21 I'll be happy to hear from you. You have an issue
22 that you'd like the Court to take up?

23 MR. HOFFMEYER: Yes, sir, Your Honor. I
24 have requested that at the time of the admission of
25 my client's statement and know this Court is aware,

1 as is the State, that I objected in limine to the
2 statements of my client given to Investigator
3 Compton as well as Investigator Godwin and
4 Investigator Drayton. Both the statements that were
5 recorded and have been transcribed and the
6 statements that were not recorded but were given to
7 the officers, I moved in limine related to that and
8 this Court overruled my objections. I'm not waiving
9 that objection, Your Honor.

10 THE COURT: Correct.

11 MR. HOFFMEYER: But I am requesting that
12 the Court charge what is 2-3, initial charge at the
13 time of the admission concerning the statement of my
14 client. I do not believe it would inordinately
15 highlight that portion of the law. I understand
16 this Court will charge that at the end of the case.
17 I think the Court will also charge how the jury at
18 that time is to consider the law, and therefore,
19 this wouldn't be unnecessarily highlighted but would
20 assist the jury in understanding what they are to
21 do. That's all I have at this time other than to
22 make a Court's exhibit.

23 THE COURT: All right. Solicitor.

24 MR. CLEMENTS: Your Honor, State v.
25 Austin, 385 Southeastern Second 830, says the trial

1 judge refuses to give a specific charge there's no
2 error if the charge actually given sufficiently
3 covers the substance of the request. And I think
4 that your charge you're going to give at the end of
5 this trial is going to sufficiently cover what Mr.
6 Hoffmeyer has submitted to be charged now. Also,
7 Your Honor, I think if you charge it now and charge
8 it then, it's going to highlight that part of the
9 law above any other part of the charge; and I just
10 think charging it all together at one time is the
11 proper way to do it, Judge. So that's what we would
12 request is that you charge this — we don't have any
13 objection to this charge whatsoever if it's charged
14 along with the remainder of the rest of the law on
15 this case, but to charge it right now we think
16 unduly sets it apart from all the rest of them.

17 THE COURT: All right. Let me ask y'all
18 to step up here real quick. I just want to run
19 something by you.

20 (WHEREUPON, counsel approached the Bench
21 for an off-the-record discussion.)

22 (Court Exhibit Number 4 was withdrawn.)

23 THE COURT: State ready for the jury?

24 MR. CLEMENTS: We are, Your Honor.

25 THE COURT: Defense ready?

1 MR. HOFFMEYER: Yes, sir, Your Honor.

2 THE COURT: Mr. Propps, would you please.

3 Before the jury comes out, just so the record is
4 clear because I had y'all come up a little side
5 matter. And I want the record to be clear that,
6 Mr. Hoffmeyer, you're withdrawing your request that
7 I charge the full charge of Subsection 2-3 of Judge
8 Ervin's charge book. And in exchange, what the
9 Court is going to do is the Court is going to give a
10 brief instruction that they are -- that even though
11 I have admitted the statement into evidence that
12 they are the ultimate deciders as to whether or not
13 the statement was made by the defendant that was
14 voluntarily made.

15 MR. HOFFMEYER: Yes, sir.

16 THE COURT: Basically use the language I
17 gave y'all up here, but that satisfies your request
18 on the initial charge.

19 MR. HOFFMEYER: Yes, sir, Your Honor.

20 THE COURT: All right. And Solicitor, I
21 think I'm correct in the State would prefer the
22 Court just not do anything until the end of the case
23 when I charge them on the law; but I don't know, you
24 may object to me doing anything but.

25 MR. CLEMENTS: We prefer that you wait and

1 do it all at one time, Your Honor; however, Your
2 Honor, based on what you explained to us you're
3 going to do we're not going to object it.

4 THE COURT: All right. And that's what I
5 will do when we get to that point then. All right,
6 Mr. Propps.

7 (WHEREUPON, the jury was returned to the
8 courtroom at approximately 11:38 a.m., and
9 the following proceedings commenced in
10 open court.)

11 THE COURT: All right, ladies and
12 gentlemen, as you recall as you come back from the
13 break we are still on the State's case and would
14 recognize the State for their next witness,
15 Solicitor.

16 MR. CLEMENTS: Your Honor, we would call
17 Lieutenant Timmy Compton.

18 THE COURT: Lieutenant Compton, if you
19 would please come around to be sworn, sir.

20 THE CLERK OF COURT: If you will, please
21 place your left hand on the Bible and raise your
22 right hand.

23 WHEREUPON,

24 **TIMOTHY WADE COMPTON,**
25 having been duly sworn by the Clerk of Court,

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1 testified as follows:

2 THE CLERK OF COURT: Please be seated and
3 state your full name for the record.

4 THE WITNESS: Timothy Wade Compton.

5 **DIRECT EXAMINATION**

6 BY MR. CLEMENTS:

7 Q Can you please tell this jury where you work,
8 what you do?

9 A Right now I'm assigned to patrol division. I'm
10 the night watch commander lieutenant.

11 Q And how long have you worked for the Florence
12 Police Department?

13 A Little over 27 years.

14 Q And how long have you been in law enforcement?

15 A 27, little over 27 years.

16 Q Entire time you spent with Florence P.D.?

17 A Yes, sir.

18 Q Okay. And can you please tell this jury in what
19 capacity you work for the police department in
20 August of 2008?

21 A Back then on that day I was a detective sergeant
22 in investigations.

23 Q Okay. Did you have an occasion at all to be
24 involved in the investigation regarding the
25 disappearance of Ms. Willie Mae Hayes?

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1 A I wasn't directly involved with the investigation
2 but I did -- I had Mr. Johnson brought to my office
3 on Wednesday, August the 27th, 2008.

4 Q All right. What were you doing on Wednesday,
5 August 28th in your office?

6 A Actually, it was around 4:00 in the afternoon.
7 At 4:30 I was supposed to get off and start my
8 vacation. And detective Sergeant Drayton, detective
9 Sergeant Godwin brought the defendant Mr. Johnson to
10 my office, so I was actually preparing, getting my
11 stuff together to leave for the day and leave for
12 over a week.

13 Q Now why did they bring him to your office?

14 A They -- I knew they was -- they were the lead
15 investigators with this case, and all they asked me
16 is can you watch Mr. Johnson till we can get back to
17 talk to him.

18 Q What were they doing?

19 A They were investigating. I'm not sure what they
20 were doing. They didn't inform me. They just asked
21 me if -- and we do this for each other whenever
22 we're working cases, we have a lot of things to do.
23 We might have you know they might ask me to do
24 something for them just like I would them, but at
25 that particular time they asked me if Mr. Johnson

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1 could sit my office until they could get back with
2 him.

3 Q Okay. So Mr. Johnson was just sitting in your
4 office?

5 A Yes, sir.

6 Q Was he handcuffed when he came in?

7 A No, sir.

8 Q Did you handcuff him?

9 A No, sir.

10 Q Can you describe for this jury what was the
11 furniture like in your office, how big was your
12 office, or how small?

13 A Actually my office is probably one of the biggest
14 offices in that area. If this is the wall in front
15 of me this would be my desk, and this would be my
16 chair. And there'd be a desk to my left facing that
17 little L section wall with a desk — a chair in
18 front of it. Behind me on the back wall where the
19 two windows are is three action chairs up against
20 the wall. And next to that desk over there is where
21 you come in the doorway.

22 Q And you said there were two desks in that office?

23 A Yes, sir.

24 Q You share it with someone else?

25 A Yes, sir.

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1 Q Okay. So they weren't there at that time?

2 A No, sir.

3 Q All right. Was there opportunity there or did
4 you take opportunity to make Mr. Johnson
5 comfortable? He had somewhere to sit comfortably?

6 A Yes, sir. He was actually sitting to my left I
7 believe in the middle chair. There's three. He was
8 sitting in the middle chair. And as a matter of
9 fact, you know, I was basically trying to get done
10 with work because I started vacation basically in 30
11 minutes, and I didn't know how long detective
12 Sergeant Drayton and Godwin would be so, and I
13 basically — I didn't know how long they'd be so I
14 started — I actually turned the computer back on
15 and to basically keep him occupied and keep me
16 occupied I turned an email that I received on a
17 video game so basically started playing a video game
18 to keep us occupied.

19 Q Now were you officially on your vacation at this
20 time or were you playing video games on the City's
21 time?

22 A On the City's time.

23 Q All right. Now so you were playing video games
24 and he was playing video games or he was just
25 watching you?

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1 A He was watching me and making remarks about the
2 video game, and I was making remarks back to him.
3 And basically a general chit chat back and forth
4 about playing the video game.

5 Q Okay. And how long did you do that?

6 A I don't -- I'm not sure exactly what time. It
7 could have been hour; I'm not sure. After basically
8 I got tired of playing video game on the City's
9 time.

10 Q Was it past 4:30 by then?

11 A Oh, yes, sir, I was on vacation.

12 Q You were on your time then; weren't you?

13 A Yes, sir.

14 Q Okay.

15 A So I, you know, I asked him, you know, did he
16 need anything to drink or something to eat. He said
17 yes. So there's always somebody walking back and
18 forth. An officer stepped out, I asked him if they
19 could watch Mr. Johnson. I went down to the end of
20 the hall way and got him I believe a Pepsi. I'm not
21 sure if it was chips or nabs or something, but did
22 give him something to eat and drink and brought it
23 back to him and we sit there. And I actually got a
24 nab and a Pepsi also.

25 Q Now that's back in the police department, right?

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1 A Yes, sir.

2 Q Now how often do y'all just let people, lay
3 people in there just unattended?

4 A It wasn't unattended. I asked another officer --
5 I can't remember who it was -- just to, you know,
6 stand by there, the doorway, let me go get him
7 something to eat and drink and I'll be right back.
8 So it was two or three minutes because where my
9 office is compared to the snack machine is at the
10 other end of the hall way so.

11 Q Were you ---

12 A Just a few minutes.

13 Q Would it be fair to say y'all don't leave lay
14 people in there unattended?

15 A Exactly.

16 Q All right. Now y'all had something to eat,
17 something to drink. Time continued to pass. What
18 did you do?

19 A Actually, you know, I didn't know how long it
20 would be. I finally decided to go back to work so I
21 got, you know, I got -- you know, I guess I'm not
22 supposed to testify to this but because my boss may
23 be here, but I actually take work home with me. I
24 put it on -- I pulled it back out and I -- going on
25 vacation I actually take case files with me.

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1 Whenever I'm not busy I pull it out, make notes,
2 type on a laptop, whatever. So I actually got the
3 case files back out off the desk, and I opened up a
4 couple of them and I decided to type some reports.
5 And Mr. Johnson said, you know, asked if he could go
6 to sleep. So at that point I said, sure, you know,
7 you can take a nap if you like. So basically while
8 he slept I did some work.

9 Q Okay. You know how long a period you worked or
10 how long a period he slept?

11 A It was several hours. I don't know the exact
12 time, but he slept several hours and I —

13 Q Where were Godwin and Drayton during this time?

14 A I know.

15 Q If you know?

16 A The only thing I can tell you is I know he was
17 working the murder. The reason why I know that is
18 we have in the general area investigation we have a
19 radio, and it's on speaker. And I can hear the
20 speaker. You know, it just sometimes, you know,
21 we'll be sitting at the desk and all of a sudden we
22 hear a robbery go out. Because of the speaker, the
23 radio, and we'll run out the door, and you know, try
24 to help out. I heard them ask for officers to meet
25 them, you know, at location; and I was putting two

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1 and two together. They was looking for the victim
2 so I knew they was working and trying to find the
3 victim. But beyond that I have no idea; I just
4 continued to work.

5 Q Okay, all right. And when did Mr. Johnson wake
6 up? How did he wake up?

7 A Actually I got tired of working and got tired of
8 doing, you know, my typing. And I'm an investigator
9 —

10 Q Does that mean you're nosy, Lieutenant Compton?

11 A Yes, sir.

12 Q Okay.

13 A Yes, sir. So I finally said, you know, I want to
14 ask him some questions. I want to see if I can get
15 him to talk. So I put my stuff away and I asked him
16 to wake up. He sat up and due to him sleeping he
17 hadn't heard anything going on, and I barely knew
18 what was going on. So I made a remark to him, I
19 said, well Mr. Johnson, you know that the other
20 investigators are down the hall way interviewing
21 other people and I'd like to talk to you about it
22 and it'd be good if you told me your side of the
23 story first before they told their side of the
24 story. And I said, would you like to talk and he
25 said yes, sir.

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1 MR. HOFFMEYER: Your Honor, I believe this
2 is likely we're getting close to the appropriate
3 time for me to enter my objection to that I
4 previously made before the Court and I renew that
5 objection.

6 THE COURT: All right. I'm going to
7 overrule your objection. Ladies and gentlemen,
8 we're about to get into some -- an area where
9 Mr. Johnson has allegedly made some statements.
10 What I want you to understand is that while I have
11 determined that those statements are admissible, I
12 will instruct you in greater detail at the end of
13 the case; but I instruct you now that you, the jury,
14 make the ultimate decision as to whether or not
15 someone made a statement and whether they made that
16 statement voluntarily. And, as I said, I'll give
17 you further instruction about that at the end of the
18 trial, but I am going to overrule the objection and
19 allow the statements in.

20 Solicitor.

21 MR. CLEMENTS: Thank you, Your Honor.

22 BY MR. CLEMENTS:

23 Q Lieutenant Compton, you asked him if he wanted to
24 tell his side of the story?

25 A Yes, sir.

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1 Q Okay. And what did he respond?

2 A He said he wanted to talk to me.

3 Q All right. As a result of that, what did you do
4 next?

5 A At that time I said, well, before I ask you any
6 questions and you say anything to me I need to read
7 your rights to you so I read his rights to him.

8 Q All right. Let me ask you this, was he under
9 arrest?

10 A No, sir.

11 Q Was he handcuffed?

12 A No, sir.

13 Q Okay. You read him his Miranda rights?

14 A Yes, sir, I did.

15 Q What did you read them off of?

16 A This card here that I keep in my business card
17 wallet that I always carry with me.

18 Q Okay. You've been a police officer for how long?

19 A Little over 27 years.

20 Q Don't you know people's Miranda rights?

21 A Yes, sir, but I was taught, you know, at the
22 academy, taught by my training officers never to do
23 it without your card because you could possibly
24 leave something out so I always read it exactly from
25 the card.

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1 Q And you read it this time exactly from the card?

2 A Yes, sir, I did.

3 Q When you read that to him were you watching for
4 his responses?

5 A Yes, sir.

6 Q Could you please read to the jury exactly what
7 you read to Mr. Johnson.

8 A Yes, sir. There's seven of these rights, and I
9 read them one by one. First is: You have the right
10 to remain silent, anything you say can and will be
11 used against you in a court of law. You have the
12 right to talk to a lawyer and have him present with
13 you while you are being questioned. If you cannot
14 afford to hire a lawyer one will be appointed to
15 represent you before any questioning if you wish.
16 You can decide at any time to exercise these rights
17 and not answer any questions or make any statements.
18 Do you understand each of these rights I have
19 explained to you.

20 Q What did he respond then?

21 A He responded yes.

22 Q Okay.

23 A Then the last one, number seven: Having these
24 rights in mind do you wish to talk to me now by
25 answering any questions I may have for you. And at

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1 that time he said yes.

2 Q Okay. And did you continue to talk to him at
3 that time?

4 A Yes, sir, I did.

5 Q Did at any time he ask for a lawyer?

6 A No, sir, he did not.

7 Q Did at any time did he say he didn't want to talk
8 anymore?

9 A No, sir.

10 Q Okay. Did at the time you threaten him in any
11 way?

12 A Absolutely not, no, sir.

13 Q Is any way you coerced him?

14 A No, sir, I did not.

15 Q You didn't bribe him with drinks and potato
16 chips?

17 A No, sir, I did not.

18 Q Okay. In your mind was he or was he not speaking
19 to you freely and voluntarily?

20 A Yes, he was.

21 Q Okay. Can you please tell us after you read the
22 Miranda rights what was your conversation with
23 Mr. Johnson?

24 A At first Mr. Johnson stated -- you know, I told
25 him, you know, to be truthful about his statement.

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1 And at first he said that he -- that he believes
2 some people or suspects, what he called suspects,
3 was messing around the victim's house. And at that
4 time, you know, I'm like, okay, who are these
5 people. And he said, there's some people. And I
6 said, you know, you need to be truthful with me.
7 And I, you know, it took me a few minutes to -- and
8 like any investigator we're going to try to persuade
9 them, hey, you know, don't lie to me, you know, just
10 tell me the truth. And a few minutes later he said
11 him and his girlfriend was outside and they saw the
12 suspects run in front of the residence. And then I
13 told him I don't believe you, you need to tell the
14 truth.

15 Q All right, let me ask you this. Did he ever say
16 who his girlfriend was?

17 A He did not tell me, no, sir.

18 Q And he said he saw people break in?

19 A He saw messing around and then he changed his
20 story after that.

21 Q All right. Why did you tell him you didn't
22 believe him?

23 A Well, my 27-and-a-half years experience usually
24 I, being a police officer or what they call a cop,
25 the first thing a person does is try to lie to us.

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1 Q Okay. So you didn't — you just thought, well,
2 this normal, I'm gonna tell him I don't believe him.

3 A Yes, sir.

4 Q Okay. When you told him that then what happened
5 next?

6 A At that time after giving my spill about telling
7 the truth and being honest with me, he said he saw
8 some suspects that went into the victim's house and
9 stole some items.

10 Q Did he say what items?

11 A No, sir, he did not.

12 Q Did you ask him what items?

13 A No, sir, I did not.

14 Q All right. Why did you not go into great detail
15 at that point?

16 A Because I didn't know really anything about the
17 case other than what I learned from Detective
18 Drayton and Godwin, that there was — reference they
19 described the crime scene to me but, and all I heard
20 through the investigation that some items were
21 stolen. And I wasn't in on the investigation and I
22 didn't know so I didn't ask what items they were.

23 Q Okay, all right. So he said some items were
24 stolen and then what did you ask him?

25 A At that time Major Raines who, is my boss, he

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1 walks in and out. He makes sure everybody, if they
2 need anything, make sure everything is running
3 smoothly. He popped in the doorway and saw
4 Mr. Johnson talking to me. And I kind of waved at
5 him, you know, come on in and sit down which he did.
6 And shortly thereafter Corporal Drulis with
7 narcotics agent, he was I understand helping both
8 sergeants with the investigation, helping them, so
9 he came in and heard Mr. Johnson talking to me and
10 he decided to sit down and listen to what
11 Mr. Johnson said.

12 Q All right. When they came in and they sat down,
13 what if anything, did that do to Mr. Johnson? Did
14 it make him uncomfortable? Did you notice any
15 change in him?

16 A No, sir, actually he -- he continued to want to
17 talk. And he was basically, when he would talk he,
18 you know, tried to look at all three of us and was
19 trying to tell us, tell all three of us, you know,
20 what happened and what, I'd say transpired, but the
21 information he had he wanted to tell all three of
22 us?

23 Q Well, was it -- Drulis and Raines, did they stay
24 the whole time?

25 A They stayed the whole time, yes, sir.

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1 Q Okay. And what did he tell y'all happened?

2 A Basically I told him, you know, to please be
3 truthful with us and that we need to know where the
4 body is at. And I basically tried to play on a
5 sympathy card, you know, that we call it. You know,
6 say hey, the family needs closure, we know she is
7 deceased.

8 Q Did you know that at the time?

9 A Not a hundred percent, but based on what I was
10 told by about the crime scene that we was possibly
11 looking for a murder victim.

12 Q Okay, all right. Did he ever tell you he went in
13 the house?

14 A Yes. Yes, he did.

15 Q Okay.

16 A He said he had went in the house also and he
17 said, you know, he wanted to take — he could take
18 me to where the body is at.

19 Q When he told you that what did you do then?

20 A Actually I was shocked. You know, I was just
21 totally surprised, you know, when he told me that.
22 And I said okay, are you sure you can take us to the
23 body. He said, I can take you exactly where the
24 body is at.

25 Q What did you not want to do?

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1 A Repeat the question, sorry.

2 Q You asked him if he was sure. Why did you ask if
3 he was sure where the body was at?

4 A He told me that Amp told him exactly where the
5 body was at so he —

6 Q Did you know who Amp was?

7 A No, sir, I did not.

8 Q Okay, all right. And so you felt confident he
9 could tell you where the body was?

10 A Yes, sir, I mean, he insisted that he could show
11 us. As a matter of fact, he got up out of his
12 chair, started walking to the door saying, come on,
13 I can show you. And I said, whoa, whoa, hold on a
14 second, you know, I appreciate that you want to take
15 us right now, I said, but I need to talk to you for
16 just a few more minutes, have a seat. So he sat
17 back down.

18 Q Okay. And what happened next?

19 A At that point I told him, I said, listen,
20 Mr. Johnson, I said, I appreciate wanting to show us
21 where the body is at and everything, I said, but I
22 already know the investigators went to several
23 locations, and you know, people are telling where
24 body the here, body there, and I don't want to go on
25 a wild goose chase. I said, so please don't mess

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1 with me, you know, be honest with me, you know,
2 don't send me on a wild goose chase. And no, sir, I
3 would not do that, I'll take you right where the
4 body is at. I said, okay. I said, before we go I
5 want to know — we know she's dead; I want to know
6 how she was killed. And he made the statement that
7 he cut her throat.

8 Q Okay, all right. And then what did y'all do
9 next?

10 A At that time Major Raines was trying to figure
11 out who is going to go in what vehicle. So we got
12 up. I started walking out of the investigations
13 office. Sergeant Drayton come walking in. I
14 explained to him at this time that Mr. Johnson
15 wanted to show us where the body was, and he at that
16 time he went and got Sergeant Godwin. And we went
17 in two separate vehicles, and Mr. Johnson directed
18 us to where the body was.

19 Q All right. Did Mr. Johnson, was there any
20 indication whether or not he understood all the
21 questions you were asking him?

22 A Yes, sir. I mean, we had a normal conversation.
23 I mean, he didn't, I mean, there's no indications
24 that was anything wrong or he didn't understand
25 anything. I mean, everything I asked him,

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1 everything, I mean, I mean, he, he attempted to lie
2 to me at first so and then he started what I believe
3 was the truth and it was a normal conversation.

4 Q Okay. So who did you ride with?

5 A Sergeant Godwin, the supervisor of narcotics, he
6 drove the vehicle. Myself ---

7 Q Sergeant Godwin?

8 A I'm sorry, Sergeant Calhoun.

9 Q John Mark Calhoun?

10 A Yes, sir. And Corporal Drulis, myself, and
11 Mr. Johnson rode in one vehicle. And then Major
12 Raines, Sergeant Godwin and Sergeant Drayton rode in
13 the vehicle behind us.

14 Q All right. Now where did you go?

15 A We actually went to Malloy Street. I mean, he --
16 we had no idea. I -- he didn't tell us the name of
17 the street. He just showed us where the street,
18 directed us down Baroody Street, Dargan Street,
19 Oakland Avenue, down I think Royal Street and on to
20 Malloy Street. And then as a matter of fact, as
21 we're going down the dirt road he start saying,
22 stop, stop, stop, stop, stop, right here, right
23 here, right here, so we immediately stopped.

24 Q Did he -- what -- did y'all go around about way
25 to it or straight to it or what?

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1 A Straight to it, I mean, he took us, like I said,
2 Baroody, left Dargan, right on to Darlington Street
3 across Lucas on to Oakland and down the, I believe
4 it's Maxwell, and then left so he took us straight
5 to it.

6 Q If you would grab that yardstick right there.

7 MR. CLEMENTS: Your Honor, may I have
8 Lieutenant Compton step down.

9 THE COURT: Yes, sir.

10 BY MR. CLEMENTS:

11 Q Lieutenant Compton, if you will step down and if
12 you will walk over to that chart there and stand on
13 the other side of it so your voice will carry back
14 to the court reporter. Can you please show us on, I
15 believe that's State's Exhibit Number 1 I think —
16 or 2, State's Exhibit 2. If you can show us here on
17 State's Exhibit 2 what area of the City of Florence
18 that is you're talking about.

19 A Well, this is basically what we call the north
20 side of Florence. Malloy Street here, and of course
21 Oakland Avenue and Wilson Road. We came in this
22 way. He directed us from this way —

23 Q Okay.

24 A —which would be Maxwell Street and up to Malloy
25 and around the curve and up this way.

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- 1 Q All right. What type of road is Malloy Road on
2 that section of the road?
- 3 A It's actually a dirt road.
- 4 Q Okay. And what are on the two sides of the road?
- 5 A I remember a big ditch.
- 6 Q And were there houses or what?
- 7 A No, sir, it's brush, trees, woods.
- 8 Q Okay, all right. And so y'all were driving along
9 and what happened?
- 10 A Well, this is — also this is at nighttime, and I
11 can't tell you what time it was but. We were
12 driving, I mean, it's no street lights, no nothing,
13 dark. And also he just starts hollering, stop,
14 stop, stop, stop, stop, right here, right here,
15 right here, so we immediately stopped.
- 16 Q And about what area approximately is it?
- 17 A I'm going to just guess right around here. I
18 haven't —
- 19 Q You had gone around the curve?
- 20 A Yes, sir.
- 21 Q On the straight part of the road?
- 22 A Yes, sir.
- 23 Q Okay.
- 24 A And it's somewhere right in here.
- 25 Q Okay, all right. And when you stopped there what

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1 did y'all do?

2 A Immediately we got out. Sergeant Godwin got out
3 of the vehicle. And immediately as soon as Sergeant
4 Godwin got out of the vehicle he said, right here,
5 right here she is and ---

6 Q Who said right here she is?

7 A Sergeant Godwin.

8 Q Okay. And I'm gonna show you what's been marked
9 as State's Exhibit 54. Does that look at all
10 familiar to you?

11 A Yes, sir, I mean, it's brushy area and the dirt
12 road like what was on Malloy Street that night.

13 Q About where y'all stopped at?

14 A It looks like it, yes, sir.

15 Q That's what the area looked like?

16 A Yes, sir.

17 Q Now did y'all have any other lights with you at
18 that time?

19 A Flashlights.

20 Q Okay. Did you get out of the car?

21 A Yes, sir, I got out of the car. I walked over.
22 There was a white sheet like bed sheet, and there
23 was --- looked like they took branches and twigs and
24 stuff and just broke them and laid them on top of
25 the sheet in the ditch.

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1 Q Okay. Now I'm gonna show you State's Exhibit 55
2 and can tell the jury if that looks familiar at all
3 to you and what that was like?

4 A Yes, sir, it does.

5 Q What is that?

6 A That's the victim wrapped up in looks like white
7 sheet.

8 Q All right. And is that a ditch or what was that?

9 A Ditch, yes, sir.

10 Q I show you State's Exhibit 56. Can you identify
11 that?

12 A That's the sheet and the body that we found.

13 Q Okay. Now when that happened what, if anything,
14 did you say or what else did you ask Mr. Johnson?

15 A Corporal Drulis, at that time he was out of the
16 vehicle also. He walked up to me and he said —

17 MR. HOFFMEYER: Your Honor, I object to
18 any hearsay.

19 BY MR. CLEMENTS:

20 Q Don't tell me what anybody said other than you
21 and Mr. Johnson.

22 THE COURT: Sustained.

23 THE WITNESS: At that time I got back into
24 the vehicle. And I told Mr. Johnson, I said, I
25 appreciate you taking us to where the body is at, I

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1 said, but you've lied to me. And he said, huh. And
2 I said, I said, David, I said, you lied to me. I
3 said, you said Amp told you where this body is at.
4 I said, there's only two ways you would know exactly
5 where this body is. One, they brought you here and
6 showed you where they dumped that body, or you were
7 here when they dumped that body. And I said, right?
8 And he goes, yes, sir. And he put his head down. I
9 said, would you like to go back to the office and
10 talk some more and get some more story; and he said
11 yes, sir. So at that time Sergeant Drayton come
12 around, and I said, you know, he would like to talk
13 some more. So myself, Sergeant Drayton, Sergeant
14 Godwin and Corporal Drulis went back to the
15 conference room on the second floor of the complex
16 here.

17 Q Did you stay while they removed her body from the
18 ditch?

19 A No, sir. Major Raines, several others, they
20 called other officers, called the crime scene and
21 stuff. At that time since he was willing to talk
22 some more and tell us more of what happened we went
23 back to the complex.

24 Q All right. Thank you. You can have a seat right
25 back up there and put that yardstick back up.

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1 A (Witness complies.)

2 Q Lieutenant Compton, y'all went back to the
3 conference room. Where is the conference room?

4 A It's on the second floor of the complex here.
5 It's our police conference room.

6 Q And how is that room furnished?

7 A It's actually two tables put in the end so it's a
8 long conference table with chairs all the way around
9 it.

10 Q And who all went in that room?

11 A Myself, Mr. Johnson, Sergeant Drayton, Sergeant
12 Godwin, and Corporal Drulis I believe.

13 Q All right. Now y'all went in that room. What
14 equipment, if any, was in there?

15 A I know they had their case file with them,
16 Sergeant Godwin, Sergeant Drayton, and a digital
17 recorder.

18 Q Okay. Now at this time had your vacation begun?

19 A Yes, sir, it has.

20 Q Okay. Did you stay there in the room and talk
21 with Mr. Johnson?

22 A I did. Mr. Johnson had given a — after asking
23 more questions by us and, you know, a more detailed
24 information that Mr. Johnson had, a taped statement
25 was given to us and after the taped statement, it

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1 was concluded, I left and went home.

2 Q Okay. Now as part of that taped statement and
3 also these other officers involved, what was done
4 additional, if anything, regarding Mr. Johnson's
5 Miranda rights?

6 A He was obviously mirandized again.

7 Q Was that in your presence?

8 A Yes, it was.

9 Q Okay, all right. What, if anything, in regard to
10 any forms or anything were used?

11 A He may have signed the waiver of rights form at
12 that time in the conference room when he was with
13 me. I just did it by my card.

14 Q Okay, all right. So you didn't issue a form or
15 have him ---

16 A No, sir.

17 Q ---go over the form with him? Okay, all right.
18 And so were you present while they took t he taped
19 recorded statement?

20 A Yes, sir, I was.

21 Q And after the tape recorded statement was
22 completed what did you do then?

23 A At that time I know they was going to go back to
24 his residence, at least that was my understanding.
25 And at that time I told Sergeant Godwin and Sergeant

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1 Drayton that if he didn't need me anymore that I was
2 going to go home as I started vacation 4:30-
3 yesterday so, and they said that was fine.

4 Q Now what was your understanding why they were
5 going to his house?

6 A He had made a statement that he had some of the
7 stolen items from the victim's residence.

8 Q Okay. And you didn't go to his house?

9 A No, sir, I did not.

10 Q Was there anything else you did to participate in
11 this investigation?

12 A No, sir.

13 Q Okay. Beg the Court's indulgence.

14 THE COURT: Yes, sir.

15 BY MR. CLEMENTS:

16 Q Let me ask you this, when, if at any time during
17 this entire process, did Mr. Johnson say I want an
18 attorney?

19 A No, sir, he did not.

20 Q When, if at any time during this process, did
21 Mr. Johnson say or act like he didn't understand
22 what everybody was talking about or what he was
23 talking about?

24 A No, sir, I mean, we had — like I said, we had
25 general conversation, played video games, the

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1 computer. Actually I had a pleasant conversation
2 with him. I mean, he was -- he not once got upset.
3 He never asked, you know, he never asked me to
4 repeat a question or anything. It was yes, sir, no,
5 sir, and very pleasant conversation to be honest
6 with you.

7 Q Okay. What, if anything, was ever done to make
8 him do anything involuntary by you or any other
9 officer?

10 A Nothing. You know, he -- it was completely
11 voluntarily.

12 Q Prior to giving a statement on the recorder, was
13 he placed under arrest or placed in handcuffs?

14 A When we took him to where the body was or where
15 he took us to where the body was, he was handcuffed
16 in the vehicle.

17 Q Okay, all right. And at that time was he said
18 that he was under arrest?

19 A We never told him he was under arrest was, but we
20 explained to him, you know, for your safety and our
21 safety that we're placing these handcuffs on you for
22 investigative detention and he never said he had a
23 problem with that or anything. He understood -- as
24 a matter of fact, he said he understood that. And
25 he was treated fairly, and you know, nothing was

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1 said out of the way to him or anything. I mean, and
2 he was, you know, he was nice the whole way through
3 and of course we were too.

4 Q So is this the sum of your involvement in this
5 case?

6 A Yes, sir, it is.

7 THE COURT: Please answer any questions
8 Mr. Hoffmeyer may have.

9 **CROSS - EXAMINATION**

10 BY MR. HOFFMEYER:

11 Q Lieutenant Compton, I have a few questions for
12 you. You say for your safety and his safety he was
13 put in handcuffs out there on Malloy Street, right?

14 A Actually he was placed in handcuffs before we
15 left the complex to go for the ride because, and you
16 know, at that point he is considered, you know, to
17 me as a person of, you know, involvement in this
18 incident. He was going to take us where he knew
19 where the body was so at that point we didn't know
20 how deep his involvement is so we did place him in
21 handcuffs, yes, sir.

22 Q My question is, how would that be for his safety?
23 Why would you place somebody in handcuffs for their
24 own safety?

25 A Well, some people when you handcuff someone and

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1 they get upset and they might attempt to flee or,
2 you know, cause harm to us. And if you try to cause
3 harm to me I'm gonna do the same back to you to get
4 you under control. So for his safety, yes —

5 Q I got you.

6 A —I don't want him to try to hurt us or he
7 hurt —

8 Q You're scared he might do something to y'all so
9 you put him in handcuffs, and therefore, you won't
10 have to do anything to him if he does something to
11 y'all is what you're telling us?

12 A Yes, sir, it keeps everybody safe.

13 Q I got you. Now let's talk about when you first
14 came into contact with Mr. Johnson. That would have
15 been around between 4 and 4:30 of that afternoon; is
16 that right?

17 A Yes, sir.

18 Q Okay. And I think you told us you were supposed
19 to be on vacation at 4:30, right?

20 A Yes, sir.

21 Q And you have that device there so you hear
22 traffic going on as far as if there's crime, a
23 robbery, or —

24 A Yes, sir.

25 Q —whatever type is going on?

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1 A Yes, sir.

2 Q And in fact, you were aware there was a missing
3 person involved in this particular case?

4 A Yes, sir, I did.

5 Q Okay. And you were aware that Officers Godwin
6 Drayton would have been working this particular
7 case, right?

8 A Yes, they were.

9 Q And they wanted to talk to Mr. Johnson, right?

10 A Yes, sir.

11 Q Okay. So you're aware that he was a suspect in
12 this case at that time; weren't you?

13 A I knew he was a person that they was interested
14 in talking to. They never told me what he was in
15 the investigation. I just assumed that he might be
16 a suspect.

17 Q Okay, that's fine. And he would have gotten
18 there sometime between 4 and 4:30, and the initial
19 statement that you took from him was well after
20 midnight; wasn't it?

21 A To be honest with you I can't remember what time
22 it was when we actually started to have a
23 conversation on the crime itself. To be honest I
24 can't remember. It was late in the hour, but I
25 don't know what time.

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1 Q Haven't you previously testified it was after
2 midnight?

3 A I don't recall saying after midnight. I know
4 when we went out to the body and stuff it was
5 sometime the next day, that morning, but I can't
6 remember what time.

7 Q Maybe it was between 2 and 3:00 a.m. the next
8 day?

9 A That's a possibility. I never looked at the time
10 that morning.

11 Q Lieutenant Compton, this is a murder
12 investigation. You don't have any notes as to the
13 time you took a statement from a suspect in this
14 murder investigation?

15 A My report is my statement. I didn't write down
16 the time, no, sir.

17 Q Well, you wouldn't disagree with me it could have
18 been after midnight when you took the statement?

19 A No, sir, I would not.

20 Q All right, sir. Now that means that if
21 Mr. Johnson had been with you since 4 to 4:30 and a
22 statement was taken very possibly, maybe even
23 probably after midnight, he'd been with you eight
24 hours at least; is that fair to say?

25 A That's fair to say, yes, sir.

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1 Q Okay. And you say that he slept for several
2 hours. That's what you told this jury.

3 A Yes, sir.

4 Q Where did he sleep?

5 A He slept in the chair.

6 Q He slept in a chair upright?

7 A Actually, I mean, when I -- not upright, I mean,
8 he was -- he -- basically he was laying down. I
9 mean, I...

10 Q I'm sorry?

11 A I'm sorry, I mean, I can demonstrate if you like,
12 but I mean.

13 Q No, sir, you don't need to demonstrate. He was
14 in a chair sleeping, right?

15 A Yes, sir, uh-huh.

16 Q Now you said that you started asking him
17 questions because you were curious. That's what you
18 told the jury?

19 A Yes, sir.

20 Q You were aware that he was a person of interest
21 in a murder investigation, right?

22 A Yes, sir.

23 Q So it was more than just curiosity; wasn't it?

24 A No, sir, because I'm not the lead investigator.
25 I wasn't ever instructed to ask him any questions.

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1 I took it upon myself so, yeah, I'm curious, I'm an
2 investigator. That's why they made me an
3 investigator because I am curious; and I decided,
4 you know, I'm going to see if he'll talk and I did.

5 Q Well, you weren't the lead investigator in this
6 case ---

7 A No, sir.

8 Q ---but you stayed throughout his taped statement
9 too, right?

10 A I was very interested after that, yes, sir.

11 Q Okay. And so you were very interested after
12 that. You weren't interested after midnight when
13 you started questioning him about a murder? You
14 weren't very interested then?

15 A I'm not quite sure I'm following you, sir.

16 Q Well, it seems to me that when you're playing
17 these video games as you described to the jury you
18 just decide because you're curious you don't have
19 much information or don't know what this is about so
20 you'll start questioning him. It seems to me you
21 knew this was a murder investigation and wanted to
22 question him; isn't that correct?

23 A I knew possibly it was a murder, yes, sir, and I
24 wanted to talk to him and it was several hours
25 before I even tried talk to him.

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1 Q Yes, sir. Now that statement that you were
2 present with Officer Godwin and Officer Drayton,
3 that taped statement began at 3:15 a.m.; didn't it?

4 A If you say so. I mean, I don't know remember
5 what time it was. I mean, if that's what it says
6 then that's what time it was.

7 Q Now, with regard to the statement that you or
8 when you first started questioning him you indicated
9 that you read to Mr. Johnson the Miranda warnings
10 from a card that you had.

11 A Yes, sir.

12 Q And you went through and asked him if he
13 understood the warnings, and you told this jury he
14 said yes.

15 A Yes, sir.

16 Q And then you asked him if he wanted to give a
17 statement, and you told this jury he said yes.

18 A Yes, sir.

19 Q Now as relates to when you asked him if he
20 understood those rights, you read several rights to
21 him, the right to remain silent?

22 A Yeah.

23 Q The right to an attorney?

24 A Yes, sir.

25 Q After each separate right you didn't ask him if

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1 he understood that particular right, did you?

2 A No, sir. I did not.

3 Q You waited till the end and asked him generally
4 do you understand these rights, correct?

5 A Correct.

6 Q Now other than that, you did not do anything to
7 make certain that Mr. Johnson understood those
8 rights, did you?

9 A No, sir, because he never indicated to me he
10 didn't understand them.

11 Q I got you. Now you didn't know Mr. Johnson at
12 all before this occasion when he was with you from
13 four to midnight, did you?

14 MR. CLEMENTS: Your Honor, at this point
15 we feel like we have a point of law we need to
16 discuss.

17 THE COURT: All right. Ladies and
18 gentlemen, I ask you to step back into your jury
19 room while I take up this matter of law. Please
20 have no conversation about the case. I'll bring you
21 right back out.

22 (WHEREUPON, the jury was removed from the
23 courtroom at 12:25 p.m, and the following
24 proceedings commenced in open court.)

25 THE COURT: All right, sir.

1 MR. CLEMENTS: Your Honor, I'm not sure
2 where Mr. Hoffmeyer is going, but what I suspect is
3 he's going to try to come in the back door what I
4 think he should attempt to do through the front door
5 if he's going to do it. Right now he's going to try
6 to get into issues of mental retardation and things
7 like that which this officer is not competent to
8 testify to at all about mental retardation, and so I
9 just felt like out of abundance of caution I need to
10 take that matter up now before the bell gets rung,
11 that I can't un-ring in front of the jury. If he's
12 planning on putting evidence up about that that's
13 fine, we'll deal with that. I don't know if he can
14 go into those issues with this witness at in time.

15 THE COURT: Well, I don't know where he's
16 going. He just started saying you didn't know him
17 before now.

18 MR. CLEMENTS: Right. And before the bell
19 got rung I felt like I need to be sure that that's
20 not where we're going.

21 MR. HOFFMEYER: Your Honor, I'm gonna ask
22 him about what he knows about him, whether he can
23 read and write, his level of education, all those
24 things, including those type issues.

25 THE COURT: That's fine.

1 MR. HOFFMEYER: If knows he knows; if he
2 doesn't, he doesn't.

3 THE COURT: Correct. I guess the
4 Solicitor's concern is that the question doesn't
5 come out, are you aware that he has mental
6 deficiency or something along those lines.

7 MR. HOFFMEYER: Well, Your Honor, I do
8 intend to ask him if you're aware if he has any
9 mental deficiencies or is — if he says no, he says
10 no.

11 MR. CLEMENTS: Well, if he's starting
12 asking about IQ levels and all these other things he
13 has no —

14 MR. HOFFMEYER: I wouldn't ask him that.

15 THE COURT: No. And the thing is, you
16 know, obviously at this stage in the case he is
17 aware of those issues, but you're asking him at the
18 time, what you knew at the time.

19 MR. HOFFMEYER: Yeah.

20 THE COURT: Sure. And I think he can ask
21 that. Are you aware if he has any mental
22 deficiencies, I think that's a valid question.

23 MR. CLEMENTS: Were you —

24 THE COURT: He can answer.

25 MR. CLEMENTS: Yes, sir.

1 THE COURT: Mr. Hoffmeyer, you know where
2 the Solicitor's concern is, is that — and I'm not
3 asking you to comment at all about the defense's
4 case. I'm just saying that — of course, his
5 concern is if that issue is broached then obviously
6 it would need to be some evidence that you intend to
7 show that. I mean, you see what I'm saying.

8 MR. HOFFMEYER: I do see what you're
9 saying. I think —

10 THE COURT: What you told me thus far I
11 think is all appropriate.

12 MR. HOFFMEYER: Well, it does bring up
13 another issue in that this witness is — as I've
14 listened to some of the comments, this witness is
15 aware that now he does suffer from a mental
16 disability. The witness is currently aware of that.

17 THE COURT: Okay.

18 MR. HOFFMEYER: And I would like to be
19 able to ask him that as well. I know that's the
20 State's objection.

21 MR. CLEMENTS: Your Honor, I don't see
22 where what he knows now is relevant at all, and I
23 don't think it has any probative value. It just has
24 a prejudicial effect.

25 MR. HOFFMEYER: Well, Your Honor, that

1 goes to show that he didn't have —

2 THE COURT: It —

3 MR. HOFFMEYER: I'm sorry.

4 THE COURT: Here's the thing, the
5 questioning that is going on right now deals with
6 the voluntariness of the statement at the time that
7 he gave the statement and what this officer knew as
8 to whether or not he was voluntarily given a
9 statement or that he understood the conversations he
10 had with the officer. The fact that he's aware now
11 that he might have some level of intellectual
12 disability, how is that relevant to what he knew
13 then when he had to make a judgment as a police
14 officer as to whether someone understood the
15 questions he was asking?

16 MR. HOFFMEYER: Because this officer has
17 repeatedly said under the State's questioning how
18 voluntary it was back in '08.

19 THE COURT: Correct. Correct.

20 MR. HOFFMEYER: And I'm going to ask him
21 'cause it goes to the weight of how credible he is
22 in determining voluntariness, if he knew that he was
23 mentally disabled then as he does now could that
24 have made a difference.

25 THE COURT: How are you getting in — I

1 mean, then what you're trying to put into evidence
2 is that Mr. Johnson has an intellectual disability.

3 MR. HOFFMEYER: Well, Your Honor, that ---

4 THE COURT: But there's no evidence of
5 that at this point.

6 MR. HOFFMEYER: There's evidence from this
7 witness and ---

8 THE COURT: No, there's not.

9 MR. HOFFMEYER: Well, if I ask him and he
10 knows it.

11 THE COURT: You can ask what he knew at
12 the time or what he knows now?

13 MR. HOFFMEYER: Both, Your Honor.

14 THE COURT: Huh-uh. I don't think that
15 would be appropriate.

16 MR. HOFFMEYER: And Your Honor, I'll just
17 proffer that maybe right now and put it in the
18 record. And I understand Your Honor's ruling, but
19 you know, and our position is also that the State in
20 prosecuting this case has admitted my client suffers
21 from a mental disability. And therefore, we are
22 asking the State to allow this Court to stipulate
23 that my client suffers from a mental disability
24 based upon the fact that their own expert agreed
25 with us.

1 THE COURT: But, and I understand what
2 you're saying, but if that intellectual disability
3 had an adverse effect, I mean, of course, you know,
4 because their position is the fact that he has that
5 had no adverse effect on his actions regarding
6 whether or not he — I mean, 'cause their position
7 is the statement was understood and was voluntarily.
8 So I mean, obviously they disagree with your
9 position that that did have an adverse effect. I
10 know your position is that it clearly had an adverse
11 effect, and so I don't — it's not in evidence in
12 this case at this point. I don't know that you can
13 force them to put it into evidence without taking on
14 some responsibility if you choose to do that.

15 MR. HOFFMEYER: Well, Your Honor, I
16 understand what you're informing me. In the
17 alternative we would ask that it be taken judicial
18 notice that he suffers from a mental disability. I
19 mean, the record is replete with that.

20 THE COURT: How is that relevant to the
21 issues in this case because the testimony that I've
22 heard both in-camera, at hearings, and everything
23 and I've ruled on it, is that even though he does
24 suffer from an intellectual disability that it was
25 not to the point that he could not understand the

1 rights he was read, that he was able to -- I mean,
2 my rulings have been that in spite of that
3 disability the evidence that this Court has had to
4 deal with shows that at least in this Court's
5 opinion, that he did have the capacity to understand
6 the questions he was being asked, to understand his
7 rights, and that his waiver of those rights was
8 voluntary. Of course, they make the ultimate
9 decision on whether or not it was a voluntarily
10 given statement, but the fact that I -- I'm not
11 understanding how that affects any issues that are
12 in this case at this point. In other words, it
13 hasn't been made an issue at this point.

14 MR. HOFFMEYER: Well, Your Honor, I
15 intended to ask the question really based upon what
16 I had previously informed the Court, that I'm asking
17 this witness about what he knew in 2008 which he
18 says it was free and voluntarily. And then the line
19 of questioning, as I've explained to the Court, that
20 back thing you didn't -- did you know, whatever, his
21 level of education, did you know he suffered from
22 mental disability, and this witness I imagine will
23 say no. Then my follow-up question to that would be
24 if you knew that his level of education was poor
25 would that have made a difference and those types of

1 things. And then eventually —

2 THE COURT: Well, okay, 'cause I still
3 don't think that's a problem until you get to the
4 eventually I think.

5 MR. HOFFMEYER: Yes, sir.

6 THE COURT: 'Cause eventually you're gonna
7 want to — you're gonna make the statement, you're
8 gonna try to put into evidence through your question
9 he suffers from intellectual disability, had you
10 known it then would it have made a difference.

11 MR. HOFFMEYER: That is correct, Your
12 Honor.

13 THE COURT: And that's where I think
14 you've crossed the line that you're, in my opinion.
15 I will allow you to proffer that.

16 MR. HOFFMEYER: Yes, sir. And I
17 understand the Court's ruling. I won't do it; I'd
18 just like to proffer it.

19 THE COURT: Absolutely, I'm gonna allow
20 you to do that.

21 MR. CLEMENTS: And Your Honor, we take the
22 position that Lieutenant Compton can't answer that
23 because to him that information is hearsay.

24 THE COURT: Well, what's your position on
25 that?

1 MR. HOFFMEYER: Well, Your Honor, I
2 understand that position, but at some point during
3 the trial of the case this officer has been privy to
4 all this information. And it doesn't even
5 necessarily go for the truth of the matter asserted.
6 It goes to show that he didn't have all the
7 information then he does now and that would have
8 made a difference as to whether he knew whether it
9 was free and voluntarily.

10 MR. CLEMENTS: It absolutely goes to the
11 truth of the matter asserted. You know, he can't
12 ask him and he would be privy now to what Mike, if
13 he was in the courtroom, as to what Mike Brandt
14 testified to or something else, that'd still be
15 hearsay. He might be privy to it, but it's hearsay
16 information to him, can't testify to it. And
17 certainly there would be no other reason whatsoever
18 for Mr. Hoffmeyer to try to introduce it if he
19 wasn't trying to introduce it for the truth of the
20 matter asserted.

21 MR. HOFFMEYER: I'm introducing it to see
22 what this witness knew, but I understand Your
23 Honor's ruling and I'm not going to do it.

24 THE COURT: Okay. Well, here's what I'm
25 going to do. At this point, 'cause I've heard from

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1 everybody, I'm gonna let you proffer this line of
2 questioning and then we got the jury out so let's go
3 ahead and do that.

4 **PROFFER EXAMINATION**

5 BY MR. HOFFMEYER:

6 Q Lieutenant Compton, it's my understanding at the
7 time that you would have met with my client you had
8 no prior knowledge of him.

