

VOLUME ONE OF NINE

STATE OF SOUTH CAROLINA

In The Supreme Court

APPEAL FROM LEXINGTON COUNTY

Lee S. Alford, Circuit Court Judge

RECEIVED

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S.C. SUPREME COURT

THE STATE,

RESPONDENT,

V.

NORMAN STARNES,

APPELLANT

RECORD ON APPEAL

JOSEPH L. SAVITZ, III
Senior Appellate Defender

HENRY DARGAN MCMASTER
Attorney General

ELIZABETH A. FRANKLIN-BEST
Appellate Defender

JOHN W. MCINTOSH
Chief Deputy Attorney General

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

DONALD J. ZELENKA
Assistant Deputy Attorney General

Attorneys for Appellant

S. CREIGHTON WATERS
Senior Assistant Attorney General
Office of Attorney General
PO Box 11549
Columbia, SC 29211

(803) 734-3727

HAROLD W. GOWDY, III
Solicitor, Seventh Judicial Circuit
180 Magnolia Street, 3rd Fl
Spartanburg, SC 29306-2335
(803) 596-2575

Attorneys for Respondent

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*NOTE: COURT'S EXHIBIT 10 (DVD OF REENACTMENT) ARE FILED AT THE SOUTH CAROLINA SUPREME COURT

1 STATE OF SOUTH CAROLINA)
2 COUNTY OF LEXINGTON) IN THE COURT OF GENERAL SESSIONS

3
4 THE STATE)
5 -vs-) TRANSCRIPT OF RECORD
6 NORMAN STARNES,) 1996-GS-32-3339
7 Defendant.) NOVEMBER 1, 2007
8) Spartanburg, South Carolina
9

10 B E F O R E:

11 THE HONORABLE LEE S. ALFORD, JUDGE.
12
13

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

15 HAROLD "TREY" GOWDY, III, SOLICITOR
16 ROBERT P. COLER, ASSISTANT SOLICITOR
17 DERRICK BULSA, ASSISTANT SOLICITOR
Attorneys for the State

18 NORMAN STARNES, DEFENDANT ACTING PRO SE
19 WILLIAM NETTLES, ESQUIRE
JOHN D. DELGADO, ESQUIRE
Attorneys appearing with the Defendant
20

21 Michael R. Watts
22 Circuit Court Reporter
23
24
25

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1 (PROCEEDINGS, November 1, 2007)

2 THE COURT: All right. Are we ready to proceed in
3 the State versus Norman Starnes?

4 MR. GOWDY: The State is, Your Honor.

5 THE COURT: Mr. Starnes, are you ready to proceed?

6 MR. STARNES: No, sir, Your Honor. If you would
7 just give me a minute. They just took the restraints off of
8 me. If you would give me just a minute. I need to get
9 prepared here. I want to do this right.

10 THE COURT: All right, sir.

11 (Off the record)

12 (Back on the record)

13 MR. STARNES: Your Honor, I believe we are ready
14 now.

15 THE COURT: All right, sir.

16 MR. STARNES: What order did the court want to
17 take these?

18 THE COURT: Well, they are your motions.

19 What I would like to do is reserve the issues
20 concerning potential jurors, whether they be excused. We
21 can save that until last, because that's going to take a
22 little time, but we will proceed.

23 They are your motions, so whatever -- whichever
24 way that you wish to proceed.

25 MR. STARNES: Yes. Thank you.

1 Your Honor, I'm not sure who all is in the
2 courtroom today. I did send some subpoenas to Dr. Joel
3 Sexton.

4 THE COURT: He's here.

5 MR. STARNES: He's here.

6 All right. Your Honor, I have motions to make in
7 regarding to an animation. It was re-creating a shooting
8 that took place at 375 Forts Pond Road. I sent a copy to
9 the State. The copy that I did send to the State was a
10 rough draft. I received the final version yesterday around
11 3:30 by Federal Express and I was able to convert that off
12 of a VHS tape onto a DVD. At this time I would like to
13 provide Mr. Gowdy's office with a copy of the final.

14 THE COURT: All right, sir.

15 MR. STARNES: Also I have a copy, if the court
16 would like one also, Your Honor.

17 THE COURT: I don't really believe I need one. I
18 would be glad to look at whatever you got and listen to any
19 questions about it.

20 MR. STARNES: Your Honor, regarding this
21 animation, I believe under Rule 901 I have to authenticate
22 this, and I'm going to have to take some testimony on it to
23 lay a foundation for the animation.

24 There are -- there are four witnesses that I will
25 need to take testimony on. And the gentleman who did the

1 animation, I haven't had a chance to speak with him today.
2 If we could have a break for maybe 10 minutes so I could
3 just go over the questions and stuff that I needed to
4 discuss with him, if we could possibly do that, if I could
5 have 10 minutes after these four witnesses.

6 THE COURT: All right, sir.

7 MR. STARNES: Your Honor, at this time I would
8 call Carlisle McNair.

9 Judge, I have never been in this courtroom, other
10 than one time, so I don't know where you want me to stand.
11 I'm familiar with how to do it in Lexington, but wherever
12 Your Honor wants me.

13 THE COURT: I think you can do it from where you
14 are, if you can speak loud enough, or you can walk out in
15 front of the bench, if you need to do that, but that's fine.

16 MR. STARNES: Would it be all right if I stood
17 over there by Mr. Coler, because I have some photographs
18 that I have to -- I would like to show on that screen.

19 THE COURT: Well, if you need access to the
20 screen, that's fine, but you can't block, obviously, the
21 solicitor's view. Okay.

22 MR. STARNES: Yes, sir.

23 THE COURT: Go ahead. I'm sorry.

24 CARLISLE MCNAIR, having been first duly sworn,
25 testified as follows:

1 THE CLERK: State your name for the record.

2 THE WITNESS: Carlisle McNair.

3 MR. STARNES: Beg the court's indulgence just one
4 second. They have to check it through security.

5 (Off the record)

6 (Back on the record)

7 DIRECT EXAMINATION BY MR. STARNES:

8 Q. How are you doing today, Mr. McNair?

9 A. Fine.

10 Q. During January of 1996, did you become involved in this
11 case --

12 A. Yes.

13 Q. -- as far as investigation around January the 10th?

14 A. If that was the date that these two individuals were
15 reported missing, yes.

16 Q. Yes.

17 And then from January of 1996, until May the 27th of
18 1996, this case was reported as a missing persons case, is
19 that correct?

20 A. I believe so.

21 Q. And Detective McNair, how did you receive information
22 regarding this case that led to my arrest?

23 A. From Gwen Ott, at the beginning. Gwen -- Gwen Ott.

24 Q. Okay. So Gwen comes to the sheriff's office and you
25 later interviewed her, is that correct?

1 A. That's correct.

2 Q. Did she provide a detailed information regarding the
3 shootings that took place on 375 Forts Pond Road?

4 A. Correct.

5 Q. And was that interview that you had with Gwen, was that
6 put on videotape?

7 A. That's correct.

8 Q. And at the time you interviewed Gwen, did she tell you
9 that I had shot Bill Welborn and Jared Champlin?

10 A. I don't remember exactly what she told me.

11 Q. Do you remember her telling you that they were shot at
12 375 Forts Pond Road?

13 A. That's why we write stuff down. That's why I asked you
14 to write a statement. I don't remember.

15 Q. You don't remember it.

16 Do you remember giving testimony in this case in April
17 of 1997?

18 A. Well, I remember testifying, but I don't remember what
19 I said, no, sir.

20 Q. Would it refresh your memory if you had that testimony
21 today?

22 A. Absolutely.

23 Q. Sure.

24 MR. STARNES: Beg the court's indulgence.

25 THE COURT: Yes.

1 (Off the record)

2 (Back on the record)

3 BY MR. STARNES:

4 Q. Mr. McNair?

5 A. What page do you want me on?

6 Q. Does that look like your testimony?

7 A. This is the first time that I have seen it.

8 Q. Yes, sir.

9 Would you turn to page 1814, please.

10 A. Yes. Okay.

11 Q. Did there come a time when you was investigating this
12 case that you enlisted the assistance of the South Carolina
13 Law Enforcement Division?

14 A. Yes, sir.

15 Q. And would that have been Agent Crimminger and Agent
16 Baker with the South Carolina Law Enforcement Division that
17 assisted you?

18 A. That's what it says here, yes, sir.

19 Q. Are you familiar with what the house looked like on 375
20 Forts Pond Road?

21 A. I'm familiar with the outside of it, yes.

22 Q. During --

23 A. I don't remember the layout.

24 Q. I'm sorry. During the course of your investigation,
25 did you take any photographs of the inside of the house?

1 A. I didn't.

2 Q. Would you recognize any of those photographs?

3 A. I don't know.

4 Q. Does that photograph look familiar, Detective McNair,
5 or does the makeup of that house or that photograph look
6 familiar to you?

7 A. That's -- that's -- if that's your house.

8 Q. So, Detective McNair, you do not recognize that
9 photograph as being the living room of the house at 375
10 Forts Pond Road?

11 A. Well, I was only in it one time with a search warrant,
12 if that's the SLED photograph.

13 Q. You say that you was inside it only one time with the
14 search warrant. Are you sure about that?

15 A. Yeah.

16 Q. Do you remember interviewing a gentleman by the name of
17 Ryan Jeffcoat in my kitchen table, sitting at my kitchen
18 table with me, back in 1995, in reference to a Lisa Rucker
19 case?

20 A. I remember sitting at your kitchen table about
21 something, but I don't remember Ryan Jeffcoat right off the
22 top of my head.

23 Q. Do you remember when --

24 A. Did you call me to come see -- I'm sorry I'm asking you
25 questions, but did you call me to come and see Ryan.

1 Jeffcoat?

2 Q. No, sir, I did not. You stopped me on 375 Forts Pond
3 Road.

4 A. And I was wanting to interview Ryan Jeffcoat at your
5 house?

6 Q. No, sir, you had asked me questions about Lisa Rucker
7 and my orchard light and did I know if there were any
8 abandoned vehicles around the wooded area around Pelion. Do
9 you remember asking me that?

10 A. Well, I asked you a lot of things, Norman, because you
11 were -- you were somebody I would come to in the Pelion area
12 if I needed to try to get some information.

13 Q. Okay. Does that look like my living room?

14 A. If that's your living room, yes.

15 Q. But you can't say that that's my living room, can you,
16 Detective McNair?

17 A. Let me see some more of the house. And I'm not a
18 detective any longer, so you can just --

19 Q. How would you like me to address you? Might I call you
20 Mr. McNair?

21 A. That's fine.

22 Well, that's a SLED photograph. That a photograph --
23 that's a photograph taken by SLED, so if that's your room.
24 I didn't take those photographs.

25 Q. Yes, sir, but do you recognize that as being the living

1 room at 375 Forts Pond Road? You cannot say that, can you?

2 A. Can I say that I recognize it?

3 Q. That's correct.

4 A. No, I don't recognize it.

5 Q. Okay.

6 A. I don't remember it, no, sir.

7 Q. Were you present when Agent Baker photographed the
8 house?

9 A. No, sir.

10 Q. You were not?

11 A. Not that I remember.

12 Q. Do you remember giving testimony about you being
13 present?

14 A. What page?

15 Q. The page I just give you. 1814.

16 A. Okay.

17 Q. You obtained a search warrant for that house, is that
18 correct?

19 A. I got the search warrant?

20 Q. Line 4 on page 1814. Would you please read that?

21 A. Okay. "Let me note that we had obtained -- "yes, sir,
22 let me note we had obtained a search warrant, a legal search
23 warrant, to go to the residence and search for evidence of
24 Welborn and Champlin in that area as you go in the bedroom."

25 Q. Would you continue to read down to line 15?

1 A. "What, if anything, did you notice on the floor?

2 "A stain of some sort.

3 "Were there other agents there that day too?

4 "Agent Crimminger and Agent Baker with the State Law
5 Enforcement Division.

6 "Now, when you walked into this door, there is a wall
7 right there, is that correct?

8 "Yes, sir."

9 I read this that he was apparently there with a -- I
10 was looking at photograph of some sort.

11 Q. Mr. McNair, does that look like a diagram of the inside
12 of the house at 375 Forts Pond Road?

13 A. That being the front door by the sofa where your hand
14 is right there?

15 Q. Right here, yes, sir.

16 A. To the best that I can remember, yes.

17 Q. To the best that you can remember.

18 But you were present when SLED processed this house, is
19 that correct?

20 A. Apparently I was. I don't remember right off the top
21 of my head. That's why I do police reports. But, yeah, I
22 guess I was there.

23 MR. STARNES: Your Honor, I don't think I have any
24 more for this witness.

25 To lay the foundation, Agent Crimminger couldn't

1 be here today. We took care of that over a telephone call.
2 Agent Crimminger was the SLED agent that photographed this.
3 I have a copy of his testimony also. I guess we would have
4 to take that up --

5 THE COURT: All right.

6 MR. STARNES: -- after he comes back from
7 vacation.

8 THE COURT: So the record will be clear, SLED
9 Agent Crimminger was -- had a vacation planned, had his
10 tickets and reservations and everything had been done and
11 asked not to be required to come today. Then we had a
12 conversation and you agreed that, you know, for him not to
13 be here, released from the subpoena, provided he would be
14 available at the trial and we could do it at that time --

15 MR. STARNES: Yes, sir.

16 THE COURT: -- if we needed his testimony with
17 regard to the photographs and to help lay a foundation. So
18 we had agreed to do that, for the record. And so that's the
19 reason he's not here. He's released from the subpoena.

20 Thank you, sir. You may stand down.

21 THE WITNESS: Thank you.

22 MR. STARNES: Do you want that?

23 THE WITNESS: No.

24 MR. STARNES: Your Honor, could I get a drink of
25 water?

1 THE COURT: Yes.

2 MR. STARNES: I haven't had nothing to drink.

3 (Off the record)

4 (Back on the record)

5 MR. STARNES: Your Honor, my next witness is Gwen
6 Bailey.

7 GWEN BAILEY, having been first duly sworn,
8 testified as follows:

9 THE CLERK: State your name for the record.

10 DIRECT EXAMINATION BY MR. STARNES:

11 Q. Hi, Ms. Bailey, how are you doing today?

12 A. Fine. How are you?

13 Q. Fine.

14 Ms. Bailey, in January of 1996, were you residing at
15 375 Forts Pond Road in Pelion?

16 A. Yes, I was.

17 Q. Okay. And before January of 1996, you were residing
18 there, correct?

19 A. Yes.

20 Q. And after January -- on and after January 8th of 1996,
21 were you residing 375 Forts Pond Road in Pelion?

22 A. Yes.

23 Q. I would like to ask you some questions about January
24 the 8th of 1996, Ms. Bailey.

25 Did you work that day?

1 A. Yes.

2 Q. And do you remember about what time it was that you
3 left to go to work?

4 A. To go to work?

5 Q. Yes, ma'am.

6 A. Probably around ten a.m..

7 Q. Okay. When you left to go to work, did you notice any
8 unusual holes in the living room wall or the bedroom wall of
9 the house that you resided at, at 375 Forts Pond Road?

10 A. Not that morning.

11 Q. You didn't see any unusual holes in the walls or in
12 the -- of the bedroom or the living room?

13 A. Not on January 8th.

14 Q. Okay.

15 A. Not that morning.

16 Q. At any point, from the time that you left to go to work
17 that morning, until you returned home late that evening, did
18 you go to the house?

19 A. No.

20 Q. At some point later did you discover that there was a
21 shooting that took place inside the house?

22 A. Yes.

23 Q. If I showed you some photographs, could you identify
24 them for the record for me, please?

25 A. Sure.

1 Q. First of all, does this diagram accurately reflect the
2 house at 375 Forts Pond Road?

3 A. No, sir.

4 Q. It does not?

5 A. Furniture displacement.

6 Q. Furniture displacement.

7 Could you explain to me what has been displaced about
8 the furniture?

9 A. The love seat is not -- I had it catty-cornered.

10 Q. That's correct.

11 On January the 8th of 1996, was the love seat where
12 it's at on this diagram?

13 A. No, sir.

14 Q. It was not?

15 A. No, it was catty-cornered.

16 Q. It was catty-cornered.

17 Do you remember giving testimony in reference to this
18 case in April of 1997?

19 A. In April?

20 Q. April of 1997.

21 A. '97. Testimony?

22 Q. Yes, ma'am.

23 A. Yes.

24 Q. Do you remember Solicitor Myers showed you a diagram,
25 that was later marked a court exhibit, and he asked you

1 about the furniture in the house?

2 A. Yes. I told him then also that it was incorrect.

3 Q. Did you note that on the record and tell them that the
4 furniture was incorrect when you testified?

5 A. I cannot completely recall that, no.

6 Q. Okay. Other than the love seat, does the rest of the
7 furniture and everything on this diagram pretty much reflect
8 the house?

9 A. Yes.

10 Q. The interior of the house?

11 A. Yes.

12 Q. Okay.

13 MR. STARNES: Your Honor, I would like to mark
14 this exhibit, if we could, a court exhibit or a defense
15 exhibit, however Your Honor would like me to do it.

16 THE COURT: Do it as defense exhibit for the
17 purposes of this hearing only.

18 MR. STARNES: Right.

19 (Diagram marked as Defendant's Exhibit No. 1 for
20 identification)

21 MR. STARNES: Are you going to retain those?

22 COURT REPORTER: Yes, sir.

23 BY MR. STARNES:

24 Q. Ms. Bailey, does that accurately reflect the inside of
25 the living room at 375 Forts Pond Road?

1 A. Not at that time.

2 THE COURT: Okay. You need to refer what you are
3 asking her. We're on the record. It's a photograph, but
4 you didn't say it is a photograph, so please explain on the
5 record what you are asking.

6 MR. STARNES: Your Honor, if I could just show her
7 these and mark them as an exhibit and then refer to them as
8 an exhibit?

9 THE COURT: Yes, sir, you can do that.

10 MR. STARNES: If we can do that?

11 THE COURT: You can go ahead and mark them before
12 you start.

13 MR. STARNES: Yes, sir.

14 THE COURT: If you wish, for identification.

15 BY MR. STARNES:

16 Q. Does this photograph look familiar, Ms. Bailey?

17 A. No, sir.

18 Q. That does not look like the inside of the house at 375
19 Forts Pond Road?

20 A. The inside of the house, but not the furniture.

21 Q. Okay. This does look like the inside of the house.

22 Do you recognize that --

23 THE COURT: Wait a minute. Wait a minute, Mr.
24 Starnes.

25 You can't state your opinion or tell her how you

1 disagree with her opinion. You can't do that.

2 You can ask her and she can respond, and you can
3 ask her another question. You cannot make statements while
4 you are examining this witness. Do you understand?

5 MR. STARNES: Yes, sir, I do.

6 THE COURT: So you can ask her a question and she
7 can respond to it. And you can ask her another question and
8 she can respond to that.

9 MR. STARNES: All right, sir.

10 BY MR. STARNES:

11 Q. Ms. Bailey, does that look like the living room at 375
12 Forts Pond Road?

13 A. I'm not quite sure how to answer the question.

14 The room is correct. The furnishings, pictures, things
15 that are in the room are not the same as I recall them.

16 Q. This photograph --

17 MR. STARNES: Your Honor, do you want me to just
18 mark all these as an exhibit right now? That way I can just
19 refer to them?

20 THE COURT: If you want to just bring them on over
21 and have them marked for identification.

22 (Photograph marked as Defendant's Exhibit No. 2
23 for identification)

24 (Photograph marked as Defendant's Exhibit No. 3
25 for identification)

1 (Photograph marked as Defendant's Exhibit No. 4
2 for identification)

3 (Photograph marked as Defendant's Exhibit No. 5
4 for identification)

5 (Photograph marked as Defendant's Exhibit No. 6
6 for identification)

7 (Photograph marked as Defendant's Exhibit No. 7
8 marked for identification)

9 (Photograph marked as Defendant's Exhibit No. 8
10 for identification)

11 (Photograph marked as Defendant's Exhibit No. 9
12 for identification)

13 (Photograph marked as Defendant's Exhibit No. 10
14 for identification)

15 THE COURT: For the record, you can refer to them
16 as a picture marked for identification as defense number,
17 whatever it is, 2, 3, or like that, for the record.

18 BY MR. STARNES:

19 Q. Ms. Bailey, referring to Defendant's Exhibit No. 2,
20 could you identify that picture, please?

21 A. Bedroom.

22 Q. Okay. Do you recognize the mirror that is reflected on
23 this wall?

24 A. I recognize it.

25 Q. Ms. Bailey, referring to Defendant's Exhibit No. 4,

1 does this accurately look like the living room at 375 Forts
2 Pond Road?

3 A. There are some differences, but it is the living room.

4 Q. It is the living room?

5 A. Yes.

6 Q. Referring to Defendant's Exhibit No. 6, does this look
7 like another photograph of the bedroom?

8 A. It is, but things are different.

9 Q. Referring to Defendant's Exhibit No. 8, does this look
10 like the furniture in the living room of 375 Forts Pond
11 Road?

12 A. It is our furniture, but it's not in the position that
13 it was in.

14 Q. Now, when you say it was not in the position it was in,
15 when are you referring to?

16 A. January 8th.

17 Q. January the 8th.

18 THE COURT: Of what year? Please make that clear,
19 please.

20 A. '96.

21 BY MR. STARNES:

22 Q. January the 8th, 1996?

23 A. Yes.

24 Q. Late in the evening of January the 8th of 1996, did you
25 happen to come to the residence at 375 Forts Pond Road and

1 see that two individuals had been shot and killed inside
2 that residence?

3 A. Yes, sir.

4 Q. At some point did you notice any bullet holes that were
5 in the walls --

6 A. Yes, sir.

7 Q. -- of that residence.

8 Where did you notice the bullet holes in the walls at,
9 Ms. Bailey?

10 A. Where the mirror that I recognized, the mirror, there
11 was one there. There was no mirror there at the time. :

12 And one behind the furnace area where the heater was.

13 Q. Referring to Defendant's Exhibit No. 8, Ms. Bailey, if
14 you would, could you give us the description of where the
15 bullet hole was over the heater?

16 A. Where the picture is.

17 Q. Okay. It's about in that vicinity?

18 A. Yes.

19 Q. Ms. Bailey, referring to Defendant's Exhibit No. 7,
20 could you tell us what that photograph depicts?

21 A. Me, personally, I have not seen that in that order, so
22 it's precisely where the bullet hole was, but it's larger.

23 Q. Right.

24 So you recognize the bed?

25 A. Yes.

1 Q. But you recognize that as about the location of where
2 the bullet hole was?

3 A. Yes, sir.

4 Q. Ms. Bailey, referring to Defendant's Exhibit No. 5,
5 does that look like the inside of a closet, the bedroom
6 closet? Does that look like the inside of it?

7 A. That's -- what I can see of it.

8 Q. What you can see of it. Okay.

9 On January the 8th of 1996, you come to the house and
10 you noticed that there were bullet holes in the wall, is
11 that correct?

12 A. Correct.

13 Q. Okay. One of bullets holes that was in the bedroom,
14 did it pass through the wall and enter the closet?

15 A. Yes.

16 Q. And when it entered the closet, did the bullet -- or
17 appear that the bullet had struck some of the clothing in
18 the closet?

19 A. Yes.

20 Q. The bullet hole in the living room, at any point did
21 you observe me take the projectile out of the wall?

22 A. Not that I recall.

23 Q. Not that you recall.

24 Ms. Bailey, referring to Defendant's Exhibit No. 1,
25 could you give me a location --

1 Or when you come into the house, could you tell me what
2 you seen, on January the 8th, after this shooting took
3 place?

4 A. Seen Jared in the living room and Bill in our bedroom.

5 Q. Could you give me a description of the location where
6 Jared was located?

7 A. Jared was in front of the sofa. His legs were more out
8 in the doorway area. I could see from his knees to his feet
9 in front of the sofa.

10 Q. In front of the sofa right here?

11 A. Right.

12 Q. Okay. Could you give me a description as to where Bill
13 Welborn was laying?

14 A. Straightways between the wall and the bed.

15 Q. Around this area?

16 A. Yes.

17 Q. Did you notice Bill Welborn's position?

18 A. Yes, sir.

19 Q. Excuse me?

20 A. Yes, sir.

21 Q. How was he laying?

22 A. Face up, with his head towards the doorway.

23 Q. Okay. And Mr. Champlin, how was he laying?

24 A. Face up.

25 Q. Ms. Bailey, according to this diagram, Defendant's

1 Exhibit No. 1, you say all of the furniture in the room is
2 correct, with the exception of the love seat. The love seat
3 was catty-corner?

4 A. Correct.

5 MR. STARNES: Your Honor, I believe that's all I
6 have of this witness, Your Honor, as far as photographs.

7 MR. GOWDY: Very briefly, Your Honor. May it
8 please the court?

9 THE COURT: Yes, sir.

10 CROSS EXAMINATION BY MR. GOWDY:

11 Q. Good morning, Ms. Bailey.

12 A. Good morning.

13 Q. Do you see the table right there that I'm pointing out?

14 A. Yes, sir.

15 Q. Was there a telephone on that table, in January of
16 1996?

17 A. Honestly I cannot recall whether it was inside the
18 bedroom or on the table there.

19 Q. You can't recall whether there was a telephone --

20 A. From my recollection, it was inside the bedroom.

21 Q. Your recollection is it was inside the bedroom?

22 A. Yes, sir.

23 Q. All right. You definitely know the love seat was not
24 there?

25 A. Correct.

1 Q. You -- and I'm not being a smart-aleck when I say this.

2 You do not have a background in forensics?

3 A. No, sir.

4 Q. You do not have a background in crime scene processing?

5 A. No, sir.

6 Q. You really don't know whether those were bullet holes
7 or not?

8 A. I knew they were. That's all I can say. I knew they
9 were.

10 Q. How?

11 A. They were not there when I left that morning.

12 Q. Did you find a projectile?

13 A. I don't recall finding a projectile, no, sir.

14 Q. Did Mr. Starnes do anything to the holes, whether they
15 were bullet holes or not? Did he make any effort to cover
16 them up, make them larger or smaller?

17 A. To cover them up. I -- I didn't want to look at them.

18 Q. Okay. When you walked in --

19 I want you as best you can --

20 You can step down, if you need to.

21 Have you used one of these before?

22 A. No, sir.

23 Q. You just point that little thing right there and try
24 not to hit anybody with the laser. All right?

25 Come show the court where --

1 A. Could I did it right here?

2 Q. You can if you want to, sure.

3 THE COURT: If it's easier, you may stand down out
4 there.

5 (Witness off the witness stand)

6 BY MR. GOWDY:

7 Q. Show the court where Mr. Welborn's body was when you
8 got there on January the 8th.

9 A. Mr. Welborn?

10 Q. Yes.

11 A. Right here.

12 Q. Okay. And his head was where?

13 A. Down here.

14 Q. Okay. And Mr. Champlin -- was he face up or face down?

15 A. Face up.

16 Q. Mr. Champlin's body was?

17 A. Here.

18 Q. And the head would be where?

19 A. Here.

20 Q. All right. And the feet?

21 A. Here.

22 Q. Face up or face down?

23 A. Face up.

24 Q. Okay. Now, you mentioned -- thank you. You can take
25 your seat back.

1 (Witness back on the witness stand)

2 BY MR. GOWDY:

3 Q. You mentioned to Mr. Starnes that they had been shot
4 and killed, or maybe he asked the question.

5 How do you know they were dead when you got there?

6 A. I didn't. When we first went in, he pointed to Jared
7 and said he knows that Jared is dead, but he wasn't sure
8 about Bill.

9 Q. Okay. And this was when you were with him?

10 A. Yes.

11 Q. Did you and/or defendant Starnes make any efforts to
12 clean up the house?

13 A. He did, sir.

14 Q. Okay. In addition to rearranging pictures, what else
15 did you do, or he do?

16 A. Tried to clean up the blood spot, and -- as far as the
17 house?

18 Q. Well, the bodies were moved?

19 A. The floor was vacuumed. He tried to clean up the blood
20 spot in the carpet.

21 Q. Okay. If the telephone was not on the table beside the
22 love seat, where would it have been?

23 A. On this little wall there. There was a dresser there
24 and the phone was on top of it.

25 Q. Okay. Did you see any firearms when you got there on

1 January the 8th?

2 A. At some point, yes, sir.

3 Q. Where?

4 A. Norman had it.

5 Q. He already had it? So you didn't see one near Jared
6 Champlin or Bill Welborn?

7 A. No.

8 Q. Give me just one second.

9 (Off the record)

10 (Back on the record)

11 BY MR. GOWDY:

12 Q. Last question. Where -- you lived with the defendant
13 for -- beginning when?

14 A. '95.

15 Q. Through April of '96?

16 A. Yes, sir.

17 Q. Were there other instances where he discharged a
18 firearm inside the residence?

19 A. Yes, sir.

20 Q. Do you know whether or not those other discharges of a
21 firearm may have left a hole that you concluded was a bullet
22 hole?

23 A. Yes, sir.

24 Q. Okay. Thank you, Ms. Bailey.

25 A. You are welcome.

1 MR. STARNES: Redirect?

2 THE COURT: Yes, sir. Briefly, yes, sir.

3 REDIRECT EXAMINATION BY MR. STARNES:

4 Q. Ms. Bailey, Mr. Gowdy just asked you did you see any
5 firearms in that house on January the 8th of 1996, and you
6 replied you did not see any firearms, other than the one
7 that I had?

8 A. Correct.

9 Q. Ms. Bailey, referring to Defendant's Exhibit No. 6, do
10 you recognize those firearms on the wall there? Do you
11 recognize the --

12 A. I do recognize them.

13 Q. So were those -- was those guns on the wall on January
14 the 8th of 1996, that you can recall, to the best of your
15 recollection?

16 A. Honestly I cannot recall if they were in that position.

17 Q. But do you recall those firearms being in the house?

18 A. Yes.

19 Q. You do?

20 A. Yes.

21 Q. So you do recall other firearms being inside that house
22 on January the 8th?

23 A. I misunderstood his question, as far as -- I didn't
24 know if he wanted exact number of guns or where.

25 Q. Yes, ma'am, I understand.

1 Other than those firearms, did you say that you did not
2 see any other firearms in that house?

3 A. Just the one that was shown to me.

4 Q. Other than the firearms on the wall that we just looked
5 at, is it a habit for me to have firearms in that house?

6 A. Yes, sir.

7 Q. Is it a habit for me to have a firearm, a handgun?

8 A. Yes, sir.

9 Q. And where would that handgun be at?

10 A. Most of the time on your possession.

11 Q. How about when I was asleep?

12 A. On the headboard.

13 Q. On the headboard of the bed?

14 A. Yes.

15 Q. Can you point that out to me on the headboard of the
16 bed exactly where you are talking about?

17 A. Well, the bed. Straight up would be the headboard.

18 Q. Would you please, for the court, if you would take
19 that, push that button and show the court where that firearm
20 would be at?

21 A. Right there.

22 Q. About right there?

23 A. Yes.

24 Q. Thank you.

25 So what you are telling the court is that it was a

1 habit for me to have a firearm there on that headboard?

2 A. When you went to bed, yes.

3 Q. When I went to bed?

4 A. Yes.

5 Q. And normally whenever I left, I carried that firearm
6 with me?

7 A. Yes, sir.

8 Q. Each and every time that I left, did I always carry
9 that firearm, or would it sometimes be left there at the
10 house?

11 A. I don't recall it ever being left at the house.

12 Q. How many handguns do you recall me having --

13 A. Two.

14 Q. -- back in January?

15 A. Two.

16 Q. And were both of them revolvers?

17 A. No. One was an automatic. One was a revolver.

18 Q. Do you remember me having a silver stainless steel
19 covered revolver?

20 A. Yes, sir.

21 Q. Do you remember me having a blue revolver?

22 A. Honestly, no, sir.

23 Q. So the revolver that you seen that night that you were
24 discussing with Mr. Gowdy that you seen me have that night,
25 do you remember the color of that revolver?

1 A. The only one I recall seeing that evening was the small
2 pearl handled handgun that could fit in the palm of your
3 hand.

4 Q. Fit in the palm of your hand?

5 A. Uh-huh. It was a revolver. Whether it was silver or
6 copper, I don't know. Whatever you call it.

7 Q. Okay. Would you say the firearm -- I'm sorry, were you
8 finished?

9 A. I was.

10 Q. Okay. The firearm that you said would fit in the palm
11 of your hand, that was the firearm that you're explaining to
12 Mr. Gowdy that you seen on me when we were in the house on
13 January the 8th?

14 A. It was one that you showed me.

15 Q. The one that I showed you?

16 A. Right.

17 Q. Did I tell you that that was the firearm that was used
18 in this shooting?

19 A. No, sir.

20 Q. I did not?

21 A. No, sir.

22 Q. Okay. Earlier you testified that you left that morning
23 and you did not return to the house until later that
24 evening?

25 A. Correct.

1 Q. When you left to go to work that day, was the firearm
2 on that headboard of the bed right there?

3 A. I don't know.

4 Q. So you don't recall?

5 A. No, sir.

6 Q. So, in other words, when you left to go, that firearm
7 is possible could have been on the headboard of that bed?

8 A. It is possible.

9 Q. And you have known me to have more than one firearm, in
10 other words, more than one handgun?

11 A. Yes, sir.

12 Q. Okay. At any point when you would see me carry a gun,
13 did you ever know for me to carry more than one gun on me?

14 A. Not at one time.

15 Q. So it was a habit normally when I carried a gun that I
16 only had one firearm on me, is that correct?

17 A. Correct.

18 Q. The automatic weapon that you explained earlier, could
19 you describe that for the court, please?

20 A. It had a clip that you popped in the bottom and rapid
21 fire.

22 Q. Had you ever shot that firearm?

23 A. I'm not sure if it was that one, but I have shot a
24 firearm.

25 Q. Do you recall ever shooting a firearm with me?

1 A. Once.

2 Q. A handgun or a shotgun?

3 A. It was a handgun.

4 Q. A handgun.

5 Do you remember the color of the handgun?

6 A. No, sir.

7 Q. You do not?

8 A. No.

9 Q. Okay. How about a shotgun, has there ever been a time
10 that you had shot a shotgun around me?

11 A. Turkey shoot.

12 Q. Turkey shoot.

13 Other than that, but you never seen -- we never shot a
14 firearm, as far as a shotgun or a rifle, at the house?

15 A. Not that I can honestly recall.

16 Q. Okay.

17 THE COURT: Where are we going now, Mr. Starnes,
18 because that doesn't --

19 MR. STARNES: I have only got two more questions.

20 THE COURT: That doesn't fit this at all.

21 MR. STARNES: I understand that. I was talking
22 about firearms. Mr. Gowdy had asked her some questions
23 about firearms.

24 BY MR. STARNES:

25 Q. But you cannot say for sure that when you left to go to

1 work that that firearm was or was not on the headboard of
2 that bed?

3 A. Correct.

4 Q. That's correct.

5 But it was a habit for me to have that firearm on the
6 headboard of that bed where we used to stay at?

7 A. Correct.

8 MR. STARNES: I believe that's it, Your Honor. I
9 don't have any more questions for this witness.

10 THE COURT: Briefly, solicitor, yes, sir.

11 MR. GOWDY: Your Honor, very, very briefly.

12 RECROSS EXAMINATION BY MR. GOWDY:

13 Q. Ms. Bailey, back to January the 8th, you were working
14 at Panther Parlor. You closed, you are doing the things
15 that you do at closing. Did the defendant walk in at some
16 point after closing on January the 8th?

17 A. Yes, sir.

18 Q. And what did you see him get?

19 A. Which occasion?

20 Q. The last time. The last time that he was in there.

21 A. The last time he was in there was --

22 Q. Not -- well --

23 MR. STARNES: Your Honor, I would object to this.
24 This is improper. We covered nothing about the restaurant.
25 He's bringing up new issues.

1 MR. GOWDY: Well --

2 THE COURT: I think -- I'll let him ask the
3 question. We will see what question he's asking first.

4 MR. GOWDY: Thank you, Your Honor.

5 BY MR. GOWDY:

6 Q. Ms. Bailey, did he come in at some point and get a
7 firearm on January the 8th, 1996?

8 A. Yes, sir.

9 Q. Where did he get it from?

10 A. The kitchen area off the shelf.

11 Q. Did he get ammunition when he got the firearm?

12 A. Yes, sir.

13 Q. Did he say what he was going to do with the firearm
14 after he got it?

15 A. Yes, sir.

16 Q. What did he say he was going to do with it?

17 A. That he was going to kill them.

18 Q. What?

19 A. That he was going to kill them.

20 Q. Them?

21 A. Them.

22 Q. Plural?

23 A. Yes, sir.

24 Q. Okay. So you -- you testified in response to his
25 questions that he either had the gun on him, or it was on

1 the headboard?

2 A. Correct.

3 Q. But you saw it on him, January the 8th, leaving Panther
4 Parlor after nine o'clock?

5 A. Yes, sir.

6 Q. Thank you.

7 A. I do not know if it was after nine o'clock. I do not
8 know the time.

9 Q. Was it after closing?

10 A. No, sir.

11 Q. Okay.

12 MR. GOWDY: That's all.

13 MR. STARNES: Your Honor, I would like to follow
14 up. He asked some questions about the restaurant.

15 THE COURT: You can ask him -- solely ask her
16 about the questions that he asked, yes, sir.

17 MR. STARNES: Yes, sir.

18 REDIRECT EXAMINATION BY MR. STARNES:

19 Q. Ms. Bailey, Mr. Gowdy asked you about the firearm that
20 was in the restaurant then and I believe you said that I
21 obtained it from what area of the restaurant?

22 A. The shelf in the kitchen.

23 Q. Okay. What kitchen shelf are we talking about now?

24 A. It was over our prep area.

25 Q. And you also testified that I got ammunition for this

1 firearm at that time?

2 A. Yes, sir.

3 Q. Where was the ammunition at?

4 A. Up there with it, with the handgun.

5 Q. So you are saying that there was ammunition and a
6 handgun on the shelf?

7 A. Yes, sir.

8 Q. Did you see me load the gun?

9 A. I don't recall you loading the gun, but I do recall you
10 getting that gun.

11 Q. You recall me getting ammunition?

12 A. Yes, sir.

13 Q. And your testimony is that you see me come and get this
14 gun and that I take ammunition with me?

15 A. Yes.

16 Q. What hand was I carrying the gun in?

17 A. I don't honestly know what hand you had the gun in.

18 Q. And at this time when this happened was anybody at the
19 restaurant with you?

20 A. Yes, sir.

21 Q. Who was at the restaurant?

22 A. My son Tyler and -- I'm trying to remember her name.
23 I'm at a loss. It was Jared's girlfriend.

24 Q. Okay. At any point in your testimony today -- let me
25 back up.

1 You give a video statement to Carlisle McNair regarding
2 what you testified to about me coming and getting the gun
3 from the restaurant, is that correct?

4 A. Correct.

5 Q. At any point in that video statement did you tell
6 Carlisle McNair that I picked up the gun and got ammunition
7 with it?

8 A. I don't recall.

9 Q. Do you recall giving testimony in April of 1997, and
10 testifying that I got ammunition with the gun at that time?

11 A. I don't recall if I ever mentioned ammunition, but I
12 know it was testified about the gun.

13 Q. It was testified about the gun.

14 But other than that, today is the first day that you
15 testified about me taking any ammunition from the
16 restaurant?

17 A. From what I recall, I vaguely remember stating
18 ammunition and gun, but I wouldn't -- it's been so long ago.

19 Q. Did you get a good look at the gun?

20 A. No.

21 Q. You did not?

22 A. I know it was a handgun.

23 Q. You know it was a handgun?

24 A. Yes.

25 Q. What were you doing at this time in the kitchen when I

1 was getting this handgun, supposedly?

2 A. Probably preparing food.

3 Q. Preparing food?

4 A. Yes.

5 Q. So then that would have had to have been before ten
6 o'clock?

7 A. When you got the handgun?

8 Q. Yes, ma'am.

9 A. Yes, sir.

10 Q. You do not recall the color of the handgun?

11 A. I want to say silver.

12 Q. Silver.

13 The box of ammunition -- was it ammunition in a box?

14 A. Yes, sir.

15 Q. What color was the box?

16 A. I don't recall.

17 Q. But the best you can recall, it was a silver handgun?

18 A. From what I can recall.

19 Q. Was it a habit for me to keep a firearm in the kitchen
20 area of the restaurant?

21 A. Was it a habit?

22 Q. Yes, ma'am.

23 A. To some degree, yes.

24 Q. To some degree.

25 Could you explain that to the court, please?

1 A. For protection.

2 Q. For protection?

3 A. Yes.

4 Q. As in self-defense?

5 A. Right. Robbers.

6 Q. Robbers.

7 A. Protection.

8 Q. But it was a normal habit for me to keep a firearm in
9 the kitchen of the restaurant? Is that what you are saying?

10 A. Yes, sir.

11 Q. At anywhere else in the restaurant would I store a
12 firearm, that you know of?

13 A. I want to say sometimes it was in the front, depending
14 on circumstances when we were there.

15 Q. Under the cash register?

16 A. Yes.

17 Q. That I stored a pistol under the cash register? There
18 is a little drawer under the cash register, is there not?

19 A. Yes.

20 Q. And would it be habit for me to store a pistol or have
21 a firearm underneath that cash register?

22 A. Not at all times.

23 Q. Not at all times.

24 But your testimony today is sometimes that I would have
25 a handgun and it would be in the kitchen area?

1 A. Yes.

2 Q. Thank you.

3 THE COURT: All right. I think that exhausts
4 that.

5 Thank you, ma'am. You may stand down.

6 MR. STARNES: Your Honor, my next witness is
7 Detective Darren Amick.

8 DETECTIVE DARREN AMICK, having been first duly
9 sworn, testified as follows:

10 THE CLERK: Have a seat and state your name.

11 THE WITNESS: Darren Amick, Darren, D-A-R-R-E-N.
12 Amick, A-M-I-C-K.

13 DIRECT EXAMINATION BY MR. STARNES:

14 Q. Hi, Detective Amick. How are you doing today?

15 A. Good.

16 Q. Detective Amick, back in January of 1996, were you
17 working with the Lexington County sheriff's department?

18 A. I was.

19 Q. In what capacity were you working for the sheriff's
20 office?

21 A. Investigator.

22 Q. An investigator.

23 And at that time did it become -- were you assigned to
24 this case?

25 A. I was.

1 Q. Around January the 11th of 1996?

2 A. Correct.

3 Q. And as a result of you being assigned to this case, it
4 was a missing persons case up until May the 27th of 1996?

5 A. That is correct.

6 Q. And at that time your agency obtained arrest warrants
7 and search warrants for various different counties?

8 A. This is true.

9 Q. You obtained a search warrant for 375 Forts Pond Road?

10 A. Yes, I did.

11 Q. Could you explain to the court where that was located
12 at in Lexington County?

13 A. Just outside of Pelion approximately two or three
14 miles.

15 Q. Just outside of Pelion.

16 During the course of your investigation did you ever
17 take any measurements of the house where this shooting
18 occurred at?

19 A. I did not.

20 Q. You did not take any measurements?

21 A. I did not.

22 Q. Did you draw any diagrams or anything of the inside of
23 the house?

24 A. I did not.

25 Q. Are you sure about that?

1 A. I don't recall drawing one. I remember one being drawn
2 during an interview. I don't recall if I draw it or
3 somebody else drew it.

4 Q. But you would recognize your handwriting, would that be
5 correct, detective?

6 A. Correct.

7 Q. Detective Amick, looking at --

8 A. May I step down?

9 THE COURT: You can stand down, yes, sir.

10 (Witness off the witness stand)

11 MR. STARNES: Your Honor, I would like to mark
12 these as the next two exhibits.

13 THE COURT: That's for the purpose of this
14 hearing.

15 MR. STARNES: Yes, sir.

16 (Diagram marked as Defendant's Exhibit No. 11 for
17 identification)

18 (Diagram marked as Defendant's Exhibit No. 12 for
19 identification)

20 BY MR. STARNES:

21 Q. Detective Amick, does that diagram look familiar?

22 A. Yes, it does.

23 Q. Is that your handwriting?

24 A. It is.

25 Q. Okay. So could you for the court describe what this

1 diagram is?

2 A. I would like to say that's 375 Forts Pond.

3 The surrounding events in reference to me making this
4 sketch I do not recollect.

5 Q. Do you remember about a timeline when you made this
6 sketch?

7 A. If I had to guess, which I don't like to do, it would
8 have been during an interview with --

9 MR. STARNES: Judge, for the record I'm referring
10 to Defendant's Exhibit No. 11.

11 BY MR. STARNES:

12 Q. Referring to Defendant's Exhibit No. 12, Detective
13 Amick, do you recognize that diagram?

14 A. Yes, sir.

15 Q. And that is your handwriting?

16 A. That is my handwriting.

17 Q. Could you tell me the date that this diagram was drawn?

18 A. 4-3.

19 Q. And that would be April 3rd of 1997?

20 A. That's correct.

21 Q. Around April 3rd of 1997, prior to the trial of this
22 case, do you remember an event where the defendant was taken
23 to 375 Forts Pond Road?

24 A. I do.

25 Q. And the defendant was taken to 375 Forts Pond Road to

1 consult with his attorneys?

2 A. During the trial?

3 Q. No, sir, during the transport back to the house, do you
4 recall that?

5 A. I do not.

6 Q. You do not recall that?

7 A. No.

8 Q. Do you recall going to 375 Forts Pond Road the day that
9 this diagram was taken and taking any photographs?

10 A. Apparently I was there. As for a direct recollection,
11 I'm not sure.

12 Q. For the record, if you could, could you explain to me
13 the measurements, as far as in inches or feet, the bullet
14 hole that is in the living room area?

15 A. There is a mark. It looks like from the front entrance
16 to that bullet hole is 13 feet.

17 Q. Okay. Could you tell me for the record, Detective
18 Amick, if you would, the bullet hole on -- the bullet hole
19 right here, that 41 inches you have got back to the kitchen,
20 now is that from where the bullet hole is to the wall to the
21 back kitchen?

22 A. It's toward the back of the house. I can't say if it
23 was the kitchen or not, but that's where the kitchen is.

24 Q. Okay. But what I'm asking you is can you tell me the
25 measurements of the bullet hole?

1 A. The measurements of the hole itself?

2 Q. The bullet hole from the wall to the floor and from
3 this side.

4 A. My handwriting there is 41 inches from the floor, and
5 then 41 inches towards the back side of the house, towards
6 the kitchen.

7 I believe also these measurements were taken by CSI
8 personnel and translated to me as per the exact measurements
9 themselves.

10 Q. Do you recognize this photograph, Detective Amick?

11 A. Vaguely.

12 Q. Okay. The bullet hole that we were just talking about
13 was 41 inches off the floor and 41 inches from the back
14 wall. Would that have been the bullet hole that would have
15 been right here over the heater?

16 A. I do not recollect.

17 Q. You do not recollect?

18 A. No.

19 Q. But do you recognize that diagram, that is being your
20 handwriting?

21 A. I do, yes.

22 Q. Referring back to Defendant's Exhibit No. 12, Detective
23 Amick, there was a bullet hole that entered the bedroom and
24 passed through the closet. Do you remember that?

25 A. Could you turn it this way, counter-clockwise.

1 Could you repeat the question?

2 Q. Okay. Do you recall during the course of your
3 investigation and being at the house a bullet that passed
4 through the closet in the bedroom?

5 A. I believe that information, or memory of that
6 information being given to me through our crime scene
7 people, yes.

8 Q. And as a result --

9 Well, let me ask you this. This diagram that you drew,
10 could you explain to me what the line is going into the --
11 from the doorway here into the bedroom?

12 A. I can't make out what that highlighted area, but it
13 says something, but as for explaining it right now looking
14 at this I cannot.

15 Q. You cannot explain that.

16 Did you take measurements of that bullet hole in the
17 closet?

18 A. I did not.

19 Q. You did not take no measurements from the floor?

20 A. I took no measurements of this house.

21 Q. You took no measurements?

22 A. Correct.

23 Q. Well, how did you know this measurement here was 41
24 inches from the floor up and from here to the wall?

25 A. Crime scene took measurements and they referred to me.

1 Q. So you had notes from crime scene?

2 A. I had my notes of them taking measurements. They were
3 physically taking measurements.

4 Q. So, in other words, they went back on April the 3rd of
5 1997 and took measurements of the living room?

6 A. What I'm saying is I don't recall physically taking
7 these measurements. I recall these measurements were given
8 to me verbally by another person.

9 Q. Can you tell me who that personnel was?

10 A. I cannot.

11 Q. You enlisted the assistance of the South Carolina Law
12 Enforcement Division?

13 A. I did not. The department did, yes.

14 Q. The department did, but through the course of this
15 investigation they assisted your agency?

16 A. Correct.

17 Q. And through the course of them assisting you all, did
18 you work with an Agent Kelvin Crimminger?

19 A. I did not.

20 Q. Did you work with an Agent Brett Baker?

21 A. I did not.

22 Q. Can you tell me who provided these measurements for
23 you, as far as where the bullets holes was? These
24 measurements here that you got, 41 inches from the bullet
25 hole that you have identified on this photograph or this

1 diagram, can you tell me who give you that information?

2 A. My recollection would be part of our crime scene
3 personnel or technician.

4 Q. Who would that person be?

5 A. I do not know.

6 Q. You do not know?

7 A. I do not know.

8 Q. Do you remember who performed an autopsy on Mr. Welborn
9 and Mr. Champlin?

10 A. Dr. Sexton.

11 Q. Dr. Joel Sexton?

12 A. Yes. .

13 Q. And where is he located?

14 A. He's in Newberry.

15 MR. STARNES: I believe that's all I have of this
16 witness, Your Honor.

17 (Witness back on the witness stand)

18 THE COURT: . Please answer any questions of the
19 solicitor.

20 MR. GOWDY: May it please the court, Your Honor?

21 THE WITNESS: Yes, sir.

22 CROSS EXAMINATION BY MR. GOWDY:

23 Q. Detective Amick, you did not have an opportunity to go
24 into the Starnes residence on January the 8th, 1996?

25 A. I did not.

1 Q. Or January the 9th, 1996?

2 A. I did not.

3 Q. Or January the 10th, 1996?

4 A. That's correct.

5 Q. You --

6 MR. GOWDY: Let me put that back up, Mr. Starnes.

7 MR. STARNES: It's right over there.

8 (Witness off the witness stand)

9 BY MR. GOWDY:

10 Q. You see what's labeled bullet hole?

11 A. Yes, sir.

12 Q. You don't know when that hole was made?

13 A. No, sir.

14 Q. You don't know who made it?

15 A. That's correct, sir.

16 Q. You don't know how far away the person was standing,
17 assuming it is a bullet hole, how far away they were
18 standing when they made the hole?

19 A. That's correct, sir.

20 Q. The same three questions for the one in the closet?

21 A. Correct.

22 Q. You don't know who made it?

23 A. Correct.

24 Q. You don't know how far away they were standing when it
25 was made?

1 A. I do not.

2 Q. You don't know when it was made?

3 A. No, sir.

4 Q. All right.

5 And with respect to --

6 Well, let me ask you this. Did you go to the residence
7 in April of '97?

8 A. April of '97?

9 Q. Yes.

10 A. It was secured at one point in time during the trial in
11 one other case with the prosecutor's office.

12 Q. But the truth of the matter is, you cannot today tell
13 this court what that house looked like on the evening of
14 January 8th or the morning of the 9th?

15 A. I do not, sir.

16 Q. You don't know what holes preexisted in the wall?

17 A. No, sir.

18 Q. You don't know what holes were made that night?

19 A. I do not.

20 Q. You don't know where the furniture was?

21 A. That's correct, sir.

22 Q. Okay. Thank you, detective.

23 (Witness back on the witness stand)

24 MR. STARNES: Nothing further of this witness.

25 THE COURT: Thank you, sir. You may stand down.

1 MR. STARNES: Your Honor, I call Dr. Joel Steven
2 Sexton.

3 THE COURT: Let me ask you, insofar as the
4 witnesses we have had so far, do we need to keep the
5 witnesses here any longer?

6 MR. STARNES: No, sir.

7 THE COURT: Is there any reason why they can't be
8 excused by either side?

9 Solicitor, do you know of any reason why these
10 first two witnesses couldn't be excused so they could go
11 about their business?

12 MR. GOWDY: No, sir, Your Honor.

13 THE COURT: Mr. Starnes doesn't.

14 So those that have already testified, if you wish
15 to leave, you are welcome to do so. Of course, you are
16 welcome to stay, if you wish to stay. Thank you.

17 DR. JOEL SEXTON, having been first duly sworn,
18 testified as follows:

19 THE CLERK: Take your seat and state your name for
20 the record, please.

21 THE WITNESS: Dr. Joel Steven Sexton.

22 DIRECT EXAMINATION BY MR. STARNES:

23 Q. Hi, Dr. Sexton. How are you doing?

24 A. Fine. How are you?

25 Q. Fine. Thank you.

1 Dr. Sexton, in May of 1996, did you perform an autopsy
2 on a Jared Lee Champlin and a William C. Welborn?

3 A. Yes, we did.

4 Q. And you did that at the request of what agency?

5 A. The coroner from Lexington County, Mr. Harmon.

6 Q. Yes, sir.

7 Have you had a chance to review your reports prior to
8 your testimony today?

9 A. Yes, sir, I have.

10 Q. I haven't had an opportunity to talk with you until
11 today, is that correct?

12 A. That's correct.

13 Q. And you have previously given testimony in this case,
14 is that correct, Dr. Sexton?

15 A. Yes.

16 Q. Do you pretty recall your testimony? It's been 10
17 years ago.

18 A. No, I do not recall.

19 Q. Dr. Sexton, would it benefit you if I provided you your
20 testimony from 1997?

21 A. That would be a benefit.

22 Q. Okay.

23 A. Thank you.

24 Q. Yes, sir.

25 Dr. Sexton, through the course of your autopsy did you

1 have an opportunity in which you took -- you drew some
2 diagrams relating to gunshot wounds?

3 A. Yes, that's correct.

4 Q. Okay. Referring to the gunshot wound to Jared
5 Champlin, was he shot in the back?

6 A. Jared Champlin was shot in the back, that's correct.

7 Q. How many times was that individual shot?

8 A. We found one gunshot wound.

9 Q. One gunshot wound?

10 A. Correct.

11 Q. And did the gunshot wound to Jared Champlin, did it
12 enter the body from the back, did it exit?

13 A. Yes, exited from the body.

14 Q. Did it exit through the clothing?

15 A. No, it did not exit through all the clothing. In fact,
16 there was no hole in the T-shirt, which was the garment
17 closest to the skin. No hole in the T-shirt at the time of
18 autopsy in the front. Only a hole in the back.

19 Q. Yes, sir.

20 During the course of your autopsy did you find that
21 projectile in Mr. Champlin?

22 A. No, we found three unspent rounds, unfired rounds, but
23 we did not found that projectile.

24 Q. And where was those three unspent projectiles found on
25 Mr. Champlin?

1 A. One was found in the dirt in all that came with the
2 body. Two were found in a shirt pocket.

3 Q. In the shirt?

4 A. Jacket pocket, excuse me.

5 Q. Were you able to identify the caliber of those shells?

6 A. No, I leave that up to ballistics.

7 Q. Yes, sir.

8 Regarding the autopsy of William Welborn, can you tell
9 us how many times Mr. Welborn was shot?

10 A. He had two gunshot wounds:

11 One that entered his right side that passed all the way
12 through the body and all layers of clothing.

13 One that entered here and just hit the T-shirt and
14 passed downward through the body and was found in the
15 lowest -- or I should say one of the lumber vertebrae,
16 highest lumbar vertebrae, which is in the abdomen, and it
17 passed through vital organs.

18 There were two holes -- or I should say holes overlined
19 each other in the shirt and the jacket in the back of the
20 neck. I don't know whether these were because the bullet
21 passed through the edge of the neck, which was decomposed,
22 and out through the shirt, or whether it simply went through
23 the shirt. But there were at least evidence of three
24 missiles hitting his clothing and two that hit his body.

25 Q. The missiles that you were talking about that entered

1 above the neck or the throat around the soft tissue area,
2 were you able to conclude to a degree of medical certainty
3 that that was a gunshot wound?

4 A. Yes, because at the end of that missile track in the
5 vertebral column was a groove in the last thoracic vertebra
6 that was going downward and deeper into the spine, and the
7 bullet was found in the first lumbar vertebra, indicating
8 the bullet came from this direction and it entered at this
9 location. So, yes, that was a gunshot wound going downward.
10 And there was no injury to the spine to indicate it came in
11 here and went out the back of the collar.

12 The neck was intact, except for the soft tissue around
13 the edge, where a bullet could have grazed, but there was no
14 damage to the vital structures of the neck.

15 Q. Yes, sir.

16 In your previous testimony you were able to identify
17 two shots, but you were uncertain of one shot?

18 A. I was uncertain as to whether it hit the body. It
19 clearly went through the clothing. There was a round hole
20 in the inside of the collar of the shirt and a tear-type
21 hole at the exit on the back of the shirt, a round hole
22 entering the back of the jacket and a hole exiting the back
23 of the jacket.

24 Q. And how were you able to conclude that that was a
25 gunshot?

1 A. Simply because of the size and nature of the hole
2 itself. Obviously something could have been pushed through
3 that if it was sharp enough, but it was consistent with what
4 I have seen in the past with gunshot wounds, particularly
5 the tearing of the exit.

6 Q. Yes.

7 There were three gunshot wounds to Mr. Welborn. Now,
8 you say that the missile that went in, that embedded in the
9 spine, it had not exited the body?

10 A. Correct, we retrieved that.

11 Q. You retrieved that during autopsy?

12 A. Correct.

13 Q. And other missiles that passed -- that went through the
14 front of Mr. Welborn's clothing and exited, that missile
15 exited the body?

16 A. Correct, and it exited the clothing in the back.

17 Q. Okay. During your autopsy with Mr. Welborn, you were
18 only able to recover one missile, is that correct, Dr.
19 Sexton?

20 A. Yes, that's correct.

21 Q. Dr. Sexton, I want to show you some diagrams, if I
22 could.

23 (Autopsy drawing marked as Defendant's Exhibit No.
24 13 for identification)

25 (Diagram marked as Defendant's Exhibit No. 14 for

1 identification)

2 BY MR. STARNES:

3 Q. Dr. Sexton, referring to Defendant's Exhibit No. 13,
4 can you identify this?

5 A. Yes. That's the diagram that I drew at the time of
6 autopsy of Mr. Champlin showing the entrance of the wound in
7 the back where I have the words GSW entrance, and the exit
8 in the front where I have the star emblem indicating that it
9 exited from the front.

10 Q. And that gunshot wound, Dr. Sexton, can you give us an
11 idea of the angle of the shot and the direction?

12 A. I know it's drawn with it showing a little bit upward,
13 and it may have been, but recognize we are doing this
14 primarily on the basis of clothing, since the tissue was
15 decomposed a lot in that area and through the bones that it
16 struck, but the impression was it went slightly upward, but
17 depending upon the position of the clothing that may not be
18 exactly correct.

19 It looked like it was going slightly upward as shown in
20 the diagram.

21 Q. And when you say slightly upward, would it be possible
22 that when Mr. Champlin was shot, that he could have been
23 leaned over forward slightly?

24 A. Assuming that all parties were on a level surface, it
25 would be my opinion he probably was leaning forward at the

1 time that shot was fired.

2 Q. And this projectile was not recovered from Mr.
3 Champlin's body?

4 A. Correct, it was not.

5 Q. Dr. Sexton, do you recognize that handwriting,
6 referring to Defendant's Exhibit No. 14?

7 A. I do.

8 Q. For the court, could you tell us what that diagram
9 reflects?

10 A. That's the diagram I drew at the time of the autopsy
11 regarding the bullet paths of Mr. Welborn, showing that one
12 enters high in the middle of the chest, just at the base of
13 neck, and travels downward into the spine. And the dark
14 structure there, the lower part of the diagram, shows the
15 bullet itself in the spine.

16 The one labeled number two shows where it enters the
17 right side of the chest and passes out the left side of the
18 back.