9 A Correct.

10 Q So you would not have known at that point when
11 you took the statement his level of education?

12 A No, sir.

13 Q You would not have known whether he could read or
14 write?

15 A No, sir.

16 Q You would not have known if he was in special ed
17 at school?

18 A No, sir, I would not.

19 Q And you -- when you take a statement, the
20 person's ability to understand I'm sure is important
21 to you?

22 A Yes, sir, it is.

23 Q Okay. And if someone did suffer -- if someone
24 was not, or rather couldn't read or write, that
25 could affect your thoughts on whether they

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1 understood what you were asking them potentially?

2 A Yes, sir, it would.

3 Q Just like if someone couldn't speak the English
4 language well, that would be something you'd be
5 concerned with?

6 A Yes, sir.

7 Q And if someone had a mental disability, mental
8 retardation, intellectually disabled, and you were
9 going to take a statement that would be a concern of
10 yours?

11 A Yes, it would.

12 Q And at this time back in 2008 you had no
13 information that Mr. Johnson was intellectually
14 disabled or mentally retarded?

15 A No, I did not have any of that information; but
16 like I think I testified in-camera Thursday, if an
17 individual that I was reading the rights to, you
18 know, we -- I've had individuals who have been shot,
19 injured, had head injuries. I've interviewed
20 mentally retarded individuals, you know, from where
21 they have committed a crime, and I know they was
22 mentally retarded I would continue with further
23 questioning of their rights to make sure they
24 understood. If I felt in any way, shape, or form
25 that they did not understand I would stop; I

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1 wouldn't go any further. I've had plenty of
2 suspects, even witnesses and stuff that I've talked
3 to, said they didn't understand their rights and
4 they have asked, well what does that mean, and I'd
5 further go into it. So if there was some issue that
6 day I would have continued with questioning to find
7 out if he understood, but he seemed to be fine. In
8 my opinion he seemed to understand everything I was
9 asking him, and I understood everything he was
10 telling me and asking me.

11 Q Okay. So you've indicated that if you are aware
12 of a concern you ask further questions and to insure
13 that someone understands; is that fair to say?

14 A Yes, sir, anybody would.

15 Q Yes, sir. And on this occasion because you felt
16 comfortable he was understanding things after you
17 asked him if he understood his rights and wanted to
18 go forward you went forward with the statement,
19 right?

20 A Correct, yes, sir.

21 Q And you were not aware as you are now that he
22 suffers from intellectual disability, correct?

23 A I was not aware, no, sir.

24 Q Okay. And if he was aware — if you were aware
25 of his mental instability as you are aware now and

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1 you've indicated you would ask further questions to
2 make sure they understood the person, you would have
3 gone further; is that correct?

4 A Yes, sir.

5 MR. HOFFMEYER: Your Honor, that's all I
6 have.

7 THE COURT: All right. I'm gonna have to
8 ask you because I was correcting part of this
9 charge, at any point in that questioning did you say
10 are you aware that he does, in fact, have a
11 intellectual disability?

12 MR. HOFFMEYER: I'm not sure I did.

13 THE COURT: I don't think you did.

14 MR. CLEMENTS: He said if you're aware as
15 you are now.

16 MR. HOFFMEYER: Yeah, I did, I did say
17 that.

18 THE COURT: All right, yeah. That I
19 clearly would not allow. I think you -- you were
20 going to say something?

21 MR. HOFFMEYER: I was just -- I was going
22 to ask the Court because I don't want to ask
23 something I shouldn't so.

24 THE COURT: The problem I see, Mr.
25 Hoffmeyer is, you can ask him questions about, you

1 know, what you know of him, what you knew of him
2 then, what you knew of his background, and if you
3 knew whether or not he had any learning disabilities
4 or whatever. And of course his answers back then
5 would have been no, no, no, no. If he did have some
6 type of a learning disability and you would have
7 known that, would you have done anything different.
8 I mean, I think those are appropriate. Where I
9 think the line crosses is when you actually either
10 you say or you ask him now, now you understand he
11 does have a — he is learning disabl— he is
12 intellectually disabled, and that's where I think
13 you're putting in evidence through your questioning
14 that is not in evidence in this trial.

15 MR. HOFFMEYER: Yes, sir.

16 THE COURT: So I think that's where the
17 line is.

18 MR. HOFFMEYER: Well, Your Honor, and I'm
19 going to stay within that line.

20 THE COURT: And I understand that —

21 MR. HOFFMEYER: But I've proffered it.

22 THE COURT: You have proffered it, and I
23 understand you, your position would be that you will
24 take exception to that ruling —

25 MR. HOFFMEYER: Yes, sir.

1 THE COURT: —that you should be able to
2 tell him that now that — in other words, you now
3 know that he has intellectual disability and you
4 wanted to question how knowing that now, how that
5 would have affected you back then?

6 MR. HOFFMEYER: Yes, sir.

7 THE COURT: And that's where, you know, my
8 ruling is that that would be inappropriate, that
9 putting in the fact that — putting in that fact
10 that he is, in fact, intellectually disabled. I'm
11 not saying that that won't end up being an issue in
12 this case 'cause you may — and I'm not getting, I'm
13 not asking you to comment on your defense; you may
14 make that an issue in this case. But until that
15 occurs or unless the State makes it an issue, it's
16 not an issue that's, in fact, in evidence right now.
17 So that's where I think it would be appropriate.
18 And of course, Solicitor, during questioning you
19 certainly object if you have an objection.

20 MR. CLEMENTS: I will, Your Honor. My
21 concern is that this defendant has every right not
22 to put in evidence, he has every right to put in
23 evidence.

24 THE COURT: Correct.

25 MR. CLEMENTS: But to try to go in the

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1 back door to save last argument is improper.

2 THE COURT: I agree. I agree. And that's
3 where I — my ruling lies is that I would not allow
4 that.

5 MR. CLEMENTS: Yes, sir.

6 THE COURT: But those other questions,
7 those prior questions I think were appropriate.

8 MR. CLEMENTS: Thank you, Your Honor.

9 THE COURT: All right. Are we ready?

10 MR. HOFFMEYER: Yes, sir, Your Honor.

11 THE COURT: All right, Mr. Propps, bring
12 the jury back in please, sir.

13 (WHEREUPON, the jury was returned to the
14 courtroom at approximately 12:42 p.m., and
15 the following proceedings commenced in
16 open court.)

17 THE COURT: All right, ladies and
18 gentlemen, we'll continue now with Mr. Hoffmeyer's
19 cross-examination.

20 MR. HOFFMEYER: Thank you, sir.

21 BY MR. HOFFMEYER:

22 Q Now Lieutenant Compton, just a few more questions
23 for you I believe. As far as my client David, you
24 did not know him before this evening, did you?

25 A No, sir, I do not.

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1 Q So when it came time to on this occasion to
2 question him as you had decided to do, you would not
3 have been aware of his level of education, would
4 you?

5 A No, sir.

6 Q And you would not have been aware of if he was in
7 special ed classes in school, would you?

8 A No, sir.

9 Q And you would not have even been aware whether he
10 could read or write, would you?

11 A No, sir.

12 Q And you would not have been aware if he suffered
13 from some type of intellectual disability or mental
14 retardation, you wouldn't have been aware of that?

15 A No, sir. But at the time I was talking to him he
16 didn't show any signs of anything that would alert
17 me to any problems.

18 Q Yes, sir. And I believe, Lieutenant Compton, it
19 would be fair to say if you had been aware of any of
20 those things at the time you would have made
21 additional efforts to make sure that person or any
22 person, if they have some type of mental disability
23 or any special ed classes or having whatever types
24 of problems they've had, you would have gone through
25 additional steps to make sure they understood their

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1 rights; is that correct?

2 A Yes, sir, I would have questioned them more and
3 asked more to make sure we had an understanding,
4 yes, sir.

5 Q Thank you, sir. Now as far as this statement
6 that was taken by you, it's my understanding that
7 you did not record this statement, correct, the one
8 given to you?

9 A Yes, sir, correct.

10 Q You did not record it?

11 A No, sir.

12 Q And in addition to that, at that time you were
13 the first person to your knowledge to question him;
14 is that correct?

15 A To my knowledge, yes, sir.

16 Q Okay. And you didn't ask him to write out the
17 statement for you, did you?

18 A No, sir.

19 Q The waiver of rights form that your office uses,
20 you have used those I'm sure many times; is that
21 correct?

22 A Correct.

23 Q And that that waiver of rights form has the
24 Miranda rights as you've described them for the
25 jury, and it has a place for the witness to sign; is

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1 that correct?

2 A Correct.

3 Q And on this occasion before you took this
4 statement from my client related to this murder
5 investigation, you did not have him sign one of
6 those waiver of rights forms, did you?

7 A No, sir, I did the waiver of rights through my
8 card.

9 Q Okay. And there are plenty of times where you
10 read the card and still have them sign the waiver
11 form; isn't that correct?

12 A Yes, sir.

13 Q If you'll excuse me one second, Lieutenant.

14 A Yes, sir.

15 Q Thank you very much, Lieutenant Compton.

16 A Thank you.

17 THE COURT: Any redirect?

18 **REDIRECT EXAMINATION**

19 BY MR. CLEMENTS:

20 Q What did you ask Mr. Johnson to read, if
21 anything?

22 A I didn't ask him anything to read, no, sir.

23 Q How often or how rare is it that you know the
24 educational background of somebody you interview
25 whether it's a suspect or a witness or a victim?

SW - T. COMPTON - REDIRECT

1 A It very rare. I mean, I ---

2 Q Very rare?

3 A Very rarely.

4 Q Okay. How often is it or how rare is it that you
5 know whether someone has any learning disabilities
6 or not when you talk to them and they're a suspect,
7 a victim, or a witness?

8 A If there was any signs, you know, that I picked
9 up on that would make me think that they didn't
10 understand something, I would question them about
11 understanding, you know, do you know where you're
12 at, you know, do you know what you're doing here
13 today, I would go further. But there was no
14 indications that night that---

15 Q No indications that night with who?

16 A With Mr. Johnson at all.

17 Q All right. How often do you know that
18 information ahead of time?

19 A You don't. Normally you don't.

20 Q What is your one thing you're trying to find out
21 when you talk with someone so that you can go
22 forward and continue to talk to them?

23 A If they understand their rights.

24 Q And regardless of who they are?

25 A Regardless who they are. I read them their

SW - T. COMPTON - REDIRECT

1 rights. If they say they understand their rights
2 and they answer yes, they'd like to answer my
3 questions, and there was no — I've had plenty of
4 suspects that ask me to read the rights again.

5 MR. HOFFMEYER: Your Honor, I object to
6 the relevance of other suspects and what they've
7 done.

8 THE COURT: Overruled. I think the
9 question was being — the questioning is on how he
10 handles these statements or interrogations, and I
11 think he can testify as to how he does it.

12 THE WITNESS: There's been plenty of times
13 where I've had, you know, suspects or persons of
14 interest that, you know, say, you know when I start
15 reading them rights, do you understand, I don't
16 understand. I say, what part do you not understand
17 and they say, well, about talking to you or stop
18 talking to you so we go over those points that they
19 don't understand. And I don't go any further with
20 any questioning until they absolutely understand
21 their rights that and I believe that they understand
22 their rights. I will — and if they don't
23 understand I don't go any further beyond that
24 because there's no use to.

25 Q What indications, if any, red flags if any,

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1 Mr. Johnson exhibit that evening to show you he
2 didn't understand or it wasn't voluntary?

3 MR. HOFFMEYER: I object to that as
4 improper redirect, Your Honor.

5 MR. CLEMENTS: Your Honor, I think it
6 relates to what he asked him on cross, Your Honor.

7 MR. HOFFMEYER: May we approach just
8 briefly.

9 THE COURT: Yeah, please.

10 (WHEREUPON, counsel approached the Bench
11 for an off-the-record discussion.)

12 THE COURT: All right. Overruled, go
13 ahead.

14 BY MR. CLEMENTS:

15 Q Did you understand my question? You need me to
16 repeat it?

17 A Please repeat it.

18 Q Okay, all right. I'm trying to make this
19 succinct. What happened, anything of any nature,
20 type, or form was there that indicated to you
21 anything other than David Johnson knew what you were
22 asking him and talking about and voluntarily
23 responding back to you?

24 A He gave no indications to me whatsoever that
25 there was an issue of understanding anything. I

1 mean, the whole time I spent with him which Mr.
2 Hoffmeyer said was around eight hours, we had
3 general conversation. I mean, everything we talked
4 about, I mean, there was no indication whatsoever
5 all this time that there was any issues that he had
6 any problems whatsoever. And his statement was free
7 and voluntary. You know, I read him his rights. He
8 stated he understood, and I believe he understood.

9 Q Thank you.

10 THE COURT: Anything further?

11 MR. HOFFMEYER: No, sir, Your Honor.

12 Thank you.

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

15 Ladies and gentlemen, it's about seven
16 minutes to one. We'll break for lunch at this time.
17 As always enjoy your lunch, kind of put your -- let
18 this be the time that your mind gets placed in
19 neutral and just relax and just enjoy your time at
20 lunch, and we'll start back this afternoon. I ask
21 you if you would please be back in your jury room at
22 2:30, and we'll get started then. That gives you a
23 little over an hour-and-a-half so please have no
24 conversation with anyone. Don't allow anyone to
25 talk with you please about the case.

1 (WHEREUPON, the jury was removed from the
2 courtroom at 12:55 p.m., and the following
3 proceedings commenced in open court.)

4 THE COURT: All right. Anything we need
5 to take up before we adjourn?

6 MR. HOFFMEYER: Not from the Defense, Your
7 Honor.

8 MR. CLEMENTS: Your Honor, I don't think
9 he's going on vacation. I hope he ain't going to go
10 any play video games on the city's time, but we
11 would ask that Lieutenant Compton be released from
12 his subpoena.

13 THE COURT: Any objection?

14 MR. HOFFMEYER: I object to that. I'm
15 just kidding.

16 THE COURT: That's fine. We'll start back
17 2:30.

18 (WHEREUPON, a lunch break was taken.)

19 THE COURT: Yes, sir.

20 MR. CLEMENTS: I believe we probably have
21 a couple of issues that'd be most expeditiously
22 taken up right now.

23 THE COURT: All right, sir.

24 MR. CLEMENTS: Before the jury comes back.

25 MR. HOFFMEYER: Your Honor, the first

1 issue I'm aware is one that we've been over with our
2 last or with the witness Lieutenant Compton. I
3 would intend to elicit the same testimony from
4 him -- excuse me, from Officer Drayton and Officer
5 Melvin Godwin as I did proffer with Lieutenant
6 Compton. Of course, I also asked the State to take
7 notice when they wouldn't do and asked for judicial
8 notice which would not occur and then I proffered
9 that. So I would need to proffer the same with
10 Officers Godwin and Drayton I believe because I will
11 need their responses in the record.

12 THE COURT: Well, let me ask, I'm trying
13 to think. I agree with you, but I thought on
14 your -- the testimony you proffered earlier did you
15 go into the current --

16 MR. HOFFMEYER: It's -- Mr. Clements
17 pointed out I did say to Officer Compton in the
18 in-camera hearing something along the lines now that
19 you're aware.

20 THE COURT: Okay.

21 MR. HOFFMEYER: Okay. I was going to say
22 --

23 THE COURT: I think everything you
24 proffered was I ruled, okay.

25 MR. HOFFMEYER: Except for that.

1 THE COURT: Okay, all right. Well, why
2 don't we do this, let Solicitor Clements do his
3 direct and then before we go into cross we'll -- how
4 long do you think it will take, probably take a
5 little bit of time on your direct; won't it?

6 MR. CLEMENTS: Your Honor, it will take a
7 little bit of time on my direct 'cause --

8 THE COURT: And you'll also be playing the
9 statement, correct?

10 MR. CLEMENTS: Not at this time. Melvin
11 Godwin, we will not -- we plan on playing the
12 statement with Larry Drayton.

13 THE COURT: My point being though at that
14 point maybe I'll send the jury out and then let you
15 proffer whatever you want to proffer and then we'll
16 --

17 MR. HOFFMEYER: Yes, sir, that's fine. I
18 just didn't know how you might prefer to deal with
19 it.

20 THE COURT: Yeah, because I don't know if
21 you want to proffer it now before you heard from
22 them on direct.

23 MR. HOFFMEYER: Your Honor, I agree now
24 that I think about it.

25 THE COURT: You might want to hear what

1 they have to say on direct, and so we'll do it that
2 way.

3 MR. CLEMENTS: Yes, sir. Your Honor, the
4 other issue I believe is in regards to the next
5 couple of witnesses we plan on calling, and I think
6 that I don't want to put words in Mr. Hoffmeyer's
7 mouth. He can speak for himself. There's some
8 record information we need to discuss.

9 THE COURT: Prior history and stuff?

10 MR. CLEMENTS: Yes, sir, might as well do
11 it now. I don't think it will take us very long to
12 talk about it.

13 THE COURT: Okay.

14 MR. HOFFMEYER: Your Honor, the first I'll
15 address is Anthony Wilson I believe will testify.
16 Your Honor, the only record of when I'm aware is
17 when has been provided that he had diversion in
18 family court of a shoplifting in 2005. Your Honor,
19 I would like to be able to ask Mr. Wilson about that
20 shoplifting. It it was with this circuit isn't that
21 right it was with this circuit.

22 THE COURT: Yeah, I think it was.

23 MR. HOFFMEYER: So first of all, judge, as
24 relates to my basis to ask him that it's under rule
25 608B specific instances of conduct. I can ask him

1 about things related to what I believe the rules
2 allow for is truthfulness or untruthfulness, but
3 it's kind of the old standard, moral turpitude
4 standard, in a way, and I would ask that I be
5 allowed to ask him under 608(b) and also under
6 608(c) evidence of bias which allows or
7 potentially -- allows me to ask questions related to
8 bias, prejudice, or any motive to represent to
9 impeach. Along those lines would be the fact he's
10 previously dealt with this solicitor's office and
11 then granted a diversion so he knew through -- he
12 knows through cooperation and theory through doing
13 the diversion program he was allowed to get rid of
14 that charge. Your Honor, also I would ask under the
15 case of State versus Jones which in my reading of
16 the case allows for some latitude to cross-examine
17 witnesses under that 608(c) standard. If you can
18 give me just a second, Your Honor, I think I have
19 it.

20 THE COURT: Okay.

21 MR. CLEMENTS: What were you looking for?

22 THE COURT: State v. Jones.

23 MR. CLEMENTS: That is 541 Southeastern
24 Second 813, Your Honor. It's a 2001 decision.

25 THE COURT: Okay.

1 MR. CLEMENTS: Your Honor, while he's
2 looking may I comment, do you want me to wait?

3 MR. HOFFMEYER: Yes, sir, go ahead.

4 MR. CLEMENTS: Your Honor, the — what is
5 this question is a shoplifting charge from 2005 at
6 that time, Your Honor, Mr. Anthony Wilson was 11
7 years old. You cannot incarcerate someone in the
8 State of South Carolina who is under 12 years old
9 there was not some deal cut with Mr. Wilson whether
10 he's 11 years old. Those are cases that DJJ
11 referred to arbitration routinely, and that was not
12 some deal or anything cut with or negotiated.

13 THE COURT: So your office didn't put it
14 in diversion?

15 MR. CLEMENTS: We would have put him in
16 the diversion program, but DJJ makes referrals on
17 that, Your Honor. It's not something that was
18 negotiated with an 11 year old. That's something
19 that's routinely put in arbitration.

20 MR. HOFFMEYER: Your Honor, I have that
21 case. Y'all may have already pulled it up.

22 THE COURT: I've got it. This is State v.
23 Jeffrey Jones.

24 MR. HOFFMEYER: Yes, sir.

25 THE COURT: Yeah.

1 MR. CLEMENTS: Your Honor, I think the
2 pertinent part of the case on, is page 4 Subsection
3 one, impeachment, which begins Brown had an
4 extensive criminal record dating back to 1976.

5 THE COURT: All right.

6 MR. HOFFMEYER: Your Honor, this case also
7 stands for the proposition that; and the way it sets
8 it out is that prior convictions, when it comes to
9 cross-examination, cross-examination of accomplices'
10 prior convictions and plea bargains was proper basis
11 if had legitimate tendency to throw a light on the
12 accuracy and truthfulness of accomplice's testimony.
13 Judge, in essence we have the plea bargain aspect to
14 this and that this particular office agreed to the
15 diversion, and it would be a situation in which if a
16 juvenile defendant, whatever the case may be, has
17 been diverted by an office and it could be numerous
18 things. And then we come to trial and it's, well,
19 he was a juvenile and we diverted it so you don't
20 get to ask him about it although he dealt with the
21 same office. We are dealing with one particular
22 instance in this case, but I think the legal
23 analysis is the same. Otherwise, juveniles can do
24 any time they get a diversion, a plea bargain for
25 lack of a better way to put it, in some respects. I

1 understand there's difference in family court but,
2 and we're not gonna be able to ask about it even
3 though the same office has allowed them to do it.

4 MR. JEPERTINGER: May I address it?

5 THE COURT: Well, in this case haven't
6 they — haven't they waived Mr. Wilson up? Aren't
7 they treating him as an adult?

8 MR. HOFFMEYER: Yes, sir, in this case.

9 MR. CLEMENTS: And also, Your Honor,
10 it's — I understand where Mr. Hoffmeyer is coming
11 from, but what I don't believe he understands is
12 that this diversion in juvenile arbitration is not a
13 plea bargain; it's something we do sua sponte.

14 THE COURT: So there's no discussing with
15 the defendant's lawyer, well, we'll run this one
16 through diversion, we'll divert this one through
17 arbitration.

18 MR. CLEMENTS: That decision is made
19 before there ever becomes a lawyer involved because
20 it is very rare that someone is in juvenile
21 arbitration and a lawyer is ever even involved.

22 MR. HOFFMEYER: Your Honor, my position on
23 that ---

24 THE COURT: Should be a stretch here, Mr.
25 Hoffmeyer. I mean, I understand what the case says

1 but it is a whole it — is a whole another world
2 we're dealing with when we deal with juveniles of
3 this age. Now I'm not talking about the kid who is
4 15 years old. And but here we have an 11 year old
5 who is accused of shoplifting and his case is
6 through the system diverted into arbitration or
7 whenever he went and it doesn't seem to be that
8 there's any plea bargain in here that it's just as a
9 matter of record that's what they do with these
10 cases. I don't even know that there's any evidence
11 that this — I don't think the man dealt with the
12 solicitor himself other than if this case was moved
13 into diversion..

14 MR. HOFFMEYER: I can tell you our
15 position on that, Your Honor, and I understand the
16 issue related to a plea negotiated, but it's our
17 position so this young man if he was 11 then he
18 would have been 14 when he was involved in these
19 offenses. That's one aspect. Another aspect is the
20 fact that he was charged with shoplifting so he
21 was — he dealt with law enforcement.

22 THE COURT: Right.

23 MR. HOFFMEYER: And then he was allowed to
24 enter into a program sua sponte, but he was charged
25 with a criminal offense and now has the knowledge

1 that if he goes along with a diversion program
2 everything works out for him. In this case he's
3 charged with a serious offense. He knows if he
4 testifies and goes along with the State he receives
5 a benefit. That's what I'm arguing, Your Honor.

6 MR. CLEMENTS: Your Honor, if he was going
7 to get any benefit the benefit would have been that
8 we would not have waived him up from juvenile court
9 where the most he'd been looking at would have been
10 a incarceration in DJJ up until the age of 21 at the
11 most. And instead, we waived him up as an adult at
12 14 years old so that he faces a conviction of 30
13 years to life on a murder charge.

14 THE COURT: That where's I'm —

15 MR. HOFFMEYER: Your Honor, I don't think,
16 quite frankly, from our perspective that that has
17 anything to do with why he would testify here on
18 behalf of the State in terms of whether they waived
19 him up or not.

20 THE COURT: You're saying is that is
21 whether they have him down there or have him up here
22 if he cooperates things go his way.

23 MR. HOFFMEYER: In his mind's eye, yes,
24 sir.

25 THE COURT: Well, I mean, in other words,

1 if he takes the stand clearly you're gonna ask him
2 about any deals he has with the Solicitor's Office.

3 MR. HOFFMEYER: Yes, sir.

4 THE COURT: So I mean, if the issue is his
5 note violation to is because of a plea arrangement
6 you're gonna be able to flesh that out through your
7 cross. How does asking him if he's been arrested
8 for and it's not even a conviction because it went
9 through diversion, how is that gonna be relevant to
10 the issue that you're wanting to use it for which is
11 he's getting — he thinks he's gonna get a deal?

12 MR. HOFFMEYER: Your Honor, my basis is
13 it's a motive for him to misrepresent because, Your
14 Honor, I imagine what this young man is going to
15 say — and I don't know what he's going to say —
16 but I think what he's going to say is, no, I haven't
17 received anything, they told me if just tell the
18 truth they'll make the court aware that I told the
19 truth or the court will be, can take into
20 consideration the fact I cooperated. Haven't been
21 offered anything and they haven't given anything.
22 They have offered them and I know they will in
23 compliance with Kyle versus Whitley so I imagine
24 that's what he's going to say and his motive to
25 misrepresent what he truly believes is going to

1 happen if he helps the State is the fact that he's
2 in essence helped himself before and has dealt with
3 the Solicitor's Office before.

4 THE COURT: All right. Anything else on
5 Mr. Wilson?

6 MR. HOFFMEYER: No, sir, I'll just renew.

7 THE COURT: That's it on Mr. Wilson?

8 MR. HOFFMEYER: Yes, sir.

9 MR. CLEMENTS: That's it.

10 MR. HOFFMEYER: And I understand.

11 THE COURT: There aren't any other
12 witnesses?

13 MR. HOFFMEYER: Mr. Montgomery.

14 MR. CLEMENTS: Mr. Montgomery, yes, sir.

15 THE COURT: Well, let's -- I'm going to
16 come back to Mr. Wilson.

17 MR. HOFFMEYER: My information that I've
18 been provided by the Solicitor's Office is that he
19 has no record. He has no record other than a simple
20 assault back in March of 2010, and then he's got
21 this charge burglary first so I...

22 THE COURT: This is Montgomery, right?

23 MR. HOFFMEYER: Yes, sir. So I'm sure the
24 State has complied and given me all the criminal
25 records related to Anthony Wilson I'm sure, and I'm

1 asking them -- and I'm sure they have, but with
2 regards to Gregory Montgomery that would be juvenile
3 and adult record and if that's all they got I really
4 don't have an issue with that.

5 THE COURT: All right.

6 MR. CLEMENTS: That's all we've got, Your
7 Honor.

8 THE COURT: Any other potential witnesses
9 that may have records we need to deal with?

10 MR. CLEMENTS: Yes, Your Honor. There is
11 a potential witness in the high patrol no Terrance
12 Patrick Mitchell, and I think we've provided
13 Mr. Hoffmeyer with that but there's a copy right
14 there. And the only thing he has that I am aware of
15 is a entering premises after warning offense dated
16 12/21/2011 which my understanding is he's in the
17 Darlington County Detention Center right now on that
18 charge.

19 THE COURT: Well, I mean, are you going to
20 call him or not? We can end this right now if
21 you're not going to call him.

22 MR. CLEMENTS: Well, Your Honor, while we
23 take care of it that's all you got there a potential
24 cut I'm going to call him, you know, something goes
25 one way or another I may deed Id need him I'm not

1 trying to waste the Court's time.

2 THE COURT: If that happens we'll deal
3 with it at that point.

4 MR. CLEMENTS: Yes, sir.

5 THE COURT: Is that it as far as witnesses
6 or records?

7 MR. HOFFMEYER: Yes, sir, that's all I'm
8 aware of.

9 THE COURT: Mr. Hoffmeyer, if I let you
10 ask him about this shoplifting how, what do you
11 intend to do with that, 'cause my understanding is
12 about all you can do is ask him is it true you were
13 arrested back in 2005 for shoplifting. He admits,
14 yeah, you move on.

15 MR. HOFFMEYER: Your Honor, I believe that
16 I can ask him you were arrested for shoplifting and
17 here Florence County, you were allowed to enter a
18 diversion program.

19 THE COURT: I don't know that you're
20 entitled to that. When you ask defendants of their
21 prior history you're allowed to ask them had they
22 been normally it's a conviction so you ask them is
23 it true you had a conviction for so and so. You
24 don't ask them what sentence did you get.

25 MR. HOFFMEYER: Yes, sir, I understand

1 that, but the distinction I make is what the Court
2 is referring to is under 609 questioning. Have you
3 been convicted under A(1) and A(2) about an actual
4 conviction. Under the Jones case deals with a
5 little bit different scenario with the plea bargain.

6 THE COURT: Let me look at this Jones case
7 a little closer.

8 (Pause.)

9 MR. HOFFMEYER: I don't want to interrupt,
10 Your Honor, but the analysis I'm using is along the
11 lines on page 6 of my opinion. I don't know if it
12 coincides. It's a lexis document.

13 THE COURT: Page 6 of what?

14 MR. HOFFMEYER: Page 6.

15 THE COURT: Yeah, that's what I'm reading.
16 Hear's the issue or distinction that I see. In that
17 case the guy had an extensive prior record and what
18 defense counsel wanted to do, wanted to go into his
19 prior dealings and his prior — let me use the
20 language they use here. Want to go into any prior
21 plea bargains to show his knowledge of the system
22 and the ways that it could be manipulated. The
23 problem you have here, Mr. Hoffmeyer, is he didn't
24 plea bargain diversion. He didn't enter into any
25 agreement to have his case go through diversion. It

1 was done whether he wanted it in diversion or not.
2 It was just moved into the diversion program. So it
3 wasn't any dealings he had with the Solicitor's
4 Office to negotiate that, and that's where I think
5 it's very different from the Jones case. In that
6 case the defense counsel had the right to talk about
7 the prior dealings. He has the negotiates and
8 dealing with the system, how to manipulate the
9 system. They even used the word manipulate in
10 there. You don't have that here. Because I was
11 inclined to let you ask him about the shoplifting as
12 you typically would under Rule 608 or, but now
13 you're wanting to take it into and because here's
14 what I'm afraid of, I'm afraid of the jury being
15 misled that this kid negotiated with the Solicitor's
16 Office and cut a deal, and that here he is doing it
17 again. And that's not what occurred. And so that
18 there's really a real opening here to mislead the
19 jury.

20 MR. HOFFMEYER: Well, Your Honor, candidly
21 that's really the part of the motive that I'm
22 seeking to elicit and I think —

23 THE COURT: To mislead the jury?

24 MR. HOFFMEYER: No, sir, I apologize if
25 that was what the Court thought I meant. I meant to

1 as far as the reasoning for a witness to try and say
2 whatever they're gonna say is to help themselves and
3 —

4 THE COURT: And you can ask him that at
5 length about what they've offered him, what they —
6 what does he believe, you know, in all truthfulness
7 what do you think, I mean, you're doing this for no
8 reason, what do you think is going to happen to you.
9 I mean, you can go into all of that with him.

10 MR. HOFFMEYER: Yes, sir, I agree with
11 that.

12 THE COURT: And the shoplifting in this
13 case with an 11 year old who was moved into
14 diversion as a matter of course through no input of
15 the guy himself and to use that to argue to a jury
16 that, look, he negotiated himself a deal once and it
17 worked for him, that's why he's doing it, again, is
18 misleading.

19 MR. HOFFMEYER: Well, that's what the part
20 of the analysis I made to the Court, and I don't
21 want to keep arguing a point, judge. I'll stop any
22 time. It's just the fact that he became aware if he
23 did what law enforcement, what prosecution, what the
24 Solicitor's Office let him do then he got the
25 benefit of the diversion. It's not the negotiation

1 on the front end.

2 THE COURT: I understand. Well, but it is
3 because he got diversion through doing nothing on
4 his part. He didn't have to cooperate. He didn't
5 have to do anything to get diversion. It happened.
6 He probably doesn't even know what happened, but
7 based on what's my understanding so I think that's
8 where it's different and so I'm not gonna allow it.
9 I don't think it fits the case, the Jones case under
10 this particular fact scenario for that witness.

11 MR. HOFFMEYER: Your Honor, I think that's
12 all the pretrial stuff from that before we bring the
13 jury back.

14 MR. CLEMENTS: I believe so, Your Honor.

15 THE COURT: All right, Mr. Propps.

16 (WHEREUPON, the jury was returned to the
17 courtroom at approximately 3:10 p.m., and
18 the following proceedings commenced in
19 open court.)

20 THE COURT: All right, ladies and
21 gentlemen, I think it's gotten kind of warm now.
22 Hopefully everybody is okay. Hope everyone had a
23 good lunch and ready to go back to work. We will
24 resume now. Still on the State's case so
25 Solicitor, you may call your next witness.

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1 MR. CLEMENTS: Thank you, Your Honor. If
2 it please the Court we call Sergeant Investigator
3 Melvin Godwin.

4 THE COURT: All right. Investigator
5 Godwin, if you'd come around please.

6 THE CLERK OF COURT: Sir, if you will
7 place your left hand on the Bible and raise your
8 right hand.

9 WHEREUPON,

10 MELVIN JUNIOR GODWIN,
11 having been duly sworn by the Clerk of Court,
12 testified as follows:

13 THE CLERK OF COURT: Please be seated and
14 state your full name for the record.

15 THE WITNESS: My name is Melvin Junior
16 Godwin.

17 **DIRECT EXAMINATION**

18 BY MR. CLEMENTS:

19 Q Sergeant Godwin.

20 A Yes, sir.

21 Q Do you know how rare you are? You're the first
22 male I've seen Mr. Propps give a cup of water to on
23 that witness stand.

24 A Uh-huh.

25 Q Sergeant Godwin, can you please tell this jury

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1 where you work and how long you've been in law
2 enforcement.

3 A Yes, sir, I work for the City of Florence. I'm a
4 police officer. I'm currently assigned to the
5 criminal investigations unit as a sergeant. I've
6 been with the City of Florence Police for 22 years.

7 Q And how long have you worked in investigations?

8 A For about 17 years.

9 Q And where were you August 25th, 2008?

10 A I was here at the complex, regular day. They got
11 a call off of Liberty Street for a possible missing
12 person, and Corporal Ford needed some further
13 assistance from investigation so he called up and
14 requested I respond to that location.

15 Q Okay. And where exactly did you respond to?

16 A 200 Liberty Street.

17 Q When you got to 200 Liberty Street what did you
18 find there and who did you find there?

19 A As our normal protocol when we respond to a scene
20 we try to speak to the officers first, and we get a
21 brief on what they got, why they wanted us over to
22 whatever particular area. They briefed me about the
23 situation that Ms. Hayes was missing. There were
24 some things about the house that was wrong. Her car
25 was missing, she wasn't at work. The family was

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1 very concerned. They haven't, was able to talk with
2 her or locate her.

3 Q Did you go in the house?

4 A Yes, sir.

5 Q Tell us what you found in the house when you went
6 in there?

7 A When I entered the home and was pointed out the
8 situations, her bedroom, the bed was disheveled.
9 There wasn't no sheets on the bed in that first bed
10 you go into. They showed me a area where a flat
11 screen should have been on the wall. They took me
12 on through the house. Another bedroom looked to be
13 plundered. Somebody may have went through the area,
14 took some items. Went to the kitchen area, looked
15 like where the window may have been tampered with,
16 something knocked over in the sink area. There's a
17 steel rods over the back door where a two by four go
18 down to secure the back door, and actually I was
19 briefed that was off the door when the family got
20 there. It was unsecured and it was off the door.
21 Outside I went around to the east side of the house
22 which would have been the kitchen area. There was a
23 screen missing from the window leaning upside the
24 house.

25 Q Okay. After you saw all that what did you do?

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1 A Going to numerous scenes and getting briefed on
2 the family and the officers started to feel that
3 this is going to be more critical than the ours
4 would be able to handle it at the time so I called
5 more assistance. I called our crime scene unit as
6 well assistance from other investigators to respond.

7 Q Okay. And who else responded?

8 A The team that would need to assist me was
9 Sergeant Larry Drayton, Corporal Brandt, his crime
10 scene. Brandt came later but Corporal Hill from
11 crime scene initially arrived first.

12 Q Okay. Corporal Hill was there first, Sergeant
13 Drayton? Any other officers?

14 A Yeah, patrol had more guys move into the area.
15 Once that blood stain was located on the bed then
16 command staff got involved. They started
17 responding. My boss Major Raines responded to the
18 area to assist as well.

19 Q Did the chief come out, Chief Shells?

20 A Yes, sir.

21 Q Okay. Now you didn't participate in processing
22 the house, did you?

23 A No, sir, that's left strictly down to our -- we
24 used to but now it's left strictly to our crime
25 scene unit.

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1 Q And that's a very specialized unit?

2 A Exactly, yes, sir.

3 Q So investigators and patrol officers, what did
4 y'all begin to do?

5 A They bolo out the vehicle, Ms. Hayes'
6 description, and they fanned out in the area of the
7 neighborhood and started to commence a search.

8 Q When you bolo out a vehicle what exactly does
9 that mean?

10 A You're giving a description. We had the tag. We
11 give that out. Any kind of damage to the car,
12 anything that would stand out on the vehicle to help
13 patrol or anybody find it quicker and easier.

14 Q What does bolo stand for?

15 A Broadcast, be-on-the-lookout for.

16 Q Okay, all right. Now what did you yourself
17 personally begin to do?

18 A Myself -- in normal cases myself and Drayton, we
19 teamed up and started foot, get on foot and started
20 canvassing the area to see if we could locate
21 anything or anybody who may have saw the victim.

22 Q Okay. Were you able to establish any leads or do
23 anything that led you in any particular direction?

24 A Yes, sir. While me and Drayton was walking the
25 area and the neighborhood, we get a call that

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1 Corporal Ford had located a vehicle on Roughfork
2 Street around in the 100 block backed into an
3 apartment complex over there. And at that time me
4 and Drayton headed over toward the car.

5 Q When you got over there to that car did you
6 canvass that immediate neighborhood?

7 A Yes, we did.

8 Q Talked to any individuals there?

9 A Yes, we got some brief information that two
10 individuals was seen getting out of that vehicle
11 earlier. From that information and they -- we got a
12 direction of travel which was back toward Liberty
13 Street, and there's a path area that runs side those
14 apartments. The vehicle was turned over to crime
15 scene and secured by patrol. Then we left again, me
16 and Drayton, walking that area.

17 Q Okay. So y'all went walking down the path?

18 A Yes, sir.

19 Q As y'all walked down the path what did y'all do?
20 Who did y'all talk with, if anyone?

21 A There's an apartment complex over there on
22 Liberty Street right, as a matter of fact, right
23 next to the victim's house, Ms. Hayes. We started
24 knocking on doors and inquiring have they seen
25 anyone come through this area, based the description

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1 of the subjects that were seen leaving the car.

2 Q So y'all told a description that y'all had that
3 y'all were looking for?

4 A Yes, sir.

5 Q Okay. As a result of that and letting people
6 know the physical description, what direction did
7 you go in, if any?

8 A Went, like I said, back through the path which
9 that were initially we was told that they headed
10 toward back toward Liberty Street. We knocked on
11 some apartments over there, got some information,
12 talked to a subject who gave a name, the first name.
13 We didn't know the individual as that basic
14 description that fit the defendant David.

15 Q So y'all began to ask or talk to people in their
16 neighborhood?

17 A That's correct, yes, sir.

18 Q Okay. And what were you asking the people in her
19 neighborhood?

20 A Did they know that individual or could they tell
21 us anybody who socialize with that subject. We
22 obtained some information that there was an
23 individual by the name of Rakim Floyd that he hung
24 around.

25 Q All right. And what was the name of the first

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1 individual y'all were asking people about?

2 A David.

3 Q David?

4 A Yes, sir.

5 Q And that's all y'all had?

6 A That's all we had.

7 Q And then you came about the name of Rakim Floyd?

8 A Yes, sir.

9 Q All right. And what did you do to look for those
10 two individuals?

11 A Well, what happened on that was we met with Rakim
12 mother and was talking to her. Sergeant Drayton was
13 at the front carrying on conversation with her
14 trying to find out where her son was at so we could
15 talk to him see what he could tell us about this guy
16 David. At that time I walked away from Drayton
17 while he was having a conversation with Mrs. Brown
18 and went to the rear of the apartment complex in a
19 little small wooded area that was to the back of the
20 apartments.

21 Q Okay. And how many people were in the house
22 where Rakim's mother lived or apartment where she
23 lived?

24 A We didn't go in her apartment. She came outside.
25 We went into the apartment later. She directed us

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1 to another apartment that we checked.

2 Q You said you went out into back behind the
3 apartments; is that right?

4 A Yes, sir.

5 Q All right. I'm gonna ask the Court's permission
6 to have you step down, if I may, and will you bring
7 that -- I tell you what, and you might have more
8 experience than me. You know how to use a laser
9 pointer.

10 A I don't know how to use a laser pointer.

11 Q You're telling this jury you're old school like
12 me.

13 A That's correct.

14 Q Okay. Can you please tell us on State's Exhibit
15 1, if you can, where Ms. Hayes' house was first and
16 then where the car was found.

17 A That is the victim's residence here, Ms. Hayes,
18 and the vehicle was found over here on Roughfork
19 Street back by the end of this apartment complex
20 here.

21 Q Can you please demonstrate for this jury on
22 State's Exhibit 1 what direction that you and
23 Sergeant Drayton went on foot and where y'all went.

24 A Once we got the car and everything situated,
25 myself and Sergeant Drayton walked back towards

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1 Liberty Street because that was the instructions we
2 had they went this way. So we came back toward
3 Liberty Street which these apartments here,
4 horseshoe type area off Liberty Street.

5 Q Okay. You say that horseshoe type, can you point
6 out which part of the buildings there, where they
7 are?

8 A Right here.

9 Q One, two, and three.

10 A Like a U.

11 Q Okay, all right. And when y'all got to those
12 apartments what did y'all do there?

13 A Talked to some individuals, gave a description of
14 the subjects. They directed us to Ms. Tasha Brown's
15 home which is Rakim Floyd residence.

16 Q Okay. Y'all talked with Ms. Brown?

17 A Yes, we did.

18 Q After talking with Ms. Brown where did y'all go?

19 A Like I said, Drayton continued to talk with her.

20 Q Okay.

21 A I walked off. I was still checking the area and
22 came to the back of this wooded area right here and
23 located a black plastic bag with bed linen there.
24 And it turned out to be pillows and other items. I
25 tore the bag, the top off of it, and it was bloody

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1 clothes, bloody linen was in that bag.

2 Q Bloody linen was in that bag. And what type of
3 bag was that?

4 A A black trash bag.

5 Q And where exactly did you find it?

6 A Back into the rear of these apartments in the
7 wood line.

8 Q Okay. So a little bit of woods back there?

9 A Yeah, little small trees or bushes, hedges.

10 Q Okay, all right. After finding that what did you
11 do next?

12 A Notified crime scene. Hill was over here at the
13 victim's house. He responded over to secure this
14 bag from me. And once he secured the bag we left
15 and went back on talking to Tasha Brown to locate
16 her son Rakim Floyd.

17 Q Did he go — did he respond on foot or by car?

18 A Hill, he walked over. He walked this right —
19 it's just a straight shot over.

20 Q About how long does it take to walk that?

21 A Probably about three minutes from the back, back
22 side.

23 Q Okay, all right. And you went back and talked to
24 Ms. Brown?

25 A Correct.

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1 Q Okay. After talking with her what did y'all do
2 next?

3 A We located her son over at Leia Mitchell's home,
4 and then we start asking him about David to obtain
5 some more information, and we told him we need to
6 speak with them downtown.

7 Q How many people went at Leia Mitchell's house?

8 A I noticed when I first went in the door it was
9 about, Mr. Mitchell, and maybe three males if I
10 remember correctly. One was on the floor lying
11 down.

12 Q Do you know who that was at that time?

13 A At that time, no, I didn't know any of the
14 individuals at that time.

15 Q And whose sons are Leia Mitchell's?

16 A Rashawn Bailey and Terrance Mitchell.

17 Q Okay, all right. And you said there were three
18 individuals there, and you're not sure who all they
19 were?

20 A That's correct.

21 Q And which house, again, was Ms. Brown's?

22 A Her apartment was right here.

23 Q All right, which house was Ms. Mitchell's?

24 A Right here, apartment right there.

25 Q What did you ever notice about a swing?

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1 A Initially I didn't — I knew there was a swing
2 there, but I didn't pay any close attention to the
3 swing.

4 Q And the swing there at whose house?

5 A Leia Mitchell. Leia Mitchell.

6 Q How many houses are in between Leia Mitchell's
7 house and Ms. Hayes' house?

8 A None. Her house there, it's a lot, open lot.

9 Q Okay, all right. Thank you. If you could sit
10 back down.

11 A (Witness complies.)

12 Q Sergeant Godwin, after you went to Ms. Mitchell's
13 house and you left there, where did you go and what
14 did you do?

15 A Myself and Sergeant Drayton came back here to the
16 complex, to the second floor in the conference room.

17 Q Okay. And what did y'all begin to do?

18 A We begin to conduct an interview with Rakim
19 Floyd.

20 Q Okay, all right. And after talking with him what
21 did you do to followup on that, if anything?

22 A He was a minor. We let his mom sit in the room
23 with us. He was 14 at the time of our interview.

24 He of course denied anything and —

25 Q You can't tell me what anybody said.

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1 MR. HOFEMEYER: Your Honor, I object,
2 that's hearsay.

3 THE COURT: Sustained.

4 BY MR. CLEMENTS:

5 Q All right. You can't tell me what anybody said.

6 A We conducted the interview. We just conducted
7 the interview.

8 Q After the interview what, if anything, did you do
9 to followup on anything from him?

10 A We went back to the, back to the neighborhood.

11 Q Okay, all right. When you got back to the
12 neighborhood what did y'all do?

13 A Myself and Drayton continued to investigate. We
14 went back to Ms. Mitchell's home.

15 Q Okay. And when you got back to Ms. Mitchell's
16 home about how many people were there?

17 A I would say three. Ms. Mitchell's boyfriend I
18 believe he was there at the time as well.

19 Q And who else was present if you can describe?

20 A Her son Terrance Mitchell.

21 Q And who else?

22 A We were looking for Rashawn. He wasn't there at
23 that time.

24 Q Okay, all right. Anybody else there besides
25 Ms. Mitchell, Terrance, and her boyfriend?

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1 A No.

2 Q Okay. Where did you go from there?

3 A From there ---

4 Q Well, let me ask you this first, did you get
5 anything -- or what did you get, if anything, from
6 Ms. Mitchell at that time?

7 A Not at that particular time. We were later,
8 Sergeant Drayton was later contacted by Ms. Mitchell
9 that she had found some jewelry and a credit card in
10 her apartment.

11 Q Okay, all right. We'll get to that in a moment.
12 When you left Ms. Mitchell's house what did y'all do
13 next?

14 A We came back. We was trying to gather
15 information on this guy David.

16 Q Okay. Where from there after you left the
17 complex where did you go from there?

18 A We later, we located Rashawn Bailey.

19 Q Okay.

20 A And then we conducted -- got him up and conducted
21 an interview with him.

22 Q All right. Where else other than that
23 neighborhood right there, where else did you go and
24 look for the person named David?

25 A We went over to the west Florence area, Sumter

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1 Street. We got that information from Rashawn
2 Bailey.

3 MR. HOFFMEYER: Your Honor, I object to
4 hearsay from this witness about what these people
5 are saying.

6 THE COURT: Sustained as to any hearsay.

7 MR. CLEMENTS: Yes, sir.

8 BY MR. CLEMENTS:

9 Q Don't tell us what anybody said but just tell us
10 —

11 A Went to west Florence.

12 Q All right. And when you went to west Florence
13 where did you go in west Florence?

14 A I believe the address is 419 west Florence,
15 Sumter Street.

16 Q 419 or 409?

17 A Could be 409.

18 Q Where was it in on the block, in the middle, on
19 corner?

20 A On the corner of Sumter and McQueen Street.

21 Q Sumter and McQueen?

22 A On the corner.

23 Q All right. Let me show you something. Beg the
24 Court's indulgence moment. When you were there on
25 Sumter Street did you talk to anyone there?

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1 A Yes, the gentleman who owned the home.

2 Q And what did you tell that gentleman?

3 A We was looking for his son.

4 Q Okay. And what instructions, if any, did you
5 give him?

6 A Once his son returned home we needed him to
7 contact us.

8 Q And after that did you -- what did you do?

9 A We came back to the complex with Mr. Bailey.

10 Q Okay. I'm gonna show you what's been marked as
11 State's Exhibit 64. You recognize that at all?

12 A Sanborn, Sumter and Sanborn.

13 Q Sumter and Sanborn?

14 A That's correct.

15 Q I'm gonna show you State's Exhibit 65. Do you
16 recognize that?

17 A Yes, that's the front of Mr. Jordan's home.

18 Q Okay. And who is Mr. Jordan?

19 A That's the father of David.

20 Q Okay, all right. Now I'm gonna ask, does that
21 refresh your recollection at all?

22 A Yes, sir.

23 Q Where was this house located?

24 A Corner of Sanborn and Sumter Street.

25 Q Okay. And how far is that from Sanborn

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1 and McQueen by the way?