19 Q. Now, Dr. Sexton, you have these labeled one, two and
20 three. Does that necessarily mean the order in which these
21 shots were fired?

22 A. No, that's an arbitrary measurement -- or
23 determination. We simply designate them. I generally do it
24 from the front of the body, starting from the top and
25 working down; down the back of the body, again starting at

1 the top and working down. It's an arbitrary number. It has
2 nothing to do with when the shots may have been fired.

3 Q. Yes, sir.

4 Dr. Sexton, referring to Defendant's Exhibit No. 14,
5 the shot that you had marked number one, in the diagram
6 would that be consistent with Mr. Welborn being leaned over
7 forward while he was shot?

8 A. It would. Again, assuming everybody is on the same
9 level surface, it could be consistent with him being very
10 far forward or laying down on his back. Either could have
11 occurred, depending upon where the shooter was in
12 relationship to Mr. Welborn.

13 Q. Yes, sir.

14 Dr. Sexton, do you recall the height of Mr. Bill
15 Welborn?

16 A. We were not able to get a very accurate height - let me
17 see what we have got here - because of the decomposition,
18 particularly of his legs. His lower extremities were
19 skeletonized, and so we don't really have an accurate
20 measurement of his overall height. But he looked to be of
21 average build, just from looking at the structure of his
22 body, perhaps a little shorter, but about average height.

23 Q. Yes, sir.

24 Shot number three on -- that you have marked number
25 three, referring to Defendant's Exhibit No. 14, to a

1 reasonable degree of medical certainty could you conclude
2 that shot number three was actually a gunshot?

3 A. In my opinion, within reasonable medical certainty, it
4 was.

5 Q. It was a gunshot?

6 A. Correct.

7 Q. But there was nothing in the tissue or the throat or
8 around the spine that would show where a missile had passed
9 through his body?

10 A. Correct, there was nothing to show it came from the
11 front and exited through the shirt, but as I mentioned, some
12 of the tissue on each side of the neck was decomposed and
13 missing due to the decomposition. But it also could have
14 been with him been far enough forward, as he would be for
15 gunshot wound labeled number one, that could have missed him
16 and just gone through the top.

17 Q. Yes, sir.

18 Dr. Sexton, if you could, please turn to page 1748 of
19 your previous testimony.

20 A. Okay.

21 Q. On line 8 -- you previously testified in this case
22 regarding this shooting, is that correct?

23 A. Yes, that's correct.

24 Q. On line 11, in your testimony you answered that there
25 were definitely two shots?

1 A. If you notice the question above asked "how many
2 gunshot wounds?"

3 And I'm stating that "there were definitely two wounds
4 to the body. The other may have gone through the edge of
5 the neck, but that tissue was missing."

6 Q. All right. On line 11, is it true that you said "there
7 may have been a third that grazed the side of his neck"?

8 A. Correct, but I couldn't say whether it hit his neck or
9 not. I saw where it went through the collar, but the tissue
10 on either side of the neck was missing. I couldn't say
11 whether it went through the edge of the neck and through the
12 collar or whether it simply hit the collar.

13 Q. One more question.

14 But shot number three, you can't say for sure that that
15 is a gunshot wound? You can or cannot?

16 A. We can never say anything absolutely, but in my opinion
17 within reasonable medical certainty that was a gunshot
18 wound, or a gunshot hole through the shirt.

19 Q. Yes, sir.

20 On January the 8th of 1996, you weren't at 375 Forts
21 Pond Road when this shooting took place, were you?

22 A. Correct, I was not.

23 MR. STARNES: That's all I have for this witness,
24 Your Honor.

25

1 CROSS EXAMINATION BY MR. BULSA:

2 Q. Dr. Sexton, what was the date of your autopsy?

3 A. It was on May 28th of '96.

4 Q. Do you know the date of the death of these two
5 individuals?

6 A. I know the date that they disappeared and were presumed
7 dead, but considering conditions of the body, we were unable
8 to give a specific date of death.

9 Q. And the dates that you were told of their disappearance
10 and estimated death was January the 8th or 9th of 1996?

11 A. January 8th of 1996, correct.

12 Q. Okay. And that was some four and a half months before
13 the autopsy?

14 A. That's correct.

15 Q. If you had the benefit of having these bodies on
16 January the 9th, could you have -- what could you have told
17 us?

18 A. I may have been able to tell more information about
19 particularly this hole in the back of the shirt as to
20 whether it was a gunshot wound associated with it.

21 Could have had better toxicology results. We were able
22 to use issue in one case, what was remaining, as far as the
23 blood in the chest in the other case.

24 And may have had a more information about the
25 individuals. For instance, the height of Mr. Welborn.

1 Q. Okay. Now, Mr. Starnes has made a big issue about the
2 hole in the collar that you have numbered three?

3 A. Correct.

4 Q. Were there holes in the clothing consistent with the
5 holes in the clothing of gunshot wounds one and two?

6 A. Are you asking if the holes in the collar were --

7 Q. Consistent nature.

8 A. -- consistent in nature with the holes elsewhere in the
9 other clothing?

10 Q. Yes, sir.

11 A. Yes, they were.

12 Q. Okay. And is that how you were able to determine that
13 that was a third gunshot wound?

14 A. That, and the fact that I have been doing this 35 years
15 and --

16 Q. Okay.

17 A. -- I have done hundreds of gunshot wound cases.

18 Q. So basically from your experience alone you can make
19 that; and then, in addition, it's consistent with the other
20 evidence that you are actually looking at?

21 A. That's correct.

22 Q. Okay. The wound to Mr. Champlin was a
23 through-and-through wound, is that correct?

24 A. Yes.

25 Q. But the T-shirt that he was wearing, we know he was

1 wearing, did not have an exit wound to the front of his
2 shirt, correct?

3 A. That is correct.

4 Q. In your opinion, was he shot from front to back, or
5 back to front?

6 A. He was definitely shot back to front.

7 Q. How can we explain why there is no exit wound to the
8 T-shirt?

9 A. Oftentimes the energy is expelled almost completely to
10 the point where we will find sometimes the bullet in the
11 exit wound. In other words, it will still be just in the
12 skin, even though there is a hole present.

13 Sometimes it's just enough to come out and fall out
14 when the body is moved from under the clothing.

15 Q. And, doctor, if medical personnel had been called to
16 the scene where Mr. Champlin was shot, what would the
17 likelihood have been of finding the bullet that went through
18 his body?

19 A. I would think it would have been found, if the bodies
20 had not been moved and people were observant.

21 Q. And you don't know how many times these bodies were
22 moved, do you?

23 A. I do not.

24 Q. Were you informed that the bodies were found some miles
25 away, buried in a location away from his home?

1 A. That was the history we received, correct.

2 Q. Now, Mr. Welborn, there was some discussion about the
3 wound, I believe that you have as gunshot wound number one,
4 which you have listed in a downward departure?

5 A. Correct.

6 Q. And there is testimony that he would have been leaning
7 forward in some fashion?

8 A. He would have been leaning very far forward, or lying
9 down on his back and someone shooting from above his head.

10 Q. So there were different scenarios in which his body
11 could have been positioned in order for that wound to have
12 been inflicted?

13 A. Correct.

14 Q. One you described as him leaning forward?

15 A. Correct.

16 Q. Or if somebody were above his head and shooting
17 downward?

18 A. If there was an ability to be on a second story, but my
19 understanding this was a one-story structure.

20 Q. So we could rule that scenario out?

21 A. Correct.

22 Q. But you also testified that he could have been actually
23 on the ground and could have been shot in that fashion?

24 A. Could have been, correct.

25 Q. How about getting up from a seated position?

1 A. If he was bent forward as he was getting up, certainly
2 that would be a scenario that would fit.

3 Q. And actually the wound to the shirt and the jacket,
4 could that have been made in close proximity to the shooting
5 of gunshot number one?

6 A. Correct. The hole in the back of the shirt would fit
7 with his head bent forward in the same fashion that he might
8 be at the time he were shot, where the bullet enters the top
9 of the chest and goes downward. Both of those would be in
10 about the same position.

11 Q. Okay. How about if the head were turned to one side?
12 Could he have been -- could that gunshot wound number three,
13 could that have been --

14 A. Certainly if his head was turned far enough to one side
15 with the collar open, the bullet could go through without
16 hitting the neck.

17 Q. So there is various scenarios as to how the neck and
18 the head could have been positioned for that wound as well?

19 A. That is correct.

20 Q. And for the matter of gunshot wound number two, there
21 are various scenarios as to how that wound could have been
22 inflicted?

23 A. Depending on the manner in which the person who is
24 holding the gun is holding it, whether they were holding it
25 out at eye level, or whether they were shooting from the

1 waist, there are number of scenarios.

2 The path is consistent with somebody standing up being
3 shot by someone else standing up, but it's also consistent
4 with other positions.

5 Q. Okay. So Mr. Welborn could have had his hand up in a
6 defensive posture and that wound have been inflicted?

7 A. That's correct.

8 Q. Could he have been laying down and that wound have been
9 inflicted?

10 A. Possible? He would have -- the person would have to be
11 fairly close because of the path, but it possible. It goes
12 in here on the right side and comes out on the back left.

13 Q. And we know that the bullet that is associated with
14 number two was through and through, so it should have been
15 able to be found at the crime scene?

16 A. You would like to think so, since it's inside the
17 house.

18 Q. Okay. Had the scene been searched or discovered the
19 day after the incident?

20 A. Correct. And reconstruction of how it occurred would
21 be done a lot more accurately.

22 Q. So time limits is important then in your line of work,
23 as well as recovering evidence, that would corroborate your
24 findings?

25 A. That's correct.

1 Q. Thank you, doctor.

2 MR. BULSA: That's all I have.

3 THE WITNESS: You are welcome.

4 REDIRECT EXAMINATION BY MR. STARNES:

5 Q. Dr. Sexton, he just asked you about gunshot wound
6 number two -- one, two, and three. Out of these gunshot
7 wounds, can you tell the court the gunshot wound that would
8 have the least resistance when passing through the body?

9 A. The one through the shirt collar.

10 Q. One through the shirt collar.

11 And what number is this one, for the body?

12 A. Number three.

13 Q. Number three?

14 A. Correct.

15 Q. Thanks.

16 MR. STARNES: I have no further questions.

17 THE COURT: Thank you, sir.

18 Any reason why Dr. Sexton couldn't be excused?

19 MR. BULSA: Not from the State, Your Honor.

20 MR. STARNES: Nothing from the defense, Your

21 Honor.

22 THE COURT: Any reason why he can't be excused?

23 MR. STARNES: No.

24 THE COURT: Thank you for coming, Dr. Sexton. You
25 may be excused.

1 THE WITNESS: You are welcome.

2 THE COURT: Do you have other witnesses on this
3 point?

4 MR. STARNES: Yes, sir, I have got one more, I
5 believe.

6 THE COURT: Okay.

7 MR. STARNES: One more, and if we could take a
8 break so I could speak with Mr. --

9 THE COURT: Yes, sir.

10 MR. STARNES: Donald Girndt.

11 DONALD GIRNDT, having been first duly sworn,
12 testified as follows:

13 THE CLERK: Have a seat and state your full name.

14 THE WITNESS: Donald C. Girndt. Last name
15 G-I-R-N-D-T.

16 DIRECT EXAMINATION BY MR. STARNES:

17 Q. How are you doing today, Mr. Girndt?

18 A. Fine.

19 Q. Mr. Girndt, could you tell the court where you work?

20 A. Where I work? I'm self employed as A crime scene
21 analyst. I specialize in the areas of crime scene analysis,
22 blood stain pattern interpretation, fingerprint
23 identification and footwear identification.

24 Q. So you are independent?

25 A. Yes.

1 Q. Prior to you being independent, did you work for the
2 South Carolina Law Enforcement Division?

3 A. I did.

4 Q. In what capacity did you work for the South Carolina
5 Law Enforcement Division?

6 A. Primarily as a crime scene analyst.

7 Q. And as a crime scene analyst, what were your duties?

8 A. Document and collect evidence from crime scenes, take
9 photographs, present evidence in court.

10 Q. Mr. Girndt, you previously testified in this case?

11 A. Yes.

12 Q. And would that have been back in April of 1997?

13 A. Yes.

14 Q. And during your testimony, did the court record video
15 and audio record your testimony?

16 A. Yes.

17 Q. And during your testimony, there was a like model, what
18 we call a mock-up, built of the living room where this
19 shooting occurred?

20 A. Yes.

21 Q. And have you been to the house on 375 Forts Pond Road?

22 A. Yes.

23 Q. And did you take measurements?

24 A. I did take some measurements, yes.

25 Q. You did take some measurements.

1 (Diagram marked as Defendant's Exhibit No. 15 for
2 identification)

3 (Diagram marked as Defendant's Exhibit No. 16 for
4 identification)

5 BY MR. STARNES:

6 Q. Mr. Girndt, referring to Defendant's Exhibit No. 16,
7 can you tell the court what that represents?

8 A. Well, first of all, portions of this are not in my
9 handwriting. I think we were accompanied that day by a
10 private investigator. I think I was taking some of the
11 measurements and he was doing some of the writing.

12 This is the rough measurements of the bedroom.

13 Q. Of the bedroom?

14 A. At Forts Pond.

15 Q. Okay. Have you seen photographs of the -- from SLED
16 regarding the processing of the house?

17 A. I have, but not recently.

18 Q. Can you tell me the measurement of the bullet hole in
19 the bedroom?

20 A. Bedroom wall?

21 Q. Yes, sir, the bedroom wall.

22 A. I'm going to refer to my testimony.

23 Q. You previously testified, Mr. Girndt?

24 A. I did.

25 Q. Could you turn to page 2230 of the transcript?

1 A. Which line?

2 Q. Line 10.

3 A. The hole was approximately 52 inches off the floor.

4 Q. 52 inches off the floor?

5 A. Uh-huh.

6 Q. During your testimony were you asked to give an opinion
7 as to the position of the shooter when this shooting
8 happened?

9 A. Yes.

10 Q. And were you able to do that?

11 A. Yes.

12 Q. And for the court, could you tell the court where the
13 position of the shooter was when this shooting happened?

14 A. Well, once again, those were purported to me to be
15 bullet holes, the one in the living room and the one in the
16 bedroom. If that's the case and this is just one fluid
17 event, my opinion was the shooter would be near the front
18 door.

19 Q. Near --

20 A. Facing into the living room.

21 Q. Near the front door facing into the living room?

22 A. Well, facing inside the house.

23 Q. Yes, sir.

24 Mr. Girndt, referring to Defendant's Exhibit No. 15, do
25 you recognize that diagram?

1 A. Yes, that's the living room area. A rough sketch I
2 made of the living room area.

3 Q. A rough sketch that you measured?

4 A. Yes.

5 Q. The bullet hole in the living room, can you tell me the
6 measurement from the floor to where the bullet hole was at?

7 A. Referring again to my testimony, it was approximately
8 40 and a quarter inches off the floor.

9 Q. 40 and a quarter inches.

10 When you say 40 and a quarter inches, the hole in the
11 wall, did you measure from the bottom of the hole to the --
12 or the center of the hole or the top of the hole?

13 A. I would imagine I would have measured to the center of
14 the hole.

15 Q. To the center of the hole.

16 And from the left wall to where the bullet hole was,
17 did you take those measurements?

18 A. I imagine that's the 8'2" measurement.

19 Q. Okay. The three foot four and a half inches, can you
20 tell the court what that is?

21 A. No, I can't.

22 I think I have another file on this that accompanied
23 these notes. That drawing was copied and given to me.

24 Q. Yes, sir.

25 A. And I will have to locate that, because I'm sure I

1 have -- I'm sure there is some photographs that go along
2 with it too, so I'm just going to have to refer primarily to
3 my testimony at this point.

4 Q. Mr. Girndt, referring to Defendant's Exhibit No. 8, the
5 bullet hole in the living room --

6 First of all, does that look like the living room of
7 the house that you went to and took measurements?

8 A. Yes.

9 Q. It does.

10 And the bullet hole in the living room, was it
11 somewhere located right around where that laser point light
12 is at?

13 A. As I recall.

14 Let me back up. Your first question was the distance
15 from the back wall. I'm not sure what that distance is, but
16 that is the vicinity where the bullet hole was, and it was
17 approximately 40 and a quarter inches off the floor.

18 Q. 40 and a quarter inches off the floor.

19 Mr. Girndt, referring to Defendant's Exhibit No. 7,
20 does this look like the bullet hole that you measured in the
21 bedroom wall?

22 A. Yes.

23 Q. And that bullet hole was 52 inches off the floor?

24 A. Approximately, yes.

25 Q. Approximately 52 inches.

1 When you took these measurements, did you measure the
2 inside of the closet and run a dowel through it?

3 A. I did.

4 Q. You did.

5 So you were pretty much able to establish or give an
6 opinion as to the trajectory path of the bullet that went
7 through the closet?

8 A. Yes. If both of those are bullet holes, yes.

9 Q. And what would that path have been?

10 A. Well, from the outside of the bedroom in through the
11 closet.

12 Q. That is correct.

13 From the shooter?

14 A. Right.

15 Q. Would that path have been to a downward angle?

16 A. As I recall, it was on a slightly downward angle.

17 Q. Slightly downward angle.

18 Could it have been possible that the shooter could have
19 been in the middle of the room for this bullet hole to come
20 through the closet?

21 A. No, because you can't see that wall from the center of
22 the room. You would have to physically be almost in front
23 of the door to go out to see that wall.

24 Q. So you have to be in front of the door to see this wall
25 here?

1 A. Yes, you couldn't -- you couldn't get that angle by
2 standing in the center of the room.

3 Q. Okay. So standing at the front door, you could see
4 this wall and where this bullet hole is, and you could see
5 the wall in the living room where a bullet hole is over the
6 heater? Is that what you are telling us?

7 A.. Yes, sir, you could see both of them.

8 Q. And you say that approximately the position of the
9 shooter was standing by the doorway?

10 A. Yes.

11 Q. In front of the doorway?

12 A. Yes.

13 Q. Thank you. Answer any questions that they have.

14 CROSS EXAMINATION BY MR. COLER:

15 Q. Mr. Girndt, you testified that you previously worked
16 for SLED?

17 A. Yes.

18 Q. Describe for the court, if you would, the protocol that
19 you are trained on at SLED, as far as processing a crime
20 scene, and describe for us the timeliness, the importance of
21 timeliness.

22 A. Well, of course, you would like to get there as soon as
23 possible.

24 And usually once when we arrive, we speak with the
25 investigators and find out exactly what they knew. Get a

1 brief synopsis of what the events that happened, if they
2 know.

3 And then, of course, we photograph everything in place.
4 And then we try to document everything through a crime scene
5 sketch, usually.

6 Then we begin the collection of the evidence.

7 Then if there is -- depending upon the types of
8 evidence, if we needed assistance, like from a chemist, or a
9 trace person, or a someone like that, we would call for
10 that. The majority of the time we would collect evidence
11 ourselves, or box it, or bag it, or whatever called for it
12 and return it to the laboratory.

13 And we have a set protocol in the laboratory as to who
14 receives what evidence in what order. For example, if you
15 had a gun with blood on it, you would want to have the gun
16 swabbed for blood. If they wanted fingerprints, the
17 fingerprints would be next and the firearms would be last.
18 So it's all a protocol type thing.

19 A lot of it is just repetitious. Each crime scene is
20 basically the same and all the evidence is documented the
21 same. And then we maintain the evidence in a chain until,
22 of course, we present the evidence in court.

23 Q. When was the first time that you had an opportunity to
24 view this scene?

25 A. I don't recall exactly. I think it was just shortly

1 before the trial started.

2 Q. Sometime in April of '97, March of '97?

3 A. Sometime like that.

4 Q. And obviously that affects your ability to make
5 determinations?

6 A. Oh, yes.

7 Q. Significantly?

8 A. Yes.

9 Q. Also affecting your ability to make determinations is
10 what other people have done at that crime scene prior to you
11 arriving and examining it?

12 A. Yes.

13 Q. And you have no idea of how many people and what was
14 done at this crime scene before you were able to examine it
15 for yourself?

16 A. No.

17 Q. No personal knowledge about what occurred in January of
18 1996?

19 A. No.

20 Q. And significant, if not all, the information has come
21 from Mr. Starnes himself, correct?

22 A. Yes.

23 Q. Let me ask you a couple of things that you just
24 testified to.

25 Looking at Mr. Starnes', or Defendant's Exhibit No. 1,

1 you were talking about the position of the shooter in
2 relation to the bullet, what you think or what you was told
3 was a bullet hole in the closet wall, is that correct?

4 A. Yes.

5 Q. And you told us where -- show me where you said his
6 position would have been, based on your determination. I
7 will let you --

8 A. I will be all over the place with that thing.

9 THE COURT: You can stand down, if you wish, if it
10 would make it easier for you.

11 THE WITNESS: I don't know if I can use it.

12 BY MR. COLER:

13 Q. The best you can.

14 A. In this area right here, because this -- the bullet
15 here went into the closet. So you can clearly see there is
16 a wall right here.

17 And then the other bullet hole is in this position.

18 So, I mean, if this spot right here, around in this
19 area would allow you to see this area and this area here.

20 Q. Okay. Describe for us then where the target of that
21 shooter would be, if you can explain the bullet hole in this
22 closet wall.

23 A. Well, of course, it passed that -- one of the bullets
24 passed through him, if that's what that is, so he would have
25 been -- once again -- the victim, probably in this area.

1 Q. In the bedroom?

2 A. Well -- or in the doorway to the bedroom, somewhere
3 like that.

4 Q. You are pointing to the left of the threshold to the
5 doorway?

6 A. Well, you see they line up.

7 Q. Not to the right of the threshold of the doorway in the
8 living room primarily, but primarily or most probably in the
9 bedroom?

10 A. Well, it passed all the way through, so I can't say how
11 far -- I would put him in this area, somewhere right in
12 here.

13 Q. Okay. And you took a measurement of the outside wall
14 of that closet and the inside wall of that closet and the
15 holes and how high off the ground those holes were, correct?

16 A. I did.

17 Q. And based on that, you made a determination of the
18 angle of the trajectory of the bullet from the gun of the
19 shooter?

20 A. Yes.

21 Q. Correct.

22 And, again, you have got the shooter standing in the
23 doorway to the home, correct?

24 A. Yes.

25 Q. What was the height of the hole in the wall in the

1 outside closet? I think you testified, if you agree with
2 me, 4'4", approximately?

3 A. Yeah, 52 inches.

4 Q. And what was the height of the inside hole in the
5 closet, approximately?

6 A. Excuse me. I'm not certain from reading this. I just
7 recall it was slightly down. They would put a dowel through
8 the hole on the outside hole and inside.

9 I haven't seen recently my photographs. We took
10 photographs I think 10 years ago and I haven't seen them.

11 Q. You say slightly downward?

12 A. Slightly downward and that's consistent with the
13 autopsy.

14 Q. But you can't tell us -- you are not sure. You can't
15 tell us now how much downward?

16 A. I may if I could find that file or seen a photograph,
17 but I can't approximate that.

18 Q. Let me ask you this then. Based on that slightly
19 downward angle through the closet well, you extrapolated or
20 calculated the height of the shooter's gun standing in the
21 doorway, did you not?

22 A. Yes.

23 Q. What height did you determine the shooter's gun to be
24 at, if, in fact, the shooter was standing in the doorway of
25 the residence?

1 A. I believe it was approximately 57 -- 56 inches, 57
2 inches.

3 Q. That's the height of the gun?

4 A. Yes. Let me see if I have that.

5 I believe I have 57 inches.

6 Q. That's the height of the gun?

7 A. Approximately.

8 Q. Okay. Based on the angle, but you don't know the
9 height of the inside hole in the closet?

10 A. I probably had it somewhere. I just don't know.

11 Q. Did you -- it is possible, Mr. Girndt, that you used
12 the autopsy report to make your determination of the height
13 of the shooter?

14 A. No.

15 Q. You would do a completely independent calculation?

16 A. Right.

17 Q. But today you don't know -- you can't tell us what the
18 height of that inside hole was?

19 A. I can't right now. I'm sure that we took photographs
20 of it. Usually what I do is put a scale and you take a
21 photograph to show you what the height is, but I don't know
22 where these pictures are at.

23 It's just slightly downward, so it would be slightly
24 lower than the entrance hole on the outside. I mean, I
25 testified they would put a dowel in that, which is just a

1 round wooden rod, and it was on a slight angle.

2 Q. And when you put that dowel through those holes in the
3 closet, you suppose were bullet holes, you at that point
4 didn't know if they were bullet holes or not, is that right?

5 A. I still don't know.

6 Q. And how thick were those holes that you put the dowel
7 through in those holes in the inside and outside of the
8 closet?

9 A. How wide were they?

10 Q. Yes.

11 A. I said -- in my testimony I testified about an inch in
12 diameter, which would be much larger than a bullet hole.

13 Q. Right, that's my point. Those -- if they were at one
14 time bullet holes, they were clearly altered?

15 A. To the best of my -- my experience has been it's not
16 unusual to find a bullet hole in one wall lower or higher
17 than the other wall, and that's how we calculate angles and
18 that's what we find the evidence on.

19 Q. And your angle -- your height of the shooter changes as
20 the shooter moves closer or further from the door that you
21 have got them at in the doorway to the residence?

22 A. Well, right. I mean, because what you do is you take
23 the string and at some point it's going to be -- if you
24 could go out far enough, it would be at some point along
25 that line where it would be impossible for the shooter to

1 be.

2 Q. You have heard some testimony here earlier. You have
3 been in the courtroom. You would admit to me that where you
4 have the shooter, the height of his gun and the hole in the
5 outside closet and the wounds that were described by Dr:
6 Sexton a moment ago could be or were entirely consistent
7 with your findings? Dr. Sexton testified that --

8 A. Right. Right.

9 Q. Okay. He testified that an average height individual,
10 Mr. Welborn, was struck with a bullet or a projectile
11 through the neck collar, and that would be consistent with
12 your findings?

13 A. I don't know if that bullet -- I think that that
14 bullet -- that hole is more consistent with the chest wound,
15 and I don't know where that collar thing came from. I never
16 heard any other -- anything else about the third bullet. I
17 mean, I saw the autopsy report, but I never saw where there
18 was evidence of a third bullet in the house.

19 Q. And then you don't disagree with me then that your
20 findings were could be that or are consistent with Mr.
21 Welborn, the victim, standing inside the threshold of the
22 bedroom getting shot in the side, and that created that
23 bullet hole in the outside and inside of the closet?

24 A. Yes.

25 MR. COLER: That's all I have. Thank you.

1 REDIRECT EXAMINATION BY MR. STARNES:

2 Q. Mr. Girndt, you said that you previously reviewed the
3 autopsy reports?

4 A. Yes, sir.

5 Q. On both these victims?

6 A. Yes, sir.

7 Q. The bullet hole that Mr. Coler was just asking you
8 about in reference to the bullet that passed through the
9 closet, what would it be consistent with on this diagram,
10 referring to Defendant's Exhibit No. 14?

11 A. As I recall, I believe it's more consistent with what's
12 marked as number two.

13 Q. What's marked as number two.

14 And that bullet hole that passed through the closet was
15 52 inches off of the floor?

16 A. I believe that's what I said.

17 You know, once again, I believe we made photographs,
18 and I haven't seen those recently.

19 Q. But your previous testimony is that that bullet hole
20 was 52 inches off of the floor?

21 A. (No response)

22 Q. On page 2230, Mr. Girndt, line 10.

23 A. I see that, but -- I mean, I would have to go back
24 and -- that bullet hole was like 52 inches off the floor.

25 Q. Yes, sir.

1 You do previously remember testifying, and your
2 testimony being videotaped, is that correct?

3 A. I do. I mean, the mock-up, though, was without --
4 basically without walls. It was just a --

5 Once again, I mean, if I saw my photographs, I saw the
6 photographs, I think the other investigator may have them, I
7 could probably answer your questions.

8 Q. Yes, sir. Do you have that videotape with you?

9 A. C.D.

10 Q. The DVD that I gave you the other day?

11 A. Yes.

12 Q. Do you have it with you?

13 A. Yes.

14 MR. STARNES: Your Honor, at this time if we could
15 enter this as an exhibit. It's already previously been
16 marked a court exhibit in the original trial. I believe
17 it's Court Exhibit No. 9 and 13. And I believe Mr. Girndt's
18 testimony was No. 13. I could make an extra copy. If we
19 could use his and enter it into the record.

20 THE COURT: All right, sir.

21 For purposes of this hearing only.

22 MR. STARNES: Yes, sir.

23 (DVD marked as Defendant's Exhibit No. 17 marked
24 for identification)

25 BY MR. STARNES:

1 Q. Mr. Girndt, Mr. Coler was asking you about the position
2 of the shooter and the position possibly of the individual
3 that was in the doorway.

4 Is it possible that the individual who was shot when
5 the bullet hole passed through the closet right here, is it
6 possible that the individual could have been standing right
7 there in the doorway with his back to this portion of the
8 wall here?

9 A. I guess he could have been anywhere along this line
10 between here and -- there's no way to make a distance
11 determination other than --

12 I mean, the primary question that I was asked to answer
13 is where could the shooter be and fire both shoots, achieve
14 both shots at one time, and my answer was in this area.

15 (Diagram marked as Defendant's Exhibit No. 18 for
16 identification)

17 BY MR. STARNES:

18 Q. Mr. Girndt, referring to Defendant's Exhibit No. 18,
19 the bullet path right here from the doorknob, you took
20 measurements from the back of the door right here, there is
21 a point of convergence right here between this bullet hole
22 line and this bullet hole line. I believe that you
23 testified previously that it was 56 and a half inches?

24 A. I believe so.

25 Q. There is a point of convergence right here. In other

1 words, it would have been impossible for the shooter to have
2 been outside on this wall outside of the house, is that
3 correct?

4 A. Right.

5 Q. And your opinion that you was asked to give in this
6 case was the approximate position of the shooter, is that
7 correct?

8 A. Yes.

9 Q. Would it be possible on this bullet trajectory path
10 right here that the individual was standing right here above
11 this blue dot on Defendant's Exhibit No. 18?

12 A. Well, I'm not sure how accurate that is. I think
13 that's something that you drew. I mean, I didn't draw that.

14 Q. Well, let me ask you this. If this bullet hole was 52
15 inches off the floor and the shooter was here, would it be
16 possible for the individual to be standing right here in the
17 doorway?

18 A. Yeah, or in the vicinity of the doorway, yeah.

19 Q. In other words, this line right here, is that in the
20 line of fire right there, if this individual is standing
21 right here?

22 A. Well, I believe clearly the line is going through
23 between the doorway and the closet, so, yeah.

24 Q. So that would be consistent with the line of fire?

25 A. What I was asked about was could you be standing in the

1 center of the room. And clearly you couldn't be standing in
2 the center of the room and achieve the one that's in closet.
3 So by using the approximate height of the dowel and by using
4 the strings for the point of convergence, and I'm not sure
5 that's exactly where they converge, but, once again, puts
6 the shooter in that vicinity.

7 Q. Puts the shooter in the vicinity of the doorway, is
8 that correct?

9 A. Right.

10 Q. And the angle of this shot, there is a slight-ward
11 downward angle that you previously testified to?

12 A. Yes.

13 Q. Thank you.

14 MR. STARNES: I have no --

15 A. As I recall, yes.

16 MR. STARNES: I have nothing further, Your Honor.

17 MR. COLER: Just two questions.

18 THE COURT: Yes, sir.

19 MR. COLER: Briefly.

20 RECROSS EXAMINATION BY MR. COLER:

21 Q. Mr. Girndt?

22 A. Uh-huh.

23 Q. If your determinations are accurate and the bullet
24 hole -- the gunshot wound of Bill Welborn, an average sized
25 individual, an average height individual, is consistent with

1 the hole in the closet, and it's a slightly downward angle
2 into the closet, the closer the victim is, Bill Welborn is
3 to that closet, while the more accurate your determination
4 is, isn't it?

5 A. The closer he is to the wall?

6 Q. Let me explain. The height of the bullet hole in the
7 outside of the closet wall is 4'4".

8 A. Okay.

9 Q. Slightly downward angle.

10 A. Okay.

11 Q. The gunshot wound to Bill Welborn's abdomen is about
12 the middle of his abdomen somewhere, somewhere in the four
13 foot range, correct?

14 A. I don't know. He didn't have a height on there.
15 Normally what they do is Dr. Sexton will measure from say
16 from the top of the head down. Based on the height that he
17 would take those numbers and figure out if that's correct,
18 but he doesn't have a height for Mr. Welborn. That kind
19 of --

20 Q. But, again, if the victim gets closer to the shooter
21 who is in the doorway, your determination, your measurements
22 don't calculate? They don't work?

23 In other words, the shooter couldn't be right on top --
24 the victim couldn't be right on top of the shooter right
25 here for your measurements to work, could they?

1 A. Why not?

2 Q. Well, you tell me if this makes sense. If the victim
3 got shot in the chest, and the bullet hole in the wall is
4 about 4'4", if he's right on top of the shooter who has got
5 the gun at with 52 -- whatever you said, 57 inches high,
6 wouldn't the bullet on the closet have to be lower than you
7 determined, because of the trajectory, the downward
8 trajectory?

9 A. Well, we don't have the measurements for Mr. Welborn,
10 so --

11 Q. Well, we don't have any of the measurements, do we,
12 because you weren't there the day after the scene and you
13 weren't able to process it, were you?

14 A. No, I mean, we just have approximate measurements, but
15 the only thing I'm approximating is by this point of
16 convergence he could be anywhere, you know, along that line,
17 because I don't know how tall he was.

18 Q. Well, for him to have a hole in his abdomen -- I mean
19 for him to have a hole in his chest and the bullet hole in
20 the closet would be about 4'4" tall, he would have to be
21 closer to the closet wall than closer to the shooter for it
22 to be a downward angle?

23 A. Maybe I'm just stupid. I don't see what it's got to do
24 with it.

25 Q. We will move on.

1 You don't even know if that's a bullet hole in the
2 closet wall, do you?

3 A. No.

4 Q. And the only one that against the back wall, you have
5 no idea if that's a bullet hole?

6 A. No.

7 Q. You don't know what they were?

8 A. No, and I testified to that, that they were purported
9 to be bullet holes.

10 Q. And you have no idea who shot first, who was shot
11 first, any of that?

12 A. No.

13 MR. COLER: That's all I have. Thank you, Your
14 Honor.

15 REDIRECT EXAMINATION BY MR. STARNES:

16 Q. Mr. Girndt, you testified you did not know Mr.
17 Welborn's height?

18 A. That's right.

19 Q. And do you know the -- do you know how tall I am?

20 A. No.

21 Q. So you don't have those; 5'10", 5'11"?

22 A. (No response)

23 Q. So you don't have those measurements, is that correct?

24 A. I don't, no.

25 Q. Okay. Your previous testimony was that shot number two

1 to Mr. Welborn was consistent with this trajectory of the
2 path of the bullet that entered the closet?

3 A. Yes.

4 Q. Thank you.

5 MR. STARNES: Nothing further.

6 MR. COLER: No.

7 THE COURT: Thank you, sir. You may stand down,
8 sir.

9 Can this witness be excused?

10 MR. GOWDY: Yes, sir.

11 MR. STARNES: Yes, sir.

12 THE COURT: Thank you for coming. You may be
13 excused, if you wish.

14 All right. We will take about a ten minutes or so
15 break and resume about 12:30.

16 (Whereupon, proceedings were recessed)

17 (Whereupon, proceedings were reconvened)

18 THE COURT: You may proceed.

19 MR. STARNES: Yes, sir.

20 Your Honor, we call Mr. Scott Taylor to the stand.

21 SCOTT TAYLOR, having been first duly sworn,
22 testified as follows:

23 THE CLERK: Have a seat, please. Once you have a
24 seat, please speak up loud and clear and state your full
25 name.

1 THE WITNESS: Scott Taylor.

2 DIRECT EXAMINATION BY MR. STARNES:

3 Q. How are you doing today, Mr. Taylor?

4 A. Okay.

5 Q. Mr. Taylor, could you give the court an idea of what
6 you do for a living?

7 A. I produce computer animations for attorneys throughout
8 the United States. I'm up to 24 states that I have worked
9 in, and I'm up to about 230 cases that I have produced.

10 Q. What kind of animations have you produced throughout
11 your work?

12 A. Approximately 70 percent of them have been vehicle
13 accidents. I also do slip and falls, explosions, fires,
14 diving accidents, accidents at sea, limited visibility,
15 rain, snow, fog, waves. It goes on and on.

16 Q. Have you ever done any animations in criminal cases
17 regarding any stabbings or shootings?

18 A. Yes. I think the number of criminal cases that I have
19 done so far is up around maybe 13 or 14.

20 Q. Yes, sir.

21 Now, you are an independent animation creator?

22 A. Yes, that's correct, I don't work for anybody other
23 than myself.

24 Q. Could you give us an idea of your work experience and
25 your experiences in computer software?

1 A. Let's see, I attended Purdue University, and in Purdue
2 I was trained in beginning computer programming and computer
3 hardware. From there I went to work for IBM and went off to
4 school for, I don't know, 16, 17 weeks, something like that.
5 I worked in the field.

6 I then went into the Navy. And was also trained in
7 computers in the Navy, both hardware and software and
8 programming. Then onboard a ship I got ahold of a
9 programming compiler and started writing computer programs
10 beyond the ones they provided us on an aircraft carrier.

11 Then came back, went back to work for IBM. Did all
12 kinds of commercial work programming systems for all sorts
13 of accounting applications and various scientific
14 applications.

15 Then I went to work for Amdoll. Digital Equipment.
16 And for Digital Equipment, I did process control work, a
17 completely new field for me.

18 I have had a total of 36 months extra education, what
19 with all these different companies we are talking about.
20 And there I learned how to program computers to control the
21 processes in manufacturing facilities. For example, at
22 Digital Equipment my largest sale ever was for \$39,000,000
23 to be installed in 12 plants over a period of six years, and
24 god knows how many computers that is. Probably about 90.
25 And I designed the software from scratch. Figured out how

1 to do the programming and taught a week long course after
2 inventing all that to the people at DuPont so that they
3 could program it.

4 Then from there I went to Wang Laboratories.

5 Oh, and I also formulated the original forerunner of
6 what we now today call E-mail, a product called All In One,
7 which was an office automation product that was first
8 installed as a prototype at DuPont. And, of course, now
9 it's commonplace everywhere.

10 I quit the corporations about -- let's see, 22 years
11 ago I guess it's been. I didn't realize it's been that
12 long. And I have had my own company since then. And I have
13 done all sorts of things, various kinds of programming.
14 Installed over 70 accounting systems, many of which required
15 special programming.

16 And then along the way I made the investment to go into
17 multi media. An expert litigation firm asked me to come
18 show them the animation software that I was representing at
19 the time, and that was my first job working for attorneys.
20 I installed 22 installations of the software to do the
21 animations programming. When attorneys found out what I was
22 doing I got another phone call, and I got the first
23 animation admitted into evidence in South Carolina in a
24 Hurricane Hugo case. And after that the phone started
25 ringing and here we are today 230 cases later.

1 Q. Mr. Taylor, have you ever been published as a result of
2 your work creating animations?

3 A. I have written -- let's see, at the very beginning when
4 animations were just starting, admissibility was a big
5 problem, and so attorney Kendall Few out of Greenville,
6 South Carolina asked me to research a history of
7 admissibility of animations. And so I -- he gave me a box
8 of books about this big and said here, go write these
9 papers. And so I wrote two papers that he presented to the
10 Advanced Trial Lawyers Association annual meeting in
11 Keystone, Colorado, and he presented the papers for me.

12 And then I published another one for Federal Judge G.
13 Ross Anderson, who asked me to present at the annual CLE
14 program in Hilton Head to the attorneys in South Carolina,
15 because we were just getting started and they wanted to
16 introduce animations throughout South Carolina, and Judge
17 Anderson wanted it because it cuts the time -- the number of
18 cases that come to trial and how long the cases it takes to
19 try them. And so I presented and wrote a paper for that.

20 So I have had three papers that are presented, but I
21 have also written, been co-author on a book for the
22 Department of Energy having to do with the synergistic
23 treatment of wastes.

24 And I have published other articles when I was in the
25 Navy and other places as well.

1 Q. Mr. Taylor, have you ever been qualified as an
2 animation expert in South Carolina?

3 A. Yes, the first case for Hurricane Hugo was about 1992,
4 and I was qualified as an expert in computer hardware,
5 because of the computer design work that I did and the
6 actual computer building of -- the construction and building
7 of computers, as well as an expert in computer software.

8 Since then I have testified in court I think about nine
9 times. And so I have been qualified each time along the way
10 as an expert in computer animations.

11 Q. Now, Mr. Taylor, would this be in state and federal
12 court?

13 A. As well as magistrates and criminal.

14 Q. And have you been qualified in other states other than
15 South Carolina?

16 A. I testified in Pennsylvania and in Georgia, and those
17 are the only other two that I can remember at this time.

18 Q. So, in other words, you created animations and you have
19 testified in other states, other than just South Carolina?

20 A. Yes, sir, that's right.

21 MR. STARNES: Your Honor, at this time I would
22 like to qualify Mr. Taylor as an expert in animation.

23 MR. GOWDY: No objection.

24 THE COURT: All right. Without objection, he's so
25 qualified.

1 BY MR. STARNES:

2 Q. Mr. Taylor, were you asked to create an animation
3 regarding this case?

4 A. Yes, I was.

5 Q. And how were you able to do that?

6 A. I was provided with a folder that gave me diagrams of
7 the layouts, many of which you have already seen today, as
8 well as a narrative of what occurred, a set of photographs,
9 autopsy photos, photos from the scene. Also you have seen
10 these same photos today. There is one from one in the
11 closet. Then the mock-up that was made of the house photos
12 of that. And then photos of people reconstructing the
13 sequence of events that I was to animate.

14 We discovered along the way after the -- I guess it was
15 probably the second criminal case that the way to do these
16 is to have the people walk through what the sequence should
17 be, so that I then know what I'm supposed to match, because
18 for me to try to program from just a verbal description is
19 very costly. I try and program what I think they said, and
20 then they go, oh, no, you are supposed to lean over, or lean
21 to the right, or to be turned somewhat, or whatever. And so
22 working from photographs has turned out to be the method
23 that's most efficient.

24 Q. So --

25 A. So I had all of that to start with.

1 Q. Could you give us an idea of what animation is? Is it
2 a pictorial communication?

3 A. We all have used blueprints to build buildings for
4 many, many years. And in court, computer-aided design
5 software has been used to draw the layout of, say, a vehicle
6 accident on a road, or the layout of a building, or the
7 layout of a crime scene. And so what you are looking -- or
8 what we are working with is computer-aided design software
9 that has the ability to include motion in it, as well as put
10 a surface on it. So, in other words, I can make wood look
11 like wood, and carpet look like carpet, and ceiling look
12 like ceiling. And, yes, it is -- it's a visual. It's a
13 video portrayal, or we can grab off pictures of any of the
14 scenes that we want.

15 Q. Now, you said motion. How do you create motion in an
16 animation?

17 A. I have a three-dimensional model built in a computer.
18 And so just like I can look out of this position that I'm
19 sitting in and look out at this room, I can position a
20 camera inside the computer and I can say give me the view
21 from the witness box, and it will look just like this.

22 So I have a three-dimensional model inside the
23 computer, and I have an object that I can place at a
24 particular point in time. And so with the mouse I can pick
25 up and grab ahold of this and say, okay, I want to start it

1 there. And let's say that's at time five seconds. And at
2 ten seconds I can click on the mouse and move it over to
3 here. So what will happen then is the computer will move it
4 between the five second mark and the ten second mark. And
5 when we play all those difference individual pictures back
6 rapidly, it looks like it's actually three dimensional and
7 it looks like it moves, just like what you see with your
8 eye, but, in fact, it's a series of still images. So when I
9 play it back fast, it's nice and smooth.

10 Q. When creating animation, for instance, one second, how
11 many still frames is that to create motion?

12 A. That's a variable that you can choose. I typically
13 program at a rate of 14 frames a second, for various
14 reasons.

15 In our case, I'm playing back at a rate of -- just a
16 second while I think about it. I have to do some
17 computations. I think it's ten frames a second. I would
18 have to do some computations to be sure that's right, but I
19 think it's ten frames a second, which doesn't make any
20 difference. It moves and it's smooth enough and that's what
21 counts.

22 Q. Yes, sir.

23 Animation and simulation, now, that is two different
24 things, is that correct?

25 A. It's very important we draw a distinction between those .

1 two. Simulation has to do with the idea that -- let's see,
2 when I animate moving something -- let's say I toss this up
3 in the air. The laws of gravity come into effect and then
4 they cause the object to fall to the floor. I have to
5 calculate with mathematics how long it will take for it to
6 go up. And then from that position, after it stops going up
7 and starts to fall, how fast it accelerates and when it hits
8 the ground. I got to calculate all that manually.

9 In a simulator you can just say toss it and it would do
10 the whole thing. It would automatically move the Bible up,
11 and then it would allow it to fall to the ground at the
12 proper rate of speed, 32 feet per second is the rate of
13 acceleration. It would do all of that automatically for
14 you.

15 In animation you have to do that. You have to
16 calculate it and then you have to move it manually and then
17 it figures out what's in between.. . .

18 Q. So, in other words, what I'm asking, to do an
19 animation, you don't feed data into the computer and that
20 the computer draws its own legal conclusion? That's not how
21 animation is done?

22 A. No, the conclusions are drawn by the experts ahead of
23 time. And then what I do is I translate those into computer
24 animation, but the conclusions are made by somebody ahead of
25 time.

1 Q. And those conclusions you take, such as crime scene
2 photographs, to create these animations?

3 A. Yeah, where a person is standing, when the gun is
4 supposed to be fired, what the direction is supposed to be
5 of the bullet, things of that nature.

6 Q. Yes, sir.

7 Mr. Taylor, I would like to show you some photographs
8 and tell me if -- when you programmed this animation, did
9 you have this material with you to create this animation?

10 Referring to Defendant's Exhibit No. 8, Mr. Taylor, are
11 you familiar with that photograph?

12 A. Right here.

13 Q. Okay. And how did you get that photograph?

14 A. It came in this binder.

15 Q. Referring to Defense Exhibit No. 10, did you have that
16 photograph?

17 A. Right here?

18 Q. Yes, sir.

19 A. No. 7.

20 Q. Referring to Defense Exhibit No. 9, Mr. Taylor, did you
21 have that photograph?

22 A. No. 4.

23 Q. Yes, sir.

24 Mr. Taylor, on these photographs that you have, did you
25 notice that there were any holes that were perforated into

1 these photos?

2 A. Any holes?

3 Q. Yes, sir.

4 In other words, is there any identification on these
5 photographs that you have?

6 A. I'm not sure I understand.

7 Q. Okay. If you would, would you please take a look at
8 Defense Exhibit No. 9?

9 A. This one?

10 Q. Yes.

11 A. Okay. Yeah, it says SLED-L. That's what you are
12 asking, right?

13 Q. Yes.

14 A. SLED-L-966936.

15 Q. Okay.

16 A. Which is what the bottom of that says..

17 Q. That's correct.

18 And the photo that I sent you regarding the living room
19 and the bedroom, those photographs had -- were identified or
20 had SLED on those?

21 A. It looks like 90 percent of the photos have SLED on
22 them. Well, maybe more than that. Wait a minute. It's
23 faint, so -- I see. All of them. I got 11 of them that
24 have SLED on them.

25 Q. Yes, sir.

1 Referring to Defendant's Exhibit No. 7, Mr. Taylor, do
2 you recognize that photograph?

3 A. No. 5.

4 Q. And you received this photograph prior to making the
5 animation?

6 A. In this binder.

7 Q. Yes, sir.

8 And you did receive that prior to you making the
9 animation?

10 A. Correct.

11 Q. Mr. Taylor, referring to Defendant's Exhibit No. 1, do
12 you recognize this diagram?

13 A. I sure do. I have various copies of that one.

14 Let's see. That's the first diagram I have.

15 Q. The first diagram that you have.

16 Mr. Taylor, when you received this packet, did it have
17 diagrams that may have related to an autopsy, what appeared
18 to be Defendant's Exhibit No. 14?

19 A. Right here.

20 Q. Taking a look at that diagram, Mr. Taylor, did you use
21 that diagram to program your animation, as far as the
22 trajectory path of the bullet on this diagram?

23 A. Yes. The person is bent over.

24 Q. Right.

25 Shot number two on this diagram, Defense Exhibit No.

1 14, did you use this diagram to program the animation that
2 would be consistent with shot number two?

3 A. Yes.

4 Q. And would it be consistent with shot number one?

5 A. Yes.

6 Q. Shot number one, you indicated that the individual was
7 possibly bent over?

8 A. Yes.

9 Q. Now, you wasn't there at 375 Forts Pond Road when this
10 shooting occurred, were you, Mr. Taylor?

11 A. No.

12 Q. So you primarily relied on what you had in your packet
13 there, is that correct?

14 A. Entirely. Well, this, plus phone conversations with
15 you.

16 Q. That's correct.

17 Now, looking at that packet that you have, the makeup
18 of it, you have photographs from SLED and you have diagrams
19 from the autopsy report?

20 A. Correct.

21 Q. Mr. Taylor, referring to Defense Exhibit No. 13, does
22 that diagram look familiar to you?

23 A. Here.

24 Q. And you -- you had this diagram when you created this
25 animation?

1 A. Correct.

2 Q. The gunshot wound on Defense Exhibit No. 13, when you
3 programmed this animation, the gunshot wound to this
4 individual was Jared Champlin?

5 A. Yes.

6 Q. And this gunshot wound entered the back and passed to
7 the front?

8 A. Correct.

9 Q. And it was slightly at an upward angle?

10 A. Yeah, because he's slightly bent over.

11 Q. Like he's slightly bent over.

12 That would be consistent with Mr. Champlin being
13 slightly bent over with what you programmed on the
14 animation?

15 A. Yes.

16 Q. This shot here, is that correct?

17 A. Uh-huh.

18 Q. Mr. Taylor, referring to Defendant's Exhibit No. 11,
19 does that diagram look familiar to you?

20 A. Yes, you sent this to me. And I did some comparisons
21 between this and what you sent me in the original folder or
22 with the binder.

23 Q. Yes, sir.

24 A. And they were consistent.

25 Q. They were consistent?

1 A. Correct.

2 Specifically the main thing I was interested in is
3 whether the bullet holes were the right -- whether this set
4 of measurements matched this set of sketches, and the answer
5 is yes, they do.

6 Q. Mr. Taylor, referring you to Defendant's Exhibit No.
7 12, do you recognize that diagram?

8 A. Right. That is this one.

9 Q. And you have a copy of this diagram also, is that
10 correct, Mr. Taylor?

11 A. That's correct.

12 Q. Mr. Taylor, did you also have a diagram that was drawn
13 from Electrotech, that has Electrotech on it, that has --

14 A. Strange you say, I remember seeing something --
15 Electrotech. I remember seeing that, but I don't know
16 where, the name Electrotech. Would that have been in the
17 original package that you sent or --

18 Q. Yes, sir, it would have. It had the measurements of
19 the room.

20 A. Yeah, just a -- excuse me just a second while I find
21 it.

22 (Off the record).

23 (Back on the record)

24 A. Yeah, here we go.

25 In addition to this original binder, you sent me a

1 February 5th, 2006 document, and another one on May 1st,
2 2005. And on the Electrotech --

3 Well, excuse me a second.

4 Yeah, Electrotech I believe came May 1st, 2005.

5 BY MR. STARNES:

6 Q. Do you have that diagram with you today, Mr. Taylor?

7 A. Right here.

8 Q. Could you take it off for me, please?

9 A. Take it off.

10 Q. Remove it so I can make it a court exhibit.

11 A. I hate to take these things apart because they never
12 get back together.

13 (Drawing marked as Defendant's Exhibit No. 19 for
14 identification)

15 MR. BULSA: Can we see it sir, Mr. Starnes?

16 MR. STARNES: Yes.

17 BY MR. STARNES:

18 Q. Mr. Taylor, referring to Defendant's Exhibit No. 19,
19 this was a diagram that you have just given to me?

20 A. Right.

21 Q. Were you able to take this diagram and get a
22 measurement of the room?

23 A. Yes.

24 Q. Mr. Taylor, the measurements on the bullet hole in the
25 living room, were you able to --

1 A. Those came on the February 5th document, and that's
2 this one.

3 Q. Okay. Could you give me the measurement on the bullet
4 hole in the living room, from the floor to the bullet hole
5 and from the left wall to the bullet hole?

6 A. 40 and a half inches. I guess the other way you could
7 do that would be three foot, four and a half inches --

8 Q. Yes.

9 A. -- in both directions. In other words, from the wall
10 to the kitchen and from the floor up to the hole.

11 Q. Yes, sir.

12 Now, that would be the bullet hole that was consistent
13 on Defendant's Exhibit No. 19, where my later pointer is at
14 right now?

15 A. Yes. Yes, uh-huh.

16 Q. Mr. Taylor, referring to Defendant's Exhibit No. 4, the
17 bullet hole that we were just discussing, would that be
18 consistent to the bullet hole on the photographs that you
19 have that was right over the heater?

20 A. Right, it would be in the area that you just -- that
21 red -- that red light, yes?

22 Q. Were you able to see that bullet hole on the
23 photographs that you had, that were sent to you?

24 A. So far I'm not seeing those in a photo.

25 Can you show me what a photo would look like that has

1 it?

2 Q. It would be No. 9 on your packet.

3 A. Oh, thank you.

4 Oh, I see. There is a spot there. I didn't think that
5 was a bullet hole, though.

6 Q. Okay. But that photograph that you got, is it
7 consistent with the photograph in Defendant's Exhibit No. 4?

8 A. Just a second. I want to make sure.

9 The spot that I see here that I don't realize is a
10 bullet hole is in the vicinity of where 40 and a half by 40
11 and a half would be.

12 THE COURT: Well, we are on speculation now. He
13 can't testify -- he didn't use that photograph, apparently,
14 at all in this, and now you are trying to make him use it in
15 after the fact.

16 MR. STARNES: No, sir, I'm not.

17 THE COURT: Where are you going with that?

18 MR. STARNES: I'm having him specify that he
19 didn't take the measurement from the photograph that he did
20 from the diagram that he had, that he didn't take the
21 measurement from this.

22 A. I took it from the diagram, not the photo.

23 MR. STARNES: Okay.

24 THE COURT: All right. Well, you can ask him that
25 question, but if you are asking him about the photograph and

1 this is supposed to be part of the materials he used in
2 putting this animation together.

3 MR. STARNES: Yes, sir.

4 THE COURT: And obviously he didn't use it.

5 MR. STARNES: Yes, sir.

6 THE COURT: So -- all right. Go ahead.

7 BY MR. STARNES:

8 Q. Mr. Taylor, I sent you numerous photographs that you
9 didn't use to make this animation, isn't that correct?

10 A. Yes. It's difficult for an attorney, an expert, or a
11 witness to know what it is I'm going to need.

12 Q. Yes, sir.

13 A. That's hard to imagine. I mean, I can't even imagine
14 it until I get in it.

15 Q. Referring to Defendant's Exhibit No. 18, Mr. Taylor, do
16 you have that diagram?

17 A. Yes, I do. Here.

18 Q. Yes, sir.

19 Now, when you programmed this animation, the bullet
20 hole that entered the closet wall right here, can you tell
21 me how many inches that was off the wall -- off the floor?

22 A. 52 inches off the floor, or 4'4", as has been described
23 in the earlier discussions today. And -- just a second. I
24 want to make sure I read that right.

25 It looks like six and a half inches from the corner.

1 Q. When you say six and a half inches from the corner,
2 referring to Defendant's Exhibit No. 18, are you talking
3 about the corner here?

4 A. Right. Yes.

5 Q. And you used those measurements to program this
6 animation?

7 A. Correct.

8 Q. And when I say program this animation, you used these
9 measurements to program the size of the living room, the
10 size of the bedroom and the length of the bullet holes off
11 the floor, is that correct?

12 A. Correct. Yes, that's correct.

13 Q. So, in other words, your animation reflects what was
14 provided to you in the SLED photos and on these diagrams?

15 A. That's correct.

16 Q. That's correct.

17 And you did not use any data to feed into the computer
18 for the computer to give its own legal conclusion?

19 A. No.

20 Q. What type of software do you use to program this
21 animation, Mr. Taylor?

22 A. I used Autodesk 3-D Studio, which is the sister product
23 to Autocad. Autocad has about 70 percent of the world's
24 market for computer-aided design software, the last time I
25 checked, which was about 10 years ago. And at that time

1 they also had 70 percent of the world's market for animation
2 software.

3 And the most popular software to use in doing
4 litigation animations is Autodesk 3-D Studio. And I would
5 estimate that you would see probably 80 to 90 percent of the
6 animations being produced by that software.

7 Q. The bullet holes to -- described as Mr. Welborn, on the
8 packet that you received, those bullet holes you did
9 according to the diagrams from the autopsy report, is that
10 correct?

11 A. Yes.

12 Q. And the bullet holes to Mr. Champlin's body, were they
13 consistent with your animation as to the ones on the autopsy
14 report of Mr. Champlin being shot in the back?

15 A. Yes.

16 Q. If you could, give the court an idea of how you
17 programmed this animation and put it all together.

18 A. The first step is to build the site, and that basically
19 means to build all the rooms and to build the boxy furniture
20 and the bed, chest of drawers, and all of that sort of
21 thing, and doorways and all.

22 Then --

23 Q. Let me ask you this, Mr. Taylor. Have you viewed a
24 video that I sent you awhile back that showed a re-creation
25 of this shooting?

1 A. Yes.

2 Q. And did that appear to be an exhibit that was from a
3 prior trial, or that was done in court? Could you tell it
4 was done in a courtroom?

5 A. It's been so long ago, I would say I guess -- I think
6 so, but I'm not sure.

7 What I primarily rely upon is solid photos --

8 Q. Yes, sir.

9 A. -- and text as to what's supposed to happen. And then
10 I look over at the playing video and -- there was
11 basically -- everything is very -- it's tediously step by
12 step by step by step by step. You know, it makes my camera
13 room look like that.

14 Q. Right.

15 A. So I don't do much with the actual videos. I do it
16 all -- or not all, but most all of the work is done from a
17 textual description of what you want step by step by step
18 and the photos.

19 Q. And did you ask me to provide some photos to you as to
20 position of where everybody was in the room when this
21 shooting occurred?

22 A. Let's see. Excuse me just a second while I figure that
23 out.

24 (Off the record)

25 (Back on the record)

1 BY MR. STARNES:

2 Q. It's in the back of one of the folders that you got.

3 A. Yeah. It appears I do not have any -- well, there is
4 one more place.

5 It looks like almost all of that came from this court
6 reenactment of using the mock-up where it shows step by step
7 what the people are doing.

8 Q. Mr. Taylor --

9 MR. STARNES: I need to beg the court's indulgence
10 just one minute.

11 (Off the record)

12 (Back on the record)

13 (Photograph marked as Defendant's Exhibit No. 20
14 for identification)

15 (Photograph marked as Defendant's Exhibit No. 21
16 for identification)

17 BY MR. STARNES:

18 Q. Referring to Defense Exhibit No. 20, Mr. Taylor, does
19 that photograph look familiar?

20 A. Yes.

21 Q. Would you tell the court what that photograph reflects
22 as to what you programmed in your animation?

23 A. Do you have a pointer?

24 This space right here is going back into the bedroom.

25 This right here is Norman standing at the front door.

1 And this is his assailant.

2 And this is the position roughly when he's getting
3 ready to shoot.

4 Q. Okay. When you programmed the animation, Mr. Taylor,
5 would this have been the position right here that you say
6 the assailant, would this have been the position of Mr.
7 Welborn?

8 A. Well, I think by the time we got into a computer model,
9 Welborn is further into the doorway. So -- well, that --

10 Q. In other words, what I'm asking is, is the position
11 that Mr. Welborn was standing in the doorway, was it
12 consistent with where I was standing and the way the
13 projectile passed through the closet?

14 THE COURT: Are you asking him as an expert, or
15 are you asking what he was programmed?

16 MR. STARNES: What he programmed --

17 THE COURT: You asked him a question like he's an
18 expert and he knows. And I'm asking you -- he's programmed
19 it based on what information you give him, apparently.