2 A About a block.

3 Q Okay, about a block. Okay, all right. But it
4 was Sumter and Sanborn Street?

5 A That's correct.

6 Q All right. You came back to the complex and what
7 happened next?

8 A We started back with the interview with Rashawn.

9 Q Okay. Now after talking to Rashawn what did you
10 do next?

11 A At that time David showed up to the complex. He
12 had heard we was looking for him.

13 Q Okay. And you told his father. Who else or
14 where else did you put out the information that you
15 were looking for David?

16 A Over the neighborhood of the victim. Anybody we
17 was talking to we was using the name David, we were
18 searching for him.

19 Q All right. And put that word out on the street?

20 A That's correct.

21 Q Okay. And when you say he showed up at the
22 complex who was that?

23 A The defendant David Johnson.

24 Q You see him seated in this courtroom?

25 A Yes, sir, right beside the attorney right there

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1 with the black, dressed in black.

2 Q Black shirt ---

3 A Yes, sir.

4 Q ---tie?

5 MR. CLEMENTS: May the record reflect that
6 the witness has identified the defendant, Your
7 Honor.

8 THE COURT: All right, sir.

9 BY MR. CLEMENTS:

10 Q Sergeant Godwin, did y'all talk to David right
11 then?

12 A Briefly. We was in the interview with Rashawn.
13 We briefly told him who we were and we'd be back to
14 talk him. And we had at that time Investigator
15 Compton moved him into his office sit there until we
16 can get around to talking to him.

17 Q Okay. Now at this time did you establish the age
18 of Rakim Floyd?

19 A 14.

20 Q Okay. Did you establish the age of Rashawn
21 Bailey?

22 A 19.

23 Q Did you establish the age of David Johnson?

24 A Yes, once we learned who he was, 22.

25 Q 22 years old?

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- 1 A That's correct.
- 2 Q And that was when?
- 3 A Once we got his name. Once we —
- 4 Q What year? What year, what month was that?
- 5 A That we learned his age?
- 6 Q Yes.
- 7 A August 2008.
- 8 Q In 2008?
- 9 A 2008, yes, sir.
- 10 Q Okay. So that's — what I'm trying to be clear
- 11 is at that time Rakim Floyd was 14?
- 12 A That's correct.
- 13 Q And Rashawn Bailey was 19?
- 14 A That's correct.
- 15 Q And David Johnson at that time in 2008 was 22?
- 16 A 22, yes, sir.
- 17 Q All right. Now what caused you to leave the
- 18 complex that time while David Johnson was there and
- 19 where did you go?
- 20 A Throughout the interview with Mr. Bailey —
- 21 Q Now don't tell us what he said now, okay. That
- 22 will be hearsay.
- 23 A We did some follow-up attempt to locate the
- 24 victim.
- 25 Q Okay, all right. And were you successful?

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1 A No.

2 Q Okay. So after not being successful there where
3 did you come back to?

4 A We came back to the complex, back to the
5 conference room.

6 Q Okay, all right. And did you receive -- don't
7 tell me what, but did you receive any information
8 from any law enforcement officers back at the
9 complex?

10 A Yes, sir.

11 Q As a result of receiving that information then
12 what did you do and the other officers, what did
13 y'all do?

14 A We all linked up. We got back with Sergeant
15 Drayton. Sergeant Drayton was the one that gave me
16 information. We all went down to the parking area,
17 loaded up the vehicles, and went back to north
18 Florence area, Malloy Street.

19 Q When you loaded up the vehicles can you tell us
20 who all loaded up where?

21 A Compton, Drulis, the defendant was in Drulis'
22 vehicle. Myself and Drayton was in Major Raines'
23 Tahoe.

24 Q Okay, Major Carlos Raines?

25 A That's correct.

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1 Q And which vehicle was leading?

2 A The defendant and Compton. He was in --
3 Compton's vehicle was leading.

4 Q The vehicle that Compton and the defendant were
5 in were leading?

6 A Correct.

7 Q And which vehicle was following?

8 A Myself and Drayton and Raines.

9 Q Okay. Where did you go in north Florence?

10 A Malloy Street.

11 Q All right. And what type of road is Malloy
12 Street?

13 A It's a dirt road that runs out the back of the
14 neighborhood called Woodmont.

15 Q Okay. Is the entire road dirt?

16 A Malloy Street, yes, sir.

17 Q Okay.

18 A All the way up to Royal Street it's concrete.

19 Q Okay. Now where on that road did you go?

20 A Like I said, we was following in trail. Once
21 they stopped on Malloy Street, of course we was
22 right behind them so we stopped.

23 Q What kind of area was that they stopped in?

24 A This is a wooded area with ditches on both sides,
25 left and right, field, brushes, shrubs, no lighting.

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1 Q Okay. And was this dark, during the dark hours
2 or the light hours?

3 A Dark hours.

4 Q Okay. You recall exactly what time?

5 A No, sir, not exactly. I know it was after 12,
6 around maybe 1 a.m., somewhere in that area, 1 a.m.

7 Q All right. Now prior to this had y'all been
8 looking for the body?

9 A Yes, sir.

10 Q Where else did you look?

11 A In north Florence area.

12 Q Okay. Any particular locations?

13 A Yes, sir, Washington Street, abandoned house.

14 Q Find anything — what, if anything, did you find
15 that indicated Ms. Hayes would have ever been there?

16 A Nothing. It was a secured vacant home. To make
17 sure we forced entry into the home to make sure she
18 wasn't there.

19 Q Didn't find anything?

20 A Correct.

21 Q And that's when y'all came back to the complex?

22 A That's correct.

23 Q Okay. And you went to Washington Street pursuant
24 to a conversation with who?

25 A Rashawn Bailey.

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1 Q Okay, all right. Now after you got to Malloy
2 Street and the first vehicle stopped and y'all
3 stopped right behind them?

4 A That's correct.

5 Q What did you do?

6 A I was on the passenger side of the Tahoe. Once I
7 exited the vehicle I was probably about 3-feet away
8 from the ditch, walked over, looked down, and I saw
9 the body.

10 Q Did you have a flashlight?

11 A Yes, sir.

12 Q Okay. And how could you tell it was a body?

13 A I can tell with many bodies, the shape of a body.

14 Q Okay. I'm gonna show you State's Exhibit 54.

15 Can you identify that for us.

16 A Yes, that's Malloy Street, wooded area, grassy,
17 grew up like that the whole street. This is a
18 dirt road. You got a light there where crime scene
19 responded and set up. That's why you can see it.

20 Q Okay. And State's Exhibit 55.

21 A The victim and covered with some dirt and weeds
22 that's been broken down and thrown over.

23 Q Okay. State's Exhibit 56?

24 A That is the victim's body wrapped in linen which
25 was from the bed area.

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1 Q Okay. Did y'all remain there while they
2 retrieved the body and unwrapped the body?

3 A No, sir.

4 Q Okay. Where did you go from that point? Once
5 you found the body you — who did you alert or get
6 in contact with?

7 A We came back to the complex. We was all there
8 with Compton, the defendant, myself and Drayton and
9 Major Raines.

10 Q Did y'all leave any law enforcement there out on
11 Malloy Street?

12 A Yes, sir. County crime scene responded, our
13 crime scene unit, Brandt with his crime lab
14 responded. The Sheriff's Department was there with
15 several units 'cause they came in to assist us, and
16 we also left some city units as well down there.

17 Q So you had the city and county there both, why
18 was that?

19 A Jurisdiction.

20 Q All right. Were you sure whether that was in the
21 city limits or out in the county?

22 A We wasn't sure. That's why we had both respond,
23 county respond rather.

24 Q Okay. Now y'all left the crime scene there?

25 A Correct.

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1 Q Y'all went back to the complex?

2 A Yes, sir.

3 Q Tell us where you went to in the complex and what
4 you did.

5 A Back to the second floor, the conference room, to
6 conduct a further interview with the defendant.

7 Q All right. Now when you went in the conference
8 room, is that a small room, large room, what type of
9 room is it and how is it furnished?

10 A It's fairly large. You got big conference table
11 probably about 15 chairs around the table.

12 Q Comfortable chairs?

13 A Comfortable chairs. Got a TV in there, phone,
14 well lit.

15 Q All right. Did you have any other kind of
16 devices or equipment with you?

17 A We had our recorder, tape recorders, our digital
18 recorder.

19 Q Okay. Now when y'all sat down where did
20 everybody sit?

21 A Right around the table.

22 Q Everybody just sat around the table?

23 A Yes, sir.

24 Q Okay. What did you do with Mr. Johnson at that
25 time?

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1 A Once again, he was given his Miranda warnings,
2 then —

3 Q Who gave him his Miranda warnings?

4 A I did.

5 MR. HOFFMEYER: Your Honor, at this time I
6 would renew my objection.

7 MR. CLEMENTS: How —

8 MR. HOFFMEYER: Your Honor, at this time I
9 renew my objection that I previously made before
10 this court.

11 THE COURT: Yes, sir, so noted.

12 BY MR. CLEMENTS:

13 Q How did you read his rights to him?

14 A We all investigators have a rights, waiver of
15 rights card in their possession, and I pulled out my
16 card.

17 Q Did you read it to him off that card?

18 A Yes, sir.

19 Q Okay. When you read Miranda rights to someone
20 are they always a suspect?

21 A No, sir.

22 Q Okay. When you read the Miranda rights to
23 someone what do you do to observe them to make sure
24 they know what's going on or understand what you're
25 doing?

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1 A First you're doing a visual. I mean, you're
2 looking at the person to make sure they're paying
3 attention to you, they hear you, understand you.
4 Once you read them to them you ask them do they
5 understand.

6 Q Okay. What, if any, conversation do you have
7 with them beforehand, any? Or do you just whip the
8 card right out and read it from the get go? What do
9 you do?

10 A You kind of brief them about the situation,
11 what's going on. Then you say I'm going to advise
12 you of your rights so we can discuss this matter in
13 further. Let them know what you're talking about,
14 you know, why you want to read your rights for, why
15 you want to read them their rights.

16 Q Why do you have to have conversation with them?

17 A To see if they understand what you're saying and
18 what's going on.

19 Q Did y'all have conversations with Mr. Johnson
20 prior to reading his rights to him?

21 A Yes, sir.

22 Q Okay. What, if anything, did he do to cause you
23 to doubt or not to doubt that he understood what you
24 were doing and what you were talking about?

25 A He didn't do anything. He said he understood his

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1 rights, knew what was going on.

2 Q What, if anything, did he say inappropriately or
3 do inappropriately?

4 A Nothing.

5 Q What about his responses and his actions seemed
6 appropriate to you?

7 A He said he understood, everything was clear.
8 Every time you asked him a question he responded
9 with a clear answer.

10 Q Okay, all right. Now when you read the rights to
11 him off that card how much of that card did you
12 read?

13 A I read the complete card. Then I asked him do
14 you understand, wish to talk to us.

15 Q Okay. And what was his response?

16 A Yes.

17 Q And then what do you ask him next?

18 A Okay, do you understand your rights as I've
19 explained them to you. He says, yes, I'm willing to
20 talk to you. And then we get them to the situation
21 that we're there to talk about.

22 Q All right. Now is your card the same as
23 Investigator Compton's card?

24 A Yes, sir.

25 Q Okay. And you heard him read his card earlier?

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1 A Yes, sir.

2 Q Is yours the exact same?

3 A Yes, sir.

4 Q Okay. So we won't ask you to read it. Now you
5 say you have a recorder there; is that correct?

6 A That's correct.

7 Q What do you do, do you cut the recorder on or do
8 you talk to him first? Tell this jury how you go
9 about doing that and why you do it the way you do
10 it.

11 A First we talk to them to get it clear. After you
12 read them their rights, they agree to talk, you go
13 over the situation trying to get it clear before you
14 start recording so there's no misunderstanding of
15 what's going on 'cause this stuff has to be
16 transcribed later. So you want to get to details of
17 what exactly happened so you're gonna talk to the
18 individual first to see what's in store, anything
19 that you may have to interject or ask him about
20 first before you start recording.

21 Q Okay, all right. And who all was there
22 conducting the interview with him?

23 A Myself, Drayton, and Compton.

24 Q All right. Now when y'all were out at the scene
25 you weren't in the car with him, correct?

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1 A No, sir.

2 Q Do you know whether he was handcuffed or not
3 riding in the car?

4 A No, sir.

5 Q When you got back and you were in the conference
6 room was he handcuffed then?

7 A Came in, yes, sir. Well, we took them off but he
8 came in.

9 Q He came in handcuffs?

10 A Right, and we removed them.

11 Q Y'all removed them?

12 A Yes, sir.

13 Q Okay, all right. Now what, if anything, did you
14 or Compton or Drayton in your presence do to
15 threaten Mr. Johnson?

16 A We're not doing that. Nobody made any threats
17 toward the defendant at all.

18 Q What, if anything, did you do to coerce him or to
19 overcome his will, if anything?

20 A We didn't do anything to coerce him into
21 anything.

22 Q All right. When you began to talk to him who was
23 doing most of the talking as far as asking questions
24 at that time?

25 A Compton had already set up a rapport with him so

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1 he was doing most of the talking, and then we
2 were -- if we had specific questions, myself or
3 Drayton, then we would ask questions.

4 Q All right. And was this prior to cutting the
5 tape recorder on?

6 A Yes, sir.

7 Q But you did mirandize him?

8 A Yes, sir.

9 Q Okay. Now when you mirandize someone on a
10 serious case like this, what if any kind of forms do
11 you ever use with people, if any?

12 A We have a waiver of rights form that was also
13 read to him, explained, and he said he understood.
14 He agreed to talk to us. He signed where the
15 appropriate areas for him to sign and continued on
16 with the interview.

17 Q Did you say the form was read to him?

18 A Yes, sir.

19 Q What knowledge do you have of Mr. Johnson or
20 anyone else before you talk to them of their ability
21 to read?

22 A None.

23 Q Okay, all right. Do you ask them sometimes?

24 A Sometimes.

25 Q Okay. But in this case who read the form -- in

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1 this case who read the form to Mr. Johnson?

2 A I did.

3 Q All right. I'm gonna show you what's been marked
4 as a Court Exhibit Number 2. Do you recognize that?

5 A Yes, that's our waiver of rights form, the one
6 that was used that night.

7 Q And do you recognize the signatures on that?

8 A At the top here that's printed David Johnson.

9 Q Who printed that?

10 A The defendant. The bottom line in cursive is the
11 defendant David Johnson.

12 Q Who signed that?

13 A The defendant.

14 Q In your presence?

15 A Yes, sir. And below that is my signature and
16 below mine is Larry Drayton, Sergeant Drayton.

17 Q And did he sign that in your presence?

18 A Yes, sir.

19 Q Okay. What is the date of this document?

20 A 27th.

21 Q August 27th?

22 A August 27th, 2008.

23 Q All right.

24 MR. CLEMENTS: Your Honor, at this time we
25 would seek to have this introduced as evidence by

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1 the State.

2 MR. HOFFMEYER: And Your Honor, I renew my
3 objection.

4 THE COURT: All right. Objection is
5 noted. Overruled.

6 (WHEREUPON, State Exhibit No. 120 was
7 marked for identification and received
8 into evidence.)

9 BY MR. CLEMENTS:

10 Q All right, I'm gonna show you State's Exhibit
11 Number 120, Sergeant Godwin. Did you go over all
12 those rights with Mr. Johnson?

13 A Yes, sir.

14 Q Did you read those verbatim off that paper?

15 A Yes, sir.

16 Q What did he indicate to you about whether he
17 understood those or not?

18 A He stated he understood them and he printed his
19 signature and signed.

20 Q And what did you do from that point forward after
21 doing that waiver of rights form?

22 A Like I said, once again, myself, I signed it and
23 Sergeant Drayton signed it, then we got into the
24 interview.

25 Q Now did you read that on the recording or did you

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1 read that before you started the recording?

2 A Read this before we started, and I read my card
3 on the recording.

4 Q All right. And I'm gonna show you what's been
5 marked as Court Exhibit 3. I'm just going to ask
6 you to just look at that first page. Don't comment
7 on anything, just look at that.

8 A Yes, sir.

9 Q All right. So let me be sure I got this correct.
10 Lieutenant Compton mirandized Mr. Johnson; is that
11 correct?

12 A Before we got with him? Yes, sir.

13 Q Yes, sir.

14 A Yes, sir.

15 Q And when y'all got to the conference room you
16 pulled out your card and you mirandized Mr. Johnson
17 again; is that correct?

18 A That's correct.

19 Q And then you got that Miranda form and you read
20 that form to him, and you went over that form with
21 him again; is that correct?

22 A That's correct.

23 Q And then you started the recording and you read
24 his Miranda rights to him off of your card on the
25 recording?

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- 1 A Yes, sir, again.
- 2 Q And did you each time ask him if he understood?
- 3 A Yes, sir.
- 4 Q So how many times was that Mr. Johnson was
- 5 mirandized?
- 6 A Including the waiver four.
- 7 Q Four times? All right. And what, how did he
- 8 respond each time as far as understanding?
- 9 A Clear, no hesitation, I understand.
- 10 Q Okay, all right. So then y'all began to do an
- 11 interview and ---
- 12 A Yes.
- 13 Q ---you recorded that interview?
- 14 A Yes, sir.
- 15 Q Okay. Once y'all complete that interview what do
- 16 you do to maintain that recording for evidence?
- 17 A Our protocol is you take the recorder, you fill
- 18 out a sheet on the time, who was interviewed, and
- 19 you turn that into crime scene. Then it becomes
- 20 their control.
- 21 Q And they maintain it for evidence?
- 22 A Yes, sir.
- 23 Q Okay. Was that done in this case?
- 24 A Yes, sir.
- 25 Q Okay. And is it reduced to a disk?

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1 A Yes, sir, so we can get it to the court system.

2 or anybody else who needs it as far as the case.

3 Q All right. Now after you completed the interview

4 where, if anywhere, did y'all go with Mr. Johnson?

5 A We went back to — we went back to Sumter Street.

6 Q Is it the same place you had been to before?

7 A That's correct.

8 Q And what corner was that?

9 A Sanborn, Sumter Street.

10 Q I'm gonna ask you if you can, if you can come
11 stand over on that side of this board and bring that
12 with you.

13 A (Witness complies.)

14 Q When y'all were taking the statement from
15 Mr. Johnson what did he tell you about potential for
16 any stolen items from Ms. Hayes' house?

17 A That they would be over at his house.

18 Q And where did he say they would be at his house?

19 A It would be at the back, and he showed us exactly
20 where they were at.

21 Q So he showed you where they were?

22 A Yes, sir.

23 Q He took you there?

24 A That's correct.

25 Q All right. That's State's Exhibit 64. Is that

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- 1 where y'all went?
- 2 A Yes, sir.
- 3 Q Okay. State's Exhibit 65, you recognize that?
- 4 A Front of the house.
- 5 Q All right. And that's where y'all went?
- 6 A Yes, sir.
- 7 Q When y'all pulled up there who was in the car?
- 8 A Myself, the defendant, and Sergeant Drayton.
- 9 Q All right. What happened -- where did y'all pull
- 10 up? Y'all pull up on the side here on Sanborn
- 11 Street, or did you pull up on Sumter Street?
- 12 A Here on the side Sanborn Street, then walked down
- 13 toward the --
- 14 Q What happened when y'all pulled up?
- 15 A The father apparently come right on out. He was
- 16 still up. He came out, and we advised him what was
- 17 going on. He didn't give --
- 18 Q Okay. Y'all advised him what y'all were about to
- 19 do?
- 20 A Yes, sir.
- 21 Q And there was any resistance or disagreement
- 22 indicated?
- 23 A No, sir.
- 24 Q Okay.
- 25 A And at that time Drayton notified Corporal Hill

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1 from crime scene to respond as well.

2 Q Okay, all right. And I'm gonna show you State's
3 Exhibit 66. What is that?

4 A This is the rear of the home over on Sumter
5 Street.

6 Q Who took you there?

7 A The defendant David Johnson.

8 Q Okay. And is there any place in particular and,
9 if so, where did he direct you?

10 A It's a crawl space. You can better see right in
11 here, crawl space right there.

12 Q Okay, all right. State's Exhibit -- skip 67 and
13 go 68. All right, do you recognize that?

14 A Yes, sir.

15 Q What is that?

16 A Those are the items, VCR, VHS, that were there of
17 course, the night we responded over there.

18 Q And --

19 A DVD player.

20 Q And that was stashed under there?

21 A Yes, sir, just like it is in this picture.

22 Q All right. And what was blocking that?

23 A That cardboard.

24 Q Okay.

25 A Front.

SW - M. GODWIN - DIRECT

1 Q All right. State's Exhibit 69 please? What is
2 that?

3 A Those are the items that were initially under the
4 house, the VCR, the DVD player, and dual DVD player
5 with remote control and wires.

6 Q All right. And that's the board that was
7 blocking the area laid down there?

8 A Yes, sir.

9 Q All right. What, if anything, did y'all do to
10 verify those items came from Ms. Hayes' house?

11 A The defendant told us they came from there at
12 that time. At that time of the night we didn't have
13 anybody from the home to come positively identify
14 them at that time.

15 Q But David Johnson himself told you they came from
16 her —

17 MR. HOFFMEYER: Object to leading, Your
18 Honor.

19 MR. CLEMENTS: He just — I just want to
20 be clear what he just asked him.

21 THE COURT: You asked him what David
22 Johnson told him?

23 MR. CLEMENTS: Yes, sir.

24 MR. HOFFMEYER: Your Honor, he leads him
25 and it's asked and answered as well.

SW - M. GODWIN - DIRECT

1 THE COURT: All right. Stop — don't lead
2 the witness. Ask non-leading questions.

3 MR. CLEMENTS: Thank you, Your Honor. I
4 apologize to the Court and to Mr. Hoffmeyer.

5 BY MR. CLEMENTS:

6 Q Who —

7 A The defendant told us, David Johnson, that those
8 items came from the victim's home.

9 Q Okay, all right. Thank you. Come back up.

10 A (Witness resumes seat on the stand.)

11 Q Now what ultimately happened to those items?

12 A Corporal Hill from crime scene packaged them up
13 to go back to the evidence room.

14 Q Okay. So they were maintained in evidence?

15 A That's correct.

16 Q Okay. Now after retrieving the stolen
17 merchandise from David Johnson's home what did you
18 and Sergeant Drayton and David Johnson do next?

19 A We came back to the complex.

20 Q Okay. And what did y'all do?

21 A From that point he was getting ready to be
22 transferred to Florence County Detention Center.

23 Q Y'all placed him under arrest then?

24 A Yes, sir. Yes, sir.

25 Q Now let me ask you just, when y'all went to

SW - M. GODWIN - DIRECT

1 Sumter Street was he handcuffed then or not?

2 A I can't remember.

3 Q You can't remember?

4 A I'm not sure.

5 Q Whose vehicle did you ride in?

6 A Drayton's.

7 Q Y'all all rode together?

8 A Correct.

9 Q All right. Beg the Court's indulgence a moment.

10 All this — what date was this on that you talked to
11 David Johnson and you went to Sumter Street, do you
12 recall that day?

13 A Everything went over until from the 26th until
14 the 27th.

15 Q So it was the 27th, two days after —

16 A Yes, sir.

17 Q —she was reported missing?

18 A Yes, sir.

19 Q As a result of what you determined so far you've
20 mentioned Rakim Floyd, you mentioned Rashawn Bailey,
21 you talked about David Johnson, was there any other
22 person of interest or suspect that you had in your
23 mind at that time, and if so, whom?

24 A Yes, sir.

25 Q Who?

SW - M. GODWIN - DIRECT

1 A There was an individual went by the nickname of
2 Amp, one which we learned was Anthony Wilson.

3 Q And how old at that time was Anthony Wilson?

4 A 14.

5 Q 14?

6 A Yes, sir.

7 Q So Anthony Wilson is 14, Rakim Floyd is 14,
8 Rashawn Bailey is 19, and David Johnson 22?

9 A That's correct.

10 MR. HOFFMEYER: Objection, asked and
11 answered, and leading.

12 THE COURT: Sustained to the leading.

13 BY MR. CLEMENTS:

14 Q Anyone else at that point in time?

15 A No, sir, not at that time.

16 Q Okay. Please answer any questions Mr. Hoffmeyer
17 may have.

18 MR. HOFFMEYER: Your Honor, may we
19 approach.

20 THE COURT: Yes, sir.

21 (WHEREUPON, counsel approached the Bench
22 for an off-the-record discussion.)

23 THE COURT: Ladies and gentlemen, I'm
24 gonna get you to step back into your jury room. If
25 you need anything please let Mr. Propps know.

SW - M. GODWIN - PROFFER

1 Please have no conversation about the case. I'll
2 bring you back out shortly.

3 (WHEREUPON, the jury was removed from the
4 courtroom at 4:00 p.m., and a recess was taken from
5 the proceedings.)

6 MR. CLEMENTS: Your Honor, do you want to
7 go forward with the proffer right now or can we take
8 a moment's break?

9 THE COURT: Go ahead and take a quick
10 break, then we'll come back and proffer.

11 (WHEREUPON, a recess was taken from the
12 proceedings.)

13 THE COURT: Mr. Hoffmeyer, if you want to
14 go ahead and proffer whatever you want to proffer at
15 this point on the issue regarding the —

16 MR. HOFFMEYER: Yes, sir.

17 THE COURT: —voluntariness, yeah.

18 MR. HOFFMEYER: Yes, sir.

19 **P R O F F E R E X A M I N A T I O N**

20 BY MR. HOFFMEYER:

21 Q Officer Godwin, as relates to this statement you
22 took from my client you testified, or it's my
23 understanding, that you read my client his Miranda
24 rights and then proceeded to question him which was
25 recorded; is that correct?

SW - M. GODWIN - PROFFER

1 A Yes, sir.

2 Q And you had no knowledge of my client's
3 intellectual disability at that time, did you?

4 A No, sir.

5 Q You now have knowledge of my client's
6 intellectual disability; isn't that correct?

7 A To what testimony I've heard here, yes, sir.

8 Q You've heard sworn testimony to that effect?

9 A Yes, sir.

10 Q In another hearing?

11 A Yes, sir.

12 Q Okay. And if someone is mentally retarded, has
13 intellectual disability, would you take more time to
14 make sure they understood their rights, their
15 Miranda rights, before questioning them?

16 A Yes, sir.

17 MR. HOFFMEYER: I don't have anything
18 further, Judge.

19 THE COURT: All right.

20 MR. CLEMENTS: Your Honor, may I
21 cross-examine on this issue briefly, one question?

22 THE COURT: Is it necessary for his
23 proffer? I'm not gonna allow that line of
24 questioning.

25 MR. CLEMENTS: Well, just for appellate

1 purposes, just the way that sounded to me I just
2 would like to ask one question if I may.

3 THE COURT: All right.

4 MR. CLEMENTS: Well, no, sir, I won't do
5 that. Thank you.

6 THE COURT: Sure. You're welcome to if
7 you want.

8 MR. CLEMENTS: It is what it is.

9 THE COURT: All right. As I ruled earlier
10 you certainly can ask him obviously, Mr. Hoffmeyer,
11 as you did with Mr. Compton about his understanding
12 and knowledge at that time of the defendant's
13 education and all of that. But where I would draw
14 the line and where I would ask you not to go would
15 be asking him are you, in fact, aware that my client
16 has intellectual disability as we discussed earlier.

17 MR. HOFFMEYER: Yes, sir, Your Honor. I
18 just proffer that for the record.

19 THE COURT: Yes, sir, all right. And as I
20 stated earlier, my purpose in ruling the way I've
21 done is that at this point there is no evidence in
22 the record of intellectual disability before this
23 jury, and that it would be my view that that's
24 putting -- that's you, as counsel, putting evidence
25 into the record by putting into the record that

SW- M. GODWIN - CROSS

1 Mr. Johnson does have, in fact, an intellectual
2 disability without putting up any testimony or any
3 witnesses to substantiate that so that would be the
4 reason for the Court's ruling. Is everybody ready
5 to start back now? Jim, did you take a break?

6 MR. HOFFMEYER: Yes, sir, I'm fine. Thank
7 you.

8 THE COURT: Okay. Mr. Propps.

9 (WHEREUPON, the jury was returned to the
10 courtroom at approximately 4:08 p.m., and
11 the following proceedings commenced in
12 open court.)

13 THE COURT: All right. Thank you, ladies
14 and gentlemen for your patience and your
15 consideration. I will now resume with Mr.
16 Hoffmeyer's cross-examination.

17 MR. HOFFMEYER: Thank you, sir.

18 **CROSS - EXAMINATION**

19 BY MR. HOFFMEYER:

20 Q Officer Godwin, I'd like to ask you a few
21 questions. Now you indicated to the jury on direct
22 that you investigated this scene, came down, and
23 they heard your investigation as relates to the
24 area. If you wouldn't mind I'd ask that you come
25 down again just for a minute and please face the

SW- M. GODWIN - CROSS

1 court reporter so she can hear it.

2 A (Witness complies.)

3 Q All right. Now Officer Godwin, just to
4 familiarize myself and the jury with this scene
5 again, this is Liberty Street?

6 A That's correct.

7 Q Right here, okay?

8 A Yes, sir.

9 Q And Officer Godwin, this would have been
10 Ms. Hayes' house here; is that right?

11 A Right there, yes, sir, 200 Liberty Street.

12 Q I see. And where's the horseshoe you were
13 referring to?

14 A The apartment complex is right here right down
15 the street from Ms. Hayes' home, off Liberty Street.

16 Q And is — you would describe the distance there,
17 is it very close, or a block, or half a block or
18 what?

19 A As you can tell it's about a block, half — right
20 here, which area you want, from the apartments or
21 right here?

22 Q Why don't we start with the apartments.

23 A About a half a block.

24 Q I see. And did Rakim Floyd live in those
25 apartments?

SW- M. GODWIN - CROSS

1 A Yes, sir, right here.

2 Q Okay. So Rakim Floyd lived about half a block
3 away from Ms. Hayes?

4 A That's correct.

5 Q Now you also told us a little bit about Rashawn
6 Bailey. He lived in this area too; didn't he?

7 A Yes, sir, with his mom.

8 Q And Officer Godwin, why don't you tell us where
9 Rashawn Bailey lived?

10 A The apartment right next door right here. That's
11 Ms. Hayes' home. He lived right there.

12 Q The only thing that separates her home from
13 Rashawn Bailey's residence was a vacant lot?

14 A That's correct.

15 Q Now you also told us about a bag, trash bag I
16 believe, with bloody cloth, clothing, or bloody
17 items in it; is that right?

18 A That's correct.

19 Q Where was that located, Officer Godwin?

20 A Back here in this wooded little area behind these
21 apartments right here in the woods area.

22 Q So the bloody clothing was found in close
23 proximity behind Rakim Floyd's residence; is that
24 right?

25 A That is correct.

SW- M. GODWIN - CROSS

1 Q And in addition, because those two residents
2 aren't far away, the bloody clothing was found not
3 very far from where Rashawn Bailey lives; is that
4 correct?

5 A That's correct. All in the general area right
6 here.

7 Q Thank you, sir. You can be seated now.

8 A (Witness complies.)

9 Q Officer Godwin, Gregory Montgomery lives on
10 Oakland Avenue; is that right?

11 A I believe he lived with his father over in the
12 west Florence area.

13 Q Do you know where he lived in 2008?

14 A No, sir. In 2008 I didn't know him.

15 Q That's fine. That's fine. Now as far as Rashawn
16 Bailey and Rakim Floyd, you have showed this jury
17 where they live. And in addition, they have
18 something else in common. They both were suspects
19 in this case; is that right?

20 A That's correct.

21 Q And, in fact, both — or rather in addition,
22 Anthony Wilson was a suspect in this case, right?

23 A Yes, once we developed him, yes.

24 Q Okay. And in fact, those individuals were
25 charged with the same crimes my client's on trial

SW- M. GODWIN - CROSS

1 for, right?

2 A That is correct.

3 Q And now Gregory Montgomery has been charged
4 related to this crime too; is that right?

5 A That's correct.

6 Q Concerning your time with my client, you have
7 indicated to us that when you met with him it was
8 after he had been with detective Lieutenant Compton;
9 is that right?

10 A That's correct, yes, sir.

11 Q Okay. And he had been with Lieutenant Compton
12 since about 4:00; is that right?

13 A It was around that time frame that he came into
14 the complex.

15 Q I see. And you have been in the courtroom.
16 Sometime after midnight is when Lieutenant Compton
17 read the Miranda warnings, and then you would have
18 read your Miranda warnings at some point after that;
19 is that right?

20 A That's correct, yes, sir.

21 Q Now when it comes to this time period when you
22 read the Miranda warnings to him, that — the first
23 time you indicated you did, that would have been
24 before you recorded anything?

25 A That's correct, yes, sir.

SW- M. GODWIN - CROSS

1 Q And then you talked to him for some period of
2 time, read the Miranda rights again; is that right?

3 A That's right. He signed a waiver of rights form.

4 Q How much time elapsed between the first time you
5 read him those rights and the second time?

6 A If I can be precise it can be from 45 minutes,
7 somewhere around that area.

8 Q And then after the second time you read the
9 Miranda rights is when you took the actual recorded
10 statement?

11 A That's correct.

12 Q Now the first time you read him those rights you
13 discussed things with him, but that was not
14 recorded, was it?

15 A No, sir. Like I explained before, you're trying
16 to get more details out of the whole situation. Now
17 that we discovered the victim he may have more
18 information to bring forth that he initially applied
19 when he first talked to Compton.

20 Q And do you have any notes related to your
21 conversation with him?

22 A No, sir. The statement, I mean, we got the
23 statement.

24 Q Yes, sir, the statement that was taken when the
25 recorder was started. I'm interested in the time

SW- M. GODWIN - CROSS

1 period before the recorder was started that's not
2 recorded. Do you have any notes related to what he
3 said then?

4 A No, sir.

5 Q Okay. And I take it you, like Lieutenant
6 Compton, didn't ask him to write out a statement at
7 that time?

8 A No, no.

9 Q Now the statement that you took that was recorded
10 has a transcription, and there's a time that seems
11 to indicate that started at 3:15 a.m. Are you aware
12 of that?

13 A Yes, sir.

14 Q Okay. So when the statement that was recorded
15 began, if my client got to the complex at 4 p.m. in
16 the afternoon that would have been 11 hours and 15
17 minutes later, right?

18 A Somewhere in that area, yes, sir.

19 Q Okay. So we have Lieutenant Compton's statement
20 about eight hours after he's been there, then some
21 discussions in between, and then a statement that's
22 11 hours and 15 minutes later, right?

23 A Yes, sir.

24 Q Then with either you or Mr. Compton or
25 Mr. Drayton or somebody watching him that entire

SW- M. GODWIN - CROSS

1 time, right?

2 A Yes, sir. He wasn't alone once he showed up
3 here.

4 Q I got you. And then just to proceed forward with
5 how long he was with y'all, I believe you told us
6 that this went on into the 27th, right? The 26th
7 into the 27th?

8 A Yes, sir.

9 Q So the statement you took at 3:15 a.m. would have
10 been the 27th?

11 A That's correct.

12 Q And from there, as you discussed on direct, you
13 would have taken him to his father's home to point
14 out some things as you've described?

15 A Right. Those are things that he brought forth
16 talking during our conversation with him that we
17 didn't know at the time that he brought out which we
18 later was able to recover.

19 Q Okay. Now Lieutenant Compton mentioned something
20 about him resting and having something to eat
21 sometime that afternoon in a chair. During all
22 those hours from Mr. Compton's doing that, whenever
23 it was, and him giving a statement to Lieutenant
24 Compton and going with y'all out to the scene and
25 coming back at 3:15 in the morning, did you offer

SW- M. GODWIN - CROSS

1 him — did he have anything to drink or eat?

2 A From that time frame on?

3 Q Yes, sir.

4 A We usually supply water. If he requested or
5 asked for water he would have received it.

6 Q Okay, if he requested it?

7 A Yes, sir. I mean, if he asked for it we would
8 give it to him.

9 Q And I guess if he requested something to eat
10 y'all would have gotten it for him?

11 A Yes, sir.

12 Q But he didn't request it so y'all didn't do
13 anything?

14 A Yes, sir.

15 Q And I guess he didn't fall asleep in the chair or
16 anywhere else that you're aware of talking to y'all
17 or in the police car?

18 A No, at that time, discovery of the victim, no,
19 sir, he didn't sleep. Everybody was fully alert at
20 that time.

21 Q I'm not talking about then, Officer Godwin. How
22 about before then, before y'all took the statement,
23 did he get a chance to rest at all?

24 A Before we took the statement?

25 Q Yes, sir. Any time before?

SW- M. GODWIN - CROSS

1 A Well, he was with Compton, sir, I can't answer
2 that one. When he was with us, no.

3 Q That's when I was talking about, when he was with
4 y'all?

5 A No.

6 Q And I take it while he was there at the complex
7 did y'all offer him to make any phone calls?

8 A I didn't.

9 Q All right. And while he was there did any -- did
10 he have the opportunity to talk to any family
11 members?

12 A Pretty sure if he requested it he'd got them.

13 Q He didn't request it that you know so he didn't
14 do that?

15 A That's correct.

16 Q Now Officer Godwin, I believe you told us that
17 you would read the rights to him and essentially ask
18 him if he understood; is that correct?

19 A Yes, sir.

20 Q When it comes to these important rights that
21 you're reading to him did you ever do anything other
22 than to read them to him and ask if he understood?

23 A Did I do anything other than?

24 Q Yes, sir.

25 A No, sir.

SW- M. GODWIN - CROSS

1 Q In other words, did you go line by line or say do
2 you understand your right to counsel, are you sure
3 you understand that; did you do that?

4 A No, I read them as we're required to read them
5 his rights and then on the card as I stated, do you
6 understand your rights.

7 Q All right. Now I take it that you would have had
8 no knowledge of my client's level of education at
9 that time; is that correct?

10 A That's correct.

11 Q And you would have had no knowledge if he
12 attended special ed classes in school at that time,
13 would you?

14 A No, I wouldn't if I didn't. No, I wouldn't.

15 Q And you would not even have any knowledge when
16 you interviewed him if he could read and write,
17 would you?

18 A He wrote his name in cursive. I mean, he could
19 write so...

20 Q So he wrote his name; but other than that, you
21 wouldn't have any knowledge whether he could read or
22 write?

23 A No, sir.

24 Q And you wouldn't have had any knowledge at that
25 time if he was mentally retarded, would you?

SW - M. GODWIN - REDIRECT

1 A He didn't display any actions that would lead me
2 to believe that he had any kind of mental defect,
3 sir.

4 Q When this statement or the statements that you
5 took, Officer Godwin, when they were taken it was
6 you, Officer Drayton, and Officer Compton all in
7 that room with just him, right?

8 A As far as I remember, yes, sir.

9 Q If you'll excuse me one second. Is there any
10 video recording, a camera, or any video equipment
11 there to record statements?

12 A No, sir, we're not set up.

13 Q You're not set up?

14 A No, sir, we don't have that.

15 Q Thank you very much, Officer Godwin.

16 THE COURT: Anything on redirect?

17 **REDIRECT EXAMINATION**

18 BY MR. CLEMENTS:

19 Q Sergeant Godwin, what opportunity did you and
20 Sergeant Drayton have to rest during this time
21 period?

22 A Sir, we were conducting a missing person, elderly
23 female, and murder. There was no time to rest.

24 Q There was no time to rest?

25 A No, sir.

SW - M. GODWIN - REDIRECT

1 Q What opportunity did you and Sergeant Drayton
2 take to knock off and go get something to eat?

3 MR. HOFFMEYER: Your Honor, I object to
4 the relevance of this.

5 THE COURT: Sustained. Sustained.

6 MR. CLEMENTS: May we approach, Your
7 Honor.

8 THE COURT: Yes, sir.

9 (WHEREUPON, counsel approached the Bench
10 for an off-the-record discussion.)

11 BY MR. CLEMENTS:

12 Q Sergeant Godwin, Mr. Hoffmeyer asked you about
13 Gregory Montgomery; is that correct?

14 A Yes, sir.

15 Q How much later was Gregory Montgomery charged?
16 When was he charged?

17 A November 2011.

18 Q November 2011 —

19 A Yes, sir.

20 Q —from August 2008?

21 A Yes, sir.

22 Q Okay. And pursuant to information you got that
23 made y'all charge Gregory Montgomery, what was done
24 to further examine evidence?

25 A Can you repeat that question. I don't

SW - M. GODWIN - REDIRECT

1 understand.

2 Q After you received information and charged
3 Gregory Montgomery what did y'all do to further
4 examine evidence that you'd been holding?

5 A That was turned over to crime scene to resubmit
6 certain items.

7 Q Resubmit to SLED?

8 A Yes, sir.

9 Q Okay, all right. And those all -- what Mr.
10 Hoffmeyer asked you about including what I'd asked
11 you about earlier, those are the only people charged
12 in this case?

13 A Yes, sir.

14 Q Okay, all right. Thank you. No further
15 questions.

16 MR. HOFFMEYER: Nothing further, Your
17 Honor. Thank you.

18 THE COURT: Thank you very much, sir. You
19 may step down.

20 (WHEREUPON, counsel approached the Bench
21 for an off-the-record discussion.)

22 THE COURT: All right, ladies and
23 gentlemen, I was just talking with the Solicitor
24 and Mr. Hoffmeyer and this next witness that the
25 State is going to call, of course, there's no way of

1 knowing how long a witness will testify, you don't
2 know what's going to come out. But this witness has
3 the potential to be fairly lengthy, and it's already
4 27 minutes after 4 so we're going to end a little
5 early today. We're going to go ahead and recess for
6 the afternoon, and we'll resume back in the morning.
7 Tell your family and friends and loved ones that
8 continue to be patient. You're still not able to
9 talk about the case. Don't let anyone talk with
10 you. Continue — and I appreciate your doing this,
11 continue to refrain from any media outlets, anything
12 like that, or trying to, you know, see if there's
13 anything out there. As I said earlier this week I
14 don't know that there is or not, but it would be
15 very inappropriate for you to expose yourself to
16 anything. As I said, you're to base this case and
17 judge this case solely on the evidence that to
18 presented here in court. Enjoy your evening. Try
19 to get a good night's rest.

20 As you've already seen this week jury service
21 can be taxing from a mental standpoint, maybe not
22 necessarily from a muscular standpoint but it
23 certainly can be tiring. So try to get a good
24 night's rest, and we'll start back again 9:30 in the
25 morning. So please, if you will give yourself time

1 to get here we'll be ready to go at 9:30. Everyone
2 else remain in the courtroom. Ladies and gentlemen,
3 we'll see you back at 9:30..

4 (WHEREUPON, the jury was removed from the
5 courtroom at 4:29 p.m., and the following
6 proceedings commenced in open court.)

7 THE COURT: Again, keep in mind if you
8 have any requests for charge to get that to me this
9 afternoon. In a little bit I'm going to print out
10 for y'all and I'll have for you in the morning a
11 proposed charge. It's not in final form, but it's
12 just kind of what I've got thus far and then you can
13 always add to or take away.

14 MR. CLEMENTS: Your Honor, I was hoping
15 that because I assumed that most of what I would
16 submit you might already cover. I was hoping that
17 we could get the charge and then see if there's
18 anything need to be added if that was okay.

19 THE COURT: That's fine, and that's what
20 I'll do is I'll have that for you in the morning and
21 so you can then go from there and see what else you
22 want to do, if any.

23 MR. CLEMENTS: Yes, sir.

24 (WHEREUPON, the proceedings were concluded
25 for the day to be reconvened on February

1 16, 2012.)

2 MR. CLEMENTS: May we approach, Your
3 Honor.

4 (WHEREUPON, counsel approached the Bench
5 for an on-the-record discussion.)

6 MR. HOFFMEYER: Your Honor, I previously
7 requested that I be allowed to cross-examine Anthony
8 Wilson regarding a 2005 diversion in family court
9 related to a shoplifting. I sought to question him
10 about the fact he was charged with shoplifting and
11 that the charge was diverted. That, in addition,
12 was in this circuit and I sought to question him
13 about that related to motive and bias and those
14 types of things, State v. Jones. And it's my
15 understanding he's getting ready to testify, and
16 Your Honor has ruled that I will not be allowed to
17 question him regarding that.

18 THE COURT: That's correct. And I think I
19 put the reasons on the record yesterday when we
20 broached the subject of the prior records of all the
21 witnesses, and so I'll stand by that ruling. And I
22 think we have all the jurors. Anything else we need
23 to do before we get started?

24 MR. JEPERTINGER: We're ready.

25 MR. CLEMENTS: No, sir.

1 (End of on-the-record Bench conference.)

2 THE COURT: Mr. Propps, ask the jury to
3 join us please.

4 (WHEREUPON, the jury was returned to the
5 courtroom at approximately 10:04 a.m., and
6 the following proceedings commenced in
7 open court.)

8 THE COURT: All right, ladies and
9 gentlemen, welcome back let me ask is anyone had any
10 conversation with anybody about the case seen or
11 read or heard anything about the case since you were
12 here yesterday anyone.

13 (There was no response.)

14 THE COURT: All right. Thank you, ladies
15 and gentlemen. We're on the State's, I mean, we
16 didn't do — we're not on cross. It will be your
17 next witness, correct? Okay, we're — we were
18 gonna — I'm trying to remember, we ended early
19 yesterday. So the State is still on their case and
20 we'll recognize them for their next witness. Mr.
21 Clements.

22 MR. CLEMENTS: Your Honor, if it please
23 the Court we call Anthony Wilson.

24 THE COURT: Mr. Wilson, if you'll please
25 come around here and be sworn, sir.

SW - A. WILSON - DIRECT

1 THE CLERK OF COURT: Sir, if you will go
2 up to the stand. Place your left hand on the Bible
3 and raise your right hand.

4 WHEREUPON,

5 ANTHONY WILSON,
6 having been duly sworn by the Clerk of Court,
7 testified as follows:

8 THE CLERK OF COURT: Walk around. Have a
9 seat and please state your name for the record.

10 THE WITNESS: Anthony Wilson.

11 DIRECT EXAMINATION

12 BY MR. CLEMENTS:

13 Q Mr. Wilson, I'm going to ask, you can slide that
14 microphone up to you a little bit and you're kind
15 soft spoken I need you speak up loudly and slowly so
16 the jurors all here you and also so the court
17 reporter can take down what you say.

18 A Yes, sir.

19 Q Now if I ask a question that's confusing or you
20 don't quite understand what I'm asking, if you'd ask
21 me to repeat it or rephrase it I'll be happy to do
22 so, all right? Now Mr. Wilson, how old are you now?

23 A 18.

24 Q In August of 2008 how old were you?

25 A 14.

SW - A. WILSON - DIRECT

1 Q 14? Do you know David Johnson?

2 A Yes, sir.

3 Q Do you — how long had you known him in August of
4 2008?

5 A Since I was small.

6 Q Since you were small? Do you see him seated in
7 this courtroom?

8 A Yes, sir.

9 Q Can you please point him out, describe what he
10 has on?

11 A A brown button-up.

12 Q All right.

13 MR. CLEMENTS: Your Honor, may the record
14 reflect that the witness has identified the
15 defendant David Johnson.

16 THE COURT: Yes, sir.

17 BY MR. CLEMENTS:

18 Q Mr. Wilson, do you recall where you were
19 August 25th, 2008?

20 A Yes, sir.

21 Q What street were you on, hanging out on in
22 Florence that day?

23 A Liberty Street.

24 Q Liberty Street? And who were you hanging out
25 with?

SW - A. WILSON - DIRECT

- 1 A David Johnson.
- 2 Q All right. Who else lived around that area that
- 3 you knew?
- 4 A Rakim Floyd, Rashawn Bailey, and Terrance
- 5 Mitchell.
- 6 Q Terrance Mitchell? Okay. And who's Tasha Brown,
- 7 do you know her?
- 8 A Yes, sir.
- 9 Q Who is that?
- 10 A Rakim's mother.
- 11 Q How about Leia Mitchell, do you know who that is?
- 12 A Yes, sir.
- 13 Q Who is that?
- 14 A Terrance mother.
- 15 Q All right, Terrance mother. How about, is she --
- 16 what relation would she be with Rashawn, if you
- 17 know?
- 18 A Stepmother.
- 19 Q Stepmother? Okay. Do you know a Gregory
- 20 Montgomery?
- 21 A Yes, sir.
- 22 Q Okay. Now did you know -- what was the age
- 23 difference between you and David Johnson, do you
- 24 know?
- 25 A Maybe about seven, eight years.

SW - A. WILSON - DIRECT

1 Q Seven, eight years? Is he older or younger?

2 A Older.

3 Q Older? So you testified you were 14 in August of
4 2008 so that would have made him about 21 or 22?

5 A Yes, sir.

6 Q What, if anything, was being discussed that night
7 about doing a lick? Did you hear anybody mention
8 anything whatsoever about doing a lick?

9 A No, sir.

10 Q Okay, all right. What were you doing that --
11 well, let me ask you this, do you know, are you
12 familiar with the house at 200 West Liberty Street?

13 A Not by address.

14 Q Not by address? Okay, all right. I want to show
15 you a few pictures. I'm gonna ask you if you can
16 identify these pictures for me, okay?

17 A Yes, sir.

18 Q And we've got a lot of them up here so if you'd
19 bear with me just a moment to find the right ones.
20 I'm gonna show you what's been marked as State's
21 Exhibit Number 5. Mr. Wilson, do you recognize that
22 at all?

23 A Yes, sir.

24 Q Yes, sir? Okay. Can you please tell us what
25 that is.

SW - A. WILSON - DIRECT

- 1 A The victim's house.
- 2 Q The victim's house?
- 3 A Yes, sir.
- 4 Q I'm gonna show you what's been marked as State's
- 5 Exhibit Number 4. Can you identify that for us.
- 6 A The window I went through.
- 7 Q That's the window you went through?
- 8 A Yeah.
- 9 Q And what is that on the ground there?
- 10 A That's a screen.
- 11 Q All right. That's a screen? All right. How did
- 12 the screen get on the ground, if you know?
- 13 A David took it off the window.
- 14 Q David Johnson took it off the window?
- 15 A Yes, sir.
- 16 Q Okay, all right. State's Exhibit 50, do you
- 17 recognize that at all?
- 18 A Yes, sir.
- 19 Q I'm gonna ask you to speak up into the
- 20 microphone.
- 21 A Yes, sir.
- 22 Q What is that please?
- 23 A The swing in front of the Rashawn Bailey's house.
- 24 Q That's a swing in front of Rashawn Bailey's
- 25 house?

SW - A. WILSON - DIRECT

1 A Yes, sir.

2 Q Okay. Where that evening were you sitting or
3 hanging out?

4 A On the swing.

5 Q On the swing?

6 A Yes, sir.

7 Q What were you doing on the swing that night?

8 A Playing on the phone.

9 Q Playing on the phone? Okay. About how late was
10 it when you were sitting on that swing?

11 A 10:45.

12 Q All right. Is that an approximation or do you
13 know exactly?

14 A Approximately.

15 Q Approximation, okay. While you were sitting on
16 that swing playing on your phone who else had been
17 in the vicinity or close around during that time
18 period?

19 A Rashawn and David.

20 Q Okay. Who approached you at the swing?

21 A David.

22 Q David?

23 A Yes, sir.

24 Q And what did he say to you?

25 A Come walk with me.

SW - A. WILSON - DIRECT

1 Q Come walk with you?

2 A Yeah.

3 MR. HOFFMEYER: Your Honor, I object to
4 the Solicitor repeating everything the witness says.

5 THE COURT: Sustained.

6 MR. CLEMENTS: Your Honor, I apologize. I
7 try to do it because he's so soft spoken. I'm
8 trying to be sure that I hear him.

9 THE COURT: Please speak up if you would
10 please, Mr. Wilson.

11 BY MR. CLEMENTS:

12 Q And I apologize, Mr. Wilson, for repeating that.
13 I'm gonna stand back over here, Anthony, so if I can
14 hear you I'm sure these jurors can hear you, okay?

15 A Yes, sir.

16 THE COURT: Let me also mention, Solicitor
17 if I may, ladies and gentlemen, if at any time
18 whether with Mr. Wilson or any witness on the stand,
19 if anyone has any difficulty hearing the witness'
20 response please raise your hand and tell them you
21 need them to repeat it, okay? It's important that
22 you hear everything.

23 Go ahead, Solicitor.

24 MR. CLEMENTS: Thank you, Your Honor.

25 BY MR. CLEMENTS:

SW - A. WILSON - DIRECT

- 1 Q Do you go by a nickname?
- 2 A Yes, sir.
- 3 Q What is that nickname?
- 4 A Amp.
- 5 Q What do you want me to call you, Amp or
- 6 Mr. Wilson or Anthony?
- 7 A It don't matter.
- 8 Q It don't matter. Okay if I call you Amp?
- 9 A Yes, sir.
- 10 Q Amp, what did David say to you when he came up to
- 11 you at the swing?
- 12 A Come walk with me.
- 13 Q What did you do?
- 14 A I walked with him.
- 15 Q Now where did you walk to?
- 16 A To the victim's house.
- 17 Q To the victim's house?
- 18 A Yes, sir.
- 19 Q How far away was that?
- 20 A Right next door.
- 21 Q Right next door?
- 22 A Yes, sir.
- 23 Q Where at the victim's house did you
- 24 walk to?
- 25 A To the window that was there.

SW - A. WILSON - DIRECT

- 1 Q And which side of the house was that?
- 2 A The right side.
- 3 Q All right. And what did you do when you got to
- 4 the window, and who else was there with you?
- 5 A David and Rashawn.
- 6 Q David and Rashawn? I'm sorry for repeating you.
- 7 Please speak up.
- 8 A David and Rashawn.
- 9 Q When you got to the window what happened, what
- 10 did you do?
- 11 A David asked me to go through the window.
- 12 Q What were you thinking when he asked you to go
- 13 through the window?
- 14 A Go through the window.
- 15 Q All right. How did you get the window open?
- 16 A They had some kind of bar trying to pry it open.
- 17 Q Was it locked or unlocked?
- 18 A I don't know.
- 19 Q Could you get it — was it easy to get open or
- 20 hard to get open?
- 21 A He had to struggle to get it open.
- 22 Q Did you help him?
- 23 A Yes, sir.
- 24 Q And when you got the window open what happened
- 25 next?

SW - A. WILSON - DIRECT

1 A David told me to go through the window. I tried
2 to jump through, couldn't get through so he pushed
3 me through the window.

4 Q Why couldn't you get through the window?

5 A I was too small; I was too short.

6 Q You were too small to jump through the window?

7 A Yes, sir.

8 Q Why did they ask you to go through the window, if
9 you know?

10 A I guess I was the smallest one.

11 Q You were the smallest one?

12 MR. HOFFMEYER: Your Honor.

13 THE COURT: Solicitor.

14 MR. CLEMENTS: I'm sorry.

15 THE COURT: You got to stop repeating the
16 answers.

17 MR. CLEMENTS: I'm sorry. Please speak up
18 for me.

19 THE COURT: I mean, you're clearly hearing
20 it 'cause you're repeating his answers verbatim
21 so...

22 MR. CLEMENTS: I understand, Your Honor.

23 BY MR. CLEMENTS:

24 Q Now who helped you get through the window?

25 A David.

SW - A. WILSON - DIRECT

1 Q What were you supposed to do -- well, let me ask
2 you this, how about Rashawn?

3 A Yes, sir.

4 Q All right. Was Rashawn there?

5 A Yes, sir.

6 Q All right. When you went through the window what
7 were you supposed to do?

8 A Go through the window, open the front door for
9 him.

10 Q Who told you to do that?

11 A David.

12 Q When you went through the window what happened
13 first?

14 A I knocked over the grill, picked the grill up,
15 and opened the door.

16 Q What'd the grill look like?

17 A Like a white crock pot.

18 Q A grill like you find outside or a George Foreman
19 type grill?

20 A A George Foreman type grill.

21 Q Okay. After you knocked it over what did you do
22 then?

23 A Picked it up and went and opened the door.

24 Q I want to show you State's Exhibit 18. What on
25 that picture shows what you're talking about there,

SW - A. WILSON - DIRECT

- 1 if anything?
- 2 A The kitchen grill.
- 3 Q Can you point to it please?
- 4 A (Indicates by pointing.)
- 5 Q Okay. Now after you put that back where did you
- 6 go next?
- 7 A Open the front door.
- 8 Q What did you do at the front door?
- 9 A Let them in.
- 10 Q And who came in?
- 11 A David, Rashawn.
- 12 Q What did you do next?
- 13 A Walked in the living room, stayed there for a
- 14 minute. Rashawn went in the room. They went around
- 15 the corner, peaked through the crack.
- 16 Q All right. So you say the room, it was -- was
- 17 that the front room in the house, bedroom, living
- 18 room, what kind room was it?
- 19 A Where I was?
- 20 Q Yes.
- 21 A Living room.
- 22 Q All right. And where was Rashawn?
- 23 A In the room next to the door, front door.
- 24 Q Okay, all right. Where did David go?
- 25 A To the bedroom.

SW - A. WILSON - DIRECT

1 Q All right. You said he peaked through a crack a
2 minute ago. What kind of crack was that?

3 A In the bedroom door.

4 Q Bedroom door. What was anybody saying, if
5 anything?

6 A Peaked through the crack and he was like, oh
7 shit, the lady is in there.

8 Q Who said that?

9 A David.

10 Q All right. What happened next?

11 A I went around the corner 'cause I thought he was
12 lieing. I went around the corner to see. He was
13 sitting on the lady over her body.

14 Q Where at?

15 A In the room.

16 Q And I mean, well where was her body in the room?

17 A Oh, laying on the bed.

18 Q And where was he sitting?

19 A Over the body.

20 Q And what was happening? What was he doing?

21 A He got a pillow right here, told me to come in.

22 Q What did you do?

23 A I stepped in the room.

24 Q And what happened next?

25 A Pulled a knife open, he gave it to me, and told

SW - A. WILSON - DIRECT

1 me to stab her.

2 Q What kind of knife was it?

3 A Pocket knife.

4 Q About how long was it with the blade open?

5 A It was about (indicating).

6 Q Can you hold your hands up about —

7 A About like that (indicating.)

8 Q Do you know what it looked like? Can you
9 describe it?

10 A Silver blade, black handle.

11 Q Okay. What else did he tell you, if anything,
12 other than to stab her with it?

13 A I was like, naw, man, I ain't want to do that.

14 He was like, man, go ahead, is you scared. I — no,
15 I ain't going to stab nobody. He point — kept
16 boosting me up so I stabbed her.

17 Q And as he was boosting you up to stab her what
18 was Ms. Hayes doing?

19 A She was trying to say something. I couldn't
20 understand because the pillow was over her head.

21 Q Did you stab her?

22 A Yes, sir.

23 Q How many times?

24 A Once.

25 Q Where was David when you stabbed her?

SW - A. WILSON - DIRECT

1 A Sitting over the body.

2 Q And you stabbed her one time. What did you do
3 then?

4 A I stood there for a minute, pulled the knife out,
5 seen blood, panicked, and left.

6 Q What did you do with the knife?

7 A Gave it back to David.

8 Q When you say you left how did you leave?

9 A I went out the room, went through the kitchen,
10 went out that door. There was another door, the
11 back door, had a two-by-four. I took the
12 two-by-four and left.

13 Q When you were coming out the room where was
14 Rashawn?

15 A I don't know, like this here.

16 Q Was he in the house?

17 A He was in the house.

18 Q What was he doing?

19 A I guess stealing.

20 Q All right. Did y'all have any type of
21 flashlights or anything like that?

22 A No, sir.

23 Q What kind of lighting was in there?

24 A The lights in the house.

25 Q Were they on or off?

SW - A. WILSON - DIRECT

1 A On.

2 Q On?

3 A Yeah.

4 Q All right. Beg the Court's indulgence just a
5 moment. While you were in the bedroom did you
6 notice, or not, anything about the size of the room?

7 A It was small.

8 Q Small?

9 A Yes, sir.

10 Q What kind of furniture was in the room?

11 A It was a chair by the bed, and like a, I forgot
12 what they call it, that little thing that keeps
13 clothes in.

14 Q A wardrobe?

15 A Yeah.

16 Q Anybody else in the room that you know of?

17 A Besides me and David?

18 Q Yes, sir.

19 A No, sir.

20 Q Now when you went out the back door and you
21 removed the two-by-four, where did you put the
22 two-by-four?

23 A Tossed it beside the door.

24 Q Do you recall which side you put it on?

25 A The right.

SW - A. WILSON - DIRECT

1 Q The right-hand side?

2 A Yes, sir.

3 Q And when you went out the back door where did you
4 go?

5 A Sit on the swing over there in front of Rashawn's
6 house.

7 Q Who went out there with you?

8 A No one.

9 Q Why did you leave out and go to the swing?

10 A I saw the blood and panicked.

11 Q Well, what happened next?

12 A I sat on the swing for a couple of minutes.

13 David came up. Shawn went the other way. David
14 came and he was like, come help me.

15 Q Come help you?

16 A Yes, sir.

17 Q When you went to help him what did you go to help
18 him do?

19 A Remove the body from the house.

20 Q When you went back in the house can you explain
21 to the jury how you found the body?

22 A On the bed wrapped up in the covers.

23 Q And when she was wrapped up in the covers how did
24 y'all move her?

25 A I grabbed the feet and he grabbed the head and

SW - A. WILSON - DIRECT

- 1 carried her out the back door.
- 2 Q Where did you take her out the back door?
- 3 A To her car.
- 4 Q Where was her car?
- 5 A Parked in the backyard.
- 6 Q Who put the car in the backyard?
- 7 A David.
- 8 Q Where in the car did you put her?
- 9 A The trunk.
- 10 Q Where, if you know, where did the items she was
- 11 wrapped up in come from?
- 12 A Off the bed.
- 13 Q Off the bed?
- 14 A Yes, sir.
- 15 Q I'm sorry, I didn't mean to repeat that. Please
- 16 speak up for me. After you put Ms. Hayes in the
- 17 trunk where did you go?
- 18 A Went to dispose of the body.
- 19 Q All right, but where did you go do that? Where
- 20 in the car did you get?
- 21 A Passenger seat.
- 22 Q Front or back?
- 23 A Front.
- 24 Q Who drove?
- 25 A David.

SW - A. WILSON - DIRECT

1 Q Do you know where Rashawn went at that time?

2 A No, sir.

3 Q When y'all drove and left the house which
4 direction did you go in?

5 A To the right towards the cemetery.

6 Q All right. And where did y'all go?

7 A Rode around north Florence a little while and
8 pull up on the dirt road.

9 Q Where were y'all -- what were y'all doing while
10 y'all were just driving around north Florence?

11 A We were trying to decide where to put the body.

12 Q So where did y'all end up going?

13 A Dirt road that was on the road.

14 Q And do you know name of that dirt road?

15 A No, sir.

16 Q All right. After you got on that dirt road what
17 did y'all do, what happened?

18 A Started -- told me to get out. I got out the
19 car, laid the body in the ditch, got back in the
20 car. He was like, can you see the body. I was
21 like, move my shoulder, and saw the body and said
22 yeah.

23 Q Which side of the car did you put the body on,
24 which side of the road, passenger side or driver's
25 side?

SW - A. WILSON - DIRECT

1 A Passenger side.

2 Q Okay. And he asked you if you could see the body
3 and you could see the body so what did you do next?

4 A I got out the car, grabbed some weeds and dirt
5 and threw it on the body.

6 Q Who did that?

7 A Me and David.

8 Q All right. And after you put some weeds and dirt
9 on top of the body what did you do next?

10 A Got back in the car, went to Roughfork Street.

11 Q What did you on Roughfork Street?

12 A Sat there for a minute and then Greg came through
13 the path.

14 Q All right. And when you say Greg who was that?

15 A His cousin.

16 Q His cousin?

17 A Cousin -- well, something.

18 Q And what nickname does he have, if anything?

19 A G.

20 Q When G came through the path what did y'all do
21 next, or what kind of conversation did y'all have?

22 A Went back to the house.

23 Q Went back to which house?

24 A The victim house.

25 Q The victim's house and did what?

SW - A. WILSON - DIRECT

1 A Well, I stayed in the kitchen area. They started
2 picking up stuff to take.

3 Q All right. And what did you do while you were
4 there in the kitchen area?

5 A Nothing really.

6 Q Who was smoking in that house, if anyone?

7 A G had a cigarette and he walked in. I took a hit
8 off of it and went back in.

9 Q When you say you took a hit off it what exactly
10 does that mean?

11 A I took a puff off.

12 Q All right. And after you put it in your mouth
13 and took a puff off of it you did what with it?

14 A I gave it back to Greg.

15 Q What did Greg do with the cigarette?

16 A Put it in water in the sink and threw it in the
17 trash can.

18 Q What trash can?

19 A In the kitchen.

20 Q All right. And after that where did you go and
21 what did you do?

22 A We left. I went and knocked on Rashawn's window.

23 He came to the window, let me in, and we laid on
24 the couch.

25 Q And you stayed there how long?

SW - A. WILSON - DIRECT

1 A Stayed till the next day.

2 Q What happened the next day?

3 A Well, I -- I can't remember everything, but I
4 remember investigators came over there.

5 Q The investigators came to the house where you
6 were, and what were the investigators' names?

7 A Sergeant Drayton and Sergeant Godwin.

8 Q What were they doing?

9 A Looking for David.

10 Q When they came to the house who all was at the
11 house?

12 A Me, David, Terrance, Terrance's mother, and
13 Rakim.

14 Q When they asked for David or were looking for
15 David what did y'all -- what did you or anybody else
16 tell, not you, what did you or David tell the
17 officers?

18 A We didn't tell them anything.

19 Q So what did they do after that?

20 A They left.

21 Q And what did David do after they left?

22 A Went and climbed up in the attic.

23 Q Climbed up in the attic?

24 A Yes, sir.

25 Q And to do what?

SW - A. WILSON - DIRECT

1 A Try to hide.

2 Q All right. What happened next?

3 A Nothing.

4 Q What did you get out of Ms. Hayes' house?

5 A Some hard candy.

6 Q When did you get arrested by law enforcement?

7 A 27th.

8 Q And on August 27th what did you do after they
9 arrested you?

10 A I gave them a statement.

11 Q Who did you mention in that statement was there
12 at the house?

13 A David, me, Shawn, Rakim.

14 Q What about Gregory Montgomery?

15 A I didn't mention him.

16 Q Why not?

17 A 'Cause they didn't mention it.

18 Q When, if ever, did you ever mention Gregory
19 Montgomery to law enforcement?

20 A When they find the DNA on the cigarette butt.

21 Q And was that a known or unknown DNA —

22 A Unknown.

23 Q —on that cigarette butt?

24 MR. HOFFMEYER: Your Honor —

25 THE WITNESS: Unknown.

SW - A. WILSON - DIRECT

1 MR. HOFFMEYER: ---I object. This witness
2 wouldn't have any knowledge of that.

3 THE COURT: I tend to sustain. How would
4 he have that knowledge?

5 MR. CLEMENTS: May we approach, Your
6 Honor.

7 THE COURT: Yes, sir.

8 (WHEREUPON, counsel approached the Bench
9 for an off-the-record discussion.)

10 BY MR. CLEMENTS:

11 Q Amp, how many times have you talked about the
12 information in this case with your attorney?

13 A Several.

14 Q When did you have an opportunity to give some
15 names to your attorney?

16 A When he found the DNA that was unknown.

17 Q Just ---

18 MR. HOFFMEYER: Your Honor, same objection
19 I have. I mean, he's asking him about hearsay
20 information that this defendant received at some
21 point.

22 MR. CLEMENTS: Your Honor, I was asking
23 him for a time frame, Your Honor. I wasn't asking
24 for any information. If I can repeat the question
25 again.

SW - A. WILSON - DIRECT

1 THE COURT: All right.

2 BY MR. CLEMENTS:

3 Q When, month, or recently or how recently, would
4 you have opportunity to give your lawyer additional
5 information?

6 A The end of this last year.

7 Q End of this past year? I'm not trying to repeat,
8 Your Honor, but he's soft spoken.

9 THE COURT: Is that correct, Mr. Wilson,
10 end of this past year?

11 THE WITNESS: Yes, sir.

12 BY MR. CLEMENTS:

13 Q What did that information you gave to your lawyer
14 the end of this last year have to do with the
15 cigarette butt you were talking about, if anything?

16 A That I had it and Gregory had it.

17 Q Okay, all right. What did you tell Drayton and
18 Godwin about that back in August 2008?

19 A Nothing.

20 Q All right. What did you tell Drayton and Godwin
21 in 2008 about going back to the house a second time?

22 A Nothing.

23 Q Okay. What did you tell Drayton and Godwin about
24 Rakim being in that house in 2008?

25 A That he wasn't there. I told him what I thought

SW - A. WILSON - DIRECT

1 they wanted to hear.

2 Q All right. Was Rakim in that house?

3 A No, sir.

4 Q Was Rakim in that area though?

5 A No, sir.

6 Q He didn't stay in that area?

7 A He stayed in the area.

8 Q Okay.

9 MR. CLEMENTS: Beg the Court's indulgence
10 a moment.

11 THE COURT: Yes, sir.

12 BY MR. CLEMENTS:

13 Q Amp, who had the keys to Ms. Hayes' car?

14 A David.

15 Q What do you know about where they came from or
16 how he got them, if anything?

17 A I don't know.

18 Q What do you know, if anything, about flipping the
19 mattress?

20 A I don't know nothing about that either.

21 Q You don't know about that either?

22 A No, sir.

23 Q I'm not trying to repeat what you say. I just
24 need you to speak up, okay. What, if anything, did
25 you ever hear David ask Ms. Hayes?

SW - A. WILSON - DIRECT

1 A He was talking to me the whole time I was in the
2 room.

3 Q Okay, all right. What are you charged with?

4 A The same thing he's charged with.

5 Q What kind of deals do you have?

6 A None.

7 Q What are you supposed to do when you're on the
8 witness stand under oath?

9 A Tell the truth.

10 Q What are you doing today?

11 A Telling the truth.

12 Q How much of the truth?

13 A All of it.

14 Q In 2008 in August, did you tell Drayton and
15 Godwin the whole truth then?

16 A No, sir.

17 Q Why not?

18 A 'Cause I was scared.

19 Q Sir?

20 A I was scared.

21 Q Why didn't you mention Gregory in 2008?

22 A 'Cause they didn't mention him.

23 Q What are you doing now?

24 A Telling the truth.

25 Q Beg the Court's indulgence. What other reason,

SW - A. WILSON - DIRECT

1 if any, do you have for testifying?

2 A Try to help the family get some better.

3 Q Would it be fair to say — well, let me — hear
4 this question knowing you got to tell the whole
5 truth. What do you hope will happen to you if you
6 tell the whole truth?

7 A Well, I hope I come out good when I go to court.

8 Q What promises have been made to you?

9 A None.

10 Q All right, just wanted to be fully honest about
11 that. Now tell me who else drove that car, if you
12 know, other than David Johnson?

13 A No one.

14 Q Not you?

15 A No, sir.

16 Q Who else did you see in that car besides you and
17 David Johnson?

18 A G.

19 Q When was that? Before you got rid of Ms. Hayes'
20 body or after you got rid of Ms. Hayes' body?

21 A After.

22 Q What, if anything, did G have to do with any of
23 this before y'all went in the house or before
24 Ms. Hayes was killed?

25 A Nothing that I know of.

SW - A. WILSON - CROSS

1 (Juror raises his hand.)

2 THE COURT: Sir? All right. You need a
3 break sir or just couldn't hear?

4 THE POTENTIAL JUROR: I just need a name.
5 Instead of G, what's the guy's real name?

6 THE COURT: Okay.

7 BY MR. CLEMENTS:

8 Q Who is G?

9 A Gregory.

10 Q Montgomery?

11 A Yes, sir.

12 Q Okay, thank you. Mr. Wilson, please answer
13 truthfully any questions Mr. Hoffmeyer has.

14 MR. HOFFMEYER: Your Honor, I don't need
15 editorializing when he addresses the Court or me.

16 THE COURT: Sustained.

17 **CROSS - EXAMINATION**

18 BY MR. HOFFMEYER:

19 Q Now Mr. Wilson, my understanding from what you
20 told us on direct is that you went in a window and
21 stabbed this lady, right?

22 A Yes, sir.

23 Q And you're telling this jury you stabbed her one
24 time. No doubt about that, correct?

25 A Yes, sir.

SW - A. WILSON - CROSS

1 Q Now as far as what you also told us you indicated
2 that you used a pocket knife to stab her, right?

3 A Yes, sir.

4 Q Now with regard to my client at that time you
5 said something along the lines of his holding a
6 pillow over her head; is that correct? You told the
7 jury that?

8 A Yes, sir.

9 Q You didn't say that in your statement to law
10 enforcement, did you?

11 A I can't remember.

12 Q I'll show it to you. The Solicitor has a copy; I
13 have a copy. Let's take a look at it. And I'll
14 direct you. Let's look at page 3, the top
15 paragraph. Take your time to familiarize yourself
16 with the statement. When you gave that statement
17 you were meeting with investigators about this case,
18 correct?

19 A Yes, sir.

20 Q And in fact, when you first met with
21 investigators about this case you denied any
22 knowledge of this incident; didn't you?

23 A When I first?

24 Q Yes, sir.

25 A Yes, sir.

SW - A. WILSON - CROSS

1 Q So you first meet with them, say I don't know
2 anything about it. Then you give this statement.
3 And in that paragraph when you're talking about what
4 my client did in that room you don't mention
5 anything about her — putting a pillow over her
6 head, do you?

7 A No, sir.

8 Q Didn't mention that to them, did you?

9 A No, sir.

10 Q And of course, you knew the importance of this
11 situation, right?

12 A Kind of sort of.

13 Q Kind of sort of you knew the importance of the
14 situation?

15 A Yeah.

16 Q Is that what you said?

17 A Yes, sir.

18 Q Okay. Now as far as getting in to the residence
19 you helped push the window up; didn't you?

20 A Yes, sir.

21 Q Okay. David didn't use a bar to do it. You and
22 he pushed it up according to what you told
23 investigators; isn't that right?

24 A I can't remember what I told them.

25 Q Well, let's take a look at your statement again

SW - A. WILSON - CROSS

1 on page 2. I'll look several lines down,
2 Mr. Wilson. And I'm looking about middle of the
3 page. And you told the Solicitor on direct that the
4 door was locked. When you talked to them you
5 indicated that the window was already unlocked and
6 we pushed it up, you and David, right?

7 A Yes, sir.

8 Q Okay. Please speak up so the jury can hear you.
9 You didn't mention anything about a crowbar and, in
10 fact, said that it was unlocked and you were
11 involved in pushing it up, right?

12 A Yeah.

13 Q Okay. That's not what you told this jury though,
14 is it?

15 A No, sir.

16 Q Now you also told this jury a little while ago
17 that you did go back to the residence; didn't you?

18 A Yes, sir.

19 Q Okay. And in your statement to law enforcement
20 you told them you never went back; isn't that right?

21 A Yes, sir.

22 Q Now did your mom go with you up to the law
23 enforcement complex? Did she take you?

24 A Yeah.

25 Q Okay. And I'm sure she impressed upon you to

SW - A. WILSON - CROSS

1 tell the truth; didn't she?

2 A Yes, sir.

3 Q But you didn't tell the truth then, right?

4 A No, sir.

5 Q According to what you told us a little while ago
6 you were telling them what you believed they wanted
7 to hear; is that correct?

8 A Yes, sir.

9 Q Okay. And of course, you're here testifying for
10 the State today in hope when it comes your court
11 time to get some help; isn't that right?

12 A Somewhat.

13 Q Something like that, or is it just like that?

14 A Something like that.

15 Q Now as far as your entering into that residence
16 and stabbing Ms. Hayes, you told investigators it
17 was you and you mentioned my client, and Rashawn and
18 Rakim; isn't that correct?

19 A Yes, sir.

20 Q And you didn't mention Rakim just once in that
21 statement, you mentioned the fact he was there
22 several times; isn't that right?

23 A Yes, sir.

24 Q And you're telling this jury today that Rakim
25 never went into the house; isn't that correct?

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1 A Yes, sir.

2 Q Now you also told us a little while ago, I
3 believe, that as far as Gregory Montgomery, in late
4 of last year which would have been 2011, you brought
5 up the name of Gregory Montgomery; is that right?

6 A Yes, sir.

7 Q Told your lawyer about it?

8 A Yes, sir.

9 Q You were charged in August of 2008, right?

10 A Yes, sir.

11 Q So over three years later you finally mention
12 Gregory Montgomery, right?

13 A Yes, sir.

14 Q I mean, he was in that house; wasn't he?

15 A Yes, sir.

16 Q But you didn't establish sometime later after
17 this tragic event, right? And you had a lawyer as
18 the State asked you. You had met with law
19 enforcement and it takes you three years to mention
20 Gregory Montgomery, right?

21 A Yes, sir.

22 Q Now as far as your involvement, you not only told
23 us that you stabbed Ms. Hayes but you were also,
24 according to what you told us on direct, were
25 involved in putting her in the trunk and then

SW - A. WILSON - CROSS

1 putting her in a ditch and covering her up; isn't
2 that correct?

3 A Yes, sir.

4 Q And as far as what you also told us, you did that
5 terrible thing to that lady and put her in a ditch
6 and you only took some candy. That's what you're
7 telling this jury?

8 A Yes, sir.

9 Q If you will indulge me one second, Your Honor.
10 By the way, you lived on Royal Street; is that
11 right?

12 A Yes, sir.

13 Q And Rakim and Rashawn lived right there on
14 Liberty Street?

15 A Yes, sir.

16 Q And Royal Street is not that far away, is it?

17 A No, sir.

18 Q And you went and washed up after this at Royal
19 Street at some point; didn't you?

20 A No, sir.

21 Q Let's take a look at your statement. You still
22 have it up there?

23 A Yes, sir.

24 Q Let's look at page 4, the bottom, the last four
25 or five lines.

SW - A. WILSON - CROSS

1 MR. CLEMENTS: May we approach, Your
2 Honor.

3 THE COURT: Yes, sir.

4 (WHEREUPON, counsel approached the Bench
5 for an off-the-record discussion.)

6 BY MR. HOFFMEYER:

7 Q All right, Mr. Wilson, now I asked you if you
8 washed up at your house a few minutes ago and you
9 told us no, correct?

10 A I mean...

11 Q I'm just asking what you just told us in this
12 courtroom today.

13 A You mean like directly how it happened or?

14 Q Could you speak up a little bit.

15 A I mean, when do you mean?

16 Q I mean that evening.

17 A No.

18 Q The evening that we're here in court about. You
19 didn't wash up —

20 A No, sir.

21 Q —at your house? Well, let me refer you to the
22 statement. And I ask you — or excuse me, Officer
23 Godwin asked you: Okay, you didn't wash up on
24 nothing in the house. And you said what? Will you
25 read your next line.

SW - A. WILSON - CROSS

- 1 A Where at?
- 2 Q Right here.
- 3 A Where? There?
- 4 Q Yes.
- 5 A It says, did you wash up.
- 6 Q Okay. And what did you say?
- 7 A At my house.
- 8 Q So you told him that you did wash up at your
- 9 house, right?
- 10 A Not that day.
- 11 Q Well what day did you think he was talking about?
- 12 A He said did I wash up, did I have any blood on
- 13 me, did I wash up.
- 14 Q Okay. And you told him what?
- 15 A I did wash up.
- 16 Q Now you told us, as I previously asked you, about
- 17 talking to officers and telling them what they
- 18 wanted to hear. And of course, now you have been
- 19 charged with murder. You've been charged with
- 20 burglary first degree, you've been charged with
- 21 armed robbery, you've been charged with conspiracy,
- 22 and you've been charged with possession of a weapon
- 23 during the commission of a violent crime. Isn't
- 24 that correct?
- 25 A Yes, sir.

SW - A. WILSON - CROSS

1 Q All right. And as you sit here testifying before
2 this jury today you face on the murder charge up to
3 a life sentence; isn't that correct?

4 A Yes, sir.

5 Q And on the burglary first degree you face 15
6 years to life; isn't that correct?

7 A Yes, sir.

8 Q And then on the armed robbery you face up to 30
9 years; isn't that right?

10 A Yes, sir.

11 Q And on the conspiracy you face up to five years;
12 isn't that right?

13 A I don't know about the conspiracy.

14 Q And on the possession of a weapon during the
15 commission of a violent crime you face up to five
16 years; is that right?

17 A I don't know.

18 Q Well, on the murder and the burglary first you
19 face two life sentences, right?

20 A Yes.

21 Q By what you know?

22 A Yes, sir.

23 Q And you certainly expect to receive a benefit by
24 your testimony today; don't you?

25 A Yeah, somewhat.

SW - A. WILSON - REDIRECT

1 Q Yeah, somewhat. Just like you were telling the
2 officers what they wanted to hear back then, right?

3 A Yes, sir.

4 Q If you'll excuse me one second. Thank you very
5 much, Mr. Wilson.

6 THE COURT: Anything on redirect?

7 MR. CLEMENTS: Very briefly, Your Honor.

8 **REDIRECT EXAMINATION.**

9 BY MR. CLEMENTS:

10 Q Amp, Mr. Hoffmeyer asked you about terrible
11 things of putting Ms. Hayes in her trunk of her car
12 and putting her in the ditch. And my question is
13 who did that with you?

14 A David.

15 Q David who?

16 A Johnson.

17 Q Thank you.

18 MR. CLEMENTS: Your Honor, we'd be ready
19 to call our next witness.

20 THE COURT: Any objection to this -- oh,
21 never mind, he's in custody. You can step down,
22 Mr. Wilson. Thank you very much, sir.

23 MR. CLEMENTS: Your Honor, our next
24 witness we call will be Gregory Montgomery.

25 MR. JEPERTINGER: May we approach.

1 THE COURT: Yes, sir.

2 (WHEREUPON, counsel approached the Bench
3 for an off-the-record discussion.)

4 THE COURT: Ladies and gentlemen, while
5 they're bringing Mr. Montgomery I'm gonna -- we're
6 gonna take just a short break. Please have no
7 conversation about the case; and if you need
8 anything let Mr. Propps know, okay?

9 (WHEREUPON, the jury was removed from the
10 courtroom at 10:57 a.m., and a recess was taken from
11 the proceedings.)

12 THE COURT: Mr. Propps, ask the jury to
13 join us please.

14 (WHEREUPON, the jury was returned to the
15 courtroom at approximately 11:16 a.m., and
16 the following proceedings commenced in
17 open court.)

18 THE COURT: Solicitor, you may call your
19 next witness.

20 MR. CLEMENTS: Thank you, Your Honor. If
21 it please the Court, we call Gregory Montgomery.

22 THE COURT: Mr. Montgomery, if you'd
23 please come around to be sworn, sir.

24 THE CLERK OF COURT: Sir, please walk
25 around here. If you would please place your left

SW - G. MONTGOMERY - DIRECT

1 hand on the Bible and raise your right hand.

2 WHEREUPON,

3 **GREGORY MONTGOMERY,**

4 having been duly sworn by the Clerk of Court,

5 testified as follows:

6 THE CLERK OF COURT: Please walk around.

7 Have a seat and state your full name for the record.

8 THE WITNESS: Gregory Montgomery.

9 **DIRECT EXAMINATION**

10 BY MR. CLEMENTS:

11 Q That's better, Mr. Montgomery. I'm going to ask

12 you to speak into the microphone so everybody can

13 hear you, okay?

14 A Yes, sir.

15 Q Mr. Montgomery, how old are you?

16 A 21.

17 Q In 2008 how old were you?

18 A 17.

19 Q Do you know David Johnson?

20 A Yes, sir.

21 Q How long have you known David Johnson?

22 A Like a year or two.

23 Q A year or two from now or a year or two from

24 2008?

25 A 2008.

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- 1 Q Are y'all related or kin at all?
- 2 A He said we is, but we're not.
- 3 Q All right. Now you remember where you were in
- 4 August 2008, latter part of August 2008?
- 5 A On Liberty Street.
- 6 Q All right. Where do you live?
- 7 A On Liberty Street.
- 8 Q Okay. And is that where you live now as well?
- 9 A No, sir.
- 10 Q Where do you live now?
- 11 A Triangle Lane in Sand Pit in Columbia.
- 12 Q And where on Liberty Street, what block on
- 13 Liberty Street were you living back in 2008?
- 14 A I'm not sure. I don't remember the address.
- 15 Q Okay.
- 16 A I don't remember the address.
- 17 Q How far was it from the grave yard?
- 18 A Probably like a block or two.
- 19 Q Okay, all right. Do you know Anthony Wilson?
- 20 A Yes, sir.
- 21 Q You know Rashawn Bailey?
- 22 A Yes, sir.
- 23 Q Did you know Rakim Floyd?
- 24 A Yes, sir.
- 25 Q Terrance Mitchell?

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1 A Yes, sir.

2 Q How did you know those guys?

3 A 'Cause we used to hang out.

4 Q All right. Out of all the names I've asked you
5 about, who if anybody didn't, of that group, didn't
6 hang out together, if anyone?

7 A I think nobody else I think.

8 Q So of y'all — all these names all hung out
9 together?

10 A Yes, sir.

11 Q All right. Mr. Montgomery, are you charged with
12 a crime related to this?

13 A Yes, sir.

14 Q What are you charged with?

15 A First degree burglary.

16 Q And do you have any prior criminal record?

17 A No, sir.

18 Q When did you get charged?

19 A November the 3rd.

20 Q November 3rd of what year?

21 A Last year.

22 Q 2011?

23 A Yes, sir.

24 Q Can you please tell this jury what you did, why
25 you're charged with burglary first?

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- 1 A Because I had stuff in the house.
- 2 Q What time of day?
- 3 A Nighttime.
- 4 Q What did you take, if anything?
- 5 A Pack of chicken and Kool-aid.
- 6 Q All right. Did you go in that house at any time;
- 7 and if you did when, while Ms. Hayes was in that
- 8 house?
- 9 A No, sir.
- 10 Q Okay. Before you went in that house who did you
- 11 see over on Roughfork Street?
- 12 A David Johnson and Amp.
- 13 Q Where did you see David Johnson and Amp?
- 14 A In the car.
- 15 Q In what car?
- 16 A Ms. Hayes' car.
- 17 Q All right. How did you know it was Ms. Hayes
- 18 car?
- 19 A Because I had seen it on the news when they had
- 20 got locked up so I had put two and two. I didn't
- 21 know at first.
- 22 Q You didn't know at first, okay, all right?
- 23 A No, sir. That's what I was getting at.
- 24 Q At that time whose car did you know that to be?
- 25 A Nobody's.

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1 Q Okay, all right.

2 MR. CLEMENTS: Your Honor, I'm gonna ask
3 permission for Mr. Montgomery to come and stand
4 right here.

5 THE COURT: Yes, sir.

6 BY MR. CLEMENTS:

7 Q Mr. Montgomery, I'm gonna ask you to come stand
8 right here, I'm gonna show you some photos.

9 A Okay.

10 Q Okay. The reason I want you to stand here is so
11 that the court reporter got to take down every word
12 you say and all these jurors need to hear you.

13 A Okay.

14 Q And you're not as loud as I am so I'm -- you
15 stand here and they can all hear you, okay? I'm
16 going to stand on this other side. All right. The
17 first thing I want to do is I want to show you
18 what's been marked as State's Exhibit 52. Can you
19 identify that for us.

20 A That was the car.

21 Q That was what car? And you need to speak up
22 please.

23 A That was Ms. Hayes' car. Yes, sir.

24 Q Who did you see with that car?

25 A David Johnson and Amp.

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1 Q Did you see anyone else with it?

2 A No, sir.

3 Q When, if ever, did you ever see Rakim Floyd or
4 Rashawn Bailey with that car?

5 A None.

6 Q Please speak up.

7 A None.

8 Q Okay. State's Exhibit 51 please. Well, that's
9 53; we'll do that one. State's Exhibit 53, what is
10 that?

11 A That's the car.

12 Q Where is that location? Is that familiar to you?

13 A Yes, sir, that was on Roughfork Street.

14 Q And that picture, what does that picture relate
15 as far as where you saw Amp and David Johnson with
16 that car?

17 A Path.

18 Q Is that the same place?

19 A Yes, sir.

20 Q All right. You mentioned a path somewhere in a
21 path at —

22 A Right here (indicating).

23 Q Are you pointing to those trees or to the grass
24 here?

25 A To over there.

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1 Q Right by that tree. Where does that path take
2 you?

3 A It comes to where I used to live at.

4 Q All right. Go back up to State's Exhibit 51
5 please. One more. That's it. All right. You
6 recognize that at all?

7 A Yes, sir.

8 Q All right. If you would please take this laser
9 pointer, hold that pointer. If you can show this
10 jury on that photo where that path goes.

11 A Well, it goes to right here. Well, right there.

12 Q Okay.

13 A And my house is right there.

14 Q On the other side of those trees?

15 A Yes, sir.

16 Q Okay, all right. Thank you. You recognize that
17 car?

18 A Yes, sir.

19 Q Whose car is that?

20 A That was Ms. Hayes' car?

21 Q All right. Now I show you a couple more
22 pictures, all right.

23 A Okay.

24 Q State's Exhibit 16, do you recognize that at all?

25 A Yes, sir, that's the refrigerator I had went

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1 into.

2 Q That's the refrigerator you went into where?

3 A In Ms. Hayes' house.

4 Q What did you get out of that refrigerator?

5 A Pack of chicken and Kool-aid.

6 Q Okay. I'm gonna show you State's Exhibit 35. Do
7 you recognize that at all?

8 A Not at first, but yes, sir.

9 Q What is that?

10 A That's the back door to Ms. Hayes' house.

11 Q What time of day was it when you went in there?

12 A At nighttime.

13 Q Okay. Did you enter the house at that location
14 or somewhere different?

15 A That location.

16 Q Okay. That's the back door?

17 A Yes, sir.

18 Q All right. Standing as if you were standing
19 looking at that photograph, which direction would
20 your house where you live be to the right or to the
21 left?

22 A To the right.

23 Q To the right?

24 A Yes, sir.

25 Q Okay. Mr. Montgomery, if you would have a seat

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1 back up there. Thank you.

2 A (Witness complies.)

3 Q Gregory.

4 A Yes, sir.

5 Q Do you have a nickname?

6 A They used to call me G but...

7 Q Who used to call you G?

8 A Amp, Rakim, and them. Yes, sir. They used to

9 call me G. The reason they used to call me G

10 because my name was Gregory so they used it for G.

11 Q All right. What nickname did David call you by?

12 A Greg.

13 Q All right. He ever call you G ever?

14 A No, sir, he just used to call me Greg.

15 Q Used to call you Greg?

16 A Yes, sir.

17 Q All right. Now can you please tell this jury
18 what you were doing, where you were going when you
19 saw David Johnson and Amp Wilson with that car and
20 take us through what happened and what you did and
21 what they did?

22 A Okay. It had start off I was at home so had
23 called David and see what he was doing so I had
24 called him and he answered the phone and I had said,
25 what you get into. He said in the backyard. I say

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1 in the backyard? Back of my house rather, in the
2 back of my house. So I said the back of my house?
3 Then he say yeah, through the path, you want to come
4 too. So basically I said, yeah. So I had walked
5 through the path. When I had walked through the
6 path is when I had seen David and Amp in the car.
7 They was in the driver's side; Amp was in the
8 passenger side. So me, I had sat in the back seat.
9 Yes, sir, I had sat in the back seat. I asked him,
10 I asked David where he had got the car from. He
11 said he had pulled a lick.

12 Q He had done what?

13 A Had pulled a lick.

14 Q What does pull a lick mean?

15 A A robbery.

16 Q Okay. What else did you ask him?

17 A And I asked him, I said, I said, to get a car
18 like this right here. And then that's when he had
19 told me, that's when he had told me I'd be scared if
20 he tell me.

21 Q And what did you say?

22 A I said, well I don't want to know.

23 Q All right. What happened next?

24 A Okay. We had rode around. We had rode around
25 the block. We didn't went nowhere. We had just

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1 rode around. We had came back through the path.
2 David parked the car through the path. That's when
3 he asked me do I want to pull a lick, pull a
4 robbery. So we had got out the car. That's when we
5 had walked through the path. When we had walked
6 through the path that's when I had seen Terrance.
7 You know, Terrance had came with us. He was
8 standing outside. I think it's his house. He was
9 standing outside. So basically we had — they had
10 showed us where the house they had broke into. We
11 didn't know the house was broke into at first until
12 we had got to the door, and the door was already
13 open. Only thing they did was just open the back
14 door. And we had just had went in the house. You
15 know, I was smoking a cigarette, and Amp did ask for
16 a drag on the cigarette so I gave him a drag on the
17 cigarette so —

18 Q What did you do with the cigarette after that?

19 A When I was walking around the house I had went to
20 the kitchen. Before I even went to the refrigerator
21 I had put the cigarette out and I had threw it in
22 the trash can.

23 Q Where did you put it out at?

24 A On the stove.

25 Q All right. And what trash can did you throw it

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1 in?

2 A It was -- it was, I think it was like a black
3 little trash can, yes, sir.

4 Q What room was it in?

5 A I think in the kitchen.

6 Q Okay. What -- what was going on while you were
7 walking around and smoking, what were you doing?

8 A I was looking around; but I didn't see nothing
9 that's I wanted like a TV, VCR, and stuff like that.

10 I didn't see none of that stuff on my wanted so

11 basically I started to think they had already went

12 in the house, did whatever they had did, because I

13 didn't see nothing in there suspicious or nothing.

14 So basically I just had went to the refrigerator and

15 I had got a pack of chicken and Kool-aid. After

16 that that's when we had left. I had went home and

17 went to sleep. That next morning that's when

18 Terrance had came and knocked on my window. So I

19 came outside and started talking to Terrance and

20 asked me what --

21 Q Don't say what the --

22 MR. HOFFMEYER: Object to any hearsay.

23 THE COURT: Sustained.

24 BY MR. CLEMENTS:

25 Q You can't say what Terrance said to you. He's

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- 1 not here, okay?
- 2 A Oh, okay.
- 3 Q All right?
- 4 A Yes, sir.
- 5 Q So you had some conversations with Terrance?
- 6 A Yes, sir.
- 7 Q Okay. Beg the Court's indulgence a moment.
- 8 What -- let me back up a little bit here.
- 9 A Okay.
- 10 Q Okay, all right. You talk a little fast.
- 11 A Yes, sir.
- 12 Q What door did you go into the house?
- 13 A The back door.
- 14 Q All right. And what did you notice, if anything,
- 15 about the back door?
- 16 A It was already open.
- 17 Q All right. What were the other guys doing in the
- 18 house while you were looking around?
- 19 A I guess they was just looking around too.
- 20 Q How were you able to see?
- 21 A It was dark. We plundering around. Plundering,
- 22 we was plundering around; it was dark.
- 23 Q Okay, all right. You didn't have any
- 24 flashlights?
- 25 A No, sir.

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1 Q Okay. What did you see anybody else get out of
2 the house at that time?

3 A Nothing.

4 Q All right. Did you ever ride anywhere else in
5 that car?

6 A No, sir.

7 Q Have you ever been to David's house?

8 A Yes, sir.

9 Q Where does he live?

10 A Sumter Street.

11 Q All right. When you got up the next morning you
12 had conversation with Terrance. When, if ever, did
13 you see, ever see law enforcement around there?

14 A I didn't.

15 Q You didn't?

16 A No, sir.

17 Q All right. How about the next afternoon, did you
18 see law enforcement around there?

19 A Yes, sir.

20 Q All right. When, if ever, did you ever talk to
21 any law enforcement?

22 A None.

23 Q None?

24 A No, sir.

25 Q All right. When was the first time you talked to

SW - G. MONTGOMERY - DIRECT

- 1 law enforcement?
- 2 A November the 3rd.
- 3 Q All right. Now who did you talk with?
- 4 A Mr. Drayton and Godwin, Mr. Godwin.
- 5 Q And that was November of what year?
- 6 A This last year.
- 7 Q 2011?
- 8 A Yes, sir.
- 9 Q Do you see the people you talked to in the
- 10 courtroom?
- 11 A Yes, sir.
- 12 Q Where are they?
- 13 A Right there (pointing).
- 14 Q All right. When you talked to them what did
- 15 y'all talk about?
- 16 A Talk about what I had did that night.
- 17 Q All right. What do they do with you after they
- 18 talked with you?
- 19 A They had locked me up, yes, sir. They had locked
- 20 me up.
- 21 Q And what did they charge you with?
- 22 A First degree burglary.
- 23 Q What did you tell them about Rakim at that time?
- 24 A That he had went in the house with us.
- 25 Q Did Rakim go in the house with you?

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1 A No, sir.

2 Q Why did you mention Rakim?

3 A Because we just hanging together, but you know, I
4 thought he was with us at that time but he wasn't.

5 Q How do you explain that?

6 A Basically, well, I was making it up, but I told
7 the truth and I admitted that he wasn't there when I
8 had went in there.

9 Q What about Rashawn Bailey?

10 A No, sir.

11 Q Did you ever see Rashawn?

12 A No, sir.

13 Q What about Anthony Wilson?

14 A Yes, sir.

15 Q You saw him where, what two places?

16 A In the car and in the house.

17 Q How about David Johnson?

18 A Yes, sir.

19 Q Where?

20 A Car and the house.

21 Q Who rode in the car with you when you rode?

22 A David and Amp.

23 Q What did they tell you, if anything, later about
24 where they got the car from?

25 A They didn't.

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1 MR. HOFFMEYER: I object to that, Your
2 Honor. It's asked and answered.

3 THE COURT: Overruled, and I'll allow it.

4 BY MR. CLEMENTS:

5 Q Please answer the question again.

6 A They didn't say.

7 Q Did you ask him?

8 A I did ask him. I had asked him where he had got
9 the car from, and that's when he told me I'd be
10 scared.

11 Q All right. And you didn't ask him ever again?

12 A No, sir.

13 Q Okay. When you rode in the car tell us exactly
14 where you sat in the car.

15 A Right behind the driver's seat.

16 Q And who did you see driving?

17 A David.

18 Q Did you ever see anybody else drive?

19 A No, sir.

20 Q When you went to Ms. Hayes' house did you know
21 who that house belonged to?

22 A Yes, sir.

23 Q Did you ever go in her bedroom?

24 A No, sir.

25 Q Did you ever look around for her?

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1 A No, sir.

2 Q Well, what did you think?

3 A What did I think happened?

4 Q What did you think about while you were in there
5 and she wasn't there?

6 A I thought she was gone.

7 THE COURT: Whoa, whoa.

8 MR. HOFFMEYER: I object to speculation.

9 The Solicitor is asking him to speculate.

10 THE COURT: He's asking him what he
11 thought at that moment. He can. Thanks.

12 MR. HOFFMEYER: I withdraw the objection.

13 THE COURT: All right.

14 BY MR. CLEMENTS:

15 Q What did you think, not about — I'm not asking
16 you to speculate on what anybody did. I'm just
17 asking, what did you think at that time while you
18 were in that house?