20 MR. STARNES: Yes, sir.

21 THE COURT: You haven't established him as an
22 expert in trajectory and all of that sort of thing. So ask
23 him the question you want to ask him about the program, what
24 he used for that.

25 BY MR. STARNES:

1 Q. Mr. Taylor --

2 A. I can answer the question he just asked.

3 THE COURT: All right, sir.

4 BY MR. STARNES:

5 Q. Okay.

6 THE COURT: If he wants that question asked, fine.

7 BY MR. STARNES:

8 Q. Please answer the question, Mr. Taylor.

9 A. Okay. In order for the bullet to end up in the wall,
10 Welborn needs to be standing back a little further, in my
11 opinion.

12 In other words, if I have a Bible and I have got to
13 have a shot go through it and it's going to end up in a
14 wall, I got to move the Bible in the position so that from
15 the door handle roughly to where the bullet hole is the
16 Bible is in the right place.

17 THE COURT: Does that mean you didn't use this
18 picture then in your programming?

19 THE WITNESS: Not actually. I did use the
20 picture, but I -- in other words, the picture -- let's see.

21 This is probably a very important point to make.
22 The pictures are approximations, as opposed to exactness.
23 And at the time people are shooting the pictures, there is
24 many things that, you know, they don't do -- they don't end
25 up in place -- and I realize it when I'm doing the animation

1 and I make the correction at the time.

2 THE COURT: All right.

3 THE WITNESS: And that's been true in every
4 criminal case that I have done, and almost every civil case
5 that I have done. The experts decide that it should be a
6 certain way, and then I get in there and look at it and then
7 I go I don't think so.

8 MR. STARNES: Your Honor, I don't know if you use
9 this laptop. I would like to show the animation to Mr.
10 Taylor to make sure that he can identify it to the court,
11 that's what he programmed. It's very short. It's only --
12 maybe not even two minutes, if that.

13 THE COURT: Well, go ahead.

14 MR. STARNES: It's pretty short.

15 (DVD marked as Defendant's Exhibit No. 22 for
16 identification)

17 BY MR. STARNES:

18 Q. Referring to Court's Exhibit No. 22 (sic), Mr. Taylor,
19 does that look like your product?

20 A. Yes.

21 Q. I'm going to play this animation and stop it at the
22 various points and I want you to, if you can, explain to the
23 court what you programmed into -- the documents that you
24 used to program this with.

25 THE COURT: Well, let me ask you. How long is

1 this going to be? I thought you said it was only going to
2 be a couple of minutes.

3 MR. STARNES: We can. I can just play the whole
4 thing and ask him questions, Your Honor.

5 THE COURT: Well, we have got to get some lunch
6 sometime. It's about twenty after one. If we are only
7 taking two or three minutes, I have no problem with doing
8 that, but if it's going to take 20 or 30 minutes, I would
9 rather just get some lunch first and come back and do it.

10 MR. STARNES: We will just go ahead and play it.

11 THE COURT: Yes, sir.

12 BY MR. STARNES:

13 Q. I will just play it so he can see it and you can
14 identify it.

15 You can step down here, Mr. Taylor.

16 A. Do you want me just to talk about it as it goes, what
17 I'm relying on?

18 Q. Just make sure that is what you programmed.

19 (Witness off the witness stand)

20 (Whereupon, Defendant's Exhibit No. 22, the DVD,
21 was started)

22 A. So as they entered, they see him on the couch talking
23 on the phone.

24 BY MR. STARNES:

25 Q. Who is the individual in the red?

1 A. That's Mr. Starnes.

2 Q. Mr. Taylor, does that pretty much look like the
3 animation that you programmed?

4 A. Yes, except what they call the aspect ratio isn't quite
5 right; in other words, it's stretched downward. We can talk
6 about that maybe later, but it should be more rectangular
7 than what you see there. In other words, there's a
8 distortion in the way it's playing back.

9 Q. Okay.

10 MR. STARNES: Your Honor, if we need to take a
11 break. What I wanted to do -- I think I'm required under
12 Rule 901 to authenticate this, is to still play part of this
13 animation so he can see it, identify the bullet holes, where
14 the position of the people are, and who was in the room. I
15 think Rule 901 requires me to do that to protect the record.

16 Your Honor, if you want to break for lunch.

17 THE COURT: Let's do that. Let's break for lunch,
18 because it's almost 1:30 and I want everybody a chance to
19 get some lunch. We will come back at -- it's right at 1:30.
20 We will come back at 2:30 and we will start again and he
21 will resume the stand at that point.

22 Mr. Taylor, let me advise you that -- of course,
23 during the lunch break you can stand down from the witness
24 stand and get lunch and refresh yourself and that sort of
25 things. What you cannot do is discuss your testimony with

1 anyone during the break. It's the same as if you were still
2 on the stand. You couldn't talk to anyone, okay? You can
3 talk to them about anything else except the case or what --
4 about your testifying about. All right, sir?

5 THE WITNESS: Okay.

6 THE COURT: All right. With that you can stand
7 down.

8 THE WITNESS: Just leave all this?

9 THE COURT: Yes. Just leave it. The courtroom
10 will be secured.

11 All right. So we will take a break then until
12 2:30. We will resume at 2:30. Thank you.

13 (Whereupon, proceedings were recessed)

14 (Whereupon, proceedings were reconvened)

15 THE COURT: Counsel and Mr. Starnes, we are
16 missing one exhibit at this point that the court reporter
17 cannot account for at this point, and it would be Exhibit
18 No. 6. It was a photograph. I think in the original group
19 that you introduced prior, Mr. Starnes. Y'all have been
20 shuffling them back and forth for the expert's testimony and
21 that, so if you would check everything that you have got to
22 see if you got Exhibit No. 6, which is a photograph.

23 MR. STARNES: I have checked, Your Honor. I don't
24 have it. He brought it to my attention earlier. Mr. Girndt
25 may have it, or one of the witnesses that testified may

1 actually put it in their file.

2 THE COURT: How about Mr. Taylor, does he have it?
3 Maybe it's up there in the stuff he's got.

4 MR. STARNES: I didn't speak to Mr. Taylor. I
5 haven't spoken to him.

6 THE COURT: Yeah. Maybe check and see, Mr.
7 Taylor, if you see Exhibit No. 6 in the stuff that you have
8 up there.

9 (Off the record)

10 (Back on the record)

11 THE COURT: Maybe we need to communicate with the
12 witnesses, particularly those who are still here, to see if
13 they have it by any chance if they picked it up by accident.

14 MR. GOWDY: Do we know who the sponsoring witness
15 was, Your Honor, what witness was on the chair?

16 THE COURT: I think it was put in -- when we first
17 started he put a bunch of photographs in, about ten of them,
18 or so.

19 MR. STARNES: Yes, sir..

20 THE COURT: I think it's one of those, I believe.
21 It's on those bigger ones, not a regular photo.

22 Let me ask the witnesses who have already
23 testified that just came in, we are trying to locate a
24 photograph, one of the larger photographs, that was
25 introduced as Exhibit No. 6. Did either of you by any

1 chance pick it up and put it with your stuff by accident
2 when you came off?

3 Mr. Girndt has already left, hasn't he?

4 MR. STARNES: Yes, sir.

5 THE COURT: I think he would have some information
6 up there and he may very well have basically his papers were
7 taken. We will just have to check with him. Mr. Girndt.

8 MR. STARNES: I will call him when I got back to
9 the detention center, Your Honor.

10 THE COURT: All right. Well, we can try to call
11 him, I think if you got a number for him.

12 MR. STARNES: I believe I have got his cell phone.

13 (Off the record)

14 (Back on the record)

15 MR. STARNES: I have it.

16 THE COURT: You have it. At least we know where
17 it is. That happens. You just have to be careful when it
18 happens.

19 All right, it's accounted for. That's the court
20 reporter's responsibility, so he don't -- all right.

21 MR. STARNES: It was in Mr. Girndt's file.

22 THE COURT: We are ready to proceed on then?

23 MR. STARNES: Yes, sir, Your Honor, I spoke to Mr.
24 Mandy Bailey, who is your law clerk, and there is a witness
25 from Lexington County that I had here relating to a

1 discovery matter. It would be very brief, if we could go
2 ahead and get that out of the way. It will only just take a
3 few minutes.

4 THE COURT: Any objection by the State?

5 MR. GOWDY: Whatever suits the court suits us.

6 THE COURT: All right. Let's go ahead and take
7 her. We will take her out of order. My understanding is
8 she has to leave shortly, so --

9 MR. STARNES: Yes.

10 THE COURT: -- go ahead and call her.

11 MR. STARNES: I really don't think -- I may not
12 have to call her. I don't know it's -- I'm going to leave
13 that up to the court.

14 Your Honor, there has been two discovery motions
15 filed on this solicitor's office in Lexington County that
16 was later forwarded to the solicitor's office in York, when
17 Mr. Pope's office had this case. And then a conflict arose
18 and Mr. Gowdy's office was assigned in this case.

19 The discovery motion that I filed and served on
20 them was back in November of 2005. I requested copies of
21 all documents generated by or caused to be generated by any
22 person or procedure of any involved agency which may not be
23 filed with the primary case file.

24 Your Honor, in September of 2004, an individual by
25 the name of David Richard Engdahl was shot and killed in

1 Pelion. Mr. Engdahl at one time was married to a Ms. Lisa
2 Engdahl. Both of those individuals, Ms. Engdahl and Mr.
3 Engdahl, testified for the State in the original trial of
4 this case. The gist of their testimony was Mr. Engdahl
5 testified that I possessed or owned a firearm that was
6 involved in another case in Lexington County. The
7 case involved -- titled Darrell Morris. I don't have the
8 case number, but it was -- this gentleman that come up
9 missing back in 1985. Mr. Engdahl testified at my trial in
10 '97 that I owned the firearm that was used to kill this
11 individual. This has been a missing persons case since
12 1995.

13 In September of 2004, Mr. Engdahl was tragically
14 shot and killed in Pelion. As a result, a gentleman by the
15 name of Joyce Lagrande King was arrested and he was placed
16 inside the Lexington County detention center.

17 The detention center has a policy of classifying
18 inmates according to their charges. And it was as a result
19 of that, when Mr. King was arrested, he was placed in my
20 housing unit, and later placed into my cell. Mr. King and I
21 were cellmates for probably about eight to ten months.

22 Through the course of the time while Mr. Engdahl
23 (sic) and I were cellmates, he received a discovery packet
24 from his attorney, who was Jack Swerling at the time. I was
25 sitting on the floor, working in my cell preparing for a

1 hearing that was coming up, and Mr. King had made a comment
2 to me. He made a comment to me to the effect that "I think
3 they are trying to involve you in another murder case." My
4 first impression was that Mr. Engdahl (sic) was referring to
5 his testimony from 1997, in the Darrell Morris incident,
6 which that wasn't the case. Mr. Engdahl was referring or --
7 Mr. King was referring to an incident report that was filed
8 with the Lexington County sheriff's department regarding his
9 charges. Now, I very briefly got to see this report. I
10 didn't get it. I haven't asked for it, because I can't go
11 to his attorney's office and ask for this discovery
12 material.

13 Around the time that Mr. Engdahl was shot and
14 killed I contacted Ms. Lisa Engdahl by phone from the
15 Lexington County detention center and I expressed my
16 sympathy for the loss of her ex-husband Mr. Engdahl. In
17 turn, Ms. Engdahl, I believe, filed a police report. In
18 this police report Ms. Engdahl made an allegation that it is
19 possible that I had something to do with her husband being
20 murdered and that I was a revengeful person, or something to
21 that degree.

22 I need this information, Your Honor, because it
23 may arise again in a penalty phase, if we get into the
24 penalty phase of this case. Before Mr. Engdahl -- or excuse
25 me, before Mr. King pled this case -- pled his case, Mr.

1 Jack Swerling comes to the detention center and interviewed
2 me. Actually he didn't do it. He had one of his assistants
3 do it. He knew that I had a prior relationship with Ms.
4 Engdahl and Mr. Engdahl. We were all personal friends.
5 They attempted to enlist me pretty much to be a witness for
6 the defense in this case and they wanted to know personal
7 information about Mr. Engdahl, especially regarding the
8 toxicology testing that was done stemming from his death.
9 Mr. King did not give me this report. He read it to me and
10 briefly showed it to me, and I believe he mentioned there
11 was a victim's assistance officer by the name of Vickie
12 involved that took this report. I have never seen it, and I
13 can't pick up the phone and ask Mr. Swerling to give me this
14 discovery packet, but I believe under Rule Five, and I
15 specifically asked for it in this previous discovery motion,
16 I believe that the State is entitled and compelled to give
17 that to me, Your Honor.

18 In addition, I believe Kyle v. Whitley imposes
19 upon them a duty to learn. I believe Ms. Engdahl may have
20 made some telephone calls to the Lexington County detention
21 center wanting to know how I got to call her, to access her
22 phone number from the inmate phone system at the jail. And
23 I would ask the state to inquire about that. I don't know
24 if there is a witness statement, if Ms. Engdahl give a
25 witness statement, regarding what transpired as a result of

1 her husband being shot and me calling her.

2 I did write her a letter on Sunday, September 26th
3 of 2004. When Mr. Brackett's office provided the discovery
4 material this, letter, and only this letter, appeared on a
5 C.D. Rom that he had given me, and I have a copy of it
6 today, but that is all that appears in the discovery. This
7 incident report, any witness statements regarding this
8 allegation that I may have had something to do with Mr.
9 Engdahl's death doesn't appear anywhere in my discovery, but
10 I know it exists, because he told me so, and he showed me
11 part of the report, and I'm asking for all of that
12 information, because if Ms. Engdahl testifies at this
13 upcoming trial, or under Crawford v. Washington, if the
14 state endeavors to admit the transcript of Mr. Engdahl's
15 prior testimony, then I believe this is discovery matter and
16 I'm entitled to this information, Your Honor.

17 MR. GOWDY: Your Honor, I can truthfully represent
18 to the court that I don't have any idea what Mr. Starnes is
19 talking about. We are not going to allege, insinuate,
20 infer, imply his involvement in any murders, other than the
21 two that he's on trial for. I don't know whether Mrs.
22 Engdahl is going to testify. I am not planning on using the
23 transcript on her late ex-husband's testimony in the first
24 trial. I don't know what Mr. Starnes is talking about him
25 being a suspect.

1 I do know that Ms. Engdahl thought it was a little
2 curious that he called to express his sympathies, but that's
3 her prerogative to think that, and I haven't seen an
4 incident report. We are not going to try to litigate her
5 late ex-husband's murder. It's not going to come up. So I
6 don't even -- if you ask me right now, I'm not going to call
7 either one of them in the sentencing phase. So whatever he
8 feels like he's entitled to I don't have. I wouldn't begin
9 to know where to get it, and I'm not going to use it.

10 MR. STARNES: Your Honor, as long as that -- as
11 long as what he is saying, that this is not going to come up
12 at trial, then the issue is moot.

13 But now we get in the middle of trial and he
14 brings up this allegation, then we have got a totally
15 different situation.

16 THE COURT: Well, certainly if something develops
17 in the meantime that you are not aware of presently,
18 solicitor, it comes to your attention, as soon as it comes
19 to your attention, or as soon as you are aware of it or make
20 any kind of plans to use it, you would have to certainly
21 comply with the discovery request and provide that to Mr.
22 Starnes.

23 Your position is at the present time that you will
24 have no intention of going in, if we reach the sentencing
25 phase of the trial, to use any of that with regard to the

1 sentencing phase?

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

3 Unless my chronology is off, Mr. Starnes was
4 incarcerated when her late ex-husband was killed. And I'm
5 not aware of any information -- I can't account for
6 speculation in Pelion, but in terms of evidence of his
7 involvement, I'm not aware of any. And even if I were, I
8 don't think I could use that in the sentencing phase. We
9 are not going within a hundred miles of that incident.

10 THE COURT: Okay. Is that satisfactory, Mr.
11 Starnes?

12 MR. STARNES: As long as he's not going to do that
13 at trial. If he -- if it's not his intention and what he
14 intends to do now and what's going to happen later, that's
15 another thing.

16 Your Honor, could I get that information from the
17 sheriff's office?

18 THE COURT: What information? The incident
19 report?

20 MR. STARNES: The incident reports. If there is
21 any -- if Ms. Engdahl give any statements saying that I was
22 involved in her husband's death, I believe I'm entitled to
23 that.

24 THE COURT: Well, solicitor, if they have that as
25 part of their record, would he be entitled to get that?

1 MR. GOWDY: Probably. I -- I don't have any
2 objection to it.

3 I'm trying to think of some theory of impeachment
4 under which he -- I mean, from a trial strategy standpoint,
5 I don't think that he would be well served by asking her
6 about that. We are not going to ask her about that.

7 He can have whatever Lexington County sheriff's
8 department will give him, as far as I'm concerned, about
9 that entire investigation. I don't want to speak with them.
10 They have their counsel here, but it's fine with me.

11 THE COURT: Mr. Tate.

12 For the record, John Tate, who is the attorney for
13 the sheriff's department.

14 Yes, sir?

15 MR. TATE: Your Honor, if Mr. Starnes will simply
16 transmit these names to me in writing some approximate
17 dates, if there is an incident report responsive and it's
18 not part of some other case, you know, that's otherwise
19 protected by law, I have no problem with giving it to him.

20 THE COURT: Okay. Does that satisfy you then?
21 Put it in writing to them, or do it -- provide it to him in
22 writing, the names.

23 MR. STARNES: Would an E-mail be good enough, Your
24 Honor?

25 THE COURT: Well, I --

1 THE WITNESS: I don't have a problem with an
2 E-mail.

3 THE COURT: You can do it by E-mail, but you need
4 to specify who it is that you are talking about, who might
5 have made any kind of statement that would be included in
6 any incident report, and any statement that might have been
7 given, and the approximate time that it would have been
8 given, or window out of which it would have been given.

9 MR. STARNES: I can give him the incident, but I
10 don't know the approximate time, because I haven't seen this
11 information, Your Honor. I mean, I can give him the
12 approximate time of when all this happened, but as far as
13 when -- I can't tell him something that I never seen.

14 THE COURT: You have to give him some kind of
15 window. I think that they can search their records, but it
16 may be -- for instance, what you have told the court is that
17 obviously this person was killed and you called his wife,
18 or -- and talked with her about it, express your sympathies.
19 She, in turn, if would have filed a complaint about it, it
20 should have been within a reasonable time after that, I
21 would assume. So you should be able to give them a window,
22 maybe a two or three month window, or something like that,
23 for them to search to see if they received anything.

24 MR. STARNES: Yes, sir.

25 THE COURT: You can enlarge the window a little

1 bit, if you want, but I'm just giving this as a for
2 instance. But if you want them to look for 10 years, you
3 know, that's going to make it a little bit difficult.

4 MR. STARNES: I understand.

5 THE COURT: All right.

6 MR. TATE: Thank you, Your Honor.

7 THE COURT: You do that and they will -- either
8 they will comply, or they will let the court know why they
9 can't comply.

10 MR. TATE: Thank you, Your Honor.

11 THE COURT: Thank you, Mr. Tate. Appreciate your
12 help.

13 MR. STARNES: Your Honor, if we can excuse Ms.
14 McIver. She was here today.

15 THE COURT: Okay.

16 MR. STARNES: I didn't know if we were going
17 take --

18 THE COURT: She was the witness that you were
19 going to have?

20 MR. STARNES: Well, actually she was the one
21 involved. She's formerly Ms. Engdahl.

22 THE COURT: Okay, but she was the one that you
23 were going to call? You don't need her now?

24 MR. STARNES: No, sir, I don't think I'm going to
25 need her.

1 THE COURT: Ma'am, you may be excused. Thank you
2 for coming. You are free to go, or stay, as you wish, okay?
3 Or stay, as you wish. Thank you.

4 Are we are ready to proceed then?

5 Mr. Taylor, if you will come back up to the stand,
6 sir.

7 (Witness back on the witness stand)

8 MR. STARNES: Is the DVD still in there?

9 MR. COLER: It should be.

10 (Off the record)

11 (Back on the record)

12 MR. STARNES: Your Honor, I believe we are ready.

13 THE COURT: Okay.

14 MR. STARNES: Basically what I'm going to do, Your
15 Honor, is just kind of walk Mr. Taylor through this and let
16 him explain to the court the position of everybody and how
17 he comes to the conclusions to make this animation.

18 (Whereupon, Defendant's Exhibit No. 22, the DVD,
19 was started)

20 BY MR. STARNES:

21 Q. Mr. Taylor, can you explain in the animation here what
22 is taking place or what you programmed that's taking place
23 into the animation?

24 A. Welborn is laying on the couch and he's talking on the
25 phone. And since it was so difficult to see, he's talking

1 on the phone, and in a minute you are going to see a still
2 image of him talking on the phone, because you can't see it
3 from here exactly that that's what he's doing.

4 And in your description, you said "Champlin is sitting
5 on the sofa to the right. As you walk into the door
6 Champlin's location -- "Welborn is lying across the love
7 seat talking on the phone." Etcetera.

8 So just basically follows this description.

9 Q. Right.

10 Now, when you say Welborn, you were talking about the
11 individual right here as I walk into the door?

12 A. Correct.

13 Q. Welborn is directly in front of me?

14 A. Correct.

15 Q. And the individual here on the right of me, you
16 identified him as Jared Champlin in the animation?

17 A. Champlin is sitting on the sofa to the right as you
18 walk in the door.

19 Q. Okay. Who are the individuals that walk in through the
20 front door?

21 A. Starnes opens the door and Fogle follows behind.

22 Q. Now, for the record, Mr. Taylor, will you explain what
23 this picture depicts?

24 A. Okay. Welborn's body position on the love seat is
25 referred -- is reflected in photo P-17, which if I go

1 there -- or P-7, or R-7, I guess it is. It's basically
2 supposed to look like a photograph that I have in the binder
3 that I was given, which has his right hand over his mouth
4 and his left hand is holding the receiver for the phone.

5 The phone is sitting on a table at the end of the
6 couch.

7 Q. Okay. And to do this animation, did you ask me to give
8 you some pictorial communications of the body positions and
9 where everybody was located in the room?

10 A. That's critical. For me to be able to do the work, you
11 know, relatively cost effective way, this photograph has
12 been taken of approximately what you want. And then I can
13 program it and then you give me verbal feedback of how you
14 want it adjusted.

15 Q. Okay.

16 A. Or when I'm making the animation, I realize, even
17 though you have a photograph that shows a particular person
18 in a particular position, it should be slightly different,
19 for whatever reason, such as for the bullet that goes
20 through the doorway to hit a person, a person has got to be
21 standing in the doorway, as opposed to outside the doorway.
22 That's an example of what I mean by realizing that something
23 needs to be somewhat different than the photographs that are
24 here.

25 THE COURT: Could I interrupt just one second so I

1 can follow you?

2 Let me ask you this question. The pictures that
3 you are looking at and the information provided to you by
4 Mr. Starnes --

5 THE WITNESS: Yes, sir.

6 THE COURT: -- are these pictures that were made
7 by Mr. Starnes himself and sent to you, or somebody made
8 them on his behalf and sent to you? They are not actually
9 evidence in a prior case or anything?

10 THE WITNESS: Correct.

11 THE COURT: These are just pictures --

12 THE WITNESS: They're at my request. They are
13 my -- in other words, a condition of me doing the work --

14 THE COURT: So this is a staged picture that they
15 made? In other words, they set it up and took the picture
16 and sent that to you that's what they want, is that correct?

17 THE WITNESS: Correct.

18 THE COURT: Okay. I'm following you now.

19 THE WITNESS: It's not meant to be necessarily
20 exact. It's meant to be an approximation, because --
21 well --

22 THE COURT: Well, I understand, but this is
23 something that, at your request, Mr. Starnes -- somebody
24 made pictures setting up what he wanted you to picture, is
25 that right, or --

1 THE WITNESS: Correct.

2 THE COURT: -- provide in your animation?

3 THE WITNESS: Correct.

4 THE COURT: These are not made by any
5 investigation or anything like that, formal investigation?

6 THE WITNESS: No. These are like instructions
7 from him as to what the sequence is supposed to be
8 approximately like.

9 What I request is that you give me a photo in each
10 of the body position changes. So like one of them has him
11 on the phone. The next one has him hanging up.

12 THE COURT: I got you. I just wanted to be sure
13 that I understand what you are using, and I want the record
14 to make sure it reflects --

15 THE WITNESS: Yeah.

16 THE COURT: -- the source of the information that
17 you have.

18 Go ahead, please. I'm sorry about the
19 interrupting.

20 THE WITNESS: It's not an expert reconstruction or
21 anything like that.

22 THE COURT: I understand. Go ahead, please.

23 BY MR. STARNES:

24 Q. Mr. Taylor, these pictures that you got that I sent you
25 to program this animation, these are pictures that you

1 requested me to send you from what I saw that night, is that
2 correct?

3 A. Right.

4 Q. As far as their body position, where they were at on
5 the furniture, and things of that nature?

6 A. Correct.

7 Q. Mr. Taylor, if you could, in this scene could you
8 explain to the court what has taken place at this point in
9 the animation?

10 A. Just a second. Let me catch up with where that is.

11 As Starnes and Fogle enter the house, Welborn
12 immediately ends his phone call.

13 By the time Starnes reaches the location in photo R --
14 well, Welborn is hanging up the phone and preparing to come
15 to his feet, as reflected in photo --

16 As Fogle walks towards the heater, Welborn makes it to
17 his feet and begins to approach Starnes, which is where we
18 are now.

19 Q. In other words, in the animation it's reflected that
20 when Starnes and Fogle enter the house, Welborn ends his
21 telephone call immediately, is that correct; or as we are
22 walking into the house, he's ending his telephone
23 conversation?

24 A. He says as Starnes and Fogle enter the house, Welborn
25 immediately ends his phone call.

1 Q. And there is nothing programmed in the animation to
2 tell us the time of that telephone call, is there?

3 A. No.

4 Q. Can you explain to us what's fixing to take place in
5 the next scene, Mr. Taylor?

6 A. Okay. It said they both meet face to face at the end
7 of the love seat by the phone table.

8 When Welborn turns to me, Welborn raises his left arm
9 and reaches around to Starnes left shoulder and turns
10 Starnes so Starnes and Welborn face the bedroom doorway.

11 When Starnes faces the bedroom doorway, wraps his left
12 arm around Starnes neck, slightly tilting Starnes neck and
13 body forward.

14 Going a little bit further.

15 Here it is.

16 Champlin is pulling a gun out of his right coat
17 pocket -- well, we didn't show all that, because we didn't
18 see it.

19 Q. When you didn't show all that you, we didn't see that,
20 so, in other words, you are programming what I seen take
21 place in this animation, is that correct?

22 A. Yeah. One of the things that did happen in our
23 adjustment between you and I was that you sent me all of
24 this, and I came back and said first off, this is a lot of
25 stuff; and, secondly, I think we ought to focus just on what

1 you physically saw. So I think these other things may be
2 going on behind you, or when you are looking at different
3 places, but let's just focus on that which you see, and that
4 way it's all more -- more useable, more meaningful to the
5 jury and the people who view it.

6 And so we did not show anything -- we took out -- okay.
7 We didn't see Champlin get up off the sofa, ask Fogle a
8 question while Starnes and Welborn are both with their backs
9 to Champlin and Fogle.

10 Fogle is still backed up to the heater.

11 We didn't -- the whole paragraph have been omitted from
12 the animation, so that the only thing that's intended to be
13 shown here is that which you actually saw or the split
14 second just before what you saw.

15 In other words, my understanding is that you heard a
16 click, click, and you knew exactly what that click, click
17 was, that it was somebody charging a gun, and you knew it
18 was going on behind you and you knew somebody was getting
19 ready to shoot somebody.

20 Q. And --

21 A. That's why I showed click, click behind you, and then
22 you turned and see that the gun is pointed.

23 Q. Yes, sir.

24 And this scene right here, did you have photographs?
25 Actually they were kind of reenactment photographs --

1 A. Yes.

2 Q. -- of Mr. Fogle holding his hands up the air and Mr.
3 Champlin pointing the gun at Mr. Fogle's chest?

4 A. Yes. In r-17 --

5 THE COURT: Hold just a second.

6 MR. STARNES: Excuse me just a second.

7 THE COURT: Solicitor.

8 MR. GOWDY: Your Honor, in the interests of time,
9 with respect to authenticity, I'm willing to stipulate that
10 this gentleman took what Mr. Starnes gave him and produced a
11 video. We do not need -- unless the court wants to, and I'm
12 happy to do so, but we do not need to go frame by frame to
13 prove to me that he did what Mr. Starnes asked him to do.

14 On the issue of authenticity, he made what Mr.
15 Starnes asked him to make. I don't know that we need to go
16 through every frame to establish that, and I'm willing to
17 stipulate that this gentleman did what Mr. Starnes asked him
18 to do.

19 THE COURT: All right.

20 MR. STARNES: That's fine. Is he willing to
21 stipulate that SLED photographs in his work product also,
22 the photographs of the bedroom and the bullet holes, the
23 measurements, and things of that nature?

24 MR. GOWDY: Well, that gets to the reliability
25 problem.

1 THE COURT: I mean, he can't -- this witness can't
2 testify to that.

3 He can testify to what you sent him. He's already
4 said he didn't know if they were bullet holes or not.

5 MR. STARNES: Right, that's correct.

6 THE COURT: So how is he going to authenticate
7 that information?

8 MR. STARNES: What I'm saying, Your Honor, is the
9 diagrams, the SLED photos, the photos from Mr. Girndt. Of
10 course, we didn't hear from Agent Crimminger, but he took
11 measurements, I believe, of the room, and that was what I
12 actually give Mr. Taylor to make this animation.

13 In other words, this isn't something that I
14 thought up and fictitious measurements and measurements that
15 I thought where the bullet holes out to be. This is
16 evidence that was generated by the State and by SLED that
17 was given to Mr. Taylor to make this animation.

18 THE COURT: Well, in all due respect, Mr. Starnes,
19 it sounds like the majority of it came from you and the
20 script that you wrote, to give him pictures that you made
21 that were staged and what have you. The fact that it also
22 that you are trying to show that it's consistent with the
23 other evidence in the case that was produced is fine for
24 that purpose, but he can't authenticate anything else.

25 I don't think they have raised any question about

1 what SLED is going to testify to, or the investigators are
2 going to testify to, what measurements they made and
3 pictures that made, that they are pictures that particularly
4 that were introduced at the last trial. I don't think there
5 is any -- you all are you not questioning those?

6 MR. GOWDY: I mean -- well, Your Honor, I mean, I
7 think it's instructive that the pictures were taken in 1996,
8 months after the incident. So, you know, from the
9 standpoint of cross-examination and what it reflected on
10 January the 8th, to me that goes to the reliability or the
11 accuracy prong of this four-step analysis.

12 In terms of authenticity, I have no reason to
13 believe that this expert did not do exactly what Mr. Starnes
14 asked him to do.

15 The underlying data, we do have questions about
16 that, because he only got one version of it. And --

17 THE COURT: Well -- and I understand that. Yeah,
18 that's the problem -- that's a problem he's got in this,
19 but --

20 But, in any event, what they are willing to agree
21 to is that the witness took the information that you
22 provided him and prepared this video animation pursuant to
23 the instructions and information that you gave him. That's
24 what they are willing. Insofar as authentication, they are
25 willing to agree to that.

1 Do you need more than that?

2 MR. STARNES: No, sir, as long as they will agree
3 to that under 901, I don't have a problem with it, Your
4 Honor.

5 THE COURT: Well, it doesn't mean they are
6 stipulating to admissibility. There is a lot of problems
7 with that.

8 MR. STARNES: Yes, sir.

9 THE COURT: They are agreeing that this witness
10 testified that he prepared this video animation based on
11 information that you provided him, including a written
12 script, photographs that you took in response to information
13 that he wanted you to provide him, along with some other
14 data that was accumulated in an investigation, and -- they
15 are willing to agree that he did prepare this in response to
16 your direction, pursuant to your directions and information
17 that you provided to him.

18 He prepared the video.

19 MR. STARNES: Yes, sir.

20 THE COURT: That's what they are willing to
21 stipulate to in authentication.

22 MR. STARNES: They are stipulating to that, then
23 we can let Mr. Taylor leave.

24 THE COURT: All right.

25 Am I misstating your position?

1 MR. GOWDY: No, sir, I would like the opportunity
2 to ask Mr. Taylor some questions before he leaves.

3 THE COURT: Sure.

4 MR. GOWDY: I'm just saying that we do not need to
5 go frame by frame for me to believe that he did what you
6 asked him to do.

7 MR. STARNES: Okay. I just need about three
8 followup questions with him and that's --

9 THE WITNESS: Could I slide a quick question in
10 there? There is two documents that disappeared out of my
11 file. Do I get those back --

12 THE COURT: Mr. Starnes can --

13 MR. STARNES: -- so I'm complete?

14 They are court exhibits. They are in the
15 court's -- I can send you. I know what it is.

16 THE WITNESS: Okay, that's fine. Okay.

17 MR. STARNES: I have got extra copies.

18 THE WITNESS: While it's in my mind I wanted to
19 ask that.

20 MR. STARNES: If you want to take this one, you
21 can give me that one, or if you want to keep that one. This
22 one is complete, or I'll just send you what's missing.

23 THE WITNESS: That's fine. We will swap.

24 MR. STARNES: Okay.

25 BY MR. STARNES:

1 Q. Just a couple more questions, Mr. Taylor.

2 You did have the diagrams from the autopsy report that
3 reflected the angle of the bullet wound to Mr. Welborn, is
4 that correct?

5 A. Correct.

6 Q. And you also had the autopsy diagram of Mr. Champlin
7 that depicted the bullet angle and the entry of the gunshot
8 wound, is that correct?

9 A. Correct.

10 Q. And you used those diagrams to assist you in creating
11 this animation?

12 A. Correct.

13 Q. And in creating this animation, you did not rely solely
14 on pictures that I provided to you? The pictures -- some --
15 in other words, some of the pictures that I provided to you
16 were photographs from SLED?

17 A. Right.

18 Q. That's correct?

19 A. Correct.

20 Q. Okay. Please answer any questions that they have.

21 CROSS EXAMINATION BY MR. GOWDY:

22 Q. Good afternoon, sir.

23 A. Uh-huh.

24 Q. I don't want to nitpick, but some of these questions
25 I'll ask you I think are important. They are technical, but

1 they are important.

2 Well, before I do that, this is what you relied on
3 here?

4 A. This is the primary. These are -- well, excuse me,
5 this is the primary too, this stuff.

6 Q. All right. And the written --

7 MR. GOWDY: And just for the court's information,
8 I am referring to a blue folder that I have not seen before.
9 BY MR. GOWDY:

10 Q. Who wrote this script that is in what you have relied
11 on?

12 A. Norman did.

13 Q. When you say Norman, you mean the defendant Norman
14 Starnes?

15 A. Correct.

16 Q. Okay.

17 A. You got a script.

18 Q. Right.

19 A. And then you got some -- we got a diagram.

20 Q. Right. We're going to get to that in a second.

21 And we have got forensic pathologist diagrams?

22 A. Okay.

23 Q. We have got some pictures that are SLED photos, which
24 you will concede that these photos were not taken on January
25 the 8th or 9th of 1996?

1 A. I have no idea. I just know this is what I was
2 supposed to use to help make it. I didn't pay much
3 attention to a lot of things.

4 If you asked a lot of questions about dates and times,
5 and I don't even pay -- I just try and figure out, well,
6 what is it that I'm supposed to make.

7 Q. Well, and I want to be fair to you.

8 A. Yeah.

9 Q. If -- you don't know whether this picture was taken
10 within an hour after Billy Welborn and Jared Champlin were
11 shot, or three months after they were shot?

12 A. The question never even crossed my mind.

13 Q. But it would be important where the furniture was
14 positioned, agreed, because you can't make an animation with
15 furniture in the right place if you don't have an accurate
16 description of where it was?

17 A. What I asked is not all that. I asked only that you
18 give me exactly what you want me to make.

19 Q. Right.

20 But for an animation to be reliable or of value to
21 somebody watching it, the accuracy is at a premium, right?

22 A. It's up to y'all to judge that.

23 Q. Well, I mean, you are an expert. I mean, you wanted to
24 accurately reflect --

25 A. Well, how do I put this? I draw my line a long ways

1 away.

2 Q. Okay.

3 A. Okay. And you will notice that in the answers. I draw
4 the line a long ways away.

5 Q. All right. Well, I'm not trying to get you to redraw
6 the line, but what I do want you to agree with me is if the
7 couch were catty-corner and you had it flush against the
8 wall, that's a pretty important difference, potentially?

9 A. Just a second.

10 Okay. I have been deposed 26 times and I have been in
11 court nine, and issues of the kind that you describe are
12 quite often pointed out as -- or presented as being
13 extremely important. And yet from where I sit, whether the
14 camera angle has the guy on the couch at a 30 degree angle,
15 different than what I have it or not, do I think it makes
16 any difference, actually, as an expert who has testified and
17 lives with this stuff for weeks and months at a time? This
18 case has been going on for what now? God, a year and a
19 half. I don't think it makes any difference.

20 Q. Well, what if the couch wasn't there? That would make
21 a difference, wouldn't it?

22 A. Well, if he's sitting on the floor, but he would still
23 be talking on the phone and --

24 Q. I guess --

25 A. -- the important thing is he's talking on the phone and

1 then he hangs it up --

2 Q. I guess my question --

3 A. -- as you walk in the door.

4 Q. I guess my question to you is how do you know he was
5 sitting?

6 A. It's a description of what a witness saw.

7 Q. What you got was from the defendant, agreed?

8 A. It's a witness -- I get narratives from all kinds of
9 people. I get narratives --

10 Q. Let me ask you about that. Did you get a narrative
11 from Gwen Bailey?

12 A. No.

13 Q. Did you get a narrative from Darren Amick?

14 A. No.

15 Q. Carlisle McNair?

16 A. No.

17 Q. Chris Lorick?

18 A. No.

19 Q. Did you talk to any of the investigators who actually
20 went to the scene?

21 A. No.

22 Q. Did you talk to the witness that first talked to him
23 right after the shooting?

24 A. No.

25 Q. Okay. So --

1 A. I almost never do.

2 Q. That's fine, Mr. Taylor.

3 What I'm asking you in this case the information that
4 you got came from him?

5 A. Correct.

6 Q. So if it's unreliable, then what we just saw is not
7 reliable, correct? That's not a trick question.

8 A. Once again, the way we define the word reliable, what's
9 important to -- from where I sit, what's important is as I
10 open the door and walked in, there is a guy talking on the
11 phone. He's got his mouth covering the phone piece so
12 nobody can hear what's going on. He sees me and he
13 immediately hangs up and then the rest of it starts.

14 Q. And you got that from the defendant?

15 A. Yeah. Whether the guy was on a couch, on the floor, or
16 on a chair --

17 Q. May or may not matter?

18 A. Yeah, that's what I'm trying to get across.

19 Q. But what if the phone was in another room, would that
20 matter?

21 A. If I couldn't see him when I walked in the door, yeah.

22 Q. What if he wasn't talking on the phone?

23 A. That would be -- yeah.

24 Q. What if he didn't have on this kind of shirt that you
25 have him on in your animation, but he had a shirt with a

1 collar?

2 A. It doesn't make any difference.

3 Q. Well, it does make a difference, because you have
4 drawings in your book from a forensic pathologist, correct?

5 Were you in here when Dr. Sexton testified?

6 A. Sure.

7 Q. Do you remember him saying that there was a bullet that
8 went through the collar of the shirt?

9 A. I heard that.

10 Q. Well, don't you think it would be important to reflect
11 that the person who got shot had a collar on his shirt?

12 A. Wasn't what I was asked to make.

13 Once again, the line is drawn.

14 Q. How tall did you make Jared Champlin?

15 A. I don't recall.

16 What I normally do is make everybody the average height
17 of 5'9". However, I seem to have in memory -- I'm not sure.

18 Q. How tall did you make Bill Welborn?

19 A. I don't know.

20 MR. GOWDY: Can you move that a little bit
21 forward, Bob? Let's get to the shots.

22 BY MR. GOWDY:

23 Q. Who provided the script that goes along with the
24 animation?

25 A. The text?

1 Q. The text.

2 A. I summarized what was in here. In other words, you
3 have to take this whole thing and then you have to figure
4 out what's the least expensive and still effective way to
5 communicate what I have got to show. And so then you get
6 into issues having to do with we are supposed to walk in the
7 door and then we are supposed to see somebody, but then I
8 tried to do a walk in the door scene and that didn't work
9 because people's heads were in the way, so then I went to an
10 overhead, all this stuff.

11 Q. Let me stop you right there. Again, I don't want to
12 nitpick with you, but I just saw a text that said what they
13 saw. They is a pleural pronoun, correct?

14 A. Okay.

15 Q. Who else did you talk to, other than this defendant?
16 Did you talk to Jody Fogle?

17 A. No.

18 Q. Well, then how do you know what he saw?

19 A. I think you have to present this animation as a
20 representation of the story of Norman Starnes.

21 Q. But --

22 A. Not six other people, but what Norman Starnes said
23 happened.

24 Q. Which is my point. This is nothing more than what he
25 says happened?

1 A. Nobody has ever represented anything different.

2 Q. Okay. And what he says happened, and if a court or
3 anyone placed a premium on the liability or accuracy, those
4 may be worlds apart correct? This may or may not be what
5 happened on January the 8th, 1996?

6 A. I have no way of commenting. All I can say is that I
7 construct what people give me in a narrative and pictures to
8 construct, and the rest of it is all up to you and that's
9 where the line is drawn.

10 Q. How do you know who was shot first?

11 A. I don't know.

12 Q. Well --

13 A. I just make a --

14 Q. How did you decide?

15 A. I didn't decide. I make an animation of what was
16 provided me in the description and the pictures to make.

17 Q. If the script is inaccurate, obviously the animation
18 will not be accurate, from the standpoint of what actually
19 happened? In fairness to you --

20 A. It's up to you to decide that, with everybody else.

21 Q. You are just making a --

22 A. I'm not --

23 Q. -- animation?

24 A. I'm not giving any opinion about it at all.

25 Q. Of what he gave?

1 A. Other than it's accurate.

2 Q. Well, I want to ask you --

3 A. Accurate as to in terms of reflecting this, with some
4 modifications as I have already been discussed.

5 MR. GOWDY: Let's go to the shooting.

6 A. Uh-huh.

7 BY MR. GOWDY:

8 Q. You testified that you relied in part upon a diagram by
9 a forensic pathologist, agreed?

10 A. (No response)

11 Q. Let me show you what I'm -- go ahead. Right here.

12 You testified in part -- I mean, that's in your book.

13 You testified that you relied in part on a diagram drawn by
14 a forensic pathologist, correct?

15 A. Yeah, it's one of the documents that I used.

16 Q. Then how do you know, because your video depicts that
17 the first shot was straight on?

18 A. I just answered that.

19 Q. That's not the --

20 A. It's right here.

21 Q. So if there is a dispute between Dr. Sexton and Norman
22 Starnes, you go with Norman Starnes, in preparing the
23 animation?

24 A. You just asked a question -- draw the line, okay. You
25 just asked the question about sequence.

1 Q. Uh-huh.

2 A. There is nothing here about sequence.

3 Q. Well, there is. They are numbered one, two, three.

4 A. I understand that, but I have a narrative that says
5 this is the way it's supposed to go and this is what I do.

6 Q. Right.

7 And you didn't talk to Dr. Sexton, right?

8 A. No.

9 Q. So you don't know how or why he numbered them one, two,
10 and three, and to the extent that there is conflict between
11 what he wrote and the script, you went with the script?

12 A. For the third time, yes.

13 Q. Okay. All right. I'll try not to ask you that
14 question again.

15 But I'm going to ask you this.

16 A. Yes.

17 MR. GOWDY: Go back to the shooting of Welborn.

18 Well, just let it play.

19 BY MR. GOWDY:

20 Q. One, two. Where is the third shot?

21 A. I was not instructed to do a third shot.

22 Q. But you have a forensic pathologist report that shows
23 three shots.

24 A. And for the fourth time, I go by the narrative of what
25 I'm asked to produce.

1 When I'm given documents, quite often there are things
2 that are included in the documents that don't necessarily
3 fit in what I'm asked to produce. I produce what I'm asked
4 to produce.

5 Q. Okay. All right. So you are not telling the court, or
6 anyone else, that that's actually a gunshot wound -- or a
7 gunshot bullet hole in the closet? You are just saying
8 that's what Norman said it was?

9 A. If I wanted to get picky on you, what I would say is I
10 never even know whether it was a bullet hole or not. I just
11 made what I was asked to make.

12 Q. That's not picky. That's exactly right. You don't
13 know whether it was a bullet --

14 A. I know it's exactly what you wanted.

15 Q. No, it's not. I mean, you don't know whether it's a
16 bullet hole or not. You just know what you were asked to
17 produce, and it may or may not be reliable.

18 A. Okay.

19 Q. Do you know how close the shooter was to Jared
20 Champlin -- this is the second shot -- second person shot,
21 when the shot was fired?

22 A. I know -- what I know is what I -- okay.

23 Q. I'm just saying was it this close?

24 A. Once again -- once again, I go by the script as to what
25 is supposed to be where or when.

1 Q. Can I look at this?

2 A. Sure.

3 Q. Did you read any of the transcript from the first
4 trial? Did you have access to that?

5 A. No. As a matter of fact, I specifically requested that
6 I not receive anything other than what they wanted animated.

7 A major cardinal rule is don't send me all those
8 depositions, don't send me all of that stuff. Send me the
9 narrative as you want it constructed.

10 Q. How many phone conversations did you have with Mr.
11 Starnes?

12 A. I have no way of knowing, but I would guess probably 40
13 or 50.

14 Q. 40 or 50 phone conversations?

15 A. Probably.

16 Q. In addition to the script that was written?

17 A. Oh, with the phone conversations it covered so many
18 other things. There was problems in getting payment was one
19 of the huge ones. I don't know how many phone calls and
20 e-mails took place regarding the fact that checks were
21 promised and nothing happened. And then -- oh, it's -- it's
22 a nightmare.

23 Q. Who entitled it self-defense? Who entitled this
24 animation self-defense?

25 A. Who entitled it self-defense?

1 . Would you go back to the screen that shows that? Are
2 you talking about -- well, just tell me. You don't have to
3 do that. Just tell me.

4 MR. STARNES: Your Honor --

5 A. Are you saying that the opening screen says that?

6 BY MR. GOWDY:

7 Q. No, sir, there is something when you -- when you put it
8 in and pull it up that says self-defense. It may not have
9 been you. It may be the way it's filed.

10 A. That's why I asked. I do not believe it was me. I
11 believe that's the guy or the first person who created the
12 C.D. Rom.

13 Q. Okay.

14 A. In other words, I produced the videotape. And then
15 last evening or yesterday around 3:30, or so, he received
16 it. It had a C.D. Rom produced, and there are the ones that
17 put that label on it, because I don't remember a label like
18 that.

19 Q. Okay. That's fair enough.

20 But the text, they turned, they saw this, they did
21 that, that's plural, and it almost suggests that it's the
22 perspective of more than one person, is that fair?

23 A. Let's see, whether it's fair or not, I don't know, but
24 I can tell you this. Now that you bring it up, if I had the
25 chance to reword it, I would reword it so that you would not

1 have the opportunity to bring that up.

2 Q. Okay. I'm -- I'm not nitpicking. It's just they sends
3 the message that more than one person contributed to your
4 product.

5 A. I see the point. It would be cleaner the other way.

6 Q. Yes, sir.

7 A. Is it --

8 THE WITNESS: Can we do that?

9 THE COURT: You don't get to ask me questions.

10 THE WITNESS: Oh, I'm sorry.

11 A. Can I ask you that question?

12 BY MR. GOWDY:

13 Q. You know what? I don't know that I'm qualified to
14 answer it.

15 But the good news is I'm almost through asking you
16 questions, because I think you and I actually are in
17 agreement that what you did is took Norman Starnes' version
18 of January the 8th and put it in a video animation?

19 A. Correct.

20 Q. And you, nor anyone else who wasn't there on January
21 the 8th, has any idea what happened inside that house?

22 A. I -- I have no opinion on that at all.

23 Q. If you were going to re-create -- not an animation, but
24 a re-creation --

25 A. Right.

1 Q. -- would it be most helpful to you to have pictures
2 that were contemporaneous with the crime? You don't want to
3 wait three or four months to get pictures, right? You want
4 them that were taken that night?

5 A. That would be nice, but I can tell you that I hardly
6 ever get that.

7 Q. You don't ever get crime scenes that were processed
8 within 24 hours of a crime?

9 A. I can't think of one. We are talking cases --
10 Let's see, the ones that are running through my mind
11 right now were months or years old.

12 Q. No, I guess my question is were the pictures that
13 documented -- the pictures that you rely upon?

14 A. Back here in the back?

15 Q. Back here in the back.

16 A. Which --

17 Q. Well, let's pick -- let's pick this picture right here,
18 because that goes into the bedroom, correct?

19 It would be better if you had --

20 A. The criminal cases that I have done, this is a more --
21 believe it or not, this is more complete and thorough than
22 any of the others that I can recall having received.

23 Q. In terms of information that you have received, not in
24 terms of accuracy, correct, because you can't speak to the
25 accuracy of it? You are just talking about the volume?

1 A. I'm just talking -- on a lot of cases I don't even know
2 what the rooms looked like. I just have a drawing that says
3 sofa, chair.

4 Q. All right. But just look at number two.

5 The couch is on another wall from the wall that you
6 have it on in your animation. And the truth is if the scene
7 were processed on January the 8th and pictures were taken
8 within an hour after the shootings, we would have a better
9 idea of where that couch was, right?

10 A. Okay.

11 Q. Agreed?

12 A. Sounds good.

13 Q. And we would know whether or not -- we would know
14 better whether or not those really were bullet holes or
15 whether somebody dug them out?

16 A. You know, it's all up to you guys to work that out.
17 You just bring me the description of what you want to the
18 best of your ability and I'll try and make it.

19 Q. So if I gave you another version of what happened --

20 A. Okay.

21 Q. -- with Gwen Bailey's input and Jody Fogle's input and
22 Darren Amick's and Joel Sexton's, you could make me another
23 video just like that one?

24 A. Well, it wouldn't be just like that, would it?

25 Q. Well, maybe with a collar on the shirt.

1 A. Probably with a collar on the shirt.

2 Q. Okay. Fair enough.

3 MR. GOWDY: One second, Your Honor.

4 (Off the record)

5 (Back on the record)

6 BY MR. GOWDY:

7 Q. Do you have another book like this?

8 A. No. I was supposed to swap with a Norman.

9 Q. Does he have one?

10 A. Yeah.

11 MR. GOWDY: Your Honor, my concern was making it a
12 part of the record or with the court to have a copy of it,
13 to the extent the court wanted to review it.

14 THE COURT: I think that it should be made part of
15 the record, whether it be a court exhibit or -- maybe it
16 ought to be made an -- or a defense exhibit, since they are
17 proffering the -- offering the video animation in and since
18 this witness has testified that it was prepared specifically
19 with those instructions, that information. Then I think
20 probably it ought to come in either as defense exhibit, or
21 it could come in as court exhibit. I don't have any problem
22 either way, but I think it needs to come in as part of the
23 record.

24 MR. GOWDY: Well, I hate to take this gentleman's
25 file, but I don't know what other --

1 THE COURT: Well, Mr. Starnes has another copy.
2 Even if he swaps with him to get complete file, the others
3 are in evidence, so we can still --

4 THE WITNESS: Well, do I even need another -- need
5 this any longer after today?

6 THE COURT: Well, I don't know. You would to
7 have -- that's something between you and Mr. Starnes.

8 MR. STARNES: I don't know. Your Honor, if we
9 could, the copy that I have got -- Mr. Taylor has got the
10 actual photographs, the original photographs. What I have
11 is photocopies and carbon copies of the script and --

12 THE COURT: Maybe we better have the one he used.

13 MR. GOWDY: Marked as a court's exhibit, Your
14 Honor?

15 MR. STARNES: Your Honor, there was some
16 photographs that were taken out of his.

17 THE WITNESS: Just one.

18 MR. STARNES: I think there were two that were
19 taken out.

20 THE COURT: Wasn't they made part of the record?
21 Yes, sir, they are already in.

22 MR. STARNES: As exhibits, yes.

23 THE WITNESS: Then you can just send me a copy of
24 what you have got in the case, if we need to do that.

25 MR. STARNES: Yes.

1 THE COURT: Let's make it part of the record. I
2 don't care --

3 MR. STARNES: I think it's only one missing out of
4 here.

5 THE COURT: I think it should come in as a defense
6 exhibit. But if not, let it come in as a court's exhibit.
7 Either way.

8 THE WITNESS: This -- I hesitate because this --
9 it's already shall ripped -- okay. One of the pieces is
10 already missing, and I don't want to -- I'm afraid that if
11 once I let this go, if I need it again, I won't be able to
12 get it back is my point.

13 MR. STARNES: Your Honor, if I may?

14 THE WITNESS: This has happened in many cases.

15 MR. STARNES: I can provide him mind and I have a
16 second copy of the photographs. I can put another one
17 identical -- in other words, I can give you what I have got
18 and then I can provide another one.

19 THE COURT: I want this one.

20 MR. STARNES: You want Mr. Taylor's?

21 THE COURT: Yes, sir.

22 MR. STARNES: How about this? Don't you have a
23 copy of everything that I have got?

24 MR. STARNES: Yes, sir, but --

25 THE WITNESS: So if I needed to do more work, you

1 would just sent me whatever I needed?

2 MR. STARNES: That's correct.

3 THE WITNESS: Done.

4 THE COURT: I want it on the record for appellate
5 purposes, particularly --

6 MR. STARNES: Yes, sir.

7 THE COURT: -- is the reason I want it on the
8 record to -- I want the appeals court to know what I looked
9 at and what I saw when they -- if it goes to them and they
10 have had a chance to review and they need it, they would
11 have a chance. Otherwise, they are not going to know what
12 was in the script.

13 MR. GOWDY: Yes, sir.

14 MR. STARNES: Yes.

15 THE COURT: Pictures, or whatever he looked at, in
16 preparing the animation.

17 MR. GOWDY: Yes, sir.

18 THE COURT: So they need that, and it should be
19 part of the record. Whether it comes in as a defense
20 exhibit or court exhibit -- I really think it should come in
21 as a defense exhibit, since the witness has testified this
22 is what he relied on and what he used to prepare it. But it
23 doesn't matter to me. If you don't want to put it in, we
24 will put it in as a court exhibit.

25 MR. GOWDY: I'm happy to move it in. I was just

1 going to give him the first crack at it.

2 MR. STARNES: Defense exhibit is fine, Your Honor.

3 THE COURT: Let it come in as a defense exhibit
4 and that way it would be a part of the record for appellate
5 purposes.

6 MR. GOWDY: No objection.

7 THE COURT: That's just for the purposes of this
8 hearing. It's not for the trial itself.

9 MR. STARNES: Hopefully we won't get to an appeal.

10 MR. GOWDY: No objection from the State, Your
11 Honor.

12 MR. STARNES: Your Honor, I just have few more
13 follow-up questions with him. It will only take five
14 minutes.

15 THE COURT: Yes, sir.

16 (Booklet marked as Defendant's Exhibit No. 23 for
17 identification)

18 REDIRECT EXAMINATION BY MR. STARNES:

19 Q. Mr. Taylor, when you made this animation, you made this
20 animation basically on what I explained to you in this
21 script that I saw, is that correct?

22 A. Correct.

23 Q. Who -- who did I tell you shot Bill Welborn and Jared
24 Champlin? In other words, didn't I tell you that I shot
25 these two individuals?

1 MR. GOWDY: Your Honor?

2 THE WITNESS: Okay.

3 MR. GOWDY: I'm willing to give him broad
4 latitude, but he can't ask questions and then answer them.
5 I mean, he's got to pick which one he wants to do.

6 THE COURT: That's right. You can ask him the
7 questions. You can't tell him what the answer is.

8 A. Whether he told me or not, it was always my
9 understanding that was the situation.

10 BY MR. STARNES:

11 Q. And in this situation, this shooting, did I explain to
12 you that there was a gun exchange that took place in the
13 living room that I did not see?

14 A. In the course of the conversation --

15 Well, let's see. If you read the script carefully that
16 you gave me, it becomes clear that you couldn't have seen
17 it.

18 Q. That's correct.

19 A. And then in addition to that, we talked about that by
20 phone when we got into the conversation about you got too
21 much stuff here, we are going to be animating stuff we
22 didn't see, I don't know where else, but at least there in
23 that conversation.

24 Q. The shot to the closet right here, there was only one
25 bullet hole is there, is that correct?

1 A. That's correct.

2 Q. And in the script that I provided to you, did I tell
3 you that I shot Bill Welborn two times?

4 A. I believe so.

5 Now, reason I say I believe is that -- first I made
6 what I thought I was supposed to make, based on the
7 narrative, and then you and I talked and I made adjustments,
8 but I never went back and made notes of I differ from the
9 original script by this, that, and the other. It becomes
10 sort of a fluid thing, and then you approve it or you don't
11 approve it, and then I actually forget the script.

12 Q. Yes, sir.

13 A. I go based on just what the client, whether that be the
14 attorney, expert, or a witness, tells me, yes, it's okay, no
15 it's not okay. All the rest of it is gone. I forget it and
16 I listen to just what you tell me on the phone at that
17 point.

18 Q. Yes, sir.

19 And in shooting Jared Champlin, didn't I explain to you
20 that I shot two times in that direction?

21 A. I believe so, yeah. Well, I think the script says
22 that.

23 Q. That's correct. And one shot hit Mr. Champlin in the
24 back and one missed and went into the wall, is that correct?

25 A. Correct.

1 Q. According to the animation?

2 A. Correct.

3 Q. Now, this animation, this is just demonstrative
4 evidence that you do for various defense attorneys? And in
5 the course of civil litigation, you do this for car wrecks
6 and things of that nature, is that correct?

7 A. I work for either side.

8 Q. So you -- well, let me ask you this. Have you ever
9 programmed an animation for a state prosecutor or a federal
10 prosecutor?

11 A. I have to apologize that I have a very poor memory. I
12 remember some things very well and everything else I throw
13 away.

14 I'm not sure. I think I have worked for a prosecutor,
15 but I can't right now remember one.

16 Q. Okay. One more question, Mr. Taylor.

17 A. But I always can't remember what those, whatever it is,
18 13 or 14 criminal cases that I have done. I can't remember
19 what they all are. I can remember maybe four or five.

20 Q. Yes, sir.

21 One more question, Mr. Taylor.

22 A. Right.

23 Q. This is not the only shooting animation that you have
24 programmed, is that correct?

25 A. That's correct. The majority of them are shootings.

1 Q. The majority of them are shootings?

2 A. Yes.

3 Q. Thank you, Mr. Taylor.

4 MR. GOWDY: No questions.

5 THE COURT: Thank you, sir. You may stand down.

6 MR. STARNES: Your Honor, I have a very brief
7 argument in law that I would like to make to the court.

8 THE COURT: Is this about the video animation?

9 MR. STARNES: Yes, sir, it is, the video
10 animation.

11 THE COURT: All right.

12 MR. STARNES: Your Honor, the case that we would
13 rely on is Clark v. Cantrell. It's cited at 529 S.E. 2d,
14 528. That's a South Carolina Supreme Court decision from
15 the year of 2000.

16 I have two other cases.

17 THE COURT: What's the cite on it?

18 MR. STARNES: The cite on it is 529 S.E. 2d, 528.
19 And that's 2000 South Carolina Supreme Court.

20 THE COURT: Okay.

21 MR. STARNES: And in Clark v. Cantrell, that was a
22 case in which the South Carolina Supreme Court ruled on the
23 admissibility of computer-generated evidence, and it was a
24 case of first impression in South Carolina.

25 Also, Your Honor, I have two Federal Court circuit

1 cases. Hinkley v. The City of Clarksburg, 81 Fed 3d 416.