19 A I thought she was not home.

20 Q All right. When did you find out definitely?

21 A When I seen it on the news.

22 Q Why didn't you come to law enforcement at that
23 time?

24 A Because I was scared and didn't want to get in
25 trouble over nothing I ain't had nothing to do with.

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1 Q You did get in trouble though; didn't you?

2 A Yes, sir.

3 Q How much later?

4 A Three years later.

5 Q And what are you in trouble for?

6 A First degree burglary.

7 Q And what, if anything, has been promised to you?

8 A Nothing.

9 Q Please answer any questions Mr. Hoffmeyer has.

10 A Yes, sir.

11 **CROSS - EXAMINATION**

12 BY MR. HOFFMEYER:

13 Q Mr. Montgomery?

14 A Yes, sir.

15 Q Now it's my understanding that you lived right
16 there near Ms. Hayes' residence on Liberty Street;
17 is that right?

18 A Yes, sir.

19 Q And I believe that Rakim lived right there on
20 Liberty Street as well; is that right?

21 A Yes, sir.

22 Q And Rashawn lived right there on Liberty Street;
23 is that correct?

24 A Yes, sir.

25 MR. HOFFMEYER: Your Honor, may we

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1 approach for a second. I forgot there's one issue I
2 need to bring to the Court's attention.

3 (WHEREUPON, counsel approached the Bench
4 for an off-the-record discussion.)

5 BY MR. HOFFMEYER:

6 Q Now back to where we were, Mr. Montgomery.

7 A Yes, sir.

8 Q Now you were just telling me, I believe, that
9 Rakim lived on Liberty Street. Rashawn lived on
10 Liberty Street as well; is that right?

11 A Yes, sir.

12 Q Now you also told this jury earlier that you did
13 not speak to law enforcement until November of 2011;
14 is that correct?

15 A Yes, sir.

16 Q And you didn't want to come forward before then
17 because you wanted to stay out of trouble, right?

18 A Yes, sir, I was scared.

19 Q But now that you're in trouble you're willing to
20 talk, correct?

21 A Yes, sir, I'm willing to help.

22 Q You're willing to help. And of course, you're
23 expecting some help too with your charges, right?

24 A No, sir.

25 Q We'll come back to that. Now as far as your

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1 prior criminal record you said you had none, but you
2 were charged and convicted of simple assault and
3 battery back in 2010; isn't that correct?

4 A Yes, sir, with my girlfriend.

5 Q I see. So your previous statement that you
6 didn't have a criminal record is incorrect, is it?

7 A No, sir. Well, I had the idea mentioned that I
8 had a CDV.

9 Q I don't remember hearing that on direct, but
10 we'll move forward. Now as far as what you told law
11 enforcement you told them of course that you lived
12 on Liberty Street, right?

13 A Yes, sir.

14 Q And in fact, you had lived there long enough that
15 you knew Ms. Hayes; isn't that correct?

16 A I used to see her on the porch, but I didn't know
17 her like that.

18 Q You knew her to see her, acquaintance, you knew
19 who she was?

20 A Yes, sir.

21 Q And you found out very quickly within a day or
22 two or three that something tragic had happened to
23 Ms. Hayes; didn't you?

24 A Yes, sir.

25 Q And that would have been in August of 2008,

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1 right?

2 A Yes, sir.

3 Q And again, you didn't come forward in 2008, 2009,
4 2010, two thousand— until November of 2011? Lady
5 that lived on your street; isn't that right?

6 A Yes, sir.

7 Q Now as far as what you told them, you of course
8 met with Officers Godwin and Drayton and knew that
9 it was very important to tell them the truth; didn't
10 you?

11 A Yes, sir.

12 Q There was investigation ongoing and they need to
13 know what happened, right?

14 A Yes, sir.

15 Q And you told them that Rakim went in the house
16 with you; didn't you?

17 A Yes, sir, I did.

18 Q Now Rakim is a friend of yours; isn't he? He was
19 back then.

20 A Well, he is.

21 Q Well, you used to hang out with him back in 2008,
22 right?

23 A Yes, sir, but I did hang out with him.

24 Q And he called you G?

25 A Yes, sir.

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1 Q And he's still a friend of yours?

2 A Yes, sir.

3 Q Okay. And you told them back then that he went
4 into the house, but now you're telling this jury
5 that Rakim didn't go in the house, right?

6 A Yeah, 'cause it's true, he didn't.

7 Q Okay. Well back then you did understand how
8 important it was to tell Officer Drayton and Officer
9 Godwin the truth; didn't you?

10 A Yes, sir, but I was just scared.

11 Q You were scared so you told a lie about a friend
12 of yours back in 2008?

13 A I told a lie?

14 Q Yes, sir, about Rakim, your friend back in 2008
15 when you talked to them and you told them he went to
16 the house. You're telling this jury you lied to
17 them back then, right?

18 A Yes, sir.

19 Q And in addition, you told them back in 2011 of
20 November when you gave your statement that you
21 didn't ride in the car at all, did you?

22 A No, sir, I did, I did say that.

23 Q You said you rode in the car?

24 A I did say I didn't rode in the car at first.

25 Q Okay, I apologize. Let me make sure I understand

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1 what you're telling me. You're telling me when you
2 spoke with them that you told them back in 2011
3 during this investigation —

4 A Didn't rode in the car.

5 Q —that you did not ride in the car?

6 A Yes, sir.

7 Q Okay. And today you have told this jury that you
8 rode in the car, —

9 A Yes, sir.

10 Q —right? You didn't understand their question
11 back in 2011, November of 2011?

12 A No, I just came clean and told the truth.

13 Q You came clean and told the truth today?

14 A Yes, I was, yes, sir.

15 Q And now you're facing 15 years to life; isn't
16 that right?

17 A Yes, sir.

18 Q And in addition to that you hadn't been given a
19 bond yet, have you?

20 A No, sir.

21 Q You'd like to have one; wouldn't you?

22 A I would like to, but it's not up to me; it's up
23 to the judge.

24 Q I understand. And when it comes time for you to
25 deal with this case you're hoping for some help for

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1 your testimony; aren't you?

2 A No, sir.

3 Q Okay. So it took you over three years to come
4 forward in this case; and now you're here today for
5 the State, and you don't hope to get any benefit
6 from it. That's what you're telling these folks
7 over here to your right?

8 A No, sir. No, sir.

9 Q If you'll excuse me one second.

10 MR. HOFFMEYER: If you will indulge me one
11 second, Your Honor.

12 THE COURT: Yes, sir.

13 BY MR. HOFFMEYER:

14 Q And you did tell us, I believe, on direct that
15 Rashawn — or excuse me, Anthony Wilson and Terrance
16 went back into this house with you?

17 A Yes, sir.

18 Q Thank you very much, Mr. Montgomery.

19 MR. CLEMENTS: Beg the Court's indulgence
20 a moment.

21 THE COURT: Yes, sir.

22 MR. CLEMENTS: Your Honor, we are ready to
23 call our next witness.

24 THE COURT: All right, Mr. Montgomery,
25 thank you very much, sir. You may step down.

1 THE WITNESS: You're welcome.

2 MR. CLEMENTS: Your Honor, our next
3 witness will be lengthy.

4 THE COURT: Ladies and gentlemen, it's a
5 little early but that's okay, it's close enough. I
6 think it's about quarter to 12 so we'll break for
7 lunch at this point. Well, let me ask you to come
8 on up real quick.

9 (WHEREUPON, counsel approached the Bench
10 for an off-the-record discussion.)

11 THE COURT: We'll do that. We'll break at
12 this time. Let's see, I'm gonna ask you if you will
13 be back here ready to go at 1:30. That actually
14 gives you an hour and 45 minutes; but it's kind of
15 nasty out, rainy, so I'll give you that time.
16 Please, again as always, no conversation, no
17 communication about the case. I don't know if I --
18 I haven't seen the paper. I don't know if there's
19 anything in it, but don't mess with newspapers or
20 computers or anything like that. Just enjoy your
21 lunch break, okay? We'll start back at 1:30. So
22 everyone else please remain seated in the courtroom
23 while the jury is excused.

24 (WHEREUPON, the jury was removed from the
25 courtroom at 11:48 a.m., and the following

1 proceedings commenced in open court.)

2 THE COURT: All right. You're set up for
3 after lunch when you need to play whatever you need
4 to play?

5 MR. CLEMENTS: Yes.

6 THE COURT: Okay. Well we'll be in recess
7 then till 1:30.

8 (WHEREUPON, a lunch break was taken.)

9 THE COURT: Anything we need to take up
10 before we get started?

11 MR. HOFFMEYER: No, sir, I don't believe
12 so. I think we intended or thought it would be good
13 to handle Officer Drayton, deal with Officer Godwin
14 on that issue I raised in-camera, to proffer that
15 testimony. That's all.

16 THE COURT: All right. Well, we'll do
17 that. You want to do that now, then you want to
18 wait?

19 MR. HOFFMEYER: Whichever the Court...

20 THE COURT: I think it's probably better
21 for you to let you hear his direct.

22 MR. HOFFMEYER: Yes, sir.

23 THE COURT: So why don't we do that and
24 we'll take a break before we do the cross and do
25 that, okay?

1 MR. HOFFMEYER: Yes, sir. He is actually
2 going to introduce the statement so I don't know if
3 we would have to — I'm confusing issues a little
4 bit. Yes, sir, that's fine.

5 THE COURT: Yeah, 'cause I think the
6 statement is not the issue that you really need to
7 deal with, is it? I mean, I know you're going to
8 have the objection obviously.

9 MR. HOFFMEYER: Yes, sir, you are right,
10 that's a different issue.

11 THE COURT: All right, so we'll —
12 Solicitor, y'all ready?

13 MR. CLEMENTS: We are, Your Honor.

14 THE COURT: All right, Mr. Propps.

15 (WHEREUPON, the jury was returned to the
16 courtroom at approximately 1:39 p.m., and
17 the following proceedings commenced in
18 open court.)

19 THE COURT: All right, ladies and
20 gentlemen, welcome back. Hope everyone had a good
21 lunch and stayed dry. I didn't leave the building.
22 I understand it's raining out there so. We're ready
23 to proceed and would recognize Mr. Clements for
24 their next witness.

25 MR. CLEMENTS: If it please the Court, we

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1 would call Investigator Sergeant Larry Drayton.

2 THE COURT: All right, Investigator
3 Drayton, if you would please come around and be
4 sworn, sir.

5 THE CLERK OF COURT: Sir, if you will
6 place your left hand on the Bible and raise your
7 right hand.

8 WHEREUPON,

9 **LARRY DRAYTON,**

10 having been duly sworn by the Clerk of Court,
11 testified as follows:

12 THE CLERK OF COURT: Please be seated and
13 state your full name for the record.

14 THE WITNESS: Larry Drayton.

15 **DIRECT EXAMINATION**

16 BY MR. CLEMENTS:

17 Q Could you please tell the jury where you work and
18 how many years experience you have and what exactly
19 that you do.

20 A I'm employed with the City of Florence Police
21 Department. I began my career with the City of
22 Florence Police Department September 29th, 1980
23 from. 1980 until 1983 I was assigned to work with
24 uniform patrol division. 1983 until 1986 I worked
25 the special investigation unit, narcotics unit.

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1 1986 until 1991 I was reassigned — from 1990 to
2 1991 I was deployed with Desert Storm. 1991, came
3 back to the department, was assigned to the criminal
4 investigation division where I'm still currently at.
5 From 2003 I had a short deployment again, 2004,
6 still assigned to criminal investigation division as
7 supervisor of investigations.

8 Q 2008, was that out of military deployment?

9 A That's correct.

10 Q All right. And you — were you on-call or how
11 did you come to be involved in the investigation of
12 the disappearance of Ms. Willie Mae Hayes,
13 August 25th, 2008?

14 A On the date in question I was working day shift
15 with the — as an investigator in the regular
16 assigned duties. Sometime that afternoon -- I can't
17 remember exactly what time it was. 1:30, between
18 1:30 and 2 on that day I remember Sergeant Godwin
19 coming across the radio. I remember hearing traffic
20 on the radio in reference to a missing person 200
21 Liberty Street. As a result of that I responded
22 along with several others at the location and met
23 with Sergeant Godwin.

24 Q When you responded can you tell this jury what
25 you found and who all was there and what you did.

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1 A Upon my arrival I remember -- I can't remember
2 everyone that was there, but I remember patrol
3 officer London Jordan who was the initial responding
4 reporting officer. I think maybe Sergeant Lee Davis
5 may have been who was then patrol supervisor.
6 Corporal Ford may have been there; I'm not sure in
7 the area. I know he was in the area later on.
8 Sergeant Godwin. I can't remember if the crime
9 scene tech was already there before I got there or
10 not either. But once I arrived Sergeant Godwin gave
11 us a brief of what was going in reference to a
12 missing person, looked suspicious, of a suspicious
13 nature.

14 Q All right. And from that point of you got
15 briefed what did you begin to do?

16 A Sergeant Godwin and myself, we did what we call
17 canvassing the neighborhood which is basically going
18 to the door, just talking to people in the
19 community, asking if they'd seen or heard anything.
20 Sergeant Godwin and myself, we were out there doing
21 that, going door to door. And a short time later
22 traffic came across the radio that Corporal Ford
23 located a vehicle belonging to the victim on a
24 street, one street to the rear of Liberty Street on
25 Roughfork Street so we proceeded over to that

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1 location and met with Corporal Ford.

2 Q When you met with Corporal Ford what did you
3 find?

4 A At the location it was like a duplex on Roughfork
5 Street. The victim's vehicle was at the location.
6 We verified that by the tag number and the VIN
7 number and also the description that was given
8 reference to the victim's vehicle.

9 Q And what did you do in that neighborhood on that
10 block?

11 A We spoke with some other individuals in that
12 block and then like three or four houses radius of
13 that block was kind of like, feel like a
14 triangulation (ph) as far as if you were, where the
15 car was located look to your left, to your right,
16 different angles, and whatever residence that you
17 could see, we went to those houses thinking maybe
18 someone in those houses may have seen someone who
19 was occupying this vehicle, that vehicle --

20 Q After doing that what, if any, leads did you
21 begin to pursue?

22 A We received information that there was two
23 individuals was seen leaving the vehicle. One
24 individual was described as a Afro-American male,
25 brown complexion with dreads. And the second was

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1 individual described of afro-American male or dark
2 complexion.

3 Q All right. And tell us, what did you do to
4 followup on that?

5 A We went back again canvassing the neighborhood
6 talking to different people, different residences.
7 We end back up on the Liberty Street, the apartment
8 complex on Liberty Street. We had talked about it
9 earlier reference to the horseshoe apartments. We
10 end up that section where we spoke with an
11 individual who ---

12 Q After speaking with other individuals what then
13 were you looking for?

14 A After speaking with several --- well, after
15 speaking with some individuals in the area we were
16 given the name of, one of the individuals ---

17 MR. HOFFMEYER: Your Honor, I object to
18 any hearsay.

19 THE COURT: All right.

20 BY MR. CLEMENTS:

21 Q Don't tell us what anybody said, okay? Well,
22 what did you begin to look for?

23 A We began to look for an individual. We began to
24 look for an individual.

25 Q Did you know who that individual was?

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1 A We just had a first name.

2 Q Okay, all right. And what did you do after that?
3 What did you do to pursue that information?

4 A We went to a residence that was close proximity
5 where the victim lived looking for this particular
6 individual. Upon our arrival there were several
7 individuals who identified. We didn't know any of
8 the individuals at the time, but there were several
9 people including the homeowners at the residence at
10 that time. We spoke with several of the people at
11 the house.

12 Q What, what did you ask them?

13 A We asked them, told them what we were doing,
14 we're looking for an individual by the name of
15 David, did anyone know an individual by the name of
16 David. Fitting the basic description that was
17 given, we were told no so we left at that time.

18 Q All right. And from there what did you begin to
19 do?

20 A Continue talking with individuals, continue
21 speaking with people. And there was one of the
22 individuals -- there was an individual that we had
23 spoke with him and his mother, and we asked that
24 individual, his mother -- he was a juvenile at the
25 time -- to come down to this building, the

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1 City-County Complex, to speak to us in reference to
2 the matter so we brought that person down juvenile
3 at the time.

4 Q And after you talked with that individual what
5 was the next — who was that individual's name?

6 A Rakim Floyd.

7 Q Okay. What was his mother's name?

8 A I want to say Tasha Brown if I'm not mistaken.

9 Q And after speaking with them what was the next
10 step you took in the investigation?

11 A After speaking with her we — if I'm not mistaken
12 we went back over into the residence where we went
13 the first time looking for David, and we spoke with
14 an individual. Went looked for — we had a name by
15 the name of Rashawn Bailey, and we start looking for
16 him.

17 Q Did you find him?

18 A Not at that time.

19 Q Okay, all right. So what was the next step in
20 your investigation?

21 A Continued talking with the individuals in the
22 neighborhood doing the same thing, canvassing,
23 talking with people in the neighborhood. Sometime
24 after that Rashawn Bailey, we located him, and we
25 brought him down to the City-County Complex and we

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1 spoke with him in detail.

2 Q All right. And after speaking with him where, if
3 anywhere, did you go to look for anything?

4 A While speaking with — during the investigation
5 speaking with him, he gave names of individuals who
6 he said was involved with the incident, the
7 homicide, the missing person homicide type case. He
8 took us to a residence located at 419 West Sumter
9 Street 'cause we were looking for David. He said,
10 we asked him do you know David, he said yes, he had
11 seen David, we asked him did he know where David was
12 living.

13 MR. HOFFMEYER: Your Honor, this is all
14 hearsay.

15 MR. CLEMENTS: Your Honor, may we
16 approach.

17 THE COURT: All right.

18 (WHEREUPON, counsel approached the Bench
19 for an off-the-record discussion.)

20 BY MR. CLEMENTS:

21 Q Investigator Drayton, after speaking some with
22 Mr. Bailey where did you go?

23 A If I'm not mistaken the address is 419 West
24 Sumter Street.

25 Q And when you went to Sumter Street who did you

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1 see there?

2 A Individual came to the door, Mr. Jordan if I'm
3 not mistaken.

4 Q And what did you tell Mr. Jordan?

5 A That we were looking for his son David, and we
6 need to speak with him reference to a matter.

7 Q And what was David's last name?

8 A Johnson.

9 Q All right. And after speaking with him where did
10 you go next?

11 A We returned back to the complex, the conference
12 room of the second floor of this building.

13 Q What, if anything, did you tell Mr. Jordan to
14 relay to his son if he saw him?

15 A If and when he saw his son to have his son get in
16 contact with us. And we left — I'm pretty sure I
17 left my card with him.

18 Q Where else did you leave that information or put
19 that information?

20 A Just different people in the streets, just by
21 that time different indi— we were receiving
22 information from different individuals so we just
23 put the word out in the street that we were looking
24 for an individual by the name David Johnson so if
25 anyone saw him just advise us, come see us.

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1 Q After talking with Rashawn Bailey where else did
2 you go?

3 A I can't remember exactly when it was, but I
4 received some information to actually go to Rashawn
5 Bailey's house and spoke with his mother.

6 Q Okay, all right. I want to back up a little bit
7 from that. What -- who were you looking for at this
8 time?

9 A The individuals?

10 Q Who was the man that you were looking for?

11 A David Johnson was the main person we were looking
12 for at that time.

13 Q As a suspect but who else that wasn't a suspect
14 that you were looking for had not been found yet?

15 A We were looking for David Johnson, Rashawn Bailey
16 —

17 Q Who was the victim?

18 A —Anthony Wilson. Pardon?

19 Q Who was the victim?

20 A Ms. Hayes.

21 Q Had you located her yet?

22 A Oh, excuse me, I'm sorry. During this entire
23 incident we were — myself and Sergeant Godwin
24 weren't particularly specifically out looking for
25 Ms. Hayes at that time; but other officers, other

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1 members of the Police Department, as a matter of
2 fact, the Sheriff Department actually had
3 individuals from up the jurisdiction to include SLED
4 looking, other individuals continuously looking for
5 the body of Ms. Hayes.

6 Q I'm sorry when I confused you when I was saying
7 who were you looking for, I meant law enforcement
8 all together, I apologize.

9 A Right, yes, sir.

10 Q Okay. So after talking and receiving other
11 information, where if anywhere, did you and
12 Detective Godwin, or where did you send anybody else
13 to look for Ms. Hayes?

14 A To look for Ms. Hayes specifically, if that's the
15 question that you're asking?

16 Q Yes.

17 A It was — while we were still interviewing
18 Mr. Bailey we received some information that a
19 location where Ms. Hayes may be located at and —

20 Q Did you check that out?

21 A Yes, I was with one of the officers that did go
22 to that particular location.

23 Q And where was that location?

24 A If you're familiar with north Florence area
25 Oakland Avenue, Royal Street, right on Royal Street

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1 to go down to Malloy Street, make a left on Malloy
2 Street and it turns into unimproved portion of the
3 road called dirt road. It was on a dirt road. It
4 goes back out to old Marion Highway where Wilson
5 High School is located at.

6 Q Well, where is Washington Street at?

7 A Washington Street is located off of north Irby
8 Street, if you're familiar with I think it's a
9 learning center, day care school, on north Irby
10 Street just before you get to Roughfork Street.
11 Washington Street, it's like two streets prior to
12 Roughfork.

13 Q What did y'all find when y'all looked at
14 Washington Street?

15 A Well, we went there also because we were directed
16 to go there to look for -- this was prior to going
17 to Malloy Street. We went there and to an abandoned
18 residence. We were told that her body may --

19 MR. HOFFMEYER: Your Honor, I object to
20 hearsay.

21 MR. CLEMENTS: Don't tell me what anybody
22 told you.

23 THE COURT: Sustained.

24 THE WITNESS: We received information that
25 the body that may have been at that location. We

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1 went there and the body was not at that location.

2 BY MR. CLEMENTS:

3 Q Okay, all right. So after you went there and
4 checked that out where did you go back to?

5 A Back here at the complex. We came back to the
6 complex here.

7 Q All right. And by that time who would come up to
8 the complex during that time that y'all were looking
9 for?

10 A David Johnson.

11 Q Okay. When David Johnson got to the complex did
12 you see him or Melvin Godwin see him, or who saw him
13 there?

14 A I saw him. I know I saw him. I think Sergeant
15 Godwin may have saw him briefly also. We were in
16 the process of interviewing another individual and
17 what we did was ask him -- he said my name is David
18 Johnson, heard y'all looking for me. Yes, sir, we
19 are. We're talking with someone else right now, if
20 you can just have a seat in another part of the
21 investigation division which would have been with
22 Lieutenant Compton at the time and asked him to have
23 a seat with Lieutenant Compton and we would get with
24 him as soon as we could.

25 Q Okay. And from that point forward -- beg the

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1 Court's indulgence a moment.

2 THE COURT: Yes, sir.

3 BY MR. CLEMENTS:

4 Q Now who were the individuals that you talked to
5 before you talked to David Johnson that were
6 suspects in this case?

7 A The first person was Rakim Floyd. We spoke with
8 Rakim and his mother. Next was Rashawn Bailey and
9 then David Johnson.

10 Q Okay. And when did you talk to Anthony Wilson,
11 before or after you talked to David Johnson and the
12 others?

13 A After.

14 Q After, okay.

15 A Correct.

16 Q All right. Now I want to back you up to
17 something you were starting to tell me about, and I
18 jumped ahead, I apologize. But tell us what
19 interaction you had with a Ms. Leia Mitchell. First
20 tell me who she is.

21 A Leia Mitchell is the mother of Rashawn, excuse
22 me, stepmother of Rashawn Bailey I think it is. I
23 think I heard some testimony about Terrance
24 Mitchell, his mother.

25 Q His mother, okay. Did you have an occasion to go

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1 back to her house?

2 A Yes, sir, I did. I received information, phone
3 call.

4 Q And as a result of that phone call what did you
5 do?

6 A I went to her residence.

7 Q And getting to a residence what, if anything, did
8 you retrieve from her residence?

9 A I was given -- I retrieved -- I was given, if I'm
10 not mistaken, two necklaces and two credit cards.

11 Q All right.

12 MR. CLEMENTS: At this time, Your Honor,
13 I'd ask permission for Sergeant Drayton to step
14 down.

15 THE COURT: Yes, sir.

16 (Witness complies by stepping off the witness
17 stand.)

18 BY MR. CLEMENTS:

19 Q I'm gonna ask you to stand over there please.

20 A Sure.

21 Q That's State's Exhibit 77. Sergeant Drayton, can
22 you tell us if you can identify that and what that
23 is.

24 A Yes, I can. That's one of the necklaces that was
25 given to me.

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1 Q All right. And where did you recover that from?

2 A The residence of Rashawn and Terrance Mitchell's.

3 Q And what was it in?

4 A A clear type grocery bag, Piggly Wiggly, Bi-Lo
5 grocery bag.

6 Q Plastic bag?

7 A Plastic bag.

8 Q I want to show you State's Exhibit 78. And can
9 you tell me what that is, if you can recognize that.

10 A Yes, that was the second necklace. The portion
11 that's appeared to have been broken, attached to it
12 sometime.

13 Q Where did you recover that from?

14 A Same location, same bag.

15 Q All right. I want to show you State's Exhibit
16 79. Can you tell me what that is and where you
17 located that.

18 A That's a Safe Federal Credit Union visa card and
19 with the — you can see the name here, I guess,
20 Willie M. Hayes, the victim's name on the credit
21 card in the same bag.

22 Q You recovered that from the same place?

23 A Yes.

24 Q I'm gonna show you State's Exhibit Number 80.

25 Can you tell us what that is.

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1 A Yes, that is a Bank of American platinum visa
2 credit card, and the person it's issued to is Willie
3 Hayes.

4 Q And where did you recover that from?

5 A All the items were recovered from this same
6 plastic bag.

7 Q All right.

8 A From the residence of Terrance Mitchell and
9 Rashawn Bailey.

10 Q All right. You can step back up here. Thank
11 you.

12 A (Witness complies.)

13 Q Can you tell us, what did your investigation
14 reveal about who was in and out of that house where
15 Leia Mitchell lived?

16 A During our investigation we were able —

17 MR. HOFFMEYER: Your Honor, I would object
18 to that. That's got to be hearsay.

19 MR. CLEMENTS: I'm not sure. May we
20 approach.

21 (WHEREUPON, counsel approached the Bench
22 for an off-the-record discussion.)

23 THE COURT: I'll sustain as to the form of
24 the question. You can rephrase your question.

25

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1 BY MR. CLEMENTS:

2 Q Sergeant Drayton, what did your investigation
3 reveal about who resided in that house?

4 A Leia Mitchell, her boyfriend, I think his name
5 was Lavern -- I can't remember the last name. It
6 was Lavern. Terrance Mitchell, Rashawn Bailey
7 resided at the residence.

8 Q And who resided in the apartments right next to
9 it?

10 A Rakim Floyd.

11 Q Okay, all right. And were there ever any other
12 individuals involved in this that you saw there when
13 you went to that house?

14 A That I saw involved with this?

15 Q Yes, that you knew who they were either then or
16 later?

17 A Mr. Anthony Wilson.

18 Q Okay, all right. When if any time did you see
19 David Johnson there or not?

20 A I don't remember seeing David Johnson there.

21 Q Okay.

22 A When we went there the first time I don't recall
23 if he was there, if I saw him or not. There were
24 several individuals there and we asked for him, but
25 I don't remember if I saw him there or not.

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1 Q Several other individuals?

2 A Several young males was there.

3 Q Okay, all right. Now let me take you back to the
4 City-County Complex. When you finished talking to
5 Mr. Rashawn Bailey what did you do next and who did
6 you talk to next or where did you go next?

7 A When we...

8 Q When you were finished with Mr. Bailey?

9 A I was trying to think 'cause we had several
10 conversations with him. If I'm not mistaken we
11 finished our conversation with Mr. Bailey. That's
12 when we spoke with David Johnson.

13 Q Okay. And tell us about that. Tell us about
14 your encounter with Mr. Johnson and where you went.

15 MR. HOFFMEYER: Your Honor, this is
16 subject to my -- or I'm renewing my prior objection.

17 THE COURT: All right, so noted.

18 MR. HOFFMEYER: Thank you, sir.

19 THE COURT: Overruled.

20 BY MR. CLEMENTS:

21 Q Please answer the question. You need me to
22 repeat that?

23 A I think I understand it. This would be -- I was
24 talking to earlier about when -- I'll go back
25 through it again, the location off Malloy Street.

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1 As a result of talking to Mr. Johnson we went to
2 Malloy Street, a dirt road portion of Malloy Street.

3 Q Who took you there?

4 A David Johnson directed us there. He gave
5 directions and he was driven there.

6 Q Okay. Was he in the vehicle with you?

7 A No, he wasn't. He was in the vehicle I think it
8 was Lieutenant Compton, Sergeant Drulis. Lieutenant
9 Calhoun I think was in the lead vehicle.

10 Q How many vehicles went out there?

11 A Two.

12 Q Okay. They were the lead vehicle?

13 A That's correct.

14 Q Who was in the vehicle with you?

15 A Major Raines was driving, myself, and Sergeant
16 Godwin.

17 Q All right. And where exactly did y'all go?

18 A Once again Oakland Avenue. Oakland Avenue goes
19 towards Pet's Superette, Wilson Road. Royal Street,
20 make a right on Royal Street, go down to Malloy
21 Street would be the first, the entrance of going to
22 a housing development commonly referred to as
23 Woodland. Left on Malloy Street which turns into an
24 unimproved road which is commonly referred to as a
25 dirt road. Going back towards Wilson Road which

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1 will take you to Wilson High School.

2 Q All right. And what happened after y'all got on
3 the dirt section of the road?

4 A Shortly after we got on the dirt portion the lead
5 vehicle stopped. When the lead vehicle stopped, I
6 don't remember the conversation but the lead vehicle
7 stopped. When the lead vehicle stopped Sergeant
8 Godwin exited the vehicle that we was in. Sergeant
9 Godwin made two or three steps toward the ditch and
10 he said we have something here.

11 Q Okay. And what was that that was there in the
12 ditch?

13 A Later -- at the time we didn't know. It was
14 subsequent revealed to be the body of Ms. Hayes.

15 Q And after finding that where did you go?

16 A Returned back to the City-County Complex with
17 David Johnson.

18 Q And who else?

19 A Sergeant Godwin and Lieutenant Compton.

20 Q All right. Now when you got back to the complex
21 with David Johnson, Compton, Godwin, and yourself,
22 where did y'all go?

23 A To the -- returned back to the conference room
24 second floor of this building is where we
25 typically -- there's a conference room. It's a

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- 1 large conference room we also use it for meetings
2 and also it serves as an interview room also.
- 3 Q Did you mirandize Mr. Johnson yourself?
- 4 A No, sir, I did not.
- 5 Q Was Mr. Johnson mirandized in your presence?
- 6 A Several times.
- 7 Q And who mirandized him?
- 8 A Sergeant Godwin.
- 9 Q Okay. And that was in your presence?
- 10 A Yes, sir, it was.
- 11 Q Okay. What did you observe about Mr. Johnson
12 while he's being mirandized and while y'all were
13 having your initial conversations with him?
- 14 A I observed that he was being attentive. He was
15 paying attention. He was answering questions that
16 we were asking, participating in conversation.
- 17 Q Did y'all take a statement from him?
- 18 A Yes, that was the last thing we did. We took an
19 audio recording of his conversation.
- 20 Q Okay. And as a result of talking with him where,
21 if anywhere, did you go?
- 22 A We returned back to the residence of 415 West
23 Sumter Street which was the residence that he was
24 residing at that time.
- 25 Q What corner was that on?

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1 A Corner of Sumter and Sanborn.

2 Q Are you sure about the exact number of the house?

3 A I'm pretty sure 419, I know the corner of Sumter
4 and Sumter and Sanborn.

5 Q It is the corner of Sumter and Sanborn?

6 A Correct.

7 Q And whose house was that?

8 A David Johnson.

9 Q Okay. Who took you there?

10 A David Johnson.

11 Q And what was his purpose for taking you there?

12 A He stated that there were some items located at
13 the residence that came from the victim's residence.
14 He wanted to show -- he voluntarily wanted to show
15 us where the items were at.

16 Q And where were those items?

17 A If you go around to the rear of the residence by
18 a little back porch stoop type there was a crawl
19 space at the edge of the house, right at the edge of
20 a crawl space.

21 Q And what did you find there?

22 A If I remember it was like maybe two DVDs, VCRs,
23 electronic equipment, several items of electronic
24 equipments.

25 Q And who did you have recover those?

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1 A Well, when we first saw the two items, when I
2 first saw the items I didn't go -- didn't do
3 anything, notified crime scene. Corporal Hill with
4 the crime scene unit, he responded to that location.
5 Told him what we had, I advised him what we had. He
6 took possession of all the items at that time.

7 Q And tell me, Sergeant Drayton, what if anything,
8 did you and Compton and Godwin do to threaten or
9 coerce or scare Mr. Johnson into taking y'all out
10 there to Sumter and Sanborn?

11 A Absolutely nothing. He volunteered to show us.

12 Q All right. And who did he say put those items
13 out there?

14 A If I recall correctly he said that other
15 individuals the other involved with this may be
16 Rashawn, Rakim -- I'm not sure, but he said other
17 individuals that was with him, that he didn't do it.

18 Q Okay, all right. Did you ever have occasion to
19 go to -- well, let me ask you this first, did you
20 know where Mr. Amp Wilson lived?

21 A Did I know?

22 Q Yeah.

23 A At the time, no, we didn't.

24 Q Did you find out after talking to him?

25 A Not after talking to Mr. Johnson.

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1 Q Okay.

2 A How we located Mr. Wilson, we got information,
3 name of his mother. We went to an area in east
4 Florence side of town. It took us a while to find
5 his mother, but we located her. And she directed us
6 where he was at, that he was located in the Magnolia
7 Trace Apartments located at Oakland Avenue with some
8 individuals there. That's where we located him.

9 Q But where did he live with his mother?

10 A His mother's address was on Palmetto Street if
11 I'm not mistaken; but the address where he was,
12 where we locate him at, was off Royal Street, the
13 Magnolia Trace Apartments. That's where he was
14 located at.

15 Q All right. What, if anything, related to this
16 incident was recovered from his mother's home on
17 Palmetto Street or where you located him at Magnolia
18 Trace Apartments?

19 A There were no items related to this incident
20 recovered at either location.

21 Q All right. Did you have occasion to go to or
22 send anyone to Stackley Street?

23 A Yes, sir, I responded to Stackley Street as well.

24 Q Why did you go to Stackley Street?

25 A If I'm not mistaken, the morning of the 29th —

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1 this incident occurred on the 24th, 25th, we
2 responded the 25th. The morning of the 29th, I was
3 at home getting dressed prepared to come to work on
4 day shift. It was -- normally our hours begin at
5 8:30 in the morning. I -- I can't remember exact
6 what time, it was before 8:30. I got a call at home
7 to respond to Stackley Street. And it was in
8 reference to one of the individuals we were looking
9 for, individual by the name of Rakim Floyd may --
10 that he may have been located in an abandoned
11 apartment on Stackley Street.

12 Q And did you find Rakim Floyd at Stackley Street?

13 A Yes, sir, we did.

14 Q What was he doing there?

15 A When I walked in I was one of the first ones to
16 go in behind one of the uniform patrol guys. He was
17 lying on a mattress on the floor asleep.

18 Q Okay. What, if anything, property wise was there
19 that relates back to Ms. Hayes, her car, or her home
20 at Liberty Street?

21 A There were no items we could relate back to
22 Ms. Hayes, Liberty Street, or her car.

23 Q Nothing?

24 A Nothing, no items.

25 Q All right. Beg the Court's indulgence a moment.

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1 Sergeant Drayton, what were any remaining leads at
2 that time, 2008, that were left to be followed up
3 on, if any?

4 A There was none. We exhausted all leads we had at
5 that time.

6 Q When did anything else come to light to followup
7 on any other leads?

8 A I don't recall the exact date, but it was
9 sometime, latter part of maybe in October 1st, first
10 part of November of 2011 when we received some
11 information that to speak with attorney by the name
12 of Guy Ballenger, the attorney of Mr. Wilson.

13 Q All right. As a result of talking with
14 Mr. Ballenger and Mr. Wilson, what did you do or
15 what did you have forensics do?

16 A We resubmitted some evidence that was collected
17 and initially was provided to SLED. We resubmitted
18 some evidence to SLED for further analysis.

19 Q And what did you submit with that for comparison,
20 from what individual?

21 A We submitted a what we call a buccal swab from an
22 individual for comparison.

23 Q And who was that individual?

24 A Mr. Gregory Montgomery.

25 Q All right. Had you ever heard Gregory

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1 Montgomery's name before in this?

2 A Going back in direct -- early in investigation
3 we -- I heard a name, nickname G or Greg, but we had
4 no idea who it was. But the full name Gregory
5 Montgomery, we didn't know who that was until we
6 spoke with Mr. Ballenger.

7 Q And earlier in the investigation where did you
8 get the name, who mentioned the name Greg and said
9 his nickname was G?

10 A Greg and G, that would have come from David
11 Johnson.

12 Q Okay. And who did David Johnson refer to him as?

13 A His cousin.

14 Q Okay. Now I want to back up now, if I may, to
15 the statement that you said you took from Mr. David
16 Johnson.

17 A Yes, sir.

18 Q How did y'all take this statement and maintain
19 it?

20 A It was a -- the statement was a recorded audio
21 statement that was a department issued voice
22 recorder each investigator is issued. Once we --
23 the statement was recovered, was secured, the
24 statement was then taken to crime scene or crime
25 scene unit; I can't remember which one. The crime

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1 scene tech we gave it to with the protocol, and we
2 did follow the protocol. We would give that
3 statement to, the tape recorder, to one of the crime
4 scene techs. They will take that statement,
5 download it to their computer system. I can't tell
6 you exactly how they do it, with the investigation
7 part of it, let them do their part. And
8 subsequently it will be given to a secretary, if you
9 will, type within the police department. She will
10 then transcribe it. And then you will have a, the
11 transcription, which would be what we call the hard
12 copy. Then you also have the digital part on a CD
13 and we place it in evidence.

14 Q All right. I'm gonna show you what's State's
15 Exhibit 116, and you know what this is?

16 A Statement of David Johnson.

17 Q In CD form?

18 A In CD form, yes, excuse me.

19 Q Now while y'all were talking to him would y'all
20 talk to him before y'all cut on the recorder?

21 A Yes, sir, it's suggested — and we follow this
22 protocol, this practice. Even though Lieutenant
23 Compton had already spoke with him and advised us
24 things that were said, myself and Sergeant Godwin
25 were the co-lead investigators in this case so what

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1 we did was re-interview him in a interview status,
2 advise his rights by Sergeant Godwin before we
3 interviewed him. And we just talk about the entire
4 case, talk about the entire incident.

5 Q Let me stop you right here. Did Compton to your
6 knowledge do a full interview or just get some
7 information?

8 A I'm not sure how much he got, but there more came
9 out the interview we came to talk with him.

10 Q Okay, all right. Please continue. I didn't mean
11 to interrupt you.

12 A Yes, sir. And at some point -- and there's never
13 a time limit when you're interviewing someone.

14 They're never a time limit on it. And we felt like
15 there was nothing else to ask or anything else he
16 could assist as far as statements he was giving. We
17 asked him did he mind we record the conversation.

18 He stated no at that time so he was advised of his
19 Miranda warnings, his rights again, and we recorded
20 the statement.

21 Q All right. What else, if anything, in addition
22 to reading his Miranda rights do you do to make sure
23 his rights are protected? Do you get him to do
24 anything?

25 A Yes. During one of those times his rights was

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1 read to him by Sergeant Godwin. It was read from a
2 form we call — it's a local form issued by the
3 Florence Police Department called a waiver of rights
4 form where —

5 Q Well, if I might — and excuse me for
6 interrupting you, pass to you State's Exhibit 120.
7 Can you identify that.

8 A Yes, this is the waiver of rights form that was
9 read to him.

10 Q All right. And are there any names or signatures
11 on that?

12 A The first name it was — it says: I, David
13 Johnson, which Mr. David Johnson print his name.

14 Q Did he do that in your presence?

15 A Yes, he did.

16 Q Okay.

17 A And then after the conclusion of the statement
18 there's a portion, a place for Mr. Johnson to have
19 signed his name, which he did in my presence. It's
20 dated. Sergeant Godwin signed it and I signed it.

21 Q Where did Sergeant Godwin sign it?

22 A Sergeant Godwin's signature is directly up
23 Mr. Johnson signature, then my signature under
24 Sergeant Godwin signature.

25 Q Was that done in your presence?

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1 A Yes, sir, it was.

2 Q Okay. What was the date on this?

3 A The date was August the 27th, 2008.

4 Q All right. Why do you do this?

5 A It's a matter of documentation in reference to
6 provide if we need any further — that we did advise
7 individual of his constitutional rights, and he did
8 sign a waiver indicating he understood his rights
9 and was willing to talk to us without attorney
10 present.

11 Q What was your conclusion and your observation of
12 Mr. Johnson understanding what y'all were talking to
13 him about?

14 A It appeared to me at the time and throughout the
15 statement that Mr. Johnson clearly understood his
16 rights and didn't have any problems or answering any
17 questions or giving the statement free and
18 voluntarily.

19 Q And what caused you to draw that conclusion?

20 A Just based on his response. We'd ask him a
21 question; he would respond back. He didn't ask us
22 to repeat over and over again. Seemed he understood
23 our questions like several, many, many interviews
24 that I've conducted before, statements I received
25 before. There was nothing different than from any

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1 of the others.

2 Q What, if any, inappropriate responses either
3 verbally or by his body language did he give?

4 A None.

5 Q All right. Have you ever encountered people to
6 give inappropriate response?

7 A Yes, sir, I have.

8 Q When that happens and you interview them what did
9 you do?

10 A Just stop the interview.

11 Q Okay. Was there anything or not that occurred
12 with Mr. Johnson that caused you to hesitate or
13 caused you to want to stop and make sure what was
14 going on?

15 A No, sir, there was nothing, no indication Mr.
16 Johnson gave that he did not understand what was
17 being said, what, didn't understand his rights.

18 Q Let me ask you this, how about what he said to
19 you? Were you able to understand what he was saying
20 to you?

21 A Yes, sir.

22 Q Okay. What, if anything, was done that could
23 have scared Mr. Johnson or threatened him or coerced
24 him or beat down his will to get him to talk to
25 y'all?

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1 A Nothing.

2 Q What did he do, if anything, that was voluntary
3 to you?

4 A First thing we took knowledge that he understood
5 his rights the first time. Sergeant Godwin read
6 them to him. To answer questions during the
7 interview, to sign the waiver of rights form, to —
8 the third time he advised Sergeant Godwin that he
9 did understand his rights. And during the
10 statements he answered all the questions freely and
11 voluntarily. He answered the questions when he was
12 asked. And made statements freely. Some portion of
13 his statement there was like we asked a question he
14 would like give a brief sentence or a bullet
15 comment, if you would, and at some portion of his
16 statement he would actually go into details about
17 the event.

18 Q All right. And what did he do, if anything,
19 physically to followup on things that he told you?

20 A From information he provided us?

21 Q Yeah. From information he provided you, what did
22 he do to actually physically followup on what he
23 told you to show you —

24 A He showed us -- he took us to two locations.

25 Q Okay.

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1 A He directed us to two locations based on his
2 statements.

3 Q And the first location was?

4 A The dirt road portion of Malloy Street.

5 Q Where the —

6 A Where Ms. Hayes' body was located.

7 Q And what was the second location?

8 A To his residence where items that came from his
9 Ms. Hayes' residence was located.

10 Q All right.

11 MR. CLEMENTS: Your Honor, at this time
12 we'd ask the Court's permission to publish State's
13 Exhibit 116, which is the statement of David Johnson
14 dated August 27th, 2008.

15 THE COURT: All right. I'm going to note
16 your objection to that, Mr. Hoffmeyer.

17 MR. HOFFMEYER: Yes, sir.

18 THE COURT: Which the Court has overruled
19 but it's noted for the record, and I'm going to
20 allow you to play it.

21 MR. HOFFMEYER: Thank you, sir.

22 (State's 116, audio statement of David Johnson, was
23 played for the jury.)

24 BY MR. CLEMENTS:

25 Q Suspect Drayton, who did you talk to first?

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1 A Rakim Floyd.

2 Q Who second?

3 A Rashawn Bailey.

4 Q Who third?

5 A David Johnson.

6 Q Who last?

7 A Well, the next —

8 Q The fourth —

9 A —would have been —

10 Q In 2008 who did you talk to last?

11 A Anthony Wilson and then Rakim Floyd.

12 Q And then in 2011 you talked to who?

13 A Gregory Montgomery.

14 Q How old was Rakim Floyd at that time?

15 A 14 years of age.

16 Q How old was Anthony Wilson at that time?

17 A 14 years of age.

18 Q How old was Rashawn Bailey at that time?

19 A 19 years of age.

20 Q And how old was David Johnson at that time?

21 A 22 years of age.

22 Q Thank you. Please answer any questions

23 Mr. Hoffmeyer has.

24 THE COURT: Before we do that, ladies and
25 gentlemen, I'm gonna get you to step into your jury

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1 room. I have a matter of law I need to take up.
2 Have no conversation about the case. Let Mr. Propps
3 know if you need anything. And this will just be a
4 short break.

5 (WHEREUPON, the jury was removed from the
6 courtroom at 2:53 p.m., and the following
7 proceedings commenced in open court.)

8 THE COURT: All right, Mr. Hoffmeyer.

9 MR. HOFFMEYER: Thank you.

10 **PROFFER EXAMINATION**

11 BY MR. HOFFMEYER:

12 Q Sergeant Drayton, you testified a little while
13 ago now about the statement you took from my client
14 Mr. Johnson?

15 A Yes, sir.

16 Q And at that time you had no knowledge of his
17 intellectual disability back in 2008, did you?

18 A I did not.

19 Q Okay. And I'm sure when you interview folks you
20 want to make sure they understand the statement,
21 understand what they're doing when they give you a
22 statement; is that right?

23 A That's correct.

24 Q And you would — if you were aware of someone's
25 intellectual disability that is something you would

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1 consider when you take a statement from them; is
2 that right?

3 A That's right.

4 Q Okay. And now — but before I get there, if you
5 were aware of mental disability would you take
6 further steps before interviewing a person to make
7 sure they understood?

8 A If I believe the person did not understand the
9 questions.

10 Q Okay. If it raised a concern to you?

11 A Yes, sir.

12 Q And now you are aware having been present and by
13 the State's own expert, that my client suffers from
14 a mental retardation intellectual disability.

15 You're aware of that; is that right?

16 A Based on statements from experts, yes.

17 Q Yes, sir. And if you had been aware of his
18 intellectual disability at the time that you took
19 the statement in 2008 that you are aware now, would
20 you have gone further to make sure he understood his
21 rights?

22 A I would have did nothing different than what we
23 did that night.

24 Q Thank you, sir. I don't have anything.

25 THE COURT: All right. And just to

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1 reiterate the Court's ruling, you will obviously be
2 allowed to ask him about what he knew about his
3 educational background, his schooling, his abilities
4 to read, write, whatever. Where the line is and
5 where it has been throughout the case was any
6 references of you putting in any evidence that he
7 has an intellectual disability.

8 MR. HOFFMEYER: Yes, sir.

9 THE COURT: So anything short of that
10 you're certainly free open to ask.

11 MR. HOFFMEYER: Thank you.

12 THE COURT: Okay.

13 (WHEREUPON, a recess was taken from the
14 proceedings.)

15 THE COURT: Mr. Propps, if you will please
16 ask the jury to join us please.

17 (WHEREUPON, the jury was returned to the
18 courtroom at approximately 3:04 p.m., and
19 the following proceedings commenced in
20 open court.)

21 THE COURT: All right. Thank you, ladies
22 and gentlemen for your courtesy. We'll now
23 recognize Mr. Hoffmeyer for his cross-examination.

24 MR. HOFFMEYER: Thank you.

25 **CROSS - EXAMINATION**

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1 BY MR. HOFFMEYER:

2 Q Officer Drayton, I just have a few questions for
3 you I believe. First of all, I'd like to take you
4 back to that, to the statement for just a few
5 moments. It's my understanding and I believe this
6 has been testified to and you're probably aware that
7 this statement was taken, recorded statement was
8 taken at 3:15 a.m., correct?

9 A The recorded statement, yes, sir.

10 Q Yes, sir. And Officer Drayton, my client had
11 been there from 4 to 4:30 in the afternoon through
12 on up to midnight, 3:15 a.m. is when the recording
13 started, correct?

14 A That's correct.

15 Q Now the statements that were taken from my client
16 Mr. Johnson before the recording started were not
17 recorded in any form or fashion, were they?

18 A That's correct; they were not.

19 Q Okay. And y'all didn't even take notes of what
20 he was saying at that time that you can provide for
21 me to look at; is that right?

22 A That's correct.

23 Q Now as far as what occurs, the Miranda rights are
24 read and you were present for that at least when
25 Officer Godwin was reading them and my client

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1 indicates he understands and therefore you go
2 forward with the statement; is that right?

3 A That's correct.

4 Q And you didn't do anything further or other than
5 that to make sure he understood, did you?

6 A No, sir.

7 Q Now with regard to my client, at that time you
8 had no knowledge of his educational background, did
9 you?

10 A No, sir, I did not.

11 Q You wouldn't have had knowledge of in writing his
12 name whether he could read or write, would you?

13 A No, sir, I would not.

14 Q And you would not have had any knowledge if he
15 was in special educational classes in school, would
16 you?

17 A I would have not.

18 Q And you would have not had any knowledge if he
19 was suffering from mental retardation or
20 intellectual disability, would you?

21 A I would have not.

22 Q And if someone is suffering from mental
23 retardation or has problems mentally you go further
24 to make sure they understand their rights; don't
25 you?

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1 A That's correct.

2 Q Now Officer, as far as my client you have
3 indicated that he gave you this statement, and in
4 fact, it seems that you were telling us on direct
5 examination that he was very cooperative; isn't that
6 right?

7 A That's correct.

8 Q And when you would ask a question or Officer
9 Godwin would ask a question he would do the best he
10 could to answer, by what you were seeing?

11 A That's correct.

12 Q And in fact, he gave you a statement that aided
13 your investigation; didn't he?

14 A It assisted with the investigation and
15 corroborated with information we'd already received,
16 yes, sir.

17 Q Well, you weren't aware where Ms. Hayes was at
18 that time —

19 A That's correct.

20 Q —before he told you?

21 A That's correct.

22 Q You didn't know?

23 A That's correct.

24 Q And in fact, you'd been looking at a house on
25 Washington Street; hadn't you?

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1 A That's correct.

2 Q And not only that he cooperated to the extent as
3 you told us, he took you over to his dad's house?

4 A That's correct, he did.

5 Q Now you had met with Rasheem, or Rakim I believe
6 it is, Bailey before you talked to my client; didn't
7 you?

8 A Yes, sir.

9 Q And you were meeting with him when my client
10 first got there, is that right, approximately?

11 A That's correct also.

12 Q And so you had been — if this statement was
13 taken at 3:15 a.m. you had been discussing the ins
14 and outs of the case to a certain extent with Rakim
15 Bailey for hours; is that right?

16 A That's correct.

17 Q I believe it's Rashawn Bailey; is that correct?

18 A Rashawn, yes, Rashawn Bailey.

19 Q I apologize. I got you. Now you also took a
20 statement from Anthony Wilson in the case, right?

21 A Yes, sir.

22 Q And that statement was taken on August 27th,
23 2008; wasn't it?

24 A That's correct.

25 Q With regard to what you have told us in terms of

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1 finding things, I believe you discussed with us that
2 there were two necklaces and credit cards found at
3 Ms. Mitchell's house; is that right?

4 A That's correct.

5 Q And that was Ms. Lilly Mitchell; is that right?

6 A It's Lilly or Leia Mitchell. It's the mother of
7 Terrance Mitchell and the stepmother of Rashawn
8 Bailey.

9 Q Mother of Terrance Mitchell and mother of Rashawn
10 Bailey; is that right?

11 A Yes, stepmother. Mother/stepmother, yes, sir.

12 Q And isn't that where my client told you you'd
13 find those things?

14 A No, sir.

15 Q Didn't he say Ms. Lilly?

16 A He didn't tell us that's where we found if I
17 remember correctly. He did not tell us that's where
18 it was found. How I found out they were there I
19 received a phone call. I don't know if it's hearsay
20 or not. I received a phone call from —

21 Q Well, just don't tell me what they said. You
22 received a phone call?

23 A Yes, sir.

24 Q Well, do you remember in his statement saying
25 that Anthony Wilson took the necklaces and the

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1 credit cards to Ms. Lilly's, do you remember that?

2 A Yes, sir, I do.

3 Q Do you know whether that was Ms. Lilly Mitchell?

4 A He was saying the same person.

5 Q It was the same person?

6 A I believe the same person, yes, sir.

7 Q So he told you that Anthony Wilson had taken
8 those things to the Mitchell residence which turned
9 out to be true?

10 A During his statement he made mention the stuff
11 was taken there. Later on it turned out to be true,
12 yes, sir.

13 Q So he was being truthful and cooperative about
14 that as well; wasn't he?

15 A The information he gave was turned out be true
16 that was there, yes, sir.

17 Q Wasn't he cooperative?

18 A He was cooperative.

19 Q Thank you. Now Rashawn Bailey lived there and
20 Terrance Mitchell, right, with Ms. Mitchell?

21 A Yes, sir, that's correct.

22 Q And you went over there to the residence at some
23 point; didn't you?

24 A Yes, sir.

25 Q And I believe you told us on direct that when you

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1 went over there you saw Rashawn Bailey there; didn't
2 you?

3 A No, sir.

4 Q You did not?

5 A No, sir.

6 Q Didn't you see Rakim Floyd there?

7 A Rakim Floyd.

8 Q Okay, you saw Rakim there?

9 A Yes, sir.

10 Q And you also saw Anthony Wilson there; didn't
11 you?

12 A Yes, sir.

13 Q Okay. So you find these things from the victim's
14 residence at a home where Rakim Floyd and Anthony
15 Wilson are there, right?

16 A They were not there at the time, but they were
17 there prior to.

18 Q Prior to you going and getting the stuff?

19 A Yes, sir.

20 Q So Rakim Floyd and Anthony Wilson were there at
21 that residence prior to your finding the items from
22 the victim's residence, right?

23 A Yes, but Mr. Johnson also stated he was there at
24 one time also.

25 Q Well, you didn't tell us that on direct. Now you

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1 remember that?

2 MR. CLEMENTIS: Your Honor, I object to
3 this line of questioning at this point. I think it
4 was an objection to the question I asked about
5 that, and we didn't go any further at that time.

6 MR. HOFFMEYER: We're talking about the
7 defendant —

8 THE COURT: Come on up.

9 (WHEREUPON, counsel approached the Bench
10 for an off-the-record discussion.)

11 THE COURT: All right.

12 BY MR. HOFFMEYER:

13 Q Now you said as you just told us that my client
14 said he'd been to the Mitchell residence too; is
15 that right?

16 A That's correct.

17 Q And he told you that?

18 A That's correct.

19 Q So he cooperated with you there too; didn't he?

20 A By telling us he was at the residence, yes, sir.

21 Q Yes, sir. And we also found out these two other
22 individuals was there and Rakim Floyd lived near
23 there, is that correct, on Liberty Street?

24 A That's correct.

25 Q And of course, Rashawn, who you said was not

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1 there at that time, lived with his mother obviously
2 right there on Liberty Street, correct?

3 A That's correct.

4 Q And that bloody — those bloody items found in
5 the bag was found in close proximity to, well
6 relatively close, half a block or block from Ms.
7 Mitchell's house, right?

8 A That's correct.

9 Q Now when it comes to your going over to Stackley
10 Street you went over there; didn't you?

11 A I did.

12 Q It was an abandoned house; wasn't it?

13 A Correct, apartment, yes, sir.

14 Q It was abandoned except Rakim Floyd was there,
15 correct?

16 A Correct, he was in the apartment.

17 Q And Rakim Floyd had shaved his head; hadn't he?

18 A That's correct.

19 Q And with Rakim Floyd were clothings and a
20 clothing and a backpack, correct?

21 A That's correct.

22 Q And Rakim Floyd was hiding from law enforcement;
23 wasn't he?

24 A I'm not saying he was hiding from law
25 enforcement. He was found in that abandoned

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1 residence.

2 Q Okay. You're not telling this jury he was hiding
3 from law enforcement; but he was found in an
4 abandoned residence with a shaved head, with a
5 backpack, and clothing, right?

6 A That's correct.

7 Q Now the Solicitor asked you about submitting
8 items from Gregory Montgomery that showed up over
9 three years later to talk with y'all to SLED, the
10 buccal swabs?

11 A Yes, sir.

12 Q You didn't submit any fingerprint evidence from
13 Mr. Gregory Montgomery, did you?

14 A No, sir, we did not.

15 Q If you'll excuse me one second.

16 MR. HOFFMEYER: Your Honor, if you'd
17 indulge me one second.

18 THE COURT: Yes, sir.

19 MR. HOFFMEYER: Thank you very much,
20 Officer Drayton. I don't have anything further.

21 THE WITNESS: Thank you, sir.

22 THE COURT: Redirect?

23 MR. CLEMENTS: Yes, Your Honor. Please
24 the Court.

25 **REDIRECT EXAMINATION**

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1 BY MR. CLEMENTS:

2 Q Sergeant Drayton, Mr. Hoffmeyer just asked you
3 about the bloody pillows and the plastic bag that
4 was found in close proximity to the house. Well,
5 can you tell this jury how close was that plastic
6 bag, black garbage bag where pillows found to where
7 David Johnson parked the car on Roughfork Street?

8 A I would probably say probably about the same
9 distance.

10 Q About the same —

11 A The same distance. Where the car was parked, if
12 you would go to the rear of the apartment complex
13 and take a path it would lead to the rear of the
14 apartment duplex. And from that duplex where one of
15 the individuals live at. It's about the same
16 distance to where Ms. Hayes house was at,
17 approximately the same distance.

18 Q All right. Now he asked you about the credit
19 cards and necklaces and what turned out to be true.
20 And I want to ask you specifically, what turned out
21 to be true, that they were there or that David
22 took — I mean, that Amp took them?

23 MR. HOFFMEYER: Your Honor, I object to
24 that. That's causing, I mean, that's speculative
25 and asking him what's true and what's not true.

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1 That's for the jury to decide.

2 MR. CLEMENTS: Your Honor, he asked him
3 wasn't it true —

4 MR. HOFFMEYER: Your Honor, we need to
5 approach.

6 THE COURT: All right, come up.

7 (WHEREUPON, counsel approached the Bench
8 for an off-the-record discussion.)

9 BY MR. CLEMENTS:

10 Q Sergeant Drayton, Mr. Hoffmeyer asked you about
11 what David Johnson told you about the necklaces and
12 the credit cards and being at Ms. Leia Mitchell's.
13 And where did you find the credit cards at Leia
14 Mitchell's? Where did you find the credit cards and
15 the necklaces?

16 A At Leia Mitchell's residence.

17 Q What knowledge do you have whatsoever about who
18 might have took them there?

19 A Absolutely none. Actually when I asked — I
20 asked direct question does she know who brought them
21 in the house.

22 Q Don't tell me what anyone said.

23 A We were not able to determine where the items
24 came from, only that they were recovered from that
25 location.

SW - L. DRAYTON - REDIRECT

1 Q Okay. And again just, who all had been in that
2 house?

3 A Our investigation revealed that -- during our
4 investigation it was determined that all the
5 individuals that have been charged to include David
6 Johnson was in the house at some time.

7 Q Thank you. Sergeant Drayton, that's all we have
8 right now. Thank you very much.

9 THE COURT: All right, anything further,
10 Mr. Hoffmeyer?

11 MR. HOFFMEYER: No, sir.

12 Thank you, Officer Drayton.

13 THE WITNESS: Thank you.

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

16 MR. CLEMENTS: At this time, Your Honor,
17 the State rests.

18 THE COURT: All right. Ladies and
19 gentlemen, the State has rested their case. It
20 requires me to take up matters of law at the close
21 of the State's case so I know you about to feel like
22 a yo-yo back and forth but I am gonna need to ask
23 you to step into the jury room. Do not discuss the
24 case and I'll get you back out here shortly after I
25 take up these matters of law.

1 (WHEREUPON, the jury was removed
2 from the courtroom at 3:21 p.m., and the following
3 proceedings commenced in open court.)

4 THE COURT: Mr. Hoffmeyer.

5 MR. HOFFMEYER: Your Honor, at this time
6 on behalf of the defendant Mr. Johnson we would move
7 for a directed verdict as to all five counts of the
8 indictment: Those being murder, burglary first,
9 armed robbery, possession of a weapon during a crime
10 of violence, and conspiracy. Your Honor, we believe
11 the evidence at most casts suspicion on Mr. Johnson.
12 We do not believe the evidence rises to the level to
13 go to the jury. Your Honor, when it comes to the
14 murder count, count one, the issue of malice
15 aforethought is certainly very questionable based
16 upon the evidence we have before us throughout this
17 trial. In addition to that, with regard to the
18 burglary first, the testimony has been in and out it
19 appears to me but nothing more than speculation or
20 suspicion as regards to whether it occurred at night
21 and what and who actually did what inside the
22 residence. And those would relate to the arm— that
23 would relate to the armed robbery as well. And the
24 possession of the weapon and the conspiracy, of
25 course, are to a certain extent intertwined with

1 those three greater charges, and therefore, we will
2 respectfully move for directed verdict as to all
3 charges.

4 THE COURT: All right, sir. I'm gonna
5 respectfully deny the motion, Mr. Hoffmeyer. I
6 think it's a factual issue that the jury is gonna
7 have to determine based on the evidence that's been
8 presented. I think there is the existence of
9 evidence whereby a jury could possibly find either
10 way and I think it's their call.

11 MR. HOFFMEYER: Thank you, sir.

12 THE COURT: All right. Anything else
13 before we move on whatever else I'm gonna do here?

14 MR. CLEMENTS: Your Honor, I was just
15 going to suggest where we go next, but I think you
16 know better than I do so I don't need to make that
17 suggestion.

18 THE COURT: Well, this is my thought, is I
19 would first need to ask, Mr. Hoffmeyer, do you need
20 some time to talk with Mr. Johnson about whether or
21 not the Defense intends to put up a case and as part
22 of that whether he intends to testify? Do you need
23 any time at this point, or have y'all already had
24 that opportunity?

25 MR. HOFFMEYER: Your Honor, we already

1 have discussed that. I might want a minute or two
2 just to confirm what he told me —

3 THE COURT: All right.

4 MR. HOFFMEYER: —an hour or two ago.

5 THE COURT: Why don't we do that. Let's
6 take that little bit of time here and whatever you
7 need, whatever you need —

8 MR. HOFFMEYER: Yes, sir.

9 THE COURT: —and get you to do that.
10 And if you would like to go to this room right
11 behind us here, if you want to take him in there so
12 you're not out here in the open courtroom and talk
13 with him.

14 Wayne, if y'all can secure that area.

15 And then y'all can use that room if you want
16 to, Jim.

17 MR. HOFFMEYER: Thank you, sir.

18 THE COURT: We'll be at ease while they're
19 having that discussion.

20 (WHEREUPON, a recess was taken from the
21 proceedings.)

22 THE COURT: Mr. Hoffmeyer, you have had an
23 opportunity to converse with Mr. Johnson?

24 MR. HOFFMEYER: Yes, Your Honor, I have.

25 We've spoken about these issues several times in the

1 past and more recently today twice.

2 THE COURT: All right, and what is the
3 decision?

4 MR. HOFFMEYER: Your Honor, my client
5 Mr. Johnson will not testify.

6 THE COURT: All right.

7 MR. HOFFMEYER: Chooses not to.

8 THE COURT: All right, Mr. Johnson, let me
9 get you to stand. I'm gonna just talk with you. I
10 know you've already discussed this with Mr.
11 Hoffmeyer, but I'm gonna go over some things with
12 you too, okay? Now do you understand through
13 talking with Mr. Hoffmeyer that if you wanted to
14 testify that you have the right to do that, you
15 understand that, correct?

16 THE DEFENDANT: Yes, sir.

17 THE COURT: Mr. Johnson, let me get you to
18 give Madam Clerk your attention. She's going to
19 place you under oath, and then I'm gonna ask you
20 some questions.

21 THE CLERK OF COURT: Please raise your
22 right hand please.

23 WHEREUPON,

24 **DAVID JOHNSON,**
25 having been duly sworn by the Clerk of Court,

1 testified as follows:

2 THE COURT: And so you understand that if
3 you — if it was your decision or your desire to
4 testify you could do that if you wanted to. You
5 understand that?

6 THE DEFENDANT: Yes, sir.

7 THE COURT: Okay. And you also have the
8 right to remain silent. You have the right under
9 the constitution to not testify. You understand
10 that as well?

11 THE DEFENDANT: Yes, sir.

12 THE COURT: Okay. Now Mr. Hoffmeyer has
13 indicated to the Court that you have decided that
14 you will not testify. Now you understand, sir, that
15 what I'm gonna do is when it comes time for me to
16 give the jury the instructions on the law, I'm gonna
17 instruct the jury that the State has the burden of
18 proof and that you don't have to prove anything.
19 Okay? And I'm gonna tell them that you have the
20 right to remain silent. And the fact that you have
21 decided to remain silent, that they cannot hold that
22 against you in any way. You understand I'm gonna
23 tell them that?

24 THE DEFENDANT: Yes, sir.

25 THE COURT: I'm also gonna tell them that

1 the fact that you decided to exercise your right to
2 remain silent, that they cannot even talk about it
3 in the jury room. In other words, they're not to
4 consider that at all, and I'm gonna instruct them
5 that. You understand that, sir?

6 THE DEFENDANT: Yes, sir.

7 THE COURT: Okay. Now the decision,
8 Mr. Johnson, to remain silent or to testify, that's
9 a decision that has to be your decision. You
10 understand that?

11 THE DEFENDANT: Yes, sir.

12 THE COURT: No one can make that decision
13 for you. Mr. Hoffmeyer is your lawyer and he gives
14 you his advice. He gives you his thoughts about it;
15 but what the point I'm trying to make is, he can't
16 tell you what to do. That has to be a decision that
17 you make on your own. You understand that?

18 THE DEFENDANT: Yes, sir.

19 THE COURT: Now you have indicated that
20 you wish to exercise your right and to remain silent
21 and not testify; is that correct?

22 THE DEFENDANT: Yes, sir.

23 THE COURT: Has that been your decision,
24 Mr. Johnson?

25 THE DEFENDANT: Yes, sir.

1 THE COURT: Has anybody forced you or
2 coerced you or threatened you in any way to get you
3 to make that decision?

4 THE DEFENDANT: No, sir.

5 THE COURT: That's been a decision you've
6 made on your own after —

7 THE DEFENDANT: Yes, sir.

8 THE COURT: —after talking with your
9 lawyer, correct?

10 THE DEFENDANT: Yeah.

11 THE COURT: Okay, all right, sir. Thank
12 you. You may have a seat.

13 Now Mr. Hoffmeyer, would there be any other
14 case that the Defense will put up, any other
15 witnesses?

16 MR. HOFFMEYER: No, sir, Your Honor.

17 THE COURT: All right. Let me suggest
18 this, let me bring the jury out, recognize you on
19 behalf of the Defense and allow you to rest on the
20 record. Then at that point I will instruct them
21 that that's the close of all the evidence and
22 basically give them some instruction before I send
23 them home, and we will do argument and charge the
24 first thing in the morning. We'll remain this
25 afternoon so we can go over the charge and do that.

1 And then what we'll do is we'll kick it off in the
2 morning with argument and charge. Is that — now, I
3 mean, is that okay?

4 MR. HOFFMEYER: Yes, sir.

5 THE COURT: Now here's what I wanted to
6 take up though, since the Defense is not going to be
7 putting up a case I don't want to bring the jury
8 out, let you rest on the record, let me send them
9 back in there, and then take up motions at the close
10 of all the evidence. So my suggestion is since you
11 have informed the Court you're not going to put up a
12 case at this time, let me take up your motions at
13 the close of the evidence, then I'll let you come up
14 normally rest on the record before the jury, then we
15 can send them home and proceed on. Is that
16 satisfactory?

17 MR. HOFFMEYER: Yes, sir, Your Honor,
18 that's fine.

19 THE COURT: So the Defense has indicated
20 that they're not going to put up a case, and so at
21 this time I'm gonna entertain your motions at the
22 close of all the evidence.

23 MR. HOFFMEYER: Thank you, sir. Your
24 Honor, we renew the motions we made at the close of
25 the State's case for directed verdict on murder,

1 burglary first, armed robbery, possession of a
2 weapon during a crime of violence, and conspiracy
3 with the same reasoning that we'd set forth to the
4 Court after the State's close of the evidence, their
5 evidence.

6 THE COURT: All right. And I'm gonna
7 respectfully deny those motions. As I said earlier,
8 I think it is a question that the jury needs to
9 respond to and answer and so we'll do that. All
10 right, so I'm gonna have the jury come out, let you
11 rest on the record, then we'll give them some
12 instruction before I send them home and then we'll
13 send them home and take care of the charge.

14 Mr. Propps, would you have the jury come out.

15 (WHEREUPON, the jury was returned to the
16 courtroom at approximately 3:35 p.m., and
17 the following proceedings commenced in
18 open court.)

19 THE COURT: All right, ladies and
20 gentlemen, I've taken up those matters of law at the
21 close of the State's case and so now I would turn
22 the attention to Mr. Hoffmeyer on behalf of
23 Mr. Johnson.

24 Mr. Hoffmeyer.

25 MR. HOFFMEYER: Thank you, Your Honor. At

1 this time we rest.

2 THE COURT: All right. Thank you, sir.

3 Ladies and gentlemen, the Defense has rested and so
4 typically what would happen is I would send you back
5 into the jury room, and I would take up motions at
6 the close of all of the evidence because the fact
7 that the Defense has rested now is the close of all
8 the evidence. Everything that you're gonna have to
9 decide this case has been placed into evidence. All
10 of the photographs, the recording, everything that
11 has been marked is, that is in evidence. You will
12 have with you back in the jury room when you retire
13 to deliberate, but we're not to that point yet. So
14 understanding that Mr. Hoffmeyer and the Defense has
15 rested their case, I went ahead and took up because
16 once the State rests I have to take up a matter of
17 law at the close of the State's case; and then the
18 Defense has an opportunity, if they choose, to put
19 up a defense. And then at the close of all of the
20 evidence there are motions I have to take up.

21 Well, since Mr. Hoffmeyer informed the Court
22 that the Defense was going to be resting we went
23 ahead and took up those motions already so we've
24 taken care of that too. So now we have reached the
25 portion of this trial where the attorneys will have

1 an opportunity to address you with their closing
2 remarks; and then at the end of their closing
3 remarks or final argument, then I would charge you
4 on the law that is applicable to this case. And
5 then once you have all of that then you are ready to
6 go back and deliberate. But it is 25 minutes to 4
7 and I don't know how long the attorneys will present
8 their closing remarks to you. I know that my charge
9 on the law is probably gonna be probably 20 minutes
10 or so. The bottom line is, if we proceeded at this
11 point you probably wouldn't even get the case for
12 your consideration until almost 5:00 if not later.
13 So what we're gonna do, 'cause I don't want to keep
14 you here past 5, I can avoid that and we can't avoid
15 that. So what I'm gonna do is I'm gonna excuse you
16 for the balance of the day and have you to come
17 back, and tomorrow morning when you come back we
18 will then proceed with the closing arguments and the
19 charge on the law, okay? So when you leave here, as
20 you've done all week long, and I very much
21 appreciate you doing this, continue to protect your
22 abilities and your right and your ability to be fair
23 and impartial, continue to not allow anyone to speak
24 with you. You can tell your family and friends and
25 loved ones that you do have to come back and that

1 you do anticipate that the case will end tomorrow so
2 if they'll continue to be patient probably sometime
3 tomorrow night or for sure this weekend you'll be
4 able to tell them all they want to know. You can
5 tell them everything. But until that point you need
6 to continue to not speak to anyone about this case,
7 continue to ask them to be patient. As always, try
8 to get a good night's rest. When you come back in
9 the morning we will begin with the closing remarks
10 and then I'll charge you on the law; and so at some
11 point tomorrow, probably mid to late morning, you'll
12 get the case for your consideration.

13 Tomorrow the County will feed you. We'll
14 have lunch brought in for you and allow you to focus
15 on your deliberations and not have to run out and
16 get something and run back here and all that stuff
17 okay so we'll take care of that for you tomorrow.
18 If there's nothing further then, ladies and
19 gentlemen, I'm going to excuse you for the balance
20 of the day and ask everyone else to remain in the
21 courtroom and we'll see you back here 9:30 in the
22 morning. Okay?

23 (WHEREUPON, the jury was removed from the
24 courtroom at 3:40 p.m., and the following
25 proceedings commenced in open court.)

1 THE COURT: All right. So for the purpose
2 of today we'll be adjourned for the afternoon. And
3 folks in the audience, you can stay or you can go
4 out; it's up to you. But why don't we take a little
5 bit of a break and then at least initially let's go
6 back into my office and talk a little bit and, then
7 of course, we'll come out and put everything on the
8 record okay.

9 (WHEREUPON, a recess was taken from the
10 proceedings.)

11 THE COURT: Let me -- we're back on the
12 record. I met back in chambers with counsel and we
13 kind of went over the charge, and I just want to hit
14 a couple of notes here. And Mr. Hoffmeyer, I'm
15 going to go over the ones that we agreed on first
16 and then we'll put on the record the one that you
17 have an issue with, okay?

18 MR. HOFFMEYER: Thank you, sir.

19 THE COURT: Mr. Hoffmeyer, I'm gonna deal
20 with his -- he was -- he had a charge that he had
21 submitted prior to the close of all the evidence and
22 so, and I think it was a charge that he submitted
23 not knowing exactly what the evidence may end up
24 showing but, it dealt with lesser included offenses.
25 And we discussed it back in chambers, and it does

1 appear that there's no evidence in this case that
2 would support a lesser included offense charge so we
3 won't be charging that. And Mr. Hoffmeyer withdrew
4 his request on the necessity of proving commission
5 of crime independent of a confession. That was
6 withdrawn. I think there's also an agreement that
7 it would not be appropriate to charge accessory
8 after the fact based on the evidence in this case.

9 I am going to charge, Mr. Hoffmeyer, a
10 request to charge on prior inconsistent statement,
11 and I am going to charge the language that I have on
12 prior inconsistent statement so we are going to
13 charge that. With regards to credibility of
14 witnesses and the bias that may be present, I am
15 going to add the language in Mr. Hoffmeyer's request
16 to charge that but we're going to tailor it to the
17 facts in this case, and so we're gonna add the
18 language about personal gain that a witness — that
19 the jury can consider among the other things that
20 are in my standard charge we're gonna add the
21 language regarding personal gain.

22 And then with regards to the request for a
23 mere presence charge, I am gonna charge that. I may
24 not be charging it exactly as Mr. Hoffmeyer has in
25 what he has presented, but I am gonna rewrite the

1 charge, my standard charge, which relates to
2 accomplice liability to add the language of mere
3 presence and how that fits in to that accomplice
4 liability law and so we're gonna add that as well.

5 Now Mr. Hoffmeyer also has requested a charge
6 under the case of State versus Woods, 189 South
7 Carolina 281. It's a 1939 case, and it basically
8 stands for the general proposition of law that all
9 parties are responsible for the incidental and
10 consequential acts growing out of the general design
11 of a crime, but they are not responsible for
12 independent acts growing out of the particular
13 malice of one of the co-conspirators. And I'm not
14 charging that language as submitted, but I think
15 that my charge on accomplice liability and mere
16 presence I think probably covers that proposition.
17 But I do understand that Mr. Hoffmeyer has asked for
18 that specific language. Is that correct, Mr.
19 Hoffmeyer?

20 MR. HOFFMEYER: Yes, sir, Your Honor, that
21 is correct.

22 THE COURT: Okay. And so I am noting his
23 exception to the Court's ruling on not charging that
24 specific language. He does have an objection to the
25 Court not charging that. I want that to be noted.

1 Now the State has submitted a charge that even
2 though South Carolina no longer recognizes a
3 difference or distinction between common law murder
4 and felony murder, there is a charge in Judge
5 Anderson's charge book where it indicates that it
6 would be appropriate under a trial scenario that
7 involves two or more defendants who are accused of
8 murder. That language, I am going to charge maybe
9 not verbatim as is listed in Judge Anderson's book
10 because I am gonna make the changes with regards to
11 maybe, rather than are or definitely is. And I'm
12 gonna also change the example which is given in
13 there from a breaking and entering where a murder
14 occurs. I'm gonna change that example to two folks
15 going in maybe attempting to rob a convenience store
16 and the clerk is killed so. And I'm — so I'm going
17 to charge that language as well. Does that cover
18 that, Mr. Jupertinger?

19 MR. JEPERTINGER: Yes, sir.

20 MR. CLEMENTS: It does, Your Honor. I
21 just want to be clear on the record that to cover
22 all of us that you are going to have the language
23 say may rather than must or is —

24 THE COURT: Correct.

25 MR. CLEMENTS: —so that there's no

1 burden shifting or no perception that there's a
2 mandatory finding of malice.

3 THE COURT: Correct, yeah, I am. I'm going
4 to change that language to reflect that so. And as
5 I informed the attorneys, so the charge is basically
6 gonna be what I've submitted to them but with those
7 changes I talked about. I'm gonna give them a copy
8 of that first thing in the morning, and we will go
9 over that and if there's any final matters that we
10 need to put on the record we'll do that. Does that
11 cover everything for the State?

12 MR. JEPERTINGER: Yes, sir, it does.

13 THE COURT: Defense?

14 MR. HOFFMEYER: Yes, sir, Your Honor.

15 Thank you.

16 THE COURT: Well, guys, we'll be at ease
17 then and we'll — if you want to come by the office
18 sometime before 9:30 I'll have the copies for you.

19 (WHEREUPON, the proceedings were concluded
20 for the day to be reconvened on February
21 17, 2011.)

22 THE COURT: Did y'all get the corrections
23 or the changes that I made to the charge?

24 MR. JEPERTINGER: Yes, sir.

25 THE COURT: Is there anything regarding

1 the charge from the State that we need to put on the
2 record?

3 MR. JEPERTINGER: No, sir.

4 THE COURT: Mr. Hoffmeyer, from the
5 Defense?

6 MR. HOFFMEYER: Yes, sir, Your Honor.
7 Your Honor yesterday put into the record, read into
8 the record State versus Wood charge that I requested
9 and I renew that request and I understand Your
10 Honor's ruling.

11 THE COURT: All right.

12 MR. HOFFMEYER: Also, in addition, I've
13 been provided the charge that Your Honor intends to
14 charge to the jury this morning and on my page 16 —
15 I don't know if it's the Court's page 16.

16 THE COURT: It should be. Go ahead, sir.

17 MR. HOFFMEYER: On that particular page
18 this is describing or relates to the hand of one is
19 the hand of all charge that Your Honor intends on
20 charging.

21 THE COURT: Yes, sir.

22 MR. HOFFMEYER: And on page 16 of what I
23 have been provided it indicates that if two or more
24 people combine together to commit an unlawful act
25 such as a robbery of a convenience store and in

1 execution of that act a murder is committed and then
2 goes on to describe all those present participating.

3 THE COURT: Right.

4 MR. HOFFMEYER: That whole page, and it's
5 an example of the hand of one is the hand of all.
6 Of course we do have an armed robbery count in this
7 case which causes me concern; but any example, quite
8 frankly, Your Honor, I object to. And I believe
9 that the hand of one is the hand of all charge is
10 covered in the preceding pages of your Court's
11 charge; and therefore, I would object to the
12 necessity to go through the example as is set out in
13 the other portions of page 16.

14 THE COURT: All right.

15 MR. HOFFMEYER: And I can make mine a
16 Court's exhibit if you like if it's not your page 16
17 so we're clear.

18 THE COURT: Well, I tell you what I'm
19 gonna do. I think it'll help. In light of your
20 objection I'm gonna make the charge that I give the
21 jury, the entire charge — and it is page 16 by the
22 way. I'm gonna make that a Court's exhibit and so
23 that will be part of the record.

24 MR. HOFFMEYER: Thank you, Your Honor.

25 THE COURT: Mr. Jepertinger, you want to

1 address that?

2 MR. JEPERTINGER: Yes, sir. I think the
3 charge is proper not only under the theory of
4 accomplice liability slash hand of one hand of all,
5 but under the felony murder doctrine that we talked
6 about, Your Honor, in chambers. I think it's a
7 proper charge, Your Honor, and it takes out the
8 presumption language by adding the may be Your
9 Honor. And that is an example. In the example that
10 Judge Anderson gave in his suggestive charge in his
11 charge book it was almost on point in terms of what
12 type of case we have here, the entry of a home, Your
13 Honor. And we have changed language to convenience
14 store but it is murder in the —

15 THE COURT: During commission.

16 MR. JEPERTINGER: —commission of an
17 armed robbery which as I understood yesterday was
18 acceptable to the Defense, Your Honor, as an
19 example. But you're gonna have the murder in terms
20 of felony murder doctrine, Your Honor.

21 THE COURT: All right. And let me in
22 addressing Mr. Hoffmeyer's objections, I want to
23 note your objection to the Court not charging the
24 State versus Woods language. As I said yesterday, I
25 think the gist of that charge that you submitted is

1 covered in this charge although it doesn't use that
2 exact language so, but I do want to note your
3 exception to that. As to the hand of one charge
4 where it gives an example, actually in judge — I
5 think it was in Judge Anderson's charge that I was
6 looking at, it used an example of breaking and a
7 burglary and I agreed that I felt like that was
8 too — I don't have a — I guess what I'm saying is
9 I understand your objection. I don't think there's
10 anything per se wrong with giving an example because
11 I think it clarifies for the jury; however, I did
12 feel that it should not have been a burglary because
13 that's what exactly what we're dealing with in this
14 case and I didn't want it to be so in line with what
15 this case about, which is why — and I didn't even
16 just change it to a robbery which this case does
17 involve an armed robbery as you said, but I did
18 change it to a robbery of a convenience store
19 because I didn't want it to mirror this case. But I
20 do think an example is helpful in having the jury
21 understand a charge.

22 Also, the language on Page 16 carries
23 language that I think is the law in this case and it
24 requires the State to meet a standard and that is,
25 that the act must be probable or a natural

1 consequence of the acts done to pursuant of the
2 common design. And that language is where it
3 appears as well as the mere presence language is
4 there although that mere presence language starts on
5 page 15. But I do want to note your exception to
6 that, and certainly I'm going to overrule the
7 objection. I'm gonna charge it as I have it, and I
8 am gonna make the charge a part of the record.

9 MR. HOFFMEYER: Thank you, Your Honor.

10 MR. JEPERTINGER: Thank you.

11 THE COURT: Anything else, Mr. Hoffmeyer,
12 as far as the charge goes?

13 MR. HOFFMEYER: No, sir, Your Honor.

14 THE COURT: All right. And I think — is
15 there anything we need to take up because now we're
16 prepared to go into closing arguments obviously.

17 MR. JEPERTINGER: Your Honor, the only
18 thing I would suggest and this is just out of
19 courtesy to everyone in the courtroom, if the
20 arguments go long that we could have at least a
21 bathroom break after the arguments before you begin
22 your charge.

23 THE COURT: Yeah, I mean, I don't have a
24 problem with that. Let me say this to everyone here
25 in the courtroom, and this has nothing to do with

1 this case in particular, this is a rule that the
2 Court abides by in every criminal trial whether it's
3 a petit larceny or a murder charge. Once we begin
4 closing arguments the courtroom doors are locked.
5 No one is allowed to come in or leave. So I'm gonna
6 take just a few minutes before I bring the jury out.
7 If you need to slip over and get some water or if
8 you need to use the restroom and you intend to be in
9 here for the closing arguments, understand that once
10 we start the doors will be locked and no one will be
11 allowed out of the courtroom, okay, until we take
12 the break that you mentioned, Mr. Jepertinger. So
13 let's just take a few minutes, if anyone needs to
14 use the restroom or whatever, and then we'll get
15 started.

16 (WHEREUPON, a recess was taken from the
17 proceedings.)

18 THE COURT: Mr. Propps, if you would ask
19 the members of the jury to join us please.

20 (WHEREUPON, the jury was returned to the
21 courtroom at approximately 10:02 a.m., and
22 the following proceedings commenced in
23 open court.)

24 THE COURT: All right, ladies and
25 gentlemen, welcome back. I hope everyone had a good

1 evening. Let me begin as we have all week, and
2 inquire if any member of the jury panel have spoken
3 to anyone about the case, read anything about the
4 case, heard anything in the news media about the
5 case, if so, please let me know.

6 (There was no response.)

7 THE COURT: Okay, thank you very much.
8 Ladies and gentlemen, if you recall yesterday the
9 testimony and the evidence was closed, the State
10 rested. I took up matters of law. The Defense
11 rested. I took up the matters of law that needed to
12 be done. And so we have now reached the time in
13 this trial where you're going to — the attorneys
14 are going to have an opportunity to address you with
15 their final summations or what we commonly refer to
16 as closing arguments. Now if you recall when we
17 started this case on Monday I told you at that time
18 that what the lawyers tell you or told you in their
19 opening remarks were not evidence. What I'm telling
20 you now is what the lawyers tell you in their
21 closing arguments is also not evidence.

22 The evidence in this case is closed. The
23 evidence that you'll have that you'll need to decide
24 this case comes from the testimony of the witnesses
25 you heard throughout the week and then any exhibits

1 which came in during the course of the trial. All
2 of these exhibits will be back in the jury room with
3 you when you retire to deliberate. But as I said
4 earlier, also, it is important that you listen
5 carefully to the attorneys because this is their
6 opportunity to address you with what they believe
7 the evidence in this case shows. It is important
8 that you listen carefully to them. When they
9 conclude their remarks, when they are done, then
10 we'll probably take a short break, let everybody
11 stretch and whatever and I also need to take your
12 lunch orders. And then I will then charge you on
13 the law that is applicable to this case. And then
14 once you have that, you will then be in a position
15 to where you can finally talk about the case amongst
16 yourselves in the jury room. So that's where we're
17 at, and that's what we have to look forward to for
18 the balance of this morning.

19 So ladies and gentlemen, if you would please
20 give the attorneys your undivided attention as they
21 address you with their closing remarks.

22 Solicitor.

23 MR. CLEMENTS: Thank you, Your Honor, may
24 it please the Court.

25 THE COURT: Yes, sir.

1 MR. CLEMENTS: Mr. Hoffmeyer. Good
2 morning, ladies and gentlemen of the jury. It's
3 been a long week; hasn't it? Now it's going to be
4 just a little short while and then we're going to
5 give this case to you. And you're going to do what
6 you swore to do, and that is to consider this
7 evidence and to bring back a verdict. The judge is
8 going to charge you on the law, and you're going to
9 take the facts as you determine them, and you're
10 gonna apply the law to it and then you're gonna come
11 back with a verdict. A veredicto is the Latin term
12 which means to speak truth. And I believe and I'm
13 convinced that you're gonna bring back a verdict
14 that speaks the truth. And that verdict is going to
15 say David Johnson is guilty of murder, armed
16 robbery, burglary first, conspiracy, possession of a
17 weapon during the commission of a violent crime.
18 The judge is going to charge you on the law, and you
19 are going to judge the facts.

20 Now let's talk about the facts a little bit,
21 and let's talk about the law a little bit. What is
22 this case about? It's very simple. This case is a
23 trial of the State versus David Gerard Johnson.
24 This case is not a trial about Rakim Floyd. This
25 case is not a trial about Stackley Street. This

1 case is about what happened at 200 West Liberty
2 Street and 107 Roughfork Street where Ms. Hayes' car
3 was, at the corner of Sumter and Sanborn Street at
4 David Johnson's house where Ms. Hayes' stolen
5 property was, and Malloy Street where Ms. Hayes'
6 body, her dead body wrapped up in her bed clothes
7 from her bed from her house was found.

8 Now David Johnson, David Johnson just along
9 for the ride? Or David Johnson, the driver of the
10 car, the leader of I believe Mr. Jepertinger
11 referred to him in his opening statement as this
12 little band of juvenile intruders. David Johnson,
13 the 22 year old; Anthony Wilson, the 14 year old.
14 You heard Rakim mention 14 years old; Rashawn
15 Bailey, 19 years old. I don't know about y'all's
16 neighborhood but in my neighborhood 14 year olds
17 don't lead around tell 22 years olds what to do.
18 They don't go do things with 22 year olds tagging
19 along. I submit to you, ladies and gentlemen of the
20 jury, that David Johnson was the driver of the car
21 on this trip that this trial is about.

22 Now you remember Agent Boehm, don't you, from
23 SLED, the DNA expert. And she got up on this
24 witness stand, explained to you about the DNA she
25 tested, and all the items that were submitted and

1 who was excluded and who was not. And
2 Mr. Jepertinger had her on the witness stand, he had
3 a lot of things to go through. And at this point
4 right here I want to explain something to you
5 because a lot of that stuff gets kind of dry and
6 kind of boring. And you've got a lot of evidence to
7 go through and you got a lot of pictures here. And
8 I thought about getting up with our telestrator and
9 playing John Madden and, you know, telling you what
10 happened and showing you those pictures. And I
11 though, you know, I've shown them pictures a bunch
12 of time, I don't want to insult their intelligence;
13 they've seen all that over and over again. You got
14 copies of the pictures here you can take back in the
15 jury room with you, and you saw them all. I don't
16 need to show them to you again, but we have to go
17 over and over and over that stuff because the burden
18 of proof is on us, the State, to prove guilty beyond
19 a reasonable doubt. So sometimes we get redundant;
20 and sometimes, as my daddy said, we plow the same
21 row over more than one time. But we do that not to
22 bore y'all or not to make y'all get tired of hearing
23 us, but we want to be sure that we touch everything
24 that's important. We do that, and Mr. Hoffmeyer
25 does that. And he does a good job, and we feel like

1 we did a good job. We've presented all this
2 evidence to you so you got it. I'm not going to go
3 over every bit of it again, but I do want to remind
4 you about Ms. Boehm because there's a lot she
5 testified to. She testified, you remember about the
6 DNA on the steering wheel, you remember that? And
7 she said that Mr. Johnson, to find somebody other
8 than him would be one in 5.1 quadrillion I believe
9 is the number. And I didn't know what that number
10 was. That's kind of above my pay grade. But
11 Mr. Jupertinger asked her and she said, well a
12 quadrillion is a one with fifteen zeros behind it.
13 And this is 5.1 quadrillion so this would be 5, 1,
14 and then 14 zeros: 1, 2, 3, 4, 5, 6, 7, 8, 9, 10,
15 11, 12, 13, 14. I'm gonna have to start that over
16 again. It just runs clear off my paper, didn't mean
17 to do that. So I'm gonna start here. 1, 2, 3, 4,
18 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, one more will be
19 15, but it's 5.1 so there it is right there.
20 5.1 quadrillion. So it's one in 5.1 quadrillion.
21 Mr. Jupertinger asked her what's the population on
22 earth, and she said roughly 7 billion. So a
23 billion, you got 1, 2, 3, that will be a thousand.
24 1, 2, 3, that will be a hundred thousand. One more
25 will be a million. 1, 2, 3, there's a billion. So

1 and it's about 7 billion. So you got that. And he
2 asked, how many — what's a quadrillion. She says,
3 well, that's about a million billion. So we're
4 talking about this many people on earth and almost a
5 million billion, 7 billion 5.1 million billion.
6 Well, if you're gonna find somebody else other than
7 David Johnson you're not gonna find him on the
8 planet earth. You might get on the starship
9 enterprise and go somewhere, but we all know that
10 that is not the case.

11 The driver of the car according to the DNA
12 was David Johnson. You grab a steering wheel, you
13 drive a car, you're traveling around, you leave your
14 DNA on it. Well, what did David Johnson say in this
15 statement? He said, well, Rakim was driving the
16 car, amp was driving the car, everybody but him.
17 Oh, I drove the car one time. Was Rakim's DNA found
18 on there? No. Was Rashawn's DNA found on there?
19 No, not according to Agent Boehm. Was Anthony
20 Wilson, Amp, was his DNA found on there? No, not
21 according to Boehm. The only driver we have by the
22 scientific forensic evidence is David Johnson, the
23 driver of the car. He said he sat in the back seat.
24 Anthony Wilson sat in the back seat according to
25 him. You saw the pictures. You heard the testimony

1 from Sergeant Brandt. You saw all those places he
2 tested and looked and thoroughly examined that car.
3 In all the items that were submitted were there any
4 fingerprints of David Johnson, Anthony Wilson, or
5 DNA in the back seat? No. Was there any
6 fingerprints or DNA anywhere in that car for Rakim
7 or Rashawn? No. Well, where were the fingerprints
8 at on the car? On the driver's side door on the
9 window and on the driver's side door under the
10 molding close to where the door handle was. And
11 whose fingerprints were they? They were David
12 Gerard Johnson's fingerprints, David Johnson, the
13 driver of the car.

14 So what I want you to ask yourself, when you
15 go back in that jury room and you look at all this
16 evidence, was David Johnson, was he just along for
17 the ride in this whole episode, this whole tragic
18 event or was he the driver of the car? And I think
19 you will have no reasonable doubt whatsoever, and
20 you will be firmly convinced that David Johnson was
21 the driver of the car; that David Johnson was the
22 leader of these juveniles; and that David Johnson is
23 guilty of murder, armed robbery, burglary first,
24 conspiracy, and possession of a weapon during
25 commission of a violent crime.

1 The judge is going to tell you about the law,
2 and he's gonna tell you that we have to prove this
3 case, the State. And like Mr. Jepertinger said on
4 his opening, we embrace that burden to prove beyond
5 a reasonable doubt, proof that leaves you firmly
6 convinced of the defendant's guilt. That's what I
7 think the judge is going to tell you. And I think
8 the judge is going to tell you that the law does not
9 require proof that overcomes every possible doubt.
10 Now you may have a doubt and say, yeah, that might
11 have been somebody else's DNA came in on the
12 starship enterprise and they beamed him down to
13 Roughfork Street and he said let me look at this
14 car. You know, you might have a doubt like that.
15 Is that a reasonable doubt? No, that's not a
16 reasonable doubt. We don't have to overcome every
17 kind of doubt; we just have to overcome a reasonable
18 doubt so that you're firmly convinced. And if you
19 are firmly convinced you must find the defendant
20 guilty. That's what the judge is going to tell you
21 on the law, and I believe you'll be firmly
22 convinced.

23 He's going to tell you about circumstantial
24 evidence and direct evidence, and I'm gonna talk to
25 you about circumstantial evidence in a moment in

1 Ms. Hayes' bedroom. But he's gonna tell you
2 circumstantial evidence is a proof of a chain of
3 facts and circumstances that indicates the existence
4 of another fact. It's evidence which immediately
5 establishes collateral facts from which the main
6 fact may be inferred, and I'm gonna talk to you
7 about circumstantial evidence and the main fact that
8 you can infer when we get to Ms. Hayes' bedroom in a
9 moment. The judge is going to tell you that the law
10 makes absolutely no distinction between the weight
11 or value given to either direct or circumstantial
12 evidence. They're both treated the same. We got
13 direct evidence that David Johnson was in Ms. Hayes'
14 car because he told you in his statement, well, I
15 was riding in the car, I was in the back seat. You
16 know, Amp was driving, Rashawn was driving, Rakim
17 was driving, whoever, anybody but me. And then we
18 have direct evidence 'cause Anthony Wilson says he
19 was in the car, I was riding with him, he was
20 driving. And then later he says he was driving. So
21 that's direct evidence. We got circumstantial
22 evidence he was in that car because we got his DNA
23 and we got his fingerprints.

24 I'm gonna talk to you a little bit more about
25 inferring the main fact when we get to Ms. Hayes'

1 bedroom so just stay with me. The judge is gonna
2 tell you about the witnesses and the credibility of
3 the witnesses. And you heard a lot of witnesses.
4 And he's gonna tell you you can believe one witness
5 over several witnesses or several witnesses over one
6 witness. And you can believe part of the testimony
7 of a witness and reject the remaining part of the
8 testimony of the same witness, or you can believe
9 all what they say or you can believe none of what
10 they say, you know. And you look at whether they're
11 biased or prejudiced or, you know, got something to
12 gain or something to lose. Well, you know, we put
13 Anthony Wilson up on the stand. He have anything to
14 gain? I'm sure he hopes that he's going to be given
15 some consideration for getting up and telling the
16 truth if it's believed that he told the truth
17 because no deals have been made with him whatsoever.
18 He told you that.

19 Gregory Montgomery, you know, he said he
20 wanted to help and tell the truth. And it doesn't
21 take a rocket scientist to figure out he hopes that,
22 you know, whatever happens to him that at least he's
23 gonna get some credit for telling the truth or
24 testifying. That also stands to argue that if what
25 he was saying sounds like a lie, it's gonna hurt him

1 so he doesn't have any reason to want to get up and
2 lie and be thought of as a liar because that's gonna
3 to hurt him. But he also told you there wasn't any
4 deals made with him.

5 So you can judge the credibility of the
6 witness, whether to believe part of what they say,
7 none of what they say, or all of what they say. And
8 when you judge those witnesses and you think about
9 what they say, think about well, you know, if they
10 wanted to lie about one thing and they're gonna lie,
11 why didn't they tell a better lie than that. You
12 know, why didn't they make themselves look better.
13 For instance, Anthony Wilson, only two people we
14 heard in that house. One we heard from the witness
15 stand in the bedroom, not just in the house but in
16 the bedroom. One we heard from the witness stand.
17 Anthony Wilson said he was in the bedroom and he
18 admits that he stabbed Ms. Hayes one time. They
19 said the reason he did it was because David Johnson
20 gave him the knife and said, you say you ain't a
21 punk come on do it, you say you ain't a punk. A 22
22 year old boosting up a 14 year old stab to somebody.
23 And then he said, I stabbed her in the neck, I
24 pulled out and saw the blood and I got out of there.
25 Didn't come back till David came back and got him

1 and helped him load the body. Well, you heard from
2 the recording David Johnson saying he was in the
3 bedroom and Anthony Wilson stabbing her, kept
4 stabbing her. Well, if Anthony Wilson is going to
5 lie why in the world did he say I didn't stab her,
6 David Johnson did all the stabbing. As a matter of
7 fact, and I'm sure Mr. Hoffmeyer is going to get up
8 and say this, I don't mean to steal his thunder, but
9 I'm going to do it. Jim Hoffmeyer will probably get
10 up and he's going to say you never heard Anthony
11 Wilson say that he saw David Johnson stab Ms. Hayes;
12 he didn't never say it. And guess what, he's right.
13 Anthony Wilson didn't say David Johnson stabbed her.
14 David, he — 'cause he wasn't lying. And he wasn't
15 gonna lie. He said I stabbed her, and I turned
16 around and I left. If he's gonna lie why didn't he
17 say, well I saw David Johnson stabbing her, no.