2 That's --

3 THE COURT: Federal third what?

4 MR. STARNES: 416.

5 THE COURT: Okay.

6 MR. STARNES: That's a Fourth Circuit case from
7 the Fourth Circuit Court of Appeals in Richmond, Virginia.
8 It's a 1996 decision, Your Honor.

9 THE COURT: Okay.

10 MR. STARNES: Also I have another case, Harris v.
11 Oklahoma. That's 13 Pacific 3rd 489. And that's a 2000
12 case.

13 THE COURT: What was the page number on that?
14 Pacific 3rd what?

15 MR. STARNES: 13 Pacific 3rd, 489, Your Honor.

16 THE COURT: Okay. Anything else?

17 MR. STARNES: Regarding Cantrell, South Carolina
18 Supreme Court, as stated earlier, was confronted with this
19 type of evidence, case of first impression in South
20 Carolina.

21 Citing the Hinkley case, the South Carolina
22 Supreme Court noted, and I'm reading directly from their
23 opinion, "the fact that the animation is inconsistent with
24 testimony or evidence presented by the opposing party should
25 not necessarily lead to its exclusion, provided it fairly

1 and accurately portrays the proponent's version of events."

2 That's exactly what this animation is, Your Honor.
3 Basically Mr. Taylor programmed this animation on what I
4 saw.

5 Now, I'm sure the court is aware, and I'm sure Mr.
6 Gowdy is, from trying various criminal cases, that when
7 these cases are called for trial, there is conflicting
8 evidence in numerous issues. Of course, in a shooting
9 incident it may be the number of shots, who got shot first,
10 what shot went in what direction, but this is basically what
11 I saw that night.

12 Animation is nothing more than demonstrative
13 evidence, Your Honor. It is different from simulation.
14 Simulation depends upon the application of scientific
15 principles. Courts treat simulation like other scientific
16 tests and require proof of the validity of the scientific
17 principles and data before admitting the simulation as
18 evidence.

19 By contrast, an animation is demonstrative
20 evidence that may be used to illustrate a witness'
21 testimony.

22 THE COURT: Well, let me ask you this, Mr.
23 Starnes. Are you aware that demonstrative evidence does not
24 come into evidence, that it's actually used for
25 demonstration purposes only?

1 MR. STARNES: I'm --

2 THE COURT: Are you -- do you understand the
3 difference? Demonstrative evidence, if you make a chart, it
4 illustrates certain points during the trial and you set it
5 up before the jury and you go over to that chart, but it
6 doesn't come into evidence. That's demonstrative evidence.

7 That obviously comes into evidence, is actually
8 admitted into evidence, if found to be reliable by the court
9 and admitted into evidence and then it's found admissible
10 under the rules. A big difference between the two.

11 Which way are you offering this?

12 MR. STARNES: I'm offering this -- well, I would
13 like to offer it as substantive evidence, but I don't think
14 I can do that.

15 So my position is the various courts that have
16 admitted this evidence, and from the appellate opinions that
17 I have read from South Carolina and various other
18 jurisdictions, that this is only admitted as demonstrative
19 evidence, that it does not go to the jury room for
20 deliberations.

21 THE COURT: So what you would propose -- you would
22 rather have it admitted into evidence, but what you are
23 really proposing to do is to illustrate your testimony with
24 this video animation?

25 MR. STARNES: That's correct, Your Honor.

1 THE COURT: In other words, go through the video
2 animation and say what you say happened, and use the video
3 animation to demonstrate how you say it happened, and that
4 would be pursuant to your testimony while you are
5 testifying, correct?

6 MR. STARNES: No, Your Honor, not only my
7 testimony.

8 THE COURT: Well, and other people's testimony?

9 MR. STARNES: Correct.

10 THE COURT: All right. And so if there is
11 something on there that if reflected by that other evidence
12 and testimony, you would use that as a demonstrative aid for
13 that purposes also?

14 MR. STARNES: Yes, sir.

15 THE COURT: All right. I think I understand your
16 position.

17 Anything else you wish to say about it before I
18 hear from the solicitor?

19 MR. STARNES: Yes, sir. There is just a few other
20 cases. Your Honor, I did not bring these cases. I can
21 E-mail them to the court.

22 THE COURT: If they are essentially the same
23 thing, I don't need any more authority than that. Probably
24 the Supreme Court case is the only one I need.

25 Fourth Circuit is interesting, but it's not

1 really.

2 MR. STARNES: Yes, sir, there was just some other
3 states. There was Colorado, Tennessee, Iowa and New Mexico
4 that followed Justice Burdette's opinion in Clark v.
5 Cantrell.

6 THE COURT: Well, I understand. If that's the
7 last word the Supreme Court is Clark v. Cantrell, if
8 somebody else agreed with them, it really doesn't matter to
9 me. If that's what they say, that's the way it is.

10 MR. STARNES: I'm just trying to put as many
11 hamburgers on the grill as I can.

12 THE COURT: You don't need them. That's what I'm
13 trying to say. You got the big hamburger steak. You don't
14 need the hamburgers, all right.

15 Anything else?

16 MR. STARNES: No, Your Honor, I believe that's it.

17 THE COURT: All right. Let me hear from the State
18 then.

19 MR. BULSA: Thank you, Your Honor.

20 Does Your Honor have a copy of the Hinkley case?

21 THE COURT: No, but I'm going to get it and study
22 it. I'm going to hear from you today, but I'm going to read
23 these cases, but go ahead.

24 MR. BULSA: Thank you, Your Honor.

25 The phrase that Mr. Starnes read to you, quoted to

1 you, came from the Clark case, but he neglected to state an .
2 additional part where the court says, "the animation must be
3 fair and accurate representation of the evidence to which it
4 relates. It need not be exact in every detail, but the
5 important elements must be identical and very similar to the
6 scene as described in other testimony and evidence presented
7 by the animation's proponent," which is Mr. Starnes, "in
8 order to constitute a fair and accurate representation."

9 Your Honor, this video animation is not fair and
10 accurate of the witnesses that Mr. Starnes called to
11 testify; specifically, the diagram and the testimony of the
12 pathologist, Dr. Sexton, who was clear in his wealth of
13 experience, that Mr. Welborn was shot at three times. That
14 in itself, Your Honor, should throw this whole animation
15 out, because it's not fair and accurate of the testimony
16 that Mr. Starnes presented himself and that he provided to
17 the animator, who for some reason disregarded it.

18 Your Honor, the prong that the State will argue is
19 that prong number three. There is four prongs listed in the
20 Clark case. That is, that it's not a fair and accurate
21 representation.

22 I need to argue further it's clear that this is
23 not probative. This video evidence in this day and age,
24 it's just so overwhelming and powerful to a jury's mind, we
25 think that it would -- this would certainly mislead them and

1 misrepresent the evidence in this case that we unfortunately
2 don't have, because Mr. Starnes removed everything. In
3 fact, we are not even sure those holes are bullet holes,
4 because they are much larger than a bullet hole had made.

5 So I think if the court can read the cases, we
6 might need to argue this further, if you feel necessary,
7 but, Your Honor, the testimony is simple. The animation not
8 does not meet the evidence that he presented.

9 MR. STARNES: Your Honor, as far as Dr. Sexton's
10 testimony, I believe it's clear. And if Your Honor would
11 likes to admit that into the record, his previous testimony,
12 Dr. Sexton could not say that the third shot was actually a
13 gunshot wound.

14 MR. BULSA: He said that.

15 MR. STARNES: That may -- Mr. Crimminger wasn't
16 here to testify.

17 And as far as what happened after this shooting,
18 it could develop at trial.

19 I shot Mr. Welborn. I know how many times I shot
20 him. I pulled that trigger, Your Honor.

21 THE COURT: That's what -- that's your version.
22 You get to tell the jury that. Whether you get to present
23 it in a video animation as well is another matter, Mr.
24 Starnes. I mean, you don't get to present the same
25 testimony three or four different ways to a jury, the same

1 testimony. And so just because you say this is what
2 happened and I know what happened because I was there, and
3 then you produce a video animation, well, you could present
4 another set of pictures or something that say the same
5 thing, but you don't get to keep presenting your version of
6 it multiple ways to the jury. And so whether I'm going to
7 allow this or not, I don't know yet. I'm going to look at
8 it. There are several numbers of things I got to look at.

9 And, you know, just like when I approved the
10 expenditure of the money for this, because you felt like
11 it's very important to you, I told you at that time at the
12 very first hearing I had with you, probably a couple years
13 ago now, or more, I told you that I would appropriate the
14 money for you because you felt like it was important, but I
15 was not assuring you that it was going to be admissible when
16 the time came, because there are a number of factors that
17 have to be considered in deciding whether the evidence is
18 admissible or not, subject to our ruling.

19 Didn't I tell that you that the first time? I
20 would appropriate the money, but whether it's going to be
21 admissible or not, you will have to establish the
22 reliability of it in order to get it admitted. I told you
23 that from the beginning.

24 MR. STARNES: Yes, sir.

25 THE COURT: And so I'm going to look at it. I'll

1 look at the cases that you cited and I'll look at it and
2 make a decision on it.

3 I certainly don't think it's going to be any more
4 than demonstrative evidence. It's not going to be any more
5 than that. I don't know that it's going to be that or not.

6 MR. STARNES: Yes.

7 THE COURT: I'm going to look at it and see. At
8 most it is demonstrative evidence, but I will look at it.

9 MR. STARNES: Yes, Your Honor.

10 Also, Your Honor, we would rely on Rule 401 and
11 402, as far as the relevance of it.

12 As far as relevance, the animation was made on, as
13 I stated before, pathologist's drawings, the trajectory path
14 of the bullet, and this wasn't something that I just made
15 up. Mr. Taylor had photographs from SLED, police data. He
16 had size of room.

17 THE COURT: Let me speak to the solicitor for just
18 a minute.

19 MR. STARNES: Yes, sir.

20 THE COURT: The point they were making and will
21 make is this. There was no evidence at the scene fairly and
22 accurately represents the scene at the time these two men
23 were killed. There is none, because the bodies were removed
24 that very night. Things changed.

25 By the time they investigated this, officers

1 investigated this, was probably, what, three or four months
2 after the fact, and what they found at that time -- whatever
3 they found at that time. Of course, blood had been cleaned
4 up. What else was done is not known. There are some
5 disagreement as to whether the phone was where it was, these
6 kind of things. There is some questions about how many
7 bullets were fired and this sort of thing. And so there are
8 a number of factors in there.

9 When you say that, you know, the animator relied
10 on, he relied primarily on the script that you provided. I
11 know -- I read in the paper one day this week they were
12 talking about some scene that was made in a movie and a
13 beautiful actress, a big bear up there doing all these
14 things, "weren't afraid of this bear? Weren't you afraid of
15 that bear breaking loose and coming and getting you?" And
16 she said, "no, not really." They said "why not?" She said
17 "it wasn't in the script, so I knew the bear was not going
18 to get me."

19 You prepared a script. And when you prepare the
20 script, we know what the outcome is going to be of that
21 script. Okay. And that's primarily what the video animator
22 programmer put on the video. He could just as easily made
23 one that says something entirely different.

24 So the question is whether it is, in fact,
25 reliable. What information was gathered was gathered --

1 most of it was gathered months after the incident occurred,
2 when things had been changed, and that's part of the concern
3 is expressed by the solicitor in their questioning of Mr.
4 Taylor and some of other people that testified. And they
5 didn't have the advantage of being able to get evidence on
6 the date the incident occurred. Rather this was some three
7 or four months later, and that's the concern that they have
8 about it as to what's reliable and whatever they are able to
9 portray through evidence; that is, the forensic evidence and
10 the pictures and that sort of thing. So that's part of
11 their concern, insofar as reliability is concerned.

12 And so -- but, in any event, I'm going to look at
13 it. I have not had video animation offered as an exhibit
14 before. It just doesn't happen. It hasn't happened in my
15 court, and so -- civil or criminal, and so I'm going to look
16 at it. It's a new issue for me. I'm going to study these
17 cases that you have got, but I honestly have some concerns
18 when your expert sits up there and says "well, this is the
19 script that he sent me. And as a matter of fact, he changed
20 the script somewhat. We had all these conversations about
21 it and he told me to change that, he didn't like this;
22 change that, he didn't like that. I don't even remember
23 what he told me about that. I just go from wherever we
24 are," and so -- until you get it like you wanted it and like
25 you like it. So that raises some concerns to the court with

1 regard to reliability of whatever is being presented.

2 But be that as it may, I'll look at it and see
3 what it stands -- that the court thinks it could be used in
4 the courtroom before a jury. I'll look at it. I'm glad I
5 have got it this early and I will be able to study it some
6 between now and next week, or before it's offered, to be
7 able to make a ruling on it. I want to do that. I'll study
8 the law on it and make sure I'm on good ground legally and
9 then I'll rule on it. I just express to you some of the
10 concerns that I have got..

11 MR. STARNES: Yes, sir.

12 THE COURT: About the reliability of it, but I'll
13 follow it up with case law.

14 MR. STARNES: Thank you, Your Honor.

15 THE COURT: All right.

16 (WHEREUPON, Mr. Taylor stood and raised his hand)

17 THE COURT: No, sir, you have already testified,
18 Mr. Taylor. That part is over.

19 Anything else? What else do we need to deal with?

20 MR. STARNES: I beg the court's indulgence,
21 please.

22 (Off the record)

23 (Back on the record)

24 THE COURT: All right. That concludes that issue.
25 What other issues do we need to address?

1 MR. STARNES: Your Honor, I guess we have to
2 address the jury issue.

3 THE COURT: We will do that.

4 Are there any others?

5 MR. STARNES: Hold on just one second, Your Honor,
6 if you would, please.

7 THE COURT: All right.

8 (Off the record)

9 (Back on the record)

10 THE COURT: I'm sorry, go ahead.

11 MR. STARNES: Your Honor, I sent a motion into the
12 court to get the court's position and the State's position
13 on sequestering witnesses in this case.

14 At the original trial Judge Westbrook
15 sequestered --

16 THE COURT: I'm going to tell you, I know you
17 are -- are you making that motion now about sequestration?

18 MR. STARNES: Yes, sir.

19 THE COURT: All right. I was going to grant that
20 motion. I usually do grant the motion. Now I have got some
21 concerns about it, based on this video animation, because if
22 you were to use this video animation, this demonstrative
23 evidence, all the way through the trial, and use it with
24 regard to every witness that comes in, then I have some
25 concerns about it, because you are going to be able to use

1 that as your thread all the way through with every single
2 witness. And so that causes me some concerns. So whether
3 the witnesses should be aware of that video animation or not
4 when you start asking them questions and showing some of
5 that video animation, if it is going to be used for that
6 purpose, then I got some questions about whether it would be
7 fair to both sides to have sequestration, if you are going
8 to try to ask them questions utilizing the video animation
9 and them not be aware of that. That's some of the concerns
10 I have got at this point.

11 MR. STARNES: What about the witnesses that
12 weren't present, or took no measurements, or anything like
13 that?

14 THE COURT: Well, that's not exactly what I'm
15 talking about. I'm talking about any witness, any fact
16 witness, who may come in and give direct or
17 circumstantial -- evidence of circumstantial evidence or
18 direct evidence based on their testimony and then you be
19 able to use this video animation to try to impeach them with
20 or try to utilize that with regard to their testimony. I do
21 have some concerns about that, if you were able to use it
22 with every witness.

23 MR. GOWDY: Your Honor, if the please the court,
24 even looking at the screen that's up there now, Jared
25 Champlin doesn't have a jacket on. He's not dressed the way

1 that the other witnesses will describe it. I would share
2 the same concerns that the court does. It's just unfair to
3 a Dawn Brudose or someone who was not there that night to be
4 cross-examining them based on -- I mean, you can't look at
5 that and have any clue that that's Jared Champlin. We don't
6 know how tall he is. The clothes certainly aren't right.
7 More of it is not right than is right. So the sequestration
8 I always leave up to the court. Whatever the court thinks
9 is fair, I'm fine with, but to blind side a witness, it's a
10 little different.

11 I don't know how pervasive he wants to use this
12 video. I just assumed he was going to testify and play it
13 just to bolster his own testimony. But if he's planning to
14 use it to cross-examine witnesses, I share the same concern
15 the court has.

16 MR. STARNES: It's the court's discretion, Your
17 Honor.

18 THE COURT: I'll think about it. I'm not going to
19 make a decision on it yet. We will decide by the first
20 of -- by Monday.

21 Anything else?

22 MR. STARNES: Yes, sir. The concern that I had,
23 something I wanted to bring to the court's attention, would
24 there be any news media at this trial? What's the court's
25 position on that? Are we going to preclude the news media,

1 or are they going to be entitled in the courtroom?

2 THE COURT: Well, no, I can't exclude the media.
3 They would be allowed to be in.

4 Are you making a motion to exclude them?

5 MR. STARNES: No, sir, I just wanted to get Your
6 Honor's position on it.

7 THE COURT: Well, I tell you what my position is.
8 My position is that I would have to hold a hearing and make
9 a determination as to whether the courtroom would be closed
10 to the media or not. And it's -- you know, they would only
11 be excluded for a very paramount reason, a reason that the
12 trial couldn't go forward without prejudice to you. So more
13 than likely they would be allowed to be at the trial and to
14 cover it, sir.

15 MR. STARNES: The reason I was asking, Your Honor,
16 probably about a year ago I was contacted by a producer from
17 Dateline NBC.

18 THE COURT: Oh.

19 MR. STARNES: And I have been in contact with this
20 individual probably for the last two years and they are
21 really interested in airing the story. If we are going to
22 let media and news media into the courtroom, I'm going to
23 ask that since this is -- since Dateline NBC is a national
24 network, I would ask the court to please allow them first
25 priority to televise this trial.

1 THE COURT: I'm not giving anybody first priority,
2 Mr. Starnes. There is no way that I'm going to give any
3 media the first priority.

4 What I would do is if there are multiple requests
5 for the media to participate in the trial or to cover it,
6 what my policy is is to require one media outlet to be able
7 to place a camera in the courtroom and they have to have the
8 ability to feed anybody else who wants to be fed by the
9 camera. So they have to have that ability. Most of them
10 have that ability and they can provide the same feed to the
11 other media outlets.

12 I will not give first priority to one.

13 Mr. Skidmore, your investigator, has a pretty good
14 relationship with them, I understand, but the fact of the
15 matter is they are not entitled to any more priority than
16 anybody else. So I would give no media priority one over
17 the other. I don't think that's something the court should
18 be involved in.

19 What I would do, if I get media request to
20 coverage, I will consider them, but my policy is that if
21 they request to have a camera in the courtroom, more than
22 one requested, I will choose one to cover it. But whoever
23 comes in has to have the ability to provide the feed to
24 everyone else who wants to participate, but I can't have
25 multiple cameras in the courtroom. It would be too

1 disruptive. So if they request it, I would put one camera
2 in the courtroom. They have to have the ability to provide
3 that same feed to all of the other media outlets so that
4 they can cover it as well.

5 MR. STARNES: Yes, sir.

6 Just one other issue I need to cover with the
7 court before I get into the jury issues, Your Honor. I
8 contacted Dekalb County, Georgia in relation to having a
9 witness brought up here. The court -- the judge's office
10 that I spoke to down there, they are pretty reluctant to
11 talk to me because I represent myself. However, they would
12 do it with for a defense attorney. I spoke to Mr. Nettles
13 earlier today and I believe he said that I would need to get
14 an attorney from Georgia to process this interstate subpoena
15 or out of state subpoena. I didn't know it was done that
16 way, but I would ask the court, if possible, for funding.

17 THE COURT: I have no problem with that. We need
18 to extradite it, obviously, but I have no problem with you
19 getting me an order and I will approve it.

20 MR. STARNES: Yes, sir.

21 One more. This deals with a witness too also,
22 Your Honor. Mr. Gowdy just mentioned a lady by the name of
23 Dawn Brudose who may testify for the State or not. I have
24 located her and I believe she's down in Florida. I don't
25 want to ask the court for funding to serve her an interstate

1 subpoena, if they are going to call her as a witness. But
2 if they are not, I need to subpoena her. And I just kind of
3 needed to know if they were going to do it. If they don't
4 want to tell me, that's fine. I'll go ahead and --

5 THE COURT: Here is the thing. They may say yes,
6 but you can't -- I don't know that you can necessarily rely
7 on that.

8 What's the position of the -- when I say that, not
9 that they wouldn't tell you the truth, but just because they
10 plan to today, they might not plan to next week. That's the
11 problem.

12 What's the position of the State?

13 MR. GOWDY: She's under subpoena, Your Honor. We
14 are planning to call her in the case in chief and the
15 sentencing phase, if we have get that far.

16 THE COURT: Okay. So she would then be available?

17 MR. GOWDY: I believe that she's planning on
18 staying for the duration of the trial. She was close with
19 one of the victims, and I think she has a personal interest
20 in the outcome of the trial as well. .

21 THE COURT: So she would be available. So you can
22 make your own decision. The State is saying they have
23 subpoenaed her and she plans to testify and be here
24 throughout the trial, so she would be available to be
25 called.

1 MR. STARNES: Yes, sir.

2 THE COURT: But having said that, if you still
3 want to subpoena, you can, even after she's here, I think
4 you can subpoena her, once she's in the jurisdiction. So,
5 you know, whatever you decide to do, that's your call.

6 MR. STARNES: Yes, sir.

7 Your Honor, I believe that's it. We will take up
8 the jury excuses.

9 THE COURT: Is there anything the State wants to
10 take up?

11 MR. GOWDY: Just one other matter. The court was
12 good enough to address it several weeks ago. I just wanted
13 to bring it to the court's attention again.

14 I don't need to see the video. I don't want to
15 see the video, but to the extent that this defendant is
16 showing videos to witnesses and they do it as an attempt to
17 intimidate or change their testimony, I'm concerned about
18 that. And I asked Mr. Starnes to preserve that video so the
19 court could review it at the appropriate time. I don't need
20 to see it. I don't want to see it, but I do want that
21 action --

22 THE COURT: Are you talking about this video we
23 have been --

24 MR. GOWDY: No, sir. No, sir.

25 THE COURT: We are dealing with a different --

1 MR. GOWDY: It's a video he made in attempt to --
2 the witness viewed it as an attempt to persuade or dissuade
3 her testimony. And if the State had done that, I would be
4 serving time somewhere, and I should be. And the same rule
5 should apply to this defendant.

6 If he's going to attempt to manipulate the
7 testimony of witnesses, I want the court to be able to see
8 that video and judge it for the court -- in the court's own
9 perspective.

10 THE COURT: Mr. Starnes, have you shown a video
11 that you made yourself to potential witnesses in this case?

12 MR. STARNES: Yes, sir.

13 If we could take some testimony on it, I don't
14 have any problem providing a copy to the court.

15 THE COURT: I want you to provide a copy to the
16 court.

17 MR. STARNES: Sure.

18 THE COURT: We will make it a court exhibit.

19 MR. STARNES: Now, he's made an allegation that I
20 have tried to intimidate a witness, and I would like to take
21 some testimony on that, Your Honor. It would take just a
22 very few minutes.

23 THE COURT: Well, is this the witness themselves,
24 or somebody else?

25 MR. STARNES: The individual that seen the video.

1 He's made a serious allegation that I have tried
2 to intimidate a witness, or tried to --

3 THE COURT: What he's stated is that the witness
4 took it as an act by you to intimidate her.

5 MR. STARNES: Well, we need to --

6 THE COURT: He hasn't -- he hasn't seen the video,
7 so he has no way of knowing what the video is, but he's
8 asked that it be preserved so the court can observe it and
9 make that determination.

10 MR. STARNES: Well, coming from him, that's
11 hearsay, and I would rather hear it on record from her, if
12 we could take that testimony today. It would only take a
13 few minutes.

14 MR. GOWDY: Your Honor, I'm delighted to do that.

15 What I would settle for is if he just won't make
16 homemade videos. I think the words I used, and the court
17 reporter can certainly play it back, are persuade or
18 dissuade someone from testifying. That's my concern. To
19 play a video that has songs in the background, which a
20 witness perceived as an attempt to appeal and tug on her
21 heartstrings, because she's a central witness, I just -- he
22 can contact whoever he wants to and ask them questions, but
23 there doesn't need to be any background music when the
24 questions are being asked.

25 MR. STARNES: Your Honor, I asked him to take

1 testimony on it. He's making an allegation that I have
2 tried to influence or intimidate a witness, and I'm asking
3 the court to please allow me to take some testimony of this,
4 Your Honor.

5 THE COURT: Have you got the video here so I can
6 observe it?

7 MR. STARNES: Yes, sir.

8 THE COURT: All right. Let's load it up and let
9 me look at it.

10 MR. STARNES: Are we going to take the testimony
11 first?

12 THE COURT: I want to see the video first.

13 Solicitor, if you need to make it to your office,
14 go ahead.

15 MR. GOWDY: Well, I'm trying to wait as long as I
16 can, so -- I feel like I --

17 THE COURT: That would be all right.

18 MR. STARNES: Your Honor, I don't know if this
19 machine is going to work on their system. If it doesn't, I
20 can provide the court with a DVD.

21 THE COURT: If you can do that, we can play it on
22 the computer up here.

23 MR. STARNES: Your Honor, could the court -- I can
24 bring my laptop up there to show it to you, or --

25 THE COURT: As long as the solicitor can see it, I

1 don't have any problem.

2 Are you going to need to plug it in, or are you on
3 a battery?

4 MR. STARNES: Yes.

5 THE COURT: If you turn it this way.

6 Solicitor, y'all come up and you can observe the
7 same thing, the same thing I do.

8 (Whereupon, the videotape was started)

9 MR. STARNES: It's 13 minutes and two seconds.

10 MR. GOWDY: With respect to this, she was being
11 interviewed by an agent of this defendant ostensibly for
12 trial preparation and this is what she gets.

13 MR. STARNES: She was asked three times if she
14 wanted to see it.

15 MR. GOWDY: This shouldn't have been made
16 available.

17 THE COURT: I don't need to see any more. I don't
18 need to see any more.

19 (Whereupon, the videotape was stopped)

20 THE COURT: We will make that -- we will make that
21 a court exhibit in this case. You can burn a copy of it and
22 provide it to the court. I'll allow you to do that.

23 I can tell you now it's totally inappropriate.
24 Anybody ought to know better than that. Not just attorneys,
25 but anybody else ought to know better. You don't interview

1 a substantial witness, an important witness in this case
2 that you have had a prior relationship with and play a 13
3 minute tape with wording and songs about all the good times
4 we have had, remember the good times, and all this kind of
5 stuff. I mean, that's totally inappropriate. Anybody would
6 know better than that. Mr. Starnes, you know better than
7 that, and you are not an attorney, and it is inappropriate.
8 I would agree with the solicitor's office on that, and you
9 will not do anything like that again.

10 I will decide what I'm going to do about this, but
11 I do want you -- I want a copy of that C.D.. I want it made
12 as a court exhibit in this case. And for whatever I do in
13 this case, I want the appellate court to be able to see it
14 and observe it for themselves.

15 MR. STARNES: Your Honor, can we -- I'm asking to
16 preserve the record, that I be allowed --

17 THE COURT: You can ask the witness questions, if
18 you want to, but I'm telling you I have already seen -- all
19 I had to see was the first minute or so of it to understand
20 that it was highly inappropriate to use that while
21 questioning a witness in preparation for this trial,
22 and that's what I'm going to say.

23 Now, if you want to call the witness and ask her
24 observations about it, that's fine, but I'm telling you --
25 regardless of what she says, I'm telling you it was

1 inappropriate and it was wrong.

2 MR. STARNES: Yes, sir.

3 THE COURT: Okay.

4 MR. STARNES: I would like to put the testimony on
5 the record.

6 THE COURT: And I think even a lay person ought to
7 know and understand that it would be wrong, sir, and
8 unethical to do that. So --

9 (Whereupon, Mr. Gowdy left the courtroom)

10 MR. STARNES: Your Honor, I would call Gwen Bailey
11 to the stand.

12 THE CLERK: She's still under oath, Your Honor?

13 THE COURT: Yes, she's under oath.

14 The record will reflect that Ms. Bailey, formerly
15 Ott, testified. She was the chief State's witness in the
16 case against Mr. Starnes during the first trial, providing
17 most of the evidence against him. She was a former live-in
18 relationship with Mr. Starnes for some period of time,
19 worked with him in his business, and they had a romantic
20 relationship for a number of years -- I mean, for a number
21 of months.

22 And so this tape, the wording on the C.D. on it
23 and the music that was played on it and the wording during
24 the preparation or talking with her about her testimony for
25 this second trial, that's -- the appellate court should look

1 at it with all the relevant information that this court has.

2 I have already read her testimony in the first
3 trial, so I'm aware of what she testified to and what
4 information she provided.

5 So with that, go ahead.

6 DIRECT EXAMINATION BY MR. STARNES:

7 Q. Ms. Bailey, you seen this video animation through --
8 how did you come about to see this animation?

9 A. Your private investigator.

10 Q. And where did this take place at?

11 A. At Lizards Thicket.

12 Q. And where was that located at?

13 A. I guess you would call it North Columbia.

14 THE COURT: Who was the investigator, ma'am?

15 THE WITNESS: I can only remember his first name.

16 Pete.

17 THE COURT: Pete Skidmore?

18 THE WITNESS: Yes, sir.

19 THE COURT: Go ahead.

20 BY MR. STARNES:

21 Q. When Mr. Skidmore come to interview you, did he advise
22 you before -- or did he ask you before you viewed this video
23 if you wanted to see it?

24 A. Yes.

25 Q. And what was your response to Mr. Skidmore?

1 A. Yes.

2 Q. Did he ask you on numerous occasions if you wanted to
3 see this video?

4 A. Several times, yes.

5 Q. How many times is several times?

6 A. Two or three.

7 Q. Two or three.

8 And each time Mr. Skidmore asked you that, your answer
9 to his question was what?

10 A. Was yes.

11 Q. Did Mr. Skidmore advise you not to look at it
12 professionally?

13 A. No, he told me he advised you not to do that.

14 Q. He said that he advised me not to do that?

15 A. Yes.

16 Q. Okay.

17 A. He advised against it, but allowed me to see it.

18 Q. Now, you testified in the original trial of this case
19 and you testified that I come by and got the gun and said
20 that I was going to kill Bill and Jared, is that correct?

21 THE COURT: No, you are not going into that.

22 That's not the purpose of this.

23 You are going to ask her about this C.D. being
24 played while she was being interviewed by Mr. Skidmore.

25 That's what you -- she was put on the stand. That's all you

1 are going to be able to ask her about. Go ahead.

2 BY MR. STARNES:

3 Q. After viewing this video, Gwen, do you feel --

4 Let me ask you this.

5 After viewing this video animation with the songs on it
6 and stuff, do you feel it's going to cause you to change
7 your testimony?

8 A. No, sir.

9 Q. So you don't think that the video animation is going to
10 affect your testimony at the upcoming trial?

11 A. No, sir, but I felt that it was an attempt to.

12 Q. You felt that it was an attempt to?

13 A. Yes.

14 Q. How did you feel it was an attempt to? Can you explain
15 that to us?

16 A. Because of the effect of the disc and watching it, it
17 was very hurtful for me, very painful for me to remember all
18 those good times, but eliminating all the bad times. It was
19 very hurtful that -- it pulled at my heartstrings. The way
20 I felt about you at that time, it made me remember, but it
21 also made me remember all the hurt that you put me through.

22 So then while watching it, I was hurt. I cried a lot.
23 But after that I started thinking what was the purpose
24 behind you doing that to me; was to sway my opinion about
25 you again, to turn my head around, many times like you have

1 done before.

2 Q. Did Mr. Skidmore interview you prior to you seeing this
3 video at your house in Pelion?

4 A. Yes, he did.

5 Q. During that interview, did you tell Mr. Skidmore that
6 you still loved me?

7 A. Yes, I did.

8 Q. How many times did you tell Mr. Skidmore that you still
9 loved me?

10 A. I couldn't count the times.

11 THE COURT: I don't know what the relevance of
12 that is. I don't know what the relevance of that is. She's
13 on the stand for one purpose. You want to ask her about
14 that, her reaction to that, that's what you can ask her.
15 What she told him on another occasion is not relevant, Mr.
16 Starnes.

17 BY MR. STARNES:

18 Q. During the time that you viewed the video and Mr.
19 Skidmore showed you the video, did you tell him that you
20 still loved me?

21 A. Yes, I did.

22 MR. STARNES: No further questions.

23 MR. COLER: Just briefly, Your Honor.

24 CROSS EXAMINATION BY MR. COLER:

25 Q. Ms. Bailey, did you perceive the video as an attempt to

1 get you to change your testimony?

2 A. Yes, sir. After watching it, a lot of thought about
3 it, I felt that it was to sway my testimony.

4 Q. And as a matter of fact --

5 A. To change the way I felt.

6 Q. As a matter of fact, before you even got to that, did
7 you feel like it was an attempt to get you to not even
8 testify?

9 A. I was asked to plead the Fifth.

10 Q. You were asked to do what?

11 A. To plead the Fifth.

12 Q. Who asked you that?

13 A. Pete Skidmore.

14 Q. Did you understand --

15 THE COURT: I'm sorry, I didn't understand her
16 response.

17 What did you say, ma'am?

18 THE WITNESS: Pete Skidmore asked me if I would
19 consider pleading the Fifth.

20 BY MR. COLER:

21 Q. And when he asked you that, he phrased that to you,
22 what was your understanding of what he was asking you to do?

23 A. To not testify.

24 Q. Pleading your Fifth Amendment Right to remain silent?

25 A. Right.

1 Q. Okay. And you already testified that you felt like it
2 was an attempt to curry favor with you, bring up old
3 emotions?

4 A. Right.

5 Q. Tug at your heartstrings?

6 A. Right.

7 Q. Get you to not testify; or if you did testify, to
8 change your testimony?

9 A. Not necessarily change my testimony, but to not
10 testify.

11 Q. Okay. And it was difficult to watch the video?

12 A. Very.

13 Q. And it did tug at your heartstrings?

14 A. Very.

15 Q. Made you uncomfortable?

16 A. I cried a lot.

17 MR. COLER: That's all, Your Honor.

18 THE COURT: Thank you, ma'am. You may stand down.

19 Well, I have to give this a lot of thought. Mr.
20 Skidmore, you're in trouble. Okay. You better get you a
21 lawyer. I certainly think you know better than what you did
22 in this case.

23 And Mr. Starnes, to the extent that you are a
24 party to it, the court is going to have to consider that in
25 deciding what action to take, as far as you are concerned.

1 I know that you knew better than that. I know that you knew
2 better than that. That's nothing but an attempt to try to
3 intimidate, use what past influence that you have on this
4 witness to get her to change her testimony, to take the
5 Fifth Amendment and not to testify at all to help you in
6 your case, because she was the chief prosecuting witness
7 against you. You knew better than that and you absolutely
8 knew better that. Mr. Skidmore, you knew better than that.

9 Now, I'm going to ask you to get me a copy,
10 provide me with the transcript of her testimony in this
11 case, her sworn testimony, everything that started with the
12 court viewing the C.D., from that point on, and her
13 testimony. Provide that to me, please.

14 Mr. Starnes, we are on the record.

15 MR. STARNES: Yes.

16 THE COURT: And I'm instructing you now not to
17 have any more contact whatsoever with Ms. Bailey --

18 MR. STARNES: I have no problem --

19 THE COURT: -- prior to the trial.

20 MR. STARNES: I have no problem with that.

21 THE COURT: During the trial.

22 You will have absolutely no contact with her
23 through yourself, or through a third person, or any other
24 way. Do you understand that?

25 MR. STARNES: I understand that, Your Honor.

1 THE COURT: And if you do, the court will deal
2 with you through contempt proceedings, but do you understand
3 that?

4 MR. STARNES: I clearly understand that, Your
5 Honor.

6 THE COURT: I would forewarn you that criminal
7 charges could arise from that. You need to understand that,
8 and that would be left up to the State. It's not up to the
9 court.

10 MR. STARNES: I understand, Your Honor.

11 THE COURT: Mr. Skidmore, I advise you the same
12 thing.

13 MR. SKIDMORE: Yes, sir.

14 THE COURT: You are not to have any more contact,
15 not only with this witness, but any more State witnesses.

16 Now, if you need to hire you another private
17 investigator, then hire you another private investigator,
18 but Mr. Skidmore is not going to have any more contact.
19 He's forbidden to have any more contact with any of the
20 State's witnesses in this case.

21 MR. STARNES: Your Honor, I have to object to
22 that.

23 THE COURT: Based on what?

24 MR. STARNES: Based on trial preparation. We are
25 just a couple of days here from trial and he's --

1 THE COURT: We are talking about State's
2 witnesses.

3 MR. STARNES: So that you are precluding me from
4 having Mr. Skidmore --

5 THE COURT: Not you. Mr. Skidmore.

6 He acted improperly in his contact with this
7 particular State's witness, and I don't think it's
8 appropriate for him to have any more contact with the
9 State's witnesses, if this is the kind of conduct we can
10 expect.

11 MR. STARNES: Your Honor, we don't have a problem
12 following the court's direction, as far as playing music
13 videos or anything.

14 THE COURT: It's not that. It's not that. There
15 are other ways that you can try to influence witnesses other
16 than playing a sentimental 13 minute video to try to
17 influence them. There are other ways to try to influence
18 witnesses as well than just outright ask them would they
19 consider not testifying in your case or taking the Fifth
20 Amendment and not testifying in your case. It's totally
21 inappropriate. Everyone knows better than that, not just
22 lawyers, and so that's not -- it was not appropriate. It's
23 totally inappropriate.

24 MR. STARNES: I beg the court's indulgence just
25 one minute.

1 THE COURT: Yes, sir.

2 (Off the record)

3 (Back on the record)

4 MR. SKIDMORE: Your Honor, can I address the
5 court?

6 THE COURT: You can, sir. I would keep in mind I
7 have already advised you that you -- that you may have some
8 problems resulting from this, and I recommend that you
9 consult an attorney about it, but if you wish to make any
10 statements to the court -- we are on the record, so if you
11 wish to make any statements to the court, go ahead.

12 MR. SKIDMORE: Not at this time.

13 THE COURT: All right. Thank you.

14 MR. NETTLES: Mr. -- I'll tell you exactly what I
15 told him.

16 THE COURT: Yes, sir.

17 MR. NETTLES: And that's this. It is abundantly
18 clear -- I'm sorry, I'm not mad at the court, and I
19 apologize, but it is abundantly clear to everybody involved
20 in this case that Pete Skidmore asked him not to show that.
21 He repeated -- we --

22 THE COURT: I don't have a problem with that, Mr.
23 Nettles.

24 MR. NETTLES: I --

25 THE COURT: Counsel, let me explain.

1 MR. NETTLES: I'm sorry.

2 THE COURT: I don't have a problem with Pete
3 Skidmore asking him not to show that and telling him it
4 wasn't appropriate, but he went on and did it anyway. Now,
5 he makes his own decision on that.

6 MR. NETTLES: Right.

7 THE COURT: He knew it was wrong.

8 MR. NETTLES: Yeah.

9 THE COURT: And he told Mr. Starnes it was wrong.
10 He knew it was wrong. He did it anyway.

11 MR. NETTLES: Right.

12 THE COURT: More important than that, more
13 important, he asked her to change her testimony or not
14 testify and take the Fifth Amendment, not to testify in Mr.
15 Starnes case, knowing full well that she is a chief
16 prosecuting witness in this case, an extremely important
17 witness to the State. He asked her to change her testimony
18 and not testify. That was her testimony.

19 MR. NETTLES: I know nothing -- I mean, all of
20 that I heard here. I just want the court to be -- Mr.
21 Starnes is not doing a good job of letting the court know
22 one thing.

23 First of all, neither one of the lawyers ever saw
24 that.

25 THE COURT: Oh, I don't doubt that.

1 THE CLERK: Neither one of us ever saw it.

2 THE COURT: I don't doubt that. You would not
3 have had any part of it.

4 MR. NETTLES: And -- and -- and when we did hear
5 about it -- I want it clear Mr. Starnes isn't doing a good
6 job of doing this. The other stuff that transpired in terms
7 of taking the Fifth, I don't know anything about it. I
8 wasn't there. I don't know anything about it, but I can
9 tell you that -- I just want the court to know, for my peace
10 of mind, that he was advised not to do that.

11 THE COURT: Well -- and I understand that. Don't
12 get me wrong. I can see that --

13 MR. NETTLES: I mean by Mr. Skidmore.

14 THE COURT: Excuse me, Mr. Skidmore told him,
15 okay.

16 MR. NETTLES: Yes.

17 THE COURT: And Ms. Ott -- I mean Ms. Bailey
18 testified --

19 MR. NETTLES: Yes, sir.

20 THE COURT: -- under oath --

21 MR. NETTLES: Yes, sir.

22 THE COURT: -- that Mr. Skidmore told her.

23 MR. NETTLES: Yes, sir.

24 THE COURT: That he told Mr. Starnes that he
25 shouldn't do that and advised him against it and not to do

1 it, but he should have known better than to do it himself.

2 MR. NETTLES: Well --

3 THE COURT: Let's assume for the moment -- let's
4 assume for the moment that the tape was the only thing that
5 was involved.

6 MR. NETTLES: Yes, sir.

7 THE COURT: Using the C.D. while he was trying to
8 talk with her. Assume that was the only thing. I have a
9 lot less problem with that --

10 MR. NETTLES: Yes, sir.

11 THE COURT: -- than her testimony under oath that
12 he tried to get her not to testify and take the Fifth and
13 not testify in the case, knowing she was a State's witness
14 and asking her to take the Fifth and not testifying, along
15 with the sentimental 13 minute C.D. he was playing in the
16 background while he was doing it.

17 THE CLERK: Yes, sir.

18 THE COURT: And she was visibly upset by it.
19 That's what I have a problem with.

20 The Justice System is extremely important to this
21 court. Extremely important. It's more important than me,
22 more important than you, more important than Pete Skidmore,
23 more important than Norman Starnes, or anybody else. The
24 Justice System and the integrity of the Justice System to
25 make sure it works properly is extremely important to this

1 court. And I do not take lightly any attempt to impune the
2 Justice System, or try to circumvent or commit fraud on the
3 Justice System, or try to use the intimidation process to
4 prevent justice from taking place. I do not take that
5 lightly. I have always taken that position. I have been on
6 the bench 29 years and I have taken that position all along,
7 and I have always taken that position.

8 Now, I do not -- I don't take lightly anything
9 that anybody does that cause people to call into question
10 the integrity of the Justice System. And as the court, I
11 don't think we can allow that to go along with.

12 MR. NETTLES: And, Your Honor, I appreciate that,
13 and I -- I agree with that. And please don't take --

14 My concern was I felt that there was
15 information -- some of it I have no information about. The
16 things that I do have information about I felt the court was
17 entitled to know.

18 THE COURT: All right.

19 MR. NETTLES: And I felt it was incumbent upon me
20 to show that to the court.

21 THE COURT: Well, I appreciate that.

22 What I'm trying to do at this point -- I have no
23 idea -- I have no question but what you and Mr. Delgado were
24 not informed and had no prior information about it. You
25 wouldn't participate in anything like that, certainly. You

1 would have told Mr. Starnes in no uncertain terms it was
2 inappropriate and you shouldn't do it, and it was unethical
3 and you shouldn't do it. You would have told him that. He
4 didn't involve you. He's representing himself. He made
5 that decision. I understand that, but -- and certainly no
6 one is questioning your integrity, or that of Mr. Delgado,
7 but I think Mr. Skidmore should have known better. He can
8 defend himself at some point. He can do it now while we are
9 on the record.

10 MR. NETTLES: Okay.

11 THE COURT: And he may want to think about it
12 first and talk with a lawyer about it first.

13 What I'm trying to do is make sure that this
14 doesn't happen again in this trial.

15 MR. NETTLES: Yes, sir.

16 THE COURT: And that's what I'm trying to do.
17 And, you know, Mr. Skidmore has already done -- he's accused
18 of doing it once, okay, and you heard the witness on the
19 stand, just like I did, under oath. And so my question is
20 should he have access to more witnesses prior to the trial
21 with the opportunity to do the same thing? That's the
22 concern that I have got. And I don't -- I certainly don't
23 want to inconvenience Mr. Starnes in being able to present
24 his case, but -- and if you can convince me otherwise, you
25 know, that you can't go forward without Mr. Skidmore's

1 assistance, but I don't know why that would be true.

2 Can you tell me why you couldn't go forward with
3 his assistance from this point?

4 MR. STARNES: Yes, sir, Your Honor. There are
5 several witnesses that we haven't gotten in touch with. One
6 that he was going to see today. It's one of the State's
7 witnesses, and we have got to get a subpoena to her and him
8 to interview her.

9 We are just several days from trial, Your Honor.
10 I have got one investigator. The solicitor's office has
11 five or six investigators and two or three --

12 THE COURT: I don't want you to be without an
13 investigator, but, you know, when you do something you know
14 is wrong, you know, you should expect some repercussion from
15 that, Mr. Starnes.

16 I tell you what I will do. I will -- if he wishes
17 to do it, I'll allow Mr. Skidmore to continue to help you up
18 to the trial locate witnesses and that, but I'm instructing
19 him now on the record, and you as well, not to try to
20 influence any witness that you talk to, any State's witness,
21 one way or the other about their testimony. You can ask
22 them what their testimony is going to be. You can ask them
23 about their previous testimony. You can ask them about
24 those kinds of things insofar as preparation, but you can't
25 try to change their testimony or try to get them to persuade

1 them to change their testimony in one way. That's improper.
2 It would be improper for the State. It's improper to the
3 defense. Defense counsel would know better. And you are a
4 lay person trying to represent yourself, I understand that,
5 but, no, we cannot have that. We just cannot have it.

6 And so -- so if you -- if I allow Mr. Skidmore to
7 continue to assist you, this being the Thursday before the
8 trial starts on Monday, I will do that, but I'm telling you
9 now, when you make contact with these witnesses, you can
10 discuss their previous testimony with them, go over what
11 their testimony is going to be this time, whatever you
12 normally will do, but do not try to change their testimony
13 or influence them to change their testimony. Now, that's
14 improper to do that.

15 MR. STARNES: I understand.

16 May I represent to the court one thing?

17 THE COURT: Yes.

18 MR. STARNES: This video was not an attempt to
19 make her change her testimony.

20 THE COURT: Mr. Starnes, you can say whatever you
21 want to. The court has its own view of it.

22 MR. STARNES: Yes, sir.

23 THE COURT: Mr. Skidmore advised you it was
24 improper and that you shouldn't do it. You did it anyway.
25 You didn't listen to him. You have heard the witness get on

1 the stand and testify her perception of it, what she
2 thought.

3 MR. STARNES: Yes, sir.

4 THE COURT: And I -- certainly she would get that
5 perception from it. I would have. I only had to look at a
6 minute of it. I haven't looked at all 13 minutes of it to
7 figure that out. I'm going to leave it at that.

8 Justice is justice for everybody in the system or
9 there is justice for no one. No one is above the rules, and
10 you can't have a Justice System where there is unethical
11 conduct and things going on like that. We just cannot have
12 it. That's my responsibility, to the extent that I have
13 knowledge of it, and I assure you that I will do everything
14 in my power to protect the integrity of the Justice System,
15 whatever it takes. Now, that's all I'm going to say about
16 it.

17 MR. STARNES: Yes, sir.

18 THE COURT: I will allow Mr. Skidmore to continue
19 to help you in this trial, with the understanding that you
20 cannot try to influence, improperly influence, or change --
21 or try to get a witness to change their testimony.

22 You can interview them for trial and know what
23 they are going to testify to and ask them questions and
24 that, but you cannot attempt to persuade them, for whatever
25 reason, to try to change their testimony.

1 MR. STARNES: Yes, sir.

2 THE COURT: All right.

3 MR. STARNES: Judge, while we are on the subject
4 of Mr. Skidmore, something I was concerned about. During
5 the course of the trial there is going to be witnesses that
6 I need to have Mr. Skidmore pick up, provide transportation
7 to, and things that he will need to do for me during the
8 course of the trial. Would it be possible -- would the
9 court allow -- I know the solicitor's office is going to
10 have two or three investigators and four or five paralegals
11 work for them and I'm by myself. I would ask the court
12 would it be okay to have him here during the trial? Would
13 the court provide funding for that?

14 THE COURT: During the trial? I have no problems
15 with that. Certainly I will be glad to do that, to allow
16 you to have your investigator present during the trial.

17 MR. STARNES: Thank you.

18 THE COURT: Now, if we should sequester and he
19 were going to be a witness, you need to keep that in mind.
20 But, no, if you want him to be with you to assist you during
21 the trial, I have no problems with that, and I don't mind
22 authorizing payment for an investigator -- private
23 investigator to be with you and get witnesses and help you
24 coordinate and get witnesses, particularly since you are
25 pro-se and incarcerated.

1 MR. STARNES: Yes, sir.

2 THE COURT: I have no problems with that.

3 MR. STARNES: Thank you, Your Honor.

4 THE COURT: Yes, sir. I just ask you to abide by
5 the ethical rules and the ones you certainly ought to know
6 better than violate. And I -- let's just leave it. Let's
7 move forward --

8 MR. STARNES: Yes, sir.

9 THE COURT: -- and get prepared for the trial.
10 And my concern is that you be as prepared as you can and
11 that both you and the State get a fair and impartial
12 trial --

13 MR. STARNES: Yes, sir.

14 THE COURT: -- in this case and that's what I'm
15 trying to do.

16 (Videotape to be marked as Court's Exhibit No. 1
17 for identification at a later date)

18 All right. Is there anything else, other than the
19 jurors that we need to take up? It's getting late in the
20 day. Can we do that?

21 Do you have your list of jurors that -- has he
22 been given a list.

23 THE CLERK: Yes, sir, Your Honor. I gave -- they
24 are right here on the corner, Mr. Starnes. Right here on
25 the corner.

1 THE COURT: Has the State got a list of the --
2 Have you got the list of the jurors that both
3 sides have agreed to excuse?

4 MR. BULSA: Yes, sir.

5 THE COURT: It's a long list of those. Do they
6 have that?

7 THE CLERK: I don't think I did give them a
8 consent showing which one they did excuse. The only one --
9 I gave you a copy of it, judge, the order --

10 THE COURT: Okay.

11 THE CLERK: -- but I do not have a copy of them
12 that I consented to. I apologize.

13 I brought the ones they did not -- they did not
14 agree upon, and then the new ones is what I have given them.

15 The first list with the x's on it, that's the one
16 that either said y'all said yes or Mr. Starnes did, but one
17 of the other did not agree to.

18 And there is a typo. I was doing this last night
19 in court, Your Honor, making up excuses for myself, but the
20 very first one, No. 14, that's supposed to be Bennie, not
21 Bebbie, and I just now saw that.

22 THE COURT: What I would like to do is get a copy
23 of these made and hand them so we can run through them.

24 THE CLERK: The ones we consented to?

25 THE COURT: The ones that they have consented to,

1 so we can run through that right quick and make sure there
2 isn't any problem on that.

3 Let's take up on the list that starts with juror
4 No. 14. And it's got Bebbie. That's going to be Bennie
5 Bass, B-A-S-S.

6 And that one -- and Ms. Frick will tell us what
7 their -- of course, she has more information on them.

8 The State has consented to excuse juror No. 14.

9 The defense has not consented.

10 Tell me what the request was for ma'am, if you
11 have that.

12 THE CLERK: Mr. Bass was served at the Lexington
13 County sheriff's department with his jury summons when he
14 had been picked up on nine magistrate court bad check
15 warrants and two magistrate court bench warrants. As of
16 yesterday he still is in the custody of the Lexington County
17 detention center.

18 MR. STARNES: Inmates don't make good jurors, Your
19 Honor. We can excuse him.

20 THE COURT: You will excuse Mr. Bass. Okay?

21 The next one is Elizabeth Berry.

22 The State has consented to.

23 The defense has not.

24 She says she has a small child. What do you have
25 on that one?

1 THE CLERK: She is a stay-at-home mom on the top
2 of her jury information section. She did put her occupation
3 as a stay at home mom. And she stated that her husband does
4 work nights at UPS, and she has a child. Wait. She does
5 have a child that is -- I forgot how many months old.

6 THE COURT: Under seven?

7 THE CLERK: Yes, sir, definitely under seven.

8 THE COURT: All right. She -- Ms. Berry says she
9 has a small child under the age of seven and that she has
10 nobody to take care of the child at night.

11 What's your position on Ms. Berry, juror number
12 18, Mr. Starnes?

13 MR. STARNES: This is an exemption, not a
14 disqualification.

15 THE COURT: This is an exemption. If you have a
16 small child under seven and you have no one else to take
17 care of the child and you can't take care of the child
18 while you are serving on jury duty, that's an exemption they
19 are entitled to. The child has to be under seven. And she
20 says the child -- you are not sure how old, but months old?

21 THE CLERK: It's -- I don't have my second page to
22 the return, Your Honor. It's on the second page of the
23 questionnaire is the exact age of the child. I don't have
24 my file. She is juror number 18 and it should be the second
25 page of her questionnaire.

1 THE COURT: Second page?

2 THE CLERK: Yes, sir.

3 MR. STARNES: One year old.

4 THE CLERK: One years old.

5 MR. STARNES: That's correct. That's what I'm
6 showing.

7 THE COURT: I think she's probably entitled to an
8 exemption, but what's your position?

9 MR. STARNES: Court's -- whatever the court
10 decides.

11 THE COURT: Well, I think she's entitled to an
12 exemption. She doesn't have anyone else to take care of the
13 child under seven. She's entitled to it, so -- and she does
14 not work outside the home.

15 All right. The next one is --

16 So we will excuse juror number 18, Elizabeth
17 Berry.

18 The next one is juror 31, Richard Breibart,
19 self-employed.

20 The defense has agreed.

21 The State has not agreed.

22 In his case he's an attorney that had some
23 involvement with this case. I don't remember what exactly.
24 He sent me a letter, and I don't think I brought it with me
25 today, but he sent a letter saying he had some at least

1 tangential involvement in the case when it was --

2 MR. BULSA: We will consent to the removal.

3 THE COURT: He will consent.

4 So Mr. Breibart would be excused. That's juror
5 number 31.

6 The next one is juror number 35, Pate Bryan. He
7 has a work problem. He's going to be out of the state until
8 December the 1st, 2007.

9 THE CLERK: Yes, sir, he works through Bartlett
10 Nuclear, Incorporated. He left September 21st for New York,
11 and then was going from October 24th through November 29th
12 to Crystal River Nuclear plant in Crystal River, Florida.

13 MR. BULSA: October 24th? So he's there now?

14 THE CLERK: No, he is in New York until October
15 28th.

16 MR. BULSA: Okay.

17 THE CLERK: And then October 24th through November
18 29th he will be in Crystal River, Florida.

19 THE COURT: You see, this is already past the
20 24th, so he's already there.

21 THE CLERK: Yes, sir.

22 THE COURT: Crystal River Nuclear plant in Crystal
23 River, Florida from October the 29th until November the
24 29th.

25 MR. STARNES: We will consent, Your Honor.

1 MR. BULSA: Agreed.

2 (Whereupon, Mr. Gowdy left the courtroom)

3 THE COURT: The defense has agreed and you have
4 agreed, so he will be excused, juror number 35.

5 The next juror is number 47, Heidi Carroll, who is
6 a student.

7 The State has agreed to excuse.

8 Defense has not.

9 THE CLERK: She is a Pelion High School student in
10 special ed, and I do have a copy of her class schedule at
11 Pelion High School.

12 THE COURT: She's still in high school?

13 THE CLERK: Yes, sir. She's 20 years old.

14 And there is a letter also from Pelion High School
15 from the registrar stating that she is enrolled in the high
16 school. She is in the 12th grade and --

17 THE COURT: Okay.

18 THE CLERK: She is in special ed, Your Honor.

19 THE COURT: Special education?

20 THE CLERK: Yes, sir.

21 THE COURT: Okay. She -- Mr. Starnes, she
22 apparently is -- she's 20, but she's a 12th grader. We got
23 a letter from the school, Pelion High School that says she
24 is a 12th grader. Apparently she's in the special education
25 classroom.

1 What's your position?

2 MR. STARNES: If school is in, Your Honor, I don't
3 have any problem with letting her go. If they are out for a
4 Thanksgiving break or something like that --

5 THE COURT: Well, the problem is she's got to be
6 available on November the 5th.

7 MR. STARNES: I don't know when they get out for
8 Thanksgiving.

9 THE COURT: Well, it's like November the -- do you
10 know what week that is?

11 THE CLERK: They get out the 22nd and 23rd, and
12 that's it.

13 THE COURT: It's like the 22nd and 23rd of
14 November, so the trial hopefully will be over by then.

15 No objection to number 47, Heidi Carroll. She
16 would be excused.

17 The next one is Tina Clark, juror number 55. It
18 says criminal record. Let's see --

19 THE CLERK: Yes, sir. She is currently on parole.
20 The charges were not out of Lexington County. They were out
21 of another county. My probation, pardon and parole office
22 said she is currently under parole supervision. And as of
23 when I talked to them yesterday morning they had yet to be
24 able to get me written documentation faxed to me.

25 What she's convicted of, it should be on the

1 second page of your questionnaire, Your Honor.

2 THE COURT: Well, let's see.

3 THE CLERK: It should be on page two of the
4 questionnaire at the very top of what she was convicted of,
5 Your Honor.

6 THE COURT: Page two?

7 THE CLERK: Of the questionnaire, up at the top.

8 THE COURT: Okay.

9 THE CLERK: I think it was bad checks.

10 THE COURT: I have got fraudulent checks.

11 THE CLERK: Yes, sir. But she is on parole, and
12 that's why I checked with them, because she said bad checks,
13 and I know those are usually magistrate level, but for her
14 to be on parole, they had to be a charge that carried more
15 than one, I do believe, because she had to serve some time
16 on it.

17 THE COURT: All right. What's your position, Mr.
18 Starnes, with regard to juror number 55, Tina Clark?

19 MR. STARNES: Your Honor, unless she is precluded
20 by statute, I don't consent to striking this juror.

21 THE COURT: Well, let's bring her in and we will
22 just have to question her about it on Monday and see exactly
23 what the charge is so we can find out about it.

24 THE CLERK: Yes.

25 THE COURT: So we will leave -- she will come in

1 and that will would be one that we will have address in the
2 qualification process on Monday.

3 Next, Ashley Cooper, who is a student, and the
4 State has agreed.

5 Defense has not.

6 Let's see.

7 THE CLERK: She is a student at Limestone College
8 in Gaffney, Your Honor, a full-time student.

9 THE COURT: She's a full-time student at Limestone
10 College, Mr. Starnes.

11 MR. STARNES: If school is in, Your Honor, I don't
12 have any problem letting her go.

13 THE COURT: I think school will be in certainly
14 for until -- hopefully this trial is over by then certainly
15 long after it starts, so we will excuse her then, Ashley
16 Cooper, number 58.

17 Nancy Davis, juror number 70. Neither side
18 consented to excuse her.

19 I beg your pardon?

20 I skipped 63. Let's back up.

21 Walter Culbreth. My law clerk has to keep me
22 straight. It's listed as conviction? What have you got?

23 THE CLERK: Yes, sir, he was convicted in 1982, to
24 obtaining money under false pretenses, but I have not been
25 able to get in touch with him to find out where. It was not

1 in Lexington County.

2 THE COURT: Well, if he went to school in Florida,
3 it may be down there.

4 THE CLERK: I may have to get with my solicitor's
5 office to get a rap sheet to see what possible conviction it
6 was.

7 THE COURT: All right. Let's see. What -- in his
8 statement is, "I pled guilty in 1982 on advice from my
9 attorney to obtain money under false pretenses."

10 That's all he says. I don't know. That could be
11 a magistrate court offense. It could be -- I think it could
12 be a -- it could be a Circuit Court General Sessions.

13 THE CLERK: Yes.

14 THE COURT: We will try to get him in. We -- we
15 will try to get Mr. Culbreth in. That's another one we just
16 have to check on during the qualification process.

17 How about juror number 70, Nancy Davis? A
18 caregiver. Did you say that you got something from her?

19 MR. BULSA: We have consented. We have been
20 provided with a letter. We would consent, Your Honor.

21 THE COURT: Did you get a copy of the letter on
22 that one?

23 MR. STARNES: I --

24 THE CLERK: It's in that package I gave you.

25 MR. STARNES: I consent to it, Your Honor. I

1 don't need to look at the letter.

2 THE COURT: That's juror number 70. Both sides
3 consent to her being excused. She is taking care of
4 someone. She has to be there so -- severely ill, so --

5 Okay. Next is 71, Stephen Davis, who is also a
6 student.

7 What school? Do you remember offhand?

8 THE CLERK: He is at Columbia International
9 University.

10 THE COURT: Well, that's a new one on me, but I
11 have heard it before, I think.

12 A christian private school?

13 THE CLERK: Yes, sir.

14 THE COURT: All right. What's the position --
15 The State has consented.

16 How about -- Mr. Starnes, you -- what's your
17 position? Stephen Davis, a student. Apparently it's a
18 private Christian school, Columbia International.

19 MR. STARNES: As long as school is in.

20 Is there any way we could find out if school is
21 going to be in on some of these students?

22 THE COURT: Well, my law clerk --

23 THE CLERK: Most of your schools are out at
24 Christmas, at Christmastime until --

25 THE COURT: Yeah.

1 THE CLERK: -- shortly after New Years.

2 THE COURT: To be honest with you, my recollection
3 is high school or college, they are in school. They may be
4 out Thanksgiving week. They take at least two days for
5 Thanksgiving. Maybe another day, I don't know, but they are
6 out at least I think two days Thanksgiving. But
7 Thanksgiving is not until a couple weeks after this trial
8 begins, which would be -- that would not be any help. They
9 are certainly going to be in school while this trial is
10 going on.

11 MR. STARNES: Yes, sir.

12 THE CLERK: They are on break November the 21st
13 through the 26th.

14 THE COURT: They break November the 21st through
15 the 26th, so that would be -- no way they can serve on this
16 jury and still be in school.

17 MR. STARNES: I understand. I consent to striking
18 him.

19 THE COURT: We will strike Stephen Davis, juror
20 number 71.

21 The next one is Troy Duke, juror number 77. A
22 work problem?

23 THE CLERK: Yes, sir. He works with DJJ. He has
24 to appear in court with the juveniles. He is a school
25 administrator at the juvenile alternative school, the

1 Newberry alternative school, and he is requesting because of
2 having to be in court with the kids and due to being a
3 teacher.

4 THE COURT: Neither side consented to him, not
5 knowing what the work problem is, but actually, as I
6 understand it, he's a teacher, is that correct?

7 THE CLERK: Yes, sir. Well, he's an office
8 administrator, but he has to -- he coordinates the student
9 affairs, like the counselor-type things with them, and then
10 goes to court with them.

11 THE COURT: He goes to court?

12 THE CLERK: Yes, sir, he has to appear in court at
13 various different family courts.

14 THE COURT: I don't know.

15 What are your thoughts?

16 MR. BULSA: I would like to bring him in, Your
17 Honor, and delve into it a little more, if we could.

18 THE COURT: Yeah. He is not -- if he actually
19 doesn't teach, he may not be indispensable and he could
20 probably spare a week or two.

21 MR. BULSA: Yes, sir.

22 THE COURT: But, in any event, we will bring him
23 in and question him about it more on Monday, so he will come
24 in.

25 Next is juror 81, Wanda Elkin, who is a U.S.

1 probation officer.

2 The State has consented.

3 What's the position of the defense?

4 MR. STARNES: Defense consents, Your Honor.

5 THE COURT: Okay. So juror number 81 is excused
6 with consent on both sides.

7 Juror number, Leah Fossum has a small child
8 excuse.

9 The defense has agreed in this case.

10 The State has not consented.

11 THE CLERK: She's a stay-at-home-mom. She has two
12 children, one aged four and a 16 month old.

13 MR. BULSA: We will consent, Your Honor.

14 THE COURT: You will consent?

15 MR. BULSA: Yes.

16 THE COURT: Juror number 94 is excused by consent
17 of both sides.

18 Next, 114, Misty Harley, who is a teacher.

19 The State has consented and defense has not
20 consented.

21 THE CLERK: She will be in school.

22 THE COURT: She's a teacher. She'll be in school.
23 She is requesting to be transferred to a week when school is
24 not in session.

25 What's your position, Mr. Starnes?

1 MR. STARNES: I don't consent, Your Honor. I
2 consent being a student and getting an education.

3 THE COURT: Well, by law they are entitled to an
4 excuse now. The difference is they can't be exempted
5 altogether. They have to be transferred to a week when
6 school is not in session.

7 Now, that doesn't prevent them from serving, but
8 they have the option of being transferred. And that's what
9 she's asking is to be transferred to a different term when
10 school is not in session, which would be in the summertime,
11 which is not unusual at all.

12 MR. STARNES: The way it looks like, I'm not going
13 to have a school teacher on here, or a student.

14 THE COURT: Well, I mean -- yeah, because of the
15 time it's being heard. There's not much we can do.

16 Now, some school teachers will make arrangements
17 to come on and some school teachers want to serve enough
18 that they will pay a substitute to sub for them and come on.
19 So maybe the school district pays for them, I don't know.
20 But, in any event, some of them will come on and serve, and
21 a lot of them have to be transferred to the summertime
22 because they don't want to be away from the classroom for a
23 week.

24 MR. STARNES: Yes.

25 THE COURT: I think she's entitled to be

1 transferred. Okay?

2 So 114 will be transferred to a different week.

3 116, Nedra Hayes, who is a caregiver.

4 The defense has consented.

5 The State has not consented. That's 116.

6 What's her situation?

7 THE CLERK: Your Honor, she is a housewife, but
8 her son was in a severe auto accident back in July and he's
9 in intensive care for an extended period anyway. He has
10 severe rehab and he has to be taken care of.

11 MR. BULSA: The State would consent, Your Honor.

12 THE COURT: The State consents.

13 That's 116, Nedra Hayes is excused with the
14 consent of both sides.

15 129, James Hunt, who is a forensic investigator.
16 Who does he works for, do you know?

17 THE CLERK: He has put here -- apparently he is
18 the president and senior safety consultant with the Warner
19 Group. He used to -- let me see here. "Unfortunately my
20 current occupation as a forensic investigator and expert
21 witness, combined with my wife's occupation in law
22 enforcement with SLED are significant deterrents of my being
23 selected amongst jurors."

24 THE COURT: Well, I understand he might not be
25 picked. That doesn't entitle him to be excused.

1 The defense has consented.

2 Does the State consent or not?

3 MR. BULSA: Not at this time, Your Honor.

4 THE COURT: Okay. That wouldn't automatically get
5 him excused, although -- all right. So he will come in.

6 142, Tina King. Personal. It says her brother is
7 in jail.

8 The State has consented.

9 The defense has not.

10 It doesn't say what her brother is in jail for?

11 THE CLERK: No, sir. She just says that her
12 brother had been in prison twice and she doesn't think she
13 would send anyone there. He was in maximum -- he was in
14 maximum security, and I don't know if he is still in or not,
15 but she said she just doesn't feel like she could sit as a
16 juror. She doesn't think anybody belongs there.

17 THE COURT: Well, the defense has not consented.

18 What's the position of the defense?

19 MR. STARNES: Your Honor, I would like to voir
20 dire this juror.

21 THE COURT: All right. She will not be excused.
22 She will come in.

23 All right. Juror number 145, Katherine Kelly has
24 requested a medical excuse.

25 Defense has consented and the State has not.

1 THE CLERK: We do have a letter from Lexington
2 County Community Mental Health where she is a patient of Dr.
3 Cherry, senior psychiatrist.

4 MR. BULSA: Is she under current?

5 THE CLERK: She is a -- she is a client of
6 Lexington Community Mental Health Home Share Program and she
7 attends a -- she attends a day treatment program at the time
8 court is scheduled.

9 MR. BULSA: We consent.

10 THE COURT: We'll consent to excusing Ms. Kelly,
11 both sides.

12 161, Christopher Linenberger has a work problem.

13 THE CLERK: Yes, sir. She works for the American
14 Red Cross center and her job title is program investigator,
15 senior associate, and this is the time they do their annual
16 quality audit. It begins on November 5th, and it is a vital
17 role. She has a vital role in this audit, and she's
18 requesting to be postponed or excused.

19 THE COURT: Is this Christopher Linenberger?

20 THE CLERK: Yes, sir. It says Chris. Chris
21 Linenberger. Oh, Christopher. I said she. I'm sorry.

22 THE COURT: It's a he?

23 THE CLERK: A he.

24 THE COURT: All right. What's the position of --
25 the State hasn't agreed.

1 What's your position?

2 MR. BULSA: We would like to determine if there is
3 anybody else that could take his place.

4 THE COURT: All right. Christopher, he will come
5 in and we will address that then on Monday.

6 163, Christina Longman, who is a student.

7 The State has agreed.

8 Defense has not.

9 Where, do you know?

10 THE CLERK: That's at the University of South
11 Carolina, Columbia.

12 THE COURT: Do you agree to excuse?

13 MR. STARNES: Consent, yes.

14 THE COURT: As long as they are going to be in
15 session.

16 Next, 164, John Lorick. He says he's no longer a
17 resident of Lexington County. He's a resident of Richland
18 County.

19 The State has agreed.

20 The defense has not.

21 He has to be a current resident of the county in
22 which he's going to serve on the jury. He says he's not.

23 Did he send anything to show that or anything?

24 THE CLERK: Yes, sir, he gave us his change of
25 address on Kevin Drive in Irmo, which is in Richland County.

1 THE COURT: All right.

2 MR. STARNES: If it's in Richland County. I
3 thought all Irmo was in Lexington County, but I was
4 mistaken.

5 THE COURT: Okay. All right. John Lorick, 164,
6 he will be excused by consent of both sides.

7 178, Jon McCullough, affidavit.

8 THE CLERK: His residence that was provided to us,
9 it --

10 THE COURT: You couldn't locate him?

11 THE CLERK: Yes, sir. The place is vacant and
12 there is no forwarding address, and the Department of Motor
13 Vehicle address is still the same, and -- I mean, we have
14 nothing to go by to try to locate an address.

15 THE COURT: All right. The State has agreed to
16 excuse.

17 The defense has not.

18 What's the position of the defense, Mr. Starnes?

19 MR. STARNES: If they attempted to locate this
20 individual.

21 One concern I have, Your Honor, out of all the 325
22 names we have here, we have only got two people from 29123,
23 which is the Pelion area. I did have some concerns with
24 that. I have concerns with excusing this juror, because I
25 noticed his previous address was 29123.

1 If possible, if they could have some of the
2 deputies at the sheriff's office try to locate this
3 individual.

4 THE COURT: I think they are trying to do that.

5 THE CLERK: Your Honor, Mr. Hite is sitting right
6 there that went out there personally with this affidavit
7 trying --

8 THE COURT: And what address did you try to serve
9 him, sir?

10 DEPUTY HITE: Just a moment, Your Honor.

11 I actually went to two addresses, Your Honor. I
12 went to 424 Pat Road, and the driver's license came back to
13 1045 Bub Shumpert Road in Pelion, which was empty.

14 THE COURT: Empty?

15 DEPUTY HITE: Yes.

16 MR. STARNES: I don't have a problem, as long as
17 he hasn't moved to somewhere in Lexington County.

18 THE COURT: I think the problem is trying to
19 locate him. If they don't have a current address for him,
20 it's pretty hard to locate him.

21 They mailed the juror information sheet to him and
22 the summons and they didn't respond, so they tried to serve
23 him, and they haven't been able to get service. They tried
24 two different addresses. The last address they tried was
25 empty, but --

1 MR. STARNES: Your Honor, could we do this?

2 THE COURT: Yes, sir.

3 MR. STARNES: Could we take this up Monday and ask
4 the sheriff's department to check with DMV to see if the
5 gentleman has reported a change of address, or if he's
6 moved?

7 THE COURT: You have already done that?

8 DEPUTY HITE: That's what I did, Your Honor.

9 THE CLERK: That's what he did.

10 DEPUTY HITE: That's where I got the --

11 THE COURT: Is that the second address from the
12 Department of Motor Vehicles?

13 DEPUTY HITE: Yes, sir, I have that, if you need
14 it.

15 THE COURT: So they have already done that.

16 MR. STARNES: All right. Well, if they have done
17 it, they can't locate him, then --

18 THE COURT: What address do you have?

19 THE CLERK: 1045 Bub Shumpert Road address.

20 THE CLERK: That's the address.

21 THE COURT: I guess we will excuse him, unless
22 somehow he gets to where he shows up. If he shows up, we
23 will try to qualify him.

24 MR. STARNES: Thank you, Your Honor.

25 THE COURT: But if he doesn't show up, we will

1 excuse him, if that's all right.

2 All right. 184, Earl McPherson. It says he has a
3 work problem.

4 The defense has consented.

5 The State has not consented.

6 Let's see. Does he say what his problem is?

7 THE CLERK: Yes, sir, he says his employer has
8 multiple employees on job sites and if he is not there,
9 nobody works. Jobs don't get done, employees won't get
10 paid. Present job sites are in Florida, Alabama and
11 Georgia. None of them are in town.

12 THE COURT: Don't you wonder how he's in all three
13 places at once, don't you, if nobody can work unless he's
14 there?

15 THE CLERK: He's the owner of Interstate Electric.

16 THE COURT: The State has not consented to Mr.
17 McPherson.

18 What's your position.

19 MR. COLER: Judge, we would like to explore that a
20 little bit more with him.

21 THE COURT: We will talk to him more on Monday.

22 Juror number 186, Irma Miles. Did we excuse her
23 already?

24 THE CLERK: Yes, sir, we did. I just didn't get
25 her off the list.

1 THE COURT: Yeah, Mr. Starnes consented when I
2 contacted him, correct? She was going on her honeymoon.

3 MR. STARNES: Yes, sir, that's correct, Your
4 Honor.

5 THE COURT: I think she's coming back -- the
6 information was she's flying back in on Monday. Probably
7 Monday -- sometime Monday, I don't know, but -- okay.

8 Next, 187, Kimberly Mingo, who says she's a
9 resident of North Charleston.

10 The State has consented.

11 The defense has not consented.

12 THE CLERK: She did provide a new address in
13 Charleston, where it was returned to us with the new
14 address, which was reported that location.

15 THE COURT: She had a forwarding address to North
16 Charleston, which would not be in Lexington County.

17 What's your position, Mr. Starnes, on her?

18 MR. STARNES: If she's in Charleston, she's not
19 qualified, Your Honor.

20 THE COURT: All right, sir. We will excuse her.

21 Next, 188, Sandra Mitchell. She says she has a
22 work problem.

23 Neither side has agreed to excuse her.

24 THE CLERK: Yes, sir, she -- all she says is that
25 her job requires her to be there at 8:30 in the morning, and

1 if she doesn't work, she doesn't get paid. And if she
2 doesn't get paid, her bills don't get paid.

3 THE COURT: Okay. I guess we will see her on
4 Monday.

5 208, Brian Norris. South Carolina Department of
6 Corrections employee.

7 THE CLERK: Yes, sir, he did send us a copy of
8 both his driver's license and his Department of Corrections
9 I.D. card.

10 THE COURT: Does he say what he does for them?

11 THE CLERK: He says he's an administrative
12 assistant, clerical, but he wanted to file under the
13 employee of the State.

14 THE COURT: I don't think so.

15 The State has agreed to excuse him.

16 Defense has not.

17 As I understand it, there is an exemption, but
18 it's for -- it's for guards at the Department of
19 Corrections.

20 THE CLERK: Well, on the summons itself, Your
21 Honor, it says 'I am a guard, teacher, employee, or other
22 officer at the state penitentiary,' and he circled numerous
23 times employee.

24 THE COURT: We will look that up. I thought they
25 only exempted people who actually worked as a guard there at

1 penal institution. So we will have Mr. Norris come in. We
2 will -- we need to look at the statute and take a look at
3 that.

4 Next is 210, Patricia Outlaw. Medical.

5 The State has consented.

6 The defense has not.

7 What did she say?

8 THE CLERK: She suffers grand mall -- let's see
9 here. Grand mall seizures. Her doctor is Dr. Williams, who
10 was supposed to fax us something, but we haven't gotten it
11 back because he didn't want to talk to us, but it's not
12 under control and she is taking different types of
13 medication. Depakote and Triptal for her grand malls, but
14 we -- as of yesterday afternoon we had not gotten the fax
15 from Dr. Williams yet.

16 THE COURT: Okay. What's your position, Mr.
17 Starnes?

18 MR. STARNES: Your Honor, I noticed this juror
19 works at the Dollar General Store and holds -- from the
20 questionnaire, it looks like she holds a job. Previous
21 occupation at Wal-Mart. I would like to -- I would like to
22 bring her in and talk to her.

23 THE COURT: All right. We will see her on Monday.
24 She needs to bring us in whatever she has got.

25 THE CLERK: Your Honor, also I didn't note it, but

1 I have got it noted up here, she does not have a license to
2 drive due to suffering from grand mall seizures. Do you
3 wish the sheriff's department to provide transportation --

4 THE COURT: Yes, ma'am, absolutely.

5 THE CLERK: -- for her Monday morning?

6 THE COURT: Yes, ma'am. And if you will let her
7 know that, and she needs to call them or they just need to
8 go pick her up.

9 THE CLERK: What will happen, Your Honor, is I
10 will notify the sheriff's department, because we have got a
11 couple more that needs transportation, and I will -- they
12 will get in touch with the prospective jurors to get
13 directions.

14 THE COURT: If you have contact with her, just
15 tell her to bring whatever medical excuse she's got with her
16 when she comes and we will look at it.

17 THE CLERK: Yes, sir.

18 THE COURT: Next, 211, Dena Oxner. It says small
19 child, but the State has not consented.

20 The defense has consented.

21 What's your -- what is her --

22 THE CLERK: She is a stay-at-home mom, and she has
23 a one -- let me see, one new child and two years old and she
24 is expecting a new one.

25 MR. COLER: We will consent, Your Honor.

1 THE COURT: The State consents.

2 She will be excused, 211, Dena Oxner.

3 All right. 217, Ryan Phillips, who says he's a
4 resident of Richland County.

5 The State has consented.

6 The defense has not.

7 THE CLERK: And that is another one of those Irmo
8 addresses, which I think that Mr. Starnes thought that all
9 of Irmo was in Lexington.

10 MR. STARNES: Your Honor, I have been locked up
11 too long. I'm sorry, I haven't been driving in Irmo, so I
12 didn't know that. We will let him go.

13 THE COURT: Probably in one of those areas where
14 you really don't know.

15 All right. Ryan Phillips then would be excused as
16 a nonresident of the county.

17 221, Cristina Rawl. It says she has a small
18 child.

19 Neither side has consented.

20 What's her situation?

21 THE CLERK: Yes, sir. She is a stay-at-home mom.
22 She has a five year old and a seven year old, and she also
23 has a 12 and a 14, but she does not work outside the home.

24 THE COURT: You say she ain't got anybody else to
25 keep her children?

1 THE CLERK: Yes, sir. Well, on her return she
2 says she wishes to be excused. She does have a child under
3 the age of seven, which is the five year old, is what she
4 puts down.

5 THE COURT: What the position of the State?

6 MR. COLER: We consent, Your Honor.

7 THE COURT: Defense?

8 MR. STARNES: Consent, Your Honor.

9 THE COURT: We will excuse her then. Sounds like
10 she has got her hands full with four.

11 Next is 223, Douglas Reedy, who is on active duty
12 in Japan.

13 The State has agreed.

14 Defense does not. Do you want to get him back
15 from Japan, Mr. Starnes?

16 MR. STARNES: No, I don't think so, if they are
17 not going to be on leave or anything, that's fine, but the
18 juror is not going to be on leave. Is that my
19 understanding? We will leave him in Japan.

20 THE COURT: We will excuse 223.

21 234, Katherine Roberts says she has no
22 transportation. We can provide that.

23 Neither side consented, so she will come in. If
24 you will notify the sheriff's department on her.

25 THE CLERK: Yes, sir.

1 THE COURT: 244, Gloria Samuels, who is a
2 caregiver.

3 The defense has agreed.

4 The State has not agreed.

5 THE CLERK: Yes, sir. She doesn't work out of the
6 home. She used to work for Surgical Claims Processing.
7 She's a little over 63 years old. She takes care of her
8 grandchild. She stays at home. She doesn't work out of the
9 home. She keeps the grandchild so the daughter can get to
10 work. They only have one car. So apparently it sounds like
11 the grandchild and the child live with her, and they have no
12 way to take care of the kid. And, plus, she wouldn't have
13 no transportation, because they just have the one car.

14 THE COURT: Does she have a child underage, or she
15 just got the grandchild?

16 THE CLERK: She just has the grandchild.

17 THE COURT: All right. She doesn't qualify for an
18 exemption?

19 What's -- the defense has agreed.

20 What's the position of the State?

21 MR. COLER: She indicates there is nobody else to
22 take care of the child?

23 THE CLERK: According to this, she says -- let's
24 see here, "I have a two year old grandchild that I am the
25 caregiver during the day so that her mother can get to work.

1 Also there is an issue of transportation since there is no
2 public transportation and one car."

3 MR. COLER: Your Honor, if she indicated she's the
4 sole caregiver, we could do that, but --

5 THE COURT: She is not automatically entitled to
6 an exemption, but --

7 MR. COLER: Right.

8 THE COURT: So -- you know, but it's up to y'all.
9 Defense has agreed.

10 What's the position of the State? I'll do
11 whatever you want.

12 MR. COLER: Right now I would like to just explore
13 that a little bit more with her.

14 THE COURT: Let's bring her in. We would need to
15 provide her with transportation.

16 THE CLERK: Yes, sir.

17 THE COURT: Next is juror number 249, Lynichia
18 Shealy, school employee.

19 The State has agreed.

20 The defense has not.

21 THE CLERK: She is the head cashier at Gilbert
22 Middle School. She's trying to claim school employee
23 transfer status.

24 THE COURT: What did she say she does, though?

25 THE CLERK: She is --

1 THE COURT: Is that the cafeteria?

2 THE CLERK: She is the head cashier. She's in
3 charge of the cafeteria.

4 THE COURT: Well, you know, I think -- the way
5 that statute reads, I think she's probably entitled, so
6 let's -- we will transfer --

7 Well, let me ask Mr. Starnes about that. He
8 didn't consent. School apparently will be in session and
9 she will be there working at the school, so -- it's not just
10 school teachers, it's other school employees.

11 MR. STARNES: I have no problems, Your Honor.

12 We did jump from 234 to 249, and we missed 244 in
13 between.

14 THE COURT: 244? She's coming in. The State
15 would not --

16 THE CLERK: That's the one we were just talking
17 about there.

18 MR. STARNES: I have 234. I didn't get 244.

19 THE COURT: Well, that was 244 we just talked
20 about.

21 Well, wait a minute. Maybe it skipped 234.

22 THE CLERK: 234 we discussed. Her only problem
23 was -- I mean, yeah, she didn't have transportation.

24 THE COURT: She didn't have transportation, so we
25 are going to bring her in.

1 THE CLERK: And then 244 is the grandmother that
2 is taking care of two year old grandchild that don't have a
3 car, so we are going to bring her in too.

4 MR. STARNES: All right.

5 THE COURT: So 234 and 244, neither one of them
6 are excused. They are going to come in on Monday.

7 Now, back to 249, school employee. What's your
8 position as to her?

9 MR. STARNES: Excused.

10 THE COURT: You agree.

11 She will be excused. Well, really transferred,
12 because she falls in that category.

13 THE CLERK: Yes.

14 THE COURT: 250 is next, Emily Shrum, who is a
15 student.

16 THE CLERK: USC, full-time.

17 THE COURT: USC.

18 Position, Mr. Starnes?

19 MR. STARNES: Let her go.

20 THE COURT: She is excused by consent of both
21 sides.

22 254, Andrew --

23 THE CLERK: I can't pronounce it, judge.

24 THE COURT: Siththisakd, whatever that is, but you
25 got that, okay? It's unusual. It's spelled

1 S-I-T-H-T-H-I-S-A-K-D. Active military.

2 THE CLERK: He is stationed at Keller Air Force
3 base, and I have no idea what the MS stands for, which one
4 of our states.

5 THE COURT: Mississippi.

6 THE CLERK: Okay.

7 THE COURT: The State has agreed.

8 What's the position of the defense?

9 MR. STARNES: Defense agrees.

10 THE COURT: Defense agrees, so he would be
11 excused.

12 Juror number 272, G.R. Subbarao, unable to locate.

13 THE CLERK: Yes, sir. According to the affidavit,
14 he's got a few names, but it was returned not deliverable,
15 his address. The Highway Department file shows the same
16 address that we have as still for his driver's license. An
17 officer went out and checked with the management and they
18 have no idea who that person is.

19 And Mr. Hite --

20 OFFICER HITE: Yes, Your Honor.

21 THE COURT: Yes.

22 OFFICER HITE: If you note that the driver's
23 license expired in 1995.

24 THE COURT: Okay. All right. The State has
25 agreed -- has consented to excuse, is unable to locate.

1 What's your position?

2 MR. STARNES: Excused, Your Honor.

3 THE COURT: We will excuse him.

4 Well, I stand corrected, for the record now, we're
5 reading from Section 24-3-930, with regard to being excused
6 in the South Carolina Department of Corrections. It says
7 "all guards, keepers, employees and other officers employed
8 at the penitentiary shall be exempted from serving on the
9 jury and from military home school duty." So apparently
10 they are automatically entitled to that excuse.

11 Do you remember what number we were --

12 THE CLERK: Yes, sir, 208.

13 THE COURT: 208.

14 THE CLERK: Brian Norris.

15 THE COURT: Brian Norris. Okay.

16 Do you agree, Mr. Starnes, under the statute he's
17 entitled to be excused?

18 MR. STARNES: Yes, Your Honor.

19 THE COURT: All right.

20 MR. STARNES: What was that statute, that cite
21 again, Your Honor?

22 JUDGE'S LAW CLERK: 24-3-930.

23 MR. STARNES: 930?

24 JUDGE'S LAW CLERK: Uh-huh.

25 THE COURT: All right. Back to the list.

1 Number 274, Nichole Sweet, small child.

2 Neither side consented.

3 What's her situation?

4 THE CLERK: She has a two year old. She's a
5 single mom. She works part-time as a stocker at K-Mart and
6 she wants to claim under the child law.

7 THE COURT: Okay.

8 MR. COLER: We will consent, Your Honor.

9 MR. STARNES: Consent, Your Honor.

10 THE COURT: All right. Both sides consent to
11 excuse her.

12 286, Samantha Trotter, teacher.

13 The State has agreed.

14 Defense has not.

15 THE CLERK: She's a teacher at Batesburg-Leesville
16 Elementary School, Your Honor. She sent us a copy of her
17 school ID.

18 THE COURT: Okay. Assuming then she's going to be
19 in the classroom during this period of time, do you agree to
20 consent?

21 MR. STARNES: I agree, Your Honor.

22 THE COURT: Then she will be excused.

23 302, Roger Watson. Small child.

24 Defense has agreed.

25 The State has not agreed.

1 What's his situation?

2 THE CLERK: He is a retired probation and parole
3 officer. He is the stay-at-home dad. He has a nine year
4 old and a six year old that he has to pick up from school at
5 2:40 and has no one to keep them after school, because he
6 stays at home with them.

7 THE COURT: What position does the State have?

8 MR. COLER: It kind of depends on what the
9 court -- if you are going to decide what you are going to do
10 about sequestering the jury. It sounds like that would be a
11 minor inconvenience, but I don't think that he's entitled
12 automatically.

13 THE COURT: Well, what he's saying is -- all
14 right, he has small children under seven.

15 THE CLERK: He has a six year old.

16 MR. COLER: Okay. Well, I misunderstood.

17 THE COURT: Yeah, he has a six year old?

18 MR. COLER: Okay.

19 THE CLERK: Yes, sir, and a nine year old.

20 THE COURT: And a nine year old. But he has the
21 six year old?

22 THE CLERK: Yes, sir.

23 THE COURT: And he is saying he has to pick them
24 up from school. There is nobody else to take care of them,
25 correct?

1 THE CLERK: Correct.

2 THE COURT: Does he say whether he is married or
3 anything, or about a wife?

4 THE CLERK: His wife works at Optek. She's a
5 college professor, wherever Optek is, but he's a
6 stay-at-home dad.

7 THE COURT: He doesn't work at all?

8 THE CLERK: No, sir, he's retired.

9 THE COURT: Okay. Do you agree to consent?

10 MR. COLER: I guess because of the child under
11 seven, Your Honor.

12 THE COURT: Okay. We will excuse him.

13 308, Jeremy Whisonant, who is a student.

14 The State has agreed.

15 Defense has not yet.

16 THE CLERK: He is a full-time student at USC.

17 THE COURT: USC?

18 THE CLERK: Yes, sir.

19 THE COURT: You agree to excuse him?

20 MR. STARNES: Yes, sir.

21 THE COURT: He would be excused as a student.

22 I beg your pardon, he will be transferred.

23 Students are transferred and teachers.

24 310, Richard White.

25 THE CLERK: We do have his reservations, Your

1 Honor.

2 THE COURT: Okay.

3 THE CLERK: He is supposed to -- I'm trying to
4 look at the date that he's supposed to fly out here. It's
5 already prepaid confirmed. He's to leave -- well, he's
6 supposed to leave today for Wichita, Kansas, and he will
7 return on the 8:18 p.m. flight. He will be landing in
8 Atlanta on the 5th at 8:18.

9 THE COURT: He will not be there for jury
10 qualifications or anything on Monday, if he's gone.

11 The defense had agreed.

12 What's the position of the State?

13 MR. COLER: He's coming back at 8:18 p.m. or a.m.?

14 THE CLERK: P.M.. I'm sorry, he is to arrive in
15 Atlanta. He's to depart Wichita at 3:25 and arrive in
16 Atlanta at 8:18, and God only knows --

17 THE COURT: That's p.m. or a.m.?

18 THE CLERK: P.m.

19 MR. COLER: I guess he will miss Monday.

20 THE COURT: We will just transfer him. He will be
21 transferred.

22 320, Timothy Wingo. Is that part-time South
23 Carolina Department of Corrections?

24 THE CLERK: Yes, sir. What he is, he is a
25 full-time physician at Lexington Memorial Center. He's a

1 trauma doctor, and he works part-time at the South Carolina
2 Department of Corrections as a physician for them.

3 THE COURT: Okay.

4 THE CLERK: He says he moonlights.

5 THE COURT: Well, there is a lot of that going on,
6 as the people would -- even with the state are doing that.
7 I say with the state -- with the Medical University and all
8 that, and some of that.

9 THE CLERK: Yes, sir.

10 THE COURT: What's -- the State has agreed to
11 excuse him.

12 How about the defense?

13 MR. STARNES: Your Honor, I would like to bring
14 him in. He's not a full-time employee with the Department
15 of Corrections. I don't think he would qualify for a
16 exemption under the statute.

17 THE COURT: The question is whether they intend
18 for them just to be full-time employees. We will bring him
19 in.

20 THE CLERK: All right, sir.

21 THE COURT: I don't know if part-time would
22 qualify. I think what they are anticipating is that if the
23 Department of Corrections is going to be affected very
24 adversely by the person not being able to be there. So he
25 will come in.

1 321, Kevin Wise. Student.

2 THE CLERK: USC.

3 THE COURT: USC.

4 You agree, Mr. Starnes, for him to be excused?

5 MR. STARNES: I agree, Your Honor.

6 THE COURT: He will be excused.

7 322, Joseph Woods, affidavit, unable to locate.

8 THE CLERK: Yes, sir. He -- it was returned
9 undelivered. The Highway Department gave a new address of
10 225 Bent Tree. That was issued in 2005. And a check of
11 that residence has been the Hames residence for over a
12 month.

13 Do you have anything else?

14 OFFICER HITE: No, other than the issue date was
15 '05. When I checked it, it was a lady that lived there.

16 THE COURT: What's the position?

17 MR. STARNES: Let him go.

18 THE COURT: We will excuse him because we just
19 can't locate him.

20 That concludes that particular list.

21 Now, on the others that are not on the list do we
22 need to take up today?

23 THE CLERK: That's all the ones that they had not
24 agreed on, yes, sir.

25 THE COURT: All right.

1 THE CLERK: Now, the other notebook is the new
2 ones.

3 THE COURT: At least it will save us time next
4 week, I guess.

5 MR. COLER: I can tell you, this is a list we are
6 looking at, starting with juror number 9, I can tell you we
7 can consent to every single one except for a handful, if you
8 want to take those numbers and compare them with Mr. Starnes
9 numbers, that may speed us through this.

10 THE COURT: I don't know if he's had an
11 opportunity to look at them.

12 Have you.

13 MR. STARNES: No, sir, Your Honor, I haven't. I
14 haven't had an opportunity to look at them.

15 THE COURT: All right. Well, let's try to quickly
16 go through the list. I would like to have this done today,
17 if we can get it done.

18 The first one is Susana Balda, whose affidavit is
19 that she's not a U.S. citizen, which would disqualify her.

20 What's the position of the State?

21 MR. COLER: We consent.

22 THE COURT: Defense?

23 MR. STARNES: Consent, Your Honor.

24 THE COURT: She would be excused. She would not
25 be qualified.

1 Number 12, James Barnett. He says in lives in
2 Richland County.

3 THE CLERK: We do have a new address confirming
4 that, Your Honor.

5 THE COURT: Position of the State?

6 MR. COLER: Consent.

7 THE COURT: Defense?

8 MR. STARNES: Consent.

9 THE COURT: All right. 13, Robert Bartlett, Jr..
10 It says he's retired from Lexington County sheriff's
11 department.

12 THE CLERK: He was -- he was an investigator over
13 there in the nineties and the latter part of the eighties.
14 He was with the sheriff's department for awhile. He is
15 familiar with some of the facts of this case. He did not
16 actually work on this case, but he's familiar with some of
17 it, and he said with his knowledge he doesn't think that he
18 could be fair. I know Mr. Bartlett personally and he came
19 in and talked to me about this.

20 THE COURT: All right. Position of the State?

21 MR. COLER: I don't think he's told us anything
22 that automatically disqualifies him, Your Honor. He's not
23 said that he worked on the case.

24 THE CLERK: He did not -- he was not assigned to
25 work the case, but he knows about the work on the case and

1 he's just not comfortable. He said he didn't think he could
2 be fair to either one. He came into the office personally.

3 THE COURT: Do you want to talk to him on Monday?

4 MR. COLER: I would like to just briefly.

5 THE COURT: We will do that.

6 All right. Juror number 22, Joshua Bigby. He
7 says he lives in Richland County.

8 THE CLERK: We do have a new address confirming
9 that, Your Honor.

10 MR. COLER: We consent.

11 MR. STARNES: Consent, Your Honor.

12 THE COURT: Number 26, Lois Boykin. Doctor's
13 statement.

14 THE CLERK: Yes, sir, we do have a doctor's
15 statement from Dr. Joseph Cavanaugh saying that she has --
16 due to her medical condition, her treatment of her diabetes
17 and other problems related to the diabetes, he's not
18 comfortable with her serving.

19 MR. COLER: We will consent.

20 THE COURT: Defense?

21 MR. STARNES: Your Honor, I don't have any
22 paperwork on her.

23 THE CLERK: You don't have number 26?

24 MR. STARNES: I'm sorry, I do not. I'm missing
25 from 14 to 22.

1 THE CLERK: Well, hold on.

2 (Off the record)

3 (Back on the record)

4 THE CLERK: Here you go.

5 There should be the doctor's statement with it.

6 MR. STARNES: We consent, Your Honor.

7 THE CLERK: You can have that.

8 THE COURT: Which one is that? That's --

9 THE CLERK: Number 26.

10 THE COURT: 26, okay.

11 THE CLERK: 26, yes, sir.

12 THE COURT: Both sides consent to excuse 26.

13 27, George Bradley, age 75. He's automatically
14 entitled to be excused.

15 THE CLERK: Yes.

16 THE COURT: Both sides agree to that?

17 MR. COLER: Yes, sir.

18 MR. STARNES: Yes, sir.

19 THE COURT: Okay. 41, Michael Byrne. He's a
20 resident of Washington, D.C., he says.

21 THE CLERK: Yes, sir. According to his -- he
22 surrendered his driver's license in '04, his South Carolina
23 license, and was replaced with his North Carolina -- I mean
24 his Washington, D.C. license.

25 THE COURT: State?

1 MR. COLER: We consent.

2 THE COURT: Defense?

3 MR. STARNES: Consent, Your Honor.

4 THE COURT: So 41 is excused, Michael Byrne.

5 46, Robert Carpenter. Affidavit, unable to
6 locate.

7 THE CLERK: Yes, sir. A check of that address --
8 what was the original address on him. It was returned.

9 A new address, supporting address is given 2700
10 Feather Run Trail, Apartment J-1. And the sheriff's
11 department, in checking that address, that residence has
12 been the Strickland residence since August of '07, and there
13 was no forwarding address of anything for Mr. Carpenter, nor
14 any new information.

15 THE COURT: Position of the State?

16 MR. COLER: We consent.

17 THE COURT: Defense?

18 MR. STARNES: Consent, Your Honor.

19 THE COURT: 48, Beth Caudle, resident of Florida.

20 MR. COLER: Consent.

21 THE CLERK: Yes, sir, we had a surrendered South
22 Carolina license.

23 MR. STARNES: Consent, Your Honor.

24 THE COURT: 48 is excused by consent.

25 50, John Chappell. Unable to locate, affidavit.

1 He's aged 87, in any event, correct?

2 THE CLERK: Yes, sir.

3 THE COURT: Consent, both sides?

4 MR. COLER: Consent, Your Honor.

5 MR. STARNES: Consent.

6 Your Honor, all the way down to 83, unable to
7 locate, I'll consent on all of those.

8 THE COURT: State?

9 MR. COLER: The same thing for us, Your Honor.

10 THE COURT: Okay. So we are down to 83 then.

11 Elizabeth Epting, doctor's excuse.

12 THE CLERK: Yes, sir. She -- we got this from --
13 I can't read this woman's handwriting. She's been diagnosed
14 with alcoholic cerebral degeneration. Her gait and her
15 speech and her short-term memory and all of that is
16 affected. She's under disability right now due to this
17 condition.

18 THE COURT: Position of the State?

19 MR. COLER: We consent, Your Honor.

20 THE COURT: Defense?

21 MR. STARNES: Your Honor, it says she's employed
22 with a law firm.

23 THE CLERK: Hold on.

24 THE COURT: It does say that.

25 THE CLERK: Number 83?

1 THE COURT: Law firm. It might have been where
2 she worked previously.

3 THE CLERK: Not working. Had not worked --

4 THE COURT: Look at the next line. The next line.

5 THE CLERK: Look at the line above it.

6 OFFICER HITE: Your Honor, I physically saw her
7 and she is incapacitated.

8 THE CLERK: Look at number 10. It says present
9 occupation, disabled.

10 MR. STARNES: I'll take his word for it.

11 THE COURT: Look at number 12, it says not
12 working. Have not worked in 15 years. Do you see that?
13 The next one, number 12.

14 MR. STARNES: I see it, Your Honor. I'm going
15 through these pretty fast.

16 THE COURT: Me too.

17 Both sides agree to excuse number 83 then.

18 MR. STARNES: Maybe she worked at Mr. Nettles
19 office or Mr. Delgado's office.

20 THE COURT: All right. Number 86, Allen
21 Etheredge. Convicted of CSC 2nd in 1994. He would be
22 disqualified. Do you agree, both sides?

23 MR. COLER: Yes, sir.

24 THE COURT: You agree, Mr. Starnes?

25 MR. STARNES: Yes, sir, Your Honor.

1 THE COURT: All right. 104, Robert Glenn.
2 Richland County resident.

3 MR. COLER: We consent.

4 THE CLERK: Yes, sir, it's an Irmo address.

5 THE COURT: Okay.

6 MR. STARNES: Consent, Your Honor.

7 THE COURT: 104 is excused by consent.

8 105, Stanley Glover.

9 THE CLERK: That's the other one.

10 THE COURT: Transportation.

11 THE CLERK: Yes, sir, he has no transportation.

12 And he's got in here that he was convicted, but it just says
13 SDM. I don't know if that is simple possession of
14 marijuana. I'm not sure.

15 THE COURT: That would not disqualify him.

16 THE CLERK: No, sir, it would not.

17 THE COURT: So he would come in. We have to
18 provide him transportation.

19 THE CLERK: Yes, sir.

20 THE COURT: 107, Robert Hagberg. Deceased.

21 That's a pretty good excuse.

22 THE CLERK: Yes, sir, we have a death certificate
23 copy.

24 THE COURT: Both sides agree.

25 MR. COLER: Yes, sir.

1 THE COURT: 107.

2 110, James Hammond. Served as a juror in February
3 of 2006. Have y'all been able to verify it?

4 THE CLERK: Yes, sir, he did. He served February
5 13th through February the 15th on a General Sessions case.

6 THE COURT: All right. He's entitled to -- he's
7 not required to serve more than once every three years, so
8 he would be excused.

9 Do you agree?

10 MR. STARNES: I agree, Your Honor.

11 MR. COLER: Yes.

12 THE COURT: 110 is excused by consent.

13 122, David Hodges. He says he's a resident of
14 Alabama.

15 THE CLERK: Yes, sir, he surrendered his South
16 Carolina license in 2001, with the Alabama address.

17 THE COURT: State?

18 MR. COLER: We consent.

19 THE COURT: Defense?

20 MR. STARNES: I consent, Your Honor.

21 Consent all the way down to 162, if the State
22 would.

23 MR. COLER: The same for us, Your Honor.

24 THE COURT: Okay.

25 THE CLERK: She is a school bus driver, Your

1 Honor, number 162.

2 THE COURT: Number 162 is a school bus driver.
3 She's entitled to be transferred, if she wishes.

4 MR. STARNES: I can't agree with that, Your Honor.
5 She's a bus driver. They have substitute bus drivers. I
6 drove a school bus.

7 THE COURT: Statute. The statute. The statute
8 says school bus driver or school employee.

9 MR. STARNES: What statute is that, Your Honor?

10 THE COURT: I can tell you I transfer them all the
11 time, but we will look it up, but it specifically says
12 school bus driver. How are the kids going to get to school?
13 I know that sometimes they have substitutes, but they can
14 get substitute teachers too, but they are entitled to be
15 transferred. They are entitled to be transferred, not to be
16 excused. We will look it up, but let's go on to the next
17 one then.

18 MR. STARNES: Yes.

19 THE COURT: 173, Grover Martin, age 84. Do you
20 agree with that one?

21 MR. COLER: Yes, Your Honor.

22 THE COURT: Defense?

23 MR. STARNES: Agree, Your Honor.

24 MR. COLER: We consent all the way down to 271.

25 THE COURT: I don't know if he's had a chance to

1 look that far.

2 How about 190, Samantha Molnar. Small children.

3 THE CLERK: She's a stay-at-home mom and she has
4 four small children.

5 THE COURT: Okay. What's your --

6 THE CLERK: Ages one, two, three -- let's see, I
7 didn't write this. Two, six, four, and six months.

8 MR. STARNES: Your Honor, I'm sorry, where are we
9 at now?

10 THE COURT: We are on 190.

11 THE CLERK: 190.

12 MR. STARNES: Consent.

13 THE COURT: Consent.

14 196, Danielle Motley, resident of Spartanburg
15 County. We can look her up over here.

16 THE CLERK: Yes, sir, she lives at 2479 Country
17 Club Road, Spartanburg.

18 THE COURT: Position?

19 MR. COLER: We consent.

20 MR. STARNES: Consent, Your Honor.

21 THE COURT: 197, Alissa Mott, resident of Richland
22 County.

23 THE CLERK: Yes, sir, we have a confirmed address
24 with the license change of address for Richland County,
25 Irmo.

1 THE COURT: Position of the State?

2 MR. COLER: We consent, Your Honor.

3 THE COURT: Defense?

4 MR. STARNES: Consent.

5 THE COURT: Excused.

6 201, Rodney Mullens. Doctor's excuse.

7 THE CLERK: Yes, sir. And, in fact, if you looked
8 at 201, it's about 30 pages of his orthopedic permanent and
9 total disability evaluation.

10 THE COURT: All right.

11 THE CLERK: He sent us his whole file.

12 THE COURT: What's the position of the State?

13 MR. COLER: We consent, Your Honor.

14 THE COURT: Defense?

15 MR. STARNES: Consent.

16 THE COURT: 202, Donald Munsch. Medical.

17 THE CLERK: Yes, sir. Yes, sir, we have a
18 statement from the Department of Veteran Affairs in
19 reference to his disability. He's on psychotherapy. I
20 can't read these things, judge. It's just he is under
21 treatment for depression, war, and back pain. Too many
22 triggers. I guess he has post traumatic stress.

23 MR. COLER: We will consent, Your Honor.

24 THE COURT: Defense?

25 MR. STARNES: Your Honor, is it possible we could

1 bring this juror in and talk to him?

2 THE COURT: I think I can. Let me look and see if
3 I have any more information. It says he's one hundred
4 percent disabled veteran, but -- let's see. Post traumatic
5 stress disorder, secondary depression, chronic back pain,
6 difficulty with movement, leg pain.

7 Do you still wish to have him brought in?

8 MR. STARNES: Yes, sir, I would like to talk to
9 him.

10 THE COURT: We will allow him to -- require him to
11 be brought in.

12 All right. 204. That's Michael Myers. Convicted
13 of financial transaction card fraud.

14 THE CLERK: Yes, sir. And he did serve time, Your
15 Honor, but I have not been able to get a copy of that in the
16 short time I have been able to go through these things.

17 THE COURT: Position of the State?

18 MR. COLER: We will consent, Your Honor.

19 THE COURT: Defense.

20 MR. STARNES: Your Honor, could I see the
21 paperwork? I do not have it.

22 THE CLERK: You don't have 204?

23 MR. STARNES: No.

24 THE COURT: They don't have the paperwork on him.
25 They are saying he did serve time.

1 THE CLERK: No, sir, I don't have the confirmation
2 on his thing here. He was sentenced -- he was convicted for
3 credit card fraud in Richland County, and they are getting
4 the files for me.

5 THE COURT: We will look him up and see if we got
6 anything. If he was convicted of financial transaction card
7 fraud, that would be a disqualification.

8 THE CLERK: Yes, sir.

9 THE COURT: 225, Jennifer Reeves, resident of
10 Indiana.

11 THE CLERK: Yes, sir. Her driver's license from
12 South Carolina was surrendered in 2001, with a change to
13 Indiana.

14 THE COURT: Position of the State?

15 MR. COLER: Consent.

16 THE COURT: Defense?

17 MR. STARNES: Consent.

18 THE COURT: 225 is excused.

19 239, Elaine Rowe. She lives in Calhoun County.

20 THE CLERK: Yes, sir, that address, 217 Bates
21 Court in Gaston is in Calhoun County.

22 THE COURT: It's actually in Calhoun County.

23 THE CLERK: Yes, sir, it's actually in Calhoun
24 County.

25 THE COURT: Position of the State?

1 MR. COLER: Consent, Your Honor.

2 THE COURT: Defense?

3 MR. STARNES: Consent, Your Honor.

4 THE COURT: All right. 267, Jennie Starnes.
5 Unable to locate. Age 84, in any event?

6 THE CLERK: Yes, sir.

7 MR. STARNES: Consent.

8 THE COURT: 270, Steven Stroman, resident of
9 Berkeley County.

10 THE CLERK: Yes, sir, we do have a change of
11 address forwarding order and it is in Berkeley County.

12 THE COURT: State?

13 MR. COLER: We consent.

14 THE COURT: Defense?

15 MR. STARNES: Consent, Your Honor.

16 THE COURT: He's excused.

17 271, Tobias Stump.

18 THE CLERK: Yes, sir.

19 THE COURT: It says he's disabled, stay-at-home
20 dad.

21 THE CLERK: Yes, sir. He has -- the child -- the
22 children are two, four, and ten months. He stays at home,
23 disabled, and the momma works.

24 THE COURT: All right. Position of the -- he
25 would be entitled to an exemption.

1 Position of the State?

2 MR. COLER: We will consent, Your Honor.

3 THE COURT: Defense?

4 MR. STARNES: Consent, Your Honor.

5 THE COURT: He would be excused by consent.

6 282, Linden Thomas.

7 THE CLERK: Yes, sir, that's the one I was telling
8 you about this morning. We got the envelope back. I made a
9 copy of the envelope. We clocked it in -- or I should say
10 my staff apparently clocked it in at 2:33 on the 30th, where
11 we just now got it back from the post office as being unable
12 to forward. Attempt not known. The sheriff's department
13 nor myself knew anything about this.

14 THE COURT: Yes, sir, do you have something?

15 OFFICER HITE: For Linden Thomas?

16 THE COURT: Yes, sir.

17 THE CLERK: You got something on her now?

18 OFFICER HITE: Linden Thomas, 282, I served.

19 THE CLERK: When did you serve her? We just got
20 this back.

21 OFFICER HITE: I served a blank packet on him on
22 the 30th.

23 THE CLERK: On the 30th?

24 OFFICER HITE: Uh-huh.

25 THE CLERK: You are good. You found out before I

1 did.

2 OFFICER HITE: You should have had that. I served
3 him on the 30th.

4 THE COURT: We don't have a request. We will see
5 him on Monday. We haven't got a request to excuse him, so
6 we will see him Monday.

7 THE CLERK: We may have to get the deputy to go
8 back out and tell him to come in, Your Honor.

9 THE COURT: All right. Well, deputy, if you could
10 do that, please, let him know he's got to be there Monday at
11 9:30.

12 OFFICER HITE: Yes.

13 THE COURT: All right. Next, 287, Stephanie
14 Turbeville. Teacher at Midway Elementary.

15 State?

16 MR. COLER: Consent.

17 THE COURT: Defense?

18 MR. STARNES: Consent.

19 THE COURT: 287 is excused by consent.

20 Michael Myers has got a conviction. She's looked
21 it up on the Internet, for the Fifth Judicial Circuit, which
22 is Richland County. It's included, and he's got a financial
23 transaction card theft. Is that right?

24 THE CLERK: Yes.

25 THE COURT: She's got that. So that would

1 disqualify him. I believe you will agree. State?

2 MR. COLER: Yes, sir.

3 THE COURT: Defense?

4 MR. STARNES: Yes, sir, I agree, Your Honor.

5 THE COURT: Let's go to the next page. Diane
6 Turkett, number 288, caregiver of two persons over 65 years
7 of age. I don't know about that one.

8 What have you got on that one?

9 THE CLERK: That's -- she does take care of --
10 she's got the sole responsibility and care of two people
11 over the age of 65 she has to provide for, and I didn't know
12 if that fell under the caregivers.

13 THE COURT: We will see her on Monday.

14 THE CLERK: Yes, sir.

15 THE COURT: She has got to show that, you know,
16 they can't get by without her. I mean, there is no way that
17 you can get it just because you got two people over 65. I'm
18 65, for God sakes, and nobody to take care of me.

19 THE CLERK: Do you need me to take care of you?

20 THE COURT: 294, Mary Violette. It says Richland
21 County and aged 68.

22 MR. COLER: We consent.

23 THE COURT: Defense consents?

24 MR. STARNES: Consent to her and 295.

25 THE COURT: And 295.

1 How about the State on 295?

2 MR. COLER: Yes.

3 THE COURT: Also. So 295 also is excused by
4 consent.

5 296, Natshea Walker. It says small child and
6 moving out of state on October 31st. She left yesterday. I
7 don't know if we got her or not.

8 What's the position of the State?

9 MR. COLER: We consent, Your Honor.

10 THE COURT: Defense?

11 MR. STARNES: Consent.

12 THE COURT: Consent.

13 306, Leslie West, who is a doctor with a work
14 problem.

15 THE CLERK: Yes, sir. She has her -- she has a
16 family -- she's a family physician with Lexington Family
17 Practice, and she said she is a busy physician. She sees 25
18 to 30 patients a day. And to reschedule the schedules would
19 cause a problem with patients.

20 THE COURT: Leslie West.

21 THE CLERK: Leslie West.

22 THE COURT: What's the position?

23 MR. COLER: We will consent, Your Honor.

24 THE COURT: You consent?

25 MR. COLER: State consent.

1 THE COURT: Defense consent?

2 MR. STARNES: Consent.

3 THE COURT: What we will do is transfer Dr. West
4 and let her make arrangements to have somebody appear for
5 her case load one week. They consent to excuse her from
6 this term, though.

7 312, Bradley Whitmill. Moved to Richland -- he
8 lives in Richland County.

9 THE CLERK: Yes, sir. We have a change of address
10 filed on his driver's license in 2005.

11 MR. COLER: We consent.

12 THE COURT: Defense?

13 MR. STARNES: Consent to 312, 315, 319, with the
14 exception of 324.

15 THE COURT: All right. How about State as to 319?
16 We've got an affidavit, unable to locate on Stephen Windish.

17 MR. COLER: We will consent, and also to 315.

18 THE COURT: Okay. So 315 is also excused by
19 mutual consent.

20 324, Walter Brent Yarborough. Reservations
21 confirmed.

22 THE CLERK: Yes, sir. He is supposed to arrive at
23 Little Rock. I have got the confirmations. North Little
24 Rock, Arkansas. He's supposed to arrive there on Tuesday,
25 November the 6th. His departure back to Columbia, I guess,

1 is November the 8th.

2 THE COURT: Why is he gone, does he say that?

3 THE CLERK: It's a work-related thing. Do you
4 think that was his? We have had so many of them file these,
5 Your Honor.

6 I apologize, Your Honor. I wasn't a part of his
7 Travelocity trip plan, and it says he's to board -- his
8 boarding pass is Sunday, November the 4th. He is to depart
9 the Columbia Metropolitan Airport at 5:25 p.m.. He will go
10 from there to Memphis, Tennessee. Then from Memphis and
11 arriving at Little Rock.

12 THE COURT: All right. Apparently he has
13 reservations to fly out Sunday afternoon and come back later
14 in that week.

15 What's the position of the State?

16 MR. COLER: We will consent, Your Honor.

17 THE COURT: Defense?

18 MR. STARNES: Consent.

19 THE COURT: Consent.

20 Here's the bus driver statute, Mr. Starnes. Let
21 me read that to you. It starts at Section 14-7-845.
22 Postponement of jury service to students and school
23 employees, It's part B of that section. "If a school
24 employee selected for jury service during the school term
25 requests, his service must be postponed to a date that does

1 not conflict with the school term. For purposes of this
2 subsection, a school employee is a person employed as a
3 teacher, certified personnel at the building level, or bus
4 driver by a school, a school system, or a school district
5 offering educational programs."

6 MR. STARNES: Consent.

7 THE COURT: Yes, sir.

8 THE CLERK: That's number 162 consented to by the
9 State and the defense?

10 MR. COLER: Yes, sir.

11 MR. STARNES: Yes, sir.

12 THE COURT: All right. Does that take care of
13 them now?

14 THE CLERK: Yes, sir.

15 They do have a copy of the ones they both
16 consented to.

17 MR. COLER: Judge, could we do one quick
18 housekeeping matter? At lunchtime we got a call from Dustin
19 Harris on the hair and blood that was sent to NMS. The hair
20 has been tested. We got the results. I think Mr. Starnes
21 has got a copy of that. If he didn't, I'll give him a copy
22 of mine as well. SLED tox has sent that to us this morning.
23 The blood is still up there and is being tested.

24 Mr. Starnes' toxicology expert, Dr. Mason, would
25 like to take physical custody of the hair that is at NMS and

1 perform additional tests by himself. . He wouldn't tell SLED
2 toxicologists what those tests are.

3 He also wants the blood transferred to his account
4 so he can, I guess, participate in the testing of that
5 blood.

6 Judge, I think the reason we sent it to their hand
7 picked independent third-party lab is to let them do the
8 tests and we all live with the results of that tests. So we
9 are objecting at this point to do anything more with the
10 hair. We have bent over backwards to accommodate that.

11 And as far as the blood being transferred to his
12 account, again, SLED tox has sent a letter, and I have got a
13 copy of it for the court, asking NMS officials to speak to
14 Dr. Mason and let him be part of the testing process.
15 Anything more than that I think, judge, is above and beyond
16 what the State is required to do. We bent over as far as we
17 can to accommodate Mr. Starnes.

18 THE COURT: Well, I think that's all that was
19 requested, that he be able to have some input into that,
20 they talk with him, that he be able to talk with them, put
21 in his account.

22 My understanding was that that blood sample, dry
23 blood sample, would be used -- probably used up in the
24 testing anyway up there.

25 MR. COLER: That's right.

1 THE COURT: So, in any event, I think that's all
2 that was asked, and if they have done that.

3 Now, insofar as the hair sample is concerned, that
4 was done by consent. It was sent off and the results gotten
5 back. And now what is the defense requesting with regard to
6 the hair sample?

7 MR. COLER: He wants to take physical custody of
8 the hair sample. Dr. Mason wants to take physical custody
9 of that hair and perform additional tests on it himself.

10 Again, we sent it to their selected third-party
11 lab. The tests have been done. I told SLED not to release
12 that hair to him, but I'll certainly do whatever the court
13 wishes.

14 THE COURT: I don't know. I think that's
15 something that you better take up with -- this is all new.
16 He is wanting more and more. You know, that's not -- we had
17 it worked out and that was done, and now more is being
18 requested. And so the concern I have is about the custody
19 of the evidence and the State has -- SLED has custody of the
20 evidence. It's been sent off and sent back.

21 MR. COLER: It's still at NMS, and it's probably
22 on its way --

23 THE COURT: Still at NMS?

24 MR. COLER: So it's probably on its way back here
25 to SLED so they can retain custody until the trial.

1 THE COURT: Well, let me say this. If that's what
2 you want to do, we better take it up maybe Monday, or so, or
3 whenever we can.

4 My suggestion is bring the expert in, let me hear
5 from him on why he thinks it's necessary to do that what
6 he's going to do, because we will need to know that. This
7 is all outside of everything that we have agreed to all the
8 way through and up until we even concluded yesterday. We
9 talked, our conference call late yesterday afternoon.
10 There's never been any request that the evidence be turned
11 over to him individually, their expert, only to be sent off
12 to the lab for testing, and that was done, and the lab of
13 your choosing, Mr. Starnes.

14 So now at this junction he wants to now have the
15 physical evidence turned over to him individually to test.
16 I don't know if he's qualified to test it or not. I -- I
17 think we need to have a little hearing on that to make some
18 kind of determination.

19 MR. STARNES: Your Honor --

20 THE COURT: Otherwise I'm not comfortable with
21 just simply turning it over to somebody without knowing
22 what's going to be done. So I think you would need to bring
23 him in and let's have a little hearing down there sometime
24 Monday.

25 MR. COLER: Yes, sir.

1 MR. STARNES: This is the first I have heard of
2 this.

3 THE COURT: Okay.

4 MR. STARNES: My understanding --

5 MR. COLER: I just got a call from Dustin Smith,
6 the toxicologist we spoke to on the phone yesterday. He had
7 talked to Dr. Mason today and advised me at lunchtime that's
8 what Dr. Mason was asking him to do. And I told him to
9 hold -- sit tight, do not release anything and do not
10 transfer anything.

11 THE COURT: That's evidence in the case. It can't
12 just be turned over to him, you know, so we are going to --
13 no, not by his request. I think the court would have to
14 make some determination before we do that.

15 So if you want to try to set up a hearing maybe
16 Monday, or so, or Tuesday, whenever we can agree to do it,
17 whenever he's available, we would have to hearing on it and
18 let him tell us why, if that's what you want to do.

19 It's your case. It's not his, so -- Mr. Starnes,
20 so you can make whatever motions that you want. But that's
21 all new and that's not come out before. Apparently not even
22 you are aware of it.

23 MR. STARNES: No, sir, judge, I'm not aware of it.

24 The only thing what I was getting at when we were
25 having the conference call was the sample being transferred

1 to his account. He actually doesn't do the testing.

2 THE COURT: That's fine. Isn't that -- is that
3 not what they did? What did they do?

4 MR. COLER: They sent a letter to NMS, directed
5 NMS officials to speak freely with Dr. Mason about the test.
6 It's still in SLED's account. SLED is going to pay for the
7 test. SLED is going to retain custody of it, retain control
8 of it. So it's still in SLED's account, but they have
9 authorized that lab up in Pennsylvania to speak to Dr. Mason
10 about the test.

11 THE COURT: Well, the questions is then whether
12 they are going to speak with him on that basis or not,
13 simply on the letter, or whether they are going to require
14 him to be --

15 MR. COLER: I don't think -- I don't think that's
16 a problem. I think -- he's -- he's -- he's closely
17 associated or affiliated with those people there. They just
18 need an authorization from SLED, who submitted the sample,
19 so I don't think that's a problem.

20 My concern is putting the evidence in his account
21 number. Again, it creates another chain issue that --

22 THE COURT: Let's do this. We had agreed after
23 the conference call late yesterday that SLED would contact
24 the lab and authorize them to -- even though, it's on their
25 account from Dr. Mason, your expert, to discuss it with them

1 and have some input into it. He agreed to do that and they
2 did that. Now, let's see if that will not work. If that
3 will not work, then if there is still some limitations on
4 being able to get the information, let's broach that on
5 Monday.

6 MR. STARNES: Yes, sir.

7 THE COURT: And hopefully they are going to get
8 it. It would be just a question of getting the results, but
9 I think that's about the only thing we can do at this point.
10 We can maybe take it up Monday, if you want to make a motion
11 Monday, and bring Mr. Mason -- Dr. Mason in, if he wants to
12 come in and be heard on it. Let's see what's going on.

13 MR. STARNES: Yes, sir.

14 THE COURT: And also see if he's going to be able
15 to have input in the testing or not, or if there is still
16 some restriction on that. And then we can take it up and
17 see what we need to do.

18 MR. STARNES: I haven't talked with him. I have
19 been -- I wasn't even in the facility yesterday until late
20 yesterday evening, so I haven't even talked to him about it.

21 THE COURT: Well, let's do that, and you can make
22 whatever motion you want to make on Monday. If you want to
23 bring him in and see if he can come in Monday or Tuesday,
24 whatever, and provide input to the court, we can do that.

25 MR. STARNES: Yes, sir, Your Honor.

1 THE COURT: We can do that down there, put it on
2 record down there.

3 MR. COLER: Yes, sir.

4 THE COURT: All right. Anything else we need to
5 address today?

6 MR. COLER: No, sir.

7 I was just telling Mr. Starnes if you don't have a
8 copy of the results of the hair sample testing, I would be
9 glad to fax that to you tomorrow. We got --

10 MR. STARNES: If he will e-mail it to me. I don't
11 have access to a fax. If he'll just e-mail it, I'll get it.

12 THE COURT: Can y'all e-mail and scan it?

13 MR. COLER: I think Dustin Smith was going to
14 e-mail him some e-mails to him last night. If you didn't
15 get it, just let us know.

16 MR. STARNES: I may have already gotten it. I
17 haven't -- I have been so busy, I haven't even checked my
18 e-mails.

19 THE COURT: You can check and see if your mother
20 received it by e-mail, and then we can -- whatever you want
21 to take up on Monday, we can do that on Monday.

22 MR. COLER: Yes, sir.

23 THE COURT: All right. I think -- I hope that
24 that would be enough time. If not, I guess maybe you can
25 get in touch with him tomorrow, or get some type of

1 conference here. I'm going to be here in the morning. I
2 don't know how long I'm going to be here tomorrow, but I
3 will be here in the morning for sure, so you can always get
4 in touch with me here, if that's an issue.

5 MR. STARNES: Yes, sir.

6 THE COURT: We maybe could do something by
7 conference call again, like we did yesterday afternoon.

8 MR. COLER: Yes, sir.

9 MR. STARNES: One other thing I would like to put
10 on the record, Your Honor. I haven't discussed this with
11 Mr. Gowdy. There has been some communication that I think
12 with Mr. Delgado and maybe Mr. Nettles, and I think since we
13 are this far into this situation, going into a trial, I
14 would just like to note for the record that I have had my
15 attorneys try to communicate settling this case without
16 going to trial.

17 I would be willing to discuss a plea with Mr.
18 Gowdy's office. However, I cannot and will not plead to
19 anything with malice aforethought.

20 If they would consider maybe a plea to a lesser
21 offense, or something that we might could come to a
22 conclusion on, I would be willing to discuss that with the
23 solicitor's office. But at this point, Your Honor, there
24 has been no offer made from the State regarding a plea in
25 this case, and I just would like the record to reflect that.

1 I know this is kind of blatant to say, Your Honor,
2 I have studied this case for a long time, probably a lot
3 longer than Mr. Nettles and Mr. Delgado has the whole time
4 they have been involved in this case, but I feel certain,
5 and I say this with a lot of confidence, and this is a lot
6 to bite off, but I feel certain when this case is over with,
7 if we go all the way through a jury trial, that I feel
8 certain that this jury will possibly convict me of a lesser
9 offense rather than murder. And in the event that that
10 happens, I would --

11 THE COURT: Well, I don't know if they will have
12 the opportunity to convict you of something less. I don't
13 think that issue was submitted to the jury last time, was
14 it, counsel?

15 MR. COLER: Manslaughter was charged, I believe,
16 Your Honor.

17 THE COURT: Pardon me?

18 MR. COLER: I believe manslaughter was charged.

19 THE COURT: Voluntary manslaughter was charged?

20 THE CLERK: Yes, sir, voluntary manslaughter was
21 charged.

22 THE COURT: I haven't read the charge. I was
23 saving that to work on this weekend, but -- okay. That was
24 submitted. All right.

25 MR. STARNES: But anyway --

1 THE COURT: I stand corrected then. It was
2 submitted.

3 MR. STARNES: You know, I understand criminal
4 defendants don't get punished for taking their case to trial
5 and receiving excessive punishment for going to trial, but
6 in the event, Your Honor, that we get --

7 THE COURT: I don't want to discuss sentences with
8 you, Mr. Starnes, because I'm not -- I'm not bound by
9 anything anybody has done when it comes to sentencing. That
10 would be solely my discretion.

11 I'm not going to listen to anything at this point
12 in time that would affect whatever sentence I might render
13 in this case, and I don't want anything to be said or done
14 that would have any effort to impact that. That's something
15 that I could only decide after I have heard all the
16 testimony and evidence in the case and that sort of thing.
17 If the jury were to convict you of anything, including a
18 lesser offense, then I would have to make that decision
19 based on all I have heard and your record and everything
20 else I heard at that time. I'm certainly not in a position
21 to do it now, and I really don't want to listen to any
22 arguments about that at this time.

23 I'll be glad to listen to any argument -- if the
24 jury were to convict you of anything, I would be glad to
25 listen to your arguments at that time about sentencing or

1 what you think the appropriate sentence is, but I certainly
2 don't want to get into that now from either side. That's
3 way premature.

4 So, insofar as discussing any kind of plea
5 negotiations, then obviously you and the State are free to
6 do that. If you want your attorneys involved in that, if
7 they -- if you request that they be involved in it, that
8 negotiation would help you with that negotiation or
9 understand that, or anything about the negotiations or what
10 were the ramifications of that, hopefully they would be able
11 to give you input on that, but if you are wanting to discuss
12 it with them, you certainly are able to do that. I don't
13 have any control over that whatsoever.

14 It's up to the State, if they wish to make an
15 offer, or if you want to approach them about discussing it,
16 you certainly can do that. Then it's up to them. I feel
17 sure that they will probably want to talk to the alleged
18 victims families and that sort of thing in making their
19 decision they want to make, but that's something that you
20 are certainly welcome to discuss, and I would encourage you
21 to do that, but at the same time that does not affect the
22 court, and I don't have any control over that. Only the
23 State can make a plea bargain offer. The court cannot be
24 involved in that. So I certainly would encourage you to
25 explore that, if there is any possibility of exploring

1 something that both sides can agree to, but I don't have any
2 control over that whatsoever. So if you want to discuss it
3 with them, you make the attempt to do that, but I'm not
4 involved in that.

5 If you -- if you were to reach some kind of
6 agreement about that and then you bring it to me and I
7 decide whether I was going to accept it or not, then I
8 certainly would be willing to talk to you about it, if you
9 reached some kind of agreement, but I can't have any
10 involvement with it in the meantime. But I certainly would
11 encourage you, if you want to talk about it, to talk about
12 it, and that's a matter between the State and the defense.
13 Okay?

14 MR. STARNES: Yes, sir.

15 THE COURT: All right. Anything else?

16 MR. STARNES: I believe that's it, Your Honor.

17 THE COURT: Thank you.

18 MR. COLER: Thank you, Your Honor.

19 (END OF REQUESTED TRANSCRIPT OF RECORD)

20

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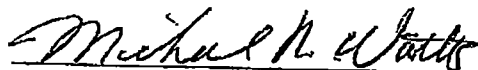
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CERTIFICATE

I, the undersigned, Michael R. Watts, Official Court Reporter for the Sixteenth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of the proceedings had and the evidence introduced in the trial of the captioned case, relative to appeal, in the Court of General Sessions for LEXINGTON County, South Carolina, on the 1ST day of NOVEMBER, 2007.

I do further certify that I am neither of kin, counsel nor interest to any party hereto.

JANUARY 3, 2008



Michael R. Watts
Circuit Court Reporter

1 STATE OF SOUTH CAROLINA)
2 COUNTY OF LEXINGTON) IN THE COURT OF GENERAL SESSIONS

3
4 THE STATE)
5 -vs-) TRANSCRIPT OF RECORD
6 NORMAN EDWIN STARNES,) 1996-GS-32-3339
7 Defendant.) NOVEMBER 5, 2007
8) Lexington, South Carolina

9 (VOLUME I)

10 B E F O R E:

11 THE HONORABLE LEE S. ALFORD, JUDGE. ; and a jury.
12

13
14 A P P E A R A N C E S:

15 HAROLD "TREY" GOWDY, III, SOLICITOR
16 ROBERT P. COLER, ASSISTANT SOLICITOR
17 DERRICK BULSA, ASSISTANT SOLICITOR
ATTORNEYS FOR THE STATE

18 MR. NORMAN EDWIN STARNES,
DEFENDANT APPEARING PRO SE

19 JOHN DELGADO, ESQUIRE
20 APPEARING WITH THE DEFENDANT

21 WILLIAM NETTLES, ESQUIRE
22 APPEARING WITH THE DEFENDANT

23 Michael R. Watts
24 Circuit Court Reporter
25

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(PROCEEDINGS, November 5, 2007)

THE COURT: Please be seated, ladies and gentlemen.

Good morning, ladies and gentlemen of the jury panel. My name is Lee Alford. I'm a resident Circuit Court Judge of the Sixteenth Judicial Circuit, which is made up of York and Union Counties. It's my pleasure, and I have been assigned to a General Sessions term of court here in Lexington County, this term of court, and it's going to be my pleasure to work with you during this term of court.

Now, you have been summonsed for General Sessions Court. General Sessions Court denotes criminal court, as opposed to Common Pleas Court, which is known as civil court. So you have been summonsed for General Sessions or criminal court.

We want to express our appreciation to you for your being here today. We certainly understand that your being here requires a sacrifice on your part. We understand that your being here requires you to be away from your work, family, and other things that you feel are very important for you to be doing, but we deeply appreciate your being here, and we deeply appreciate the sacrifices that you will make to help make our Justice System work.

It has been said that jury service is probably the most important service that you can render your county,

1 state and nation in a time of peace. Our jury system is the
2 cornerstone of our system of justice in this country. We
3 simply cannot work as a justice system, and it will not work
4 without jurors, such as yourselves, who are willing to make
5 the sacrifices necessary to help make our justice system
6 work. Again, we deeply appreciate your being here. We
7 deeply appreciate the sacrifices that you are going to make
8 this week. We will do everything that we can to minimize
9 any inconvenience to you and work with you in any way that
10 we can.

11 I certainly want to commend the clerk's staff
12 here, who are excellent people, that do an outstanding job.
13 My experience with them has just been excellent. They have
14 done -- they are very well organized, do a great job. They
15 look after jurors pretty good, I think. Some counties I go
16 to, they don't look after the jurors quite as well with
17 snacks and drinks and try to accommodate you as well as they
18 try to do here, so I know that you are proud of this staff,
19 and I've really enjoyed working them, and I look forward to
20 working with them for the rest of the week.

21 Now, our purpose this morning is to determine your
22 general qualifications to serve as jurors in this court, and
23 the state law requires that I ask you certain questions and
24 get responses to those questions. And, frankly, some of
25 these questions are rather personal and I won't require you

1 to stand up in open assembly and respond.

2 First of all, all of the information that you
3 provide to the court today with regard to these questions,
4 or any other information that you provide to the court at
5 any time during jury qualification process, has to be under
6 oath, and it also has to be recorded by the court reporter.
7 My court reporter is down front. He is recording everything
8 that I say, and he is going to record all of the information
9 that you are going provide the court today, and all of that
10 information has to be under oath. So I'm going to ask, if
11 you will, at this time to all please stand and raise your
12 right hands.

13 Do you, and each of you, solemnly swear or affirm
14 that you will provide truthful and complete responses and
15 answers during this jury qualification process? If you
16 accept the oath, please indicate by saying I do.

17 JURY VENIRE PANEL: (Collectively said I do)

18 THE COURT: Thank you, ladies and gentlemen. You
19 may be seated.

20 Now, ladies and gentlemen, as I told you earlier,
21 the State law requires that I ask you these questions. The
22 responses to some of the questions may be rather personal.
23 And for that reason it is my policy not to require jurors to
24 stand up in open assembly and respond. What I would do
25 instead is ask that you listen very carefully as I go

1 through these questions. And if you think one, or more, of
2 these questions may apply to you, or you need to respond to
3 one, or more, of these questions, please come forward at the
4 appropriate time. That will be after I have asked you the
5 questions.

6 I will also go through the possible exemptions to
7 the jury service this week. And then at that time I'll give
8 you a chance to come forward and respond to these questions
9 down front next to the court reporter, where we can do that
10 with a little more privacy.

11 Now, here are the questions.

12 Is any member of the jury panel not a citizen of
13 the United States?

14 Is any member of the jury panel not a resident and
15 citizen of the County of Lexington, State of South Carolina?

16 Is any member of the jury panel unable to read,
17 write, speak, or understand the English language?

18 Does any member of the jury panel have less than a
19 6th grade education or its equivalent?

20 I would emphasize the word equivalent to you,
21 because even if you didn't go beyond the 6th grade in
22 school, you have otherwise worked, raised a family and taken
23 care of your affairs for a number of years, you probably
24 have at least a 6th grade education equivalent.

25 Again, if you think this question applies to you,

1 please come forward at the appropriate time.

2 Is any member of the jury panel incapable by
3 reason or mental or physical infirmities to render efficient
4 jury service?

5 Now, I would point out to you that minor physical
6 problems probably would not prevent your serving, because if
7 you get selected on the jury, we take frequent breaks and
8 you would not be required to sit on a jury for a long period
9 of time without taking a break.

10 But, again, if you think this question applies to
11 you, please come forward at the appropriate time.

12 Has any member of the jury panel been convicted by
13 guilty plea or a trial in a state or federal court of record
14 of a crime punishable by imprisonment for more than one year
15 and your civil rights have not been restored by pardon or
16 amnesty?

17 Let me explain to you what I mean by a crime
18 punishable by imprisonment for more than one year. If you
19 pled guilty to or were convicted after a jury trial of a
20 crime for which you could have received more than one year
21 in jail, regardless of the sentence that you actually
22 received, even if you were placed on probation, if you could
23 have received more than one year for that crime, please come
24 forward at the appropriate time.

25 Is any member of the jury panel a clerk or a

1 deputy clerk of court, constable, sheriff, or other
2 commissioned law enforcement officer, probate judge, county
3 commissioner, magistrate, or other county officer, or any
4 person employed within the walls of any courthouse? If so,
5 please come forward at the appropriate time.

6 Is there any member of the jury panel who has
7 previously served on jury duty in a court of record; that is
8 to say, circuit court? Not city court or magistrate court,
9 but circuit court, during the last three calendar years. If
10 so, please come forward at the appropriate time. You are
11 not required to sit on a circuit court jury more often than
12 once every three years.

13 Has any member of the jury panel served as a
14 member of the Lexington County Grand Jury during the last
15 two calendar years? If so, please come forward at the
16 appropriate time.

17 Now, ladies and gentlemen, that concludes the
18 questions. We now move to jury exemptions.

19 State law provides for several exemptions for jury
20 service. An exemption does not mean that you are not
21 qualified to serve. It simply means in most instances you
22 have the right to say I choose not to search.

23 For example, those of you who are 65 years of age,
24 or older, may be exempted from jury service as jurors. And
25 those of you who are 65 years of age, or older, represent a

1 pool of tremendous talent for jury service, and we would
2 urge you to serve this week, if you are inclined to do so,
3 but if you wish to be exempted, you may certainly do so.

4 Is there anyone on the jury panel who is 65 years
5 of age, or older, who wishes to be exempted from jury
6 service this week? If so, please come forward at the
7 appropriate time.

8 Now, if you are 65 years of age, or older, and you
9 are willing to serve this week, you need not come forward.

10 The next exemption deals with those of you who
11 have small children. Please listen very closely to this
12 exemption. It has several parts, all of which must apply
13 for you to be exempted on this basis.

14 You may be exempted from jury service if you have
15 a small child, or small children, under the age of seven
16 years and you have the legal custody of your child, or
17 children, and you have the principal care and custody and
18 control of your child, or children, and you are unable to
19 make arrangements for the adequate care of your child, or
20 children, while performing jury duty. If all of these
21 requirements apply to you, then you may be exempted on this
22 basis, but only if all of these requirements are present.
23 If this exemption applies to you and you wish to exercise
24 the exemption, please come forward at the appropriate time.

25 The next exemption involves those of you who may

1 be attending school at this time or are working in some
2 capacity with the school. Is there any member of the jury
3 panel who is a full-time student, school teacher, school
4 crossing guard, school bus driver, or serves in any other
5 school-related function who is unable to serve on jury duty
6 this week as a result of that school involvement?

7 If this exemption applies to you and you wish to
8 exercise the exemption, we will transfer your service to
9 another term of court at a time which will not conflict with
10 your school responsibilities.

11 Is there any member of the jury panel who is
12 employed with the South Carolina Department of Corrections?
13 If so, please come forward at the appropriate time.

14 Now, ladies and gentlemen, that concludes the
15 statutory lists of qualification questions and exemptions
16 for jury service. It may be that you are qualified and no
17 exemption applies to you, but jury service this week would
18 constitute an extreme hardship upon you for a particular
19 reason.

20 Now, I cannot permanently excuse a qualified juror
21 from jury service, but under extreme and compelling
22 circumstances I may excuse a juror from this term of court
23 and transfer the juror to another term of court,
24 particularly jurors who have not been previously
25 transferred.

1 Now, ladies and gentlemen, please recognize that
2 general inconvenience is not a sufficient basis to transfer
3 you to another term of court. To justify a transfer to
4 another term of court, service this week must constitute an
5 extreme hardship upon you for a particular reason that you
6 can give the court.

7 Now, ladies and gentlemen, now will be the
8 opportunity for those of you who need to respond to one, or
9 more, of the questions that I asked. If you wish to apply
10 for an exemption from jury service this week, or simply
11 discuss your service on the jury with the court, what I
12 would ask you to do is come to the center aisle and come
13 forward one at a time, as you may be directed.

14 (The following were on-the-record bench
15 discussions, out of the hearing of the jury venire panel,
16 but in the presence of all counsel and the defendant)

17 THE COURT: I invite everyone to come up.
18 Counsel, come back here, if you want to.

19 Gentlemen, y'all can come up, if you want to.

20 THE BAILIFF: Juror number 77, Your Honor.

21 (The following was a bench conference with Juror
22 Number 77)

23 THE CLERK: Troy Duke.

24 THE COURT: Yes, sir.

25 JUROR NUMBER 77: I'm a court liaison with the

1 Department of Juvenile Justice and we work out of the school
2 district. And also I'm a school representative, principal
3 within the school district.

4 THE COURT: So --

5 JUROR NUMBER 77: I'm scheduled to be out of the
6 U.S. Territory come Friday.

7 And I have a flight agenda from the school.

8 THE COURT: Okay. What else did you say that you
9 have?

10 JUROR NUMBER 77: It's the travel plans.

11 THE COURT: All right. I mean, that's something
12 that you printed off the Internet?

13 JUROR NUMBER 77: Well, that's for Associated
14 Marine Institutes.

15 We also have a company that came and now we are
16 looking to open up a new program, a residential program for
17 the state.

18 THE COURT: Are you affiliated with them, or the
19 school district?

20 JUROR NUMBER 77: Yes, sir, for Associated Marine
21 Institute. We are a contract. We have all the residents
22 programs and the Marine Institute's candidate program. It's
23 all on the same company. It's all associated with the
24 Marine Institute.

25 And that's just the Newberry Alternative Education

1 Program. We contracted with them also.

2 THE COURT: All right. Is this Affinity School of
3 Newberry, is that an alternative school?

4 JUROR NUMBER 77: Yes, sir.

5 THE COURT: The situation would be placed out in a
6 regular school setting?

7 JUROR NUMBER 77: Uh-huh, and they go there before
8 they go to the residential programs.

9 THE COURT: All right, sir. Just have a seat.
10 I'll let you know something in a little bit.

11 JUROR NUMBER 77: Yes, sir.

12 THE COURT: Thank you.

13 (Juror Number 77 returned to the jury venire
14 panel)

15 THE BAILIFF: Juror number 52, Your Honor.

16 (The following was a bench conference with Juror
17 Number 52)

18 THE CLERK: William Chavis.

19 THE COURT: Yes, sir, Mr. Chavis.

20 JUROR NUMBER 52: Your Honor, my problem is that I
21 have got a health issue. I just had to have blood Thursday,
22 two units. And back in June I had to have four units, plus
23 I'm 67, so --

24 THE COURT: You are 67?

25 JUROR NUMBER 52: Yes, sir.

1 THE COURT: All right. So you wish to be excused?

2 JUROR NUMBER 52: Yes, sir. I don't even feel
3 like being here.

4 THE COURT: All right.

5 JUROR NUMBER 52: I wanted to be here, but --

6 THE COURT: Okay. All right. This juror is 67
7 years of age. He's entitled to be exempted, so I'm going to
8 excuse you.

9 Thank you for coming, sir. You may be excused.
10 Just turn whatever you have back to the bailiff, if you have
11 a badge or anything.

12 JUROR NUMBER 52: All right.

13 THE COURT: Thank you.

14 (Juror Number 52 returned to the jury venire
15 panel)

16 THE BAILIFF: Juror number 320.

17 (The following was a bench conference with Juror
18 Number 320)

19 THE CLERK: Timothy Wingo.

20 THE COURT: Yes, sir, Mr. Wingo.

21 JUROR NUMBER 320: Strictly in full disclosure, I
22 was a moonlighting position at Kirkland Correctional
23 Institute for the first six months of this year. I
24 personally don't care about that as an exemption.

25 The other thing is I'm actually undergoing

1 shoulder surgery at six a.m. in the morning.

2 THE COURT: Shoulder surgery?

3 JUROR NUMBER 320: Yes, sir.

4 THE COURT: Okay. Have you got something from a
5 doctor or anything?

6 JUROR NUMBER 320: No, I don't. I'm pretty sure
7 y'all could find that out. I promise I wouldn't lie about
8 it.

9 THE COURT: Yeah. I mean -- okay. Well, we don't
10 check -- we require to bring it with you. We can't check up
11 on every juror that comes in.

12 JUROR NUMBER 320: I can bring it. I can get you
13 something back.

14 THE COURT: Let me get you to do this. If you can
15 get the doctor's office to fax something to the clerk's
16 office here.

17 JUROR NUMBER 320: Yes, sir.

18 THE COURT: She's going to write you the fax
19 number now. Fax something showing that you are scheduled
20 for surgery in the morning.

21 JUROR NUMBER 320: Sure.

22 THE COURT: If so, we will transfer you, but just
23 keep your seat out here until we tell you something else.

24 JUROR NUMBER 320: All right.

25 THE COURT: Keep your seat.

1 (Juror Number 320 returned to the jury venire
2 panel)

3 THE BAILIFF: Juror number 55, Your Honor.

4 (The following was a bench conference with Juror
5 Number 55)

6 JUROR NUMBER 55: I was incarcerated for -- I just
7 got out and I was sentenced to two and a half years, but I'm
8 on parole for a year and a half.

9 THE COURT: Okay. And your name, ma'am, was for
10 the record?

11 JUROR NUMBER 55: Tina Clark.

12 THE COURT: All right. Ma'am, I appreciate it.
13 We will excuse you. I appreciate your honesty. You are
14 free to go. Thank you.

15 JUROR NUMBER 55: Thank you.

16 (Juror Number 55 returned to the jury venire
17 panel)

18 THE BAILIFF: Juror number 76, Your Honor.

19 (The following was a bench conference with Juror
20 Number 76)

21 THE CLERK: Anne Draffin?

22 JUROR NUMBER 76: Yes.

23 THE COURT: Yes, ma'am.

24 JUROR NUMBER 76: I have been suffering with panic
25 attacks and anxiety disorders. I'm doing well today. I

1 don't know, you know, how my days we are going to be. I
2 have been doing well for the past week. I would not make a
3 big decision for my life right now. Maybe today I would be
4 able to do that. I'm willing to serve, and it looks like it
5 would be interesting to serve. I have never served before.
6 But then, again, if I wouldn't make a big decision for my
7 life, my question is would it be fair to make a decision for
8 someone else's?

9 THE COURT: Okay.

10 JUROR NUMBER 76: A big decision.

11 THE COURT: Are you seeing a therapist?

12 JUROR NUMBER 76: I went to a -- I see a doctor of
13 internal medicine. She sent me to a psychiatrist, but I
14 won't take medications. And she said "I don't know why they
15 sent you here." I'm allergic to almost everything. She
16 said "I don't know why they sent you here," but she give me
17 a list of things to do, and I have not seen a therapist. I
18 have been -- I have healing C.D.'s that I'm playing that
19 calm me.

20 My problem is mostly at night. It did move over
21 into my days, but my days -- I have not been attacked with
22 it in the last week in the daytime, but at nighttime I sleep
23 like one and a half hours and I wake up. I was waking up in
24 panic, my heart palpitating. Now I wake up anxious. My
25 heart might be beating fast, but it's not palpitating, so I

1 get like one and a half hours sleep. And if it's just
2 anxiety, I go right back to sleep and get maybe another one
3 and a half hours.

4 THE COURT: Could I get you to do this for me?

5 JUROR NUMBER 76: Certainly.

6 THE COURT: Could you get your physician, who is
7 the internist, to fax something to the clerk's office?

8 JUROR NUMBER 76: Well, I asked her to, and she
9 was supposed to, but she told me to have my psychiatrist do
10 it, but the psychiatrist is not seeing me. She said that
11 there is nothing she can do.

12 THE COURT: Well, see if we got anything from --
13 you know, if you are not actually a patient of the
14 psychiatrist, I'm sure the psychiatrist would not be willing
15 to do that, but your internist could probably do that.

16 JUROR NUMBER 76: Right. I called them and asked
17 them to do that.

18 THE COURT: Well, let's see if we got anything. I
19 think they are checking to see if they got anything. If
20 not, we need to get you to do that. We will give you a fax
21 number. We don't have anything.

22 THE CLERK: We never received anything.

23 THE COURT: Please, ma'am, if --

24 JUROR NUMBER 76: She's not willing to do it.

25 THE COURT: Okay. She's not willing?

1 JUROR NUMBER 76: She's not willing, because I
2 called her and asked her to and she told me to go through my
3 psychiatrist.

4 THE COURT: When did you see the psychiatrist?

5 JUROR NUMBER 76: Friday two weeks ago.

6 THE COURT: Two weeks ago?

7 JUROR NUMBER 76: Uh-huh, and she released me,
8 because there is nothing she can do.

9 THE COURT: All right.

10 JUROR NUMBER 76: The problem is I'm allergic.
11 You see, I used to take -- my internist gave me sleeping
12 medication, which took care of that. I mean, it was great,
13 and then I got allergic to it. So now I'm having to battle
14 it, you know, without medicine, you know.

15 THE COURT: Okay.

16 JUROR NUMBER 76: And I have done well in the past
17 week. If you want me to serve, it's fine with me.

18 THE COURT: Yeah.

19 JUROR NUMBER 76: I mean, it's kind of -- it's
20 interesting. I kind of would like to come back.

21 THE COURT: Let me ask you, if you were serving on
22 the jury all day long --

23 JUROR NUMBER 76: Uh-huh.

24 THE COURT: -- and for several days --

25 JUROR NUMBER 76: Uh-huh.

1 THE COURT: -- is that going to affect your --
2 would you be able to do that at all?

3 JUROR NUMBER 76: Yes, I would.

4 THE COURT: Do you think that you could do that?

5 JUROR NUMBER 76: I would be able to do that.

6 THE COURT: If you were required to make some
7 decision with regard to the -- that the jury normally has to
8 make.

9 JUROR NUMBER 76: If I'm --

10 THE COURT: Do you think that you can do that?

11 JUROR NUMBER 76: If I'm hyperventilating, I may
12 not retain as much information as I would if I'm relaxed.

13 THE COURT: I see.

14 JUROR NUMBER 76: Okay.

15 THE COURT: Okay. All right.

16 JUROR NUMBER 76: It's questionable.

17 THE COURT: Well, I'm going to give it some
18 thought. I'm going to ask you just to have a seat for right
19 now. I'll let you know something in just a little bit.

20 Thank you, ma'am.

21 JUROR NUMBER 76: Thank you.

22 (Juror Number 76 returned to the jury venire
23 panel)

24 THE BAILIFF: Juror 207, Your Honor.

25 (The following was a bench conference with Juror

1 Number 207)

2 THE COURT: Come up please, sir.

3 THE CLERK: Mr. Nix.

4 THE COURT: Give us your name.

5 THE CLERK: Mr. Nix. Thomas Nix.

6 JUROR NUMBER 207: Tom Nix.

7 THE COURT: Yes, sir.

8 JUROR NUMBER 207: I don't have any problem with
9 this week, sir, Your Honor, but next week I'm going to be in
10 Calhoun County. It's a custody hearing. It's going to be
11 Tuesday in Calhoun County.

12 THE COURT: Of next week?

13 JUROR NUMBER 207: Like I said, I don't know the
14 schedule.

15 THE COURT: Is this like a full-blown hearing, or
16 is this a temporary custody hearing?

17 JUROR NUMBER 207: It's the first hearing, to get
18 custody.

19 THE CLERK: Temporary hearing.

20 JUROR NUMBER 207: Three o'clock Tuesday.

21 THE COURT: Do you think that you can get this
22 postponed if we --

23 JUROR NUMBER 207: I don't know. I could call my
24 attorney.

25 THE COURT: Okay. How about doing that, if you

1 will. If it's a temporary hearing -- you know, if you were
2 set for a two or three day hearing, or something, we might
3 could work with that, but if it's a temporary hearing, maybe
4 they could reschedule it for a little bit later, but how
5 about talking with your attorney about that and --

6 JUROR NUMBER 207: Yes, sir.

7 THE COURT: -- maybe we can get an opportunity to
8 do that in just a little bit, and then let me know what he
9 says.

10 JUROR NUMBER 207: Yes, sir.

11 (Juror Number 207 returned to the jury venire
12 panel)

13 THE BAILIFF: Juror number 63, Your Honor.

14 (The following was a bench conference with Juror
15 Number 63)

16 THE CLERK: Walter Culbreth.

17 THE COURT: Yes, sir.

18 JUROR NUMBER 63: Yeah, back in 1982, I pleaded
19 guilty to a conspiracy to obtain money under false
20 pretenses, and I was sentenced to five years in prison, and
21 it was reduced to five years probation, with paying back
22 \$60,000 restitution.

23 THE COURT: Okay. Did you ever get a pardon or
24 anything?

25 JUROR NUMBER 63: No, sir.

1 THE COURT: All right, sir. Then we are required
2 to excuse you then. Thank you for coming in. You are free
3 to go.

4 JUROR NUMBER 63: Thank you.

5 (Juror Number 63 returned to the jury venire
6 panel)

7 THE BAILIFF: Juror 318, Your Honor.

8 (The following was a bench conference with Juror
9 Number 318)

10 THE CLERK: This would be Mr. Willingham, David
11 Willingham.

12 JUROR NUMBER 318: Yes, sir.

13 THE COURT: How are you doing, sir?

14 JUROR NUMBER 318: About ten years ago my wife was
15 falsely accused and indicted on federal charges and went
16 through a bad situation there with that. About \$50,000
17 later she was acquitted, and I just don't think the system
18 is fair.

19 THE COURT: All right, sir. Let me ask you -- and
20 I understand your situation with that.

21 Let me ask you, do you think in another case that
22 would come up here that you could listen to the testimony
23 and evidence in the case and the law as explained to the
24 jury by the court and render a decision, which would be fair
25 to both the State and the defendant?

1 JUROR NUMBER 318: No, sir, at this time I could
2 not.

3 THE COURT: All right. I'm not going to require
4 him to serve on this jury.

5 What I would ask you to do is transfer him to a
6 civil term of court, which would be different than a
7 criminal term.

8 JUROR NUMBER 318: All right.

9 THE COURT: All right.

10 JUROR NUMBER 318: Thank you, sir.

11 THE COURT: Sir, the last juror -- sir, just wait
12 around for a few minutes, if you will.

13 JUROR NUMBER 318: Thank you, sir.

14 THE COURT: Thank you.

15 (Juror Number 318 returned to the jury venire
16 panel)

17 THE BAILIFF: Juror number 92, Your Honor.

18 (The following was a bench conference with Juror
19 Number 92)

20 THE CLERK: Donna Fletcher.

21 JUROR NUMBER 92: Uh-huh.

22 THE COURT: Good morning.

23 JUROR NUMBER 92: Good morning. I'm asking
24 because I'm on disability, because I have medical
25 conditions. I have really bad migraines that I wake up with

1 in the morning and I have back problems. I have
2 fibromyalgia. That's why I have had trouble working. It's
3 like Friday and Saturday morning I woke up with them, and I
4 called Friday and said "what do I do if I can't even make it
5 Monday morning?"

6 That's my biggest concern is if I wake up in the
7 morning and I can't make it to court. I'm on lot of
8 medications. I'm on pain medicines now. I have trouble
9 sitting for long periods of time. I have back pain a good
10 bit, and that's my concern.

11 THE COURT: Who is your physician?

12 JUROR NUMBER 92: Dr. Henry Marks is who is
13 managing me mostly now. I have seen a lot of specialists
14 and that's how --

15 THE COURT: Okay.

16 JUROR NUMBER 92: When I went to court in March,
17 because I finally -- I have been disabled now for three and
18 a half years, and then I finally got approved. This was the
19 paper where I finally got disability and got on Social
20 Security.

21 THE COURT: Okay. Could you -- could you get your
22 physician to fax us a medical statement saying that he does
23 not believe that you are able to serve on the jury --

24 JUROR NUMBER 92: Yes.

25 THE COURT: -- and he believes that?

1 JUROR NUMBER 92: Yes.

2 THE COURT: And why you are not able to serve?

3 JUROR NUMBER 92: Yes.

4 THE COURT: Could you do that?

5 JUROR NUMBER 92: Yes.

6 THE COURT: We will give you a fax number.

7 JUROR NUMBER 92: Sure.

8 I was really -- I -- just with medical things, I
9 wouldn't want to be --

10 THE CLERK: That's my fax number.

11 THE COURT: If you will call your doctor. You can
12 go call your doctor and ask his office to fax this to the
13 clerk's office, because we need that information.

14 JUROR NUMBER 92: Okay.

15 THE COURT: And after you make your phone call,
16 just have a seat back in the jury panel.

17 JUROR NUMBER 92: Okay.

18 THE COURT: Okay?

19 JUROR NUMBER 92: Okay. Thank you.

20 (Juror Number 92 returned to the jury venire
21 panel)

22 THE BAILIFF: Juror 169, Your Honor.

23 (The following was a bench conference with Juror
24 Number 169)

25 THE CLERK: Martha Maddox.

1 JUROR NUMBER 169: Your Honor?

2 THE COURT: Yes, ma'am.

3 JUROR NUMBER 169: I have had spinal surgery and I
4 don't think that I'm going to be able to help you. I would
5 love to, but I'm still in a lot of pain, plus I can't sit
6 that length of time.

7 THE COURT: All right. Who is your physician,
8 ma'am?

9 JUROR NUMBER 169: Dr. Brett Gunner.

10 THE COURT: Could you get him to fax us a
11 statement concerning your condition --

12 JUROR NUMBER 169: Okay.

13 THE COURT: -- that you are not able to serve?

14 JUROR NUMBER 169: Are you talking about my family
15 physician?

16 THE COURT: Yes, ma'am.

17 THE CLERK: Excuse me, ma'am, you were born in
18 1927?

19 JUROR NUMBER 169: Right, I'm 80.

20 THE COURT: Okay. So you are over 65 then?

21 JUROR NUMBER 169: I'm 80.

22 THE COURT: All right. Okay. Well, you are
23 entitled to be excused on age, so --

24 JUROR NUMBER 169: Thank you. Thank you.

25 THE COURT: I'll excuse you. Thank you, ma'am.

1 Thank you for coming.

2 THE CLERK: Yes, ma'am. Thank you very much. I
3 appreciate it.

4 (Juror Number 169 returned to the jury venire
5 panel)

6 THE BAILIFF: Juror 242, Your Honor.

7 (The following was a bench conference with Juror
8 Number 242)

9 THE CLERK: Henry Rutland.

10 JUROR NUMBER 242: It's been a little over two
11 years ago. It's been a little less than three, but it's a
12 little over two years. I don't have a problem serving
13 again, but I was on -- I didn't get called for a criminal
14 case, but it was a civil case.

15 THE COURT: Let me tell you this. If, in fact,
16 you served in the last three years, you are entitled to be
17 excused today, but you are also entitled to serve. That's
18 an exemption that you could choose to take or not take.

19 What would you like -- do you want us to check and
20 see if you have served? And if you have served, do you want
21 to be excused, or are you willing to serve?

22 JUROR NUMBER 242: I'm willing to serve. That's
23 fine.

24 THE COURT: Then we will -- he will stay with the
25 jury panel. He's agreed to serve.

1 THE CLERK: All right.

2 THE COURT: Thank you.

3 (Juror Number 242 returned to the jury venire
4 panel)

5 THE BAILIFF: 167, Your Honor.

6 (The following was a bench conference with Juror
7 Number 167)

8 THE CLERK: Richard Lyttleton?

9 JUROR NUMBER 167: That's correct.

10 THE COURT: Yes, sir.

11 JUROR NUMBER 167: I'm 65 years, Your Honor. I
12 would like to exercise my option.

13 THE COURT: We would love to have you, but I
14 understand.

15 JUROR NUMBER 167: I appreciate it. I'm a pastor
16 of a church. I have got shut-ins and invalids and widows
17 depending on me, and I don't want to use that, but I will
18 use the 65.

19 THE COURT: All right. And you are free to go.
20 Thank you.

21 JUROR NUMBER 167: Thank you, sir.

22 (Juror Number 167 returned to the jury venire
23 panel)

24 THE BAILIFF: 265, Your Honor.

25 (The following was a bench conference with Juror

1 Number 265)

2 THE COURT: Yes, ma'am.

3 THE CLERK: Ms. Stanfield?

4 JUROR NUMBER 265: Yes.

5 THE CLERK: Okay.

6 THE COURT: Yes, ma'am.

7 JUROR NUMBER 265: I am a home school mom. I have
8 a 15 year old at home who would blow up the house. She says
9 "mom, if you can get off to the summer, that would be
10 great." So it's a request on her part.

11 THE COURT: What's the age of your children?

12 JUROR NUMBER 265: She's 15.

13 THE COURT: Ma'am, I'm not going to be able to
14 excuse you for that reason. That doesn't fall within an
15 exemption.

16 JUROR NUMBER 265: Will we be at home at night so
17 we can do the experiments?

18 THE COURT: For the most part I believe you will.
19 If you get selected on the jury, the jury is not going to be
20 sequestered, so you won't be kept overnight or anything, you
21 know.

22 JUROR NUMBER 265: That's what she's concerned
23 about.

24 THE COURT: Okay. Well, you are fine. Thank you,
25 ma'am.

1 JUROR NUMBER 265: Thank you, judge.

2 (Juror Number 265 returned to the jury venire
3 panel)

4 THE BAILIFF: 314, Your Honor.

5 (The following was a bench conference with Juror
6 Number 314)

7 THE CLERK: Phyllis Wicker.

8 THE COURT: Yes, ma'am.

9 JUROR NUMBER 314: Your Honor, I did not realize
10 my dates when I sent in my questionnaire. I sent in my
11 affidavit October 5th to ask to be excused. I'm on vacation
12 this week. It's paid for. We're actually were supposed to
13 leave for Saturday. I spoke to Crystal several times during
14 October. On Friday she told me they never received my
15 affidavit. I did not know that. I asked if I could fax it
16 in and she told me to be in here to talk to you.

17 THE COURT: Let's see what you got.

18 JUROR NUMBER 314: If I could just be recycled. I
19 don't mind serving. I just --

20 THE COURT: Do you work?

21 JUROR NUMBER 314: Yes, sir.

22 THE COURT: So you took time off from work to be
23 on vacation?

24 JUROR NUMBER 314: Yes, sir.

25 THE COURT: And what have you planned for

1 vacation?

2 JUROR NUMBER 314: I have got a cabin rented up in
3 Gatlinburg. Everybody left Saturday.

4 THE COURT: Except you?

5 JUROR NUMBER 314: Yes, sir.

6 THE COURT: Ma'am, let me think about it for a few
7 minutes and I'll look at it and I'll let you know.

8 JUROR NUMBER 314: Okay.

9 THE COURT: So your number was?

10 JUROR NUMBER 314: 314. I appreciate your
11 consideration.

12 THE COURT: I'll think about it and we will let
13 you know shortly.

14 JUROR NUMBER 314: Okay.

15 (Juror Number 314 returned to the jury venire
16 panel)

17 THE BAILIFF: Juror 183, Your Honor.

18 (The following was a bench conference with Juror
19 Number 183)

20 THE COURT: Yes, ma'am.

21 JUROR NUMBER 183: I apologize for asking. I love
22 juror duty, but I'm a teacher and my students have final
23 exams. I teach chemistry in high school.

24 THE COURT: Do you wish to be transferred?

25 JUROR NUMBER 183: To the summertime. I still

1 want to do it.

2 THE COURT: Okay.

3 JUROR NUMBER 183: June or July is wonderful for
4 us.

5 THE CLERK: Ms. McNeill, is that correct?

6 JUROR NUMBER 183: Yes.

7 THE COURT: All right. We will transfer you to a
8 summer term.

9 JUROR NUMBER 183: Thank you.

10 THE COURT: During the summer. Okay.

11 Let me ask the clerk if she -- will y'all send her
12 something?

13 THE CLERK: Yes. I apologize, judge, you will
14 receive something in the mail.

15 THE COURT: You are free to go. You are
16 transferred. You will get a new summons.

17 (Juror Number 183 returned to the jury venire
18 panel)

19 THE BAILIFF: 249, Your Honor.

20 (The following was a bench conference with Juror
21 Number 249)

22 THE CLERK: Ms. Shealy.

23 THE COURT: Yes, ma'am.

24 JUROR NUMBER 249: I work at the Gilbert Middle
25 School, head cashier in the lunchroom. Part of my job as

1 the manager, I had to go by there this morning on my way
2 here. They don't know --

3 THE COURT: You don't think there is anybody that
4 could do your job while you are serving on jury duty?

5 JUROR NUMBER 249: I don't think for every day,
6 maybe. But this job is going to be back tomorrow and there
7 is no way I could be here. I have to collect the lunch
8 money.

9 THE COURT: All right, ma'am. But there is nobody
10 else that can do that if you are not there? That's what I'm
11 asking.

12 JUROR NUMBER 249: No, sir. She's just now
13 starting to --

14 THE COURT: What would happen if you were sick or
15 something, like three or four days sick? What would happen?

16 JUROR NUMBER 249: Because I'm getting her trained
17 now for my backup.

18 THE COURT: All right. I'll think about it. Just
19 have a seat for how, if you will, and we will let you know
20 something.

21 JUROR NUMBER 249: Okay.

22 (Juror Number 249 returned to the jury venire
23 panel)

24 THE BAILIFF: Juror number 80, Your Honor.

25 (The following was a bench conference with Juror

1 Number 80)

2 THE COURT: Can I get your name, please, ma'am?

3 JUROR NUMBER 80: Karen Elia, E-L-I-A.

4 THE COURT: Yes, ma'am.

5 JUROR NUMBER 80: I have a five year old and a
6 seven year old and I have had difficulty trying to get
7 arrangements for after school. So I -- my transportation
8 today, they had to go out of town unexpectedly, and
9 that's -- I need to pick them up. I'm the one that picks
10 them up every day and takes care of them in the afternoon.

11 THE COURT: So have you got somebody to do it
12 after today?

13 JUROR NUMBER 80: Hopefully. I can't guarantee.
14 If they come back today, yes, then I will. It's my parents.
15 They had to go out of town unexpectedly. So depending on
16 when they get back, then I can hopefully serve, but I can't
17 guarantee that.

18 THE COURT: Is there anyone else that can watch
19 your children?

20 JUROR NUMBER 80: You see, I'm new here, so I
21 don't know a lot of people.

22 THE COURT: Okay.

23 JUROR NUMBER 80: You know, that I would --

24 THE COURT: Okay. No other family members?

25 JUROR NUMBER 80: No. No. Back home I had a few,

1 but --

2 THE COURT: All right. Let me think about it. I
3 have to -- you know, but I'll let you know.

4 JUROR NUMBER 80: Okay.

5 THE COURT: Just stay with the jury.

6 JUROR NUMBER 80: I mean, when they are done,
7 because I need to call.

8 THE COURT: Yes, ma'am.

9 (Juror Number 80 returned to the jury venire
10 panel)

11 THE BAILIFF: Juror number 87, Your Honor.

12 (The following was a bench conference with Juror
13 Number 87)

14 THE CLERK: James Farrell.

15 JUROR NUMBER 87: James Lee Farrell.

16 The only thing is I keep seeing this is the same
17 question about being married. And my ex-wife told me at
18 dinner last night to tell you or advise the court she is the
19 deputy solicitor for Richland and Kershaw County.

20 I personally have no problem with serving on it,
21 but it keeps coming up, and I just wanted someone to know
22 about it.

23 THE COURT: Your wife -- is it your ex-wife, or
24 your --

25 JUROR NUMBER 87: My ex-wife.

1 THE COURT: Your ex-wife.

2 How long have you been divorced?

3 JUROR NUMBER 87: About three years.

4 THE COURT: Have you talked with her at all about
5 this case coming up?

6 JUROR NUMBER 87: I'm not aware of this case in
7 the slightest, but we are -- you know, we are close, but
8 we -- I'm not even aware of this case, but I just thought
9 somebody needed to know, particularly because the question
10 keeps coming up.

11 THE COURT: Well, I think you would be fine.

12 JUROR NUMBER 87: Okay.

13 THE COURT: If we get into selecting the jury for
14 trial or something, that issue, maybe you could make that
15 information available then.

16 JUROR NUMBER 87: Okay.

17 THE COURT: But it would not prevent your service.

18 JUROR NUMBER 87: Thank you.

19 THE COURT: Thank you.

20 (Juror Number 87 returned to the jury venire
21 panel)

22 THE BAILIFF: Juror 214, Your Honor.

23 (The following was a bench conference with Juror
24 Number 214)

25 THE CLERK: Ms. Parks. Helyn Parks.

1 THE COURT: Yes, ma'am.

2 JUROR NUMBER 214: Your Honor, I'm taking
3 medication for anxiety and an irregular heartbeat. These
4 kind of situations triggers that, if I have to participate
5 in anything like that.

6 THE COURT: Have you -- have you got anything from
7 the doctor?

8 JUROR NUMBER 214: No, today I don't.

9 THE COURT: All right. Let me get you to do this
10 then. If you can go now and use the phone and call your
11 doctor, get them to fax something into us saying that you
12 have this problem, you take medication for it, or whatever,
13 and renders you unable to serve. If they will fax that in,
14 then we'll take a look at it.

15 JUROR NUMBER 214: Okay.

16 THE COURT: But I have to have something in
17 medical.

18 JUROR NUMBER 214: Okay.

19 THE CLERK: Do you have your little card?

20 JUROR NUMBER 214: Yes.

21 THE CLERK: Let me write you a fax number on here
22 for you.

23 JUROR NUMBER 214: Great.

24 THE COURT: Call in and give them the fax number,
25 okay?

1 JUROR NUMBER 214: Thank you.

2 (Juror Number 214 returned to the jury venire
3 panel)

4 THE BAILIFF: 188, Your Honor.

5 (The following was a bench conference with Juror
6 Number 188)

7 THE CLERK: Ms. Mitchell. Sandra Mitchell, Your
8 Honor.

9 THE COURT: Yes.

10 JUROR NUMBER 188: I have panic attacks, anxiety
11 attacks. I take Klonopin for that, and that doesn't do
12 anything for my memory. I can't remember information.

13 THE COURT: Okay.

14 JUROR NUMBER 188: You can tell me something and
15 two minutes later I would have forgot it.

16 THE COURT: I thought only I suffered from that.

17 JUROR NUMBER 188: But I would prefer not to be on
18 that, because I can't retain information.

19 THE COURT: Ma'am, are you seeing a physician? Do
20 you see a physician?

21 JUROR NUMBER 188: Yes, sir, I go to mental health
22 every three months.

23 THE COURT: Okay.

24 JUROR NUMBER 188: Lexington Mental Health.

25 THE COURT: Can you get them to fax us -- can you

1 call your doctor's office and get them to fax us saying what
2 the problem is that you have and --

3 JUROR NUMBER 188: Okay.

4 THE COURT: -- whether they think that you would
5 be able to serve on jury or not?

6 JUROR NUMBER 188: Okay.

7 THE COURT: Because we will need some medical to
8 show that.

9 JUROR NUMBER 188: Okay.

10 THE COURT: If you can do that, then we will
11 consider it.

12 JUROR NUMBER 188: Okay. Just --

13 THE CLERK: I'll give you a number.

14 THE COURT: It's a fax where they can just fax
15 something from their office straight in to the clerk's
16 office.

17 JUROR NUMBER 188: Yes.

18 THE COURT: We will need to do that today.

19 JUROR NUMBER 188: Okay. Thank you very much.

20 THE COURT: Yes, ma'am.

21 THE CLERK: Ms. Mitchell.

22 Judge, she's not free to go.

23 THE COURT: No, no.

24 THE CLERK: She just needs to go out in the hall
25 and call your doctor's office, and then you remain with us.

1 JUROR NUMBER 188: Oh, you want me to call them?

2 THE CLERK: Right now and ask them to fax us
3 something saying --

4 JUROR NUMBER 188: I don't remember the number. I
5 need to go downstairs to get my daughter to get you to call.

6 THE CLERK: We just want you to not leave the
7 building. You just need to stay with us and have them fax
8 us something. Thank you.

9 (Juror Number 188 returned to the jury venire
10 panel)

11 THE BAILIFF: Juror 219, Your Honor.

12 (The following was a bench conference with Juror
13 Number 219)

14 THE CLERK: Raley. J.L. Raley.

15 THE COURT: Yes, ma'am.

16 JUROR NUMBER 219: Well, this is first time that I
17 have ever been called for jury duty and I have always wanted
18 to do this ever since I was registered to vote. I work for
19 myself and I'm the only source of form of income that I have
20 right now. And I'm in a situation to where if I were to be
21 out of work this week, I'm on the verge of losing my home.
22 I want to do this. I really want to serve on this jury, but
23 if I do, I will lose everything.

24 THE COURT: What is your business, ma'am?

25 JUROR NUMBER 219: I clean houses. I have worked

1 for -- and I have had some physical ailments that have
2 limited my work and it's just got me in a bind. I didn't
3 want to get up there and ask this because I have always
4 wanted to do it, but if I do, I just --

5 THE COURT: Our problem is that we have got a
6 number of these kind of requests, but we can't grant
7 requests simply because somebody has some financial
8 situation.

9 JUROR NUMBER 219: I understand.

10 THE COURT: Because a lot of people would have
11 that. But I'm going to --

12 JUROR NUMBER 219: I mean, I just had to ask. If
13 you say no, that's fine, because I do want to do it, but I
14 have discussed it with my mom and she said "just tell them
15 your situation and see what happens."

16 THE COURT: Well, let me -- if you will stay with
17 us and I'll consider it, but I don't know that I can do
18 that.

19 JUROR NUMBER 219: Okay.

20 THE COURT: But at any rate, if you will, just
21 stay with us. We will let you know something.

22 (Juror Number 219 returned to the jury venire
23 panel)

24 THE BAILIFF: Juror number 14, Your Honor.

25 (The following was a bench conference with Juror

1 Number 14)

2 THE COURT: Yes, sir. Give us your name, sir.

3 JUROR NUMBER 14: Bennie Bass, B-A-S-S.

4 THE COURT: Yes, sir.

5 JUROR, NUMBER 14: I have about 20 employees
6 underneath me. We do heavy highway construction and they
7 count on me to do the scheduling and organize them daily,
8 and I will be hampered from being able to take care of that.

9 THE COURT: Well, what happens when you are not
10 there? Isn't there somebody else that takes care of it when
11 you are not there?

12 JUROR NUMBER 14: Yes, sir.

13 THE COURT: Well, sir, you know, I'm -- I
14 understand your situation, but we -- you know, we have a lot
15 of requests from people that's work related, that kind of
16 thing, but I'm going to ask you to stay with us, sir. Thank
17 you.

18 (Juror Number 14 returned to the jury venire
19 panel)

20 THE BAILIFF: Juror 161, Your Honor.

21 (The following was a bench conference with Juror
22 Number 161)

23 THE CLERK: Mr. Linenberger?

24 JUROR NUMBER 161: Yes, ma'am.

25 THE COURT: Yes, sir.

1 JUROR NUMBER 161: I work for the Red Cross. I'm
2 their senior audit investigator. We have our annual audit.
3 They sent a letter about three weeks ago asking me to be
4 postponed or dismissed. I'm just following up with that
5 letter. It's basically for them.

6 THE COURT: Okay.

7 JUROR NUMBER 161: We have it every year.

8 THE COURT: Well, who does the audit?

9 JUROR NUMBER 161: BHQ, their regional quality
10 auditors from Washington, D.C..

11 THE COURT: Can they not get what they need
12 without your --

13 JUROR NUMBER 161: There is a lot of people in my
14 department.

15 THE COURT: All right. Please stay with us, sir.

16 JUROR NUMBER 161: Yes, sir.

17 THE COURT: Appreciate it.

18 (Juror Number 161 returned to the jury venire
19 panel)

20 THE BAILIFF: Juror number 75, Your Honor.

21 (The following was a bench conference with Juror
22 Number 75)

23 THE CLERK: This is Mr. Dove.

24 THE COURT: Yes, sir, Mr. Dove.

25 JUROR NUMBER 75: I was convicted of a misdemeanor

1 in 1994.

2 THE COURT: What was it?

3 JUROR NUMBER 75: Common law conspiracy.

4 THE COURT: Common law conspiracy?

5 JUROR NUMBER 75: Yes, sir. I caught three years
6 probation.

7 THE COURT: And was it in the big court up here?

8 JUROR NUMBER 75: Yes, sir.

9 THE COURT: It was up here?

10 JUROR NUMBER 75: Yes, sir.

11 THE COURT: Common law conspiracy?

12 JUROR NUMBER 75: Yes, sir.

13 THE COURT: It carries up to five years?

14 JUROR NUMBER 75: I don't know. I didn't --

15 THE COURT: But you got three years probation?

16 JUROR NUMBER 75: Yes, sir.

17 THE COURT: Okay. Thank you for coming in. We
18 will excuse you. Thank you for coming in.

19 JUROR NUMBER 75: Thank you.

20 (Juror Number 75 returned to the jury venire
21 panel)

22 THE BAILIFF: Juror number 36, Your Honor.

23 (The following was a bench conference with Juror
24 Number 36)

25 THE CLERK: Ms. Bryant.

1 THE COURT: Yes, ma'am.

2 JUROR NUMBER 36: I'm a school teacher. I teach
3 4th grade and I'm responsible this year for a child in a
4 syndrome that doesn't -- a substitute change -- he is just a
5 child and I'm just wondering if I could maybe change it to
6 another time, that I could serve at another time.

7 THE COURT: Let's transfer her to a summer term.

8 JUROR NUMBER 36: Right.

9 THE COURT: June or July, something like that.

10 THE CLERK: We will do it then. We will send you
11 a notice in the mail.

12 JUROR NUMBER 36: You will let me know, okay.

13 THE COURT: Okay.

14 (Juror Number 36 returned to the jury venire
15 panel)

16 THE BAILIFF: Juror 261, Your Honor.

17 (The following was a bench conference with Juror
18 Number 261)

19 THE CLERK: This is Ms. Sons.

20 THE COURT: Yes, ma'am.

21 JUROR NUMBER 261: How are you doing, Your Honor?
22 I'm 66 years old and --

23 THE COURT: You don't look it.

24 JUROR NUMBER 261: Thank you. I just don't think
25 that I could --

1 THE COURT: But you are over 65.

2 JUROR NUMBER 261: I was a magistrate, yes, sir
3 for the whole time.

4 THE COURT: All right. If you are -- age-wise,
5 you are entitled to be excused, if you wish. We would love
6 to have you, but we understand.

7 JUROR NUMBER 261: Thank you.

8 (Juror Number 261 returned to the jury venire
9 panel)

10 THE BAILIFF: 184, Your Honor.

11 (The following was a bench conference with Juror
12 Number 184)

13 THE CLERK: This is Mr. McPherson.

14 THE COURT: Mr. McPherson, yes, sir.

15 JUROR NUMBER 184: I own a construction company.
16 If I'm not working, my guys are off.

17 THE COURT: Don't you have other supervisors that
18 work there?

19 JUROR NUMBER 184: Well, my jobs are in four
20 different states. Sups to where they are at, and I'm
21 supposed to be in Mobile, Alabama today with two guys, and
22 I'm here.

23 THE COURT: Yeah. Well --

24 JUROR NUMBER 184: I have got two guys not doing
25 anything, just sitting around.

1 THE COURT: But you have had a little bit of
2 advanced notice that you had to be here this week, correct?
3 You could have made some arrangements.

4 JUROR NUMBER 184: Well, if I don't work, they
5 don't work. You know, it has nothing -- sups -- one sup --
6 I have one sup and two labors for each guy. My labors can't
7 go with anybody else. They go with me when I have jobs.

8 THE COURT: All right. I don't think I'm going to
9 be able to excuse you for that, but I'll think about it.
10 Just have a seat and we will let you know something later.

11 (Juror Number 184 returned to the jury assembly
12 panel)

13 THE BAILIFF: Juror number 13, Your Honor.

14 (The following was a bench conference with Juror
15 Number 13)

16 THE CLERK: This is Mr. Bartlett.

17 THE COURT: Yes, sir, Mr. Bartlett.

18 JUROR NUMBER 13: I'm a retired Lexington County
19 detective with ten years of criminal investigations. I have
20 been recently contacted by an investigator that's handling a
21 kidnapping and burglary of a three year old, and so I'm
22 really back into investigation. I don't believe that I
23 could sit, with my experience, and be fair to the defense.

24 THE COURT: Let me be sure I understand you now.
25 Where did you work before you retired?

1 JUROR NUMBER 13: Lexington County sheriff's
2 department.

3 THE COURT: And when did you retire from that?

4 JUROR NUMBER 13: '94.

5 THE COURT: 1994.

6 Okay. And you are saying now that you are helping
7 somebody investigate one?

8 JUROR NUMBER 13: Investigating -- I was
9 reassigned the case that I had. It was open at the time of
10 my retirement.

11 THE COURT: Okay. What was the name of that case?

12 JUROR NUMBER 13: The Jessica Gutierrez case.

13 THE COURT: Well, I don't think that would
14 disqualify you in this case, if you were working on a --
15 went back working on an old case that's closed out or
16 something that come back up. I don't think that would
17 disqualify you, because you are not currently serving as an
18 active police officer, are you?

19 JUROR NUMBER 13: I am not, but I did build cases
20 against suspects for the prosecution, and that's where I
21 felt justice wouldn't be served with me serving on the jury.

22 THE COURT: Well, I mean, you couldn't -- on a
23 case that you didn't work on, you don't know anything about
24 it, you couldn't listen to the testimony and evidence and
25 instruction from the court about the law that applies and

1 render a decision which would be fair to both sides?

2 JUROR NUMBER 13: I feel like I'm too pro-law
3 enforcement. I think the defense may use a strike to get me
4 off the jury panel.

5 THE COURT: All right. Are you telling the court
6 that you could not be fair in a case, that you would always
7 side with the State?

8 JUROR NUMBER 13: In my experience, yes, sir.

9 THE COURT: All right. I'm going to excuse this
10 juror. He's telling me he can't be fair. I'm going to
11 excuse him.

12 JUROR NUMBER 13: Thank you, Your Honor.

13 (Juror Number 13 returned to the jury venire
14 panel)

15 THE BAILIFF: Juror 285, Your Honor.

16 (The following was a bench conference with Juror
17 Number 285)

18 THE CLERK: Ms. Turkett.

19 THE COURT: Yes, ma'am.

20 JUROR NUMBER 285: I have a tree service that I
21 run. It's Mike's Tree Service. I'm the only one in the
22 office. There is no one else there to run anything but me,
23 so I don't know what to do.

24 THE COURT: Well, what do you do when you are not
25 there?

1 JUROR NUMBER 285: What do I do when I'm not
2 there?

3 THE COURT: Yes.

4 JUROR NUMBER 285: I'm also an EMT.

5 THE COURT: But how does the business run when you
6 are not there? Do you also --

7 JUROR NUMBER 285: I'm there. I'm usually there.

8 THE COURT: What if you are not there, if you were
9 sick or if you had vacation or something?

10 JUROR NUMBER 285: A cell phone. So my other half
11 works for the power company and he's unable to be there to
12 oversee the fellows, so --

13 THE COURT: You don't supervise people out in the
14 field? You just work in the office?

15 JUROR NUMBER 285: I go out there also and do
16 estimates and that.

17 THE COURT: There is nobody else that can do that
18 when you are not there?

19 JUROR NUMBER 285: Not -- I'm the only one that
20 runs the office.

21 THE COURT: Ma'am, I'm going to --

22 JUROR NUMBER 285: It's okay if you don't.

23 THE COURT: It's okay if I don't?

24 JUROR NUMBER 285: If you don't, I understand.

25 THE COURT: I've listened to what you are saying,

1 but we have a lot of people in that situation.

2 JUROR NUMBER 285: Right.

3 THE COURT: Let me -- I'm going to think about it,
4 and just stay with us for now. I'll let you know.

5 JUROR NUMBER 285: Okay. Thank you.

6 (Juror Number 285 returned to the jury venire
7 panel)

8 (Whereupon, the bench conferences were concluded)

9 THE COURT: All right. We are going to take a
10 brief recess, ladies and gentlemen. You may refresh
11 yourselves. We probably will take about 15 minutes or so.
12 You may refresh yourselves and you come back right back to
13 your seat.

14 I'm going to ask counsel, if you will, to meet
15 with me in chambers, briefly. Thank you.

16 (The following was an in-chambers hearing, with
17 all parties present)

18 THE COURT: Normally I don't worry about it,
19 particularly if we have got enough jurors to get by, but
20 because of a case as this, it's a death penalty case, I feel
21 like I at least need to give you a chance to have some input
22 in this before I do it. Normally I just make a decision
23 like that. I think it's discretionary with the court, but I
24 will hear from you, nevertheless, if you have some
25 objections to some of these.

1 Let's see. I'm trying to remember what I did with
2 some of these now.

3 Troy Duke, we let him -- we excused him?

4 THE CLERK: Duke? 77.

5 MR. GOWDY: He has travel plans, Your Honor. He
6 showed you an internet printout.

7 THE COURT: Oh, that's the one. We didn't excuse
8 him.

9 MR. GOWDY: He works in the schools or --

10 THE COURT: What he does -- let me kind of
11 acquaint you. I was a Family Court judge for awhile. The
12 Marine Institute is a private outfit, but they run things
13 for the schools. They contract to run for them. They do a
14 lot with DJJ, and they got some institutes where they
15 actually put people in them, like down in Beaufort and
16 places, and they run through a school down there, like a
17 boot camp kind of thing, juveniles that are in trouble. And
18 they also work with the schools. They are running an
19 alternative school for the school. That's where you take
20 kids out of the classrooms that are behavioral problems, put
21 them in there and it's separate from the other students, and
22 they have to work their way back to a regular classroom. So
23 he's running that program there. And he says he has to
24 occasionally go to court when they wind up having to go to
25 court. And the school has requested that he be excused.

1 And he also talks about having travel plans for
2 some kind of meeting with the institute, this Marine
3 Institute outfit.

4 What are your thoughts about it?

5 MR. GOWDY: I don't think his school work, Your
6 Honor, alone would disqualify him.

7 If he does have -- I think he said out of the
8 country travel plans. That's in the court's discretion.

9 I have no opposition to letting him go. I hate to
10 have somebody, especially if it's nonrefundable, eat a
11 ticket. Whatever the court wants to do, I'm --

12 THE COURT: I guess the other problem I got with
13 it is he says he's a principal of this alternative school.
14 It is a part of the school, even -- and so the question is
15 he may be entitled to be transferred, whether we like it or
16 not, under the statute. He's in kind of a unique capacity,
17 but he's serving with the schools, one of the alternative
18 schools, so I think he's probably entitled to it.

19 What are your thoughts, Mr. Starnes?

20 MR. STARNES: I think he's entitled to it, if
21 he's -- I mean, I don't know. I have never read anything
22 about an alternative school.

23 THE COURT: Well, let me tell you what it is.
24 Just about all schools have them now. They have so many
25 discipline problems. They set up a little separate school

1 and they move the problem children out of the regular
2 classroom where they would -- rather than expel them. They
3 put them in there. It's a special setting. He might have,
4 say, 30 students in there. And they put a lot of people
5 working with them in there and real strict discipline. It's
6 still a school. They got to take regular course work in
7 that. And then once their discipline improves, they can go
8 back to the regular school. But the alternative school
9 means they pull them out for a while and try to correct
10 their behavior. Do you understand? They are still part of
11 the school system.

12 In York, for instance, they got one, but it's
13 school teachers running it.

14 What are your thoughts? Any objection to excusing
15 him?

16 MR. STARNES: No, sir, I have no objection.

17 THE COURT: Let's excuse him.

18 JUDGE'S LAW CLERK: Judge Alford, before that you
19 had 76, if you want to go numerically?

20 THE COURT: 76?

21 JUDGE'S LAW CLERK: She had anxiety attacks.

22 MR. GOWDY: I believe it's 77.

23 Are you going in the order that they came up,
24 judge?

25 THE COURT: Well, I was kind of going in the

1 order. That's the way I wrote them down.

2 Now, 320 we transferred. I don't remember why.
3 It must have been a school deal.

4 And 52 we excused, and I didn't write down why we
5 excused.

6 MR. GOWDY: Oh, 320 -- I'm sorry, 320 is a
7 physician that has shoulder surgery I believe scheduled for
8 tomorrow at six a.m..

9 THE COURT: Is that 320?

10 MR. GOWDY: I thought that was --

11 JUDGE'S LAW CLERK: I had knee surgery.

12 MR. GOWDY: I think that was Wingo.

13 JUDGE'S LAW CLERK: Knee surgery, shoulder
14 surgery.

15 THE COURT: Shoulder surgery. Oh, I put
16 transferred, but then he was supposed to send something in.

17 MR. GOWDY: He is.

18 THE COURT: So assuming he sends something in
19 saying he's going to have his shoulder operated on in the
20 morning, do you have any objection?

21 MR. GOWDY: Having survived shoulder surgery, I
22 would have let him go without the notice. Nobody would lie
23 about having shoulder surgery.

24 THE COURT: Well, I normally would, but because
25 it's a death penalty case, I wanted to hear from you.

1 Do you have any objection to excusing him, if he's
2 having surgery?

3 MR. STARNES: No objection.

4 MR. GOWDY: No objection, Your Honor.

5 THE CLERK: I only received the one doctor's
6 excuse on the fax.

7 THE COURT: So far?

8 THE CLERK: And that's from Dr. Wingo, from Dr.
9 McIntosh. He is scheduled for surgery tomorrow morning.

10 THE COURT: Okay. So he is scheduled for surgery.

11 THE CLERK: 320.

12 THE COURT: We will excuse 320.

13 Well, we will transfer him. You can transfer him
14 to a later term, but he will be excused in this case.

15 THE CLERK: Okay.

16 THE COURT: Thank you.

17 Now, 52 I had excused. I didn't write it down
18 why. Most of them I did.

19 Did anybody write down I excused them?

20 JUDGE'S LAW CLERK: That was age and health
21 reasons.

22 THE COURT: Okay. Oh, yeah, I did write it down.
23 She's 67. That's right.

24 All right. 55 had a criminal record. He was --
25 it was more than one year, so we had to excuse him.

1 76 was medical. I didn't write what I did with
2 that one.

3 THE CLERK: You haven't excused yet.

4 THE COURT: They are waiting on --

5 THE CLERK: That's the one I think she said -- she
6 is saying had anxiety attacks.

7 MR. GOWDY: I think she began the colloquy, and
8 correct me if I'm wrong, but I'm saying I can't make
9 important decisions in my own life, so I certainly don't
10 want to make any with respect to others, which caught my
11 attention in a case like this.

12 THE COURT: She said I would be all right today,
13 but I can't speak for tomorrow or the next day, is what --

14 MR. GOWDY: She convinced me that she had
15 problems, even in the short period of time we were up there.

16 THE COURT: All right. What are your thoughts,
17 Mr. Starnes?

18 MR. STARNES: I would like to talk to her. Voir
19 dire.

20 THE COURT: All right. Let's see if we get some
21 medical excuse from her. If I get a medical excuse that
22 says she isn't mentally capable of serving, I'll probably
23 excuse her anyway. She's supposed to be sending us a
24 medical, so we will keep her on hold.

25 All right. 207 had a Family Court hearing,

1 custody hearing on child custody. As I understand it, it's
2 the first hearing. It says temporary custody hearing.

3 What are your thoughts about that one? It could
4 possibly be rescheduled.

5 MR. GOWDY: I'll defer to you.

6 If he can -- he said he was going to call his
7 attorney. I don't know how long it takes to get those
8 things rescheduled. I don't want to put a hardship on him.

9 THE COURT: It may take several weeks.

10 MR. GOWDY: He may not get picked, so I would
11 think that he should at least stay with us and find out
12 whether or not he gets picked. And then -- or if he's in
13 the panels, then you can maybe call the Family Court judge
14 or call his lawyer and find out. We don't know now whether
15 or not he's --

16 THE COURT: Do you want to hold onto him then and
17 let us check it out?

18 Okay. 63 was excused for criminal record. He had
19 more than a year.

20 318 I got excused. I wrote something down but I
21 can't read it.

22 THE CLERK: He's transferred is what I have.

23 THE COURT: Transferred?

24 MR. GOWDY: His wife was falsely accused --

25 THE COURT: Oh.

1 MR. GOWDY: -- by the feds.

2 THE COURT: We moved him to civil court. He said
3 he had a problem with the Criminal Justice System, so --

4 THE COURT: All right.

5 I had to excuse him. I mean, I questioned him
6 closely whether he could still be fair and he said no.

7 Now, 92 we said needed a doctor's statement.
8 Another panic, anxiety attack.

9 169 was excused for age.

10 167 was excused for age.

11 314 has a vacation scheduled. Her family is
12 already there in Gatlinburg. She would like to go.

13 What are your thoughts? I feel a little
14 uncomfortable transferring her, but --

15 MR. STARNES: We will all go.

16 THE COURT: I wish we could all go.

17 MR. GOWDY: I say I would vote to let her go.

18 MR. STARNES: Let her go to Gatlinburg.

19 THE COURT: We will transfer her, please, Madam
20 Clerk, to a different term --

21 THE CLERK: Yes, sir.

22 THE COURT: -- that won't conflict with her
23 vacation.

24 265, I don't think we did anything with him. We
25 kept 265, I think.

1 183 we transferred to the summer. Must have been
2 a school teacher.

3 249, school cashier. I didn't make a decision on
4 her yet. What she says is that they have a little computer
5 there that rings up. She's at the cash register and rings
6 up the bill -- rings up the school, and she is a school
7 employee, so I'm not so sure under the statute -- without
8 looking at the statute, she may be entitled to be excused.

9 Pull up that statute and see what it says.

10 She is saying they are training somebody now to do
11 that, but she right now is -- it's not anybody that can
12 really fill in for her until they get somebody trained. The
13 girl that is supposed to be trained is coming back tomorrow.

14 THE CLERK: I apologize, Your Honor, but 249, that
15 Lynichia, she did the school thing, that was one we did
16 review last --

17 THE COURT: I know.

18 THE CLERK: -- Thursday and I had it marked here
19 to transfer.

20 THE COURT: You did?

21 THE CLERK: Yes, sir, I got excused.

22 THE COURT: Maybe we looked at -- I know we looked
23 at the statute last week, but I couldn't remember --

24 THE CLERK: Because we were looking at -- you
25 looked at the law then about it says employee, school

1 employee, because we had the bus driver.

2 THE COURT: I know it includes bus drivers.

3 THE CLERK: Yes.

4 THE COURT: What are your thoughts then? If we
5 already -- if we have already done it, what are your
6 thoughts today, Mr. Starnes? She's a school cashier in a
7 lunchroom.

8 MR. STARNES: Let her go.

9 THE COURT: Let's -- we will transfer her, if we
10 hadn't transferred her.

11 THE CLERK: All right, sir.

12 All right. Number 80 had a five year old and a
13 seven year old. She had parents that could maybe watch the
14 child, but they had to go out of the town and not available
15 right now. She's not sure when they were coming back.
16 Maybe they will be back this week, in a day or two.

17 What are your thoughts.

18 The five year old, she has got nobody else to take
19 care of him. She's entitled to be excused. She hasn't got
20 anybody to look after him.

21 Anybody object to excusing her then?

22 MR. GOWDY: No.

23 MR. STARNES: No.

24 THE COURT: With the five year old?

25 MR. STARNES: No objection.

1 THE COURT: She's excused, please, Madam Clerk.

2 THE CLERK: Yes.

3 THE COURT: Both sides agree.

4 219, business situation. Is he the one that's
5 got people down in Alabama, somewhere?

6 MR. GOWDY: She's a house cleaner, judge.

7 THE COURT: Oh, that's the house cleaner.

8 MR. GOWDY: House cleaner business.

9 MR. GOWDY: She's about to lose her house and car
10 she said.

11 THE COURT: She said it's going to be a financial
12 hardship if she has to serve. She wanted to serve.

13 What are your thoughts on 219?

14 MR. STARNES: I would like to keep her, judge.

15 THE COURT: All right. She will stay with us.

16 75 was excused for a criminal record. That is
17 more than a year.

18 36 was transferred because she's a teacher.

19 261 was excused for age.

20 184 was the one I guess who works and got a couple
21 of people down in Alabama that he says if he's not there
22 they can't work. Construction.

23 THE CLERK: Yes, sir.

24 THE COURT: Thoughts? Do you want to be
25 transferred?

1 MR. GOWDY: I -- I think I should be consistent,
2 which is if he's got a work hardship, but I also think we
3 should be consistent, and I thought his story was less
4 compelling than the woman who is going to lose her house and
5 her car.

6 THE COURT: Yeah.

7 MR. GOWDY: So feed them out of the same spoon.

8 THE COURT: All right. Then he will stay with us.

9 13 I had excused, but I didn't have why.

10 MR. GOWDY: He's a former detective that cannot be
11 fair.

12 THE COURT: Oh, yeah. He said he wasn't going to
13 be fair. I know you all would probably like to have him.

14 MR. GOWDY: If he can't be fair, I don't want him,
15 judge.

16 MR. STARNES: Bennie Bass was the former
17 detective? He was the one that done the paving company.

18 MR. GOWDY: Robert Bartlett.

19 MR. STARNES: Bartlett, okay.

20 THE COURT: 285, I didn't write -- what did we do
21 with 285, do you remember?

22 JUDGE'S LAW CLERK: You said that you were going
23 to think about it.

24 THE COURT: I struck her. She's going -- that's
25 another business person. She stays. Her husband doesn't

1 work the business, but he does -- but 285 is staying with
2 us. I'm going to treat them out of the same spoon.

3 Now, I think that covers it. Is there anything --

4 JUDGE'S LAW CLERK: Here is the statute.

5 THE COURT: Oh. Well, everybody has agreed to
6 excuse the school cashier, correct? School cashier, didn't
7 you?

8 MR. STARNES: Yes, sir.

9 THE COURT: Okay. So it doesn't matter. I think
10 we had already looked at it Thursday.

11 MR. GOWDY: How about 92, Donna Fletcher?

12 THE COURT: 92? Oh, yeah, she needs a doctor's
13 statement. That's what I said. We haven't gotten a
14 doctor's statement from her yet.

15 MR. GOWDY: You left 161 in, the Red Cross
16 auditor?

17 THE COURT: I did.

18 MR. GOWDY: He kind of half-way seemed like he was
19 going through the motions. He didn't really want to leave.

20 THE COURT: That's exactly right. His company
21 wanted him to be there, but he didn't think he needed to be
22 there, so --

23 MR. GOWDY: 188, panic attacks, mental health.
24 She is sending us a note from mental health?

25 THE COURT: That's the one that is supposed to

1 send us a statement, a medical statement.

2 THE CLERK: Now, if we get those medical
3 statements, bring them to you as soon as we get them --

4 THE COURT: Yes, ma'am.

5 THE CLERK: -- so we can excuse them? In the
6 meantime they will remain to be put into panels?

7 THE COURT: Yes, ma'am. We can always address
8 them, again, I guess on the panel when they come in for voir
9 dire, if they got a doctor's statement or something.

10 MR. STARNES: Judge, one thing I meant to ask when
11 we were here earlier. I know we are fixing to get into
12 explaining to the jury what type of case this is and stuff.
13 Do you intend to give them any kind of charge regarding me
14 being pro se?

15 THE COURT: Well, I don't really need to do that
16 at this point, I don't think.

17 MR. STARNES: Is that something that I can mention
18 it in voir dire?

19 THE COURT: I think that's something that I can
20 say to them in voir dire. I think I would need to say that
21 on each juror and say, well, this is such and such a case,
22 and in this case Mr. Starnes has chosen to represent himself
23 and he will ask the questions. I think we could just tell
24 them. I don't think we need to tell this at this point. I
25 think we just tell them that in voir dire stage that Mr.

1 Starnes has chosen to represent himself in this case, so he
2 will ask questions.

3 MR. STARNES: An instruction letting them know
4 that I have the right to represent myself and that's not to
5 be held against me or drawn any inference?

6 THE COURT: Oh, yeah, yeah, I have got to do that,
7 and I'll tell them that you have a Constitutional Right to
8 represent yourself and he's chosen to do that. They will
9 draw no inferences from that. Sure, be glad to do that.
10 Okay.

11 Anything else?

12 THE CLERK: Do you wish me to go and tell these,
13 or are you going to do it, Your Honor, when you go back out?
14 Do you want me to call these individuals that you just
15 excused and let them know so they can leave, or do you
16 want --

17 THE COURT: Yeah, you need to prepare you a list
18 before we can tell them that.

19 THE CLERK: Yes, sir, I need to know if we need to
20 go ahead and draw so we can make --

21 THE COURT: Why don't you do -- well, we probably
22 need to be out there and on the record, I guess, when we do
23 that as well, I guess. So let's go back in there and go on
24 the record, and I'll let you read out the ones that have
25 been transferred, or excused, and then we will -- the others

1 we are still looking for medical statement, if they will get
2 those into us.

3 THE CLERK: Okay. So when we go back on the
4 record, do you want me to say the following jurors have been
5 excused?

6 THE COURT: Right, or --

7 THE CLERK: And then say -- like number 77, Troy
8 Duke, you have been excused. You may leave at this time, or
9 how do you want me to do that, Your Honor?

10 THE COURT: Yeah, the court has excused you.

11 THE CLERK: And the ones to be transferred --

12 THE COURT: Most of ones with age and teachers we
13 have already excused. They are already gone.

14 THE CLERK: Yes, sir.

15 THE COURT: But the ones that we still had under
16 advisement, those that we decided today would excuse, excuse
17 the others and tell them that they are going to have to stay
18 with us with everybody on the jury panel.

19 THE CLERK: All right.

20 THE COURT: And those that were supposed to
21 provide us with a medical statement, they can get that
22 medical statement in and we will look at it at that time,
23 but in the meantime they are staying with the jury.

24 THE CLERK: Do you wish me to go ahead and do that
25 now, or --

1 THE COURT: Well, I guess we need to do everything
2 on the record.

3 THE CLERK: Yes, sir.

4 THE COURT: All right. Thank you.

5 MR. GOWDY: Judge, would you give us a sixty
6 second lag?

7 THE COURT: Absolutely.

8 (Whereupon, the in-chambers hearing was concluded)

9 (Whereupon, proceedings were reconvened in open
10 court)

11 THE COURT: Counsel approach just a minute. If
12 the parties would approach a minute.

13 (Whereupon, the lawyers and the defendant
14 approached the bench for an off-the-record discussion)

15 THE COURT: All right. Ladies and gentlemen of
16 the jury panel, if you would give me your attention again,
17 please. I appreciate your patience and I apologize for the
18 delay, but we have been working and trying to get things in
19 order how we are going to proceed, and you will see that
20 shortly.

21 Let me go back over some of the jurors that I took
22 under advisement your request.

23 Juror number 77, Troy Duke, you are being
24 transferred to another term because of your school
25 responsibilities and travel plans, so you are free to go.

1 You will get another summons in the mail to report back,
2 sir.

3 Juror number 80, Karen Elia, E-L-I-A, you have
4 been excused. You are excused and you are free to go.

5 Juror number 249, Lynichia Shealy has been
6 transferred. You will be transferred to a different term.
7 If you are still here, you are free to go.

8 Juror number 314, Phyllis Wicker, you are being
9 transferred. If you are still here, you are free to go.

10 Juror number 320, Timothy Wingo, you are being
11 transferred. If you are still here, you are free to go.
12 Timothy Wingo.

13 All right. Those of you jurors who have requested
14 to be excused and you are supposed to provide us with a
15 medical excuse, you can have those faxed in, we still are
16 waiting on some of those we haven't received them. And
17 those of you for whom we have not received the medical
18 excuse, you are still on the jury panel. If the medical
19 excuse comes in, we can take a look at that when it comes in
20 and maybe reconsider it, but in the meantime you are still
21 on the jury panel and follow instructions accordingly.

22 Madam Clerk, if you will call the next case for
23 trial.

24 THE CLERK: Indictment 1996-GS-32-3339, the State
25 versus Norman E. Starnes, indicted for Count I, murder;

1 Count II, murder; Count III, possession or display of a
2 firearm or knife during the commission of a violent crime.

3 THE COURT: Is the State ready to proceed to
4 trial?

5 MR. GOWDY: Yes, sir, Your Honor.

6 THE COURT: Defense ready to proceed to trial?

7 MR. STARNES: Defense is ready, Your Honor.

8 THE COURT: Thank you, sir.

9 Ladies and gentlemen of the jury panel, if you
10 would give me your attention again, please. As you have
11 just heard, the State has charged Norman E. Starnes with two
12 counts of murder and one count of possession of a firearm
13 during the commission of a violent crime.

14 To these charges the defendant has pled not
15 guilty, and we are, therefore, proceeding on with the trial.

16 Now, as you have heard that Mr. Starnes has been
17 indicted for these two counts of murder and one count of
18 possession of a firearm during the violent crime.

19 I would charge you and instruct you, ladies and
20 gentlemen, that an indictment is not evidence of anything
21 against anyone. An indictment is merely a formal document
22 by which any person charged with any criminal offense is put
23 on notice as to what the allegations against him or her are,
24 so that they can then come into court and properly defend
25 themselves with that information. It is not proof of

1 anything. It's not evidence of anything. It cannot be
2 considered of proof of evidence. It is merely the formal
3 charge upon which -- a notice document from which a person
4 is put on notice to what the charges are, so they can
5 properly defend themselves.

6 Counsel, I apologize. Could you approach just one
7 minute again, please?

8 (Whereupon, the lawyers and the defendant
9 approached the bench for an off-the-record discussion)

10 THE COURT: Ladies and gentlemen, in this case the
11 State is represented by three attorneys. They are
12 represented by solicitor Trey Gowdy, who is the solicitor
13 for the Seventh Judicial Circuit.

14 If you would please stand, sir, so they can see
15 who you are. Thank you, sir.

16 Also Bob Coler. Thank you, sir.

17 And Mr. Derrick Bulsa. I don't believe he's in
18 the courtroom right now, but he also will be assisting in
19 the case.

20 Is anyone on the jury panel related by blood or
21 marriage, friends with, or have any other type social,
22 business or professional relationship with anyone who works
23 in the -- excuse me, with either Trey Gowdy, Bob Coler,
24 Derrick Bulsa, or anyone else who works in the Seventh
25 Circuit solicitor's office? If so, please stand.

1 (No response)

2 THE COURT: In this case the defendant, Norman E.
3 Starnes, has exercised his Constitutional Right to represent
4 himself in this case. Mr. Starnes has a Constitutional
5 Right to represent himself in the case. Everyone has that
6 right when they are charged with any criminal offense.

7 I instruct you, ladies and gentlemen, that the
8 fact that Mr. Starnes has chosen to exercise his
9 Constitutional Right to represent himself cannot be
10 considered in any way for him or against him. He has that
11 Constitutional Right. You are to draw no inference
12 whatsoever from the fact that he is representing himself in
13 this case, as he has a Constitutional Right to do.

14 The court has -- as is standard practice when
15 someone chooses to represent themselves, the court has
16 appointed standby counsel, experienced criminal defense
17 attorneys as standby counsel to answer questions that he may
18 have, Mr. Starnes, during the court of the trial.

19 And I'll ask first, Mr. Starnes, would you please
20 stand, so the jury can see who you are.

21 Thank you, sir. You may be seated.

22 Is anyone on the jury panel related by blood or
23 marriage, friends with, or have any other social, business
24 or professional relationship with Norman E. Starnes? If so,
25 please stand.

1 (No response)

2 THE COURT: And then I'm going to ask Mr. William
3 Nettles and John Delgado, counsel, if you would please stand
4 and face the jury panel.

5 Thank you, sirs. You may be seated.

6 Is anyone on the jury panel related by blood or
7 marriage, friends with, or have any other type social,
8 business, or professional relationship with, that is to say
9 currently or formerly represented by, any other type
10 relationship to Mr. William Nettles, or to John Delgado? If
11 so, please stand.

12 Yes, sir, please stand and give us your name and
13 number, sir.

14 JUROR NUMBER 91: Mike Flack, number 91. I have
15 met Mr. Delgado. I don't see him very often, but we have
16 met.

17 THE COURT: All right. Sir, let me ask you
18 whether there is anything about that relationship that would
19 interfere in any way with your ability to give both the
20 State and the defendant Norman Starnes a fair and impartial
21 trial in this case?

22 JUROR NUMBER 91: I don't believe so, Your Honor.

23 THE COURT: I have to have a more definitive
24 answer, yes or no.

25 JUROR NUMBER 91: No, sir.

1 THE COURT: Thank you. You may be seated.

2 Anyone else?

3 Yes, ma'am, please give us your name and number.

4 JUROR NUMBER 243: Roberta Salters, number 243.

5 THE COURT: Yes, ma'am.

6 JUROR NUMBER 243: I have met Mr. Delgado. My
7 husband was chief of police of West Columbia and we have
8 been to many different functions there.

9 THE COURT: Now, ma'am, let me ask you whether
10 there is anything about that relationship that would
11 interfere in any way with your ability to give both the
12 State and the defendant and fair and impartial trial in this
13 case?

14 JUROR NUMBER 243: I think I would have to say
15 yes, sir.

16 THE COURT: Do you think that would relationship
17 is that strong?

18 JUROR NUMBER 243: Yes, I think so.

19 THE COURT: All right. I'm going to excuse this
20 juror.

21 Ma'am, you are excused. You are free to go at
22 this time. Thank you for coming in.

23 I'm sorry, let me go to the gentleman standing
24 first.

25 Yes, sir.

1 JUROR NUMBER 218: Judge, my name is Charles
2 Phipps. I'm number 218. I'm an attorney and I am
3 acquainted with Mr. Nettles professionally.

4 THE COURT: All right. Sir, let me ask you
5 whether there is anything about your relationship with Mr.
6 Nettles, or any other attorney, that would interfere in any
7 way with your ability to give both the State and the
8 defendant a fair and impartial trial in this case?

9 JUROR NUMBER 218: No, sir.

10 THE COURT: Thank you, sir. You may be seated.

11 Someone had their hand up. If you will please
12 stand, sir, and give us your name and number.

13 JUROR NUMBER 87: James Farrell, 87 my juror
14 number.

15 I met Mr. Delgado through my former wife Elizabeth
16 Whitney, who has been assistant solicitor for Richland and
17 Kershaw County.

18 THE COURT: Sir, is there anything about that
19 relationship that would interfere in any way with your
20 ability to give both the State and the defendant a fair and
21 impartial trial in this case?

22 JUROR NUMBER 87: No, sir, Your Honor.

23 THE COURT: Thank you, sir. You may be seated.

24 Anyone else?

25 Yes, sir, please give us your name and number,

1 sir.

2 JUROR NUMBER 105: Stanley Glover. My number is
3 105, and I know Mr. Delgado.

4 THE COURT: Give us your number again. I didn't
5 get it.

6 JUROR NUMBER 105: 105.

7 THE COURT: Okay. How do you know Mr. Delgado,
8 sir?

9 JUROR NUMBER 105: Mr. Delgado represented five or
10 six of my close friends, and at that time I was working for
11 David Chapman and I worked really close with Mr. Delgado.

12 THE COURT: Let me ask you, sir, whether there is
13 anything about that relationship that would interfere in any
14 way with your ability to give both the State and the
15 defendant a fair and impartial trial in this case?

16 JUROR NUMBER 105: Yes, sir.

17 THE COURT: You think that would interfere with
18 your ability?

19 JUROR NUMBER 105: Yes, sir.

20 THE COURT: You don't think that you could be fair
21 in this case?

22 JUROR NUMBER 105: Like I said, I have been
23 knowing Mr. Delgado today for about 15 or 16 years. I don't
24 think I could.

25 THE COURT: All right. I'll excuse this juror for

1 cause. He is saying he cannot be --

2 THE CLERK: Just a minute, Your Honor. I need
3 to -- sir.

4 THE COURT: Wait just a minute, sir.

5 THE CLERK: I apologize. Did you tell me your
6 juror number is 105?

7 JUROR NUMBER 105: Yes, ma'am.

8 THE CLERK: And tell me what your name is, please?

9 JUROR NUMBER 105: Stanley Glover.

10 THE CLERK: Glover.

11 THE COURT: All right, sir, you are free to go.

12 Thank you for coming in.

13 Anyone else?

14 (No response)

15 THE COURT: Ladies and gentlemen of the jury
16 panel, by the way of a little bit of background time-wise,
17 this incident out of which these charges arose occurred in,
18 I believe, Pelion. Am I pronouncing that right, Pelion,
19 South Carolina, and they occurred in the year of 1996, by
20 point of reference.

21 Has any member of the jury panel had any prior
22 knowledge about this case from any source before coming here
23 to court today, whether it be through talking with somebody,
24 any kind of media, Internet, anything, any source of
25 information? Has any juror had any prior information about

1 this case from any source before coming to court today? If
2 so, please stand.

3 Okay. All right. What I'm going to do is I'm
4 going to ask the four of you, if you will come to the center
5 aisle. I will like to get your responses down front next to
6 the court reporter, please.

7 Counsel, I invite counsel to come up.

8 (The following were on-the-record bench
9 conferences, out of the hearing of the jury venire panel,
10 but in the presence of all counsel and the defendant)

11 THE BAILIFF: Juror number 97, Your Honor.

12 (The following was a bench conference with Juror
13 Number 97)

14 THE COURT: Okay. Yes, ma'am.

15 JUROR NUMBER 97: I just read what was in the
16 Chronicle, the little article the Chronicle had in it.

17 THE COURT: When was that, ma'am?

18 JUROR NUMBER 97: Last week.

19 THE COURT: There was an article in the Chronicle,
20 local newspaper last week?

21 JUROR NUMBER 97: Uh-huh.

22 THE COURT: Okay. Let me ask you, ma'am, whether
23 there is -- based on that article, if you formed any opinion
24 about this case?

25 JUROR NUMBER 97: No, I don't know all the

1 details, just what was in there so --

2 THE COURT: Okay. I didn't read that. Basically
3 what did it say?

4 JUROR NUMBER 97: That he had, like you said,
5 killed two people, thought it was drug related, and they had
6 been buried in Pelion and reburied over in Aiken.

7 THE COURT: Let me ask you, ma'am, whether what
8 you read in the newspaper, again, have you formed any
9 opinion about the innocence or guilt in this case?

10 JUROR NUMBER 97: No. No.

11 THE COURT: Let me ask you whether you could
12 listen to the testimony and evidence that comes in during
13 the course of this trial and render -- instruction by the
14 court on the law that applies to this case in forming an
15 opinion and judgment in this case, independent of anything
16 that you have read in the paper?

17 JUROR NUMBER 97: Do you want a yes or no?

18 THE COURT: Yes, ma'am.

19 JUROR NUMBER 97: I'm not sure. I would like to
20 say yes, I could. I can try.

21 THE COURT: Okay. Well, my question to you is
22 whether you could listen to the testimony and evidence and
23 the law as provided by the court and render a decision which
24 would be fair and impartial to the defendant, irregardless
25 of what you might have read in the paper? Could you put

1 that aside and base your decision solely on what comes in to
2 the course of the trial?

3 JUROR NUMBER 97: I'll just say no.

4 THE COURT: Okay. All right. Then, ma'am, I'm
5 going to excuse you from this case.

6 JUROR NUMBER 97: Thank you.

7 THE COURT: You are free to go. Thank you.

8 (Juror Number 97 was dismissed from the jury
9 venire panel)

10 MR. DELGADO: Madam Clerk, what was in the paper?

11 THE CLERK: I didn't see it either.

12 MR. STARNES: We can get that paper. We would
13 like to a copy.

14 THE COURT: All right. Yeah. We will --

15 MR. STARNES: Make it a court exhibit.

16 THE COURT: -- try and get it. I accept for.

17 Well, I think it occurred. Maybe you can get a
18 copy of it so we can have it as a court exhibit. Okay.

19 THE CLERK: All right, judge, I want to ask you a
20 question. Since they have already been split into panels to
21 come back and we will excuse them. Just for everybody's
22 purpose, there are two numbers now. There is a jury number
23 and there is another number that nobody identified at it as
24 well. This particular one you excused is juror number 64.

25 THE COURT: It might be --

1 THE CLERK: We can't re-split them.

2 THE COURT: The only thing I can think of is that
3 maybe we can just go -- if we got one left with just five in
4 it, we just go with the five.

5 THE CLERK: Okay.

6 THE COURT: Instead of the six. That might be the
7 easiest thing to do.

8 MR. STARNES: Your Honor, since this is a death
9 penalty case, could you inquire of them about the
10 appropriate punishment?

11 THE COURT: No, not now. We will do that during
12 voir dire. That comes during voir dire.

13 THE BAILIFF: Juror number 10, Your Honor.

14 (The following was a bench conference with Juror
15 Number 10)

16 JUROR NUMBER 10: I read the article in the
17 Chronicle.

18 THE COURT: Give us your name.

19 JUROR NUMBER 10: Lynn Baldwin.

20 THE COURT: Ma'am, do you recall what you read in
21 the paper?

22 JUROR NUMBER 10: It just said it was a retrial.
23 That he had been convicted, death sentence, and there were
24 technicalities with the judge and it was going to be a
25 retrial.

1 THE COURT: Let me ask you whether there is
2 anything about that article -- based on that article, have
3 you formed an opinion.

4 JUROR NUMBER 10: I think I could make my own
5 opinion.

6 THE COURT: You think you could make your own
7 decision on it?

8 JUROR NUMBER 10: Yes.

9 THE COURT: Let me ask you specifically whether
10 you can put aside anything that might have been put in the
11 paper --

12 JUROR NUMBER 10: Yes.

13 THE COURT: -- and listen to the testimony and --

14 JUROR NUMBER 10: I can.

15 THE COURT: -- evidence and decide the case -- and
16 the law given by the court and make a decision, be fair and
17 impartial to both sides --

18 JUROR NUMBER 10: Yes.

19 THE COURT: -- base is solely on that?

20 JUROR NUMBER 10: Yes.

21 THE COURT: Put aside anything that you might have
22 read about it

23 JUROR NUMBER 10: Yes.

24 THE COURT: Thank you, ma'am.

25 (Juror Number 10 returned to the jury venire

1 panel)

2 THE BAILIFF: Juror number 242, Your Honor.

3 (The following was a bench conference with Juror
4 Number 242)

5 JUROR NUMBER 242: This case, I read about it in
6 the Lexington Chronicle this past week.

7 THE COURT: Okay. Give us your name again for the
8 record.

9 JUROR NUMBER 242: Henry Rutland.

10 THE COURT: Yes, sir. Let me ask you, sir,
11 whether have you already formed an opinion about the
12 innocence or guilt of the defendant, based upon that
13 article?

14 JUROR NUMBER 242: Well, I believe I could serve
15 without bias, but I have formed an opinion. I would be
16 lying if I didn't form some kind of opinion.

17 THE COURT: You have already formed an opinion as
18 to innocence or guilt?

19 JUROR NUMBER 242: Yes, sir.

20 THE COURT: Innocence or guilt.

21 JUROR NUMBER 242: Well, just based on the story
22 that I read.

23 THE COURT: Okay. Let me ask you --

24 JUROR NUMBER 242: I don't know all the details,
25 of course.

1 THE COURT: Let me ask you whether you could put
2 aside what you may have read in the paper and base your
3 decision solely on the sworn testimony and evidence that
4 comes in during the course of the trial and the instructions
5 by the court on the law that applies and the issues rendered
6 solely on that, and not anything that you might have read?
7 Could you put that aside and decide based solely on what
8 comes in during the course of the trial?

9 JUROR NUMBER 242: Yes, Your Honor, I believe I
10 could.

11 THE COURT: All right. Thank you, sir. You may
12 return to your seat.

13 (Juror Number 242 returned to the jury venire
14 panel)

15 THE BAILIFF: 219, Your Honor.

16 (The following was a bench conference with Juror
17 Number 219)

18 THE COURT: Yes, ma'am, give us your name again
19 for the record.

20 JUROR NUMBER 219: It was Lynn Raley.

21 THE COURT: Yes, ma'am.

22 JUROR NUMBER 219: 219. The story of the man,
23 owner of the Panther Parlor?

24 THE COURT: Yes.

25 JUROR NUMBER 219: Yeah. Well, I live in Pelion.

1 I have lived there for a long time, and what he did directly
2 affected some very personal friends of mine.

3 THE COURT: All right. Let me ask you --

4 JUROR NUMBER 219: Uh-huh.

5 THE COURT: -- ma'am, whether you have already
6 formed an opinion as to the innocence or guilt?

7 JUROR NUMBER 219: Oh, yes, I have.

8 THE COURT: All right.

9 JUROR NUMBER 219: I have been sure for a long
10 time.

11 THE COURT: Could you put aside anything that you
12 have thought about this case before coming to court and
13 listen to the testimony and evidence that comes in and the
14 court's instruction on the law and decide it, based on what
15 comes in during the course of the trial and decide it?

16 JUROR NUMBER 219: I'm not sure I can.

17 THE COURT: Okay. I really need a definitive
18 answer whether you could or not, based on what knowledge
19 that you have.

20 JUROR NUMBER 219: I doubt it, no.

21 THE COURT: All right. Thank you, ma'am. I'm
22 going to excuse you. You are free to go.

23 (Juror Number 219 was dismissed from the jury
24 venire panel)

25 THE BAILIFF: 216, Your Honor.

1 (The following was a bench conference with Juror
2 Number 216)

3 THE COURT: Yes, sir. Give us your name for the
4 record.

5 JUROR NUMBER 216: Eugene Petrey, Jr..

6 THE COURT: Yes, sir.

7 JUROR NUMBER 216: I do have prior knowledge about
8 this incident, because I did read it in the paper and when
9 it happened, but I don't know Mr. Starnes. I'm from
10 Swansea, but -- that's close to Pelion. That's all.

11 THE COURT: But you read it when it originally
12 happened?

13 JUROR NUMBER 216: Right.

14 THE COURT: Which was a long time ago?

15 JUROR NUMBER 216: Well, when it happened. I have
16 prior knowledge of it, yes, sir.

17 THE COURT: And from the prior article that was in
18 the paper about it?

19 JUROR NUMBER 216: Right.

20 THE COURT: Let me ask you, sir, whether you could
21 put all of that aside, whatever you have read about it in
22 the paper, and listen to the testimony and evidence and
23 instruction on the law and decide the case solely on what
24 you heard here in the courtroom, and put aside anything that
25 you may have heard about it before? Could you do that?

1 JUROR NUMBER 216: Correct, I could.

2 THE COURT: Thank you, sir. You may return to
3 your seat.

4 (Juror Number 216 returned to the jury venire
5 panel)

6 THE BAILIFF: Juror 54, Your Honor.

7 (The following was a bench conference with Juror
8 Number 54)

9 THE COURT: Give us your name for the record,
10 please, ma'am.

11 JUROR NUMBER 54: Delores Joy Clark.

12 THE COURT: Yes, ma'am. What do you know about
13 the case?

14 JUROR NUMBER 54: Well, I had just moved here in
15 '93. I live -- my address is Swansea. I live sort of down
16 in the triangle between Pelion and Swansea. It's about
17 seven miles from Pelion, and I don't even know if it is this
18 case. I'm thinking about it, but it had to do with
19 someone -- I think it was Buddy's Pizza, or something in
20 Pelion, and I don't even know if this is the same case or
21 not.

22 THE COURT: Let me ask you, ma'am, is there
23 anything that you heard about the case outside the
24 courtroom, have you formed any opinion in this case as to
25 the innocence or guilt of the defendant in this case?

1 JUROR NUMBER 54: I don't think I knew enough
2 about it.

3 THE COURT: All right. Let me ask you whether you
4 could listen to the sworn testimony and evidence that comes
5 in during the course of the trial and the court's
6 instructions on the law that applies and render a decision
7 which would be fair to both the State and also to the
8 defendant? Can you do that?

9 JUROR NUMBER 54: I think I could. I'm a pretty
10 objective person.

11 THE COURT: And I know when a lot of people say I
12 think so, but I need either a yes or no answer, please,
13 ma'am.

14 JUROR NUMBER 54: I can be objective.

15 THE COURT: Thank you, ma'am. You may return to
16 your seat.

17 (Juror Number 54 returned to the jury venire
18 panel)

19 THE BAILIFF: That's all.

20 THE COURT: How many did we mess up?

21 THE CLERK: Four.

22 THE COURT: Well, the only thing I know is --

23 THE CLERK: They will be all right.

24 THE COURT: Go five instead of six, and we will
25 call them and --

1 Here is the article -- I'll tell you what we'll
2 do. Let's finish up with the jury and then we can -- we can
3 look at the article and that sort of thing. Let's don't
4 look at it right now. Let's get this done first.

5 (Whereupon, the bench conferences were concluded)

6 THE COURT: Has any member of the jury panel
7 formed or expressed an opinion as to the guilt or innocence
8 of the defendant Norman E. Starnes? If so, please stand.

9 (No response)

10 THE COURT: Is any member of the jury panel
11 conscious of any interest, bias or prejudice for or against
12 the defendant Norman E. Starnes? If so, please stand.

13 (No response)

14 THE COURT: Can each member of the jury panel give
15 both the State and the defendant, Norman E. Starnes, a fair
16 and impartial trial in this case? If not, please stand.

17 (No response)

18 THE COURT: Does any member of the jury panel know
19 of any reason whatsoever why he or she should not serve as a
20 juror in this particular case? If so, please stand.

21 (No response)

22 THE COURT: Keeping in mind that we still have
23 individual questions, is there any additional questions
24 requested from either side?

25 MR. GOWDY: Not from the State, Your Honor.

1 MR. STARNES: None from the defense, Your Honor.

2 THE COURT: All right. Let me ask you whether the
3 State agrees that the jury is properly constituted? Any
4 objection to the constitution of the jury?

5 MR. GOWDY: We do agree, Your Honor, yes, sir.

6 THE COURT: How about the defense?

7 MR. STARNES: We are in agreement, Your Honor.

8 THE COURT: The record will reflect that each side
9 agrees that the jury is popularly constituted.

10 Do we need any additional time to get our panels
11 set up?

12 THE CLERK: We are ready.

13 THE COURT: Okay. Ladies and gentlemen of the
14 jury panel, I need to explain to you in this case the State
15 is seeking the death penalty in this case.

16 Now, in a death penalty procedure the procedure is
17 a little bit different, and so I want to go through that
18 briefly for you.

19 The first part of that procedure is is we have a
20 trial to determine whether the defendant is guilty or not
21 guilty of the charges against him. If he's found not
22 guilty, and -- of course, the State has to prove the
23 defendant guilty beyond a reasonable doubt of each of these
24 charges.

25 If he were to be found not guilty, of course, that.

1 would be the end of the matter and it would conclude, just
2 like any other jury trial or any other criminal trial,
3 insofar as the jury. That would be the end of it.

4 However, if the jury were to determine that the
5 State had proven beyond a reasonable doubt the elements of
6 these offenses and that the defendant was guilty of these
7 offenses, that offense of murder, then this case would go to
8 what we call a second phase of the trial. In that phase
9 there is a determination. The jury is asked to make a
10 recommendation as to the appropriate sentence, based on all
11 the information that's provided to the jury at that time.
12 So these are the procedures.

13 Now, in cases where the State has elected to seek
14 the death penalty, there is some additional questions
15 allowed of the jury, individual jury members, with regard to
16 their views as to the death penalty. And so each side then
17 at that time -- the court asks them questions, and each
18 of -- the State is allowed to ask some questions and the
19 defendant is allowed to ask to some questions to determine
20 the jurors views in that regard. Now, we do that
21 separately. So each juror is examined separately.

22 And so what we will do is break the jury down into
23 panels. Rather than having the whole entire jury panel sit
24 around while we do this, it would take some period of time,
25 as you might imagine. So what we will do is that we will

1 break the jury into panels. We will start off. Some will
2 be five, some will be six, and we will give you a time when
3 you are required to report back to be examined.

4 Let me caution you of any fears that you might
5 have about these questions. You are not put under any kind
6 of third degree or anything like that. I want you to
7 understand. It's just simply an informal session basically
8 where you would be asked your views and asked to honestly
9 give your views in that regard. So it's nothing to be
10 concerned about. Even though we do it individually,
11 certainly nobody is going to give you a hard time or
12 anything like that. You shouldn't be concerned about that
13 at all.

14 But in order to proceed, keep everybody from
15 sitting around, we are going to break into panels. And the
16 clerk will give you the names and go through the procedure
17 with you. And once that group comes up, you will go out
18 with the bailiff. They will show you where to return to
19 and be told what time to return.

20 Now, after today -- probably after about midday
21 tomorrow, instead of going ahead and setting a time, they
22 ask you to call in and get a time, or check it on the
23 website and get a time when you are to report back. So
24 that's kind of the way the procedure works.

25 Now, I'm going to tell you at this time this is

1 extremely important. Extremely important. I will tell you
2 we are not going to sequester the jury in this case.
3 Sometimes in cases where the State is seeking the death
4 penalty, we sequester the jurors and they stay in a motel,
5 local motel, until the end of the matter, including the
6 second trial. We are not going to do that in this case,
7 which means that the jurors that are selected, when we
8 finish for the day, you will be allowed to go home and come
9 back the next morning, just as you do in any other type case
10 that we might be trying. So you will not, whoever is
11 selected, will not be sequestered in a motel. Now, that
12 should make it easier for all the jurors.

13 But in the same time, in the same breath, I would
14 tell you, ladies and gentlemen, that you are not to discuss
15 this case, any of you, with anyone, discuss this case with
16 anyone, including family, friends, or anyone else that you
17 might see when you are not in court. You are absolutely not
18 allowed to discuss this case with anyone. You are
19 prohibited from obtaining any information about this case.
20 You cannot read anything about this case in the newspaper,
21 listen to any news accounts on the radio, television, go on
22 the Internet. A lot of people look at the information over
23 the Internet, including you. You are not allowed to go on
24 the Internet and get any news information or any other kind
25 of information about this case, period. That's extremely

1 important.

2 Now, if the court should -- it's extremely
3 important that you base your decision in this case solely on
4 the sworn testimony and evidence that comes in during the
5 course of the trial and not from any other source. There is
6 no way anyone can guarantee the accuracy of any other kind
7 of account of this trial. So I repeat that. Please do not
8 read, listen to, or watch any kind of media account of this
9 trial. Please do not discuss this case among yourselves or
10 with anyone else, including family or friends.

11 And you might say well, what's wrong with
12 discussing the case, if somebody finds out that we are on
13 the jury? Once you start discussing the case, you start
14 forming opinions. It wouldn't be fair to both sides of this
15 case if you didn't wait. You have heard all the testimony
16 and evidence in the case before you start making opinion
17 judgements about the case or forming any kind of opinion
18 about the case. So that's extremely important.

19 Should it come to the attention of the court that
20 you have read, listened to, or watching any media account of
21 the article, or gone on the Internet to try to find out any
22 information about it, or talk to anybody about it, then that
23 would cause us a major problem in this case.

24 So, ladies and gentlemen, I do not think it's too
25 much to ask of you. You are not going to be sequestered in

1 jury room, so we are going to leave that up to you. But if
2 a newspaper comes to your home, any news accounts, make sure
3 that you don't listen to it, read it, or watch any kind of
4 media account.

5 And if someone else is watching, please do not
6 discuss it with your family members. That's extremely
7 important, because that could cause us some major problems
8 in this case.

9 All right. With that admonishment then, I'm going
10 to at this time call on the clerk and ask the clerk to
11 please call out the first panel with instructions.

12 Ladies and gentlemen of the jury panel, disregard
13 what I just said. The clerk is well organized and she knows
14 what she is doing, so please listen to her instructions and
15 follow those instructions. Thank you.

16 THE CLERK: All right, ladies and gentlemen, this
17 is that time I told you about that we were going to break
18 you into panels and I'm going to give you a time and a panel
19 number to be back. It's important that you listen to that.

20 In the event that anything were to happen, you
21 would need to call immediately and let somebody know that we
22 need to send a deputy out to get you, because a car broken
23 down, or something.

24 It's imperative that you be on time. And when I
25 give a date and time to be here, it is imperative that you

1 be here on time so that we can track on this trial. Do not
2 be tardy. You have an emergency, you call the sheriff's
3 department, or you need to call my office and let them know
4 that you have an emergency.

5 And let me just say that I hope your emergency
6 would be constituted by the judge to say it really was an
7 emergency. It could be an emergency if you cannot be here.
8 Be on time when I give you your time to be here.

9 When I tell you what time to be here and you
10 arrive, you will come off this elevator, take a left and go
11 to these glass doors right here. You will be met by a
12 bailiff. That's one of our fine people in the red jackets
13 here. They will escort you back to the jury room so that
14 you can have further questioning.

15 Be on time. It's imperative.

16 Listen carefully. As I call your name, if you
17 stand, I will excuse you after I tell you your panel and
18 time to be here.

19 THE COURT: Madam Clerk, let me interrupt you just
20 a minute. I apologize.

21 Two other things I want to tell you, and that is
22 those of you that are on the jury, if you should be out and
23 about courthouse, if you see anybody standing around talking
24 about this case, please do not listen to any kind of
25 conversations of anybody that might be having about the

1 case, whether it's lawyers, witnesses, family members,
2 anybody standing around talking about the case, don't listen
3 to any conversations about this case.

4 Secondly, no one should try to discuss this case
5 with you. If they do try to discuss the case with you,
6 please do not discuss it with them, but make note of that
7 person. Give the best description you can to the bailiff or
8 the clerk of court when you come back. They will let me
9 know and I'll deal appropriately with that person. No one
10 should try to discuss the case with you. If they do, I'll
11 certainly want to be made aware of it. Thank you.

12 Sorry for the interruption. Please proceed.

13 THE CLERK: All right. Ladies and gentlemen, as I
14 call your name, if you would please stand.

15 Donna Keisler.

16 James Stone.

17 Diane Turkett.

18 Theo Elmore.

19 Paula Mallory.

20 Claude Wessinger.

21 You are the lucky ones. Two o'clock today we will
22 start. Glass door right outside here. You are panel number
23 one. The bailiff will meet you and escort you back. You
24 are excused to go. Two o'clock. In thirty minutes.

25 Panel number two.

1 Jean Paquin.
2 Everett Ernest.
3 H.L. McCart.
4 Veronica Snow.
5 Rodney Heatly.
6 Eric Pantsari.
7 All right. You are panel number two. 3:30 today.
8 Off the elevator, glass doors. They will escort you in.
9 3:30 today. Panel number two. You are excused. Thank you.
10 Panel number three.
11 Daniel Wallace.
12 Catherine Johnson.
13 Charles Phipps.
14 Jo Anne Kappauf.
15 Charles Roberson.
16 Laura Alexander.
17 You are panel number three. Five o'clock today.
18 Off the elevator, glass doors, five o'clock.
19 Panel number four.
20 Emma Sutton.
21 Harry Johnson.
22 Deanna Lucas.
23 Bernice Smith.
24 Steven Hanes.
25 Byron Sonner.

1 You are panel number four. You are to be here
2 tomorrow morning at nine a.m.. Tomorrow morning at nine
3 a.m.. Elevators. Glass door. Bailiff, nine a.m.. Don't
4 be tardy. Don't forget. Nine a.m. tomorrow morning.

5 Panel number five.

6 Marti Sox.

7 David Butz.

8 Thomas Zobel.

9 Murray Jeffers.

10 Kellydawn Canaday.

11 William Camlin.

12 Panel number five. 10:30 tomorrow morning. 10:30
13 tomorrow morning.

14 Panel number six.

15 Charles McKinney.

16 James Farrell.

17 Thomas Shumpert.

18 Peggy Leaphart.

19 Frank Tyler.

20 Twelve o'clock tomorrow. Twelve o'clock tomorrow.

21 You are panel number six.

22 Panel number seven.

23 Bennie Bass.

24 Earl McPherson.

25 Eugene Petrey.

1 Margaret Albert.
2 Bonnie Bettis.
3 Darren Hamelinck.
4 Panel number seven. Two o'clock tomorrow. Panel
5 number seven, two o'clock tomorrow.
6 Panel number eight.
7 Patricia Outlaw.
8 Tina Rivers.
9 Josephine Menie.
10 Kimberly Tebeau.
11 Nancy Ross.
12 Donna Richardson.
13 You are panel number eight. Panel number eight is
14 3:30 tomorrow afternoon.
15 Cynthia Brownlee.
16 Michael Sawyer.
17 Linda Hair.
18 Nancy Beym.
19 Alonzo Chavis.
20 Janice Machos.
21 You are panel number nine. Five o'clock tomorrow.
22 Five o'clock tomorrow. Panel number nine.
23 Phillip Arms.
24 Melissa Watson.
25 John Kennerly.

1 Trent Muldrow.

2 Kathy Hynes Roberson.

3 Tiffany Swinford.

4 Okay. You are panel number ten. Panel number
5 ten. You are to be here at six o'clock tomorrow night. Six
6 o'clock tomorrow night. Panel number ten.

7 All right. Beginning with panel number 11, you
8 will check the website tomorrow. When I call your name, I'm
9 going to tell you what panel you are on. I'm going to tell
10 you what time to be here, but beginning tomorrow evening
11 seven p.m., you can check our website or call the number on
12 your pink card to verify that you are still supposed to be
13 here at the same time that I give you today.

14 Everybody got that? After seven p.m. evening you
15 can check the website or the phone number on the pink card
16 to verify that you are still to be here at the day and time
17 I tell you.

18 Joan Toole.

19 Linda Gantt.

20 Audrey Peter.

21 Pamela Turner.

22 Susan Amick.

23 All right. You are scheduled to be here Wednesday
24 morning at nine o'clock. You are panel 11. Wednesday
25 morning at nine o'clock. You may check after seven tomorrow

1 night to make sure that panel 11 is still nine o'clock
2 Wednesday.

3 Henry Smith.

4 Eva Crouch.

5 Donna Fletcher.

6 John Whitehead.

7 Beverly Holland.

8 Monty Seawright.

9 You are panel 12. 10:30 on Wednesday. After
10 seven tomorrow you can verify that. Panel 12, 10:30 on
11 Wednesday. Don't forget. Schedule it in. I don't want to
12 send the sheriff after you.

13 David Wright.

14 Christopher Linenberger.

15 Lois Campbell.

16 Nancy Findley.

17 Karen Henrickson.

18 Panel 13, twelve o'clock on Wednesday. Panel 13,
19 twelve o'clock on Wednesday. After seven tomorrow you can
20 verify that. Have a nice evening.

21 Karen Tobin.

22 Darcie Fouste.

23 John Dunlap.

24 Tonia Brazell.

25 Phillip McCarthy.

1 Thomas Nix.

2 You are panel 14. Two o'clock on Wednesday.

3 Verify that tomorrow after seven o'clock. Panel 14, two
4 o'clock, Wednesday. Y'all have a nice evening.

5 Julius Felder.

6 Elaine Starks.

7 Tina Keen.

8 James Hunt.

9 Thomas Mogan.

10 Margaret Williamson.

11 You are panel 15. 3:30 on Wednesday. Panel 15,
12 3:30 on Wednesday. Verify that after seven o'clock tomorrow
13 evening. You guys have a nice evening.

14 Romi Robinson.

15 John Moskel.

16 Marcia Rogers.

17 Raymond Hughes.

18 Ronald Vaughn.

19 Jacquelyn Neal.

20 Panel 16, five o'clock Wednesday evening. Panel
21 16, five o'clock Wednesday evening. Verify it after seven
22 tomorrow evening. Have a nice night.

23 Brad Lammers.

24 Michael Flack.

25 Julie Estes.

1 Sandra Mitchell.
2 Rochelle Stansfield.
3 Delores Clark.
4 Panel 17, Wednesday at six. Panel 17, Wednesday
5 at six. Verify it after seven o'clock.
6 Trisha Kohler.
7 Lynn Baldwin.
8 Kevin Taylor.
9 Maxine Maynard.
10 William Royson.
11 Sally Bellamy.
12 Panel 18, nine o'clock Thursday morning. Verify
13 it after seven tomorrow evening. Panel 18, nine o'clock
14 Thursday. Have a nice evening.
15 Anne Draffin.
16 Erica Huggins.
17 Lakesha Daniels.
18 Edward Moore.
19 John Matthews.
20 Linda Felder.
21 Panel 19, 10:30 Thursday. Panel 19, 10:30
22 Thursday. Verify it after seven tomorrow evening.
23 John Brewer.
24 Barbara Rate.
25 Jason Kyzer.

1 Raymond Taggett.

2 Mary Nunn.

3 Deborah Whitaker.

4 Panel 20. Twelve o'clock on Thursday. All right.

5 Y'all have a nice night.

6 Tammy Frye.

7 Robert Strickland.

8 William Arthur.

9 Richard Jeffcoat.

10 Jessica Royer.

11 Helen Parks.

12 Valorie Clayton Banks.

13 Henry Rutland.

14 The remainder of you are scheduled to be here at
15 two o'clock. You are panel 21 on Thursday. Panel 21, you
16 are scheduled to be here at two o'clock.

17 UNKNOWN JUROR: Can I ask a question?

18 I have a business trip scheduled for Monday
19 through Thursday of next week. Is there any way that I can
20 change that?

21 THE COURT: You know, if he has a trip planned for
22 next week, he would know by Thursday whether he's going to
23 be on the jury or not.

24 UNKNOWN JUROR: I need to know. I have got people
25 traveling.

1 THE CLERK: If you are not chosen, you are good to
2 go. If you are chosen, that's when it's going to be an
3 issue.

4 UNKNOWN JUROR: Thank you.

5 JUROR NUMBER 175: I did not realize it was an
6 area of this. I was -- I would like to maybe possibly ask
7 if I could be transferred to the later date. I'm on
8 commissioned sales and this is our busiest time of year
9 where insurance section, Internal Revenue Code, all our
10 accounts have to be reviewed by certain date. I have groups
11 that are scheduled at the end of the month. I didn't -- I
12 don't know how long this trial would last, but this is the
13 only time that I would have to chance to, you know, earn a
14 living during that time.

15 THE COURT: Well, give us your name and number.

16 JUROR NUMBER 175: I am Maxine Maynard, 175.

17 THE COURT: Where is your conflict? Towards the
18 end of month?

19 JUROR NUMBER 175: Yes, sir, starting on the 19th.

20 THE COURT: 19th?

21 JUROR NUMBER 175: Yes, sir.

22 THE COURT: Okay. When is she scheduled to be
23 back, please, Madam Clerk? She's the last panel?

24 JUROR NUMBER 175: No, Thursday.

25 THE COURT: Okay. Why don't we take it up then

1 please, ma'am. We will take it up then.

2 JUROR NUMBER 175: That would be great. Thank
3 you.

4 THE COURT: Yes, ma'am.

5 THE CLERK: I think that he's going to address it
6 more on Thursday, because you are the final panel on
7 Thursday.

8 And I apologize, sir, what did you tell me your
9 number was?

10 JUROR NUMBER 318: David Willingham.

11 THE CLERK: David Willingham. He's number 318.

12 THE COURT: We transferred him to Common Pleas
13 Court.

14 THE CLERK: That's exactly right.

15 THE COURT: I probably didn't tell him that. He's
16 one I overlooked it, I guess. I thought I told him.

17 THE CLERK: You are free to go.

18 JUROR NUMBER 318: It was a mistake.

19 THE COURT: Well, okay, I thought we had agreed to
20 transfer you to Common Pleas Court. I thought that's what I
21 told you.

22 JUROR NUMBER 318: He asked me to stay.

23 THE COURT: Okay. I understand. Okay. Well, you
24 will be transferred. You will get another notice when you
25 are supposed to report back.

1 JUROR NUMBER 318: Thank you.

2 THE CLERK: Thank you.

3 THE COURT: Go ahead and close the back door of
4 the courtroom, if you would, please, sir.

5 All right. I believe all the jurors are gone, is
6 that correct? You don't have any jurors with us, is that
7 correct? All jurors are out.

8 All right. Is there any matter before we take a
9 quick break to get something to eat? I know we are running
10 late, unfortunately. Anything we need to take up?

11 MR. STARNES: Nothing from the defense.

12 THE COURT: Let me just put this on the record.
13 We had discussed this before we got started this morning,
14 but it wasn't on the record at that time.

15 I believe both sides -- I wasn't sure if the law
16 had changed yet or not. There was a provision for a child
17 or blind person to draw the jury, unless it was waived, and
18 each side agreed to waive it, in any event, and just draw it
19 according to the customary way it's being drawn now, through
20 the computer program. Everybody agreed to that. We need to
21 put it on the record.

22 The State agreed to that, is that correct?

23 MR. GOWDY: Yes, sir, Your Honor.

24 THE COURT: Defense agreed to that, sir?

25 MR. STARNES: Yes, sir, Your Honor.

1 THE COURT: All right. The record will so
2 reflect.

3 Is there anything else that we needed to get into
4 at this point?

5 Let's do this. We will grab some lunch and we
6 will be running a few minutes late on the panels getting
7 started. We will just have to do them when everybody can
8 get back here. Probably we are going to be 10 or 15 minutes
9 late getting started with the first panel. I'm going to let
10 everybody get lunch and get back here as quick as possible.

11 MR. GOWDY: Do you want us to just come back in
12 the courtroom, or do you want us to be here by 2:00, or
13 2:10, or --

14 THE COURT: No, I would say -- you know, I would
15 say -- how long is it going to take Mr. Starnes to get
16 lunch? How does that work?

17 THE CLERK: We got his lunch here too, judge.

18 THE COURT: You have got his lunch here too.

19 THE CLERK: Everybody is being fed.

20 THE COURT: All right. Just make sure everybody
21 is taken care of.

22 We will start back -- let's start about ten
23 minutes after two.

24 MR. GOWDY: Thank you, Your Honor.

25 THE COURT: Be back in the courtroom and be ready

1 to go then.

2 MR. GOWDY: Thank you.

3 THE COURT: Here is the article, if you want to
4 read this. I only have one, but both sides can read that.

5 (Juror Type Sheet marked as Court's Exhibit No. 1
6 for identification)

7 (Newspaper Article marked as Court Exhibit No. 2
8 for identification)

9 (Whereupon, proceedings were recessed)

10 (Whereupon, proceedings were reconvened)

11 THE COURT: Counsel, are you ready to proceed?

12 Mr. Starnes, are you ready to proceed with the
13 first juror?

14 MR. GOWDY: The State is, Your Honor.

15 MR. STARNES: The defense is ready, Your Honor.

16 THE COURT: All right.

17 (Whereupon, Juror Number 143 entered the
18 courtroom.

19 VOIR DIRE EXAMINATION BY THE COURT:

20 Q. Good afternooon, ma'am.

21 You are Donna Keisler --

22 A. Yes, sir.

23 Q. -- is that correct?

24 Ms. Keisler, just relax. Just relax. Nobody is going
25 to give you the third degree or anything like that. We just

1 want to get a little information from you, so just relax and
2 give us information to the best of your ability, if you
3 will.

4 First of all, you submitted a --

5 Well, let me remind you first that you are still under
6 oath. I placed you under oath. You continue to be under
7 oath on the information that provide the court. Do you
8 understand that?

9 A. Yes, sir.

10 Q. And, ma'am, you filled out a juror questionnaire and
11 was sent into the clerk's office in this case containing
12 information?

13 A. Yes.

14 Q. Is all that still correct?

15 A. That's correct.

16 Q. Do you need to change anything?

17 A. No.

18 Q. Let me ask you, ma'am, and I ask this previously
19 briefly, and I'm going to ask it again, if you heard
20 anything, or read any news accounts about this trial, or
21 seen or heard anything about this case before coming to
22 court?

23 A. Not that I remember.

24 Q. And you answered, I believe, that you were not related
25 by blood or marriage or had any connection to any of the

1 attorneys in this case, is that correct?

2 A. That's correct.

3 Q. Nor Mr. Starnes, is that correct?

4 A. That's correct.

5 Q. Do you have any interest, bias or prejudices in this
6 case that you are aware of?

7 A. Not that I'm aware of.

8 Q. Have you formed any opinion about this case in any way?

9 A. No, sir.

10 Q. All right. There has been a rather extensive list of
11 potential witnesses in this case. Have you had a chance to
12 look over that list?

13 A. Yes, sir. I don't recognize anyone.

14 Q. Okay. It's rather extensive. We don't anticipate
15 calling all those people, but we will call some of them, I'm
16 sure, but you don't recognize any of those names on that?

17 A. No, sir.

18 Q. Let me ask you, ma'am, whether you understand that a
19 trial in which the State is seeking the death penalty it may
20 be carried out in two stages, maybe one, maybe two, but in
21 the first stage of trial is what we call the guilt phase,
22 could you listen to the testimony and evidence, sworn,
23 that's come in during the course of the trial, the
24 instructions by the court, the judge on the law, and render
25 a decision which would be fair to both the State and to the

1 defendant in this case?

2 A. Not knowing the death penalty is there.

3 Q. Pardon me?

4 A. Not knowing the death penalty is in the end.

5 Q. Well, I'm going to go into that in just a minute.

6 But could you -- I'm -- that would be another question,
7 but could you listen to the testimony and evidence in the
8 case and instruction by the court on the law and render a
9 decision which would be fair and impartial as to both the
10 State and the defendant as to whether the State had proven
11 the defendant guilty beyond a reasonable doubt as to each of
12 the charges against him?

13 A. Yes, sir.

14 Q. You could do that?

15 A. Yes, sir, I think so.

16 Q. You think so?

17 A. Uh-huh.

18 Q. Now, do you understand that in this case, if the jury
19 were, of course, to find the defendant not guilty on the
20 charge, then that would be the end of the matter. There
21 would not be a second phase of the trial. Do you understand
22 that?

23 A. Yes.

24 Q. But if the guilt -- but if the jury should find the
25 defendant guilty of the murder charge, then the case would

1 go to what we call the penalty phase.

2 In the penalty face the jury would be asked, after
3 hearing a lot of information being provided to the jury, to
4 make a decision as to the appropriate punishment on the
5 charge. Do you understand that?

6 A. Yes, sir.

7 Q. And the two possible sentences in that case would be,
8 of course, the death penalty and also life imprisonment
9 without parole. Do you understand that, ma'am?

10 A. Yes.

11 Q. Let me ask you whether in a sentencing phase of the
12 trial whether you could again listen to all of the testimony
13 and evidence and information provided during that phase of
14 the trial and make a decision which would be fair as to both
15 the State and the defendant in that case as to the
16 appropriate punishment?

17 A. I don't know that I could.

18 Q. Let me ask you specifically, then, would you never be
19 able to render a judgment of a death penalty?

20 A. I don't think so.

21 Q. You don't think that you could do that?

22 A. Uh-uh.

23 Q. Okay. I'm going to ask you a little bit more about
24 that. Do I understand you to say that you could not render
25 the death penalty under any circumstances?

1 A. I don't believe I could.

2 Q. All right. Counsel -- I'm going to turn it over to
3 counsel to ask any questions that you would like to ask.
4 The State first.

5 MR. GOWDY: Your Honor, the State would have no
6 questions for Ms. Keisler.

7 THE COURT: Defense, any questions?

8 MR. STARNES: Yes, sir, Your Honor. May it please
9 the court.

10 THE COURT: Yes, sir.

11 VOIR DIRE EXAMINATION BY MR. STARNES:

12 Q. How are you doing today, Ms. Keisler?

13 A. Fine.

14 Q. Do you understand in a capital case that in order to
15 get to that penalty phase, you would have to first find
16 beyond a reasonable doubt that the defendant is guilty?

17 A. I understand that.

18 Q. You understand that.

19 And in that penalty phase the State would present
20 evidence of aggravation, things that allegedly made the
21 crime worse, made it heinous, made it terrible; and the
22 defense would have an opportunity to offer evidence of
23 mitigation; in other words, give you a history and
24 background of the defendant. You would hear more evidence
25 about the crime and maybe why the defendant should get life

1 without parole, or the death penalty.

2 As a juror, could you follow the law and hear all the
3 evidence in this case?

4 A. I think I could hear the evidence, yes.

5 Q. And if the evidence in this case warranted the death
6 penalty and it was really heinous and really a bad crime, do
7 you think that you could give the death penalty?

8 A. I have a problem with the death penalty.

9 Q. You have a problem with the death penalty?

10 A. Yes.

11 Q. Is that something from your upbringing or is it
12 something religious?

13 A. My -- my -- what I do in life is to keep people alive,
14 not to kill people.

15 Q. Keep people alive?

16 A. Yes, sir.

17 Q. And that would hinder you from --

18 A. Yes.

19 Q. Okay. So let me ask you one more question.

20 If you were to sit on this jury, there was no way that
21 you could sign your name to put anybody to death?

22 A. No.

23 Q. That's all that we ask. Thank you, ma'am.

24 THE COURT: Anything else from the State?

25 MR. GOWDY: No, sir, Your Honor.

1 THE COURT: Please, if you would just wait just
2 outside the courtroom and we will bring you back in in just
3 a minute. Thank you.

4 (Whereupon, Juror Number 143 left the courtroom)

5 THE COURT: State?

6 MR. GOWDY: She's a classic Wainwright juror.
7 She -- her views prevent her from being able to impose the
8 death penalty. She's not qualified.

9 MR. STARNES: She's not qualified, Your Honor.

10 THE COURT: The court agrees that she's not
11 qualified, so she will not be qualified. I'll bring her in
12 and excuse her.

13 Please bring her back in.

14 (Whereupon, Juror Number 143 entered the
15 courtroom)

16 THE COURT: Ms. Keisler, you can stand right
17 there. I would like to take this opportunity to thank you
18 for coming in, for being open and honest with the court and
19 for being here today, but we are going to excuse you from
20 this case, which means this will excuse you for the week as
21 well, and the clerk will put a check in the mail for your
22 services. Thank you for your service.

23 JUROR NUMBER 143: Thank you.

24 THE COURT: You are free to go at this time.

25 (Whereupon, Juror Number 143 left the courtroom)

1 (Whereupon, Juror Number 268 entered the
2 courtroom)

3 VOIR DIRE EXAMINATION BY THE COURT:

4 Q. You are James R. Stone, is that correct?

5 A. Yes, sir.

6 Q. Mr. Stone, I would ask you just to relax there in the
7 chair. Nobody is going to give you the third degree or
8 anything like that. We just want to get a little
9 information about your views about the death penalty, in
10 general.

11 Let me ask you, you submitted a juror questionnaire in
12 this case back to the clerk's office that was originally
13 sent to you? You filled that out and sent it back in, is
14 that correct?

15 A. Yes, sir.

16 Q. Sir, is there anything that changes, you need to modify
17 or change on that form?

18 A. Just one, sir. That church I attend I left off, that.
19 I attend Faith Methodist.

20 Q. Which church, sir.

21 A. Faith Methodist Church.

22 Q. Any other changes that you need to make? Any other
23 changes that you need to make?

24 A. No, sir.

25 Q. All right, sir.

1 You have had a chance to look at the potential witness
2 list in this case?

3 A. Yes, sir.

4 Q. And, sir, I don't think all of these witnesses will be
5 called, but some of them certainly would be called, and do
6 you know of any of those witnesses on there? Do you
7 recognize any names on the list?

8 A. No, sir, I do not recognize any names.

9 Q. Let me ask you, sir, whether there was a page back in
10 the jury room, which is also I believe there on your desk in
11 front of you, which describes three types of jurors? Did
12 you have a chance to read those, sir?

13 A. Yes, sir, I did.

14 Q. Sir, would any of -- of course, these three types of
15 jurors do not fit everybody, but would you say that your
16 views would -- if you would identify with one of these more
17 so than the other one of these three?

18 A. Yes, sir, I would.

19 Q. Which one would that be, sir?

20 A. It would be the last one, number three.

21 Q. The third one?

22 A. Yes, sir.

23 Q. So you would be the type of juror who could listen to
24 the testimony and evidence and the law and only make up his
25 mind that you are satisfied the State has proven the

1 defendant guilty beyond a reasonable doubt?

2 A. Yes, sir.

3 Q. Now, if we got through -- the first part of a case in
4 which the State is seeking the death penalty is what we call
5 the guilt phase. And in that the State would be required to
6 prove the charges against the defendant by evidence that
7 satisfies the jury beyond a reasonable doubt.

8 If they didn't, of course, that would be the end of the
9 matter in that event.

10 But if the jury were to find the defendant guilty of
11 the charges, then we would go to what's called a second
12 phase of the trial. And in that second phase there are -- a
13 lot of testimony and evidence would be presented to the
14 jury, that those -- in favor of aggravation and mitigation
15 in favor of the defendant. And then based on all of that
16 information, then the jury would be asked to decide the
17 appropriate punishment for the defendant, to include either
18 the death penalty or life without parole. Now -- life
19 without the possibility of parole. Do you understand that,
20 sir?

21 A. Yes, sir, I do.

22 Q. Now, if you were to -- if the jury were to -- if we
23 were to reach the second stage of this trial, could you
24 render a decision as to the death penalty or life
25 imprisonment, sir?

1 A. Yes, I could.

2 Q. All right, sir. And would you always give the death
3 penalty of somebody convicted of murder?

4 A. No, sir. I would base my decision on the instructions
5 given, as far as the law, and consider the extenuation,
6 mitigation, aggravation, all the circumstances involved.
7 And -- I think each case is different, each in and of
8 itself.

9 Q. All right. I will turn the questioning over to the
10 State.

11 VOIR DIRE EXAMINATION BY MR. GOWDY:

12 Q. Good afternoon, Mr. Stone.

13 A. Hello.

14 Q. Very briefly. The judge asked almost every question I
15 had to ask for you.

16 Can you tell me generally what your views on the death
17 penalty are and how you came to reach them?

18 A. My views on the death penalty are that's a statute
19 that's available within our judicial system and it's there
20 for a reason, passed by people who are a lot smarter than I
21 am.

22 Q. I don't know about that.

23 A. But it's -- it's not applicable in every case and
24 that's why the judge has a requirement to explain the
25 requirements of the law that, you are required to examine

1 all circumstances that are presented to you, as far as
2 extenuation and mitigation, and those different things.

3 Q. If you thought the circumstances warranted it and that
4 that was the correct punishment, you would be able to vote
5 for death?

6 A. Yes, I would.

7 Q. Correspondingly, if you thought that life was the
8 proper punishment, you would vote for life?

9 A. Yes, I could.

10 Q. You would base it on the evidence and the judge's
11 instructions?

12 A. Yes, sir.

13 Q. Would you be able to sign your name to a death or life
14 sentence verdict at the end, if called upon to do so?

15 A. Yes, sir, I would.

16 Q. Thank you for your service.

17 A. Yes, sir.

18 THE COURT: Defense?

19 MR. STARNES: Thank you, Your Honor.

20 VOIR DIRE EXAMINATION BY MR. STARNES:

21 Q. Hi, Mr. Stone?

22 A. Hello.

23 Q. I'm Norman Starnes. I'm the defendant in this case.

24 A. Yes, sir.

25 Q. Mr. Stone, do you understand that not all killings are

1 murder?

2 A. Well, yes, sir, I understand that.

3 Q. And you could follow the law as the judge instructed
4 you?

5 A. I -- I -- I could follow the law as the judge
6 instructed, and if I had any questions or concerns about
7 that, I would ask for some clarification.

8 Q. Yes, sir.

9 What I mean by follow the law, you would go by what the
10 judge tells you and not what you believe the law would be?

11 A. I would follow the judge's instructions, yes, sir.

12 Q. Even if you did not agree with it?

13 A. Yes, sir.

14 Q. The solicitor just asked you about aggravation and
15 mitigation. Do you understand if we do not reach that
16 phase, there are certain things called lesser offenses?

17 A. Yes, sir.

18 Q. Do you know of any reason why -- any religious beliefs
19 or any personal beliefs of why you couldn't sit as a juror
20 on this case?

21 A. No, sir.

22 Q. And you could be fair to the defense and the State?

23 A. Yes, sir, I could.

24 Q. That's all we can ask of you, Mr. Stone. Thank you.

25 A. Thank you.

1 THE COURT: All right. Mr. Stone, please, if you
2 will wait just outside the courtroom for a minute, we will
3 have you back in just a moment.

4 JUROR NUMBER 268: All right. Thank you, sir.

5 (Whereupon, Juror Number 268 left the courtroom)

6 THE COURT: Position of the State?

7 MR. GOWDY: He's qualified, Your Honor.

8 THE COURT: Defense?

9 MR. STARNES: Qualified, Your Honor.

10 THE COURT: The court agrees that he is qualified.
11 Bring him back in, please.

12 (Whereupon, Juror Number 268 entered the
13 courtroom)

14 THE COURT: Mr. Stone, you can just stand right
15 there, if you will.

16 JUROR NUMBER 268: Yes, sir.

17 THE COURT: The court has found you qualified to
18 serve as a juror in this case and --

19 What are the instructions about when he's to
20 return back?

21 THE CLERK: Tentatively set a time, which is what
22 we wanted to like say Wednesday, three o'clock, but for him
23 to check with us Tuesday after seven o'clock to find out
24 exactly where we are in this process.

25 If he will call the number that's on there, then

1 there would be a message for the seated jury panel.

2 THE COURT: All right. Did you understand what
3 the clerk said?

4 You should have a number on there for a seated
5 jury number. If you call that number, and you call tomorrow
6 night after six o'clock, and they will give you
7 instructions, but otherwise you are to report Wednesday at
8 two o'clock.

9 THE CLERK: Three.

10 THE COURT: Three o'clock. I beg your pardon.
11 Wednesday at three o'clock. Wednesday at three o'clock.
12 And if you call into that number tomorrow night to see if
13 there is any change.

14 JUROR NUMBER 268: All right, sir.

15 THE COURT: If you could do that, we would
16 appreciate it.

17 THE CLERK: It would also be posted on the website
18 for you. It will just say see the jury panel and we will
19 know whether or not that you are to be here Wednesday at
20 three, or whether that's been changed. You will know and
21 you can check on either one.

22 JUROR NUMBER 268: All right.

23 THE CLERK: Okay. Thank you, sir. You can leave.

24 (Whereupon, Juror Number 268 left the courtroom)

25 MR. GOWDY: Can we approach for half a second?

1 THE COURT: Yes, sir. Come on up Mr. Starnes.

2 (Whereupon, the lawyers and the defendant
3 approached the bench for an off-the-record discussion)

4 THE COURT: Skip over the third one on the list,
5 Turkett, juror number 288, and tell her we will get to her,
6 and let's go to the next one, which would be Elmore, number
7 82.

8 THE BAILIFF: Juror number four is just now
9 reading the materials.

10 THE COURT: Okay. We are going to be delayed just
11 a couple of minutes. If you need run to the restroom or
12 something, go ahead.

13 (Off the record)

14 (Back on the record)

15 (Whereupon, Juror Number 82 entered the courtroom)

16 VOIR DIRE EXAMINATION BY THE COURT:

17 Q. Sir, you are 82, Theo Elmore?

18 A. Yes, sir.

19 Q. Mr. Elmore, did you have an opportunity to read over
20 the witness list and the other form back in the room with
21 you?

22 A. Yes, sir.

23 Q. Have you had a chance to do that?

24 A. Yes, sir.

25 Q. Mr. Elmore, I would remind you that you are still under

1 oath that the court placed you under earlier this morning
2 when you were qualified, put under oath. You are still
3 under oath for the personal information that you will
4 provide today.

5 I want you to be relaxed a little. It's very informal
6 and we just want to ask some questions about your views
7 towards the death penalty, in general, information like
8 that. No right or wrong answers. We just want to know how
9 you feel about certain things and just be relaxed and answer
10 as honestly as you can, please, sir.

11 A. Okay.

12 Q. Now, Mr. Elmore, you filled out an application. You
13 sent it into the clerk's office when you were originally
14 served with your summons. Is there anything about that that
15 needs to be modified or changed as of today?

16 A. No, sir.

17 Q. Okay. Have you had a chance to look over the potential
18 witness list in this case back in the other room? There is
19 one in front of you as well. Have you had a chance to look
20 over that, or do you need any more time to do that?

21 A. Yes, I looked over it.

22 Q. You looked over it.

23 All of these witnesses will not be called. Some of
24 them certainly will be called. And the question I have for
25 you is whether you know any of these witnesses yourself,

1 recognize any of them?

2 A. I recognize a few of the names on there.

3 Q. What I would like for you to do is not give me the
4 name, but give me the number. There should be a number
5 listed beside that. Could you give me that?

6 A. I recognize number seven. I have to put on my reading
7 glasses.

8 Q. I do too, so go ahead.

9 A. Number 70.

10 I think those are the only two I recognized.

11 Q. Those are the only two that you recognized?

12 A. Yes.

13 Q. Let me ask you, sir, whether if any of these witnesses
14 were to be called in the case by either side of the case,
15 would the fact that they were witnesses in this case
16 interfere in any way with your ability to give both the
17 State and the defendant a fair and impartial trial in this
18 matter?

19 A. I would have no problem.

20 Q. Sir?

21 A. No.

22 Q. Now, let me ask you. There was a form left in the jury
23 room, back in the jury room with you, and that you have
24 there in front of you which lists three types of jurors. Of
25 course, this is not all inclusive. It's just in general,

1 but let me ask you, sir, whether you would identify yourself
2 with one of those three types of jurors?

3 A. The third one.

4 Q. The third one.

5 So you could listen to the testimony and evidence in
6 the case and the court's instruction on the law and only
7 make up your mind about the case after you have received all
8 that information, and base it on the instruction of the
9 court, is that right?

10 A. Yes, sir.

11 Q. Okay. Let me ask you, sir, whether you would --

12 Well, first of all, let me ask you, do you understand
13 that going through what we call the guilt phase of the
14 trial, the State has to prove the defendant guilty of these
15 charges beyond a reasonable doubt?

16 If they failed to do that, that would be the end of the
17 matter, if they failed to find him guilty of the murder
18 charges.

19 But if they found him guilty, then we would go to the
20 second phase of the trial. And in the second phase of the
21 trial there would be evidence offered by the State in
22 aggravation and by the defense in mitigation, showing why it
23 should or should not be the death penalty carried out, or
24 why he shouldn't be given by the defense a life without the
25 possibility of parole.

1 Do you understand that and if that happens, sir, could
2 you make that decision based on the information presented to
3 you at the penalty phase?

4 A. I think so.

5 Q. All right, sir. And let me ask you, sir, would you
6 always give the death penalty if someone is convicted of a
7 murder?

8 A. More than likely.

9 Q. All right. But would you always do that?

10 A. Yes.

11 Q. You think you would.

12 All right. Are there any circumstances under which you
13 believe that someone is convicted of murder ought to get
14 life without the possibility of parole?

15 A. I have to really think about it, you know, a good deal.
16 It would depend upon the situation.

17 Q. Okay. Do you understand that if you go through the
18 penalty phase of the trial -- and there would be evidence
19 offered in way of aggravation, but it would also be evidence
20 offered in the way of mitigation to show why the defense was
21 not does -- would not feel at that time that the defendant
22 should be given the death penalty, based upon things that
23 were favorable to him, insofar as that's concerned.

24 Do you think that you could listen to both sides of
25 that and make a determination of whether the death penalty

1 or the life imprisonment would be the appropriate sentence?

2 A. Yes, I could.

3 Q. Do you think that you could?

4 A. Yes.

5 Q. All right. I'm going to ask you, if you will, to
6 answer any questions that either side may have for you.

7 The state first, please?

8 MR. GOWDY: Thank you, Your Honor.

9 VOIR DIRE EXAMINATION BY MR. GOWDY:

10 Q. Good afternoon, sir.

11 First, congratulations on your college beating the
12 number two college in the country over the weekend.

13 A. Thank you.

14 Q. There are -- as the court said, as His Honor said,
15 there are no right answers. There are no wrong answers.
16 There are simply your answers, and nobody is here to
17 challenge or question them.

18 A. Okay.

19 Q. Having said that, we do have to know what they are.

20 Would you agree with me that all murders are not the
21 same?

22 A. Yes.

23 Q. And correspondingly, all murders should not be punished
24 the same?

25 A. Well, I guess my opinion is it depends upon I have

1 to -- I have to see what -- or how it was murder. I mean --

2 Q. Exactly. There are factors that would make you lean
3 towards death?

4 A. Uh-huh.

5 Q. And there are factors that could make you lean towards
6 life in prison?

7 A. Correct.

8 Q. And you understand that the way the law is written in
9 South Carolina, you are never forced to choose death. You
10 you are never forced to choose life in a capital case.

11 A. Yes.

12 Q. It's your choice?

13 A. Correct.

14 Q. Do you think weighing and balancing what we call
15 aggravating circumstances, which are things that make a
16 crime worse; mitigating, which tend to mitigate; if you
17 weigh and balance those, do you think based on the evidence,
18 that you would in some circumstances be able to vote for
19 life imprisonment?

20 A. It would have to be overwhelming the other way.

21 Q. It would have to be overwhelming in terms of
22 mitigation?

23 A. Right.

24 Q. But if you believed that that was the proper
25 punishment, could you impose it?

1 A. Yes.

2 Q. All right. And if you thought that death was proper,
3 accepting that all murder is not the same?

4 A. Yes.

5 Q. You have two different punishments that you would keep
6 in mind, and you would base your decision based on the
7 evidence and the law?

8 A. Correct.

9 Q. All right. Thank you.

10 VOIR DIRE EXAMINATION BY MR. STARNES:

11 Q. How are you doing, Mr. Elmore?

12 A. Fine.

13 Q. Mr. Elmore, the solicitor just asked you about the
14 penalty phase of the trial. Do you understand that you are
15 not bound to enter that? In other words, the burden of
16 proof is on them and they have to prove beyond a reasonable
17 doubt that the defendant is guilty?

18 A: Correct.

19 Q. Okay. And if you decide that the defendant is guilty
20 beyond a reasonable doubt and we get into that penalty
21 phase, do you understand that the defendant has a right not
22 to present no defense at all, to present nothing in
23 mitigation?

24 A. I didn't know that.

25 Q. In the event that we get to the penalty phase and the

1 State puts up their case, in other words, aggravation and
2 all of these bad facts, give you more evidence why the crime
3 was supposedly more heinous, and the defense sits silent and
4 you heard nothing in mitigation, or put up no defense at
5 all, how would you be inclined to vote?

6 MR. GOWDY: Your Honor, I don't think he can stake
7 him out like that. He can ask general questions, but how
8 would you be inclined to vote, that's getting close to the
9 line, Your Honor.

10 THE COURT: Yeah, I would be inclined to agree
11 with you.

12 Please rephrase your question, Mr. Starnes.

13 MR. STARNES: Yes.

14 BY MR. STARNES:

15 Q. If we get into the penalty phase, Mr. Elmore, and the
16 defense doesn't put up any mitigation at all, could you
17 consider life or death?

18 A. I probably would vote for death.

19 Q. You would probably lean towards death?

20 A. Yes.

21 Q. And if you heard nothing from the defense, you would
22 lean more towards death? In other words, you would vote for
23 the death penalty?

24 A. Yes, sir.

25 Q. And you would do that because you have not heard

1 anything in mitigation, anything good about the defendant,
2 about the defendant's background, good character, and
3 reasons why to give him life, that you would -- if you
4 didn't hear any of that, you would vote for death?

5 A. Yes, sir.

6 MR. STARNES: I have no further questions.

7 THE COURT: Any followup to that?

8 MR. GOWDY: Just one question, Your Honor.

9 RE-VOIR DIRE EXAMINATION BY MR. GOWDY:

10 Q. Are you able to give life in prison, if you think that
11 is the proper punishment?

12 A. If it is the -- if I feel like -- if I get things
13 presented to me and I can go with life, but I would have
14 to -- like I say, it's kind of hard. I have to see what it
15 is before I can make a decision.

16 Q. Exactly. You have to have the evidence presented to
17 you?

18 A. Correct.

19 Q. Would you have an open mind as you received that
20 evidence?

21 A. Yes.

22 Q. Would you be fair?

23 A. Yes.

24 Q. And are there circumstances under which you could
25 impose a life in prison sentence?

1 A. Yes.

2 Q. Okay.

3 MR. GOWDY: Thank you.

4 THE COURT: Yes, sir, Mr. Starnes.

5 RE-VOIR DIRE EXAMINATION BY MR. STARNES:

6 Q. Mr. Elmore, if you did not hear any of this evidence,
7 and you heard no mitigation, how would you be inclined?

8 A. I have no evidence that could go for life?

9 Q. In other words, if we get into the penalty phase of
10 this case and the defense puts up no defense whatsoever, you
11 hear no evidence of mitigation, no evidence from the
12 defendant, or the defendant doesn't put up any defense at
13 all, you could still give a life sentence?

14 A. Yes.

15 Q. Even if the crime was heinous?

16 A. (Shaking head yes)

17 Q. You could still vote for life?

18 A. Uh-huh.

19 No, I meant death. Vote for death.

20 Q. You could still vote for death?

21 A. Uh-huh.

22 Q. And you would favor death if you did not hear any
23 evidence of mitigation?

24 A. Correct.

25 Q. And if there was -- and if the defendant did not put up

1 any defense whatsoever and sat silent, you would be inclined
2 to vote for death?

3 A. Correct.

4 Q. In a situation like that, if we get that far, and you
5 heard no evidence of mitigation, you heard no defense, could
6 you still vote for life?

7 A. Probably not.

8 Q. Probably not?

9 A. (Shaking head yes)

10 Q. Is that something from your religious background or
11 from your upbringing? Can you give us --

12 A. Just my personal.

13 Q. Just your personal views?

14 A. Uh-huh.

15 Q. And that's your personal views in reference to the
16 death penalty?

17 A. Uh-huh.

18 Q. Okay. Thank you.

19 THE COURT: All right. Thank you, sir. If you
20 will please wait just outside and we will be back with you
21 in just one minute.

22 (Whereupon, Juror Number 82 left the courtroom)

23 THE COURT: State's position.

24 MR. GOWDY: Your Honor, I think the court frankly
25 could go either way. I think that there are cases that the

1 fact that a potential juror says they are leaning one way or
2 another, frankly the fact that a potential juror says that
3 they would favor one punishment over the other does not
4 disqualify them.

5 This juror said he could give life and death. The
6 hypothetical presented to him was that if there was no
7 mitigation case whatsoever put up, would you always give
8 death. And even though he equivocated on that, let's just
9 say he said I would be inclined to vote towards death.
10 Well, that's a perfectly reasonable position. There has
11 been nothing offered in mitigation. There is only
12 aggravation.

13 He said to me that he could give life and death,
14 and it would depend on the circumstances and the law. And I
15 think that makes him a qualified juror.

16 THE COURT: Mr. Starnes?

17 MR. STARNES: Your Honor, I don't think he's
18 qualified under State v. Jessie Whalin Sapp, 621 S.E. 2d
19 883. Your Honor, he was unequivocal about being
20 substantially impaired, and I don't think that he makes the
21 criteria under Wainwright v. Whitt.

22 THE COURT: Well, I'm going to look at your case
23 in just a minute. The clerk will take a minute to pull it
24 up. We will look at the case you are talking about and see
25 what you are saying.

1 My concern is that I never had it asked before,
2 "if the defense doesn't put up any mitigation whatsoever,
3 would you be inclined to vote for the death penalty?" And,
4 you know --

5 MR. STARNES: It's our position --

6 THE COURT: Why would the defense never put up
7 anything in mitigation?

8 You know, I understand what you are saying. Maybe
9 there isn't anything in mitigation, but if the State -- why
10 would the defense not put up any mitigation? That's the
11 whole purpose of the penalty phase of the trial, is to allow
12 the State to put up aggravation and the defense to put up
13 mitigation. And to ask a juror "if we don't put up anything
14 that shows anything that you should consider, would you lean
15 towards the death penalty?" And, you know, if there was
16 nothing good to be said about a person who has been
17 convicted of murder, you know, would they be inclined to
18 render the death penalty? I don't think that's really a
19 fair question.

20 MR. STARNES: Your Honor, I believe it would
21 substantially impair his duty as a juror and I believe it's
22 burden shifting.

23 In addition, Your Honor, the Constitution doesn't
24 compel a defendant to put up any case at all.

25 THE COURT: I don't disagree with you.

1 The question is whether the question is a fair
2 question or not.

3 What's your point with regard to -- what's your
4 point with regard to the Sapp case? That's a juror who, for
5 religious reasons, couldn't impose the death penalty, and
6 vacillated on it, but couldn't -- essentially based on
7 religious views, couldn't impose the death penalty, and the
8 question was whether she should have been properly excluded
9 or not.

10 MR. STARNES: Well, Your Honor, this goes to his
11 personal views. I think Sapp stands for the proposition and
12 Wainwright v. Whitt by his responses, that if he did not
13 hear anything in mitigation, he would vote for the death
14 penalty. I mean, I think it's a clearly that he should be
15 excluded, that he's not qualified under Wainwright. He
16 couldn't adhere to a mercy instruction.

17 MR. GOWDY: Well, Your Honor, with all due respect
18 to this potential juror, he wasn't given that option in the
19 defendant's hypothetical, which is why case law doesn't want
20 us asking hypotheticals. His answers was much more -- were
21 much more in line in George and Cain.

22 In George a juror was qualified, even though he
23 initially said he could never vote for life if he found an
24 aggravating circumstance. That's beyond what this
25 defendant -- this juror said.

1 Another juror was qualified even though he
2 specifically said two mitigating circumstances would not
3 matter at all to him.

4 So you have to judge it in the context of his
5 whole answer. And if the court wanted to, the court could
6 bring him back in. That's the problem with attorneys and
7 defendants through the voir dire, is we want to move them
8 one way or another. And if you wanted to bring him back in
9 and ask him, without any edge from my side or his side,
10 trying to get him to be life prone or death prone. I think
11 it's close enough, if the court wanted to inquire one more
12 time, can you give both sentences. The fact that he would
13 disregard certain mitigators does not disqualify him.

14 Bring him back in one more time. I'm going to ask
15 him a couple more questions.

16 (Whereupon, Juror Number 82 entered the courtroom)

17 THE COURT: Sir, please have a seat again.

18 RE-VOIR DIRE EXAMINATION BY THE COURT:

19 Q. I need a clarification on something, if I can, please.

20 A. Okay.

21 Q. You were asked a hypothetical situation by the defense;
22 that is, if the defense chose not to put up any evidence in
23 mitigation, they just -- something that should be considered
24 in his favor in weighing whether to give the death penalty
25 or life without parole.

1 But let me ask you along that line, you know, if you
2 received an instruction from the court that you couldn't
3 consider that against him in any way, would that make a
4 difference in whether you -- that he's not required to put
5 up anything, would that make any difference as to whether
6 you could look at all of the testimony and evidence in the
7 case and still make a decision and -- make a choice between
8 the death penalty and life without parole?

9 A. Yes, sir.

10 Q. So let me ask you again then. You could listen to all
11 testimony and evidence in the case, including -- of course,
12 you would have heard the testimony and evidence during the
13 case itself in chief, if that would have been made part of
14 the record in the penalty phase, and could you listen to
15 what is presented in the penalty phase, instruction by the
16 court as to drawing no adverse influence against the
17 defendant because he chose not to put up anything in
18 mitigation. I would ask you as you could weigh all of that
19 and make a decision then -- and be able to make a decision
20 as between the death penalty and life without parole?

21 A. Yes, sir.

22 Q. And is it possible under those circumstances, depending
23 upon what you find to be the factual information that you
24 have at that time, do you think it's possible that you could
25 render a sentence of life without parole, or would you

1 always give the death penalty?

2 A. More than likely I would give the death penalty.

3 Q. But could you listen to everything and then make that
4 determination?

5 A. Yes, sir.

6 Q. And could you render a sentence of life without parole,
7 if you thought all the facts and evidence warranted it?

8 A. If they warranted it.

9 Q. Yes, sir. All right.

10 THE COURT: Any -- I'm going to let you follow up
11 one more time, if you want to.

12 MR. GOWDY: No, sir.

13 THE COURT: Okay. All right. Thank you, sir.
14 You may stand down.

15 Do you want to ask another questions.

16 MR. STARNES: Please, sir.

17 THE COURT: Well, you didn't get up.

18 MR. STARNES: Sorry.

19 THE COURT: Please, sir, resume your seat for just
20 a minute. He wants to ask you a question, please, the
21 defendant.

22 RE-VOIR DIRE EXAMINATION BY MR. STARNES:

23 Q. Mr. Elmore, let me get -- I'm a little confused here.
24 I want to make sure we are on the --

25 A. I'm a little confused myself.

1 Q. All right. Did the judge confuse you by all those
2 questions he asked you?

3 A. No, I think he cleared it up.

4 Q. Okay. In the event that we get into a penalty phase --
5 and this is a yes or no answer on this. In the event we get
6 into the penalty phase on this and the defense -- if the
7 defendant does not put up any defense, and you hear no
8 evidence of mitigation, and the judge instructs you to what
9 the law is, and there was no evidence of anything good about
10 the defendant, and the State put up a case about
11 aggravation, about how bad the crime is, how heinous it
12 is --

13 MR. GOWDY: Your Honor, is this one question, or
14 is this more than one question?

15 THE COURT: I have no idea where he's going with
16 this.

17 Could you clarify? Simplify it just a little bit
18 and make sure that he's able to understand you, Mr. Starnes.

19 BY MR. STARNES:

20 Q. If we get into the penalty phase and the defense puts
21 up no evidence and you heard nothing good about the
22 defendant, you could vote for the death penalty?

23 A. Yes.

24 Q. Could you vote for life imprisonment?

25 A. I would have to see it, what, to make the decision.

1 Q: But if we did not put up any evidence --

2 MR. GOWDY: Your Honor, it's now the fourth time
3 he's asked the question. He doesn't like the answer.

4 THE COURT: Yes, sir, I agree. He's answered the
5 best he can, sir. Thank you.

6 MR. STARNES: No further questions.

7 THE COURT: All right, sir. Thank you." You may
8 step outside. We will call you back in just a minute.

9 (Whereupon, Juror Number 82 left the courtroom)

10 THE COURT: All right. I think I have already
11 heard from you.

12 Anything else you want to say?

13 MR. GOWDY: Just when you strip away the varnish
14 of the advocates and the court asked the question, I think
15 that's the answer that we can rely most on, and he's
16 qualified, based on that.

17 MR. STARNES: Your Honor, I think under the Evans
18 case that I'm entitled to ask the juror further questions.
19 I'm sure Mr. Gowdy likes this juror because he's a pro-death
20 juror. We object to him.

21 THE COURT: Well, I let you asked him questions.
22 You just didn't get up and act like you wanted to ask him.
23 another question. I didn't overlook you. You just didn't
24 get up, and that's what's required.

25 MR. STARNES: I understand.

1 It is the defense position that he's not qualified
2 under Wainwright v. Whitt, and we would ask that the juror
3 be excused.

4 THE COURT: Thank you.

5 The court finds that he's qualified.

6 Let me say I don't -- I think he leans towards the
7 death penalty for murder, but he has stopped short of saying
8 that he will always give murder (sic). And so I think the
9 question is we don't put up anything in our favor, which is
10 kind of absurd I think, but if we don't put up anything --
11 which you are not required to put up anything, but I would
12 think in a penalty phase it would be foolish not to. There
13 certainly would be nothing to gain by not putting up
14 something that's favorable to you. I just don't think
15 that's a fair question, because you are asking the potential
16 juror -- it is true that you don't have to put up anything.
17 It would be foolish not to, but the court would instruct
18 them that they couldn't consider that again you in any way.

19 I've never seen a case where no mitigation was put
20 up in favor of a defendant.

21 That's not a fair question, to ask them is if he
22 was found guilty of murder, and the State put up all this
23 stuff about heinous and all kind of terrible stuff, and all
24 that kind of stuff, and the defense doesn't put up anything,
25 are you going to find him guilty of murder -- I mean, are

1 you going to give him the death penalty? Probably so he
2 said. Well, you know, what else would you expect him to
3 say?

4 I don't -- what I'm saying is I don't think that's
5 a fair question. I think that he probably leans towards the
6 death penalty, if somebody is convicted of murder, but he
7 didn't say he couldn't give life without parole. He said he
8 couldn't give it under certain circumstances. And I don't
9 think it's a fair question to say we don't put up anything.
10 I think you need to say you could listen to all of it and
11 make a decision; and even through hearing it, could you
12 still give the death penalty? And, you know, a juror might
13 say that, if he feels that strongly about it, but he didn't
14 say that, so I find him qualified.

15 He's indicated that under certain circumstances he
16 could give life without parole and that's what's required.
17 I find him qualified.

18 Let's go with the next one.

19 MR. STARNES: Your Honor, if I may, before we get
20 started with the next juror, just so I got a full
21 understanding of this. It's my understanding from the
22 court's instruction that I cannot ask them the question --
23 in other words, if we doesn't put up any defense in the
24 penalty phase, is that a question that the court is
25 precluding me from asking?

1 THE COURT: Well, I don't think it's a fair
2 question. That's what I'm saying to you. I just don't
3 think it's a fair question to ask somebody that, that kind
4 of hypothetical.

5 I don't know of any case that would allow you to
6 ask that kind of question. I just don't think it's a fair
7 question, that kind of hypothetical.

8 A better question would be listening to
9 aggravating and mitigating factors, you would listen to all
10 that testimony with regard to both, could you still -- could
11 you give either the death penalty or the life without
12 parole? I think that's -- without possibility of parole. I
13 think that would be the proper question.

14 I don't think it's fair to say if we don't put up
15 anything, you still lean towards the death penalty?

16 MR. STARNES: Your Honor, it's our position that
17 it's a fair question. I don't -- the juror, he specifically
18 said he would have to hear everything and. If we don't put
19 up a defense -- the Constitution doesn't compel the
20 defendant to put up a defense. And while that may be
21 unreasonable, it's unreasonable for a capital defendant to
22 come into court and walk into the Supreme Court and ask for
23 the death penalty. That's completely unreasonable, but it
24 happens, and it's happened in South Carolina. And I don't
25 think under the statute, Your Honor, under 16-3-26, that I

1 should be precluded from asking a juror that question.

2 There is an old case that deals with voir dire and
3 on staking out jurors, and I believe it's State v. Smart. I
4 believe it's in 282 S.E. 2d. I don't know the exact page
5 number on it, but I don't believe under --

6 THE COURT: State v. Smart?

7 MR. STARNES: State v. Ronald Smart.

8 I don't believe that would be an unreasonable
9 question to ask when a juror says they would have to hear
10 the penalty phase, if we get to the penalty phase.

11 I know it would be unreasonable for any capital
12 defendant to get into a penalty phase and not present a
13 defense, but that is feasibly possible that that could
14 happen in this case. I'm not saying it's going to.

15 MR. GOWDY: Well, Your Honor, that is exactly why
16 the Supreme Court has systematically said do not ask
17 hypothetical questions, because that hypothetical in and of
18 itself is unfair, because the judge is going to tell the
19 jury you can give life for any reason or no reason. He
20 didn't say that in his hypothetical. You are going to tell
21 them that you can vote for life if you find every
22 aggravating circumstance, and he didn't say that.

23 My question is -- my point is it's got to be fair.
24 The questions to any of these, whether they are life prone
25 or death prone, have to be fair. And to say we are not

1 going to put up anything in mitigation at all. And to use
2 the word heinous, which he has, instead of aggravation,
3 which is the more proper word, to say how heinous it is and
4 we are not going to say anything good about the defendant,
5 which way you would lean, everybody in the world would lean
6 towards death. It's not fair. The court pointed that out.
7 If he needs to ask that hypothetical, he needs to puts in
8 all relevant considerations, including the judge's charge at
9 the end.

10 MR. STARNES: Your Honor, I don't agree with Mr.
11 Gowdy, because there are some jurors that can't vote for the
12 death penalty at all, so I don't agree with his statement
13 that all jurors would vote for death.

14 THE COURT: Well, we are not saying that. We are
15 not going to get that far if somebody says "I can't ever
16 vote for life without parole, I can't ever vote for that,
17 I'm always going to vote for death." We are not going to
18 get that far.

19 If somebody says "I can't give the death penalty,"
20 we don't get that far. If they absolutely cannot give one
21 way or the other, then they are disqualified, so we don't
22 get that far.

23 We have a juror who says "I would lean towards
24 death penalty. Yeah, I could listen to the testimony and
25 evidence, I could listen to everything, and under certain

1 circumstances I could give a life without parole." That's
2 what he said.

3 And then you came up and said -- asked this
4 hypothetical, which I don't think is fair, "if you didn't
5 hear anything good about the defendant, you hear all the bad
6 stuff, nothing good, would you lean towards the death
7 penalty," and he said "yes."

8 MR. STARNES: I understand that, Your Honor.

9 THE COURT: What's fair about that?

10 MR. STARNES: If we get into a penalty phase and I
11 can't function as a defendant and have to just sit over here
12 and can't do anything, I think I'm entitled to ask that
13 juror that. That could happen.

14 Any defendant would be shocked and emotionally
15 distraught from having a murder judgment entered on him. We
16 could very well get into a penalty phase and I may not be
17 able to control my defense. I may not be able to put up a
18 defense. Now, that's not hypothetical. That could very
19 well happen. I'm not saying it's going to happen, but I say
20 it realistically could happen, and I believe it's an honest
21 and appropriate question.

22 THE COURT: I -- I -- when you get into things
23 that aren't likely to happen and put that as a hypothetical,
24 you know, I have problem with that when we are trying to
25 determine the views of the juror towards the death penalty.

1 I have a problem with that. I don't think it's fair.

2 Smart, of course, like some of the other cases you
3 cite, Mr. Starnes, does not stand for what it says it stands
4 for. So that's of no help to the court.

5 Smart says they are not to let the State voir dire
6 individually the jurors, so it's left to the discretion of
7 the court as to what possible questions would be -- what
8 voir dire questions would be -- would be left to the
9 discretion of the court. So it does not stand for what it
10 says it stands for.

11 I'm trying to think through the question. That's
12 why I'm spending time to think it through, the question
13 itself.

14 You know, there are statutory mitigating
15 circumstances that the court is required to instruct the
16 jury on. Of course, there are other mitigating factors that
17 can be presented to the jury in addition that's brought out
18 during the trial, but there's certain statutory mitigating
19 factors that have to be instructed to the jury -- or, you
20 know, they have to be instructed to the jury. So it's not
21 as though they wouldn't hear anything in mitigation. You
22 got statutory. So that's not -- again, it's not a fair
23 question to the jurors.

24 All right, I'm going to cite for the record State
25 v. Sowell, 285 S.C. 529, 331 S.E. 2d 775, a 1985 case. The

1 Supreme Court case says that parties are not allowed to ask
2 hypothetical questions to the jury with regard to findings
3 in the case on voir dire.

4 MR. STARNES: Your Honor, it's the defense
5 position that the question is reasonable. He was very
6 hesitant -- he was very hesitant in his answers, and that if
7 we didn't put up a defense, that he would vote for the death
8 penalty. I don't believe -- under the facts and
9 circumstances I do not believe that the question --

10 THE COURT: Now, he changed that a bit when the
11 court asked him the questions, as I instructed them on the
12 law, he couldn't hold that against the -- against the
13 defendant, the fact that he didn't put up anything in
14 mitigation, and he said, well, he would have to consider
15 that, and he would decide based on everything that he heard.

16 MR. STARNES: I understand that -- I understand
17 the court's position on the question being one of
18 hypothetical, but the entire case is hypothetical, Your
19 Honor, because we may not get that far. I mean, I can't say
20 that we would.

21 THE COURT: I'm not going to play that mind game.
22 I know we might not get that far. The whole purpose of
23 asking these questions is to determine their position on the
24 death penalty. That's -- that's why we are here, Mr.
25 Starnes. We are not here to play mind games. We are here

1 to ask them the position on the death penalty. I realize we
2 might get that far. I have already told them that. The
3 question is how do we feel if we did get that far. So it's
4 not a hypothetical. Of course, if we don't get that far,
5 that's going to end the matter.

6 I'm talking about you are saying if you don't put
7 up anything. You are going to put up something. You know
8 that you are going to put up something, and so that's a
9 hypothetical question. It's an unrealistic question. I
10 have never seen a case where the defense didn't put up
11 anything, and 99.9 percent of the cases are represented by
12 an attorney, the attorneys -- didn't put up anything in
13 mitigation, the case would probably be turned over for
14 ineffective assistance of counsel on PCR, because they have
15 got to put up whatever you have got in the way of mitigation
16 to prevent from getting the death penalty. So, yeah, it's a
17 hypothetical.

18 You are saying if everything -- they put up all
19 this bad stuff against me and I choose not to put up
20 anything, would you be more inclined to give the death
21 penalty? Would you probably give the death penalty? He
22 said yes. Then.

23 I instructed him, you know -- I don't think that's
24 a fair question.

25 I think a question is could you listen to all of

1 the testimony and evidence in the way of aggravation and
2 mitigation and the court's instruction on the law, and then
3 could you then render a decision based on how you found it
4 as to the death penalty, or life without parole? I think
5 that's a fair question.

6 To say if we don't put up anything and they put up
7 everything bad, are you going to vote for the death penalty,
8 what else are they going to say?

9 It's not a fair question to determine whether they
10 could or could not give life or death. I don't think it's a
11 fair question.

12 I think this gentleman leans towards the death
13 penalty in the conviction for murder. He said but he was
14 not an absolute.

15 What I'm trying to get at is the question. I
16 don't think the question needs to come up anymore and I'm
17 not going to allow the question. I think it's a
18 hypothetical.

19 A better question would be -- your expecting
20 something that's probably not going to happen. And so I
21 think a better question would be whatever the -- even if you
22 don't put up any, could you listen to the testimony and
23 evidence with regard to aggravation and mitigation and
24 court's instruction on the law in that regard, the court has
25 to instruct on statutory mitigation issues, has to instruct

1 the jury on that. Could you do that and decide between the
2 death penalty and life? And would you always give the death
3 penalty, or would you consider life? He said he would
4 consider life under that question.

5 I'm not going to allow that question. I have
6 thought it through. I think it's a hypothetical question.
7 I'm not saying it couldn't ever happen, but it's extremely
8 unlikely to happen, and I think that there would be some --
9 at least some mitigation come in. And, therefore, I don't
10 think it's a fair question to say let him put all this bad
11 stuff, heinous stuff, and all that stuff in against me, and
12 I don't put up anything whatsoever, just sit down and don't
13 do anything, would you probably give the death penalty?
14 What else is he going to say except death.

15 I don't think it a fair question, so let's move
16 on.

17 I find this juror qualified to serve, and I'm not
18 going to allow you to ask that question in that form.

19 You can ask it in a form could you listen to the
20 aggravating factors presented by the State and mitigating
21 factors offered by the defense, the court's instruction on
22 the law that applies to those issues, and could you then
23 render a decision based on everything that you have heard as
24 to whether to give the death penalty or life in prison, or
25 would you always give the death penalty? You can ask those

1 questions, but I think that's the appropriate question and
2 that's where we are going to go.

3 MR. STARNES: Your Honor, under State v. Torrence,
4 I would like to preserve the record. I am certainly not
5 going to argue with Your Honor. I accept your ruling from
6 the court.

7 Your Honor, I would ask that that be preserved,
8 not only for this juror, but each and every juror
9 afterwards, that I would ask to be protect it on the record
10 that I would like to ask that question.

11 THE COURT: All right.

12 MR. STARNES: The because I don't think --

13 THE COURT: It's there. It's noted. The
14 objection is on the record and the record will so reflect.
15 The court overrules it.

16 MR. STARNES: Thank you, Your Honor.

17 THE COURT: Yes.

18 I don't think it's a fair question, any way close
19 to being fair, and it would interfere I think with every
20 single juror trying to get an honest answer, and I don't
21 know if you could give them an unlikely scenario and have
22 them base their decision on that question. All right, sir.

23 That juror is qualified.

24 Let's move onto the next one.

25 Did y'all have a chance to read the questionnaire

1 on Ms. Turkett, or do you want to save her for last?

2 MR. GOWDY: I'm ready.

3 THE COURT: Are you ready with Ms. Turkett?

4 MR. STARNES: Yes, Your Honor.

5 THE COURT: Did you get a copy of her?

6 MR. STARNES: Yes, sir, I did.

7 THE COURT: Let's take her next then.

8 THE CLERK: Your Honor, bring the gentleman back
9 in?

10 THE COURT: Oh. I'm sorry. Yes, sir. Let's do
11 that, yes, sir.

12 (Whereupon, Juror Number 82 entered the courtroom)

13 THE COURT: Sir, you can stand right there,
14 please.

15 Mr. Elmore, the court has found you qualified to
16 serve on the jury.

17 What I would ask you to do is to -- you are
18 required to return to court Wednesday at two o'clock.
19 However, you can also check the website. Do you have a
20 number to call, a number to call in --

21 JUROR NUMBER 82: Uh-huh.

22 THE COURT: -- for jurors on the jury that have
23 been selected.

24 JUROR NUMBER 82: Uh-huh.

25 THE COURT: For qualified jurors. If you will

1 call that number tomorrow night after six, you can get
2 instructions on whether that time has been changed or stays
3 the same, or you can go on the clerk's website. And it says
4 for qualified juror, this is when you report.

5 JUROR NUMBER 82: Okay.

6 THE COURT: Either way you can get it. Otherwise
7 it would Wednesday at two.

8 JUROR NUMBER 82: Wednesday at two?

9 THE COURT: Thank you.

10 (Whereupon, Juror Number 82 left the courtroom)

11 THE COURT: We can go with Ms. Turkett.

12 (Whereupon, Juror Number 288 entered the
13 courtroom)

14 VOIR DIRE EXAMINATION BY THE COURT:

15 Q. Ma'am, you are Diane Turkett, is that correct?

16 A. Yes, sir.

17 Q. If you kind of talk into the mike so we can hear you.
18 And Ms. Turkett, I'm going to ask you just to be relaxed, if
19 you will, in your chair. We are going to ask you a few
20 questions. No right or wrong answers to these questions.
21 Nobody is going to give you the third degree or anything
22 like that.

23 The only thing we are going to do is ask you a few
24 questions to determine your views on the death penalty and
25 maybe certain other things. Just to be as honest as you

1 can, give us honest answers, please, ma'am.

2 And I think I told you you are still under oath for the
3 purposes of the information that you are going to provide to
4 us today.

5 Now, did you get a chance to look -- there was a long
6 list of potential witnesses in this case. Did you get a
7 chance to look over those potential witnesses, ma'am?

8 A. Yes, sir.

9 Q. And, Of course, hopefully -- I know all of these
10 witnesses will not be called, but some of them will be
11 called, and the question is do you know any of these
12 witnesses? Do you recognize any names on that list?

13 A. The only one name that I --

14 Q. Well, don't give me the name.

15 A. Okay.

16 Q. If you recognize any, just give me the number that's on
17 there.

18 A. Number seven.

19 Q. Number seven. Do you recognize that name?

20 A. Yes.

21 Q. Okay. Any others that you recognize by number?

22 A. No, sir.

23 Q. Ma'am, let me ask you if that potential witness would
24 be called as a witness by either side in this case, would
25 that witness being called as witness interfere in any way

1 with your ability to give both the State and the defendant a
2 fair and impartial trial in this case?

3 A. No, sir.

4 Q. Now, ma'am, there was a page in the jury room which
5 talked about -- it gave examples of three different jurors.
6 This not all inclusive, obviously, of jurors, but did you
7 identify yourself as closer to one of these three potential
8 jurors?

9 A. I think probably number three. The third one.

10 Q. The third one?

11 A. Yes, sir.

12 Q. So you would be a juror who could listen -- would not
13 have their mind made up in advance, but would listen to the
14 testimony and evidence in the case and the court's
15 instruction on the law and then make a decision based on
16 that, is that correct?

17 A. That's correct.

18 Q. Okay. In a case in which the State is seeking the
19 death penalty there are two possible phases of the trial.

20 The first phase of trial would be what we call the
21 guilt trial -- guilt phase, in which the State would have to
22 prove the charges against the defendant beyond a reasonable
23 doubt.

24 If the State failed to prove the charge of murder
25 beyond a reasonable doubt against the defendant, then the

1 juror's role would be ended -- at that point it would end.

2 But in the event that the jurors would find that the
3 State had proven the charge of murder against the defendant
4 beyond a reasonable doubt, then we would go to the second
5 phase of the trial, which would be the penalty phase.

6 And in the penalty phase jurors would be asked to
7 listen to certain aggravating factors presented by the State
8 and mitigating factors by the defense and the court's
9 instruction on the law as it applies to those cases, and the
10 jury would then be asked to render a verdict, recommend a
11 verdict of either death or life without parole -- without
12 the possibility of parole. Now, do you understand that?

13 A. Yes, sir.

14 Q. Now, ma'am, if we reach the penalty phase of the trial,
15 if we reach that, and that evidence was presented to you,
16 could you render a decision then which would be fair, based
17 on all of the -- what would be appropriate based on all the
18 information provided to you during that phase of the trial
19 as to the death penalty or life without parole?

20 A. I believe so, yes, sir.

21 Q. Okay. And would you always give the death penalty in
22 if someone was found guilty of murder?

23 A. No, sir.

24 Q. Would you always give life without parole, without the
25 possibility of parole, if someone were found guilty of