18 But you look at the circumstantial evidence,
19 you look at the circumstantial evidence, and if
20 Anthony Wilson stabbed her one time, there wasn't
21 one person left in that room to stab her the six
22 other times. That the pathologist testified to,
23 Doctor Presnell, she said she was stabbed seven
24 times. And she told Mr. Jepertinger, I can't say
25 which stab wound actually killed her. You know,

1 'cause there's no way to say this stab wound was
2 first, this was second, this was third. She just
3 died from all the stab wounds. Well, the only other
4 person we know of that was in that room was David
5 Johnson so if Anthony was telling the truth about he
6 stabbed her one time and a 14 year old stabbing
7 somebody in the throat and then not being able to
8 take it and getting out, that's pretty believable
9 'cause he's only 14 years old, a lot younger, a lot
10 smaller than what you saw him here at 18 years old.
11 If he told the truth he only stabbed him one time,
12 then the circumstantial evidence is that you can
13 infer, okay, we know that David Johnson was in the
14 room, we know no — we don't know about anybody else
15 coming in the room. Somebody else might have come
16 in the room; we don't know that. But we know David
17 Johnson was in the room; nobody else was. So either
18 David Johnson had to get somebody else to come in
19 the room and finish stabbing her or David Johnson
20 had to finish stabbing her himself. And that's the
21 main fact I think you can infer from the
22 circumstantial evidence that both of them were in
23 the room and Anthony stabbed her one time; and then
24 the person who gave him the knife, David Johnson, he
25 gave the knife back and got out there and went to

1 the swing where he was before or the vacant lot one
2 house over because he was 14 years old. I think you
3 can infer the main fact from that that David Johnson
4 finished stabbing Ms. Hayes. And as he said, the
5 others were in the house knocking off items,
6 stealing stuff.

7 Well, I'm gonna tell you about his statement;
8 you'll have it. And you can listen to it as many
9 times as you feel necessary to listen to. And I ask
10 you to. I know y'all listened closely while it was
11 being played in the courtroom 'cause I watched you.
12 I know y'all listened closely. But if you need to,
13 listen to it again and listen closely because if you
14 listen closely you can catch some things on this
15 that David said. Why didn't — close to the
16 beginning of the statement when they were asking him
17 about going in a house, and he says, Amp opened the
18 window with the crowbar. Now Mr. Hoffmeyer said,
19 well who said something about a crowbar, where did
20 that come from; Anthony Wilson, you didn't say
21 anything in your first statement to the police but
22 then you said something about a crowbar on the
23 witness stand. Well, David Johnson also said there
24 was a crowbar. He says Anthony used it. They went
25 in. They went in the room, I mean, the house.

1 Opened the front door, all of us went in the front
2 door, left from out the front door, then we went
3 right to the room. The other boy was all ready
4 going around the house, me and Amp. He didn't say
5 boys. He said the other boy. Amp came to tell you
6 later said, you know, I was scared, yeah, I put
7 Rakim in there to begin with but he wasn't there.
8 I'm sure he was around somewhere, but Amp says he
9 didn't go in the house there. And David in his
10 statement says, oh, the boy was already going around
11 the house and me and Amp. Listened to the
12 statement; it's right on there. And listen to some
13 other stuff on there 'cause right after that he
14 starts talking about she was asleep. You know,
15 while she was real asleep he cut her throat. But
16 then backs up and says, well, no, she was talking,
17 and I think it was Timmy Compton on the recording
18 said, how can she talk when her throat was cut. He
19 goes, oh, well, he was cutting her a little, then
20 cutting her a little bit. But when he first told
21 her he said Amp cut her throat; but now he got
22 caught in that and he has to go oh, he stabbed her a
23 little bit, stabbed her a little bit. Well, he
24 talks about her saying, you know, I'll show you
25 where it is; and he said that Amp was saying where's

1 the money, where's the money, where's it at. Amp
2 didn't tell you that. Amp said he had a pillow over
3 her head. He went in the room; David was on top of
4 her already, had the pillow over her head. He
5 didn't need to — he didn't know what she said, but
6 David knew what she said because David was the one
7 saying where's the money, where's it at, where's it
8 at. And then he put the pillow over her head; and
9 told Amp to come stab her, here's the knife, you say
10 you're not a punk, prove you're not a punk, you're
11 not a punk, stab her. Is Amp guilty? Yes, he is.
12 Yes, he is. And so is David Johnson.

13 If you believe — let me mention one more
14 thing to you. Then David says, oh, and right before
15 she passed he told me where the pocketbook was. Do
16 you really believe Ms. Hayes' dying words is going
17 to be my pocketbook is right around there in that
18 wardrobe, my pocketbook is it on the kitchen table,
19 or — you think that's gonna be her dying words;
20 She's gonna tell them where her pocketbook was? No,
21 that's not believable at all. But Anthony is
22 guilty. And the judge is gonna charge you on the
23 law of what's called the hand of one is the hand of
24 all. And part of what he's going to tell you is
25 that if two or more people combine together to

1 commit an unlawful act such as a robbery of a
2 convenience store and in the execution of that act a
3 murder is committed by one of the actors as a
4 probable or natural consequence of the acts done in
5 pursuance of the common design, all present
6 participating in the unlawful act may be as guilty
7 as the one who committed the fatal act. So that
8 means a couple of people go in a convenience store
9 and their plan, their common scheme, their common
10 design is to go in and rob the convenience store and
11 somebody decides to shoot the clerk, they're all
12 guilty of the murder. It's called the hand of one
13 is the hand of all, and it is the law in the state
14 of South Carolina. And it is the law that you will
15 do your sworn duty and will apply to these facts.
16 And these facts, if you believe what David said, is
17 that they all went in together to rob that house and
18 that Anthony Wilson killed Ms. Hayes. Is that a
19 natural consequence? You go in somebody's house to
20 rob their house in the middle of the night and
21 they're there? Is it a natural consequence to think
22 somebody might be killed? Absolutely. People have
23 weapons in their house or people can see you and
24 identify you and call the cops and tell. So it's a
25 natural consequence that somebody goes in and

1 burglarize somebody's house and the person happens
2 to be there that person may get killed.

3 So if you believe David Johnson, that he went
4 in that house with them and they were robbing that
5 house, and he talks about it in his statement.
6 People were knocking stuff off, robbing stuff, that
7 they put Amp through the window and he unlocked the
8 door and they all went in and the other boys were
9 robbing and Amp went in the room and Amp killed her.
10 If you believe that, you believe his story, guess
11 what, he is guilty of murder. It's a natural
12 consequence of what they were doing together, and
13 he's guilty of the murder too. But according to
14 Amp, if you believe Amp, they both stabbed her and
15 he's guilty of the murder. So either way he's
16 guilty of murder. He cannot escape that, cannot
17 escape that from his own words.

18 Now I don't need to tell you about every one
19 of the crimes and tell you about all the elements.
20 The judge is going to charge you on the law. I'm
21 just going to mention a little bit of it. Murder is
22 when you kill somebody with malice aforethought.
23 And if you've broken into somebody's house in the
24 middle of the night and stab tell Amp and kill them
25 in their bed, that's the safest place they think

1 they can be, that's not malice, there's no such
2 thing. You can infer malice from what they did.
3 And burglary first degree, burglary is you go into
4 somebody's house without their consent. Now opening
5 a window and sending somebody in, the smallest one,
6 the littlest one, to come open the door so you can
7 get in and steal stuff, well, that's entering
8 somebody's house without their consent with the
9 intent to commit a crime. That's burglary first.
10 And armed robbery is when you steal somebody's stuff
11 like their TV, their VCRs, and DVDs, their car, some
12 of their — some of their necklaces or credit cards,
13 some money out of their pocketbook. You steal that
14 stuff while you're armed with a knife that's armed
15 robbery. And conspiracy, when you got two or more
16 agree together to do something. And the judge is
17 going to tell you that agreement can be tacit or
18 expressed, which means it can be tacit. It can be a
19 silent agreement to go in and do it together. They
20 don't have to put it in writing. They don't have to
21 talk about it. They got a tacit agreement.

22 And when you get one guy and y'all pry the
23 screen off and lift the window up and put somebody
24 in, that's an overt act. The judge is going to tell
25 you about an overt act. And that's what an overt

1 act is, when you do something and you take action on
2 your conspiracy, on your agreement, to make it
3 happen. And Amp said, you know, he tried to jump in
4 the window but he's too little, and he knocked that
5 what he called a grill off. I'm not sure if it's a
6 grill or some kind of crock pot or what it is. It's
7 in the picture. He identified that. And so they to
8 boost him up in the window. And he unlocked the
9 door, and they all went in. Whether Rakim and
10 Rashawn both went in there really is not a relevant
11 issue on whether David was there or not. But David
12 put himself there; amp put himself there. And Amp
13 put David there, and whoever was with them they
14 committed burglary first. They committed armed
15 robbery and they committed murder. Whether you
16 believe David's story and that he committed murder
17 under the hand of one being the hand of all, or
18 whether you believe Amp's story and he did it
19 himself stabbing her because he was the only one
20 left in that room, it's murder nevertheless.

21 Now Amp said David came and got him and he
22 went back in. They had already stripped the clothes
23 off the bed, wrapped her up. He didn't turn the
24 mattress over; he didn't know anything about that.
25 And they carried her out, put her in the trunk, and

1 then they went to Malloy Street. And David took him
2 straight to the body. And David was saying, well,
3 you know, they told me they dumped her on a dirt
4 road. And they went out there on the dirt road and
5 ain't anything — you look at the pictures. It's
6 just brush and woods and he said stop right here,
7 stop right here. And they stopped right there. And
8 Melvin Godwin gets out, looks, and there's the body
9 right there. And Timmy Compton is like, wait a
10 minute, David, you lieing to me, you either had to
11 be here when it was done or either they brought you
12 here and showed you. You couldn't just do this what
13 somebody told you. And he goes, yes, sir. Yeah,
14 he's caught in that lie so he goes back and he tells
15 them a story and they record it. He says Rashawn
16 and Rakim were driving the car. He was just along
17 for the ride.

18 Well, let me tell you something, ladies and
19 gentlemen of the jury, y'all know that doesn't make
20 any sense whatsoever. He's just along for the ride.
21 That's gonna be a ride he's not going to take with
22 some 14 year old who has just committed murder. And
23 he's 22 years old, he's just going to ride along
24 with them and dump the body? No, he wasn't along
25 for the ride; he was driving that train. He was in

1 charge. What reason would somebody have to go in
2 someone's house and then figure out they're in their
3 bedroom, why in the world would he follow Amp in
4 there. Why would he follow Amp in there and have a
5 chance for her to identify him and see him? Not
6 unless he was intended on her being dead so she
7 couldn't identify him. There's no other reason for
8 him to even go in there. Why would he follow Amp in
9 there? He wouldn't. And that's not how it
10 happened. He went in there on purpose. He went in
11 there intentionally, and he didn't go in there just
12 to look out. Listen to his statement. He says,
13 well, I was just looking out for him, you know, I
14 was just looking out. How can he look out by going
15 in the room? How can he look out by being in the
16 house? Melvin Godwin asked him, you know, he said I
17 was just looking out for him. Melvin says, you
18 wasn't looking out. Listen to it on the statement.
19 You weren't looking out for him, you went in the
20 house. He was like, well, yeah, you know, I was
21 just looking out for him. He was looking out to
22 make sure that his little 14 year old intruders did
23 what he was directing them to do, and that's why he
24 gave the knife to Amp and boosted him up and said,
25 you say you ain't a punk, you know, prove to me.

1 I'm a man, I'm 22 years old; you're a 14 year old,
2 you just a punk, prove you're not a punk, stab her,
3 stab her. Ladies and gentlemen, he was the driver
4 of the train; he was not along for the ride.

5 Now one thing occurs to me and
6 Mr. Jepertinger and I were talking about this, if
7 this was not so tragic, not so horrible and
8 Ms. Hayes had not lost her life this would almost be
9 what I'm about to tell you would almost be
10 laughable. Well, yeah, they broke in the house and,
11 you know, Amp unlocked the door and we all went in
12 and I wasn't doing nothing, I just went in, I was
13 just looking out for him, I wasn't doing nothing.
14 And Amp went in the room, and I followed him in
15 there and, you know, he jumped up on top of her and
16 had the pillow over her and you know, he stabbed
17 her, and I said dang, you know, but I wasn't doing
18 nothing, I wasn't going to touch her like that. And
19 you know, I went and sat in her car. Listen to it,
20 why would he go sit in her car? He's the one who
21 moved the car from under the aluminum carport to the
22 back where they could load the body out. And when
23 they loaded the body and, you know, they drove, I
24 just rode in the back seat, I didn't do nothing
25 though. And they dumped the body. And then we came

1 back, went back in the house, I didn't do nothing
2 though, I was just there. Well, he's there, he's 22
3 years old, he's not going to stop a 14 year old from
4 robbing. He's sitting there in the room with a 14
5 year old. He says 14 year old committed murder. He
6 didn't do anything to stop it. And it doesn't make
7 any sense whatsoever he'd have walked in the room in
8 the first place if he wasn't doing nothing.

9 And then low and behold though, he's got his
10 standards. He's not going to accept any stolen
11 goods 'cause Amp tried to give him the VCR and the
12 DVDs, he already had his — tried to sell it to him,
13 but you know, he's got his standards. He's not
14 accepting. No, no, I don't want, no, I'm not gonna
15 accept any stolen goods. But yet I'll let a murder
16 go on and a burglary go on and let the body be
17 disposed of, but I'm not going to accept these
18 stolen goods. How ridiculous is that? Now why in
19 the world would they go put stolen goods at his
20 house if they had the car and they could have
21 driving all around and put it anywhere else.
22 Because that's a lie. They didn't put those items
23 at his house; David put those items at his house.
24 And then he figured, I got to blame somebody so
25 anybody but me. Rakim was driving, Amp was driving,

1 Rashawn was driving. Amp took the stuff and put it
2 under my house. Amp is the one who killed the lady;
3 I was just there in the room. And said, dang, I'm
4 just along for the ride. No, he's not, ladies and
5 gentlemen of the jury.

6 You look at the evidence presented by the
7 State and you know he's guilty. They did a thorough
8 job investigating this case. They continued to
9 investigate it all the way to 2011. The officers
10 testified they got a message, and they went and
11 talked with Guy Ballenger. And they went and talked
12 with Anthony Wilson. And they had evidence they had
13 submitted to SLED. There was a bunch of evidence
14 submitted to SLED that came back unknown, but they
15 had a cigarette butt and it had unknown DNA on it
16 and it had Anthony Wilson's DNA on it. And in 2011
17 they found out who it might be. And they submitted
18 Gregory Montgomery's buccal swabs, and it came back
19 to Gregory Montgomery. The DNA was on that
20 cigarette butt too. And what did Anthony Wilson
21 tell you was the truth? What did Gregory Wilson
22 tell you that was the truth? I smoked a cigarette.
23 I gave Anthony a drag off of it, and I put it out, I
24 threw it in the trash can. And Mike Brandt found it
25 and Shannon Hill. And it came back the DNA was

1 Montgomery and Wilson.

2 And who did David Johnson say Montgomery was?

3 He didn't mention him earlier, and he was just his

4 cousin. He was just around, somebody talk to. He

5 didn't include him in, who he refers to as his

6 cousin. He wasn't going to include him in on it.

7 But Anthony Wilson saw it and said, well you know,

8 they never asked me about that. And he was 14 years

9 old when they talked to him, and they didn't ask him

10 directly about going back in there about anybody

11 else, so he didn't volunteer that information and

12 they didn't know about it. But then he came clean

13 and he told at them about Gregory; and Gregory told

14 the truth and said, yeah, I did it. And what else

15 did Gregory tell you? I saw the car and I saw David

16 driving the car. He said man, we pulled a lick. He

17 said, what kind of lick you pull to get a car like

18 this. Well, if I told you you'd be scared. Well

19 then I don't want to know.

20 And then they went and they went in

21 Ms. Hayes' house and he stole some chicken, and he

22 stole some Kool-aid. He might have stole some other

23 stuff, I don't know, you know, but there wasn't

24 anything else we know of missing. But he wasn't

25 scared about burglarizing her house and going in

1 there and stealing chicken and Kool-aid, going in
2 somebody's house in the middle of the night. He
3 wasn't scared about that so what would he be scared
4 of that David told him he'd be scared so he didn't
5 want to know. The lick David was referring to that
6 if I told you'd be scared was that we killed a lady
7 and stole her car and put her in the trunk and went
8 and threw her body in the woods and covered her up
9 with weeds and dirt, and that's what would have
10 scared Gregory Montgomery. When he found out about
11 all that he came to testify to his part in it and
12 what he knew. And if he wanted to lie and say, man,
13 you know, if I tell a real good story maybe I'll get
14 some help. You know, he'd have said, yeah, David
15 Johnson told me he killed Ms. Hayes and he and Amp
16 killed Ms. Hayes. He'd have made a good chopping
17 lie but he didn't. All he said was what was true
18 and that he told me I'd be scared so I said I didn't
19 want to know. So if he wanted to lie to help
20 himself he'd have told a better one than what he
21 told. So I submit to you you can believe his
22 credibility. He's telling the truth.

23 And if Amp wanted to really lie and help
24 himself he'd say I didn't stab her, David did all
25 the stabbing. He'd have told a good whopping lie to

1 try to help himself. What's gonna show he's lieing?
2 It's his word against David's word so why wouldn't
3 he say I didn't stab her at all, David did it. I
4 was just a little kid, I was scared. He admitted to
5 what he did, and I think because of that you can put
6 credibility on what he said about David Johnson
7 'cause if he's gonna lie he'd have told a better one
8 than what was told. A lie sometimes is a lot better
9 story than the truth. But he didn't tell a lie; I
10 submit to you he told the truth.

11 Now I'm gonna sit down in a moment, and
12 Mr. Hoffmeyer is gonna get up. And one of the
13 things Mr. Hoffmeyer might not say now and probably
14 still will say is that Anthony Wilson never said my
15 guy stabbed him. Well, he didn't because, you know,
16 he wasn't going to lie about it. If he's going to
17 tell a good lie he'd have said, I saw him stab her.
18 He didn't. But one of the things he's going to get
19 up and he's going to tell y'all about Stackley
20 Street. He's gonna tell y'all about Rakim Floyd.
21 Well, let me tell you a little bit about Rakim Floyd
22 first. No fingerprints were ever found on Rakim
23 Floyd. No DNA was ever found on Rakim Floyd
24 connecting him to any of this. Just a couple of
25 people mention his name, that's it. He was found at

1 Stackley Street Mr. Hoffmeyer will say because he
2 was running from the police. Might have been
3 scared. He might have been 14 years old and scared
4 'cause he knew something about this. He's right
5 there in the neighborhood, you know, right there,
6 and I'm sure those boys talked and ran their mouth.
7 And maybe he was involved, but he was only 14 years
8 old. He was scared perhaps if he was running. And
9 he's there and guess what, the officers told you
10 they didn't find anything to connect him to
11 Ms. Hayes' house. They didn't find anything to
12 connect him to Ms. Hayes' car. They didn't find
13 anything to connect him to Malloy Street other than
14 what David Johnson said. They did find some
15 earrings that he happened to have with him or they
16 might have just been there at the house; I don't
17 know. There were some earrings at Stackley Street,
18 that I do know. And they submitted those earrings,
19 and there was no DNA. Most importantly, there was
20 no DNA to connect those earrings to Ms. Willie
21 Mae Hayes to say those were her earrings, that they
22 were stolen from her. There was no DNA to connect
23 it.

24 So I'm gonna tell you, I don't know if y'all
25 remember or not, but I think Mr. Compton said he

1 asked a question of Mr. Johnson I think is on that
2 tape; I might be mistaken. Listen to it and see.
3 That you know, we don't want to go on no wild goose
4 chase or maybe that's what he talked to about in his
5 office. He said, you sure you can show us where the
6 body is. Are you sure you can show us where the
7 body is because I want to be on any wild goose
8 chase. You know, you heard the officer say they had
9 gone to Washington Street. I don't know why they
10 went to Washington Street. That's not in evidence.
11 I know they were talking to Rashawn Bailey, then
12 they went to Washington Street and didn't find
13 anything, you know. And Compton said don't send us
14 on a wild goose chase.

15 I would submit to you that Stackley Street is
16 a wild goose chase. Don't go on a wild goose chase.
17 You know who the driver was; it was David Johnson.
18 You know who the leader was; it was David Johnson.
19 22 years old. Gets a couple of 14 year olds and a
20 19 year old to go in that lady's house. And as
21 Mr. Jepertinger said, when he was little he was
22 scared of the dark, and he thought he was safe in
23 his house in his room in his bed under his covers.
24 Ms. Hayes thought she was safe in her house, in her
25 room, in her bed, under her covers. And because of

1 David Johnson and these other mean little boys, she
2 wasn't because her covers became her burial shroud
3 as they dumped her with no dignity whatsoever in a
4 ditch on Malloy Street. And all I ask for for the
5 State is for justice. I ask for justice for
6 Ms. Willie Mae Hayes, a 69 year old lady who lived
7 in a home that was neat and nice and well kept and
8 still worked, a good citizen of our community. I
9 ask for justice for her and for her family. And I
10 ask for justice, for justice that David Johnson
11 deserves, that you find him guilty of murder, guilty
12 of burglary first degree, guilty of armed robbery,
13 and guilty of conspiracy for taking these 14 year
14 olds and corrupting them, and guilty of possession
15 of a weapon during the commission of a crime of
16 violence. Thank you.

17 THE COURT: Thank you, Solicitor.

18 Mr. Hoffmeyer.

19 MR. HOFFMEYER: May it please the Court,
20 Mr. Clements and Mr. Jepertinger. Ladies and
21 gentlemen, I want to thank you again for the time
22 and attention you've given us in this case. I know
23 that when I first had the opportunity to speak with
24 y'all I told you how important this case was; and
25 clearly it's important to Ms. Hayes' family and

1 Ms. Hayes', it's important to the State, and
2 likewise it's critical and important to David
3 Johnson. He's on trial for these terrible things
4 that were done to Ms. Hayes. So this is his day in
5 court. This is his opportunity to have people like
6 you looking to the facts and evidence in the case
7 and then do what's right. And he's counting on that
8 because there's no doubt based upon this evidence
9 the State made their mind up a long time ago. But
10 the good part about it is they don't get to make the
11 final decision; you folks do. So I thank you in
12 advance for that because y'all are gonna go back
13 there and share with one another, talk with one
14 another, and you'll give us justice.

15 Now as far as the law of the case as has been
16 indicated or told to you several times, His Honor is
17 going to tell you all about it. I'd like to touch
18 on a few things, some of which you have heard
19 before, and that is that the State has the burden of
20 proof beyond a reasonable doubt. And when it comes
21 to this burden of proof it affects and is about each
22 and every crime that they've charged David with and
23 each and every part of the crimes that they have
24 charged him with. You can't be suspicious someone
25 did something. You can't think they did it

1 probably. You can't think, well, seems like that's
2 the case. No, they have to prove it beyond a
3 reasonable doubt. He doesn't have to prove a thing.
4 And His Honor will tell you if at any point y'all
5 discuss his testifying or not testifying, that's
6 improper. He does not have to prove a thing. The
7 State's burden and with all their abilities, all
8 their scientific stuff, everything they have to
9 benefit them defendant's don't have. It's their
10 burden.

11 Now as far as this proof beyond a reasonable
12 doubt, that also relates to what the State seems to
13 be telling you folks in their closing argument, or
14 at least partially. The State seems to say, well,
15 you know what ladies and gentlemen, we believe he
16 did it, we believe that he stabbed Ms. Hayes, we
17 believe he led these 14 year olds. Of course, they
18 forget to talk very much about the 19 year old
19 Rashawn Bailey who Mr. Wilson their own witness says
20 was there. And unfortunately, when it comes to 14
21 year olds and this is when you folks have the
22 benefit of knowing the way life is particularly now
23 these days, 14 year olds can do terrible, terrible,
24 terrible things. And by Mr. Wilson's own admission
25 he did a terrible, terrible, terrible thing. But of

1 course, the State would have you believe, no, they
2 can't do that, had to be directed. Directed? He
3 told you himself he stabbed her.

4 But what the State seems to say is, well, you
5 know what, ladies and gentlemen, the evidence
6 clearly shows that Mr. Johnson did it. But, but if
7 you don't think he did stab her, if you don't think
8 that's the case, well then he was there, he was
9 watching somehow. He was there so the hand of all
10 is the hand of all, convict him then. But see, it's
11 not quite that easy because His Honor is gonna
12 instruct you concerning the hand of one is the hand
13 of all, and His Honor is gonna tell you even prior
14 knowledge that a crime is going to be committed
15 without more is not sufficient to make a person
16 guilty of that crime. Mere knowledge that another
17 person is going to commit a crime even if the
18 defendant is present when the crime is committed is
19 not sufficient to convict the defendant as a
20 principal. They have to prove beyond a reasonable
21 doubt this hand of one is the hand of all. More, it
22 takes more His Honor will tell you, than mere
23 presence. It takes more than that. So the first
24 theory they haven't proven beyond a reasonable
25 doubt, and the second theory, their fall-back

1 theory, they haven't either.

2 But let's talk about the evidence that they
3 presented to you. And of course, what you bring to
4 the courtroom individually, then collectively when
5 you go back there and share with one another is
6 y'all know how the way things work and y'all have
7 God given common sense and y'all had the benefit of
8 seeing and listening and hearing these witnesses.
9 And of course, bias and motive and a gain that
10 someone can get by their testimony is something
11 folks like you would make in these difficult
12 decisions to consider.

13 But what we find out with the State's burden,
14 we find out not a whole lot about Rakim Floyd. I
15 bring that out. Don't know much about Rakim Floyd
16 other than the fact that he was hiding out in an
17 abandoned house having shaved his head with a
18 backpack and clothing. The State didn't put much
19 evidence in about him, but I brought that to your
20 attention because y'all needed to know that.
21 Anthony Wilson told law enforcement initially; and
22 Anthony went there with his mom, that Rakim Floyd
23 was there in the house. In addition, don't know
24 much about Rashawn Bailey. Rashawn Bailey was put
25 in the house by Anthony Wilson. Rashawn Bailey is a

1 19 year old, don't know much about him. Don't know
2 much about Terrance Mitchell whose name was
3 mentioned. It's the State's burden of proof. We
4 haven't even heard from Lilly Mitchell, you know,
5 where the credit cards and the necklaces were found
6 and all this was allegedly transpiring as far as
7 those items being there, we haven't even heard from
8 her. State's burden of proof beyond a reasonable
9 doubt. He's on trial for these terrible crimes.
10 He's accused of these terrible things. It's their
11 burden of proof.

12 Now let's talk about some of the other things
13 we found out through the witness stand and through
14 the evidence that was presented. We have three
15 locations that seem to be mentioned on several times
16 throughout the trial. We have Liberty Street where
17 Rashawn and Rakim live in close proximity to
18 Ms. Hayes, and we find out that a bag full of bloody
19 items was found less than a block from Rashawn and
20 Rakim's house. We haven't received any evidence by
21 way of clothing or shoes or anything such as that
22 from anybody's home on Liberty Street to see if
23 there's any DNA of Ms. Hayes, or anything else that
24 would potentially help y'all make a difficult
25 decision. We haven't received anything my client

1 took him to his house, was helping him, was
2 cooperating with him. Did they try and get any
3 clothing to see if there was any blood or anything
4 that they could substantiate these terrible things
5 they're saying about him? No.

6 Stackley Street, the clothing wasn't even
7 tested. The knife was tested just peripherally to
8 see if there was any blood, a pocket knife, found
9 with Rakim Floyd who was holding -- excuse me, who
10 was hiding from law enforcement with a shaved head.
11 What type of knife did Anthony Wilson say was used?
12 A pocket knife. What kind of knife was found on
13 Stackley Street? A pocket knife. Was it -- would
14 it have been that hard to send that off to see if
15 there was DNA on it? SLED wouldn't test a potential
16 murder weapon?

17 Now we also find out that Anthony Wilson
18 didn't want to admit it when I was asking him about
19 it, but Anthony Wilson washed up after this. You
20 remember the questioning. You remember I had to
21 break out his statement and have him look at it. So
22 it makes sense there might not be blood on Anthony
23 Wilson; but this was a tragic scene, a tragic scene
24 that Anthony Wilson by his own admission
25 participated in and he washed up. Why would you

1 wash up if you stab someone once and then walk away.
2 Well, it -- because he did more than that. As my
3 client told you he stabbed her multiple times. That
4 statement of my client that was taken at 3:15 a.m.
5 He's been with law enforcement 11 hours and 15
6 minutes, and the State nitpicks here and there,
7 picks this and that, whatever seems to fit; but he
8 was telling the truth. The forensic pathologist,
9 she was stabbed tragically 7 times, which is exactly
10 the type of thing that my client described for you
11 Anthony Wilson was doing.

12 Now as far as the bloody items that was found
13 in that bag, as I touched on they were found near
14 Rakim and Rashawn's house, what little we know about
15 them that the State has brought you. And the State
16 during questioning seems to want to infer that
17 during the evidence and trial of this case, well,
18 that would have been near where Mr. Johnson parked
19 the car too; wouldn't it? But Anthony Wilson who
20 was with, according to them, with my client at that
21 time never mentioned anything about that. He was in
22 the car according to them. He never mentioned
23 anything about my client having anything to do with
24 that bag.

25 And that brings up another interesting thing

1 about the car, what the evidence shows. That was a
2 lot of zeros that the Solicitor put up, a lot of
3 zeros. I was never good at math, still not good at
4 math, not sure how many zeros were there up but that
5 has nothing to do with this case, neither does the
6 fingerprint. Because my client has always admitted
7 he at one point later on after this tragic incident
8 after that night drove that car. And you know what
9 else he said? He said that he was the one that
10 parked the car on Roughfork Street so it would make
11 sense that his fingerprint would be there. It would
12 make sense that his DNA would be on the steering
13 wheel. They tell you, this stuff doesn't last that
14 long, it's one time. And one moment it's, oh, we
15 can't find this evidence, it's never there, it's
16 never there because it goes away. And another
17 instance, well, his DNA was there so he had to have
18 been driving the car the whole time? No. Because
19 see, it is sometimes a case as they told you where
20 DNA and things like that because of different
21 conditions go away. And so the last person that
22 would have parked the car is more likely to have a
23 fingerprint or that touch DNA, which is what he told
24 you he did. But that's a far cry from participating
25 in being involved with a murder and a armed robbery,

1 conspiracy, possession of a weapon, and the other
2 crimes. They didn't charge him with possession of a
3 stolen vehicle; they charged him with these things.

4 Now as far as Mr. Montgomery, he tells us
5 first as we're trying to determine what he knows and
6 you folks are trying to determine whether he's
7 credible, he tells the State he's never been
8 convicted of a crime. I asked him, well, there was
9 a simple assault, CDV, I was convicted. When he
10 swore to tell the truth he swore to tell the truth
11 when he got on the witness stand, not after the
12 State finished questioning him. And we also found
13 out that well, you know, this was a terrible thing
14 but I didn't bother to tell anybody for over three
15 years. Is that the kind of witness that's
16 believable and credible? I knew Ms. Hayes but
17 didn't mention it for over three years. He also
18 told law enforcement when he's coming clean three
19 plus years later, I didn't ride in the car. Well,
20 low and behold he did ride in the car. So which is
21 it?

22 He also, just like Anthony Wilson, what a
23 coincidence, over three years later Anthony Wilson's
24 statement was taken shortly after this tragedy when
25 Anthony Wilson said Rakim was there, the one that

1 was hiding out on Stackley Street? Gregory
2 Montgomery also said Rakim was involved and
3 mentioned Terrance, Terrance Mitchell, but he said
4 Rakim was involved. And now in court Rakim wasn't
5 involved. Well, see, I was afraid, I was scared
6 when I was talking to law enforcement. You think
7 now that he faces a burglary first degree and faces
8 15 years to life he's scared, and he's changing his
9 story? You think that's scary? Says Mr. Johnson
10 said I pulled a lick. Anthony Wilson testified
11 nobody mentioned anything about a lick. They're not
12 consistent.

13 In addition, he hadn't been given a bond,
14 Mr. Montgomery. And he says, well, I'm just
15 testifying, the Court will decide if I can get a
16 bond. Y'all think the State will be present at a
17 bond hearing? You think the State will be present
18 when he's facing 15 years to life? Is that
19 believable? Is that credible when he's on trial
20 when liberty at stake?

21 Now with regard to Mr. Wilson, goes up there
22 with his mother, this 14 year old that stabbed
23 Ms. Hayes, and the first thing he told law
24 enforcement was I don't know anything about this,
25 don't know anything about this. Then he gives the

1 statement. We know based upon what he told us 14
2 year olds can do terrible, horrendous, evil things.
3 Would a 14 year old try and minimize what he did
4 even after he had admitted the terrible thing.
5 Would a 14 year old try and minimize, try to lessen
6 the terrible acts that he did? Of course we find
7 out again Rakim was there; now Rakim is not there.
8 We find out, well, from him my client allegedly used
9 a crowbar but then at trial. In this statement, no,
10 it was unlocked, we just pushed it up. Wants to
11 make sure he tells each of you that my client put a
12 pillow over her head, didn't mention it in his
13 statement. Not one word about that.

14 When you think about what he says he did,
15 does it make sense? Does it make sense that he
16 stabbed her, turned around, and handed a knife to
17 somebody? Or does it make sense that Ms. Hayes
18 would have tried to tell where her money was and ask
19 who is this, and the things that Mr. Johnson said.
20 As he told you he was standing in the door shaking
21 his head while this Anthony Wilson does these
22 terrible things. In hindsight, should he have tried
23 to stop him? No doubt. But that doesn't make him
24 guilty of what the State is trying to prove him
25 guilty of. How on earth could Anthony Wilson have

1 done that and then expect people to believe she just
2 laid there while we're doing it. Well, now it's all
3 of a sudden he put a pillow over her head, didn't
4 mention that in the statement. And of course we
5 know, as I mentioned earlier, that he washed up
6 after this tragedy, this horrendous act. He also
7 said another interesting thing on the witness stand
8 when I was asking him why he told officers certain
9 things, why he said Rakim said, why he told them
10 things such as that, that now he's changing his
11 story. Which is it? He said, I told them,
12 referring to the officers, I told them what they
13 wanted to hear. I told them what they wanted to
14 hear. He's facing, Mr. Wilson, two life sentences,
15 plus even more time for the other crimes. You think
16 he has any motive now, any reason to tell the State
17 what they want to hear? But you folks don't let
18 witnesses get away with that. You people don't
19 allow that.

20 Now my client Mr. Johnson, David, after being
21 there with the officers eight plus hours before
22 meeting with Mr. Com— before talking with Mr.
23 Compton, 11 plus hours before talking with Officers
24 Godwin and Drayton, tells them what occurred and
25 tells them he stood there and it happened and tells

1 them other things that made clear he was telling the
2 truth. He told them where some items Anthony Wilson
3 had put at his house, at my client's house, at
4 David's house. Would a 14 year old who is willing
5 to stab somebody take items and try to hide them
6 something else other than where his momma would see
7 them? Would he? My client didn't have to tell them
8 about it. He wanted to tell them about it so he
9 took them there and showed them. He had been to the
10 scene of where Ms. Hayes was taken. He told you
11 that in his statement. He couldn't believe what
12 happened in the house, but he told you in his
13 statement. And he took them there. Did he have to
14 do that? Could he send them to Washington Street as
15 they'd been before or somewhere else? No, he wanted
16 to take them there. Remember what Mr. Compton said,
17 he got up to take him. He got up to lead them to
18 her. That's credible. That's believable.

19 He also told them about the things at
20 Ms. Lilly's house. Now his statement was taken on
21 August 26th into the 27th I believe the testimony
22 was, shortly after this terrible thing. Where did
23 they find that stuff? At her house. So the things
24 that he told the officers, unlike these other
25 individuals, he not only told them but he showed

1 them. Of course he also told the officers again
2 truthfully, that he stood in that hallway and saw
3 what Anthony Wilson did and think how fast that's
4 happening, that terrible horrendous thing; but it
5 doesn't mean that he's guilty of murder under either
6 of the State's theory, theories, which again they
7 seem to say if not this, then that.

8 Now ladies and gentlemen, if your verdict was
9 to say to us and to the Hayes' family that this was
10 a terrible tragedy, everybody would certainly agree
11 with that. A verdict in this case though is about
12 whether they've proven him guilty beyond a
13 reasonable doubt. Your verdict cannot be based on
14 passion or sympathy because if it was -- if a
15 verdict particularly in this case with a lady like
16 Ms. Hayes, regardless of who is on trial, if it was
17 about passion or sympathy and compassion and being
18 sorry for this terrible loss to this family and her
19 loss herself, then clearly anybody should be
20 convicted. But this verdict has to be based upon
21 proof beyond a reasonable doubt that he's guilty of
22 the crimes. And so we know you will share with one
23 another, talk with one another, talk about this
24 evidence; and when you do you'll make that terribly
25 hard decision. It will be a decision that while

1 sympathy and compassion and a real sense of loss
2 that everybody has is still there, it will be a
3 verdict of not guilty. Thank you, again,
4 individually and collectively for all the time
5 you've given Ms. Hayes and David Johnson. Thank
6 y'all very much.

7 THE COURT: Thank you, Mr. Hoffmeyer.
8 Ladies and gentlemen, I'm going to ask you to step
9 back into the jury room. Please have no
10 conversation about the case. It's not — you're not
11 ready to deliberate yet. I'm gonna take a short
12 break and then we're going to start back, and I'll
13 give you the charge on the law, okay? So if you
14 need anything let Mr. Propps know, and the clerk
15 will be coming back there to get your lunch orders
16 so we'll take care of that while you're back there.

17 (WHEREUPON, the jury was removed
18 from the courtroom at 11:23 a.m., and a recess was
19 taken from the proceedings.)

20 THE COURT: Mr. Propps, you can go ahead
21 and bring the jury in please.

22 (WHEREUPON, the jury was returned to the
23 courtroom at approximately 11:50 a.m., and
24 the following proceedings commenced in
25 open court.)

1 THE COURT: All right, ladies and
2 gentlemen, you've heard from the attorneys with
3 their closing remarks and now it's time for me to
4 tell you the charge on the law. During the course
5 of the trial I've been up on the Bench and kind of
6 essentially out of the way to allow the evidence to
7 be presented to you because you are the fact finders
8 in this case. You decide the facts and I'm not to
9 have any influence on you about the facts so it's
10 been appropriate for me to be out of the way while
11 the evidence has been presented to you. But now
12 we've reached the portion of this case where you and
13 I are in this together, you, as the judges of the
14 facts and me as the judge of the law. So I usually
15 come down with the jury and give you the charge here
16 with and be right here with you.

17 Please listen carefully as I give you the
18 charge on the law. I'm going to read it right out
19 of the notebook where I've prepared it so that I
20 don't leave out anything or miss anything, and you
21 will have a copy of this in the jury room when you
22 retire to deliberate the case, okay? So Madam
23 Forelady and members of the jury, you have heard all
24 of the evidence and heard the arguments of both
25 parties. I will now explain to you the law which

1 applies to this action. The indictment charges the
2 indictment David Gerard Johnson with the charges of
3 murder, first degree burglary, armed robbery,
4 possession of a weapon during the commission of a
5 violent crime, and criminal conspiracy. I remind
6 you that the fact that the defendant was arrested,
7 charged, and indicted in this case is not evidence
8 in this case, and it cannot be considered by you as
9 evidence of guilt in this case, nor does it create
10 any presumption or inference of guilt. The
11 indictment is simply the formal written instrument
12 which contains the charges made against the
13 defendant. It is the formal document by which this
14 case is brought into this court. Now, as I said, I
15 will give you a copy of these instructions in
16 written form to have with you in the jury room.
17 During your deliberations you may refer to the
18 instructions to guide you in your decision making.
19 You must consider the instructions as a whole and
20 not follow some and ignore others.

21 Now the defendant has pled not guilty to the
22 indictment and to these charges and that plea puts
23 the burden on the State to prove the defendant
24 guilty. A person charged with committing a criminal
25 offense in South Carolina is never required to prove

1 him or herself innocent. I charge you that it is an
2 important rule of law that a defendant in a criminal
3 trial, no matter what the seriousness of the charge
4 may be, will always be presumed to be innocent of
5 the crimes for which the indictment was issued
6 unless guilt has been proven by evidence satisfying
7 you of that guilt beyond a reasonable doubt. This
8 presumption of innocence does not end when you begin
9 your deliberations, but it accompanies the defendant
10 throughout the trial until you reach a verdict of
11 guilt based on evidence satisfying you of that guilt
12 beyond a reasonable doubt. The presumption of
13 innocence is not a mere legal theory. It is not
14 just a legal phrase. It is a substantial right to
15 which every defendant is entitled unless you, the
16 jury, are satisfied from the evidence of the
17 defendant's guilt beyond a reasonable doubt.

18 The State has the burden of proving the
19 defendant guilty beyond a reasonable doubt. So what
20 is a reasonable doubt in the law? Some of you may
21 have served as jurors in a civil cases where you
22 were told that it is only necessary to prove that a
23 fact is more likely true than not true such as by
24 the greater weight or the preponderance of the
25 evidence. In criminal cases the State's proof must

1 be more powerful than that; it must be beyond a
2 reasonable doubt. Proof beyond a reasonable doubt
3 is proof that leaves you firmly convinced of the
4 defendant's guilt. There are very few things in
5 this world that we know with absolute certainty.
6 And in criminal cases the law does not require proof
7 that overcomes every possible doubt. If based on
8 your consideration of the evidence you are firmly
9 convinced that the defendant is guilty of the crimes
10 charged you must find the defendant guilty. If on
11 the other hand you think that there is a real
12 possibility that the defendant is not guilty, you
13 must give the defendant the benefit of that doubt
14 and find him not guilty.

15 I remind you that during this trial you and I
16 have certain duties to perform. As the trial judge
17 it is my responsibility to preside over the trial of
18 this case, and I also have the duty to rule on the
19 admissibility of the evidence that's offered during
20 this trial. You are to consider only the competent
21 evidence that is before you. You are to consider
22 only the testimony which has been presented from the
23 witness stand, any exhibits which have been made a
24 part of this record, and any stipulations of
25 counsel. I have the additional duty to charge you

1 the law that is applicable to this case. As the
2 presiding judge I am the sole judge of the law in
3 this case, and it is your duty as jurors to accept
4 and to apply the law as I now state it to you. If
5 you already have any idea as to what the law is or
6 what the law ought to be and it does not agree with
7 what I now tell you the law is, you must abandon
8 your idea because you are sworn to accept the law
9 and to apply the law as exactly as I state it to
10 you.

11 In every case tried in this court before a
12 jury, the jury becomes the sole and the exclusive
13 judge of the facts of a case. A trial judge cannot
14 intimate, state, comment on, or make any statement
15 to a trial jury about the facts in a case. Since
16 you, the jury, are the sole judge of the facts in
17 this case you are not to infer from what I have said
18 during the progress of this trial in ruling upon the
19 admissibility of evidence or otherwise or anything
20 that I say now during the course of these
21 instructions to you that I have any opinion about
22 the facts in this case. The law does not allow me
23 to have an opinion about the facts in this case.
24 This is a matter solely for you, the jury, to
25 determine. As jurors it is your duty to determine

1 the effect, value, weight, and truth of the evidence
2 presented during the trial.

3 Now there are two types of evidence which are
4 generally presented during a trial. There's direct
5 evidence and there's circumstantial evidence.

6 Direct evidence is the testimony of a person who
7 claims to have actual knowledge of a fact such as an
8 eyewitness. It is evidence which immediately
9 establishes the main fact to be proven.

10 Circumstantial evidence is proof of a chain of facts
11 and circumstances indicating the existence of a
12 fact. It is evidence which immediately establishes
13 collateral facts from which the main fact may be
14 inferred. Circumstantial evidence is based on
15 inference and not on personal knowledge or
16 observation.

17 Now the law makes absolutely no distinction
18 between the weight or the value to be given to
19 either direct or circumstantial evidence, nor is
20 there a greater degree of certainty required of
21 circumstantial evidence than of direct evidence.
22 You should weigh all of the evidence in this case.
23 After weighing all of the evidence, if you are not
24 convinced of the guilt of the defendant beyond a
25 reasonable doubt then you must find the defendant

1 not guilty. However, after weighing all of the
2 evidence, if you are convinced of the defendant's
3 guilt beyond a reasonable doubt, then you would find
4 the defendant guilty.

5 Necessarily, you must determine the
6 credibility of the witnesses who've testified in
7 this case. And ladies and gentlemen, credibility
8 simply means believability. It becomes your duty as
9 jurors to analyze and to evaluate the evidence and
10 to determine which evidence convinces you of its
11 truth. In evaluating eyewitness testimony you
12 should remember that the State must prove the
13 identity of the defendant as the person who
14 committed the crime beyond a reasonable doubt.

15 In determining the believability of witnesses
16 who have testified in this case you may believe one
17 witness over several witnesses or several witnesses
18 over one. You may believe a part of the testimony
19 of a witness and reject the remaining part of the
20 testimony of that same witness. You may believe the
21 testimony of a witness in its entirety or reject
22 that testimony in its entirety. You may consider
23 whether any witness has exhibited to you any
24 interest, bias, prejudice, or other motive in this
25 case. You may consider whether a witness is seeking

1 a personal gain as well as the appearance and the
2 manner of a witness while on the witness stand.

3 Now there has been evidence presented that
4 witnesses have made prior statements which are not
5 consistent with the witness' present testimony. You
6 may use this evidence to decide whether or not to
7 believe the witness. You may also use evidence of
8 the earlier contradictory statement to determine the
9 truth of those statements. It is up to you to
10 decide whether to believe the earlier statements or
11 to believe the testimony given at trial.

12 A person who has a past criminal record is
13 competent to testify during a trial. A past record
14 does not affect the ability of that witness to
15 testify. The past record may only be considered by
16 you, if at all, in determining the witness'
17 believability. Remember, you are the sole judges of
18 the facts in this case and of the believability of
19 any and all witnesses in this case.

20 Now the rules of evidence ordinarily do not
21 let or do not permit a witness to testify as to
22 opinions or conclusions. There is an exception to
23 this rule that exists for witnesses that we call
24 expert witnesses. A witness who by education and
25 experience has become an expert in some art,

1 science, profession, or calling may state an opinion
2 as to relevant and material matter in which that
3 witness claims to be an expert and may also state
4 the reasons given for that opinion. You should
5 consider any expert opinion received in evidence in
6 this case and like any other evidence give it the
7 weight that you think it deserves. If you decide
8 that the opinion of an expert witness is not based
9 on sufficient education and experience, or if you
10 conclude that the reasons given in support of the
11 opinion are not sound or that the opinion is
12 outweighed by other evidence, you may disregard the
13 opinion in its entirety. On the other hand, if you
14 decide that the opinion of an expert witness is
15 based on sufficient education and experience, or if
16 you conclude that the reasons given in support of
17 the testimony or that opinion are sound, then you
18 may accept that opinion in its entirety. An expert
19 witness' testimony is to be given no greater weight
20 than that of any other witness simply because the
21 witness is an expert. Further, you're not required
22 to accept an expert's opinion even though it's not
23 contradicted.

24 Now a statement alleged to have been made by
25 the defendant has been admitted into evidence in

1 this case. While the Court has determined that the
2 statement is admissible, I instruct you that you
3 make the ultimate decision of whether or not the
4 defendant made the statement. If the defendant did
5 make the statement you must determine whether the
6 statement was made by the defendant voluntarily and
7 of his own free will. This means that the statement
8 was not caused by pressure, force, fear, threats,
9 coercion, or intimidation, or by hope or promise of
10 leniency or reward of any kind. In determining
11 whether the statement was voluntarily you should
12 consider both the characteristics of the defendant
13 and the details of the questioning. Some of the
14 factors that you may consider are the age of the
15 defendant, the defendant's education or lack of
16 education, the defendant's mental ability or
17 capacity, the defendant's IQ or intelligence, the
18 defendant's background, and the environment, the
19 place and the length of the detention, the nature of
20 the questioning, and the advice or the lack thereof
21 to the defendant of his constitutional rights;
22 including but not limited to, the right to remain
23 silent, that any statement could be used against him
24 in a court of law, the right to have a lawyer
25 present, that he would — that if he could not

1 afford a lawyer a lawyer would be appointed to
2 represent him without any cost, and that he could
3 stop making a statement at any time. The State has
4 the burden of proving beyond a reasonable doubt that
5 the alleged statement was made by the defendant and
6 that it was voluntarily given. You must carefully
7 consider all of the surrounding circumstances before
8 you give any weight to an alleged statement.

9 Now I instruct you and I emphasize that the
10 fact that the defendant did not testify is not a
11 factor to be considered by you in any way in your
12 deliberations and in your consideration on the
13 question of guilt or innocence of the defendant. It
14 must not be considered by you in any manner
15 whatsoever. A defendant has the constitutional
16 right to remain silent, and the assertion of that
17 right must not be considered by you in your
18 deliberations. I repeat, under your oath you are to
19 draw no conclusion whatsoever from the fact that the
20 defendant in this case did not testify. The fact
21 that this defendant did not testify should not even
22 be discussed in the jury room. The burden of proof
23 as I've stated to you is on the State. The
24 defendant is not required to prove his innocence.
25 The burden of proof remains on the State to prove

1 guilt beyond a reasonable doubt.

2 Now the indictment in this case alleges
3 several different charges against the defendant.
4 Those charges are, under count one, murder; count
5 two, first degree burglary; count three, armed
6 robbery; count four, possession of a weapon during
7 the commission of a violent crime; count five,
8 criminal conspiracy. Each count of the indictment
9 charges a separate and a distinct offense. You must
10 decide each charge separately on the evidence and
11 the law applicable to it uninfluenced by your
12 decision as to any other charge. The defendant may
13 be convicted or acquitted on any or all of the
14 offenses charged. You will be asked to write a
15 separate verdict of guilty or not guilty for each
16 charge.

17 Now if a crime is committed by two or more
18 people who are acting together in committing the
19 crime the act of one is the act of all. A person
20 who joins with another to commit an unlawful act is
21 criminally responsible for everything done by the
22 other person which happens as a probable or natural
23 consequence of the acts done in carrying out the
24 common plan and purpose. For example, two people
25 can be guilty of killing another person when only

1 one of the two had a gun, there was only one bullet,
2 and only one of the two fired the shot that caused
3 the death. If two or more people are acting
4 together assisting each other in committing the
5 criminal act, the act of one is the act of all, or
6 as is sometimes said, the hand of one is the hand of
7 all.

8 Prior knowledge that a crime is going to be
9 committed without more is not sufficient to make a
10 person guilty of that crime. Mere knowledge that
11 another person is going to commit a crime even if
12 the defendant is present when the crime is
13 committed, is not sufficient to convict a defendant
14 as a principal. Guilt as a principal is shown by
15 actual or constructive presence at the scene as a
16 result of a prior arrangement. Therefore, a finding
17 of a prior arranged plan or common scheme is
18 necessary for a finding of guilt as a principal.
19 The State must prove beyond a reasonable doubt by
20 competent evidence the theory of the hand of one
21 being the hand of all. A principal in a crime is
22 one who either actually commits the crime or who is
23 present aiding, abetting, or assisting in the
24 committing of the crime.

25 Now the State has to prove more than mere

1 presence at the scene. Mere presence at the scene
2 is not sufficient to prove someone guilty of a
3 crime. If two or more people combine together to
4 commit an unlawful act such as the robbery of a
5 convenience store; and in the execution of that act
6 a murder is committed by one of the actors as a
7 probable or natural coverage consequence of the acts
8 done in pursuance of that common design, then all
9 present in the unlawful act may be as guilty as the
10 one who committed the fatal act. The common purpose
11 may not have been to kill and to murder; but if it
12 was unlawful as, for instance, to rob a convenience
13 store, and in the execution of this common purpose a
14 murder is committed by one as a probable or a
15 natural consequence of the acts done in pursuance of
16 that common design, then all present in the unlawful
17 common design may be as guilty as the slayer. In
18 other words, in the above example a defendant cannot
19 escape responsibility if the attack upon the victim
20 was a natural and probable consequence of his tacit
21 or expressed agreement to commit the robbery.

22 Now the defendant is charged with the crime
23 of murder. The following are the elements that the
24 State must prove beyond a reasonable doubt to prove
25 murder. One, that the defendant killed another

1 person; and two, that he did so with malice
2 aforethought. Malice is hatred, ill will, or
3 hostility toward another person. It is the
4 intentional doing of a wrongful act without just
5 cause or excuse and with the intent to inflict an
6 injury or under circumstances that the law will
7 infer an evil intent. Malice aforethought does not
8 require that malice exists for any particular time
9 before the act is committed. But malice must exist
10 in the mind of the defendant just before and at the
11 time that the act is committed. Therefore, there
12 must be a combination of a previous evil intent and
13 the act.

14 Malice aforethought may be expressed or
15 inferred. These terms, expressed and inferred or
16 implied, do not mean different kinds of malice but
17 merely the manner in which malice may be shown to
18 exist. That is, either by direct evidence or by
19 inference from the facts and circumstances which are
20 proved. Expressed malice is shown when a person
21 speaks words which express hatred or ill will for
22 another or when the person prepared beforehand to do
23 the act which was later accomplished. For example,
24 lying in wait for a person or any other act of
25 preparing, going to show that the deed was within

1 the defendant's mind, would be expressed malice.

2 Implied or inferred malice may be found to
3 exist when circumstances demonstrate a wanton or a
4 reckless disregard for human life or when a
5 reasonably prudent person would have known that
6 according to common experience there was a plain and
7 strong likelihood that death would follow the
8 contemplated act.

9 Now the defendant is also charged with first
10 degree burglary. The State must prove beyond a
11 reasonable doubt that the Defendant entered a
12 dwelling without consent. A dwelling is any
13 building or portion of a building in which a person
14 ordinarily sleeps, but a building is a dwelling even
15 if the residents are temporarily absent from the
16 building. Now in order to prove that the defendant
17 entered the dwelling the State does not have to show
18 that the defendant's entire body entered the
19 dwelling. The smallest entry is sufficient. It may
20 be any part of the body such as a hand or a foot or
21 even an instrument such as a hook or other
22 instrument. In addition, the State does not have to
23 prove that force was used to gain entry. If a
24 person enters a building by using deception,
25 artifice, trick, or misrepresentation to get consent

1 to enter, this is an entry without consent.

2 Next the State must prove beyond a reasonable
3 doubt that the defendant intended to commit a crime,
4 either a felony or misdemeanor at the time of the
5 entry. The mere entry into a dwelling without
6 consent is not burglary. Intent may be shown by
7 acts and conduct of the defendant and other
8 circumstances from which you may naturally and
9 reasonably infer intent.

10 Finally, the State must prove beyond a
11 reasonable doubt any one or more of the following
12 occurrences: One, that the entering while in the
13 dwelling, that when entering while in the dwelling
14 or when fleeing the defendant or an accomplice was
15 armed with a deadly weapon or explosive. A deadly
16 weapon is any article, instrument, or substance
17 which is likely to cause death or great bodily harm.
18 Whether an instrument has been used as a deadly
19 weapon depends on the facts and circumstances of
20 each case. The following are some examples of
21 instruments which may be deadly weapons: A pistol,
22 a shotgun, a rifle, a dirk, a dagger, or a knife.
23 Or number two, they must — State prove that when
24 entering while in the dwelling or when fleeing that
25 the defendant or an accomplice caused physical

1 injury to anyone not participating in the crime. Or
2 three, that when entering while in the dwelling or
3 when fleeing the defendant or an accomplice used or
4 threatened to use a dangerous object. And four,
5 that the defendant entered or remained in the
6 dwelling in the nighttime. Nighttime is the period
7 between sunset and sunrise during when there is not
8 enough daylight to recognize a person's face except
9 by artificial light or moonlight.

10 Now the defendant is also charged with armed
11 robbery. In order to prove this offense the State
12 must first prove beyond a reasonable doubt that the
13 defendant took personal property from the person or
14 the presence of another person. Property is in the
15 presence of person if it is within the person's
16 reach, inspection, observation, or control so that
17 the person could, if not overcome with violence or
18 prevented by fear, could keep possession of the
19 property. The State must also prove beyond a
20 reasonable doubt that the defendant carried the
21 property away intending to permanently deprive the
22 owner of the property and to keep the property for
23 the defendant's own use. The slightest removal of
24 the property or the complete possession of the
25 property even for an instant by the defendant is

1 sufficient to show a taking or a carrying away of
2 the property. The taking and the carrying away of
3 the property must have been done with violence or by
4 putting the owner of the property in fear of
5 violence. Finally, the State must prove beyond a
6 reasonable doubt that the defendant was armed with a
7 deadly weapon during the robbery. A deadly weapon
8 is any article, instrument, or substance which is
9 likely to cause death or great bodily harm. Whether
10 an instrument has been used as a deadly weapon again
11 depends on the facts and circumstances of each case.

12 As I instructed you earlier, the following
13 are examples of instruments which may be considered
14 deadly weapons: A pistol, a shotgun, a rifle, a
15 dirk, a dagger, or a knife. The defendant is
16 charged with possession of a weapon during the
17 commission of a violent crime. The State must prove
18 beyond a reasonable doubt that the defendant was in
19 possession of a firearm, a dirk, a dagger, or a
20 knife, or visibly displayed what appeared to be a
21 firearm, a dirk, a dagger, or a knife during the
22 commission of a violent crime. In order to find the
23 defendant guilty of possession of a weapon during
24 the commission of a violent crime you must first
25 find that the defendant is guilty of either

1 committing a violent crime or attempting to commit a
2 violent crime. Under South Carolina law murder,
3 first degree burglary, and armed robbery are all
4 classified as violent crimes.

5 The defendant finally is charged with
6 conspiracy. The State must prove beyond a
7 reasonable doubt that the defendant combined with
8 one or more persons for the purpose of committing an
9 unlawful act or of committing an unlawful act -- or
10 excuse me, of committing a lawful act by unlawful
11 means. There must be a mutual understanding,
12 agreement, or common intention and plan. Mere
13 passive knowledge of or consent to the criminal
14 conduct of another is not enough to make the person
15 a conspirator. There must be guilty knowledge and
16 participation. Similarly, the mere fact that the
17 defendant may have associated with another person or
18 met with another person and discussed common aims
19 and interests does not necessarily establish proof
20 of the existence of a conspiracy or that the
21 defendant was involved in a conspiracy. On the
22 other hand, it's not necessary that the agreement be
23 a formal one, that it be in writing, or that the
24 persons hold a meeting and expressly state the terms
25 of the common plan or that the agreement be stated

1 in words between them. The agreement of a criminal
2 conspiracy may come into being through an implied
3 mutual understanding. The willful, intentional, and
4 knowing adoption by two or more persons of a common
5 plan is sufficient. No overt acts need to be shown
6 to establish a conspiracy. A conspiracy may be
7 shown by circumstantial evidence in the conduct of
8 the parties. In order to convict a defendant of
9 conspiracy the State must prove beyond a reasonable
10 doubt not only that the defendant knew of the
11 lawful — unlawful conduct, but that the defendant
12 agreed to combine with other persons for the purpose
13 of accomplishing the unlawful conduct.

14 Now Madam Forelady and members of the jury,
15 as you retire to begin your deliberations let me
16 express to you my hope that each of you will reach
17 the heighth of freeing your minds of all improper
18 influences. I wish to express to each of you to
19 understand the importance of your responsibilities.
20 You're not called upon to serve as jurors very
21 often, and the proper performance of the duty
22 requires each of you to reach the heighth of freeing
23 your mind of any improper influences. You and I are
24 acting for the community, and that is why we must
25 see to it that this trial is fair and that this

1 verdict is just.

2 You observe that the presiding officer of
3 this court is always addressed as Your Honor. Well,
4 the reason is not because of the person wearing this
5 robe, but that this Court is entrusted with the
6 honor of this community, the honor of this State,
7 and the honor of this Country in seeking that every
8 case tried here receives fair and impartial justice.
9 Now do not get the idea that I'm trying to intimate
10 to you how I might think you should decide this
11 case. As I've already told you, under the laws of
12 the State of South Carolina you, the jury, are the
13 sole judges of all questions of fact. It would be
14 highly improper for me to influence you in the
15 performance of that duty. But as the presiding
16 officer of this court I am vitally concerned that
17 whatever verdict you find will be the result of your
18 going into the jury room, confining your
19 consideration to the evidence and to the law that
20 you've heard in this courtroom, weighing it fairly
21 and impartially as I have every confidence you will
22 do. Your verdict in this case cannot be based on
23 sympathy, compassion, prejudice, or emotion or some
24 other consideration that is not found in the
25 evidence. The court is of the confirmed opinion

1 that whatever verdict you reach will represent truth
2 and justice for all parties involved.

3 As I told you earlier, ladies and gentlemen,
4 your verdict in this case must be unanimous. You
5 must all agree on the verdict. Now Madam Forelady,
6 in the front of the notebook — this notebook will
7 go back with you. In the front of the notebook is
8 the verdict form. It's a simple form. If you'll
9 just follow it and you can follow it in any order
10 you, as a jury, wish to follow it. I've just
11 numbered the counts on the indictment one through
12 five and listed them in that order. You can handle
13 these in any order you wish. But you'll simply as
14 to each separate count, there are five counts.
15 You'll weigh the evidence, consider the evidence,
16 and you'll arrive at a verdict on each count; and
17 your verdict in each count will either be not guilty
18 or guilty. And so you'll consider all five counts,
19 and you'll arrive at verdicts of each of those
20 counts.

21 Now I'm gonna send you back into the jury
22 room; but Ms. Anderson, I'm gonna ask that you not
23 begin deliberations yet. I'm gonna send you back
24 there, and I'm going to confer with the attorneys to
25 make sure that I haven't left anything out or

1 haven't misspoken anything. If I need to bring you
2 back out and charge you anything additional or make
3 any corrections, I will do that. If the charge is
4 good as it's been given, then I will take this
5 notebook and I'll gather up the exhibits and bring
6 them back into the jury room for you. Once you
7 receive these items that'll be your queue to begin
8 your deliberations.

9 Now while you have these items back there,
10 there are some items that are in boxes and you can
11 open the larger boxes if you need to look at those
12 items, but do not unseal any items that are sealed.
13 There's some of these bags from SLED that have been
14 resealed, and those need to remain sealed so don't
15 be opening those bags but you can look in the boxes.
16 With regards to the audio disk, if you wish to
17 listen to that, if you'll just send word out to the
18 Court we'll make an arrangement for you to listen to
19 that, okay? So if you will, go back to the jury
20 room. Don't begin your deliberations until you
21 receive these items.

22 (WHEREUPON, the jury was removed from the
23 courtroom at 12:26 p.m., and the following
24 proceedings commenced in open court.)

25 THE COURT: Are there any exceptions or

1 objections to the charge from the State?

2 MR. CLEMENTIS: None from the State, Your
3 Honor.

4 THE COURT: Mr. Hoffmeyer, on behalf of
5 Defendant?

6 MR. HOFFMEYER: Yes, sir, Your Honor. We
7 would renew our request that Your Honor charge State
8 versus Woods which you put into the record
9 yesterday.

10 THE COURT: Yes, sir.

11 MR. HOFFMEYER: And in addition, we renew
12 our exception to the portion of the charge which is
13 covered on page 16 of the charge which dealt with
14 the hand of one is the hand of all.

15 THE COURT: All right, sir. And those
16 objections and exceptions are certainly noted for
17 the record. Have y'all had a chance to go over
18 these with Frances?

19 MR. JEPERTINGER: We have.

20 THE COURT: Everything is in order?

21 MR. CLEMENTIS: Everything is in evidence
22 and we would ---

23 THE COURT: Everything that's up here?

24 MR. JEPERTINGER: Yes, everything was not
25 in evidence she withdrew.

1 THE COURT: Well, Mr. Propps, if y'all can
2 help Mr. Propps bunch up the stuff that has to go
3 back. If you would, take that back and let
4 Ms. Scott, ask Ms. Scott the alternate, to step out
5 please.

6 (Alternate was returned to the courtroom.)

7 THE COURT: Ms. Scott, I want to thank you
8 for your service this week. I think that the main
9 jury, and I think everybody is able to participate
10 in deliberations so I'm gonna excuse you now.

11 (Alternate was excused.)

12 (Court was in recess and jury began their
13 deliberations at 12:30 p.m.)

14 (Court's Exhibit Numbers 15 and 16 were marked and
15 made a part of the record.)

16 (WHEREUPON, counsel approached the Bench
17 for an off-the-record discussion.)

18 THE COURT: Mr. Propps, if you would ask
19 the members of the jury to come out please.

20 (WHEREUPON, the jury was returned to the
21 courtroom at approximately 1:42 p.m., and
22 the following proceedings commenced in
23 open court.)

24 THE COURT: Ladies and gentlemen, I
25 received your notes. One, and I'll just read them.

1 May we have the report of the forensic pathologist,
2 Anthony Wilson's height, weight at the time of the
3 murder, Anthony Wilson criminal record, David
4 Johnson criminal record. As I told you all week
5 long when you left the courtroom and going to places
6 I told you not to investigate on your own, not to go
7 on the internet, not to do any of that. Well, I
8 have no authority and cannot add to the evidence or
9 take away from the evidence. The evidence in this
10 case that you're gonna have to decide this case has
11 been submitted through the testimony of witnesses
12 and the exhibits that you have. As far as the
13 answers to these questions, if those answers are in
14 that evidence, then that's where you'll need to get
15 it from. And if it's not, I can't add to the
16 evidence that is in the record, okay? So I guess
17 that's a long way of saying I cannot answer these
18 questions for you. All I can tell you is that you
19 need to base your verdict in the case on the
20 evidence that was presented this week during the
21 course of the trial and that's in the record. Okay?
22 So with that in mind I would ask you to return back
23 and continue your deliberations please.

24 (WHEREUPON, the jury was removed from the
25 courtroom at 1:44 p.m., and the following

1 proceedings commenced in open court.)

2 THE COURT: Any objections or exceptions
3 from the State with regards to the Court's remarks?

4 MR. CLEMENTS: No, Your Honor.

5 THE COURT: Anything from the Defense?

6 MR. HOFFMEYER: No, sir, Your Honor.

7 THE COURT: All right. We'll remain at
8 ease while the jury continues to work.

9 (WHEREUPON, a recess was taken from the
10 proceedings.)

11 THE COURT: Keith, if you would go back
12 with it and instruct the forelady how to play it.
13 (Keith Godbolt takes a laptop and the statement in
14 the jury room for them to listen to.)

15 THE COURT: Mr. Propps, if you'll be in
16 there with Keith while he explains to the forelady
17 how to run that.

18 THE BAILIFF: All right.

19 THE COURT: Solicitor, just for the
20 record, I made that a Court exhibit and the note was
21 sent that they wanted to listen to the audiotape and
22 I made that note a Court exhibit and just wanted to
23 make the record clear that that's what they're doing
24 now is they're listening to the audiotape.

25 (WHEREUPON, a recess was taken from the

1 proceedings.)

2 THE COURT: All right. Ladies and
3 gentlemen, my understanding is that the jury has
4 reached a verdict. Before I receive, bring the jury
5 out, we receive that verdict. Let me share with you
6 what I share with everyone and every case whether
7 it's criminal case or whether it's a civil case. I
8 always tell folks I don't expect and I don't ever
9 ask anyone to agree with a jury's verdict because in
10 every case usually there's gonna be one side that's
11 gonna be pleased with the verdict and one side that
12 won't be. So I don't ask anyone to agree with the
13 verdict, all I ask that the jury's verdict be
14 received in a professional manner.

15 Now I understand that there are emotions
16 involved, and I don't expect you to be robots. But
17 I do expect everybody to give the jury the courtesy
18 that they're deserving in receiving their verdict.
19 And basically what I mean by that is that I'm asking
20 that there not be any emotional outbreaks, there not
21 be any comments made or things said. That if you
22 agree with the jury's verdict I don't want to hear
23 any cheers or anything like that. If you disagree
24 with the jury's verdict I don't want to hear any
25 comments or moans or anything regarding that. And

1 again, I'm not trying to ask you to be robots, but I
2 am asking you to at least give the jury that respect
3 of receiving their verdict. Again, not asking you
4 to agree with it, but at least give them the respect
5 of receiving it and they're deserving that. They
6 have worked hard all week long. And so now having
7 said that, if you don't think that you'll be able to
8 contain your emotions or contain your response then,
9 I would ask you to step out of the courtroom and
10 wait until the verdict is received and then you can
11 find out what it is. And I give people that
12 opportunity because I'm very serious about this, and
13 if I have any outbursts or if I have anything that I
14 feel is disrespectful of the jury I'm just gonna put
15 it in plain English, I'm gonna lock you up. And I
16 have that authority 'cause I'm gonna hold you in
17 contempt of court and I'm gonna send you to
18 Effingham. And I'm not trying to be a jerk. I
19 would — I'm trying to maintain the professional
20 image of the Court. I'm trying to maintain the
21 respect that the jury deserves. So please
22 understand I'm very serious about that. I've never
23 had do it; I don't want to do it. But I will do it.
24 So having said that, Solicitor, is the State
25 ready to receive the jury's verdict?

1 MR. CLEMENTS: We are, Your Honor.

2 THE COURT: Mr. Hoffmeyer, is Defense?

3 MR. HOFFMEYER: Yes, sir, Your Honor.

4 THE COURT: All right, sir. Mr. Propps,
5 if you would ask the jury to join us please.

6 (WHEREUPON, the jury was returned to the
7 courtroom at approximately 3:09 p.m., and
8 the following proceedings commenced in
9 open court.)

10 THE COURT: All right. Ms. Anderson, has
11 the jury reached a unanimous verdict, ma'am?

12 THE FORELADY: Yes, Your Honor, we have.

13 THE COURT: Would you please hand that to
14 Madam Clerk.

15 (Verdict form tendered to the Court.)

16 THE COURT: Thank you, Ma'am.

17 Ms. Anderson, if you could do me a favor.
18 Get you to come here, I need you to sign where on
19 the second page where it asks you to sign as the
20 forelady. There you go.

21 (Forelady complies.)

22 THE COURT: Thank you, ma'am.

23 Madam Clerk, if you would please publish the
24 verdict of the jury.

25 THE CLERK OF COURT: State of South

1 Carolina, County of Florence, Court of General
2 Sessions, Twelfth Judicial Circuit. State of South
3 Carolina versus David Gerard Johnson, indictment
4 number 2009-GS-21-1564: As to the count number one
5 of murder, we the jury, find the defendant David
6 Gerard Johnson guilty of murder; as to count two,
7 first degree burglary, we the jury, find the
8 defendant David Gerard Johnson guilty of first
9 degree burglary; as to count three, armed robbery,
10 we the jury, find the defendant David Gerard Johnson
11 guilty of armed robbery; as to count four,
12 possession of a weapon during the commission of a
13 violent crime, we the jury, find the defendant David
14 Gerard Johnson, guilty of possession of a weapon
15 during the commission of a violent crime; as to
16 count five, criminal conspiracy, we the jury, find
17 the defendant David Gerard Johnson guilty of
18 criminal conspiracy. Dated February 17th, 2012
19 signed Shannon Anderson, the forelady. Members of
20 the jury, if this is your verdict please raise your
21 right hand.

22 (All jurors complied by raising their hand.)

23 THE COURT: All right. Thank you very
24 much, ladies gentlemen. Y'all may have a seat.

25 Mr. Hoffmeyer, anything further for the jury,

1 sir?

2 MR. HOFEMEYER: Yes, sir, Your Honor.
3 We'd ask they be polled.

4 THE COURT: All right. Ladies and
5 gentlemen, madam clerk is going to ask you a couple
6 of questions and if you would just respond to her
7 questions please.

8 THE CLERK OF COURT: When I call your name
9 if you will stand. I'm gonna ask you two questions.
10 I need you to answer yes or no to each question.
11 Patrick Nettles, was this your verdict then, back in
12 the jury room?

13 THE POTENTIAL JUROR: Yes.

14 THE CLERK OF COURT: Is it still your
15 verdict now?

16 JUROR NETTLES: Yes.

17 THE CLERK OF COURT: Devin Mitchell, was
18 this your verdict then?

19 JUROR MITCHELL: Yes, ma'am.

20 THE CLERK OF COURT: Is it still your
21 verdict now?

22 JUROR MITCHELL: Yes, ma'am.

23 THE CLERK OF COURT: John Ward, was this
24 your verdict then?

25 JUROR WARD: Yes.

1 THE CLERK OF COURT: Is this still your
2 verdict now?

3 JUROR WARD: Yes.

4 THE CLERK OF COURT: Dian Graham, was this
5 your verdict then?

6 JUROR GRAHAM: Yes.

7 THE CLERK OF COURT: Is it still your
8 verdict now?

9 JUROR GRAHAM: Yes.

10 THE CLERK OF COURT: Olivia Brown, was
11 this your verdict then?

12 JUROR BROWN: Yes.

13 THE CLERK OF COURT: Is it still your
14 verdict now?

15 JUROR BROWN: Yes.

16 THE CLERK OF COURT: Kendra Carson, was
17 this your verdict then?

18 JUROR CARSON: Yes.

19 THE CLERK OF COURT: Is it still your
20 verdict now?

21 JUROR CARSON: Yes.

22 THE CLERK OF COURT: Clarence Zantt, was
23 this your verdict then?

24 JUROR ZANTT: Yes.

25 THE CLERK OF COURT: Is it still your

1 verdict now?

2 JUROR ZANIT: Yes, ma'am.

3 THE CLERK OF COURT: Christopher Jackson,
4 was this your verdict then?

5 JUROR JACKSON: Yes.

6 THE CLERK OF COURT: Is it still your
7 verdict now?

8 JUROR JACKSON: Yes, ma'am.

9 THE CLERK OF COURT: Laurie Causey, was
10 this your verdict then?

11 JUROR CAUSEY: Yes.

12 THE CLERK OF COURT: Is this still your
13 verdict now?

14 JUROR CAUSEY: Yes.

15 THE CLERK OF COURT: Christina Fraley, was
16 this your verdict then?

17 JUROR FRALEY: Yes.

18 THE CLERK OF COURT: Is it still your
19 verdict now?

20 JUROR FRALEY: Yes.

21 THE CLERK OF COURT: Adam Heeg, was this
22 your verdict then?

23 JUROR HEEG: Yes.

24 THE CLERK OF COURT: Was this your verdict
25 then?

1 JUROR HEEG: Yes, ma'am.

2 THE COURT: Is it still your verdict now?

3 JUROR HEEG: Yes.

4 THE CLERK OF COURT: Shannon Anderson, was
5 this your verdict then?

6 JUROR ANDERSON: Yes, ma'am.

7 THE CLERK OF COURT: Is it still your
8 verdict now?

9 JUROR ANDERSON: Yes, ma'am.

10 THE CLERK OF COURT: That was it, Judge.

11 THE COURT: All right, ladies and
12 gentlemen.

13 Anything further, Mr. Hoffmeyer?

14 MR. HOFFMEYER: No, sir, not from the
15 jury, Your Honor.

16 THE COURT: Thank you.

17 MR. HOFFMEYER: Thank you.

18 THE COURT: Ladies and gentlemen, I want
19 to thank you for your service that you've given this
20 week. I don't know how many of you have ever served
21 on jury duty before, or has anyone served before on
22 jury duty? A couple of you have. As you can see
23 it's probably not as easy as some people may think
24 jury service is, and it's a very honorable task that
25 you give to your community. I want to thank you for

1 that service that you've given this week. Now as I
2 told you on Monday you've earned an exemption so
3 that for the balance of this year and for the
4 following two years, if you receive a summons for
5 jury service here to circuit court you've earned an
6 exemption, and if you receive that summons and you
7 wish to be excused you can exercise that right and
8 be excused. But I also tell folks it is just an
9 exemption. It doesn't mean you're not qualified to
10 serve. So if you do get another summons for jury
11 duty and you want to serve, I would encourage you to
12 do that. I am 56 years old and I've never been even
13 summoned for jury duty until a few years ago and
14 then I got summoned for a term of court that I was
15 presiding over. So I've never had the opportunity
16 to do what you've done and to serve my community in
17 that fashion, and I regret that I wish I would have
18 had that opportunity. Again, I want to thank you
19 for your service.

20 In just a little bit we're gonna proceed to
21 the sentencing phase. I always tell members of the
22 jury that if you would like to remain for that and
23 be here for that you are welcome. You've done the
24 work this week, and if you interested and you want
25 to stay for that I would welcome you to remain with

1 us. However, many times jury service have you spend
2 a lot of time here and you're ready to go. If
3 you're ready to go home I will certainly honor you
4 in doing that. As far as speaking to your family
5 and your friends and whoever, that is lifted so you
6 if they're curious as to what you've been doing all
7 week, you feel free to speak with them and to speak
8 with anybody you would like to speak to.

9 Now having said that, if somebody approaches
10 you and wants to speak with you about the case and
11 you don't want to speak about it, you just let them
12 know that you'd rather not talk. If they persist or
13 if they continue to try to talk to you please,
14 again, let me know and I'll make sure that that
15 doesn't occur. We're very protective of our jurors
16 and their rights to speak or not speak. So if you
17 have any problem with that please let me know okay.

18 So what we're gonna do in just a moment I'm
19 gonna move into the sentencing phase, but we're just
20 gonna take a little short time before we do that.
21 So those of you that would like to be excused you
22 are excused for the rest of the week. Obviously
23 there's not much left but, and you're free to go.
24 Those of you who would like to stay for the
25 sentencing portion of the case you're welcome to

1 stay there and view from the box if you want. So
2 I'm gonna leave that up to you. Whoever wants to go
3 may go, whatever you want to do. Stay can stay.

4 We're gonna just be at ease just a moment.

5 Solicitor, have you got sheets prepared?

6 MR. CLEMENTS: All done, Your Honor.

7 MR. HOFFMEYER: Your Honor, I do have a
8 post-trial motion.

9 THE COURT: Sure, absolutely. I was just
10 going to let things clear before we start back.

11 (WHEREUPON, a recess was taken from the
12 proceedings.)

13 THE COURT: Ladies and gentlemen.

14 MR. JEPERTINGER: Your Honor, I defer to
15 Mr. Hoffmeyer.

16 THE COURT: Mr. Hoffmeyer, I'll be happy
17 to take up any motions you have at the close of the
18 verdict.

19 MR. HOFFMEYER: Yes, sir, Your Honor. At
20 this time we would move for a new trial. Your
21 Honor, the basis for the new trial — well, there's
22 several bases. One, is the fact as you are aware I
23 made a motion in limine related to the statement of
24 my client which was allowed into evidence. That's
25 one reason. We would ask that in essence based upon

1 the fact we believe that it should not have been
2 allowed in, and he is entitled to a new trial.
3 Also, as Your Honor is aware I made motions related
4 to the DNA evidence concerning the fact that there
5 was no Smerber hearing, no warrant, no order, and
6 therefore should not have come in. The consent was
7 not voluntarily. In addition, the search which
8 emanated from the confession or statement, depending
9 on how you view the statement of the defendant, I
10 objected to on the basis of it being fruit of the
11 poisonous tree. And lastly, Your Honor, and of
12 course along with that any evidence that was derived
13 from that statement I sought to suppress.

14 THE COURT: Right.

15 MR. HOFFMEYER: And lastly, Your Honor, I
16 submitted two requests to charge, one under the
17 State versus Wood case that Your Honor put into the
18 record. It was not charged. In addition, I
19 objected to page 16 of the Court's charge, the
20 examples concerning the hand of one is the hand of
21 all, and based upon that I also in sum total move
22 for a new trial.

23 THE COURT: All right. Thank you, Mr.
24 Hoffmeyer. I'm gonna respectfully deny your motion.
25 Again, I made clear on the record my rulings as they

1 related to these matters, and so I'm gonna
2 respectfully deny your motions, sir. Anything else,
3 Mr. Hoffmeyer?

4 MR. HOFFMEYER: No, sir, Your Honor.

5 THE COURT: Mr. Clements, let me — I am
6 going to make the charge a Court's exhibit so let me
7 do that at this point. And page 16 in there matches
8 your page 16 so.

9 MR. HOFFMEYER: Thank you, sir.

10 (Court's Exhibit Number 17 was marked
11 and made a part of the record.)

12 THE COURT: Mr. Clements, is the State
13 ready to proceed to sentencing?

14 MR. CLEMENTS: We are ready, Your Honor.

15 THE COURT: Mr. Hoffmeyer, is Defense
16 ready?

17 MR. HOFFMEYER: Yes, sir, Your Honor.
18 Would you prefer we come around to the podium?

19 THE COURT: You know, I think it's okay
20 for y'all to remain where you're at will be fine.

21 MR. CLEMENTS: Your Honor, I know I don't
22 have a wife to say I'm loud, but I am like that
23 Agent Black so I don't think the Court will have any
24 problem hearing me. You heard the testimony and the
25 evidence in this case. Also, Your Honor, in regards

1 to Mr. Johnson's prior record we have the Court's
2 exhibits here which I'm going to hand back up to the
3 court reporter, Your Honor, where he has a
4 conviction for burglary second degree nonviolent
5 which was a lesser included offense where he was
6 charged with burglary first. He's got a conviction
7 on that. Also a conviction for grand larceny five
8 thousand dollars or greater where it was a companion
9 charge to this where he put a younger individual
10 through the window of a house and they burglarized
11 the house and stole the car. The difference between
12 that case and this case is the owner of the house,
13 the owner the car wasn't present in the house at
14 that time like, unfortunately, Ms. Hayes was. Also,
15 Your Honor, he had a count where he pled to
16 possession of a stolen vehicle and a count for
17 failure to stop for a blue light, and a count of
18 breaking and entering a motor vehicle, Your Honor,
19 which I don't think was — it was occurred — the
20 plea occurred at the same time, but I think it was a
21 separate incident. And then he had another count
22 for grand larceny of five thousand dollars or
23 greater involving another vehicle, and another count
24 for possession of a stolen vehicle, Your Honor,
25 where he pled to seven different counts, Your Honor.

1 And I think that is the extent of his criminal
2 history. There might have been a couple of other
3 items, but these were submitted as potential 404(b)
4 evidence, Your Honor, and that's his record. And
5 here is the sentencing sheets on these charges, Your
6 Honor.

7 And Your Honor, the State would ask that you
8 not sentence Mr. Johnson on possession of a weapon
9 during the commission of a violent crime. And the
10 reason we ask that, Your Honor, is because we would
11 ask that the Court sentence Mr. Johnson to life
12 without possibility of parole on this murder charge.
13 And Your Honor, we'd also ask for consecutive life
14 sentence on the burglary in the first degree. And
15 if the Court does sentence him to life in the
16 possession of a weapon during the commission of a
17 violent crime, which is an additional five years, it
18 be moot and be unnecessary.

19 Your Honor, there are members of Ms. Hayes'
20 family here. Wilma Hayes Epps, her daughter is
21 here. Mr. David Hayes, the son, has been here, Your
22 Honor, and I think is in back in our office in our
23 conference room at this time. She's got brothers,
24 Your Honor, Curly Dolford, Earnest Dolford, and
25 Marion Dolford that are here. Her sister Viola

1 Lovell, Betty Rutherford a friend, Marilyn Capehart
2 I think is the cousin and a friend, and several
3 other family members and friends and pastor to the
4 family is here as well. And I think they have
5 chosen two family members to address the Court, and
6 at the appropriated time, Your Honor, I ask that you
7 hear from them.

8 THE COURT: I'll be more than happy to do
9 that, sir, but I'm — before I do that, any other
10 presentation other than hear from the family from
11 the State?

12 MR. CLEMENTS: No, Your Honor.

13 THE COURT: All right. Mr. Hoffmeyer,
14 happy to hear from you. And if Mr. Johnson would
15 like to address the Court or anyone else on his
16 behalf I obviously — no one is required to — I
17 certainly would be happy to hear from you.

18 MR. HOFFMEYER: Thank you, Your Honor. I
19 have discussed that with the family, and I may need
20 to turn around and ask them just a second.

21 THE COURT: Sure, absolutely.

22 MR. HOFFMEYER: But Your Honor, it's very
23 well aware due to the in-camera hearings that we've
24 had in this case that Mr. Johnson's IQ varies in
25 terms of what the experts say from in the 50s to 60s

1 perhaps, as I recall the evidence and testimony, in
2 the upper 50s. In fact, the State agreed with us as
3 far as his intellectual disability, and that's one
4 reason that this Court issued an order that the
5 State could not seek the death penalty. But that
6 same IQ, of course, affects him in everything he
7 does, affects his entire life, and affects the
8 terrible decision that he's here before this Court,
9 has been before Your Honor and this jury concerning.
10 Your Honor, he does have family that cares a great
11 deal about him, and they're seated right here.
12 There's five of them and naturally it's very
13 difficult for them.

14 THE COURT: Sure.

15 MR. HOFFMEYER: Can I just ask them real
16 quick.

17 THE COURT: Yes, absolutely.

18 (Pause.)

19 MR. HOFFMEYER: Your Honor, would you like
20 them to stand right there?

21 THE COURT: That will be fine. If they
22 would please just speak up so that the court
23 reporter can hear them, and if they could just give
24 their name for the record.

25 MS. JOHNSON: My name is Latoya Johnson.

1 I'm the niece of David Johnson, and he's not like
2 (inaudible) to me more of a brother, and I came up
3 with him and so when he gets cut and stuff like that
4 he wouldn't — he couldn't take a look at his blood.
5 He was run to my mom and my grandmother to get them
6 to take care of it because he hated the look of
7 blood so.

8 MR. HOFFMEYER: Your Honor, I think
9 (inaudible) her by the emotion, clearly she just
10 wants this Court and everybody in the courtroom to
11 know that he has people that care about him.

12 THE COURT: Sure.

13 MR. HOFFMEYER: And of course I'm very
14 sorry for the family, both families.

15 THE COURT: All right. Mr. Johnson, is
16 there anything you wish to tell the Court, sir?
17 You're not required to but you certainly have that
18 right.

19 (Attorney confers with the defendant.)

20 THE DEFENDANT: Yes, sir.

21 THE COURT: All right, sir. I'll be happy
22 to hear from you, sir.

23 THE DEFENDANT: I just want to tell the
24 Court I'm sorry for everything that happened, and I
25 mean, I just wish it didn't happen that way. You

1 know, it could have been a better way, could not
2 have been at all. I just want to say I'm sorry and
3 please have mercy on me, you know, and the Court
4 will understand my — I can't talk, I can't talk.

5 THE COURT: I understand, sir. All right.
6 Anything else?

7 MR. HOFFMEYER: Your Honor, any mercy that
8 this Court perhaps give him.

9 THE COURT: All right, sir. Mr. Clements,
10 I'll be more than happy to hear from anyone on
11 behalf of Ms. Hayes and her family.

12 MR. CLEMENTS: Your Honor, her brother
13 Marion Dolford, Your Honor, would like to address
14 the Court.

15 THE COURT: Mr. Dolford, happy to hear
16 from you, sir.

17 MR. DOLFORD: And I'm the baby of the
18 family. Ms. Hayes had three brothers and had three
19 sisters and two sisters — excuse me, three girls
20 and three boys in the family, and she has a sister
21 that live in Philadelphia that could not be here.

22 THE COURT: All right, sir.

23 MR. DOLFORD: Thank you so much. Your
24 Honor, to the jury, members of this court. I cannot
25 express to you no way that I could express to you

1 the heartfelt grief that this family and myself have
2 gone through for the last three years. It was
3 totally unnecessary as I look back on that August
4 night. Here you have a senior citizen, a woman that
5 did her part to do what she could to be a good
6 citizen. She provided a place for me to live as I
7 grew up, made sure I went to school to be the best
8 that I could be. This woman, Your Honor, had two
9 children, raised them on her own, worked un-tiredly,
10 came up during the rough times in this community.
11 She started out as a maid making very little money,
12 but yet she cared for her children. The little that
13 she gathered she made a home for her family, and it
14 grieves me terribly here to see someone to come and
15 take that away from her and ultimately taking her
16 life. Yes, this young man said show mercy please,
17 and I'm a man of God and I believe in mercy, but I
18 also believe in justice. I believe that this Court
19 has shown justice, but ultimately I say to this
20 young man that God will be his final judge. And may
21 God have mercy on your soul and all the others that
22 were involved in this horrific crime which wasn't
23 necessary. And I pray that none of you ever have a
24 wife or a mother or a grandmother including this
25 family over here, that will have to face someone

1 that's heartless and cruel and brutal as this young
2 man and his accomplices. I pray that nobody else
3 will ever have to experience that.

4 This woman was in the cradle of her bed on a
5 Sunday night after going to church where she thought
6 she was safe. Her brother even went as far as to
7 install a bar on her back door to insure her safety
8 and to protect her, but the thugs in the community
9 didn't care anything about that. They saw an
10 innocent woman that was helpless, entered her home,
11 went to the extent of breaking into her home, sat on
12 her, covered her face with a pillow. I can't
13 imagine a more horrible death. But to sit on her at
14 69 years' old, enough to be his grandmother, and to
15 stab her and to take her life like that. Your
16 Honor, God will be his judge, but I thank this
17 Court. I thank you. I thank this jury for
18 rendering this family justice.

19 Now this young man may have thought, may
20 think that it's — he has nothing left. But I want
21 you to know that he does have a mother left, he has
22 a sister left. David — and Willie Mae doesn't have
23 anywhere to go to now. I don't have my sister.
24 She's gone. I rest from night to night since 2008
25 simply knowing that she is in loving care of our

1 savior. That's the only thing that gives me rest
2 and peace. May God have mercy on your soul.

3 THE COURT: Thank you, Mr. Dolford.

4 MR. CLEMENTS: Your Honor, that's it.

5 THE COURT: All right.

6 MR. CLEMENTS: I think Mr. Dolford said it
7 all. Your Honor, I would just like to thank the
8 Court and the jury. I think everyone did their job,
9 did their job well. Mr. Hoffmeyer did an
10 outstanding, as he always does, but I want to
11 commend the Florence Police Department for their
12 investigation and thorough investigation in this
13 case the investigators forensic unit they're to be
14 commended and I want to thank them on behalf of the
15 Solicitor's Office. And Your Honor, please consider
16 what we requested. You know all these facts, you
17 know the history, and you know all of it.

18 THE COURT: Yes, sir. I too wanted to
19 again thank the ladies and gentlemen of the jury for
20 your work in this case. I — my heart and my
21 condolences go to the family of Ms. Hayes and also
22 to the family of Mr. Johnson. There are no winners
23 here. I think Mr. Dolford said it best. I think
24 justice was done. But two families have lost loved
25 ones. And as Mr. Dolford said it was absolutely

1 senseless and needless. I do not know why, what
2 goes on in the hearts of folks. This burglary could
3 have occurred by simply burglarizing this home and
4 leaving Ms. Hayes. There was nothing in the
5 evidence — there's nothing that I'm aware of that
6 caused them to assault Ms. Hayes. She was, from
7 what I understand, actually asleep in her bed so she
8 wasn't bothering anybody.

9 There is a course of conduct, Mr. Johnson,
10 that we've seen from you. I heard all the testimony
11 and I heard all of the evidence regarding your
12 intellectual disability, and I have — there's
13 nothing that I know of that would cause me to
14 question that at all. I don't question that. What
15 I do question is to the level that Doctor Price
16 seemed to think that disability, to the depth that
17 he seemed that disability went. I've spoken to you
18 on several occasions and asked you questions, and I
19 think you've understood my questions. You appear to
20 have understood them. I think you intelligently
21 answered the questions that I've asked of you. I
22 listened to the interview tape that you gave. I
23 don't believe there was — I would agree with the
24 jury's assessment that that was a statement that was
25 voluntarily given. I do believe you understood your

1 rights and the way you responded to the questions
2 from law enforcement during that interview seemed to
3 show me that you understood their questions and your
4 responses were appropriate with regards to answering
5 those questions. And so although I do believe and I
6 understand that you may have some level of
7 intellectual disability as the doctors determined, I
8 do believe that you're clearly a competent
9 individual who understood the difference between
10 right and wrong and the consequence of your actions.
11 Believing that that leaves me only to the conclusion
12 that there's something evil, there's some level of
13 meanness that is there that is absolutely a danger
14 to this community. To go into a lady's home is bad
15 enough to do that, and then without any provocation
16 just decide to kill her in the manner in which she
17 was killed, and then to take on top of that the
18 disrespect to simply wrap her in a blanket and throw
19 her in the trunk of a car and toss her into a ditch
20 is unspeakable. There — it's just difficult to
21 imagine on numerous levels.

22 And I understand you were not operating
23 alone, but what I do believe is that none of this
24 would have occurred but for your actions. And if
25 I'm wrong I apologize; but based on everything I

1 know about this case, those two 14 year olds didn't
2 go in there without some form of leadership from
3 you, and that 17 year old as well. And I just don't
4 understand it. Sometimes we say it in a joking way,
5 but the truth is it's not a joke. Sometimes there
6 are just some things we're not meant to understand.
7 One thing I do understand is that I don't believe
8 that you are someone that needs to be in this
9 community.

10 On indictment 2009-GS-21-1564, count one, the
11 count of murder, sentence of the Court is that you
12 be committed to the State Department of Corrections
13 for the remainder of your natural life without the
14 possibility of any parole. Count two of that
15 indictment, burglary in the first degree, sentence
16 of the court you be committed to the State
17 Department of Corrections for the remainder of your
18 natural life without the possibility of parole.
19 Those two sentences are to run consecutive to each
20 other. On indictment -- on that same indictment
21 count three, armed robbery, the sentence of the
22 court you are to be committed to the State
23 Department of Corrections for a period of 30 years.
24 On count five of the indictment, conspiracy, the
25 sentence of the Court that you be committed to the

1 State Department of Corrections for a period of five
2 years. The armed robbery and the conspiracy charge
3 are to run concurrent with the other two counts.

4 With regards to count four, the possession of
5 a weapon during the commission of a violent crime,
6 that carries a maximum penalty of five years.
7 However, if I'm not mistaken the law deems that to
8 be subsumed with the life sentence so I won't be
9 imposing a sentence on that charge. Good luck to
10 you, sir.

11 I want to thank Mr. Clements, Mr.
12 Jepertinger, Mr. Hoffmeyer, for the professional way
13 that you conducted yourselves throughout the trial
14 and the courtesies that you have shown to the Court
15 this week. It's been a very big help, and I
16 appreciate it very much with the way you conducted
17 yourselves.

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19 * * * END OF REQUESTED TRANSCRIPT OF RECORD * * *
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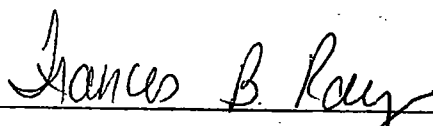
C E R T I F I C A T E O F R E P O R T E R

STATE OF SOUTH CAROLINA)
COUNTY OF FLORENCE)

I, FRANCES BAKIS-RAY, Registered Professional Reporter (RPR), court reporter for the State of South Carolina, Twelfth Judicial Circuit, do hereby certify that the foregoing proceeding is a stenographic report and was transcribed through computer-aided transcription; that the foregoing transcript contains a true record of the proceedings.

I further certify that I am neither counsel for, nor related to nor employed by any of the parties connected to the action, nor am I financially interested in the action.

Witness my hand at Florence, South Carolina, this 8th day of May, 2012.


FRANCES BAKIS-RAY, RPR

FORM 5

STATE OF SOUTH CAROLINA)

COUNTY OF Florence)David Gerrard Johnson)

Full name and prison number (if any) of Applicant.)

SCDC# 312138)

v.)

State of South Carolina)

IN THE COURT OF COMMON PLEAS

20 16 CP 21 2545APPLICATION FOR
POST-CONVICTION RELIEFINSTRUCTIONS - READ CAREFULLY

In order for this application to receive consideration by the Court, it shall be in writing (legibly handwritten or typewritten), signed by the applicant and veified (notarized), and it shall set forth in concise form the answers to each applicable question. If necessary, applicant may furnish his answer to a particular question on the reverse side of the page or on an additional page. Applicant shall make clear to which question any such continued answer refers.

Since every application must be sworn under oath, any false statement of a material fact therein may serve as the basis of prosecution and conviction for perjury. Applicants should, therefore, exercise care to assure that all answers are true and correct.

If the application is taken in forma pauperis, it shall include an affidavit (attached at the back of the form) setting forth information which establishes that applicant will be unable to pay fees and costs of the proceedings. When the application is completed the original shall be mailed to the Clerk of Court for the County in which the applicant was convicted.

1. Place of detention Lieber Correctional Ins.
2. Name and location of Court which imposed sentence PO. Box 205 Ridgeville, South Carolina 29472
The Court of General Session, County of Florence.
3. Name(s) of co-defendant(s) (if any) Anthony Wilson, Gregory Montgomery, Rakim Floyd, and Rashawn Bailey.
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed: 2009-GS-21-1564
 - (a) Count (1) natural life, Count (2) burglary →
 - (b) Life without parole.
 - (c) Count (3) Armed Robbery period of 30 years.
5. The date upon which sentence was imposed and the terms of the sentence:
 - (a) February 13, 2012
 - (b) Life without parole

- (c) 30 years
6. Check whether a finding of guilty was made:
- (a) after a plea of guilty ---
- (b) after a plea of not guilty Trial by Jury
- (c) after a plea of nolo contendere ---
7. Did you appeal from the judgment of conviction or the imposition of sentence?
yes
8. If you answered "yes" to (7), list:
- (a) the name of each Court to which you appealed:
- South Carolina Court of Appeals
 - South Carolina Supreme Court
 - Supreme Court of The United States
- (b) the result in each such Court to which you appealed:
- Court of Appeals Affirming Convictions
 - Granted Certiorari to review the Court opinion
 - The Court Dismissed the writ as improvidently Granted
- (c) the date of each such result:
- April 9, 2014
 - February 20, 2015
 - December 2, 2015
- (d) if known, citations of any written opinion or orders entered pursuant to such results:
- Filed A timely petition for rehearing Denied
 - Granted petition
 - Dismissed AS Improvidently Granted
9. If you answered "no" to (7), state your reasons for not so appealing:
- (a) N/A
- (b) N/A
- (c) N/A
10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully: