

VOLUME FOUR OF NINE

STATE OF SOUTH CAROLINA

In The Supreme Court

APPEAL FROM LEXINGTON COUNTY

Lee S. Alford, Circuit Court Judge

RECEIVED

DEC 6 2009

S.C. SUPREME COURT

THE STATE,

RESPONDENT,

V.

NORMAN STARNES,

APPELLANT

RECORD ON APPEAL

JOSEPH L. SAVITZ, III
Senior Appellate Defender

ELIZABETH A. FRANKLIN-BEST
Appellate Defender

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

Attorneys for Appellant

HENRY DARGAN MCMASTER
Attorney General

JOHN W. MCINTOSH
Chief Deputy Attorney General

DONALD J. ZELENKA
Assistant Deputy Attorney General

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 this investigation there were various officers that were
2 involved in the case. I believe Detective Darren Amick was
3 assigned as the lead investigator on January the 11th of
4 1996.

5 Through the course of the investigation, Your
6 Honor, there were -- there were various things done through
7 the course of investigation that related to drugs relating
8 to this case. On the 12th of November or -- or excuse me,
9 the 12th of January Detective Amick met with the narcotics
10 officers in Pelion, at the Pelion Elementary School. They,
11 in effect, raided a drug house in Pelion. And Detective
12 Amick reported in his written report that this drug raid met
13 with negative results in this case.

14 In addition, Your Honor, at a later point
15 somewhere around, I believe it was March, Detective Amick
16 submitted a report to the Federal Bureau of Investigation
17 and files a report that what they call a VIACAP report. In
18 that VIACAP report, Your Honor, Detective Amick discloses to
19 the Federal Bureau of Investigation -- there is a
20 questionnaire that's filled out. There is around 101
21 questions. One of those questions on the VIACAP report is
22 "is this case related to organized drug trafficking?" And
23 Detective Amick indicated on that questionnaire that it was.

24 Under Rule 401, Your Honor, relevant evidence
25 means evidence having any tendency to make the existence of

1 any fact that is of consequence to the determination of the
2 action more probable or less probable than it would be
3 without the evidence.

4 Now, I haven't put up a case in defense yet, Your
5 Honor, but the previous testimony in the 1997 trial was that
6 this was a drug deal that went bad in my home in Pelion on
7 January the 8th. Apparently there was some investigations
8 that the Lexington County sheriff's office did about
9 relating to drug activity regarding this case, and they
10 interviewed several witnesses and different individuals
11 regarding drugs.

12 If the court feels that maybe it's not appropriate
13 during the State's case in chief, Your Honor, what I intend
14 to do in my case is I intend to offer proof that Mr. Welborn
15 used drugs on or about January the 8th. I intend to offer
16 proof that Mr. Welborn used drugs on January the 4th, 5th,
17 and maybe the 6th. I believe there is a videotape that
18 exists, that I'm trying to get at this moment, that reflects
19 Mr. Welborn in a motel doing drugs. The drug that Mr.
20 Welborn was doing was crystal methamphetamine, and I believe
21 there is a videotape that reflects that.

22 Detective Amick mentions this videotape in his
23 investigative report. There is an interview with Mr. --
24 with Mr. Welborn's ex-wife Ms. Joyce Welborn. In that
25 video -- or in the interview Ms. Welborn mentions the

1 existence of a video, because Mr. Welborn had made a
2 declaration -- a statement to her that he thought that he
3 was going to die and that the video would explain why.

4 So, Your Honor, if I'm not allowed to present this
5 evidence while the State puts up their case, I can
6 understand it.

7 I would ask the court -- Mr. Amick and various
8 investigators in this case have been served a subpoena by
9 the defense. I would ask that the court please allow me to
10 call those witnesses in my defense, in my case when I put my
11 defense up as being relevant to my defense.

12 THE COURT: Now, all right. Let me explain this
13 to you. If you wish to call them in your defense, you can
14 call them as a witness in your defense. You can call
15 witnesses to present your defense, but whatever testimony
16 that you are going to ask them to give has to be within the
17 rules. Okay? And so -- and it's going to have to be
18 relevant to the case. Of course, it's also going to have to
19 be within the rules. So I'm not sure what you are going to
20 try to ask them, and maybe we need to do that with a proffer
21 before we put it up before a jury, because it's hard to take
22 it out of the minds of jurors once it's there.

23 So the concern would be if you have direct proof,
24 that you have some proof of an issue, then you can --
25 obviously you can proceed on that fashion, if it's relevant

1 to this case. However, we have to be within the rules. So
2 you can't not establish that somebody that was a rumor, a
3 gossip, an investigation, some hearsay statement that
4 somebody made out there somewhere about drug use, or
5 investigation of drug use, or possible drug involvement.
6 You can't prove a case -- you can't get into that in court,
7 because it's more prejudicial than probative, unless you
8 have got something to show, to be able to establish to prove
9 your case.

10 MR. STARNES: Yes.

11 THE COURT: And, for instance, the example I gave
12 you at the bench when I was talking to you is why you
13 couldn't do that. Let's say the police officer said "we
14 believe -- "we had information to believe that Norman
15 Starnes killed two other people three years ago before we
16 started this investigation." And I said do you think
17 that's, you know, that would be fair to you, when you are
18 being tried for murder charges, to allow somebody to bring
19 that before the jury, when there's no proof that you did
20 that. There is no -- there might be hearsay, or gossip, or
21 something. There might have been an investigation and
22 investigation report was negative or did not establish that
23 there was any proof of anything. So, you know, would that
24 be fair? Of course not. And within the rules it would be
25 more prejudicial than probative, and so you can't do it that

1 way. You can't prove something by hearsay or gossip. The
2 court -- the laws require more than that in court. So
3 that's the only caution that I have for you.

4 I have no idea what you are going to prove. If
5 you can make it relevant, that's fine. You can call
6 witnesses to put up your defense, call any of them that you
7 want to. The only thing is, keep in mind is, you cannot
8 prove something by innuendo, by gossip, by negative
9 investigation. You can't prove some positive with a
10 negative. And so that's the concern. And so you have to
11 stay within the rules. You know, that's true for the State.
12 It's true for you. Whether you are represented by attorneys
13 or whether you represent yourself, you still have to stay
14 within the rules. The rules are there for a reason. That's
15 the only thing I ask you.

16 And so I'm not trying to limit you on whatever the
17 defense that you want to present, but it's got to be
18 relevant and you got to have something more than gossip,
19 innuendo, a negative investigation. Okay?

20 MR. STARNES: I understand.

21 THE COURT: -- to prove somebody was using drugs
22 or involved in drugs.

23 MR. STARNES: Yes.

24 THE COURT: If you got some proof on that,
25 obviously you can present it, but you got to bring the

1 person in that you that said it and let them be subject to
2 cross-examination.

3 The State can't have one witness say that another
4 witness said Norman Starnes did so and so. You can't do it
5 that way. Under the law you got to bring the person who
6 said it into court and let them say it on the stand and let
7 Norman Starnes ask them some questions about it, or
8 cross-examination, confirmation, and that's what the law and
9 that's what the Fifth Amendment due process clause requires,
10 and that's what the rules require. So you can't prove
11 something through gossip, hearsay out there somewhere, or
12 because one person said something to somebody else and let
13 that person come in and say what they said.

14 It's kind of like old thing. You got ten people
15 in a line. You start out and you might say a long sentence.
16 The first person says it to the second person, to a third
17 person, to the fourth person, and second to the third -- by
18 the time you get to the end, it's entirely something else.
19 It's entirely different. I mean, experience has shown that.
20 What the tenth person says is not what the first person
21 says, and so it becomes entirely something different. So
22 you can't prove it that way.

23 You got to direct evidence of it or circumstantial
24 evidence that's sufficient, you know, you can present it.

25 And I don't know, maybe -- maybe standby counsel

1 can kind of go over that with you, or something, just some
2 guidance, I don't know. But if you ask the court to rule on
3 it before you get into something like that, I would ask you
4 to -- let's discuss it with the solicitor and -- or the
5 State and out of the presence of the jury and we will see
6 before we present it to the jury. Okay? We can always take
7 a proffer of the testimony or the evidence out of the
8 presence of the jury to see if it's something that the jury
9 should see or not. I will be glad to do that, if you want
10 to do that at any time. That's unquestionable. Okay?

11 MR. STARNES: Yes, sir.

12 One more area, Your Honor. During the -- and I
13 can't anticipate what Mr. Gowdy is going to do, but during
14 the first trial in 1997, Solicitor Myers made it a very big
15 point after these individuals were shot and killed, I burned
16 their belongings in a dumpster behind the house. He made it
17 look like that I stole their credit cards, like it was a
18 robbery. That's what he pretty much presented to the jury.
19 And I don't know if Mr. Gowdy is going to get into that, if
20 he is going to say that I tried to rob these individuals,
21 that I shot and killed them to rob them.

22 At some point in the investigation, around January
23 the 16th, there are various officers involved in this case,
24 and one of them was an investigator that investigated credit
25 card fraud, fraudulent checks, stolen credit cards and

1 things of that nature. And during the course of that,
2 Detective Amick received a returned check on Mr. Welborn.
3 Apparently there was a check that was written on his
4 account, that Mr. Welborn had written and the check was
5 returned for insufficient funds.

6 THE COURT: When?

7 MR. STARNES: On January the 16th, after he was
8 killed.

9 THE COURT: Well, all right, here is the thing.
10 How is that relevant? Now, if he didn't have any income
11 coming in between the 8th, when he was killed, and the 16th
12 he had no income coming in, no money in the bank and the
13 check was outstanding, obviously it could have bounced
14 because he didn't put any money in the bank, didn't earn any
15 income, didn't put any in the bank at the time he died on
16 the 8th until the 16th. I don't know. I'm just saying how
17 is that relevant? We don't know why the check bounced. It
18 may be a very good reason why it bounced, but how is it
19 relevant to the case?

20 MR. STARNES: Because they are going to allege
21 that I robbed these individuals. And I want to show the
22 jury that I did not use any of Mr. Welborn's credit cards.
23 I did not use any of his ATM cards. I did not write any of
24 his personal checks. Norman Starnes did not steal from
25 these individuals.

1 THE COURT: Well, you can to testify to that, if
2 you testify, or if you have other evidence to present to
3 establish, that you can do. You can ask the witness. I
4 mean if a witness says you took these things off of the
5 bodies and did something with them, some of it was burned.
6 I don't know what happened to the rest of it. I think you
7 can ask them "do you have any evidence that I ever used
8 these credit cards for any reason?" You can ask them that.
9 Of course, the witness may not know. They may not, but if
10 there is no evidence of it, obviously you can argue that to
11 a jury. If they never present the evidence that you used,
12 you can argue to the jury "they didn't present any evidence
13 that I used the cards." Okay?

14 MR. STARNES: Yes, sir.

15 THE COURT: I'm not trying to help you with your
16 defense. I'm just saying, though, that obviously if they
17 don't present any evidence that you used the cards, it's a
18 fair argument that they didn't present any evidence that you
19 used the cards. Okay?

20 They can present evidence, if they got evidence.
21 It's got to be direct evidence.

22 Hearsay or something that you took whatever you
23 took, if you took things off the bodies, personal property
24 off the bodies, they obviously have a right to get that in.

25 The purpose of it or the intent was it's something

1 that you can address as well, but if it happened, they are
2 able to present that to the jury. That's all I can tell
3 you, for whatever inferences the jury wishes to make on that
4 point.

5 MR. STARNES: I understand, Your Honor.

6 THE COURT: Okay. All right. Anything else?

7 MR. STARNES: No, sir, I believe that's it.

8 THE COURT: All right. Let me ask you, too. We
9 took the first witness yesterday, you took a very long time
10 on cross. And I'm -- and I'm not trying to prevent you from
11 getting anything in that you want to get in support of your
12 case. I want you to be able to do that.

13 At the same time, something like a picture that
14 you want to try to get in evidence, you have to lay a
15 foundation to get it in. So if you are offering a picture
16 to a witness and say "does this look like something", well,
17 you need to establish at what period of time; if you know
18 who took the picture, establish who took the picture; does
19 this reasonably represent -- fairly and accurately represent
20 what is intended what you say it depicts?" So I mean, if
21 you took a picture of something in 1980, it might not fairly
22 and accurately represent what something looks like in 1996.

23 MR. STARNES: I understand.

24 THE COURT: Do you understand what I'm saying?

25 MR. STARNES: Sure.

1 THE COURT: So you have to -- you have to lay some
2 kind of foundation with what you are trying to show.

3 Now, if the person is familiar with the picture or
4 that and know about the picture, certainly you can ask them
5 about it and establish a foundation through that, but that's
6 what you need to do.

7 And it also needs to be relevant to the case. And
8 so, you know, I ask you to consider that.

9 You asked the same questions several times, the
10 exact same questions several times in your
11 cross-examination, and I didn't say anything to you about
12 that during -- but I realize that you are a lay person and
13 not an attorney. This is your first witness that you were
14 cross-examining, but what I would ask you to do, though, is
15 try to be a little more succinct and try to ask your
16 questions, but don't keep repeating the same questions to
17 the same witness. Okay? If you get an answer to it, then
18 you need to move on to something else and not bring that
19 back up again. Just try to avoid this repetition, if you
20 will.

21 The solicitor, I'm sure, does not want to
22 continuously stand up and objecting, and I do not want to
23 correct you in front of the jury, to keep having to do that,
24 so let's try to avoid that. Okay?

25 MR. STARNES: One more minor point, Your Honor,

1 and I would like to address this before the jury comes out,
2 because I certainly don't want to do something that I'm not
3 supposed to do. I figure it would be appropriate to do at
4 this time, Your Honor.

5 THE COURT: All right.

6 MR. STARNES: During the course of the
7 investigation, Detective Lorick is originally assigned to
8 this case and in his capacity. There is a point in the
9 investigation where Detective Lorick checks the NCIC
10 database to see if these individuals are incarcerated.
11 Detective Lorick learns at that time that Mr. Champlin has
12 outstanding warrants and that he was prohibited by law from
13 carrying, or acquiring, or possessing a firearm.

14 There is evidence that the State presented at the
15 original trial that Mr. Champlin was armed on January 8th of
16 1996.

17 I believe the fact that he was prohibited from
18 carrying a gun and that he was armed, the State's evidence
19 will show that he was armed on January the 8th of 1996, that
20 is relevant, Your Honor, under 401.

21 MR. GOWDY: How does that matter?

22 First of all, there are -- even if you were a
23 prohibited person -- as someone who prosecuted guns cases
24 for six years in the U.S. Attorney office's, even if you are
25 a prohibited person, there is still circumstances under

1 which you can possess a firearm. So if Mr. Starnes is going
2 to testify that he knew Jared Champlin was a prohibited
3 person and that impacted somehow or another on his actions
4 on January the 8th, then let him tell the story from the
5 witness stand. But to impune Jared Champlin's character by
6 having outstanding warrants and his prohibited person's
7 status, how is that relevant?

8 MR. STARNES: Your Honor, Detective Lorick was
9 under subpoena. We can take it up. We don't have to do it
10 at this time.

11 THE COURT: All right.

12 MR. STARNES: We have got something we can take up
13 when I put my case up.

14 THE COURT: Let me say to you if it's relevant on
15 the issue of self-defense, it's something that you should
16 have been aware of and impacted your decision somehow as to
17 whether it was self-defense or not whether you needed to
18 defend yourself, that's the way it has to be.

19 The mere fact that somebody was prohibited because
20 he had a prior felony, or something, and couldn't have a
21 gun, and -- you know, convicted felon and could not have a
22 gun in his possession, if that were the case, that's fine,
23 but that is not relevant to this particular case and it has
24 no significance, unless you knew -- if you knew somebody had
25 a conviction for a violent offense, you were aware of that

1 at the time this occurred, that would be relevant as to your
2 frame of mind or what you knew at that time.

3 If he had an outstanding warrant -- or if he had a
4 weapon in his possession and he was a convicted felon and
5 wasn't supposed to have a gun in his possession, that still
6 is not relevant in this case unless you were aware of it and
7 it impacted your decision.

8 MR. STARNES: Yes, sir.

9 THE COURT: Do you understand the difference?

10 MR. STARNES: I understand.

11 THE COURT: And so any information that you had
12 with regard to whether he had been convicted of a violent
13 crime or was a person of violence and you were aware of that
14 when this occurred, which could have your frame of mind at
15 that time, you are allowed to get into that to establish on
16 the self-defense issue. Okay?

17 MR. STARNES: Yes, sir.

18 THE COURT: I'll allow you to go there.

19 But if it's something you didn't know anything
20 about, I don't see how that's relevant to this case, except
21 to make somebody look bad, the victim look bad. It's got to
22 be relevant to the case and it affected your frame of mind.
23 It's got to be something that you knew to affect your frame
24 of mind.

25 MR. STARNES: Yes, sir.

1 THE COURT: Do you see the difference?

2 MR. STARNES: Yes, sir.

3 One other minor point on this. Ms. Dawn that
4 testified yesterday, she testified that they had to wait 24
5 hours before filing a missing persons report. They did not
6 file that missing persons report because Jared did have
7 outstanding warrants on him and --

8 THE COURT: She didn't say that. She didn't say
9 that. You tried to insinuate that to her. She gave a
10 different reason for why it was not filed. She said, first
11 of all, that she went to school that day. She could have
12 filed it that day -- the next day. She went to school that
13 day. She got home late. She got up the next morning and
14 they decided to wait until the end of the day until she got
15 back from school. They still hadn't showed up and they were
16 going to file it then. That's when she did file it.

17 You did ask her, I believe, whether there were
18 outstanding warrants and that's the reason you didn't file
19 it. She never did say -- that she -- refresh my memory,
20 read it back, but she never did say she knew about any
21 outstanding warrants, did she?

22 MR. GOWDY: That's correct, she certainly never
23 cited that as the reason for waiting to file the missing
24 persons report.

25 THE COURT: Well, her testimony will stand for her

1 testimony, but I don't believe -- she gave a reason why and
2 that -- I don't know if she knew about that outstanding
3 warrant or not. Whether the other lady Karen, the
4 girlfriend of Jared Champlin, told her that or not, that she
5 was aware of it. I don't think that -- did she ever give a
6 clear answer to that?

7 MR. GOWDY: I don't think she was aware of it. I
8 think there was a hearsay objection, which Your Honor
9 granted -- there was a relevance objection when he asked
10 that question.

11 THE COURT: All right. In any event, I don't see
12 it would make any difference in this case as to the cause of
13 death, or why the death occurred, or reasons with regard to
14 that. I don't know how that would be relevant on that
15 issue, frankly.

16 MR. STARNES: I understand, Your Honor.

17 THE COURT: It would be more prejudicial than
18 certainly probative. It's really not probative to anything.

19 All right, anything else?

20 MR. STARNES: No, sir, Your Honor.

21 THE COURT: All right. Thank you.

22 I think we can get the jury in.

23 Looking back at the record, it was a hearsay
24 objection. I sustained it and she never answered the
25 question. Okay?

1 MR. GOWDY: Thank you, judge.

2 (The following takes place in the presence of the
3 jury panel)

4 THE COURT: Good morning, ladies and gentlemen of
5 the jury panel. I hope you had a pleasant night last night.
6 I apologize for a little delay in getting started here this
7 morning, but there were a couple matters that came up that
8 we had to address. We are ready to get started now.

9 A couple of things I didn't tell you yesterday
10 that I will tell you now, and that is let me explain the
11 role of the alternates.

12 The role of the alternates in this case are the
13 same as the first twelve jurors chosen; that is, to listen
14 carefully to the testimony and evidence in this case, so you
15 would be in a position to deliberate and help reach a
16 verdict in this case. Because if for any reason an
17 emergency should develop with regard to one of the first
18 twelve jurors chosen, an alternate would automatically fill
19 in for the missing juror. You couldn't do that if you
20 hadn't listened carefully to the testimony and evidence and
21 were in a position to deliberate and to help reach a verdict
22 in this case.

23 Ladies and gentlemen, I haven't picked a
24 foreperson of the jury at this time, and what I'm going to
25 do is allow you among yourselves -- you should have gotten

1 to know each other a little bit better by now. And what I'm
2 going to ask you to do in the next break to elect a
3 foreperson of the jury.

4 Now let me explain a foreperson's role. A
5 foreperson is asked to serve as spokesperson for the jury
6 back to the court. So if there is a matter that needs to
7 come to the attention of the court from the jury, the
8 foreperson would write a message down on the tablet provided
9 in the jury room. Give that to the bailiff and the bailiff
10 would bring it to me. And as I told you yesterday with a
11 message, I probably will correspond in like manner; or, if I
12 need to, I'll bring you back out in the courtroom and
13 respond, as the case may be.

14 The foreperson is also asked to serve as moderator
15 once we have reached the deliberative stage in the trial, to
16 maintain some order in the deliberations, to make sure
17 everyone is allowed to participate and be heard in those
18 deliberations. And then, finally, once a unanimous verdict
19 is reached by the jury, to record the verdict on the verdict
20 form, or forms, which would be provided to you and explained
21 at the appropriate time, at the conclusion of the trial.

22 The primary role of the foreperson is the same as
23 every other juror, and that's to listen carefully to the
24 testimony and evidence so that you will be in a position to
25 deliberate and help reach a verdict in this case.

1 With that information, what I would like you to do
2 is when -- at the next break, when you go back to the jury
3 room, to elect from your group a foreperson. Put that
4 person's name and number, if you have the juror -- if you
5 know the number, give that to the bailiff and the bailiff
6 will bring it to me. All right? Thank you.

7 Now, ladies and gentlemen, we now ready to get
8 started with the trial.

9 Counsel, ready to proceed.

10 MR. GOWDY: Yes, sir, Your Honor.

11 THE COURT: Please call your next witness.

12 MR. GOWDY: May it please the court, the State
13 would call Captain Darren Amick with the Lexington County
14 sheriff's department.

15 CAPTAIN DARREN AMICK, having been first duly
16 sworn, testified as follows:

17 THE CLERK: Have seat in the witness box and state
18 your full name for the record and spelling your last name,
19 please.

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

22 DIRECT EXAMINATION BY MR. GOWDY:

23 Q. Good morning, sir?

24 A. Good morning.

25 Q. Can you introduce yourself to the jury and tell them

1 where you work and in what capacity?

2 A. My name is Darren Amick. I'm a captain with the
3 Lexington County sheriff's department. My assignment is
4 over the major crimes unit or the investigative bureau at
5 the sheriff's department.

6 Q. How long have you been in law enforcement?

7 A. Almost 23 years.

8 Q. How long have you been the captain of investigations
9 for the Lexington County sheriff's department?

10 A. I moved back to the investigations bureau approximately
11 two years ago.

12 Q. Let's go back to January of 1996. In what capacity did
13 you work at the sheriff's department then?

14 A. I was a slicked-sleeve detective.

15 Q. You were a detective that would have gotten a variety
16 of cases assigned to you?

17 A. Yes, sir.

18 Q. All right. Did you become involved in a missing
19 persons investigation on or about January 9th or 10th of
20 1996?

21 A. Yes, sir, I did.

22 Q. All right. In order to explain your testimony and what
23 you did to the jury, would it assist you if you had a map?

24 A. Yes, sir.

25 Q. Okay. Let me show you State's Exhibit 6 and ask you

1 whether or not that would help you illustrate your
2 testimony?

3 A. Yes, sir, it would.

4 Q. Is that an accurate representation of the major
5 roadways and thoroughfares in that part of Lexington County?

6 A. Yes, sir.

7 MR. GOWDY: Your Honor, we would move State's 6
8 into evidence.

9 MR. STARNES: No objection, Your Honor.

10 THE COURT: It's admitted without objection.

11 MR. GOWDY: Your Honor, permission to publish to
12 the jury on the overhead?

13 THE COURT: You may publish.

14 MR. GOWDY: Thank you, Your Honor.

15 BY MR. GOWDY:

16 Q. Detective Amick, can you see that, or is the glare --
17 would you like it a little darker?

18 A. A little darker than that would be a little better.

19 Q. Okay. A little darker than that?

20 A. I think I can make it out, yes, sir.

21 Q. Would you like a laser pointer, or -- would that help
22 you, or do you want to just talk?

23 A. I'll just talk.

24 Q. Good enough.

25 THE COURT: Wait just a minute.

1 Yes, ma'am.

2 UNKNOWN JUROR: That light?

3 THE COURT: Does that take care of it, ma'am?

4 UNKNOWN JUROR: Yes, sir.

5 BY MR. GOWDY:

6 Q. Tell the jury what they are looking at.

7 A. Basically that's an overlay, a hand drawn map of the
8 direct vicinity of Pelion, South Carolina.

9 You will see some things notated, such as Highway 178,
10 Highway 302, which is your main junction into the town of
11 Pelion.

12 Do you want to go into what's been labeled, solicitor?

13 Q. Well, I do. Let's start with the Panther Parlor.

14 A. It would be right at the corner. It has a secondary
15 address, but it's basically, for the most part, Highway 178
16 in Pelion. It faces 178.

17 Q. Let me do this, detective. I'm going to ask Mr. Coler
18 if he can turn that on in such a way that the light
19 doesn't --

20 While he's doing that, I'm going to show you State's 9,
21 10, 11, 12, 13, 14 and 15, and ask you whether or not you
22 recognize what is depicted in those photographs, what year
23 it represents, and whether or not it would fairly and
24 accurately depict what existed in January of 1996?

25 A. Yes, sir, it would.

1 Q. And does that fairly and accurately represent that part
2 of Lexington County in January of 1996?

3 A. Yes, sir.

4 Q. Okay.

5 MR. GOWDY: Your Honor, we would move these
6 exhibits into evidence.

7 MR. STARNES: No objection, Your Honor.

8 THE COURT: Admitted without objection.

9 BY MR. GOWDY:

10 Q. Let's start with State's 15.

11 MR. GOWDY: Can we bring down one more row of
12 lights?

13 Thank you.

14 BY MR. GOWDY:

15 Q. Detective, what is the jury looking at?

16 A. In the very middle of the picture you will see
17 basically a building, a duplex-type building.

18 To the left of that duplex is a burgundy in color
19 front, and then a white front.

20 That left burgundy in color building would have been
21 the Panther Parlor.

22 That's Highway 178 that runs directly in front of it.

23 Intersecting to the left of it would be Highway 302.

24 Q. Let me show you State's 14. Is that a little closer
25 view?

1 A. Yes, sir, I believe it's just zoomed in a little bit,
2 but the same building. The Panther Parlor.

3 Q. When you refer to the Panther Parlor, are you referring
4 to that right there?

5 A. That's correct, sir.

6 Q. Okay. There appears to be -- is that a separate
7 structure. It's all under the same roof?

8 A. It's under the same roof, but there was a passage
9 from -- to the best of my recollection, from the Panther
10 Parlor into that -- into that second side building.

11 Q. Let me go back and ask you about C.J.'s.

12 Can you tell the jury what C.J.'s was?

13 A. From that intersection that I just mentioned, if you
14 head back west, if you are going towards Lexington or
15 towards Highway No. 6, C.J.'s would be approximately two to
16 three miles on your left, on Highway 302 or Edmond Highway.

17 Q. What kind of establishment, if you know, was C.J.'s?

18 A. It was grocery, but it was also, for the most part
19 income-wise, a bar.

20 Q. A bar.

21 Let me show you State's Exhibit 13 and ask you whether
22 or not that you recognize what is depicted in that?

23 A. An aerial of C.J.'s.

24 Q. All right. And State's 12, would that be a slightly
25 closer view?

1 A. That would be the storefront to C.J.'s, yes, sir.

2 Q. Would that be the front door? I'm not suggesting that
3 you ever been to C.J.'s, but would that be the front door?

4 A. I believe it's off to the left. It would be covered by
5 that gas canopy.

6 Q. Covered by that. Okay.

7 Forts Pond Road, is that where Mr. Starnes lived?

8 A. That's correct, 375.

9 Q. Let me show you State's 11, 9 and 10, which are going
10 to be various shots of that.

11 Would that be Mr. Starnes' residence right there?

12 A. Yes, sir.

13 Q. Would that be a closer view of Mr. Starnes residence?

14 A. That's correct, sir.

15 Q. All right. As part of your investigation into the
16 missing persons of Bill Welborn and Jared Champlin, did you
17 have an occasion to talk to Norman Starnes?

18 A. Yes, sir, I did.

19 Q. Do you recall when you first talked to him, what the
20 date of your first interaction with him was?

21 A. It would have been the same day that the report was
22 assigned to me, January 11th of 1996.

23 Q. Where did you talk to Mr. Starnes?

24 A. At the Panther Parlor.

25 Q. Was anyone with you?

1 A. Detective McNair was with me.

2 Q. Did you have him write out a statement or did you just
3 interview him and take investigative notes later?

4 A. A statement had already been offered basically covering
5 some basis, going through normal investigations, but asking
6 questions, as you said, yes, sir.

7 Q. So one of your colleagues had already talked to Mr.
8 Starnes and taken a written statement and you were following
9 up?

10 A. Correct, the day prior.

11 Q. Did the defendant at that time tell you that Bill
12 Welborn and Jared Champlin had been shot in his house?

13 A. No, sir.

14 Q. Did he tell you that they had even been at his house on
15 January the 8th?

16 A. He did not.

17 Q. Did he tell you that he moved their bodies to his
18 uncle's property in Aiken County?

19 A. No, sir, he did not.

20 Q. Did he acknowledge any involvement whatsoever in the
21 disappearance of Bill Welborn or Jared Champlin?

22 A. No, sir, he did not.

23 Q. Did he tell you where the last place he saw them was?

24 A. He did. He said that he recalls them near or around
25 the pay phone at C.J.'s.

1 Q. He told you the last place that he saw them was there?

2 A. That's correct, sir.

3 Q. This is January the 11th, 1996, he told you that?

4 A. That's correct.

5 Q. Detective Amick, did you leave a missing persons poster
6 with Mr. Starnes?

7 A. The following day I did, yes, sir.

8 Q. The 12th of January?

9 A. That's correct.

10 Q. You went back to interview him again?

11 A. I did.

12 Q. Is it customary to interview and re-interview someone
13 that is suspected to be the last person known to be with
14 missing people?

15 A. Very customary, yes, sir.

16 Q. Did you happen to see what Mr. Starnes did with the
17 missing persons posters that you gave him?

18 A. We produced it that morning, so another reason for
19 going back after the re-interview was also to take that
20 poster to that location and to the locations within Pelion
21 for posting. He was advised of that when I was there. He
22 requested some tape from Gwen, who was also there, and he
23 posted one of the flyers on the front of his store, or
24 restaurant.

25 Q. He posted missing persons posters in his store?

1 A. That's correct, sir.

2 Q. For Bill Welborn and Jared Champlin?

3 A. Yes, sir.

4 Q. During the course of your investigation, Captain Amick,
5 did the defendant Norman Starnes ever call you with false
6 investigative leads?

7 A. Yes, sir, he did.

8 Q. How many times?

9 A. Twice that I can recall, sir.

10 Q. Twice he called you to assist in your investigation?

11 A. Correct.

12 Q. Let's move to May the 27th, 1996.

13 Did a young lady named Gwen Ott, now Bailey, come to
14 the Lexington County sheriff's department?

15 A. Yes, sir.

16 Q. At some point on the 27th did you interact with her?

17 A. I had interaction with her on that date, yes, sir.

18 Q. Let me ask you this, generally. You are the captain of
19 investigations. I walk into the Lexington County sheriff's
20 department. I tell you I have got information in a missing
21 persons case. Tell the jury how you would handle me if I
22 did that.

23 A. Well, we would secure that person. We do have an awful
24 lot of missing persons at the same time, so we would have to
25 clarify exactly what we were looking at, as for what case or

1 case number, as we would document something.

2 We take them to a room. We would try our best to get
3 in touch with the lead investigator in reference to his
4 input and also find out who the person that was reporting
5 the information, or alleged information, exactly where she
6 got it from and credibility, this, that, and the other.

7 But what we would do is get the initial information
8 that is vital to whatever case or missing persons that
9 was -- and not just missing persons cases, and secure that
10 information, and react on it and then follow up at a
11 later -- later on.

12 Q. Okay. Is it fair to say that initially you paint with
13 a broad paintbrush, and then you get down to finer details?

14 A. That's a good way to put it, yes, sir.

15 Q. And you have been involved in how many investigations
16 in your career?

17 A. No less than 200, sir.

18 Q. And that's the way that you do it?

19 A. Correct, sir.

20 Q. Still to this day?

21 A. To this date.

22 Q. At some point did you and/or others at the Lexington
23 County sheriff's department discover two bodies on a farm in
24 Aiken County?

25 A. Yes, sir.

1 Q. And was Mr. Norman Starnes ultimately arrested for the
2 murder of Bill Welborn and Jared Champlin?

3 A. Yes, sir, he was.

4 Q. At any point in January, February, March, April, or up
5 until the point of arrest, did Norman Starnes ever mention
6 the word self-defense to anyone?

7 A. No, sir.

8 Q. Please answer any questions that the defendant has for
9 you.

10 MR. STARNES: May it please the court, Your Honor?

11 THE COURT: Yes, sir.

12 CROSS EXAMINATION BY MR. STARNES:

13 Q. How are you doing, Captain Amick?

14 A. Good morning.

15 Q. Captain Amick, you were working as a sheriff's
16 investigator on January the 11th, 1996?

17 A. That's correct.

18 Q. And in what capacity were you working for the sheriff's
19 office then?

20 A. As a detective.

21 Q. As a detective?

22 A. Right.

23 Q. And what was your rank then?

24 A. Detective.

25 Q. Were you a sergeant, a captain?

1 A. Just a detective.

2 Q. Just a detective.

3 At some point in this investigation did you have an
4 opportunity to provide information to other various
5 investigators?

6 A. Every morning we discussed our cases, so I would say
7 yes.

8 Q. Okay. When you say we, would Detective Markley be one
9 of those?

10 A. Yes, sir, he was in the bureau at that time.

11 Q. In what capacity did Detective Markley work in?

12 A. Basically his expertise, if you will, was telephone
13 incidents, harassing phone calls, this, that, and the other.

14 Q. Did he investigate telecommunication fraud, stolen
15 telephone cards, things of that nature?

16 A. Negative. No, sir.

17 Q. Did you have a chance to work with Detective Chapman?

18 A. Yes, I did.

19 Q. And what did Detective Chapman do at the sheriff's
20 office with Lexington county?

21 A. He would be what we would call a white-collar
22 criminalist. Basically any crimes dealing with banks,
23 checks, along that nature. Monetary-type items. He
24 would -- credit cards, he would deal with that type of
25 crime.

1 Q. Detective Amick, at any point in your investigation did
2 you learn that any of Mr. Welborn's credit cards were used
3 by the defendant?

4 A. They were not used.

5 Q. Did you at any point in your investigation learn that
6 any of Mr. Welborn's checks were written by the defendant?

7 A. No checks were passed after.

8 Q. Did you at any point in your investigation learn that
9 anyone, other than Mr. Welborn, used his credit cards, bank
10 ATM's, financial cards, or anything to that nature?

11 A. Anything with his history in reference to financial was
12 basically what we call red flagged, and there was no use by
13 any of that.

14 Q. Now, if I heard you correctly, Captain Amick, you
15 stated that one of the investigators worked in
16 telecommunications?

17 A. That's correct.

18 Q. Okay. At any point in your investigation did you have
19 an opportunity to get the phone records off of this pay
20 phone here at C.J.'s?

21 A. That information was requested to be obtained by
22 Detective Markley.

23 Q. And was at that information obtained?

24 A. To the best of my recollection, it came back that it
25 was unobtainable, for the most part.

1 Q. Unobtainable?

2 A. Correct.

3 Q. Do you know why that information was unobtainable?
4 What information did you get, other than just --

5 A. I do not. And that type of investigation, I would go
6 by that expert, if you will, that does that type of
7 investigation --

8 Q. Okay.

9 A. -- when he says there was nothing obtainable.

10 Q. Was detective -- were you able to check other
11 telecommunication records on any other phone lines relating
12 to this?

13 A. There were numerous requests for records.

14 Q. Numerous requests for records.

15 Did you -- did you receive search warrants or subpoenas
16 for those records, personally yourself?

17 A. There were occasions, yes.

18 Q. Do you remember how many different telecommunication
19 records that you checked?

20 A. I do not.

21 Q. Detective Amick, can you please tell the jury when this
22 photograph was taken?

23 THE COURT: Sir, refer to it by exhibit number for
24 the record, so the record knows what you are talking about.

25 MR. STARNES: Sorry, Your Honor.

1 THE COURT: Yes, sir.

2 MR. STARNES: State's Exhibit No. 9.

3 BY MR. STARNES:

4 Q. Can you tell the jury when this photograph was taken?

5 A. I'm quite sure it was taken in March of 1997.

6 Q. And was it taken from a helicopter?

7 A. That's correct.

8 Q. And who was taking that photo?

9 A. I was taking that photo.

10 Q. You were taking that photo.

11 At the time the photo was taken, Detective Amick, can
12 you tell the jury who was living in that house on Forts Pond
13 Road?

14 A. In March?

15 Q. Yes, sir.

16 A. No. No, I could not.

17 Q. Do you know that the defendant was living in that house
18 at that time?

19 A. I'm sorry, correct.

20 Q. In other words, I was not -- the defendant was not
21 living in the house at that time?

22 A. You were not present in that location in March of 1997.

23 Q. Referring to State's Exhibit No. 11, Detective Amick,
24 this is an aerial photograph of 375 Forts Pond?

25 A. That's correct.

1 Q. Prior to that photograph being taken, do you recall a
2 point in time where there was an airstrip that run right
3 outside of the backyard through this field here?

4 A. From prior knowledge, prior to this case, it was known
5 throughout basically that part of the county that there was
6 an airstrip down there.

7 Q. And there was an airstrip?

8 A. I had no personal knowledge, but yes.

9 Q. Detective Amick, on May the 27th of 1996, you stated
10 that Ms. Bailey come to the Lexington County sheriff's
11 office and give an initial statement?

12 A. Correct.

13 Q. And who did she give that statement to, Detective
14 Amick?

15 A. Detective McNair.

16 Q. And were you able to hear and see this on a video
17 monitor Detective McNair and Ms. Bailey talking in that
18 room?

19 A. Parts of it, yes.

20 Q. Parts of it?

21 A. Right.

22 Q. Could you tell the jury what parts that you were able
23 to see and hear?

24 A. I don't recollect.

25 As when that came in, of course, we started, lack of a

1 better to put it, moving and shaking on the information. So
2 if one investigator is involved in that type of interview
3 and builds a rapport, we try not to interfere. So peaking
4 in and out, making sure everything was okay, making sure the
5 officer was okay. That's what I meant by my statement.

6 Q. Did you have an opportunity to notify Detective McNair
7 through any electronic devices that was hooked to him as to
8 ask Ms. Bailey questions?

9 A. That is often -- at that time, in 1996, we were pager
10 driven instead of mobile phone driven, so oftentimes we
11 would -- if we thought that there was a question that needed
12 to be asked, we would put it through a paging system.

13 Q. And did you have an opportunity -- did you page
14 Detective McNair while this interview was going on?

15 A. I really don't recall.

16 Q. You don't recall?

17 A. No, sir.

18 Q. Now, that was ten years ago?

19 A. Correct.

20 Q. But you recall me -- do you recall the defendant
21 putting posters up or missing persons fliers up ten months
22 prior to that?

23 A. That's correct.

24 Q. You do recall that?

25 A. I do.

1 Q. And you recall interviewing the defendant at the
2 Panther Parlor Restaurant, is that correct?

3 A. Correct.

4 Q. Did you have an opportunity to interview Ms. Bailey
5 when this was a missing persons case?

6 A. I spoke with her that one time at the Panther Parlor.

7 Q. Now, when you say that one time, could you tell us when
8 that was, Detective Amick?

9 A. She would have been present on the 11th and the 12th of
10 January.

11 Q. And did you have an opportunity to ask her did she know
12 anything about the missing person case, or where Mr. Welborn
13 and where and Mr. Champlin were at?

14 A. I believe on the first occasion I asked if she had any
15 knowledge. I don't recall the exact answer, but basically I
16 was there to speak with you, and she summonsed you. I
17 forget by what means the second day, but I was there to
18 speak with you.

19 Q. Ms. Bailey tell you that she knew where they were at?

20 A. She did not.

21 Q. Ms. Bailey didn't provide any information to you in
22 January of 1996, regarding this case?

23 A. No, sir.

24 Q. In February? Did she provide any information in
25 February?

1 A. No.

2 Q. Did she provide any information to you in March?

3 A. No.

4 Q. Did she provide any information to you or any of the
5 sheriff's investigators in April?

6 A. No.

7 Q. Not until May the 27th of 1996, is when Ms. Bailey
8 comes to the sheriff's office? Is that what happened?

9 A. Correct.

10 Q. And at that point she gives this statement and you can
11 hear pretty much what's going on on a video monitor or --
12 tell us how that happened.

13 A. I beg your pardon?

14 Q. How were you able to hear and see that conversation?

15 A. We had a room at that time that was mainly used for
16 crimes or incidents involving children. That room was used
17 by Detective McNair for that interview.

18 A secondary room had a monitoring system, so for
19 whatever the case or whatever we needed in reference to the
20 children, or in this case that we could monitor via TV.

21 Q. And as a result of Ms. Bailey's interview, did you have
22 enough information to obtain an arrest warrant?

23 A. Immediately upon her arrival, within two or three hours
24 I would say, no.

25 Q. At what point in your investigation did you obtain an

1 arrest warrant for the defendant?

2 A. The exact date I'm not sure, but it would have been
3 within a day or two of when Ms. Ott-Bailey came into the
4 sheriff's department.

5 Q. Did you, Captain Amick, file a report regarding that?

6 A. The arrest?

7 Q. Correct.

8 A. I believe it's included in my supplements.

9 Q. Was it included in your typed version, the typed report
10 that you did?

11 A. I believe I did.

12 Q. And in your typed report did you note that stemming
13 from Ms. Ott's initial interview, that you had enough
14 information to obtain an arrest warrant on Ms. Ott, the
15 defendant, and another individual?

16 A. That's customary to put it into a supplement, even as
17 far as the warrant numbers, that they were obtained and
18 served.

19 Q. At some point on May the 27th y'all learned that the
20 bodies were in Aiken County, is that correct?

21 A. Correct.

22 Q. When you obtained the warrants for the defendant and
23 Ms. Bailey, did you obtain warrant for another individual?

24 A. Yes, sir, we did.

25 Q. Would you please tell the jury who that individual was?

1 A. Jody Fogle, and there was another one.

2 Q. I'm sorry?

3 A. And there was another one.

4 Q. Did you have an opportunity through the course of your
5 investigation, after you had spoke to Ms. Bailey, to
6 interview Mr. Fogle?

7 A. I did.

8 Q. Could you give the jury an idea of what transpired in
9 this interview?

10 A. In reference to Mr. Fogle?

11 MR. GOWDY: Your Honor, he --

12 MR. STARNES: I'll ask a direct question.

13 MR. GOWDY: He knows that's hearsay.

14 MR. STARNES: I'll ask a direct question.

15 BY MR. STARNES:

16 Q. During your -- during the course of this interview with
17 Mr. Fogle, did Mr. Fogle tell you that Jared Champlin --

18 MR. GOWDY: Hearsay, Your Honor.

19 THE COURT: Mr. Fogle -- anything that Mr. Fogle
20 would have said I believe would be hearsay, Mr. Starnes.

21 MR. STARNES: I beg the court's indulgence just
22 one minute.

23 (Off the record)

24 (Back on the record)

25 BY MR. STARNES:

1 Q. Detective Amick, based on your interview with Mr.
2 Fogle, were you able to obtain an arrest warrant on him?

3 A. Correct.

4 Q. Did you have that arrest warrant stemming from his
5 interview or from Ms. Bailey's interview?

6 A. For corroboration purposes, it would have been
7 conjunctive, if you will.

8 Q. Did Mr. Fogle during that interview tell you --

9 MR. GOWDY: Objection.

10 THE COURT: Approach just a minute, counsel.

11 Approach just a minute, please.

12 (Whereupon, the lawyers and the defendant
13 approached the bench for an off-the-record discussion)

14 BY MR. STARNES:

15 Q. Mr. Amick, you were able to interview Mr. Fogle on what
16 date?

17 A. I don't remember the exact date, but it would have been
18 either the 28th or 29th.

19 Q. And were you able to interview Mr. Fogle regarding the
20 events of January 8th, 1996?

21 A. Yes.

22 Q. You were able to do that?

23 A. Yes.

24 Q. When you obtained these -- when you obtained arrest
25 warrants, you obtained arrest warrants, they were all in

1 numerical order?

2 A. I do not know.

3 Q. Would you recognize these arrest warrants?

4 A. Sure.

5 MR. GOWDY: Your Honor, may we approach?

6 THE COURT: Yes, sir.

7 (Whereupon, the lawyers and the defendant
8 approached the bench for an off-the-record discussion)

9 THE COURT: Ladies and gentlemen of the jury
10 panel, we are going to take a short break. There's a legal
11 matter I need to take up at this time, so we will take a
12 short break. We will probably take about ten minutes, so
13 you can go ahead and refresh yourselves during the break.
14 Thank you very much. Please don't discuss the case. Thank
15 you.

16 (The following takes place outside the presence of
17 the jury panel)

18 MR. STARNES: Proffer for the record, Your Honor?

19 THE COURT: Yes, sir.

20 BY MR. STARNES:

21 Q. Detective Amick, did you appear before a magistrate
22 regarding this case with some warrants?

23 A. I did.

24 Q. Did you swear before the warrant in a sworn statement
25 regarding Jody Fogle?

1 A. Did I swear a statement?

2 Q. Right. Did you give a sworn warrant for Mr. Fogle's
3 arrest?

4 A. I offered probable cause to the magistrate and the
5 warrant was issued, correct.

6 Q. And you did that in a sworn statement and signed your
7 name to it?

8 A. I didn't give my statement.

9 Q. On the warrant?

10 A. It was an affidavit contained within the warrant, but
11 no statement. Maybe I'm misunderstanding you.

12 Q. But you signed your name to it, is that correct?

13 A. Correct.

14 Q. And you did the same for the defendant, is that
15 correct?

16 A. I believe so, yes.

17 Q. And you did the same for Ms. Bailey, is that correct?

18 A. I believe so, yes, sir.

19 MR. STARNES: Beg the court's indulgence just one
20 minute.

21 (Off the record)

22 (Back on the record)

23 BY MR. STARNES:

24 Q. Detective Amick, in that sworn affidavit that you give
25 relating to Ms. Gwen Ott's arrest, did you say that "on

1 January the 8th, 1996, the defendant, Gwendolyn W. Ott did
2 personally assist Norman Starnes in disposing of the
3 deceased body of Jared Champlin"?

4 A. If that's what the affidavit reads, correct.

5 Q. Did you say that?

6 A. Did I say that she assisted?

7 Q. Did you swear to that in this statement?

8 A. I would have had to have sworn to that.

9 Q. And did you state in that that "the felony murder was
10 committed at 375 Forts Pond Road, in Pelion area of
11 Lexington County, South Carolina, and that the body was
12 disposed of in Aiken County." Did you state that in the
13 affidavit?

14 A. Yes.

15 Q. Did you state in that affidavit that Ms. Ott gave a
16 statement of "no prior knowledge of the murder"?

17 A. Repeat the question.

18 Q. Did you give a statement in that affidavit that Ms. Ott
19 gave a statement of "no prior knowledge of the murder"? Did
20 you say that?

21 A. If that's in the affidavit, yes.

22 Q. Did you put that in the affidavit?

23 A. May I look at it?

24 Q. Thank you.

25 A. (Witness reviewing document.

1 Correct, yes.

2 Q. Detective Amick, these are your warrants, is that
3 correct?

4 A. They were issued by the bench. The magistrate's.

5 Q. This is your signature reflected on these warrants, is
6 that correct?

7 A. That's correct.

8 MR. STARNES: Beg the court's indulgence just one
9 moment.

10 (Off the record)

11 (Back on the record)

12 BY MR. STARNES:

13 Q. Detective Amick, you made this affidavit stemming from
14 what Ms. Ott originally told you all, is that correct?

15 A. Yes.

16 Q. And you talked to that individual, Ms. Ott, is that
17 correct?

18 A. Briefly on the two occasions mentioned.

19 Q. On the two occasions?

20 A. Yes.

21 Q. Now, you say the two occasions. That means the first
22 occasion and the second occasion?

23 A. The 11th and the 12th.

24 Q. Okay. How about the 27th, when these warrants were
25 obtained?

1 A. As mentioned in prior testimony, there was interaction,
2 but there was really no questioning by me in reference to
3 Ms. Ott, Bailey.

4 Q. But you observed Ms. Ott and Detective McNair in that
5 interview room, is that correct?

6 A. That's correct.

7 Q. And you were able to hear what was going on in that
8 interview room, is that correct?

9 A. Off and on, yes.

10 THE COURT: Where are you going? I'm still lost.
11 Where are you going?

12 MR. STARNES: In the interview -- in the interview
13 she is asked by Detective McNair "did Norman have that gun
14 on him that night?"

15 THE COURT: Well, I mean, bring Ms. Ott in to
16 testify. Again, you are talking about hearsay.

17 You can ask him if he issued around warrants for
18 people and what the charges were. You can ask him that.
19 You can ask him that. You can't get him to say what
20 somebody else said, Mr. Starnes, because that's hearsay.

21 MR. STARNES: I understand.

22 MR. STARNES: Beg the court's indulgence just one
23 minute.

24 (Off the record)

25 (Back on the record)

1 MR. STARNES: Your Honor, I would ask that I be
2 able to provide that information to the jury, that I be able
3 to question this witness regarding that.

4 THE COURT: Regarding what?

5 MR. STARNES: No prior knowledge of the murder,
6 that he said that in this sworn statement.

7 MR. GOWDY: That may be quadruple hearsay. I know
8 it's certainly double hearsay.

9 He didn't talk to her. Somebody else talked to
10 her.

11 The way warrants work, as everybody knows, they
12 funnel information to a detective, who then goes to a
13 magistrate using hearsay. Hearsay can be used when you are
14 preparing an affidavit. He just said he didn't have any
15 personal knowledge of having talked to her.

16 He wants to set up his cross-examination of Gwen
17 Ott-Bailey through this detective, and it's just not fair,
18 especially when he knows there is a statement that she gave
19 that day where he walked into the Panther Parlor and said
20 "I'm going to kill them." If we are going to be fair about
21 it, let's put that statement in, but I realize it's not
22 admissible.

23 This detective sought a warrant, and it would be
24 unprecedented from my experience to introduce the affidavit
25 in support of an arrest warrant in a criminal trial. I have

1 never thought to do it. Wanted to, but never even tried.

2 (Off the record)

3 (Back on the record)

4 MR. STARNES: Your Honor, what I would like to ask
5 this witness is did he talk to these people; did he talk to
6 Gwen Ott.

7 I know this is rather unusual, Your Honor. The
8 jury is not with us right now, and I'm going to ask under
9 McKaskle v. Wiggins, a U.S. Supreme Court decision, in which
10 they cite Faretta v. California that my attorneys, my
11 standby counsel, be allowed to address this matter to the
12 court. We are not here in front of a jury. McKaskle v.
13 Wiggins says that as long as it's not in front of the jury,
14 Your Honor, that I can allow them to do that. I can ask the
15 court to do that. And I believe under McKaskle --

16 MR. GOWDY: I do find that interesting, because in
17 his opening statement he talks about the nine years of law
18 school here against the poor pitiful Norman Starnes, and
19 then he wants to bring in his defense counsel as soon as the
20 jury is not in the room. I could care less who he wants to
21 rely on, but he either is pro-se or he's not. And a hybrid
22 representation everybody realizes is not permissible.

23 If he thinks his lawyers can get hearsay in, can
24 get an affidavit in support of an arrest warrant into
25 evidence, I don't care, but to represent in front of a jury

1 that it's poor him against nine years of law school and then
2 to pull this --

3 MR. STARNES: Your Honor, I believe the U.S.
4 Supreme Court decision in McKaskle v. Wiggins permits me to
5 do that. I have got the cite. I will be glad to give it to
6 the court.

7 THE COURT: Let's do that. I'm going to take
8 about five minutes. I may have the cite back in my
9 chambers. I need to go back and get that. We will take
10 about a five minute break and we will come right back and
11 I'll make a decision on it at that point.

12 In the meantime during the break I'm going to
13 allow you to stand down, sir. You cannot discuss the case
14 during the break.

15 THE WITNESS: Yes, sir.

16 THE COURT: You can't discuss this with your
17 attorneys or anyone else in the case. Okay?

18 THE WITNESS: Yes, sir.

19 THE COURT: We will take -- let's take about a
20 five minute break.

21 Give us your cite, please, Mr. Starnes if you have
22 got it.

23 MR. STARNES: Your Honor, someone unhooked my
24 computer so I have to wait for it.

25 McKaskle v. Wiggins.

1 (Whereupon, proceedings were recessed)

2 (Whereupon, proceedings were reconvened)

3 THE COURT: All right, counsel, let's proceed.
4 Mr. Starnes?

5 MR. STARNES: I'll try to be brief, Your Honor.

6 BY MR. STARNES:

7 Q. Detective Amick, did you speak to Gwen Ott?

8 THE COURT: Oh, is this a proffer?

9 MR. STARNES: Yes, sir.

10 THE COURT: Of course, we don't have the jury
11 back. Is that what you are trying to do it as a proffer?

12 MR. STARNES: Yes, for the record.

13 BY MR. STARNES:

14 Q. Did you speak to Gwen Ott on May the 27th, 1996?

15 A. Off and off while she was being interviewed by
16 Detective McNair.

17 Q. And before -- after you spoke to her, you obtained some
18 arrest warrants, is that correct?

19 A. Yes, I did obtain arrest warrants.

20 Q. You gave a sworn statement before you got those arrest
21 warrants, is that correct?

22 A. I submitted -- I verbalized my probable cause to the
23 magistrate and the warrants were obtained.

24 Q. I'm sorry?

25 A. And the warrants were obtained, correct.

1 Q. Did you say in your affidavit in support of your
2 affidavit -- in support of your warrant, Ms. Ott gave a
3 statement of "no prior knowledge of murder"?

4 A. As what you showed me, that's in my affidavit.

5 MR. STARNES: Your Honor, it's my argument that
6 this is his statement. This isn't Ms. Ott's statement.
7 This is this witness' statement.

8 THE COURT: Let me explain to you. We are talking
9 about hearsay, okay? Hearsay -- what -- you are saying what
10 she told him, that's hearsay. Okay. What she told him, so
11 it's hearsay.

12 You can call Ms. Ott, if you wanted to know what
13 she said, so she can be cross-examined about it.

14 But what Mrs. Ott may have said to him would have
15 been -- would be hearsay.

16 MR. STARNES: Your Honor, this is what Detective
17 Amick told the magistrate.

18 THE COURT: Okay. He put that in an affidavit of
19 probable cause. He put that in the affidavit for probable
20 cause, true. Okay. It's still hearsay. It's what she told
21 him. He is reflecting in there what she told him.

22 MR. STARNES: Your Honor --

23 THE COURT: He's not testifying to what he knows
24 of his own personal knowledge.

25 You certainly could ask him about anything that he

1 knows of his own personal knowledge, but this is what she
2 told him. Why would that not be hearsay? If you can give
3 me that, why that's not hearsay?

4 MR. STARNES: All I'm asking, Your Honor, is what
5 did he tell the magistrate. That's not hearsay.

6 THE COURT: All right. Let's back up.

7 In order to get the magistrate to issue a warrant,
8 an arrest warrant, there has to be -- or a search warrant,
9 there has to be probable cause, probable cause, for it to be
10 issued. Okay. And they have to present an affidavit of
11 sworn testimony of information that they have, a reason to
12 believe that that person charged has committed a criminal
13 offense in order to get the magistrate to officially issue a
14 warrant.

15 What information is in there gained from somebody
16 else is still hearsay. It's somebody else told them, it's
17 still hearsay.

18 And you are saying it's what he told the
19 magistrate. But what he was giving the magistrate is what
20 somebody else told him, and it's still hearsay.

21 MR. STARNES: Your Honor, under McKaskle v.
22 Wiggins, I would ask that -- the jury is not in, and I would
23 ask to allow my standby counsel to make the argument to the
24 court.

25 THE COURT: All right. I think you are right.

1 Under McKaskle he could argue a legal motion outside the
2 presence of the jury.

3 Let me hear from counsel.

4 Have you got anything that you want to say? You
5 may not agree with it.

6 MR. NETTLES: I do, Your Honor. I think that if
7 the question is formed correctly, which is this, which is
8 "did you speak to Gwen Ott, all right, as part of your
9 investigation?"

10 The answer to that I believe is yes.

11 THE COURT: No, answer is going to be -- well,
12 maybe -- no, he did. Yes.

13 MR. NETTLES: "Did you obtain the information from
14 Gwen Ott as part of this investigation?"

15 All right. And then "you had investigated this
16 case to some degree, okay, whether you had talked to Gwen
17 Ott," any other investigation he done up to that point. "At
18 some point you were required -- that being you being
19 Investigator Amick, "to give information to a magistrate
20 about why you believed these warrants should be given? You
21 had to give that under oath." That's a sworn statement.

22 Not "what did Gwen Ott tell you," because that's
23 hearsay, but "you told the magistrate -- "you told the
24 magistrate Ms. Gwen Ott gave a statement of no prior
25 knowledge of the murder. That's what you told the

1 magistrate." That -- because that -- that's not hearsay.
2 It's a -- it's an in-court statement. "That's what you told
3 the magistrate."

4 THE COURT: Based on what?

5 MR. NETTLES: Well, I mean --

6 THE COURT: Based on what?

7 MR. NETTLES: Well, based on the investigation.

8 THE COURT: Based on?

9 MR. NETTLES: His investigation.

10 THE COURT: Well, you know, that's --

11 MR. NETTLES: And that is his impression.

12 THE COURT: Whose impressions?

13 MR. GOWDY: Your Honor, Detective Amick has
14 already testified he had information coming from a variety
15 of sources. And I think his testimony was pretty clear, one
16 of the least sources he had was actually Gwen Ott-Bailey.
17 He virtually did not talk to her at all, if he did talk to
18 her at all. So he's got multiple sources coming to him to
19 provide him with probable cause.

20 It is not an element of murder that it be
21 premeditated, so why does that matter in an affidavit to a
22 magistrate whether it was premeditated? He may have meant
23 by that that she didn't have knowledge or he didn't think it
24 was planned before January the 8th.

25 Indictments aren't evidence. How in the world can

1 an affidavit in support of an arrest warrant be evidence?

2 THE COURT: Well, it's not, and it doesn't come
3 in, and I think counsel knows it doesn't come in.

4 I'll hear you further.

5 MR. NETTLES: Thank you. I mean, I didn't want to
6 interrupt, judge.

7 THE COURT: Yes.

8 MR. NETTLES: Mr. Delgado is pointing out to Rule
9 801 (d), which are statements which are not hearsay.

10 (D) (2), admission by party opponent.

11 The statement is offered against a party and is,
12 either, (A), the party's own statement in either an
13 individual or representative capacity, or (B), a statement
14 of which the party has manifested an adoption or belief in
15 its truth.

16 So the fact that an officer of the State, by
17 swearing out an arrest warrant, has -- he clearly has to --
18 it's a statement to which the party has manifested an
19 adoption or belief in the truth of that statement, that
20 being that --

21 THE COURT: Well, let me ask you this, counsel.
22 Maybe if I could see if this would resolve the problem. If
23 perhaps he could ask the officer if he had formed a belief
24 that she had not -- did not have knowledge. If he had
25 formed that belief or he was under that impression.

1 MR. NETTLES: Yes.

2 THE COURT: But without saying that she told him
3 that or how he got that information.

4 MR. GOWDY: What is the relevance of whether or
5 not she had knowledge on the 6th, 7th, or 8th? It requires
6 malice aforethought.

7 THE COURT: Well, I agree with you.

8 I think what -- as I understand what he's trying
9 to do, that is to say Mr. Starnes is trying to do, is to be
10 able to show that when she gave information to the police,
11 that she didn't give her entire involvement or not -- didn't
12 give her knowledge of the crime prior to a certain point
13 to -- as a question of her credibility, I guess. I presume
14 that's -- I can't think of anything else where he would be
15 going with that. And so -- all right.

16 MR. GOWDY: But, judge, how can he impune her
17 credibility through someone who never talked to her?

18 We know for a fact that in a statement on the
19 27th, before he ever sought this arrest warrant, that she
20 said "he came to the store and told me I'm going to kill
21 them." We know for a fact she did it. It's in a statement
22 dated that. The fact that he didn't know that or didn't
23 read that should not be used to impune Gwen Ott-Bailey.
24 It's not fair to her.

25 MR. NETTLES: Well, I mean -- I'm sorry.

1 THE COURT: Yes, sir.

2 MR. NETTLES: Well, first of all, it's -- if she
3 were on trial, that might be a little bit more compelling
4 argument. I mean, if she wants to take the stand and
5 explain that, then that's fine. I mean, that's just part of
6 the government's -- the State's burden. But in this case it
7 is relevant for the jury to know. I mean, they could
8 ultimately make the decision about how all this shook out,
9 but there is --

10 I believe that it's relevant to the jury to know
11 that when this officer, after the investigation that he had
12 completed, and he was the person that was chosen to go get
13 the arrest warrants, that this is what the statement that he
14 had adopted as being the truth at that time.

15 Now, they can put up Ms. Ott and, you know, and
16 try to undo that, or whether the jury adopts that or not is
17 up to them, but it is definitely relevant.

18 MR. GOWDY: Why should she have to explain
19 Detective Amick's statement? Why should one witness have to
20 explain --

21 THE COURT: And, of course, I agree with that, if
22 she -- if he can't testify that she -- he -- you know, she
23 didn't actually make that statement to him. And even if she
24 did, it would be hearsay. How does that come in? That's --

25 MR. NETTLES: Well, I don't think he would have

1 adopted -- he wouldn't have adopted this as being the truth.

2 And Your Honor, you know, the other thing that we
3 are sort of -- the defense is sort of hamstrung on here in
4 terms of this argument is, first of all, we are basing an
5 argument about this witness about something that has not
6 even really come into evidence yet. You know, for all we
7 know, I don't know what Gwen Ott is going to say.

8 I mean, it would be different if Ms. Gwen Ott had
9 come in and said information -- I mean, the State is trying
10 to -- is asking the court to make a decision about something
11 that is not into evidence yet.

12 MR. GOWDY: Your Honor, I don't think that we -- I
13 don't think that we proffered that exhibit. They are the
14 ones that proffered an affidavit in support of an arrest
15 warrant. I have never heard that come in in a criminal
16 case, ever.

17 MR. NETTLES: Well, to the extent that is I have.
18 And because -- I mean, I have, and I have done it, and it's
19 not --

20 MR. GOWDY: To --

21 MR. NETTLES: That's a legal matter, okay, but I
22 mean, the issue here is is that this individual adopted
23 something as being the truth, and that's evidenced by the
24 fact that he swore to a magistrate that statement.

25 We agree with the court that -- it would be our

1 position that it is admissible under -- if the question is
2 did you -- "did you believe at the time that you swore this
3 that Ms. Ott had -- "there was no prior knowledge of a
4 murder." And I believe when the question is phrased that
5 way, it comes in under 801(d)(2)(b). That statement does.

6 MR. GOWDY: Judge, the only possible relevance --
7 the reason they want that statement in has nothing to do
8 with Detective Amick. It has everything to do with Gwen
9 Ott-Bailey.

10 He cannot testify that that statement came from
11 her. He never talked to her. And if he had talked to her,
12 the best evidence of what she said that day, with all due
13 respect to Captain Amick, is not his affidavit to a
14 magistrate. It's what she said that day.

15 They can cross-examine her, and I'm sure that they
16 will, based on the length of previous cross-examination, all
17 day long about what she said. But to cross-examine this
18 witness over something she did not say is unprecedented.

19 THE COURT: All right. I'm going to let him ask
20 the question --

21 The warrant and affidavit do not come in. Okay.
22 They are hearsay, clearly hearsay, and I'm not going to
23 allow them in.

24 What I'm going to allow him to ask is this:
25 "Whether at the time you got the warrants from the

1 magistrate you were under this impression?"

2 But I'm not -- he can't say the source of that
3 impression. He can't say the source of that impression,
4 because it has not been established that Ms. Ott told him
5 that personally, and it would be hearsay in any event, if he
6 can't confirm it.

7 But I'm going to allow under 801(2)(d), the
8 subsection -- I looked at your subsection. I would allow
9 him to ask him if he was under that impression at the time
10 that he sought the warrants. And that's where you got to
11 leave it from that. You are not going any further than
12 that, so let's be clear on that.

13 MR. STARNES: Yes, sir, I understand.

14 Beg the court's indulgence.

15 MR. GOWDY: Am I going to be able to redirect him
16 on whether or not he met prior to January the 8th, or prior
17 to him actually shooting?

18 THE COURT: I'm going to let you redirect on
19 anything like that that has connected to anything that he's
20 gone into on cross.

21 That's pretty simple. Are we ready to go?

22 MR. STARNES: Yes, sir. I just want to make sure
23 that I phrase this right and I don't upset the court.

24 THE COURT: That's a matter of one sentence. A
25 one-sentence question there.

1 MR. STARNES: Your Honor, if I could proffer this
2 question for the record so I don't get in any trouble.

3 "When you gave your sworn affidavit to the
4 magistrate, you believed that there to be no prior knowledge
5 of this murder?"

6 THE COURT: By whom? Are you talking about by Ms.
7 Ott?

8 MR. STARNES: Yes, sir.

9 MR. GOWDY: Your Honor, that's the affidavit for
10 her arrest warrant, not his.

11 THE COURT: Yeah.

12 MR. GOWDY: So what is the relevance of an
13 affidavit from Gwen Ott's arrest warrant? It's not his
14 arrest warrant. That's in her arrest warrant. That's the
15 affidavit in support of Gwen Ott's arrest warrant.

16 THE COURT: I understand, but it's -- exactly. I
17 understood that. But at the time that he got the arrest
18 warrant for Ms. Ott, what impression was he under as to Ms.
19 Ott, the charge against her?

20 Solicitor, it goes to any bias on her part or her
21 credibility. It goes to that.

22 MR. GOWDY: But, Your Honor, if she -- if he did
23 not interview her, then how --

24 THE COURT: Well, I understand what you are
25 saying. I made my ruling on it. I'm satisfied with it. I

1 have looked at the rule. I have looked at the case. I'm
2 satisfied with my ruling on that. I think that's a correct
3 ruling, as long as he doesn't go outside my ruling I'll
4 allow it.

5 MR. STARNES: Your Honor, just so I don't get in
6 any trouble, I want to make sure that I'm phrasing this
7 question right, and we will move on.

8 "When you gave your sworn affidavit to the
9 magistrate, you believed that there to be no prior knowledge
10 of the murder by Ms. Ott?"

11 THE COURT: Prior knowledge before when? I think
12 we need to make that clear. She had to have some knowledge
13 at some point. She went to --

14 MR. STARNES: Before -- before the killing they
15 classify as murder.

16 THE COURT: Before what date are you talking
17 about? That's what I'm trying to say, if you are going to
18 make it clear.

19 MR. STARNES: January 8th.

20 THE COURT: Before January the 8th?

21 MR. STARNES: Yes, sir.

22 THE COURT: Okay. All right. Let's don't --
23 let's stay with that now. Don't -- let's don't -- all
24 right.

25 We are ready now. We will bring the jury back in

1 and we will get started.

2 (The following takes place in the presence of the
3 jury panel)

4 THE COURT: All right. We're ready to proceed.

5 MR. STARNES: If it please the court, Your Honor?

6 THE COURT: Yes, sir.

7 BY MR. STARNES:

8 Q. Mr. Amick, before we took the break we were discussing
9 that you obtained an arrest warrant on individuals regarding
10 this case, is that correct?

11 A. Correct.

12 Q. At the time that you obtained the arrest warrant on Ms.
13 Gwen Ott-Bailey, when you gave your sworn affidavit to the
14 magistrate, you believed that there to be no prior knowledge
15 of the murder by Ms. Ott before January 8th, is that
16 correct?

17 A. As per the information forwarded to me, correct.

18 Q. Through the course of your investigation, Detective
19 Amick, at any point in your investigation did you learn that
20 any of Mr. Welborn's credit cards, ATM cards, or anything
21 were used by any individual other than Mr. Welborn?

22 A. They were not used.

23 Q. They were not.

24 And during the course of your investigation, did you
25 have an opportunity in May of 1996, to interview a Jody

1 Fogle.

2 A. I did.

3 Q. Detective Amick, did Mr. Fogle have the opportunity,
4 when you interviewed him, to draw you a diagram of the
5 inside of the house at 375 Forts Pond Road?

6 A. He did.

7 Q. And what I mean by 375 Forts Pond Road, I'm taking
8 about the residence of Norman Starnes.

9 A. Correct.

10 Q. And Mr. Amick, would you recognize that diagram?

11 A. I would.

12 Q. (Witness reviewing diagram)

13 MR. STARNES: Your Honor, I.D. purposes at this
14 time only.

15 THE COURT: Yes, sir.

16 (Pencilled Drawing marked as Defendant's Exhibit
17 No. 5 for identification)

18 MR. STARNES: Beg the court's indulgence just one
19 moment.

20 (Off the record)

21 (Back on the record)

22 BY MR. STARNES:

23 Q. Detective Amick, in January of 1996, you did have an
24 opportunity to speak with Ms. Ott, is that correct?

25 A. Briefly, yes.

1 Q. Ms. Ott give you no statement as to what happened in
2 these events in January when you spoke to her, is that
3 correct?

4 A. She did not.

5 THE COURT: Mr. Starnes, you have already gone
6 over that point. Let's move on.

7 MR. STARNES: That's all the questions. Thank
8 you, Detective Amick.

9 THE COURT: Thank you.

10 MR. GOWDY: Very briefly on redirect, Your Honor.
11 May it please the court?

12 THE COURT: Yes, sir.

13 REDIRECT EXAMINATION BY MR. GOWDY:

14 Q. On May 27th, when Ms. Ott came in, you were not the
15 detective that initially talked to her, correct?

16 A. I was not.

17 Q. After the detective initially talked to her, was she
18 asked to write out a detailed statement of everything that
19 she knew about relevant incidents?

20 A. Yes, she was.

21 Q. Did she do so?

22 A. She did.

23 Q. All right. Speaking of May 27th, were there any
24 wallets or cash found with the bodies at the burial?

25 A. I do not of belief so, no.

1 Q. Thank you, detective.

2 MR. STARNES: Nothing further, Your Honor.

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

4 MR. BULSA: The State calls Robert Doray.

5 ROBERT DORAY, having been first duly sworn,
6 testified as follows:

7 THE CLERK: If you will take a seat on the witness
8 stand and stating your full name and spell your last name
9 for the record, please.

10 THE WITNESS: Robert T. Doray, D-O-R-A-Y.

11 DIRECT EXAMINATION BY MR. BULSA:

12 Q. Good morning, Mr. Doray.

13 A. Good morning.

14 Q. Where do you live, sir?

15 A. Beaufort.

16 Q. Did you used to live in Lexington?

17 A. I did, yes, sir.

18 Q. When did you move to Beaufort?

19 A. '99.

20 Q. What do you do now?

21 A. Actually I'm a licensed contractor.

22 Q. Build homes?

23 A. I move mobile homes and set them up and so forth.

24 Q. And when you lived in Lexington, what was your
25 occupation?

1 A. I was a deputy with Lexington County.

2 Q. How long were you a deputy?

3 A. Lexington County was approximately four years. I came
4 from Beaufort County sheriff's office there, I was.

5 Q. You were at the Beaufort sheriff's office and then you
6 moved to Lexington?

7 A. Yes, sir.

8 Q. How long have you been in law enforcement for?

9 A. Approximately ten years.

10 Q. And what were your duties back in January of 1996?

11 A. I was the resident deputy in Swansea.

12 Q. Explain to the jury what a resident deputy is.

13 A. More or less you work, live in that area, and you are,
14 more or less, the sheriff's eyes and ears for that immediate
15 area, and address all the concerns in the community.

16 Anything from minor complaints to major. You are more or
17 less like the liaison between the sheriff's office and the
18 community.

19 Q. What's the purpose for a resident deputy? Is it so you
20 can get to know the residents better?

21 A. Yes, sir.

22 Q. Be more --

23 A. Build up the morale of the community and the law
24 enforcement and have a good working relationship between
25 both parties.

1 Q. Okay. And does the Swansea area include the Pelion
2 area?

3 A. Yes, sir, it does. It's close to each other.

4 Q. And were you aware of Mr. Starnes at that point in
5 time?

6 A. Yes, sir.

7 Q. Had you had contact with him before?

8 A. Yes, sir.

9 Q. Had you developed a rapport with him?

10 A. Somewhat I knew him, because he owned a business in
11 Pelion where I -- where I lived, worked, kids went to
12 school. There was a Star Locator across from his business
13 and I passed by his residence every morning on my way to
14 Swansea.

15 Q. Was there a police station of some sort in Swansea?

16 A. Yes, sir.

17 Q. Would it be called a substation?

18 A. Yes, sir.

19 Q. And how far is that from Pelion?

20 A. Maybe approximately five miles, I would imagine.

21 Q. Everybody in the community knew where it was?

22 A. Yes, sir.

23 Q. Now, Mr. Doray, were you working on January the 9th of
24 1996?

25 A. Yes, sir.

1 Q. Okay. And did you receive any information from Norman
2 Starnes about anything that had happened on January the 8th
3 of 1996?

4 A. If I can refer to my --

5 I did talk to Mr. Starnes after I had a complainant
6 come into the substation and filed a missing persons report.

7 Q. When did the complaint come in, sir?

8 A. It would have been on -- let's see. My report
9 indicates January 10th, is what I have on the bottom here,
10 so I'm not sure.

11 Q. So the first information that you had was you received
12 on January the 10th, is that correct?

13 A. Yes, sir.

14 Q. And when did these two men --

15 What was the report, the general nature of that report?

16 A. A young lady came into the office substation and wanted
17 to file a missing persons report.

18 Q. Okay. Was it was a missing persons report of two
19 individuals?

20 A. Yes, sir.

21 Q. And who were those two individuals?

22 A. One was a -- was a Welborn -- or a William Welborn. I
23 believe last name was Champlin. I can't read the --

24 Q. Jared Champlin?

25 A. Yes, sir.

1 Q. Now, you received that information on the 10th, and
2 what was the date that they were suspected to be missing?

3 A. I have January 8th.

4 Q. January the 8th?

5 A. Right. Yes, sir.

6 Q. At any time on January the 8th did Mr. Starnes come to
7 you and tell you anything about either one of these
8 individuals?

9 A. No, sir.

10 Q. On January the 9th, did Mr. Starnes come to you, as
11 resident deputy, to tell you anything about what had
12 happened to those individuals?

13 A. No, sir.

14 Q. And you stated on January the 10th, someone came in and
15 filed this report. Was Mr. Starnes name named in that
16 report?

17 A. He was, sir.

18 Q. How so?

19 A. That he was the last one seen with these individuals
20 and that they had been together at an establishment in
21 Pelion.

22 Q. And once you received that information, what did you
23 do?

24 A. Actually I made a phone call to Mr. Starnes' place of
25 business and I was informed that he wasn't there. And the

1 young lady that answered the phone, which I'm not sure who
2 she was, but she gave me his home number.

3 Q. Why did you make a phone call to him?

4 A. Actually to talk to Mr. Starnes, if I could attempt to
5 locate these two individuals, and what he might have known
6 about it.

7 Q. Okay. So you were interested in what he might know,
8 because he was the last person known to have seen them?

9 A. Yes, sir.

10 Q. And you made a phone call and you did not reach him.
11 Did you ever make contact with him that day?

12 A. I want to say he called me back and we spoke about
13 these individuals.

14 Q. So he called you back the same day?

15 A. Yes, sir.

16 Q. And what did he tell you?

17 A. He told me that they had been together at C.J.'s
18 Tavern, which is located in Pelion, just outside the city
19 limits. That they had been playing pool, and that he had
20 told me that the two individuals were drinking pretty
21 heavily.

22 At one point he said that when they were in the
23 restroom, that the one gentleman was beating up on the walls
24 and that he made a -- made a threat towards Mr. Starnes.

25 Q. Okay. So that was information that he told you over

1 the phone. Did he ever invite you over to his home?

2 A. No, sir. As far as inviting me, no, sir.

3 Q. Did he ever tell you that those two individuals had
4 been to his residence on the date in question, January the
5 8th?

6 A. No, sir.

7 Q. So he did not invite you over there to show you what
8 had happened in that house?

9 A. No, sir.

10 Q. And did you personally know the two individuals that
11 were missing?

12 A. I did, sir.

13 Q. What kind of contacts did you have with them?

14 A. Actually being the resident deputy in Swansea, I was
15 involved with a Christmas parade in which the two
16 individuals -- actually they parachuted into a business
17 parking lot, one of them which was dressed as Santa Clause.
18 It was a nice event for people in Swansea.

19 Q. That was sometime in December?

20 A. Yes, sir.

21 Q. So you actually knew the individuals that you were
22 looking for?

23 A. Correct.

24 Q. In your conversation with Mr. Starnes, did he tell you
25 where he last saw them?

1 A. He told me that he had left them at the location.

2 Q. Did he specifically state where, inside or outside?

3 A. Let's see, I want to say Mr. Starnes told me that he --
4 they made a comment that they were going to see a Stan the
5 Man subject that he did not know, but that -- let's see,
6 that I want to say that he told me that they left walking
7 towards Pelion, Highway 302, towards the airport.

8 Q. Can you see this map?

9 A. I do.

10 Q. Using this pointer, if you would, point to where C.J.'s
11 is.

12 A. It would be somewhere --

13 Q. Do you see C.J.'s up at the top?

14 A. I'm trying to look at where we are.

15 Okay. I got you.

16 Q. All right. Based on the information that Mr. Starnes
17 gave you, where would these two gentlemen have been walking?

18 A. They would have been walking in this direction towards
19 Pelion.

20 Q. Towards Pelion?

21 A. Yes, sir.

22 Q. And this Stan the Man, were you familiar with him?

23 A. Yes, sir.

24 Q. Do you know where he would have been living?

25 A. I want to say up in this -- if that's 178 there, it

1 would be up in that vicinity there, sir.

2 Q. So Mr. Starnes gave you the impression that these men
3 had left C.J.'s walking to see Stan the Man?

4 A. Correct, sir.

5 Q. Thank you. Answer any questions that Mr. Starnes may
6 have.

7 CROSS EXAMINATION BY MR. STARNES:

8 Q. Hi, Mr. Doray. How are you doing today?

9 A. Good, Mr. Starnes.

10 Q. On January the 9th, did you happen to come into contact
11 with Mr. Jody Fogle?

12 A. Say that again.

13 Q. On January the 8th, or the 9th, did you happen to come
14 in contact with an individual named Mr. Jody Fogle?

15 A. I'm not familiar with that name, no, sir.

16 Q. How about a Ms. Gwen Ott-Bailey?

17 A. Yes, sir.

18 Q. On the 10th, when you took the missing persons report,
19 did you tell me the individual who come to you to file the
20 report?

21 A. It was Donna Benson.

22 Q. I'm sorry?

23 A. Donna Benson.

24 Q. Donna Benson?

25 A. Yes, sir.

1 Q. You mentioned something I believe about a Christmas
2 parade in Swansea?

3 A. Yes, sir.

4 Q. At a later time did you attend the Christmas parade
5 where they parachuted in Pelion?

6 A. I don't recall them parachuting in Pelion, no, sir.

7 Q. You don't recall?

8 A. I don't remember that, no.

9 Q. Thank you, Mr. Doray. You have a good day.

10 MR. BULSA: One last followup question, if I may.

11 REDIRECT EXAMINATION BY MR. BULSA:

12 Q. Mr. Doray, if Mr. Starnes come to you on the 8th or the
13 9th with any information about something --

14 MR. STARNES: Your Honor, I object to the improper
15 redirect. That's nothing that I even covered.

16 THE COURT: I don't think he did go into that on
17 his cross. I sustain the objection.

18 BY MR. BULSA:

19 Q. But did he ever come to you himself?

20 A. Regarding this incident, not at all, sir.

21 Q. Thank you.

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

23 MR. BULSA: Your Honor, we ask that this witness
24 be excused.

25 THE COURT: Any objection?

1 MR. STARNES: No objection.

2 THE COURT: Thank you for coming. You may be
3 excused at this time.

4 Yeah, I'm sorry, please call your next witness.

5 MR. GOWDY: I'm sorry, judge. It's my fault.

6 The State would call Deputy Coroner Chris Lorick.

7 DEPUTY CORONER JAMES CHRISTOPHER LORICK, having
8 been first duly sworn, testified as follows:

9 THE CLERK: Have a seat there and state your full
10 name and spell your last name for the record, please, sir.

11 THE WITNESS: My name is James Christopher Lorick.
12 Last name is L-O-R-I-C-K.

13 DIRECT EXAMINATION BY MR. GOWDY:

14 Q. Good morning, sir.

15 A. Good morning.

16 Q. You are currently a deputy coroner with Lexington
17 County, is that correct?

18 A. Chief deputy coroner, yes, sir.

19 Q. Chief deputy coroner.

20 How long have you been in that position?

21 A. Two years, seven months, around there.

22 Q. Prior to becoming the deputy coroner of this county,
23 what was your occupation?

24 A. I worked with the Lexington County sheriff's
25 department.

1 Q. And how long had you been with the sheriff's
2 department?

3 A. 14 years, approximately.

4 Q. Did you hold a variety of different positions during
5 those 14 years?

6 A. Yes, sir.

7 Q. In 1996, what capacity did you work at the sheriff's
8 department?

9 A. I was an investigator.

10 Q. In January of 1996, were you assigned to a case, to
11 work a case where two men were reported missing?

12 A. Yes, sir.

13 Q. Were those two men named Bill Welborn and Jared
14 Champlin?

15 A. Yes, sir.

16 Q. Tell us how you came to be involved in that
17 investigation.

18 A. I believe I arrived -- I was working second shift and I
19 arrived at work. I was -- I'm not sure if I was assigned
20 the case, but I was given this case to follow up on two
21 missing people out of Pelion.

22 Q. Is it fair to say missing persons cases, that you make
23 an effort initially to find out the last person that might
24 have been seen with them?

25 A. Yes, sir.

- 1 Q. Did you make an effort to do that in this case?
- 2 A. Yes, sir.
- 3 Q. Were you able to identify who the last person that you
- 4 could tell was seen with Bill Welborn and Jared Champlin?
- 5 A. Yes, sir.
- 6 Q. Did you talk to that person?
- 7 A. Yes, sir.
- 8 Q. Who was it?
- 9 A. Norman Starnes.
- 10 Q. Where did you talk to him?
- 11 A. At his restaurant in Pelion, Panther Parlor.
- 12 Q. Do you recall what date that you talked to him?
- 13 A. January 10th, '96, I believe was the date.
- 14 Q. Did you make an appointment or did you just stop by?
- 15 A. I believe I just stopped by.
- 16 Q. And where did you talk to Mr. Starnes?
- 17 A. Inside the restaurant.
- 18 Q. At a table, booth?
- 19 A. Table.
- 20 Q. Was anyone else present in the restaurant when you met
- 21 with him?
- 22 A. I'm sure there was customers, employees.
- 23 Q. Did you ask him -- did you interview him first about
- 24 what knowledge he may have had?
- 25 A. Yes, sir.

1 Q. And as part of your investigative protocol, did you ask
2 him -- give him the opportunity to give reduce to writing
3 whatever his statement may have been?

4 A. Yes.

5 Q. Did you limit him in any way as to what he could say?

6 A. No, sir.

7 Q. Did you say "Mr. Starnes, I'm only going to give you
8 one sheet of paper, so you have got to write it all down on
9 this one sheet"?

10 A. No, sir.

11 Q. Could he have written as much as he wanted to?

12 A. Yes, sir.

13 Q. Did you suggest to him what angle you wanted him to
14 take?

15 A. No, sir.

16 Q. Let me show you what has been marked as State's Exhibit
17 16 and ask you whether or not you recognize that?

18 A. That's the statement that he filled out in my presence
19 down there at the Panther Parlor.

20 Q. What's the date on that?

21 A. 10 January, '96.

22 Q. Thank you.

23 MR. GOWDY: Your Honor, we would move State's 16
24 into evidence.

25 MR. STARNES: No objection, Your Honor.

1 THE COURT: Admitted without objection.

2 MR. GOWDY: Permission to publish to the jury,
3 Your Honor?

4 THE COURT: You may publish.

5 BY MR. GOWDY:

6 Q. What portions did you fill out?

7 A. It looks like I wrote his name and my name.

8 Q. You would have done that?

9 A. Yes, sir.

10 Q. And that?

11 A. Yes, sir.

12 Q. All right.

13 A. And the top. The date the birth and social up there at
14 the top right-hand corner.

15 Q. That. All right. Who wrote this?

16 A. Norman Starnes.

17 Q. And, again, you did not restrict him in the amount of
18 paper that you were going to give him?

19 A. No, sir.

20 Q. Did you tell him that you were in a hurry and he needed
21 to go ahead and get through this?

22 A. "Take your time."

23 Q. Is this a standard form that was used by detectives in
24 Lexington County in 1996?

25 A. Yes, sir.

1 Q. I hand you another copy of this.

2 Deputy Coroner Lorick, this is a copy of what the jury
3 is looking at. Could I get you, if you would, to please
4 read what the jury is looking at?

5 A. Starting from the very top?

6 Q. Just start with "I am".

7 A. "I am 30 years of age and I live at 375 Forts Pond
8 Road. Approximately 7:30 Bill, Jared, Karen came by the
9 Panther Parlor. They got something to eat. And Karen gave
10 a girl who worked across the street at Piccolos, Tammy, a
11 ride to the plaza. She was gone about 30 minutes and hadn't
12 returned, so we went to the plaza to check on her. Bill and
13 I shot about four to five games of pool and I was" -- I
14 can't read that.

15 Q. Could it be "it was"?

16 A. "And it was about 9:15 and I had to come back and close
17 the restaurant. While I was walking to the counter to pay
18 for a six pack of beer, Bill told the girl who was working
19 that he was going to take me down to Platt Springs Road and
20 blow my brains out. He had acted very strange and hyper all
21 evening but never imposed a threat on me. We walked out and
22 he said he had to get in touch with Stan the Man. He went
23 to the pay phone out front and that was the last I saw him."

24 Dated at Pelion, South Carolina 10 January '96.

25 Q. Is that his signature at the bottom where I believe it

1 says "I have read each page of this statement. Each page
2 which bears my signature. I certify that the facts
3 contained herein are true and correct"?

4 A. Yes, sir.

5 Q. That's his signature --

6 A. Yes, sir.

7 Q. -- below that paragraph?

8 A. Yes, sir.

9 Q. Deputy Coroner Lorick, if I am standing in front of
10 C.J.'s, how far away is Platt Springs Road?

11 A. It's seven, eight miles.

12 Q. By foot, do you have an estimate of how long it might
13 take me to get there?

14 A. Several hours.

15 Q. A while?

16 A. A while.

17 Q. He specifically told you on January the 10th -- or he
18 wrote "but never imposed a threat on me"?

19 A. Correct.

20 Q. Not your handwriting? His, correct?

21 A. His.

22 Q. Please answer any questions that the defendant may have
23 for you.

24 MR. STARNES: May it please the court, Your Honor?

25 THE COURT: Yes, sir.

1 CROSS EXAMINATION BY MR. STARNES:

2 Q. How are you doing today, Detective Lorick?

3 A. Fine.

4 Q. It's pretty obvious that I was lying to you in that
5 statement, isn't that correct?

6 A. It seems like it.

7 Q. If I would have told you at that time when you come to
8 interview me that I shot and killed Bill Welborn, what would
9 have happened?

10 A. Well, you would have probably ended up at the sheriff's
11 department.

12 Q. Probably?

13 A. In an interview room.

14 Q. In an interview room?

15 A. Uh-huh, giving your side of the story.

16 Q. Been in handcuffs, is that correct?

17 A. Probably.

18 Q. Would you have told me "you could come in tomorrow or
19 the next day"?

20 A. No.

21 Q. You would have arrested me on the spot, is that
22 correct?

23 A. Yes.

24 Q. Detective Lorick, did you have an opportunity through
25 the course of your investigation to interview a lady by the

1 name of Claudette Harbert?

2 A. I believe I did.

3 Q. Could you tell the jury what Ms. Harbert told you as to
4 the actions and demeanor --

5 MR. GOWDY: Your Honor --

6 THE COURT: Sustained. That's hearsay.

7 MR. STARNES: I understand. I'll move on.

8 BY MR. STARNES:

9 Q. You did have an opportunity to interview Ms. Claudette
10 Harbert, is that correct?

11 A. I believe so, yes.

12 Q. And during the course of your investigation, on the
13 date that this statement was given to you, did you have an
14 opportunity to speak with a Ms. Gwen Ott?

15 A. Ms. Who?

16 Q. Gwen Ott.

17 A. I don't recall that.

18 Q. Do you recall if she was working that day?

19 A. I don't recall.

20 Q. Did you have an opportunity to interview a lady by the
21 name of Tammy Arnold?

22 A. I believe so.

23 Q. Detective Lorick, in anywhere in this statement that I
24 gave you, did I ever indicate that I had left C.J.'s and
25 returned?

1 A. I don't believe so.

2 Q. Did you ask me any questions about an incident between
3 me and Mr. Welborn that took place at C.J.'s?

4 A. I believe so, yeah.

5 Q. It was pretty apparent at the conclusion of your
6 investigation that I lied to you, isn't that correct?

7 A. Then no. Now yes.

8 Q. Thank you, Detective Lorick.

9 MR. GOWDY: Very briefly, Your Honor.

10 THE COURT: Yes, sir.

11 REDIRECT EXAMINATION BY MR. GOWDY:

12 Q. Deputy Coroner Lorick, Mr. Starnes asked you what would
13 have happened had he told you the truth on January the 10th
14 instead of that. Do you remember that question?

15 A. Yes, sir.

16 Q. Would you have been able to process the crime scene at
17 375 Forts Pond Road, had he told you the truth on January
18 the 10th?

19 A. Yes, sir.

20 Q. Would you have been able perhaps to have done gunshot
21 residue tests on the hands of Bill Welborn and Jared
22 Champlin --

23 A. Yes, sir.

24 Q. -- to see whether or not they had even touched a gun?

25 A. Yes, sir.

1 Q. Would you have been able to do autopsies immediately --

2 A. Yes, sir.

3 Q. -- on bodies that had not --

4 MR. STARNES: Your Honor, I object.

5 BY MR. GOWDY:

6 Q. -- not decayed?

7 MR. STARNES: He's asking leading questions.

8 THE COURT: Well, he's answered them yes or no. I
9 overrule the objection. You may ask the questions.

10 BY MR. GOWDY:

11 Q. Would you have been able to do autopsies on bodies that
12 were not decayed and decomposed?

13 A. Yes, sir.

14 MR. STARNES: Your Honor, I have to object. The
15 solicitor is testifying. He's testifying as to decomposed
16 bodies and then allowing the detective to answer.

17 THE COURT: All right.

18 MR. GOWDY: I'll ask an open-ended question.

19 THE COURT: Let's do that. I sustain the
20 objection as to assuming facts not in evidence.

21 BY MR. GOWDY:

22 Q. Had he told you the truth on January the 10th that he
23 shot Bill Welborn and Jared Champlin, what all would you
24 have been able to do?

25 A. I would have been able to get in touch with a team of

1 supervisors, go down there, process the scene where it took
2 place. I would have -- hopefully I would have been able to
3 ascertain where the bodies were located, get that going.
4 Statements from any other witnesses that might have been
5 there. I mean it -- it would have been a whole lot sooner
6 than what had actually took place.

7 Q. Thank you, Coroner Lorick.

8 THE COURT: Followup?

9 MR. STARNES: No.

10 THE COURT: Thank you, sir, you may stand down.

11 MR. GOWDY: Your Honor, could I move that Deputy
12 Coroner Lorick be released to go back to work?

13 MR. STARNES: Your Honor, he's under subpoena for
14 the defense.

15 THE COURT: Well, subject to being recalled. Sir,
16 you would need to be available in case you are recalled to
17 the court. You are free to go and resume your duties, but
18 be available for recall. Thank you, sir.

19 THE WITNESS: Yes, sir.

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

21 THE COURT: Yes, sir.

22 MR. COLER: The State calls Dean Sease.

23 DEAN SEASE, having been first duly sworn,
24 testified as follows:

25 THE CLERK: If you would take a seat on the

1 witness stand, state your full name, spelling your last name
2 for the record, please.

3 THE WITNESS: Dean Sease, S-E-A-S-E.

4 DIRECT EXAMINATION BY MR. COLER:

5 Q. May it please the court, Mr. Sease, could you tell us
6 where you live?

7 A. I live in Gilbert.

8 Q. And how long have you been in Lexington County?

9 A. My whole life.

10 Q. What do you do for a living?

11 A. I do fleet commercial sales for Simpsonville Chevrolet.

12 Q. Back in 1996, January of 1996, in particular, what was
13 your career?

14 A. I worked with the Pond Branch Telephone Company.

15 Q. What did you do with the Pond Branch Telephone?

16 A. I was a technician.

17 Q. Just briefly tell the jury what a technician with Pond
18 Branch Telephone does.

19 THE COURT: Excuse me, I don't mean to interrupt,
20 but could you get just a little closer to the microphone?

21 THE WITNESS: Sure.

22 THE COURT: That's good. Thank you.

23 BY MR. COLER:

24 Q. Just briefly tell us what --

25 A. We did just about everything. Anything that dealt with

1 telephones. We installed them, worked on them, business
2 systems, anything.

3 Q. And how long did you do that?

4 A. 17 years.

5 Q. How many?

6 A. 17 years.

7 Q. Describe for us the area that you were assigned to work
8 in.

9 A. I worked the Pelion, Boiling Springs, Fairview area.

10 Q. I'm going to ask you to think back to January of 1996.
11 Did you have an occasion to have a conversation with the
12 defendant Norman Starnes?

13 A. I did.

14 Q. Was that when you were across the street from his
15 restaurant?

16 A. I was working on the pay phones across the street from
17 his restaurant.

18 Q. Okay. Prior to that date, did you know or were you
19 familiar with Mr. Starnes?

20 A. I have known him, from working in the area. I worked
21 in the area for a number of years. He had one of two
22 restaurants, and naturally you eat at one of the two
23 restaurants.

24 Q. Do you recall approximately what time of day it was
25 when you were working on the pay phones across the street

1 from the Panther Parlor?

2 A. It was mid-morning.

3 Q. And do you recall what day of the week it was?

4 A. It was a Monday or a Tuesday.

5 Q. Before that conversation, had you seen or heard any
6 reports of the two missing individuals, Bill Welborn and
7 Jared Champlin?

8 A. The weekend prior it was news report. I had seen the
9 news that they were -- they had been reported missing.

10 Q. And you say the weekend prior -- can you see that
11 calendar from where you are sitting?

12 A. I can.

13 Q. When you say the weekend prior, can you tell us the
14 approximate dates of the weekend that you are talking about?

15 A. I would say it would -- it would probably have been the
16 6th, 7th. Maybe the 13th or 14th.

17 Q. Well, let me refresh your memory. If you need to look
18 at your information from the previous testimony, the
19 individuals were reported missing on the 10th of January.

20 A. Okay, well, it would have been the 13th, 14th, 15th,
21 along in there.

22 Q. Saturday, the 13th; or Sunday, the 14th?

23 A. That's right.

24 Q. And the conversation that you had with Mr. Starnes then
25 would have been the following Monday or Tuesday?

1 A. That's right, either that Monday or Tuesday.

2 Q. 15th or 16th of January?

3 A. That's right.

4 Q. Describe for us the best you can recall what the
5 defendant did and what he said when he approached you as you
6 were working on the pay phones.

7 A. I was working on the phones, and he walked across the
8 street and started a conversation and asked me if I had
9 heard where the two men had been reported missing, and I
10 said I had. And I said, "you know, I wonder what happened
11 to them." And he said -- he said "those guys are dead." He
12 said "they won't find them." And I said "you know, you
13 think so?" And he said "yeah." He said that he had been
14 with them. They were at his home that night and he was the
15 last one to see them alive.

16 Q. How did that information register with you?

17 A. I kind of took me back, kind of surprised me, because
18 that didn't correlated with what I had seen on the news
19 reports.

20 Q. Had you seen anything on the news reports about Mr.
21 Starnes being involved in it?

22 A. No, not at all.

23 Q. Describe for me as best you can recall Mr. Starnes, the
24 defendant's demeanor, his actions, when you were talking to
25 with him?

1 A. He was a little nervous acting. Kind of hyper. A
2 little nervous acting that morning.

3 Q. Did he tell you anything else during that conversation
4 about -- or asked you anything else about the phone in his
5 home?

6 A. He questioned me about whether phone calls could be
7 traced from days prior. He said that the two people were at
8 his home making phone calls, and he was wondering if the
9 phone company could go back and trace those calls.

10 Q. Did he indicate to you why he wanted that information
11 to you --

12 A. He said that it would help the police department if he
13 could find out who they were calling.

14 Q. He told you he thought that information would help him
15 help the police find the men?

16 A. That's correct.

17 Q. About how long did that conversation with Mr. Starnes
18 last that morning?

19 A. Ten minutes, max.

20 Q. Did you, again, have an opportunity to have another
21 conversation with Mr. Starnes after that morning?

22 A. About a day or two later he called my house at about
23 nine o'clock that night and started questioning again about
24 his phone records and being able to trace calls, block
25 calls. It was a very rambling conversation. Kind of a

1 strange conversation.

2 Q. Would that have been usual for the defendant, Norman
3 Starnes, to call the home of Dean Sease?

4 A. No.

5 Q. Had that ever happened before?

6 A. No, never.

7 Q. Did you and the defendant have that type of a
8 relationship?

9 A. No, we had a casual relationship. Just we knew each
10 other.

11 Q. I would ask you to take a look at --

12 Mr. Sease, I'm going to take a label that defense has
13 had an opportunity to look at, and no objection. It says
14 "Starnes talked to Sease concerning the boys being dead,
15 disappearance and phone trace."

16 A. That's correct.

17 Q. I'm going to affix that to this calendar on the
18 approximate date that you had that conversation.

19 Would it be correct or accurate to put that on or about
20 Monday or Tuesday, January 15th or 16th?

21 A. It would.

22 Q. I'm going to ask you to take a look at a couple of
23 photographs. If you will take a look at those.

24 MR. COLER: For the record, Your Honor, I'm
25 handing him what's been as State Exhibit No. 17, 18 and

1 19.

2 BY MR. COLER:

3 Q. Tell us, Mr. Sease, what if you recognize those
4 photographs?

5 A. I do. That's Norman Starnes house, and this is a
6 telephone protector box.

7 Q. Do those photographs appear to accurately or generally
8 portray Mr. Starnes home and the telephone box at his home
9 as it existed, to your knowledge, back in 1996?

10 A. They do.

11 Q. And you were familiar with Mr. Starnes home?

12 A. I was. I worked in the area on it.

13 MR. GOWDY: Your Honor, at this point we would
14 offer all three exhibits into evidence and offer them to
15 publish them to the jury.

16 MR. STARNES: I have to object. They would not
17 let me bring any pictures in, any photographs in, unless a
18 proper foundation was laid as to who took the pictures, the
19 year of the photo and all of that information. And now what
20 they are trying to do is do the very opposite of what I'm
21 not allowed to do, and I don't think that's fair, Your
22 Honor.

23 MR. COLER: Your Honor, he's testified that that's
24 an accurate portrayal of the residence and phone box, as he
25 knew it to exist back in January of 1996.

1 MR. STARNES: But there is no foundation as to who
2 took the pictures. And there is a picture of the residence
3 in front of the residence.

4 THE COURT: All right, approach just a minute.

5 (Whereupon, the lawyers and the defendant
6 approached the bench for an off-the-record discussion)

7 THE COURT: Let's let the record be clear on that.
8 Mr. Starnes is withdrawing his objections to what numbers?
9 I didn't have the number.

10 MR. COLER: 19 and 18, Your Honor.

11 THE COURT: And the court sustained the objection
12 as to what number?

13 MR. COLER: 17.

14 THE COURT: 17, okay.

15 Is that correct, Mr. Starnes?

16 MR. STARNES: As far as.

17 THE COURT: Show them to him just to be sure.

18 MR. STARNES: Correct. Yes, sir, Your Honor.

19 THE COURT: Please proceed.

20 MR. STARNES: Your Honor, we offer now to publish
21 State's Exhibit No. 18 to the jury.

22 THE COURT: You may publish it.

23 BY MR. COLER:

24 Q. Mr. Sease, please describe for the jury what this is a
25 picture of.

1 MR. COLER: For the record, Your Honor, that's
2 State's 18 I'm showing him.

3 A. That is a -- what is known as a telephone protector
4 box. It's the demarcation point between the phone company's
5 wiring and the home's station wiring.

6 BY MR. COLER:

7 Q. Is it fair to say that that's essentially where phone
8 service comes into a residence?

9 A. That's correct.

10 Q. I'm going to show you State's Exhibit No. 19.

11 Can you see on that photograph of Mr. Starnes home the
12 location of the box.

13 A. I do.

14 Q. Would you point to it for the jury with the laser
15 pointer?

16 A. That's it right there.

17 Q. Okay. Let me ask you a couple of questions about that
18 box. You said that's for service to the home?

19 A. That's correct.

20 Q. And what do you -- what else is it used for, did you
21 tell me?

22 A. This was a test jack right here. If you don't have any
23 phone service in your home, you could bring your phone out,
24 unplug this module plug, plug your phone in there to see if
25 you had dial tone coming from the phone company.

1 Q. Could you disable telephone service to a residence
2 through this box?

3 A. Absolutely. Just unplug this module plug. It's just
4 like unplugging your phone from the jack in the wall.

5 Q. How difficult would it be?

6 A. Just likes unplugging your phone from the jack in the
7 wall. Very simple.

8 MR. COLER: Beg the court's patience just one
9 minute.

10 (Off the record)

11 (Back on the record)

12 BY MR. COLER:

13 Q. That's all the questions that I have, Mr. Sease.
14 Please answer any that the defendant has.

15 CROSS EXAMINATION BY MR. STARNES:

16 Q. Hi, Mr. Sease. How are you doing?

17 A. Fine.

18 Q. You and I knew each other through a relative of mine,
19 is that correct?

20 A. That's correct.

21 Q. Would you tell the jury who that relative is?

22 A. Patrick Coyne.

23 Q. You and I and Patrick have been deer hunting a couple
24 of times, hadn't we?

25 A. I think we had been deer hunting once before.

1 Q. And you had a bachelor party?

2 MR. COLER: Objection to relevance, Your Honor.

3 MR. STARNES: I'm laying foundation of how I knew
4 this individual. We went on a deep sea fishing trip. That
5 is it.

6 THE COURT: You may ask. Go ahead.

7 BY MR. STARNES:

8 Q. Prior to you getting married, you had a bachelor party
9 on a --

10 A. I did. We had chartered a whole boat, deep sea fishing
11 boat. We had something like 30 some people, and you were on
12 it, that's correct.

13 Q. Me and Pat Coyne, my cousin?

14 A. That's correct.

15 Q. When I spoke to you over at the pay phones across the
16 street from the Panther Parlor, I believe you indicated that
17 I was pretty nervous?

18 A. Right.

19 Q. And I was questioning you in regard to tracing phone
20 calls?

21 A. That's correct.

22 Q. And I asked you about how to trace phone calls, and I
23 told you that the individuals that were missing were making
24 telephone calls from my house?

25 A. That's correct.

1 Q. Through the course of your work at the Pond Branch
2 Telephone Company, did you ever have an occasion to work on
3 any telephone lines at the Panther Parlor?

4 A. I did.

5 Q. And could you tell the jury what you did, as far as
6 working on the telephone lines at the Panther Parlor?

7 A. I will be honest, I could not. It's a long time ago,
8 it's --

9 THE COURT: What's the relevance?

10 A. Working on phone lines.

11 THE COURT: What's the relevance?

12 MR. STARNES: I was going to ask him did I know --
13 had he ever taught me how to work on telephone lines for
14 anything before.

15 THE COURT: Why don't you ask him that question
16 then.

17 BY MR. STARNES:

18 Q. At any point that we knew one other, Dean, did you have
19 an opportunity to teach me how to work on telecommunication
20 lines?

21 A. It's possible. I'm sure I probably showed, just like I
22 show everybody how to check their phone line to make sure
23 that it's working or not working.

24 Q. Anytime that I had problems with telephone lines, I
25 called Pond Branch phone company?

1 A. As far as I know.

2 Q. And when I did that, you would come out to the site and
3 work on the telephone?

4 A. Yeah, same as I always did.

5 Q. Mr. Sease, on this -- this is called a telephone
6 protector?

7 A. That's correct.

8 Q. And I believe you said this was a test jack here?

9 A. That's correct.

10 Q. Okay. To get into that box, how do you get into that
11 box? In other words, you can just go up to somebody's house
12 and open the box and plug a telephone in and start making
13 telephone calls?

14 A. There is one screw that generally looks about like that
15 screw on the cover of the lid of the box. Generally they
16 are finger tight. You can just about take your fingers and
17 undo most of them. At the very most, you would need a
18 screwdriver.

19 Q. What type of screwdriver would you need to get into
20 that box?

21 A. Most of them would be flathead screwdrivers. Some of
22 the older ones may take a crescent wrench, but most of them
23 would be a flathead screwdriver.

24 Q. When you say a crescent wrench, would you explain to
25 the jury what type of tool you are talking about?

1 A. It's just a wrench shaped like a crescent on the end
2 that would fit on a bolt like that right there.

3 Q. If the telephone lines were cut with wire cutters, that
4 would disabled service into that house?

5 A. That's correct.

6 Q. How long would it take to repair that box, if you took
7 a pair of cutters and cut it?

8 A. If the station wires right here were cut, assuming that
9 there was enough slack, which there generally is enough
10 slack to reach back up in there, a matter of a minute or two
11 to hook it back up.

12 Q. If someone ripped the phone wires out, just walked up
13 to them and snatched the phone wires out while the box was
14 closed, how long would it take you to repair that, Mr.
15 Sease?

16 A. About the same thing. Basically you just have two
17 wires to hook up, this one and this one, and there is no way
18 to -- years ago polarity mattered. Nowadays it doesn't.
19 There is no way to get it backwards. Anyway you hook it up,
20 it will work.

21 Q. Time-wise how long would that take?

22 A. A couple of minutes.

23 Q. At any time did you make any phone repairs, repair
24 calls to my house around midnight?

25 A. No.

1 Q. Never been to my residence on Forts Pond Road at twelve
2 o'clock or one o'clock in the morning to make a telephone
3 repair?

4 A. No, no, we never went out at that hour.

5 Q. Never went out at that hour.

6 Did it appear to you, when I spoke to you over the
7 telephone scene, that I was lying to you?

8 MR. COLER: Objection. That calls for
9 speculation.

10 THE COURT: Sustained.

11 MR. STARNES: No further questions. Thank you.

12 MR. COLER: Just a couple briefly, Your Honor.

13 REDIRECT EXAMINATION BY MR. COLER:

14 Q. Mr. Starnes asked you about have you ever instructed
15 him on working on telecommunications equipment. How -- in
16 the range of difficulty, how difficult would it be for
17 somebody to unplug or disable service to this box?

18 A. Very easy. Anybody could do it. We were -- you know,
19 as a technician, that was one of our jobs is to show people
20 when we went out on a call how to do it, to check their
21 inside service so that they wouldn't be charged for a
22 service call if it ever happened again, so it's very easy.
23 In fact, generally there are instructions on the lid that
24 actually shows you what to do and how to do it, but it's
25 very easy.

1 Q. And in your experience working on residential telephone
2 service, how often did you have difficulty opening that box
3 with nothing more than a screwdriver?

4 A. No difficulty at all. As I said, most of the time you
5 can go up and it's just finger tight. Just unscrew it with
6 your fingers.

7 Q. And if someone were to just yank those wires out, how
8 long would it take to unscrew that, slide the leftover wire
9 back in and screw it back in?

10 A. If you have a flathead screwdriver, a minute, two
11 minutes at the most. You just undo the two screws, put the
12 wire back in and tighten it back down.

13 Q. Thank you, Mr. Sease.

14 MR. STARNES: No.

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

17 MR. GOWDY: Your Honor, the next witness has some
18 length.

19 THE COURT: All right.

20 MR. GOWDY: Actually a lot of length.

21 THE COURT: Let me -- we had planned to take lunch
22 around 1:00 or 1:15, I think, somewhere around there, and
23 they are ordering in for the jury here. And so,
24 nevertheless, if the witness is going to be a long witness
25 anyway, I guess we can go ahead and get started. We may

1 just have to split up that witness' testimony.

2 MR. GOWDY: Certainly.

3 Your Honor, the State would call Ms. Gwen
4 Ott-Bailey.

5 MR. NETTLES: May I approach, Your Honor.

6 THE COURT: Yes, sir.

7 (Whereupon, the lawyers and the defendant
8 approached the bench for an off-the-record discussion)

9 GWEN OTT-BAILEY, having been first duly sworn,
10 testified as follows:

11 THE CLERK: If you would, just take a seat in the
12 witness box, slide all the way up, speak clearly into the
13 microphone and state your full name, spelling your last name
14 for the record, please.

15 THE WITNESS: My name is Gwendolyn Bailey,
16 B-A-I-L-E-Y.

17 DIRECT EXAMINATION BY MR. GOWDY:

18 Q. Good afternoon, ma'am.

19 A. Hi.

20 Q. I want you to speak up so the last gentleman and the
21 last lady in the jury box can hear you, okay?

22 A. Yes, sir.

23 Q. Even if it seems like you are screaming at me, keep
24 your voice up good and strong for me, okay?

25 A. Okay.

1 Q. Ms. Bailey, have you gone by any other name in life?

2 Before you were Ms. Bailey, what would you --

3 A. Gwen Ott, O-T-T.

4 Q. So if the jury has heard the name Gwen Ott, you are
5 that person?

6 A. Yes, sir.

7 Q. All right. Thank you.

8 If you do not mind my asking, how old are you?

9 A. 48.

10 Q. And where do you live?

11 A. In Pelion.

12 Q. How long have you lived in Pelion?

13 A. Since about '89.

14 Q. How long have you lived in Lexington County?

15 A. Most of my life.

16 Q. Who lives with you in Pelion today, 2007?

17 A. My husband Larry and my son Tyler.

18 Q. How old is your son?

19 A. 24.

20 Q. Do you work outside the home?

21 A. Yes, sir.

22 Q. Where do you work?

23 A. At Terminex.

24 Q. How long have you been there?

25 A. Almost ten years.

1 Q. Do you know the defendant Norman Starnes?

2 A. Yes, sir.

3 Q. Where did you meet him?

4 A. In Pelion, at the Panther Parlor.

5 Q. Tell the jury in -- they have heard the name Panther
6 Parlor before, but tell the jury what the Panther Parlor
7 was.

8 A. A fast food restaurant.

9 Q. Tell the them how the business was laid out. If I
10 walked in the front door, where would I walk?

11 A. Into the dining room.

12 There were tables and booths, prep bar, cash register,
13 fountain -- drink fountain. Fountain drink machine.

14 Q. When you initially met Mr. Starnes, did you meet him as
15 a customer?

16 A. Yes, sir.

17 Q. Did you eventually become an employee?

18 A. Yes, sir.

19 Q. To the best of your recollection, and I know I'm asking
20 you to go back 10 or 15 years, when did you begin working at
21 the Panther Parlor?

22 A. I do not recall the exact year. Several years after
23 meeting him. A couple years after meeting him.

24 Q. What were your responsibilities or jobs at the Panther
25 Parlor?

1 A. Opening up the restaurant, prepping for the day, taking
2 orders, fixing the food, delivering the food.

3 Q. What time would the restaurant open?

4 A. We opened at eleven.

5 Q. And what time would it close?

6 A. At nine p.m..

7 Q. Could I expect to find you there at all points between
8 those two times?

9 A. Yes, sir.

10 Q. At some point, Ms. Bailey, did your relationship with
11 Norman Starnes move from employer employee to boyfriend and
12 girlfriend?

13 A. We had a relationship before I started working for him.

14 Q. Okay. At some point did you move in with him?

15 A. Yes, sir.

16 Q. And where did you move -- what -- at what residence,
17 what address?

18 A. 375 Forts Pond Road, in Pelion.

19 Q. Do you recall when you would have moved in with him?

20 A. It was in August of '95.

21 Q. Okay.

22 A. August of '95.

23 Q. Who else lived there? You, him, and who else?

24 A. My son Tyler.

25 Q. Okay. Let me show you what's been marked as State's

1 Exhibit No. 8 and ask you whether or not you recognize that?

2 A. Yes, sir, that was our home.

3 Q. All right.

4 A. On Forts Pond.

5 MR. GOWDY: Your Honor, we would move State's 8
6 into evidence.

7 THE COURT: Any objection, Mr. Starnes?

8 MR. STARNES: No objection, Your Honor.

9 THE COURT: Admitted without objection.

10 MR. GOWDY: Your Honor, permission to publish
11 State's 9 and 8, both which are now in evidence?

12 THE COURT: Yes, sir.

13 BY MR. GOWDY:

14 Q. Ms. Bailey, let me first show you that. Can you tell
15 the ladies and gentlemen of the jury what that is?

16 A. That was our home.

17 Q. All right. Let me show you State's Exhibit 8.

18 A. The same home.

19 Q. That is the home with the roof off, right, looking
20 down?

21 A. Correct.

22 Q. I want to give you a laser pointer. Have you used one
23 of these before?

24 A. Yes, sir.

25 Q. Okay. When I ask you where certain things -- can you

1 see it well enough?

2 A. Yes.

3 Q. When I ask you where certain things were, I want you to
4 point them out to the jury, okay?

5 Where would I walk into 375 Forts Pond Road?

6 A. Right here.

7 Q. All right. And to the best of your recollection, would
8 the door open to my left or to my right?

9 A. To the left.

10 Q. And what is the room that I would walk into?

11 A. Our living room.

12 Q. Okay. The room to the left, I see a bed. What was
13 that?

14 A. That was our bedroom.

15 Q. Okay. Show me the kitchen.

16 A. Right there.

17 Q. And the other bedroom, would that have been your son's?

18 A. Yes, sir.

19 Q. All right. And the bathroom is off the back?

20 A. Yes, sir.

21 Q. Okay. We will come back to that in a minute, okay?

22 Did you know Bill Welborn and Jared Champlin?

23 A. Yes, sir.

24 Q. How did you know them?

25 A. I met them through Norman.

- 1 Q. Do you know what they did for a living?
- 2 A. They were teaching skydiving.
- 3 Q. Do you recall the name of their business, or had you
- 4 ever been to their business?
- 5 A. Yes, sir, the Drop Zone.
- 6 Q. The Drop Zone.
- 7 Were y'all social friends?
- 8 A. Yes, sir.
- 9 Q. Did you -- do you remember a lady named Dawn?
- 10 A. Yes, sir.
- 11 Q. Do you remember a lady named Karen?
- 12 A. Yes, sir.
- 13 Q. On occasions would y'all as a group go out?
- 14 A. Yes, sir.
- 15 Q. We will go to January the 8th.
- 16 Did you work that day?
- 17 A. Yes, sir.
- 18 Q. Do you know what time that you got to work?
- 19 A. Probably -- we opened at eleven, so I was probably
- 20 there by 9:30 or ten.
- 21 Q. Okay. To the best of your recollection, would Mr.
- 22 Starnes have opened the restaurant that morning?
- 23 A. Most times not. I do not honestly remember whether he
- 24 helped me open that morning or not.
- 25 Q. Was it usual or unusual for him to open a restaurant --

1 to open the restaurant?

2 A. Unusual.

3 Q. At some point on the 8th did Bill Welborn, Jared
4 Champlin and Karen Pratt come to the Panther Parlor?

5 A. Yes, sir.

6 Q. Accepting the fact that you were working, you did not
7 realize that twelve years later that somebody would ask you
8 this question, do you remember what time they got there?

9 A. Vaguely. Probably between four and five in the
10 afternoon.

11 Q. All right. Do you know whether they took separate
12 cars? Do you know whether they all came in one car?

13 A. From my best recollection, it was one car.

14 Q. And once they got -- had they been there before?

15 A. Yes, sir.

16 Q. All right. When they pull up in the parking lot, did
17 they all walk in together? Did any of them hang back?

18 A. I cannot honestly answer that --

19 Q. All right.

20 A. -- whether they all came in together or not.

21 Q. Did they order food?

22 A. Yes, sir.

23 Q. Did they eat?

24 A. Yes, sir.

25 Q. Did you know they were coming ahead of time?

1 A. No, sir.

2 Q. How long would the three of them - Bill, Jared and
3 Karen - have stayed at the Panther Parlor?

4 A. The two gentlemen stayed long enough to eat. Karen
5 stayed with me all evening.

6 Q. All right. So Karen stayed. Bill and Jared leave.
7 Who do they leave with?

8 A. Norman.

9 Q. Do you know where they were going?

10 A. Not at that time, no, sir.

11 Q. All right. Do you know whether they all left in one
12 car?

13 A. Yes, sir.

14 Q. Whose car was it?

15 A. Norman's mother's.

16 Q. What was Karen doing?

17 A. She was sitting with my son at one of the booths.

18 Q. All right. And you were, of course, working?

19 A. Yes, sir.

20 Q. All right. At some point did Norman Starnes come back
21 to the Panther Parlor?

22 A. Yes, sir.

23 Q. On one occasion, or more than one occasion?

24 A. More than one.

25 Q. All right. Start with the first time he came back to

1 the Panther Parlor, after having left with Bill and Jared,
2 and tell the jury what you recall about each one of his
3 trips back, in as much detail as you can remember.

4 A. On two occasions he came in to get money out of the
5 cash register.

6 The first time really, no questions. They were up at
7 C.J.'s. He let me know that they were at C.J.'s shooting
8 pool, so he was getting money for that.

9 The second time he came in for more money, saying that
10 they were gambling, so he needed more money.

11 Q. Are you absolutely certain that he came in to take out
12 money as opposed to put money in?

13 A. Yes, sir, he took out money.

14 Q. So he took money out of the cash register. Was that a
15 normal or an abnormal thing to happen?

16 A. It was a normal thing for him to do, but I noticed it.

17 Q. All right. So Norman has come in twice, taken money
18 out of the cash register, he tells you they are up to C.J.'s
19 shooting pool?

20 A. Correct.

21 Q. All right. Were Bill or Jared with him either one of
22 those times?

23 A. Not that I can say that they were. He was the only one
24 that came in.

25 Q. And they certainly didn't come into the restaurant with

1 him?

2 A. No, sir.

3 Q. All right. Was there a third time that Norman Starnes
4 came into the Panther Parlor on January the 8th, in the
5 early evening hours?

6 A. Yes, sir.

7 Q. Tell the jury about that.

8 A. He came in upset, shaking, at the verge of tears. I
9 asked him what was wrong. He had a mark on his temple. He
10 stated that he had been pistol whipped at C.J.'s in the
11 bathroom by Bill Welborn.

12 He proceeded to get his pistol and bullets and stated
13 to me at that time that "they were going to be dead," that
14 he was going to kill them that night. "They will be dead
15 tonight."

16 Q. Gwen, are you absolutely certain that he used the word
17 them?

18 A. Yes, sir.

19 Q. Are you absolutely certain that he used the word they?

20 A. Yes, sir.

21 Q. Did Norman Starnes own a firearm, to your knowledge?

22 A. Yes, sir.

23 Q. Where was that firearm usually kept?

24 A. There was one that sometimes he kept in the front
25 drawer at the cash register and then in the kitchen area of

1 the restaurant.

2 Q. Did he ever keep a firearm on his person?

3 A. Yes, sir, most of the time.

4 Q. Where would he keep it on his person?

5 A. In a small of his back.

6 Q. Right in here?

7 A. Yes, sir.

8 Q. All right. He comes in. You described him as angry,
9 distraught, crying?

10 A. Yes, sir.

11 Q. He said he had been pistol whipped and beat up in a
12 bathroom?

13 A. Yes.

14 Q. Did he say who had done it?

15 A. Yes, sir, Bill Welborn.

16 Q. He said Bill Welborn had beat him up in the bathroom?

17 A. Right.

18 Q. Were you aware -- had you received any information
19 about a discrepancy with money from January the 6th, when
20 y'all went to Wings & Ale?

21 A. Yes, sir, I vaguely recall that.

22 Q. Okay. So Norman Starnes comes in, he's crying, he's
23 upset, he says he has been pistol whipped and he walks
24 where? Where does he go?

25 A. He gets the gun off the shelf in the kitchen and the

1 bullets. He's just now in the kitchen area. He doesn't go
2 back up front.

3 Q. And he tells you that he is going to kill them?

4 A. Yes, sir.

5 Q. Did you believe him?

6 A. No, sir.

7 Q. Why didn't you believe him?

8 A. I thought he was just angry and spouting off.

9 Q. On a scale of one to a hundred, with a hundred being
10 the same amount of certainty that you are sitting in that
11 chair right now in Lexington County, how certain are you
12 that Norman Starnes got a gun from the Panther Parlor on
13 January the 8th?

14 A. Absolutely certain.

15 Q. How certain are you that at the time that he got the
16 gun, he said "I am going to kill them tonight"?

17 A. Absolutely certain.

18 Q. When he left, what did you do?

19 A. I continued cleaning up in the kitchen. I was closing.

20 Q. Was Karen there?

21 A. Yes, sir.

22 Q. At some point had she left?

23 A. Yes, sir.

24 Q. Do you know what she left to do?

25 A. She was taking someone, an acquaintance of mine, taking

1 her somewhere where she asked her to take her.

2 Q. Giving somebody a ride?

3 A. Yes, giving someone a ride.

4 Q. A friend of yours, giving her a ride?

5 A. Right.

6 Q. Did she come back?

7 A. Yes, sir.

8 Q. All right. He's left with the gun and the ammunition.

9 You are still there working?

10 A. Yes, sir.

11 Q. When is the next time that you saw Norman Starnes?

12 A. When he came back in and told me that they were dead.

13 Q. Did he have anything with you when he came in -- with
14 him?

15 A. With him? I believe a six pack of beer.

16 Q. Do you know what he did with one of the six pack of
17 beer?

18 A. No, sir, I do not recall what happened to that.

19 Q. Did he address Karen Pratt, or do you recall?

20 A. I know he spoke with her. I didn't hear the
21 conversation, except for when we were leaving.

22 Q. All right. He walks in. What does he say to you?

23 A. Well, nothing really right away. He came to me after a
24 few minutes and told me to "let's go, that they were dead,"
25 and I continued to wash the dishes, because I didn't believe

1 him.

2 Q. All right.

3 A. And he came back and told me "let's go, and I mean now.
4 They are dead. Let's go."

5 Q. Is your son still at the Panther Parlor?

6 A. Yes, sir.

7 Q. He tells you twice "they are dead, let's go," what do
8 you do?

9 A. Well, after he convinced me that they were dead, I
10 finished -- stopped doing what I was doing to go.

11 Q. Did you hear him say anything to Karen Pratt about
12 where Bill and Jared were?

13 A. Yes, sir, he told her that they were still up at
14 C.J.'s, that he left them. They were going to use the pay
15 phone and he left them as they were going to use the pay
16 phone.

17 Q. And at some point did she leave to go get Bill and
18 Jared?

19 A. Yes, sir.

20 Q. Which would leave you, Norman, and your son Tyler at
21 Panther Parlor?

22 A. Yes, sir.

23 Q. Tell the jury what happened after that.

24 A. He told me to tell my son that he needed to talk to me
25 and in private, so we locked him up in the restaurant by

1 himself and we left the building.

2 Q. How old was your son at the time?

3 A. 11 or 12.

4 Q. All right. How long of a drive was it from the Panther
5 Parlor to your home on Forts Pond Road?

6 A. Maybe five minutes, if that.

7 Q. Did y'all talk on the way there?

8 A. Yes, sir.

9 Q. At this point, Gwen, did you believe that he had done
10 what he said he was going to do earlier?

11 A. At that point, yes, I did.

12 Q. All right. Did you ask him any details, or did y'all
13 discuss it? Was he in the mood to talk about it on the way
14 home?

15 A. I kept asking him where we were going and he told me
16 not to worry about it, that where he was taking me I
17 wouldn't like it, it wouldn't be pretty. And I kept asking
18 where we were going and he still wouldn't tell me.

19 Q. All right. We have pulled up to the front of your
20 home?

21 A. Yes, sir.

22 Q. Your son is at the restaurant.

23 Norman Starnes has told you that it's not going to be
24 pretty, not going to like it?

25 A. Right.

1 Q. Tell the jury what you see when the front door opens.

2 A. I saw a pair of legs in the doorway, and that was all I
3 could see at that time, until I went into the house.

4 Q. Show the jury where the legs you saw were.

5 A. Right in here.

6 Q. And who did the legs belong to?

7 A. Jared.

8 Q. Was he on his back or was he on his stomach?

9 A. On his back.

10 Q. Did you see any signs of life?

11 A. No, sir.

12 Q. How about Bill Welborn, where was he?

13 A. Right here in our bedroom.

14 Q. Ms. Bailey, there is no furniture in the den in which
15 you are looking at. Can you give the jury a sense of how
16 that room was from a furniture standpoint, where couches
17 would have been, what angles they would have been at, and
18 were there any tables?

19 A. The couch was along this wall in front of a window.

20 The love seat was catty-cornered here.

21 A chair here, catty-cornered.

22 A table in this corner.

23 And there was a dresser here.

24 Q. In the bedroom there was a dresser where there is none?

25 A. Yes, sir.

1 Q. How many telephones were there in your house?

2 A. Two.

3 Q. Tell the jury where those two telephones were on
4 January the 8th, 1996, to the best of your recollection.

5 A. There was one on top of the dresser here, which was
6 just like a chest of drawers, and one on the kitchen wall
7 here.

8 Q. Okay. You walk in and you see Jared Champlin laying in
9 the den. You see Bill Welborn laying in the bedroom. Any
10 signs of life from either one of them?

11 A. No, sir.

12 Q. All right. What does Norman Starnes do?

13 A. Well, when we first walk in, he points to Jared and
14 states that he knows Jared is dead, but he wasn't sure about
15 Bill, so he went to check Bill's vital signs.

16 Q. Did he say what made him not sure whether Bill Welborn
17 was dead or alive?

18 A. Yes, sir.

19 Q. What did he say?

20 A. That Bill was gurgling when he left him.

21 Q. He was what?

22 A. Gurgling.

23 Q. Did he indicate to you or did he tell you that he had
24 done anything with your telephones after he noticed Bill was
25 gurgling?

1 A. Yes, sir.

2 Q. Tell the jury what he did to your telephones.

3 A. He unplugged it where it couldn't be used.

4 Q. He unplugged it.

5 Would that be done inside or outside?

6 A. Outside.

7 Q. Ms. Bailey, did he indicate to you on January the 8th
8 who he shot first?

9 A. Yes, sir.

10 Q. Who did he say he shot first?

11 A. Jared.

12 Q. Did he tell you why he shot Jared?

13 A. Yes, sir.

14 Q. Tell the jury what explanation for this shooting he
15 gave you on January the 8th.

16 A. He told me that Jody was on the phone trying to make --

17 Q. Who?

18 A. Jody.

19 Q. All right.

20 A. Was making a drug connection for them, and Jared put a
21 pistol to Jody's head and cussed him. And as the gun was
22 coming down from Jody's head, that's when he shot Jared.

23 Q. So he said Jared Champlin had a gun in his hand, was
24 lowering the gun and he shot Jared first?

25 A. Yes, sir.

1 Q. Did he ever tell you why he shot Bill Welborn? Did he
2 ever allege that Bill Welborn was armed?

3 A. No, sir, he never really told me why he shot. He just
4 stated that he popped Jared and then turned and popped Bill.

5 Q. He used the word popped?

6 A. Yes, sir.

7 Q. All right. Jared is laying in the den. Bill is in the
8 bedroom.

9 Tell the jury what Norman Starnes does.

10 He's walked in and he said "I know that one is dead,
11 but I'm not sure about this one." Tell the jury what
12 happens next.

13 A. He had checked Bill's vitals, and then he proceeded to
14 slap Bill in the face. He took the pistol and pistol
15 whipped Bill, cussing obscenities at him.

16 Q. What did he do to Jared?

17 A. Did the same thing. Stood over him, cussed him that it
18 was all his fault.

19 Q. What was --

20 A. Pistol whipped him and slapped him.

21 Q. What was Norman Starnes' demeanor while he was pistol
22 whipping and slapping Jared Champlin and Bill Welborn?

23 A. It was angry. Kept telling them it was their fault and
24 "now you know how it feels," standing over them. Squatted
25 over them, straddling them.

1 Q. All right. Tell the jury what happens next.

2 A. He takes everything out of their pockets. Goes through
3 the wallets. After that he proceeds to let them open the
4 trunk of his mother's car.

5 Q. All right. Ms. Bailey, I got to ask you, at this point
6 why not call the police?

7 A. I was terrified.

8 Q. Were you concerned that you, yourself, getting in
9 trouble --

10 A. Yes, sir.

11 Q. -- for what you had seen, the fact that it happened in
12 your house?

13 A. Yes, sir.

14 Q. Did Norman Starnes tell you what would happen to you if
15 the police were involved?

16 A. Yes, sir, many times.

17 Q. What did he tell you?

18 A. That I would be just as guilty. They would take my son
19 and I would never see him again.

20 Q. Speaking of your son, he's back at the Panther Parlor.
21 He's locked up at the Panther Parlor. Norman Starnes loads
22 two bodies in the trunk of a car?

23 A. Yes, sir.

24 Q. Tell us what happens next.

25 A. We go and get my son and he takes us back to the house.

1 Q. What car did you go get your son in?

2 A. His mother's.

3 Q. Is that the car with the bodies in the back?

4 A. Yes, sir.

5 Q. All right. You go pick up your son. You have got the
6 bodies in the back of his mother's car. Tell the jury what
7 happens next.

8 A. He takes us back to the house.

9 Q. Are you making any efforts to clean up the house?

10 A. That was done before we went to get my son.

11 Q. All right. Tell the jury what efforts he made to clean
12 up the house.

13 A. He was upset that Bill had bled on the floor, on the
14 carpet, so he cleaned up the carpet, vacuumed the carpet.
15 Made me change the clothes around in the closet. Clean the
16 porch off where there was blood on the porch from dragging
17 their bodies.

18 Q. Did he stick his finger in any of the bullet holes to
19 try to make them appear larger?

20 A. I don't recall if it was that night or not, but yes, he
21 did.

22 Q. At some point he did?

23 A. Yes, sir.

24 Q. Let's stay with that night.

25 He's cleaning up the crime scene; the bodies are in the

1 back; gone and got your son from the Panther Parlor; you are
2 back at your house?

3 A. Yes, sir.

4 Q. What happens next?

5 A. He leaves -- well, he makes a phone call and then he
6 leaves again.

7 Q. Before he makes the phone call, he pulled up to the
8 front of your house?

9 A. Yes.

10 Q. You got your son.

11 Which direction does Norman Starnes go?

12 A. I do not know. Me and my son go in and he stays
13 outside for a moment.

14 Q. He stays outside for a moment and then does what?

15 A. Then he comes in and makes the phone call.

16 Q. And where was he standing when he was making that
17 telephone call?

18 A. In our bedroom where the phone is located on the chest
19 of drawers.

20 Q. Do you know who he called?

21 A. Tony Tindal.

22 Q. Why?

23 A. Because he wanted to borrow his pickup.

24 Q. What happened after that?

25 A. He leaves.

1 Q. All right. He leaves. Do you get dressed for bed?

2 A. Yes, sir.

3 Q. All right. What I got to ask you again, he's gone,
4 he's left the house. You got a telephone. Did you think
5 about calling the police?

6 A. I thought about it many times. I was too terrified.

7 Q. Did you believe him when he said that you were every
8 bit as much involved as him?

9 A. He made me feel that way.

10 Q. All right. He leaves to go get Tony Tindal's car. You
11 are at home with your son. What happens next?

12 A. Well, he eventually comes home, gets me out of bed and
13 makes me leave my son again to follow him to Aiken County.

14 Q. You say follow him. That suggests that you are in
15 separate cars?

16 A. Yes, sir.

17 Q. What car is he driving?

18 A. He is driving a pickup.

19 Q. And what are you driving?

20 A. A stolen vehicle.

21 Q. All right. Where does he take you?

22 A. I follow him to his uncle's property in Aiken County.

23 Q. Had you ever been there before?

24 A. Yes, sir.

25 Q. Can you see that?

1 A. If I put my eyes on.

2 Q. Sure.

3 A. Yes, sir.

4 Q. How would you get to his uncle's property?

5 A. Down 302 going towards Aiken.

6 Q. And you followed him there that night?

7 A. Yes, sir.

8 Q. What happened when you got there?

9 A. I followed him down the drive, which was his Uncle
10 Charles' mother's house. And he goes around the back side
11 of the house, so I follow him behind it to the back of the
12 house.

13 Q. And what do you see when you get there?

14 A. Bill and Jared laying on the ground.

15 Q. Were they in a grave yet?

16 A. No, sir.

17 Q. What happens next? What does he do at that point?

18 A. Well, I turn off my lights and he screams at me to turn
19 my lights back on, because I didn't want to look at them any
20 more. And after that, he walks over to the bodies and he
21 kicked one of them. I don't know which, because they were
22 both together, and then he urinated on them.

23 Q. On a scale of one to a hundred, with a hundred being
24 absolute certainty, the same certainty that you are sitting
25 in that chair, how certain are you that he urinated on

1 either the body of Bill Welborn or Jared Champlin?

2 A. One hundred percent.

3 Q. In fact, did he later brag to you that he had done so?

4 A. Yes, sir.

5 Q. What did he say to you verbatim?

6 A. He said that he pissed in their faces.

7 Q. All right. What does he do with the bodies at that
8 point?

9 A. He loads them onto the back of the pickup.

10 Q. Where does he take them?

11 A. He backs up into the woods.

12 Q. How long --

13 A. That was at a later time.

14 Q. What do you mean it was at a later time?

15 A. After he loaded them on the pickup, he tried to start
16 it and it wouldn't start.

17 Q. All right. Tell me what happened when you realized it
18 wouldn't start.

19 A. We had to go back to Pelion to get jumper cables.

20 Q. You had to drive all the way from his uncle's property,
21 with two bodies laying on the ground, back to Pelion to get
22 jumper cables?

23 A. Yes, sir.

24 Q. You got the jumper cables and came back. Did you crank
25 up the car?

1 A. Yes, sir.

2 Q. What happened?

3 A. The truck.

4 He backed up into the woods. I lost sight of him. All
5 I could see were the headlights.

6 Q. All right. And does he come back out? Y'all were
7 still in separate cars?

8 A. Yes, sir.

9 Q. What happens when he comes out?

10 A. He just keeps going.

11 Q. And you follow him?

12 A. After a few minutes of sitting there going what's going
13 on, I decided I'm going to leave.

14 Q. All right. To get from your house to his uncle's
15 property, you have to cross something called the Edisto
16 River?

17 A. Yes, sir.

18 Q. Did anything happen when y'all crossed the Edisto
19 River?

20 A. Yes, sir.

21 Q. Tell the jury what happened.

22 A. He made me stop on the bridge and he threw the pistol
23 out into the river.

24 Q. Did he say anything about the pistol as he was throwing
25 it in the river?

1 A. Yes, sir. He said he hated to do that because it
2 was his uncle's, that he had given it to him.

3 Q. All right. You go back home, I presume, and see --
4 it's early morning hours on January the 9th.

5 Is there any more discussion about what just happened?

6 A. I tried to talk to him and he kept telling me to shut
7 up, not to ever mention it again, "don't ever bring it up."

8 Q. Did he give you any tips on how to answer questions if
9 anybody asked you about it?

10 A. Yes, sir.

11 Q. Did he tell you that you had certain habits that might
12 reveal the truth and you had to watch out for them?

13 A. Yes, sir.

14 Q. What did he tell you?

15 A. I talk too much with my hands and that I needed to be
16 very careful, because I would be a dead giveaway.

17 Q. Did he make any other efforts to either clean up the
18 crime scene or conceal what already existed in your home?

19 A. Yes, sir.

20 Q. Tell the jury what he did.

21 A. He put a mirror over the bullet hole that was in on the
22 bedroom.

23 He had poked his finger through the hole to make it
24 larger.

25 The one in the living room stayed in the living room.

1 Q. All right. At some point the news around Pelion and
2 Lexington County is that two skydivers are missing. Were
3 you ever given the opportunity or was he ever given the
4 opportunity to post missing persons posters at the Panther
5 Parlor?

6 A. Yes, sir.

7 Q. Did he do so?

8 A. Yes, sir.

9 Q. Would he ever bring up the fact that these two
10 skydivers were missing, to just find out what other people
11 were talking about?

12 A. Yes, sir.

13 Q. Do you remember whether or not any family members of
14 Bill Welborn or Jared Champlin came to Lexington County to
15 look for their loved ones?

16 A. Yes, sir.

17 Q. Do you recall whether or not Norman Starnes went with
18 them to help look for their loved ones?

19 A. Yes, sir, several occasions.

20 Q. Did he ever make comments about Bill Welborn and Jared
21 Champlin after he shot them and buried them?

22 A. Yes, sir.

23 Q. Tell the jury what he would say.

24 A. "I wonder how Bill and Jared are.

25 "I wonder where they are.

1 I wonder how they are doing."

2 Q. Was he asking in a theological way, or was he asking in
3 a smart-alecky way?

4 A. To me it was cold. Smart-alecky, if that's the word
5 you want me to use, but just cold-hearted to me.

6 Q. At some point did he tell you that he went back to the
7 burial scene?

8 A. Yes, sir.

9 Q. Did he tell you why and what he did?

10 A. Yes, sir.

11 Q. Tell the jury.

12 A. He had gotten a call from his Uncle Charles that the
13 women, which is his stepdaughter and wife, were smelling an
14 odor and he needed to come and do something about it,
15 because it smelled like death.

16 Q. Did he tell you what he did?

17 A. Yes, sir.

18 Q. What?

19 A. Covered them with lime and reburied them. Lye or lime.

20 Q. He went back to the bodies and covered them with
21 something?

22 A. Yes, sir.

23 Q. Do you recall whether or not he brought anything back
24 from the burial scene when he came back?

25 A. Yes, sir, he did.

1 Q. What did he bring back?

2 A. A piece of blue jean and a tennis shoe.

3 Q. Did he say anything about the blue jean or tennis shoe
4 when he brought it back?

5 A. Yes, sir.

6 Q. What did he say?

7 A. He put the cloth up to his nose and inhaled and said
8 "yeah, that smells like death."

9 Q. At some point, Gwen, you decided to leave Norman
10 Starnes, correct?

11 A. Yes, sir. Well, it really wasn't my decision. He put
12 me out.

13 Q. All right. At some point you decided to go to law
14 enforcement?

15 A. Yes, sir.

16 Q. Who was the first person that you confided in what you
17 just told this jury?

18 A. Vickie Kaiser.

19 Q. And what is your relationship with Vickie Kaiser?

20 A. She was a customer at the restaurant and I considered
21 her a friend.

22 Q. All right. You confided in Vickie Kaiser what you just
23 told this jury and she advised you to do what?

24 A. To go to the police.

25 Q. And did you go to the police?

1 A. Yes, sir.

2 Q. Did you go to the police the next day after she --
3 after you confided to her?

4 A. Yes, sir.

5 Q. Up until -- from January the 8th and 9th, up until the
6 time that you confided in your friend Vickie Kaiser, had you
7 discussed this with anyone else?

8 A. No, sir. Just God.

9 Q. All right. When you got to the police station, who did
10 you ask for?

11 A. Carlisle McNair.

12 Q. Why did you ask for him?

13 A. Because I knew him and considered him a friend.

14 Q. To the best of your recollection, what time did you get
15 to the Lexington County sheriff's department on May 27th?

16 A. It was probably around ten. Between nine and ten.

17 Q. Did you have to wait on Detective McNair for awhile?

18 A. Yes, sir.

19 Q. When he got there, did you go into a room with him?

20 A. Yes, sir.

21 Q. And did he tell you that you could very well be
22 charged?

23 A. Yes, sir.

24 Q. In fact, did he advise you of your right not to talk to
25 him?

1 A. Yes, sir.

2 Q. Did you talk anyway?

3 A. Yes, sir.

4 Q. Were you, in fact, charged in connection with this
5 crime?

6 A. Yes, sir.

7 Q. Did you, in fact, plead guilty to what your involvement
8 in this crime was?

9 A. Yes, sir.

10 Q. What were the precise instructions, as you understood
11 them, from Detective Carlisle McNair on May 27th, 1996, at
12 the Lexington County Sheriff's Department?

13 A. To basically start out giving him the highlights, just
14 what he needed to recover the bodies and to get Norman
15 Starnes.

16 Q. When you walked into the Lexington County Sheriff's
17 Department on May the 27th, were Bill Welborn and Jared
18 Champlin still buried on Norman Starnes' uncle's property?

19 A. They were, but I did not know that at that time, sir.

20 Q. You did not know that --

21 A. Where they had been buried --

22 Q. Okay.

23 A. -- until his uncle called.

24 Q. No one -- I'll phrase this differently.

25 There was nothing to indicate that this had gone from a

1 missing persons case to a homicide investigation?

2 A. No, sir.

3 Q. You had not said anything, correct?

4 A. Correct.

5 Q. So when Norman -- when Carlisle McNair asked you to hit
6 the highlights, you first wanted to tell them where you last
7 saw the bodies, correct?

8 A. Yes, sir.

9 Q. Did you also tell them who was involved?

10 A. Yes, sir.

11 Q. After you hit the highlights, did you give a more
12 detailed statement to law enforcement?

13 A. Yes, sir.

14 Q. That same day?

15 A. Yes, sir.

16 Q. And when you met with law enforcement on May the 27th,
17 did you tell them that Norman Starnes had walked into the
18 Panther Parlor on January the 8th and said "I am going to
19 kill them"?

20 A. If I didn't say it, it was in my written statement.

21 Q. It was in your --

22 Would you like to see your written statement? Would
23 that refresh your recollection, or do you independently
24 recall telling them that?

25 A. I know I told them, but I don't know if it was after I

1 had written it or before.

2 Q. All right.

3 A. I just know I had told them.

4 Q. On May 27th you told law enforcement that he walked
5 into the Panther Parlor and said "I am going to kill them"?

6 A. Yes, sir.

7 Q. On May the 27th, your first interaction with law
8 enforcement, 1996, did you tell law enforcement that Norman
9 Starnes urinated on the bodies?

10 A. I put that in my written statement.

11 Q. On May 27th, 1996?

12 A. Yes, sir.

13 Q. Ms. Bailey, since January the 8th, you walked in,
14 Norman Starnes has told you the story that he shot Jared
15 first and then he shot Bill -- did he tell you how many
16 times he shot Bill?

17 A. Twice.

18 Q. Did he tell you how many times he shot Jared?

19 A. One.

20 Q. Did he tell you who he shot first?

21 A. Yes, sir.

22 Q. Who?

23 A. Jared.

24 Q. On January the 8th, when you walked in and saw what was
25 in your house and he told you his version, did you tell him

1 "if that is what really happened, call the police"?

2 A. Yes, sir.

3 Q. Did he?

4 A. No, sir.

5 Q. How much time had passed from his walking into the
6 Panther Parlor to get his gun and get the ammunition and say
7 "I'm going to kill them" and him coming back and telling you
8 "they are dead"?

9 A. I honestly cannot answer that question. I continued my
10 work. I didn't watch the clock. It may have been an hour.

11 Q. Okay.

12 MR. GOWDY: One moment, Your Honor.

13 (Off the record)

14 (Back on the record)

15 BY MR. GOWDY:

16 Q. Ms. Bailey, we are almost through.

17 Did he tell you -- do you recall whether or not he told
18 you what part of the body he shot Jared Champlin in?

19 A. No, sir.

20 Q. You testified that on May the 27th is when you notified
21 law enforcement what you knew about Bill Welborn and Jared
22 Champlin being missing, right?

23 A. Yes, sir.

24 Q. When did you confide in Vickie Kaiser?

25 A. I'm sorry?

1 Q. When did you confide in Vickie Kaiser? How many days,
2 or hours, or when?

3 A. On that Sunday evening we went to Vickie Kaiser's
4 house.

5 Q. The 26th?

6 A. The 26th.

7 Q. Okay. So you tell Vickie Kaiser what you just told
8 this jury and she said "you have got to go tell the police"?

9 A. Yes.

10 Q. And you went first thing Monday morning?

11 A. Yes, sir.

12 Q. And you met with Detective McNair on the 27th.

13 Thank you, Ms. Bailey. Please answer any questions
14 that the defendant has for you.

15 A. Yes, sir.

16 THE COURT: I think, gentlemen, we will go ahead
17 and break for lunch. We have ordered in for the jury so we
18 can keep moving with the case. So we will take -- by the
19 courtroom clock, it's about ten minutes after one. So we
20 will take until -- let's just start back at two o'clock.
21 We'll start back at two o'clock and we are going to
22 cross-examine at that time.

23 Now, ladies and gentlemen of the jury panel, we
24 are going to take a recess at this time. Don't make -- I
25 will allow any of you who smokes to take a smoke break. You

1 will be able to do that during this lunch break. And you
2 know you can -- somebody has to take you outside to be able
3 to smoke. You can't smoke inside.

4 We have ordered lunch for you. That would be
5 available to you when you go back.

6 Have you had an opportunity to elect a foreperson
7 yet? Have you done that?

8 If you would write the person's name down and
9 number and please give it to the bailiff and the bailiff
10 will bring it back. Thank you.

11 Please retire to the jury room.

12 (The following takes place outside the presence of
13 the jury panel)

14 THE COURT: Ms. Bailey, you can stand down from
15 the witness stand during lunch break. Just do not discuss
16 the case. You are not allowed to discuss the case with
17 anyone, okay? You can talk about other things, but do not
18 discuss the case or your testimony with anyone during break,
19 okay?

20 THE WITNESS: Yes, sir.

21 THE COURT: Thank you, ma'am. You may stand down.

22 THE WITNESS: Thank you.

23 THE COURT: We will be in recess until two
24 o'clock. Thank you.

25 (Whereupon, proceedings were recessed)

1 (Whereupon, proceedings were reconvened)

2 THE COURT: All right. Is everybody ready to
3 proceed?

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

5 MR. STARNES: Yes, sir, Your Honor.

6 THE COURT: All right. Please bring the jury in,
7 sir.

8 For the record, Mr. Shumpert, juror number 151,
9 the jury has elected him as the foreperson.

10 Counsel, approach just a minute before the jury
11 comes in, please.

12 (Whereupon, the lawyers and the defendant
13 approached the bench for an off-the-record discussion).

14 (The following takes place in the presence of the
15 jury panel)

16 THE COURT: Ladies and gentlemen of the jury
17 panel, I got your note back out that Mr. Shumpert, juror
18 number 251, is the foreperson, and we are ready to move on.

19 We had a note that you would like a little more
20 volume from the witness stand, so we will remind the
21 witnesses to speak up and speak directly into the
22 microphone.

23 All right. Thank you.

24 We are ready to proceed now, sir.

25 MR. STARNES: Yes, sir.

1 May it please the court?

2 THE COURT: Yes, sir.

3 MR. STARNES: Your Honor, could we drop the
4 screen?

5 THE COURT: Madam clerk, would you do that?

6 CROSS EXAMINATION BY MR. STARNES:

7 Q. Good evening, Ms. Bailey. How are you doing?

8 A. Fine. Thank you.

9 Q. Okay. Ms. Bailey, referring to State's Exhibit No. 8,
10 do you recognize that diagram?

11 A. Yes, sir.

12 Q. Is there anything different about the furniture or
13 anything in the house in this diagram?

14 A. There is no furniture in the living room in the
15 diagram, and the chest of drawers is not in the place it
16 was.

17 Q. The chest of drawers.

18 Could you show us -- you still have the laser pointer?

19 A. It's at the bottom left-hand corner. It's placed there
20 in front of the window. It was over by the entrance to the
21 bedroom.

22 Q. So this chest of drawers was over here on this wall
23 here?

24 A. Yes, sir.

25 Q. Okay. How about the bed, Ms. Bailey? Was the bed in

1 the same position?

2 A. Yes, sir.

3 Q. Ms. Bailey, when you come to the sheriff's office on
4 May the 27th, do you remember talking to an Officer Carlisle
5 McNair?

6 A. Yes, sir.

7 Q. And at the time when you talked to Officer McNair, do
8 you remember giving him a diagram of the property in Aiken
9 County?

10 A. Yes, sir.

11 Q. Do you also remember drawing a detailed diagram of the
12 inside of the house?

13 A. I don't recall doing one in the house.

14 MR. STARNES: Your Honor, may I approach?

15 THE COURT: Yes, sir.

16 BY MR. STARNES:

17 Q. Do you recognize that diagram, Ms. Bailey?

18 A. I recognize my initials, but whether I can recall if I
19 drew that, I would say that I did, because of my initials,
20 but I don't recall drawing it.

21 MR. STARNES: Your Honor, if I may make this an
22 exhibit?

23 THE COURT: Yes, sir.

24 (Diagram marked as Defendant's Exhibit No. 6 for
25 identification).

1 THE COURT: Are you offering it into evidence, Mr.
2 Starnes?

3 MR. STARNES: Yes, sir.

4 THE COURT: Any objection?

5 MR. GOWDY: No, sir.

6 THE COURT: All right. It's in without objection.
7 You may proceed.

8 BY MR. STARNES:

9 Q. Ms. Bailey, referring to State's Exhibit No. 6 (sic),
10 does that look like the diagram that you drew Officer
11 McNair?

12 A. Like I said, I don't recall drawing the diagram. It
13 looked similar to the house. It looks like the house --

14 Q. Okay.

15 A. -- but I do not recall drawing that.

16 Q. Do you recall Detective McNair asking you to draw a
17 diagram of the house?

18 A. I don't recall that.

19 Q. Do you recall drawing any diagrams on a napkin?

20 A. I don't recall.

21 Q. On this diagram, could you describe what part of the
22 house this would be?

23 A. That looks like the living room.

24 Q. On the diagram, could you describe what that part would
25 be?

1 A. That presumably would be our bedroom.

2 Q. Okay. And Ms. Bailey, what would this represent right
3 here?

4 A. It looks like a bed.

5 Q. It looks like a bed.

6 And what would be right behind the bed here on that
7 wall?

8 A. If it's our bed, it would be the headboard.

9 Q. Okay. And behind the headboard built into the wall,
10 what would be right here?

11 A. I don't recall.

12 Q. Would there be a window there?

13 A. I know there is -- I cannot recall if it was one window
14 or two windows in that room --

15 Q. Okay.

16 A. -- on that side.

17 Q. Now, referring to State's Exhibit No. 8, you just
18 previously testified regarding this exhibit, is that
19 correct?

20 A. Yes, sir.

21 Q. On State's Exhibit No. 8, does it appear that the bed
22 is in a different position?

23 A. That's the way I recall it.

24 Q. That's the way -- this position here is the way that
25 you recall it?

1 A. Yes, sir.

2 Q. When you say recall it, Ms. Bailey, are you referring
3 to January the 8th?

4 A. Yes.

5 Q. Okay. Referring to Defendant's Exhibit No. 6, the
6 placement of the bed right here, is that how you recalled it
7 on January the 8th?

8 A. No.

9 Q. On May the 27th, when you come and talked to Detective
10 Carlisle McNair, did you know that you were being
11 videotaped?

12 A. I requested it.

13 Q. You requested it?

14 A. Yes, sir.

15 Q. Do you recall asking Detective McNair "am I being
16 videotaped"?

17 A. Yes, sir.

18 Q. And what was his response?

19 A. Yes, I was.

20 Q. Do you recall telling Detective McNair the demeanor of
21 Bill Welborn and Jared Champlin on January the 8th?

22 A. Yes, sir.

23 Q. Do you recall telling Detective McNair their demeanor
24 when they come to the restaurant on January the 8th?

25 A. Yes, sir.

1 Q. Ms. Bailey, if you would, would you please explain to
2 the jury what you told Detective McNair in that statement?

3 A. That they appeared to be hyper, on drugs, alcohol.
4 Bill come up to the counter and was going up and down the
5 counter, pacing back and forth, and pounding on the counter,
6 telling you to hurry up.

7 Q. Telling me to hurry up?

8 A. There were several occasions where they said "come on,
9 Norm, let's go, let's go."

10 Q. At any time, Ms. Bailey, on January the 8th, do you
11 recall me calling Mr. Welborn and inviting them over?

12 A. I don't recall, no, sir.

13 Q. Okay. At any point on January the 8th, did you call
14 Mr. Welborn, or Mr. Champlin, or Karen Pratt and ask them to
15 come to Pelion?

16 A. I don't recall that, no, sir.

17 Q. When they showed up at the restaurant, what happened?
18 When they come to the restaurant, what happened? Can you
19 remember?

20 A. When they first came in?

21 Q. Yes, ma'am.

22 A. Karen and Jared, I recall, sat at the booth, and Bill
23 was pacing the counter.

24 Q. Did they all three come in together or --

25 A. I don't recall how they came in.

1 Q. Do you recall what time they came in?

2 A. From my best recollection, I would say between four and
3 five.

4 Q. Between four and five?

5 A. Yes, sir. I didn't watch the clock, so I'm just --
6 it's a guesstimation to me.

7 Q. Okay. At some point did Karen Pratt leave the
8 restaurant?

9 A. Yes, sir.

10 Q. Did she tell you why she was leaving?

11 A. Yes, sir.

12 Q. Would you please tell the jury?

13 A. A friend of mine came in and wanted to know if I could
14 take her somewhere and I told her I couldn't because I was
15 by myself. I could not lock up the restaurant to take her
16 anywhere, so Karen volunteered.

17 Q. So then Karen and this individual left?

18 A. Yes, sir.

19 Q. What was that individual's name?

20 A. Tammy.

21 Q. Do you remember Tammy's last name?

22 A. No, sir.

23 Q. Do you remember where Tammy worked at?

24 A. Yes, sir.

25 Q. Could you explain?

- 1 A. The adjacent restaurant from the Panther Parlor.
- 2 Q. After they left, how long were Tammy and Karen gone?
- 3 A. I honestly do not know.
- 4 Q. Okay.
- 5 A. I could not even guesstimate.
- 6 Q. Did they ever return to the restaurant?
- 7 A. My recollection is Karen did, but not Tammy.
- 8 Q. Do you recall that night Tammy using the telephone?
- 9 A. Yes.
- 10 Q. Was that before or after they left?
- 11 A. Before.
- 12 Q. So at no time on January the 8th do you remember Karen
- 13 and Tammy returning after they left the first time?
- 14 A. I honestly do not remember if Tammy returned.
- 15 Q. Ms. Bailey, you previously testified that I returned to
- 16 the restaurant after leaving. How many times did I leave
- 17 and return on January the 8th?
- 18 A. Three, for the final time.
- 19 Q. Three, for the final time.
- 20 Okay. What time was it when I left the first time?
- 21 A. I could not tell you.
- 22 Q. Do you remember who was with me?
- 23 A. Bill and Jared.
- 24 Q. And at the time when we left, where was Karen?
- 25 A. She was sitting at the booth with my son.

1 Q. She was inside the building? She was not outside the
2 building?

3 A. I don't recall her going in and out at all. I just
4 remembered her sitting at the booth with my son.

5 Q. Do you remember us leaving, walking out the door?

6 A. Well, I know you had to leave, so --

7 Q. Did you physically see us leave the building?

8 A. I could not answer to that, no, sir.

9 Q. Did you physically see Karen sitting down talking to
10 your son when we left the building?

11 A. Yes.

12 Q. And where were they sitting at?

13 A. The first booth that you would come to out of the
14 kitchen on the right-hand side.

15 Q. How big is the dining room area where they were
16 sitting?

17 A. I don't know how to describe that.

18 From me to the first bench, if not a little further.

19 Q. That would be the size of the whole dining room, as far
20 as from your distance to the first bench? It's a pretty
21 small -- pretty small restaurant, is that correct?

22 A. Pretty much, yes, sir.

23 Q. And you couldn't see us leave, but you could see Karen?

24 A. Well, she was there most of the night, so --

25 Q. And she was leaving the restaurant, coming and going

1 with Tammy, or you never seen her leave?

2 A. I don't recall watching them walk out the door. I
3 don't recall watching Karen walk back in. I just know she
4 was there. I was working by myself.

5 Q. During your original statement to Detective McNair, do
6 you remember him asking you what car you drove down to Aiken
7 County?

8 A. Yes.

9 Q. Do you remember what your answer was?

10 A. No, sir, I do not.

11 Q. Did you ever tell Detective McNair in that interview
12 "that's where I draw a blank. I'm brain dead to a lot of
13 memory"?

14 A. I did say that, because I had kept this in for so long,
15 and trying to put into words and get everything out of my
16 brain into words was difficult at first. I was asked
17 questions I had to seriously think about before even
18 speaking, and in the process of trying to get something out,
19 I'm going like "I'm brain dead at this point. Just give me
20 a minute to think."

21 Q. Did you seriously think about what you were saying and
22 telling Detective McNair when he was interviewing you?

23 A. I'm sorry, I don't understand what you are asking me.

24 Q. Did you give it some serious thought about what you
25 were telling Detective McNair when he was interviewing you?

1 A. No, sir, things were just coming out of my mouth.

2 Q. Things were just coming out of your mouth?

3 A. He would ask me a question and I tried to remember and
4 answer the question. To the best of my abilities at that
5 point I was a mess.

6 Q. Do you remember Detective McNair asking you about Jody
7 Fogle's involvement?

8 A. Yes, sir.

9 Q. And what did you tell Detective McNair during that
10 interview, Ms. Bailey?

11 A. That you had gone to pick him up to take him to the
12 house to -- for him to back you up in case anything went
13 wrong and to score drugs for them.

14 Q. So Detective McNair asked you "so they went to Jody's
15 for drugs"?

16 A. Yes.

17 Q. Now, what -- what do you mean by they?

18 A. I'm sorry?

19 Q. What do you mean by they, Ms. Bailey?

20 A. Could you read again what I said?

21 Q. Detective McNair asked you a question during that
22 interview. He asked you "so they went to Jody for drugs"?

23 Do you remember your response?

24 A. No, sir.

25 MR. STARNES: Your Honor, may I approach the

1 witness, please?

2 THE COURT: Yes, sir.

3 BY MR. STARNES:

4 Q. Ms. Bailey, on page 23 of the transcript there -- are
5 you on page 23, Ms. Bailey?

6 A. Yes, sir.

7 Q. Detective McNair asked you, "so they went to Jody for
8 the drugs?" Is that what Detective McNair asked you?

9 A. Yes, sir.

10 Q. And your answer was what, Ms. Bailey, on the next line?

11 A. My answer was "right".

12 Q. Then on line 3, Detective McNair asked you, "to his
13 house, or to the bar?" And how did you answer, Ms. Bailey?

14 A. "I don't know where they picked him up at."

15 Q. Then on line 5, Detective McNair asked you, "did Norman
16 have the gun on him then?" How did you answer that
17 question?

18 A. "I don't know."

19 Q. Detective McNair's next question to you, Ms. Bailey,
20 "did Norman talk about killing them then?"

21 Would you please tell the jury your response to that
22 question?

23 A. By looking at this statement and recalling the
24 conversation, my interpretation of the question was did you
25 tell me at that point that you had killed them, and I did

1 not know at that time.

2 Q. On line 7, Ms. Bailey, please, please, Ms. Bailey,
3 please answer the question.

4 Detective Carlisle McNair asked you, "did Norman talk
5 about killing them then?"

6 Was that the question that Detective McNair asked you?

7 A. Yes, sir.

8 Q. Ms. Bailey, would you please read your response on line
9 8 to the jury?

10 A. It says "no, because I didn't know about it until
11 afterwards."

12 Q. He asked you, "did Norman talk about killing them
13 then?"

14 A. Right.

15 Q. "He's talking about killing," is that what you
16 understand Detective McNair to ask you?

17 A. Not at that point. I misunderstood. I took his
18 question completely different.

19 Q. You misunderstood that question?

20 A. I took it completely different than the way it appears.

21 Q. Okay. His question was, "did Norman talk about killing
22 them?"

23 A. Right.

24 Q. How did you take that question, Ms. Bailey?

25 A. That you had told me at that time that you had killed

1 them, and I said no, I didn't know until afterwards.

2 Q. Your response was, "no, because I didn't know about it
3 until afterwards"?

4 A. About killing them, that you had killed them.

5 Q. Isn't it true, Ms. Bailey, you didn't even know about
6 this killing until after it was done?

7 A. Right. That's the way I interpreted his question. I
8 didn't know until afterwards.

9 Q. But you told this jury that Norman Starnes come to the
10 restaurant and obtained a pistol and told you that he was
11 going to kill them?

12 A. Yes, sir.

13 Q. That's what you previously told this jury, is that
14 correct?

15 A. Yes, sir.

16 Q. At the time that Detective McNair asked you about
17 killing them, you never mentioned nothing in your original
18 statement about Norman Starnes getting a gun, did you?

19 A. I did in my written statement.

20 MR. GOWDY: Your Honor, under Rule 106 this is one
21 statement. I think she ought to be able to explain it,
22 because that's exactly what she said later on that day.

23 THE COURT: That's going to be the ruling of the
24 court, yes, sir.

25 MR. STARNES: I will let her explain it.

1 BY MR. STARNES:

2 Q. Later on you give Detective McNair a written statement,
3 is that correct?

4 A. Yes, sir.

5 Q. And in that written statement you say -- I'm not
6 putting words in your mouth, Ms. Bailey, but did you say in
7 your written statement, "Norman told me he was going to kill
8 them tonight"?

9 A. Yes, sir.

10 Q. Did you say, "it upset me, but I didn't really take him
11 seriously"?

12 A. Yes, sir.

13 Q. "He then left again. I saw him take his pistol with
14 him."

15 A. Yes, sir.

16 Q. Anywhere in this written statement, anywhere in your
17 original statement did you mention anything about getting
18 any ammunition to any firearm?

19 A. Not that I recall.

20 Q. Did you feel that it was important to tell the
21 investigators that?

22 A. At that time, or later?

23 Q. At any time, Ms. Bailey.

24 A. That it was important?

25 Q. Yes, ma'am.

1 A. I guess I didn't think it was important at that time
2 because what happened happened.

3 Q. Ms. Bailey, if I heard you correctly, you told this
4 jury that I returned from C.J.'s and got money out of the
5 register?

6 A. Yes, sir.

7 Q. And if I heard you correctly, did you tell the jury
8 that I again returned and got money out of the register?

9 A. Yes, sir.

10 Q. At what point did you tell the jury that I obtained the
11 pistol?

12 A. On your third trip.

13 Q. On the third trip.

14 At any point did you leave after that again and return?

15 A. After they were dead.

16 Q. After they were dead.

17 At some point did I come into the restaurant with a six
18 pack of beer?

19 A. Yes, sir, on your third time.

20 Q. And I left again, is that correct?

21 A. With me.

22 Q. When I came in with the six pack of beer, at that point
23 you are telling this jury that we left?

24 A. Yes.

25 Q. Okay.

1 MR. STARNES: Beg the court's indulgence just one
2 minute, please.

3 THE COURT: Yes.

4 (Off the record)

5 (Back on the record)

6 THE COURT: Is there a question?

7 MR. STARNES: Yes, sir.

8 BY MR. STARNES:

9 Q. Ms. Bailey, on page one of your statement, at the
10 bottom, I believe you mentioned "later on Norm came into the
11 restaurant alone and told us that they were down at C.J.'s
12 playing pool and that he was going back. He just had to run
13 in and get something." Is that correct? Is that what
14 you --

15 A. That's what's written, yes, sir.

16 Q. Is that what you wrote, Ms. Bailey?

17 A. Yes, sir.

18 Q. Then when you say us, who are you referring to?

19 On page 2, Ms. Bailey, at the top, you mentioned "we
20 did not see Bill and Jared." Who were you referring to in
21 that statement?

22 A. Me, Tyler or Karen.

23 Q. Me, Tyler or Karen.

24 Did you write --

25 A. All of us.

1 Q. Karen had made a comment about Jared not coming inside
2 to speak to her?

3 A. Correct.

4 Q. So when you mentioned in that statement us and we, are
5 you talking about you and Karen?

6 A. Me, Karen and Tyler.

7 Q. So, it's your testimony, or is it not, when I returned
8 from C.J.'s, that I told you and Karen that we were down at
9 C.J.'s and that I had to return?

10 A. I don't know whether it was you that told her or I that
11 told her, but we knew that you were at C.J.'s.

12 Q. Did you write later on "Norm came into the restaurant
13 alone and told us that they were down at C.J.'s"?

14 A. Correct.

15 Q. "Playing pool and that he was going back. He just had
16 to run in and get something"?

17 A. Yes, sir.

18 Q. "We did not see Bill and Jared. It was already dark
19 outside"?

20 A. Correct.

21 Q. "And that Karen had made a comment about Jared not
22 coming inside to speak to her"?

23 A. Yes, sir.

24 Q. Was that on the first or the second trip?

25 A. I do not recall which trip it was.

1 Q. Ms. Bailey, when you told the jury that "Norman come by
2 and got the gun and said he was going to kill them," where
3 was Karen at?

4 A. In the dining room.

5 Q. Do you remember seeing her in the dining room?

6 A. When you came in?

7 Q. Yes, ma'am.

8 A. I was in the kitchen, so I wasn't looking at her.

9 Q. How do you know she was in the dining room?

10 A. Because every time I walked up front, she was still
11 sitting there.

12 Q. She wasn't in the back helping you clean or anything?

13 A. No, sir.

14 Q. Did she help you clean that night?

15 A. No, sir, not that I recall.

16 Q. She didn't help you clean and mop, or anything like
17 that?

18 A. I don't recall.

19 Q. Do you remember what time it was when I supposedly come
20 in and got the gun?

21 A. No, sir.

22 Q. You don't recall?

23 A. No, sir.

24 Q. Do you remember telling Detective McNair "I want
25 everything to come out clear"?

1 A. In reference to what?

2 Q. In reference to your statement, your original
3 statement.

4 A. Yes.

5 Q. On page 24 of your video statement, Ms. Bailey.

6 A. At the video? With this video?

7 Q. Yes, ma'am.

8 On page 24, on line 10, it says "from what he said
9 happened, he said that" -- would you please read that to the
10 jury?

11 A. "That he held a gun up to Jody's head and was saying
12 something about him. I can't remember exactly what he said,
13 but he said that Jared put a gun to Jody's head and said
14 that he would kill him and that it wouldn't phase him a bit
15 to kill him. And what he was trying to do" -- "what was he
16 trying to do is fuck him over or something like that. It
17 was something crazy that was said."

18 Do you want me to read further?

19 Q. Continue yes, ma'am.

20 A. "And he said he left like" -- excuse me.

21 Q. You can continue to read, Ms. Bailey.

22 A. I need to find my place. I'm sorry.

23 "And he said that he felt like if they didn't go down
24 then, Jody would go down."

25 I'm not even understanding my own writing or statement.

1 "And when Jared dropped the gun from Jody's head,
2 that's when it all happened. And he said he basically felt
3 like that he would shoot one of them."

4 Q. What did you say after "shoot one of them"? Would you
5 please read that to the jury? On page 25.

6 A. I understand.

7 Q. Yes, ma'am.

8 A. "That Jared was going to shoot one of them, because
9 they were out of their minds when they came in the
10 restaurant. I told you they were hyped up" --

11 THE COURT: Hold it. Hold it just a minute.

12 MR. GOWDY: Your Honor, we are getting to a point
13 where it involves hearsay. We haven't gotten there yet, but
14 we are getting to a point where it involves hearsay, and I
15 don't want us to get to that point.

16 BY MR. STARNES:

17 Q. Ms. Bailey, if you would, just read up to line 5 where
18 it starts "and". Please don't read that part after that.
19 Okay?

20 A. Okay.

21 Q. If you would, please start on line 1, "because they
22 were," and stop right there. If you would read that to
23 the jury, please.

24 A. "Because they were out of their minds when they came in
25 the restaurant. I told you they were hyped up and I have

1 never seen them like that before."

2 Q. What did you mean by that when you were telling
3 Detective McNair hyped up and you had never seen Bill and
4 Jared like that before?

5 A. My interpretation of the way that Bill was acting, that
6 he was on some kind of -- under the influence of something.

7 Q. Had you ever seen Mr. Welborn like that before?

8 A. Not like that, no.

9 Q. Had you ever seen him out at the Drop Zone skydiving?

10 A. Yes, sir.

11 Q. Had Mr. Welborn or Mr. Champlin been in my restaurant
12 before and eat?

13 A. Yes.

14 Q. Prior to January the 8th?

15 A. Yes, sir.

16 Q. Ever seen Mr. Welborn act like that before?

17 A. Not to that degree, no, sir.

18 Q. Not to that degree. Can you explain that to us?

19 A. I have never seen him just keep pacing and pounding on
20 the counter.

21 Q. Did you state that he kept asking me to leave?

22 A. "Hurry up. Come on, let's go. Let's go."

23 Q. Did you know what he was talking about?

24 A. That y'all were going out together.

25 Q. Seeing Bill and Jared laying in the house was pretty

1 terrifying, wasn't it, for you?

2 A. Yes, sir.

3 Q. Prior to January the 8th, did you ever see a time when
4 Bill and Jared or I had any problems, as far as we ever have
5 any harsh words with one another, ever get in a fight, or
6 anything?

7 A. Not that I recall, no.

8 Q. We all got --

9 A. There was one incident that y'all didn't act too happy
10 with each other, but it was nothing that I could hear
11 verbally going on between you two, but I could sense it.

12 Q. We all went out to the Sheraton motel and danced and
13 had a good time together?

14 A. Right.

15 Q. Had a good time at Wings & Ale together?

16 A. At Wings & Ale is where I -- it was getting pretty
17 heated at the time shooting pool, verbal things, just like
18 you were just, as friends do, poking at each other.

19 Q. How was Mr. Welborn's actions at Wings & Ale?

20 A. Like I just described.

21 Q. Pretty anxious, ansi? I mean, describe it to us so we
22 will know what you are talking about.

23 A. Just like guys being guys. I don't know how to
24 describe it any different. Just making snide little
25 comments to each other, poking at each other.

1 Q. Ms. Bailey, what date was it that you moved out of my
2 house?

3 A. I do not remember the date.

4 Q. You don't remember?

5 A. Exact date, no, sir.

6 Q. Do you remember the month?

7 A. April.

8 Q. April.

9 Just a couple more questions, Ms. Bailey.

10 When you give your original statement to Detective
11 Carlisle McNair, you didn't say anything about Norman going
12 and getting a gun, did you?

13 A. In my written statement.

14 Q. In your written statement.

15 How long was it after your original statement that you
16 give your written statement?

17 A. A matter of minutes. Long enough for them to get me
18 paper and pen.

19 Q. How long does it take you to write the statement?

20 A. All day, it seemed. Possibly four or five hours.

21 Q. Four or five hours?

22 A. That seems like it. I couldn't tell you the time.

23 Q. But it took you a long time to write that written
24 statement?

25 A. Yes, sir. I had to do a lot of thinking before I put

1 it on paper.

2 Q. Did you tell Detective McNair in your original
3 statement when he talked to you that it sounded like
4 self-defense?

5 A. Yes, sir.

6 Q. Why did you tell Detective McNair that?

7 A. Because what you told me, I told him I told you "if
8 that's what happened, sounds like self-defense, call
9 9-1-1."

10 Q. And when you were telling Detective McNair that it
11 sounded like self-defense, you never mentioned anything
12 about going and getting a gun, did you?

13 A. In talking to him or --

14 Q. In that video statement.

15 A. Well, I was just hitting on the highlights that he
16 needed to stop you.

17 Q. Did you feel like that telling him that I come by the
18 restaurant to get a gun was something that wasn't important?

19 A. Not at that time. I just was telling him the
20 information he needed to recover the bodies and to stop you.

21 Q. You didn't mention anything about Norman getting any
22 bullets in that original statement, did you, Ms. Bailey?

23 A. I didn't recall you getting the bullets at that time,
24 but later recollection I saw you get bullets.

25 Q. When you wrote your written statement, Ms. Bailey, you

1 didn't say anything about bullets, did you?

2 A. Not at that time.

3 MR. STARNES: I have no further questions, Your
4 Honor.

5 MR. GOWDY: Just briefly on redirect, Your Honor.

6 REDIRECT EXAMINATION BY MR. GOWDY:

7 Q. You do not recall when you were, to use your words,
8 asked to leave Mr. Starnes' residence?

9 A. I'm sorry?

10 Q. You don't recall the month when you were asked to leave
11 his residence on --

12 A. I believe it was April.

13 Q. All right. April.

14 At some point in the days before May the 27th --

15 I want you to listen very carefully to my question.

16 Just answer my question, okay?

17 At some point in the days before May the 27th, did you
18 have another encounter with Norman Starnes?

19 A. Yes, sir.

20 Q. Is that what precipitated you to go to law enforcement
21 on the 27th?

22 A. Yes, sir.

23 Q. Ms. Bailey, the version that this defendant had you
24 read from your initial highlight interview with Carlisle
25 McNair, the version that he had you read - Jody Fogle, guns,

1 drugs - who did that come from?

2 A. From me.

3 Q. Who told you? You weren't there.

4 A. Oh, I'm sorry, I thought that you was asking my
5 statement came from me.

6 Q. You are right. It came from your statement, but who
7 did that version come from?

8 A. From Norman.

9 Q. From Norman Starnes, right?

10 A. Yes, sir.

11 Q. Is that the same version he told you on the night of
12 January the 8th?

13 A. That in my statement?

14 Q. Yes.

15 Did he ever tell you multiple versions of what
16 happened?

17 A. No, sir.

18 Q. Did you tell him "if that version is true, call the
19 police"?

20 A. Yes, sir.

21 Q. You gave a videotaped statement, for lack of a better
22 word, to Detective Carlisle McNair?

23 A. Yes.

24 Q. In that videotaped statement did you tell him that
25 Norman Starnes had told you that he shot Jared Champlin

1 first?

2 A. Yes, sir.

3 Q. And, again, to put it in context, when you walked in on
4 the 27th, the bodies had not even been recovered yet; nobody
5 knew where Bill --

6 A. Yes, sir.

7 Q. -- Welborn and Jared Champlin were?

8 A. Correct.

9 Q. Norman Starnes was not arrested?

10 A. No, sir.

11 Q. Nobody knew anyone who was involved, when you walked
12 into the sheriff's department?

13 A. No, sir, other than who I told that evening before.

14 Q. Vickie Kaiser?

15 A. Yes, sir.

16 Q. You hit the highlights and then you reduced it to
17 writing?

18 A. Yes, sir.

19 Q. And your words within a matter of moments?

20 A. Yes, sir.

21 Q. In your written statement -- do you have it in front of
22 you?

23 A. Yes, sir.

24 Q. I want you to look at the bottom of the second page.

25 Did you write, on May the 27th, third line from the bottom,

1 "Norman told me he was going to kill them tonight"?

2 A. Yes, sir.

3 Q. Was that the truth when you wrote it?

4 A. Yes, sir.

5 Q. Is it the truth today?

6 A. Yes, sir.

7 Q. Is that what happened on January the 8th?

8 A. That's what I was told.

9 Q. Okay.

10 A. That it happened, from Norman.

11 Q. Is that what he told you?

12 A. Yes, sir.

13 Q. That's what he told you?

14 A. Yes, sir.

15 Q. I want you to look at the top of the third page, 3 of

16 15. The very first line, do you see a reference to a six
17 pack of beer?

18 A. Yes, sir.

19 Q. Okay. Would you look on the fourth page?

20 Did you write on May the 27th, "Bill was lying face up
21 on the floor. Both of their eyes were wide open."

22 Did you describe on May the 27th what you told the jury
23 today, in terms of what you saw when you walked into the
24 house?

25 A. I described where the bodies were, but not explicit

1 detail.

2 Q. Okay. On page 4 of 15, did you describe him standing
3 over the bodies and slapping them in the face and cussing
4 them?

5 A. Yes, sir.

6 Q. On page 6 of 15, on May the 27th, 1996, five lines
7 down, did Norman Starnes tell you -- did he tell you
8 previously, and did you report to law enforcement, he said
9 "you know there is going to be questions and you have to get
10 it together and watch what you do with your hands"?

11 A. Yes, sir.

12 Q. Page 7. On May the 27th, 1996, the very first time
13 that you sat down with law enforcement, did you tell them,
14 in the first line, "Norman said, damn, Bill bled on the
15 floor"?

16 A. Yes, sir.

17 Q. Did you also tell them on the 27th about driving to his
18 uncle's farm?

19 A. Yes, sir.

20 Q. And on page 9 of 15, did you tell law enforcement "I
21 stayed in the car watching him. He walked over to the
22 bodies, stood there a moment, kicked at them, and then he
23 urinated all over them"?

24 A. Yes, sir.

25 Q. "And he told me later that he pissed in their faces"?

1 A. Yes, sir.

2 Q. On page 10 of 15, did you describe to law
3 enforcement ---

4 A. I'm sorry, I do not have 10.

5 Q. You don't have 10?

6 A. No, sir.

7 Q. Let me give you the whole stack.

8 A. It may be here. I will be glad to look.

9 Q. I will give you this one. It's 10 of 15.

10 Do you remember telling law enforcement that "Norman
11 Starnes stopped and threw the gun in the river"?

12 A. Yes, sir.

13 Q. Do you remember telling law enforcement that "Norman
14 Starnes hated that it happened because he really enjoyed
15 skydiving"?

16 A. Yes, sir.

17 Q. On page 11 of 15, the very first time that you talked
18 to law enforcement, do you remember telling them "as days
19 went by, Norman would pop up and say I hope Bill and Jared
20 are okay"?

21 A. Yes, sir.

22 Q. "I'm sure worried about them"?

23 A. Yes, sir.

24 Q. "He would meet with their family members and have a few
25 beers to talk about that night"?

1 A. Yes, sir.

2 Q. Did he even leave tickets for them to a concert, Ms.
3 Bailey?

4 A. We had purchased tickets for a concert for them.

5 Q. The version that you repeated for this jury came from
6 him?

7 A. Yes, sir.

8 Q. Of what happened inside the house, because you were at
9 work?

10 A. Correct.

11 Q. You were asked to leave his home sometime in April?

12 A. Yes, sir.

13 Q. You had another interaction with him in the days or
14 hours that preceded you going to law enforcement on the
15 27th, correct?

16 A. Yes, sir.

17 MR. STARNES: Your Honor, I have to object.

18 That's improper redirect. That's --

19 THE COURT: I'll sustain the objection.

20 Counsel, you have already covered it in any event.

21 Let's move on with that.

22 Sustained.

23 MR. GOWDY: Yes, sir, Your Honor.

24 BY MR. GOWDY:

25 Q. Did you tell law enforcement on the 27th what you have

1 told this jury today?

2 A. Yes, sir, I did.

3 Q. Thank you, Ms. Bailey.

4 A. You are welcome.

5 MR. STARNES: Just one followup question, Your
6 Honor.

7 THE COURT: Yes, sir.

8 RECROSS EXAMINATION BY MR. STARNES:

9 Q. Ms. Bailey, on January the 8th, 1996, were you inside
10 the residence at 375 Forts Pond Road when Bill Welborn and
11 Jared Champlin were killed?

12 A. No, sir.

13 Q. Thank you.

14 THE COURT: Thank you, ma'am. You may stand down.

15 THE WITNESS: Thank you.

16 MR. STARNES: Your Honor, if I may, I had Ms.
17 Bailey under subpoena. She's free to go.

18 THE COURT: You are releasing her from the
19 subpoena?

20 MR. STARNES: I'm releasing her from the subpoena.

21 THE COURT: She's released. I don't know if you
22 need her in reply or not.

23 MR. GOWDY: Can I approach and ask the court just
24 one quick question?

25 THE COURT: Yes, sir.

1 (Whereupon, the lawyers and the defendant
2 approached the bench for an off-the-record discussion)

3 MR. BULSA: The State calls Vickie Brannon.

4 VICKIE BRANNON, having been first duly sworn,
5 testified as follows:

6 THE CLERK: If you would a take a seat up there on
7 the witness stand and speak loudly in the microphone and
8 state your full name and spell your last name for the record
9 please, ma'am.

10 THE WITNESS: Victoria Lynn Brannon,
11 B-R-A-N-N-O-N.

12 DIRECT EXAMINATION BY MR. BULSA:

13 Q. Good afternoon, Ms. Brannon.

14 Is your maiden name Kaiser?

15 A. No.

16 Q. Is that another married name that you have?

17 A. Yes.

18 Q. But you have remarried since then?

19 A. Yes.

20 Q. Now Vickie Brannon?

21 A. Yes.

22 Q. Ma'am, where do you live?

23 A. In Timmons ville.

24 Q. Is that part of Lexington County?

25 A. It's Florence County.

1 Q. Florence County. Okay.

2 Now, I see that you are dressed in what's a nursing
3 outfit?

4 A. Yes.

5 Q. What do you do?

6 A. I'm a cardiovascular stenographer.

7 Q. And do you have an education in that?

8 A. Yes, sir.

9 Q. Where did you get that education?

10 A. From Midlands Tech.

11 Q. When were you at Midlands Tech?

12 A. In -- well, several years. It was different programs.
13 I graduated in 2005.

14 Q. Okay. What were you doing back in January of -- excuse
15 me, let's just say in 1996, what were you doing?

16 A. I was a student in the Human Resource Program at that
17 time.

18 Q. At Midlands Tech?

19 A. Uh-huh.

20 Q. Okay. And did you happen to know Ms. Gwen Ott, as she
21 was known at that time?

22 A. Yes.

23 Q. And how did you meet Ms. Ott?

24 A. Through the Panther Parlor in Pelion.

25 Q. And how did you frequent the Panther Parlor?

1 A. Well, I worked at -- I also worked at the high school,
2 Pelion High School there, and I went there with my son after
3 work in the afternoons.

4 Q. So you were working as well as attending school?

5 A. Yes.

6 Q. How old was your son?

7 A. He would have been about 12, 13 -- 12, 13, somewhere
8 along in there.

9 Q. Okay. And what time of day would you go and eat at the
10 Panther Parlor?

11 A. Late in the afternoons.

12 Q. Afternoons. Would that be dinner time?

13 A. Yeah, around evening time, yeah.

14 Q. And did you know Ms. Ott before going to the Panther
15 Parlor?

16 A. No, I didn't.

17 Q. Do you remember about what time frame that you remember
18 meeting her?

19 A. I don't remember how long, you know, that I -- I really
20 don't, no. I just -- I remember I met her there and we
21 became friends. Not outside of there, but we just became
22 friends. We talked every afternoon when I was there. Just
23 as acquaintance.

24 Q. Did you go there often?

25 A. Several times a week.

1 Q. Okay. And y'all became friends and spoke a lot?

2 A. Uh-huh.

3 Q. Did she ever have an occasion to stay at your house?

4 A. Only once.

5 Q. Do you remember when that was?

6 A. It was around Memorial Day in '96.

7 Q. Around Memorial Day in 1996?

8 A. Around May of '96.

9 Q. We have a calendar out here of May of 1996. Memorial
10 Day usually is the last Monday of the month?

11 A. Somewhere around at that time.

12 Q. All right. And do you remember going to the police
13 with her?

14 A. I do.

15 Q. Okay. Was -- did she spend the night with you the
16 night before going to the police?

17 A. Yes, sir.

18 Q. And how was it that -- I don't want to go into the
19 details, but how was it that she came to stay with you?

20 A. She called me the night before and said she and her
21 friend Evelyn and her son Tyler needed a place to go.

22 Q. Okay. Do you know where she had been staying?

23 A. At that time I think she was living with Mr. Starnes.

24 Q. That was the understanding that you had?

25 A. Uh-huh, that was the understanding I had, yes, sir.

1 Q. And she called you and said "I need a place to stay"?

2 A. Uh-huh.

3 Q. How was she acting? What was her demeanor?

4 A. She was very upset, and I -- I just said "come on. You
5 know, that was fine."

6 Q. Okay. Had she have ever been to your house before?

7 A. No, sir.

8 Q. Had y'all even seen each other outside the Panther
9 Parlor before?

10 A. No, sir.

11 Q. Somehow you were somebody that she felt she could
12 trust?

13 A. I think so.

14 Q. Okay. And when did she arrive at your place?

15 A. It was late that night. It was late. Maybe 11:00 or
16 11:30, somewhere along in there that night.

17 Q. And who came with her?

18 A. Her friend Evelyn and her son Tyler.

19 Q. And how did she appear to you?

20 A. Very upset. She had been crying. You could tell she
21 had been crying. She was very shaken.

22 Q. And when she came in, was she able to go to sleep?

23 A. No.

24 Q. What took place?

25 A. Well, she put her son to bed, because it was late and

1 then I had -- I made some coffee, I think, and we just sat
2 down and started talking.

3 Q. And did the conversation -- was part of the
4 conversation about what occurred back in January of 1996?

5 A. Eventually, it was, yes.

6 Q. About how long did y'all talk?

7 A. Most of the night.

8 Q. Okay. And specifically was part of the conversation
9 about January the 8th of 1996?

10 A. I'm sorry, would you repeat that?

11 Q. Was part of the conversation about January the 8th of
12 1996?

13 A. Yes, sir, it was.

14 Q. Did she go into specific detail with you about the
15 events of that night?

16 A. Yes, sir, she did.

17 Q. Did she go into any detail about Mr. Norman Starnes
18 being at the Panther Parlor and anything taking place in the
19 Panther Parlor that evening?

20 A. That night?

21 Q. Yes, ma'am.

22 A. She -- I think she said that she had just received a
23 call from him late that night. Now, I don't remember.

24 Q. What about the night of January the 8th?

25 A. The night of January the 8th.

1 On that particular night I think that she -- she had
2 told me that he was in there earlier --

3 Q. Okay.

4 A. -- and then had left.

5 Q. Okay. How was -- how did she tell you how he was
6 acting when he was in there?

7 A. She said he was angry.

8 Q. Did she say he made any statements?

9 A. I don't recall specifically.

10 Q. Okay. Did she tell you whether he left with anything?

11 A. I don't recall that.

12 Q. You don't recall that. Okay.

13 Did she tell you what he had done?

14 A. Not at that time.

15 Q. Okay. During your conversation -- I'm going to get
16 at --

17 A. Right.

18 Q. -- the night of May 26th --

19 A. Yes, sir,.

20 Q. -- the morning of May the 27th, did she tell you what
21 he had done?

22 A. Yes, sir.

23 Q. And how did you react?

24 A. I was surprised. Shocked. That's not something that
25 you hear every day.

1 Q. And what did you, if anything, do when you heard that?

2 A. I asked her several questions, and, you know, she just
3 kept talking.

4 Q. Okay. And did at any point you encourage her to do
5 anything?

6 A. Yes, sir.

7 Q. What?

8 A. I told her that we had to go to the police.

9 Q. What was her attitude at that point?

10 A. She said she knew she did.

11 Q. Did you, in fact, take her?

12 A. Yes, sir.

13 Q. Did she tell you anything about what he had done to the
14 bodies?

15 A. Yes, sir.

16 Q. What did she say?

17 MR. STARNES: Your Honor, I have to object. It's
18 hearsay.

19 MR. BULSA: Rule 801, Your Honor. He implied that
20 Ms. Ott had made up portions of her --

21 MR. STARNES: Your Honor, may we approach?

22 MR. BULSA: -- statement to the police.

23 THE COURT: Approach just a minute. Approach.

24 (Whereupon, the lawyers and the defendant
25 approached the bench for an off-the-record discussion)

1 THE COURT: Mr. Foreman, ladies and gentlemen of
2 the jury, a brief matter of law I need to take up with
3 counsel. This would be very brief. Please retire to the
4 jury room for a moment. Okay?

5 (The following takes place outside the presence of
6 the jury panel)

7 THE COURT: All right, let me hear from you.

8 MR. BULSA: Your Honor, based on Rule 801
9 (d)(1)(b), the State would argue that this is not hearsay,
10 because the defendant had cross-examined Ms. Ott and raised
11 the inference that she had lied to law enforcement about
12 portions of her statement. And this testimony from Ms.
13 Brannon involves a conversation that she had with Ms. Ott
14 before Ms. Ott went to law enforcement, so it would be a
15 prior consistent statement, or it would be a prior statement
16 that's consistent with Ms. Ott's testimony at trial.

17 THE COURT: All right. Let me hear from you.

18 MR. STARNES: Your Honor, the jury is not in,
19 under McKaskle v. Wiggins, I would ask Mr. Nettles to argue
20 this. He can do a better job than I.

21 THE COURT: Yes.

22 MR. NETTLES: I think in order for him to get it
23 in under 801 --

24 He hasn't laid the proper foundation, first of
25 all, if it comes in under 801. If by -- I guess what he's

1 trying to do is lay it in under 801(d)(1), where it --
2 (d)(1)(b), where it says it's "consistent with the
3 declarant's testimony." It's "offered to rebut an express
4 or implied charge against the declarant of recent
5 fabrication or improper influence or motive; provided,
6 however, the statement must have been made before the
7 alleged fabrication, or before the alleged improper
8 influence or motive."

9 As it relates to what he just asked her about, I
10 don't think that Mr. Starnes, during his cross-examination
11 of Ms. Ott, brought up the issue about the fact she had not
12 made -- talked about the gun and the ammunition in one
13 statement but had in another. I don't -- I don't recall
14 that he made any -- that he said that she had lied about the
15 pistol whipping.

16 In other words -- in other words, this would be a
17 very different situation if he had repeated done what he did
18 with the gun and the ammunition about the question that he
19 just asked. So, I mean, this is bolstering is what this is.

20 THE COURT: Well, here is the -- what my thoughts
21 are are this. That I allowed the -- the statement is to be
22 treated as one -- basically one continuous statement, or two
23 parts of the same statement, essentially, because under 106,
24 and the Cabrera case that was cited previously on the record
25 cites that in fairness to the parties making the -- giving

1 the statement, both of them should be considered together,
2 because basically they are essentially an extension of one,
3 one being like kind of an outline of the highlights, and the
4 rest of them filling in the rest of the outline. Basically
5 is what it was was a written statement starting with the
6 testimony of the witness. She finished given the video
7 statement, but it took quite some time to write out a 15
8 page handwritten statement. It took some time, but I ruled
9 that that was essentially -- it should -- all of that should
10 be considered together, because basically it's one
11 statement. And that being true, if he's asking her as
12 between one statement -- one part of the statement and the
13 other, basically I let it in and I let you question her
14 about the whole statement, as opposed to a part of the
15 statement. So, for that reason, I don't know why you would
16 then should be allowed to ask this witness or to say it's an
17 inconsistent statement, if you are allowed to show that, in
18 fact, it was in the statement as a whole.

19 MR. BULSA: I appreciate Your Honor's ruling and
20 position. However, the defendant in his cross-examination
21 consistently referred to the video statement as the first
22 statement, and then he referred to the number of hours that
23 passed before the written statement was taken. He's got in
24 this jury's mind that there was a first statement and a
25 second statement, implying to the jury that she was not

1 forthright in her first statement, and, therefore, lied in
2 her second statement. That is how his cross-examination
3 played out. I understand Your Honor's ruling and --

4 THE COURT: Well, I think that -- I think about
5 it, I think you -- he did essentially raise a question why
6 she didn't raise it.

7 Now, let me ask you, are you asking her questions
8 that she didn't have in either of the statements? Asking
9 this witness about something Mr. Starnes asked her that was
10 not in either of the statements - the video statement
11 followed by the handwritten statement? Are you asking her
12 about something outside of that that he questioned?

13 MR. BULSA: No, this is -- this is just to show
14 that her statement to Ms. Brannon is consistent with the
15 statement to the police and we view this statement also --

16 THE COURT: What are you going to ask her about?
17 What issue was that?

18 MR. BULSA: About the bodies. I was going to ask
19 her again about whether she -- Ms. Ott said she saw him
20 coming in and getting a gun.

21 MR. NETTLES: Well --

22 MR. BULSA: And also making a threat against --

23 MR. NETTLES: I'm sort of humbled by the court's
24 argument. I really wish I would have thought about it. The
25 way that they were able to get that in is because we ruled

1 on this pretrial and the court ruled Norman, during his
2 cross-examination, was able to point out in this statement
3 this statement, you know, and you -- the video statement you
4 said this, but in the other statement you said -- in the
5 written statement she eventually cleared it up. In other
6 words, what he was able to say was not that you are on the
7 witness stand today saying something and in the previous
8 statement you said something different. Is the court
9 following me? Because the court ruled they are one
10 statement.

11 What Norman had to do was -- and he had -- I mean
12 there is no -- the court has ruled that for purposes of a
13 number of cases that Norman cited that they are one
14 statement and they should be treated as one statement. So
15 what Norman -- but it was valid for Norman to simply point
16 out that during the context of this one statement, as the
17 court ruled, that this video statement she didn't say things
18 that were in the written statement. Now -- and the reason
19 that all of -- that because the court ruled it was one
20 statement, the solicitor was able to get up and fairly
21 effectively already point out the things that she -- that
22 Norman did not bring up during his cross, but that she had
23 testified to in her direct that were consistent with things
24 she had said in her statement. I mean, that was what his
25 redirect was.

1 Mr. Delgado and I discussed that. We decided that
2 we would not want to advise our client to object to that
3 because it was proper redirect, and the reason it was proper
4 redirect was because what Norman did on his cross was point
5 out things that weren't in certain parts of arguments. So,
6 therefore, it did make it relevant that the stuff that she
7 had testified to that were in her statement, because the
8 court had ruled they were all one big statement.

9 THE COURT: All right. Well, you know, counsel my
10 ruling is going to be -- and I understand your argument. My
11 ruling is going to be, though, I allowed you to treat this
12 as one statement and to redirect on the one statement and
13 that -- and he had -- Mr. Starnes raised some issues there
14 about the statement that allowed you to go into the full
15 statement, handwritten statement, as part of it as well.
16 But I'm -- based on that, I'm not going to allow you to go
17 into it at this particular witness as a prior consistent
18 statement, and that being an inconsistent statement, because
19 I treated it as one at your request. And so you have full
20 opportunity then to ask her about that, so I'm not going to
21 let do you that.

22 What I will allow you to do, if you want to do it,
23 this witness realizes she traveled some distance. You are
24 not coming back. If you need to call her in reply, if
25 questions come up about that, I may very well let her come

1 back and reply. But, of course, otherwise not.

2 MR. NETTLES: Your Honor, could I take a brief
3 break.

4 THE COURT: Well, it's about 3:15. I hadn't told
5 the jury -- let's go ahead and take about ten minutes.

6 MR. STARNES: Your Honor.

7 THE COURT: How much -- would you like to finish
8 with this witness?

9 MR. BULSA: Not much further, Your Honor.

10 THE COURT: Still got some cross. Let's -- we
11 will go ahead and take about ten minutes.

12 MR. STARNES: Your Honor?

13 THE COURT: Yes.

14 MR. STARNES: One more thing. Mr. Derrick just
15 mentioned something, if I heard him correctly, about a
16 threat, and I -- if we are going into any threats or
17 anything dealing with what happened or transpired --

18 THE COURT: Not -- I don't think he's going to be
19 able to get into that now. He may be able to get into it if
20 the door gets opened.

21 MR. BULSA: That was part of the court's ruling,
22 he wasn't going to let me ask the question.

23 THE COURT: However, I'm pointing out -- I'm not
24 saying the door can't be opened later to it. If the defense
25 opens the door, they can walk right through the door, but

1 that's the ruling of the court. Okay?

2 Let's take about ten minutes.

3 Ma'am, you can stand down during the break to
4 refresh yourself, but you cannot discuss your testimony in
5 any way.

6 THE WITNESS: Yes, sir.

7 (Whereupon, proceedings were recessed)

8 (Whereupon, proceedings were reconvened)

9 THE COURT: We ready to proceed?

10 MR. BULSA: Yes, sir.

11 THE COURT: Please bring the jury in.

12 (The following takes place in the presence of the
13 jury panel)

14 THE COURT: All right, you may proceed.

15 MR. BULSA: Thank you, Your Honor.

16 BY MR. BULSA:

17 Q. Ms. Brannon, do you remember this missing persons case
18 back in 1996?

19 A. I do.

20 Q. How did you hear about it?

21 A. It was on the news, on the radio. There was posters.

22 Q. And you said you saw posters?

23 A. Uh-huh.

24 Q. Where did you see posters?

25 A. Well, there were several different posters. I saw them

1 at the Panther Parlor.

2 Q. Was there any talk about that while you were in the
3 Panther Parlor? Do you recall any?

4 A. About?

5 Q. About the missing persons.

6 A. About -- yes, wondering where they were and what
7 happened to them.

8 Q. Okay. And Mr. Starnes, himself, had posters put in his
9 business?

10 A. Yes, sir.

11 Q. Had you ever met the two men that had been missing?

12 A. I had seen them in the Panther Parlor. I knew who they
13 were.

14 Q. Okay. Did you have an occasion to ever interact with
15 them,

16 A. Well, we would speak and say hello, yeah.

17 Q. When Ms. Ott came to your house, I believe you
18 testified that she was upset?

19 A. Uh-huh.

20 Q. Okay. Did she seem angry?

21 A. No.

22 Q. Did you have to convince her to go to the police?

23 A. No.

24 Q. Did she feel something was going to happen to her?

25 A. If she didn't go to the police she did.

1 Q. And did she feel she might be arrested?

2 A. She felt that she would be.

3 Q. And did you do anything to help her, like getting any
4 of her affairs in order, or anything?

5 A. Well, she wanted to make arrangements for her son to be
6 picked up from school, and she wanted to wait until we could
7 get them to school before she went.

8 Q. Who all went to the police?

9 A. She and I went, but I think Evelyn was with us too.
10 Evelyn was with her.

11 Q. How was her demeanor when she went to the police the
12 next day?

13 A. She was nervous, scared, I'm sure.

14 Q. Did she seem angry at that point?

15 A. No, sir.

16 Q. Did she seem afraid?

17 A. Nervous, uh-huh. Probably I would be.

18 Q. Thank you, ma'am. Answer any questions that Mr.
19 Starnes may have.

20 A. Certainly.

21 MR. STARNES: Your Honor, I have no questions for
22 this witness.

23 THE COURT: All right. Thank you, ma'am. You may
24 stand down.

25 MR. BULSA: I would ask that she be excused.

1 THE COURT: Any objection to her being excused?

2 MR. STARNES: No objection.

3 THE COURT: Thank you for coming, ma'am. You may
4 be excused.

5 THE WITNESS: Thank you.

6 MR. BULSA: Donna Ricard.

7 DONNA RICARD, having been first duly sworn,
8 testified as follows:

9 THE CLERK: Have a seat on the witness stand and
10 state your full name and spell your last name for the record
11 for me.

12 THE WITNESS: Donna Harmon Ricard, R-I-C-A-R-D.

13 (Telephone Record marked as State's Exhibit No. 20
14 for identification)

15 (Telephone Record marked as State's Exhibit No. 21
16 for identification)

17 (Telephone Record marked as State's Exhibit No. 22
18 for identification)

19 DIRECT EXAMINATION BY MR. BULSA:

20 Q. Good afternoon, Ms. Ricard.

21 A. Good afternoon.

22 Q. Ma'am, could you tell us where you are employed?

23 A. I'm employed to at PBT, formerly Pond Branch Telephone
24 Company.

25 Q. It changed to PBT?

1 A. Uh-huh.

2 Q. Okay. All right. How long have you been there?

3 A. Since 1994, July.

4 Q. As part of your job do you have access to phone
5 records?

6 A. I do.

7 Q. And were you requested to obtain some records,
8 statements back to 1996?

9 A. I was.

10 Q. Let me show you some records. I believe I have shown
11 the defendant.

12 I'll show you those records.

13 MR. BULSA: For the record, they are State's
14 Exhibit 20, 21, 22.

15 BY MR. BULSA:

16 Q. First, looking at them and see if you recognize those?

17 A. I do.

18 Q. Okay. And are those records that you obtained at the
19 request of law enforcement?

20 A. That's correct.

21 Q. Okay. Ma'am, let me show you some more.

22 State's Exhibit No. 20, does that show a phone number
23 for a Tony Tindal?

24 A. Yes, it does.

25 Q. And State's Exhibit No. 21, what does that show?

1 A. I will need glasses for that one.

2 Q. Okay.

3 A. That's a phone record of calls made out of 894-6010.

4 Q. Is there a page attached to that exhibit?

5 A. It is.

6 Q. Whose phone number is that?

7 A. That phone number belongs to Norman Starnes.

8 Q. Okay. And now State's Exhibit No. 22, whose phone
9 records are those?

10 A. And that's account number 894-4425, and that belongs to
11 Norm's Panther Parlor.

12 MR. BULSA: Your Honor, I would move those into
13 evidence at this time.

14 MR. STARNES: No objection, Your Honor.

15 THE COURT: They are admitted without objection.

16 BY MR. BULSA:

17 Q. Now, let's talk about these on the overhead, ma'am.

18 Starting first with State's Exhibit No. 21, I'll get
19 this to where you can read it.

20 Can you read that?

21 A. Sort of kind of.

22 Q. Okay. The yellow highlighted line at the top?

23 A. Uh-huh.

24 Q. Can you explain that to the jury?

25 A. That's a call going to 755 -- and I'm trying to see

1 that.

2 Q. 3299?

3 A. Correct, and the two calls. And that would be made
4 from the phone number to the very left, the 894 number.

5 Q. And the page attached shows that as the number
6 belonging to Norman Starnes?

7 A. That's correct.

8 MR. BULSA: And, Your Honor, I previously
9 discussed it with the defendant. I believe he's stipulating
10 that the 755 number is Dawn Brudose's number.

11 Is that correct, Mr. Starnes?

12 MR. STARNES: Your Honor, I can't -- I can't say
13 that that's whose phone number that is. That's not mine,
14 but if they say that's Ms. Brudose's phone number, I have no
15 objection.

16 THE COURT: You are not stipulating, but he's not
17 objecting to the exhibit.

18 MR. BULSA: All right.

19 BY MR. BULSA:

20 Q. What time was that call made?

21 A. The month is under the connect month, which is January.
22 Connect day is the 8th, and the connect year is '96. The
23 connect hour is military time, so that would be 9:55 and
24 some odd seconds. That would be p.m..

25 Q. Okay. And what's the next line -- next column past the

1 755 number?

2 A. That would be rounded up to how many minutes the call
3 listed.

4 Q. So this call lasted one minute, or less?

5 A. Correct.

6 Q. If it goes over a minute, is it rounded up?

7 A. It's rounded up.

8 Q. Then there is a pink line highlighted?

9 A. Uh-huh.

10 Q. All right. And that's to number 894-4116, I believe?

11 A. That's what I'm seeing from here.

12 Q. And let me show you State's Exhibit No. 20. Does that
13 show the billing address for that number?

14 A. It shows that belonging to Tony Tindal.

15 Q. So the pink highlight on that goes with the pink
16 highlight to State's Exhibit No. 21, would that be accurate?

17 A. That's correct.

18 Q. And what was the time of that call?

19 A. That would be 9:11 and some odd seconds. So that would
20 be in the morning, if I'm seeing --

21 Q. I believe that's a 0?

22 A. I'm looking.

23 Q. Let me show you up close?

24 A. Yes, please. I don't think the glasses are going to
25 help.

1 Yes, that would be 0. That would be midnight.

2 Q. That's eleven minutes after midnight?

3 A. Correct.

4 Q. So that is the number at eleven minutes after midnight
5 from Mr. Starnes to Tony Tindal?

6 A. Correct.

7 Q. Is that correct?

8 A. Yes.

9 Q. Now, on State's Exhibit No. 22, this would be the
10 number for Norm's Panther Parlor?

11 A. That's correct.

12 Q. And there is a yellow highlighted line. If you would
13 explain that line to us?

14 A. Okay. This is a call from the number at the top of the
15 page, 894-4425, made on January the 8th, at 10:12 p.m. to
16 755-3299.

17 Q. Okay. So 10:12 to the 755 number, which was the same
18 number on State's Exhibit 21, is that correct?

19 A. Correct.

20 Q. All right. Once again, that was Panther Parlor to the
21 755 number?

22 A. Yes.

23 MR. BULSA: That's all I have of Ms. Ricard.

24 MR. STARNES: May it please the court, Your Honor?

25 THE COURT: Yes, sir.

1 CROSS EXAMINATION BY MR. STARNES:

2 Q. Hi, Ms. Ricard, how are you doing today?

3 A. Fine, thank you.

4 Q. Ms. Ricard, if you would, could you take a look at your
5 phone records one more time, please?

6 A. Uh-huh.

7 Q. Ms. Ricard, regarding the phone calls to 755-3299 on
8 January the 8th --

9 A. Uh-huh.

10 Q. -- from 894-4425, how many telephone calls was made
11 that day to that telephone number?

12 A. It shows one.

13 Q. Only one telephone call?

14 A. On January the 8th?

15 Q. Yes, ma'am.

16 A. That's correct.

17 Q. And on January the 8th, the telephone calls from
18 894-6010 to 755-3299, I believe it was?

19 A. Correct. It shows one.

20 Q. One telephone call?

21 A. Yes, sir.

22 Q. Did you receive any request from law enforcement or
23 anyone regarding any other phone records regarding 894-6010?

24 A. Not that I remember, no, sir.

25 Q. Ms. Ricard, if you could, could you identify the

1 document that you have right now?

2 A. Yes, that's looking for any kind of trouble tickets or
3 repair calls that would have been recorded in our billing
4 system for 894-6010.

5 Q. And is there some handwriting on the bottom of that
6 document?

7 A. That is handwriting on the bottom that says "the only
8 record of any repairs calls to Norman Starnes," with my
9 signature.

10 MR. STARNES: Your Honor, at this time I would
11 like to move this into evidence.

12 (Telephone Record marked as Defendant's Exhibit
13 No. 7 marked for identification)

14 THE COURT: Any objection, counsel?

15 MR. BULSA: No, sir.

16 THE COURT: Admitted without objection.

17 BY MR. STARNES:

18 Q. Ms. Ricard, referring to State's Exhibit -- excuse me,
19 Defendant's Exhibit No. 7?

20 A. Uh-huh.

21 Q. Was this the document that you just reviewed?

22 A. It is.

23 Q. And could you tell the jury the last time -- or how
24 many times there were phone repairs done on telephone number
25 894-6010?

1 A. The only record that that is showing was done on 9-20
2 of '94.

3 Q. 9-20 of '94?

4 A. Correct.

5 Q. Okay.

6 A. That's the only recorded, documented.

7 Q. Yes, ma'am.

8 And that signature at the bottom?

9 A. That is my signature.

10 Q. That is your signature right there, Ms. Ricard?

11 A. It is.

12 Q. Now, 894-6010, that was to Norman Starnes' residence on
13 Forts Pond Road, 375 Forts Pond Road?

14 A. That's correct.

15 Q. Thank you, Ms. Ricard.

16 A. You are welcome.

17 MR. BULSA: Just briefly.

18 REDIRECT EXAMINATION BY MR. BULSA:

19 Q. Ma'am, Mr. Starnes asked you about repair calls to 725
20 Forts Pond Road, is that correct? 375, I believe?

21 A. Yes, sir.

22 Q. Do you always get requests for service to repair a line
23 from the box?

24 A. Would you repeat that question?

25 Q. Do you always get requests for service to repair a

1 break-in, what's shown in State's Exhibit No. 18?

2 A. I can't say we always get a call for those kind of
3 repairs, because there are parts of that box that can be
4 entered in by the customer, but that's kind of out of my
5 area of expertise.

6 Q. So this service call that's Defendant's Exhibit No. 7,
7 you referred to, can you tell what it was for? It says
8 station wire. What's that?

9 A. It says station wire, which would mean that something
10 wasn't right with the station wire. They either had to fix
11 it, replace it. There was some issue with the station wire.

12 Q. What is the station wire?

13 A. That's actually the wire that goes from your phones
14 inside to the jack or the outlet on your protector on your
15 house and then onto the pedestal, which would be to repair
16 your phone service.

17 Q. Would it have anything to do with a break-in at that
18 box?

19 A. It could.

20 Q. It could?

21 A. It could.

22 Q. In your experience being with the phone company this
23 long, is a break in of any one of these lines, is that
24 something that a customer could repair themselves?

25 A. It's possible.

1 Q. Thank you.

2 And if I may, I'll just -- let me do it this way,
3 ma'am, before I get these marked.

4 Mr. Starnes asked you about any other calls made on
5 January the 8th?

6 A. Yes, sir.

7 Q. And you said there were one. There is one showing on
8 State's Exhibit No. 21?

9 A. Correct.

10 Q. Now, is this record one of many pages?

11 A. Yes.

12 Q. And this, in fact, is page four?

13 A. Correct.

14 Q. And let me show you a different -- this is like a copy
15 of that.

16 A. Okay.

17 Q. Is that the entire group of the records?

18 A. It begins with page 1, 2, 3, I would say.

19 Q. Let's look at page four. Does page four have this
20 number listed on State's Exhibit 21 at the top?

21 A. It does.

22 Q. So would that be -- so that is the same record?

23 A. Yes, sir.

24 MR. BULSA: Now, let me get page three marked, if
25 I may.

1 (Telephone Record marked as State's Exhibit No.
2 23 for identification)

3 BY MR. BULSA:

4 Q. Does page three, State's Exhibit No. 21, show any other
5 calls from that phone number on January the 8th?

6 A. That's correct.

7 Q. Okay. How many other calls?

8 A. There is one.

9 Q. And --

10 A. It's made to 894-4425.

11 Q. What time?

12 A. That would be at 1:59 in the morning, 25 odd seconds.

13 Q. Okay.

14 MR. BULSA: Your Honor, I would move State's
15 Exhibit No. 23 into evidence.

16 MR. STARNES: No objection, Your Honor.

17 THE COURT: Admitted without objection.

18 MR. BULSA: Okay.

19 BY MR. BULSA:

20 Q. Just show the jury that it was clear there was more
21 than one call at least made, and that call -- the last call
22 on this sheet, is that correct?

23 A. That's correct.

24 Q. It's 1:59 in the morning to 894-4425, and that is
25 actually the Panther Parlor number, is that correct? Is

1 that correct?

2 A. That's correct.

3 Q. Okay. Thank you, ma'am.

4 MR. BULSA: I have no further questions.

5 RECROSS EXAMINATION BY MR. STARNES:

6 Q. Ms. Ricard, referring to State's Exhibit No. 21, phone
7 calls to 755-3299, not any phone calls, phone calls to that
8 specific number, 755-3299, how many telephone calls, Ms.
9 Ricard, do you see on that bill right there?

10 A. There is one.

11 Q. Ms. Ricard, can you read that and see page four, or do
12 you need me to bring it to you?

13 A. I can see it.

14 Q. Ms. Ricard, referring to State's Exhibit No. 23, can
15 you tell me what page number that is?

16 A. Page three.

17 Q. This other phone call on January the 8th, 1996, do you
18 see any more telephone calls to 755-3299?

19 A. Not on January the 8th.

20 Q. Only one telephone call, that's what I'm hearing?

21 A. Yes, sir.

22 Q. Thank you, Ms. Ricard.

23 A. You are welcome.

24 MR. BULSA: Nothing further.

25 THE COURT: Thank you, ma'am. You may stand down.

1 MR. BULSA: We ask she be excused.

2 THE COURT: Any objection to this witness being
3 excused?

4 MR. STARNES: No, sir. I had her subpoenaed and
5 she can be excused.

6 THE COURT: Thank you for coming, ma'am. You may
7 be excused at this time.

8 MR. GOWDY: May it please the court, Your Honor,
9 the State would call Dawn Holrath. Recall I should say.

10 THE COURT: Ms. Holrath, you were previously sworn
11 in your testimony in this case. You continue to be sworn
12 and under oath for your testimony at this time.

13 THE WITNESS: Yes, sir.

14 THE COURT: Please proceed.

15 MR. GOWDY: Thank you, Your Honor.

16 DIRECT EXAMINATION BY MR. GOWDY:

17 Q. Good afternoon, ma'am.

18 A. Good afternoon.

19 Q. I'm going to ask you a hard question. Can you remember
20 your telephone number from January of 1996, when you lived
21 in Lexington County?

22 A. I believe it was 755-3299.

23 Q. You testified previously that you remember getting a
24 call on January the 8th from Bill Welborn?

25 A. Yes, sir, at 9:55.

1 Q. 9:55.

2 What I'm showing you has previously been introduced as
3 a log of the phone calls made from Norm Starnes residence.

4 Can you see the yellow line?

5 A. Yes, sir.

6 Q. 755-3299?

7 A. Yes, sir.

8 Q. If I were to put an 803 in front of that, would that
9 have been your telephone number?

10 A. Yes, it would.

11 Q. And in military time, you can read it better than I
12 can. 21:55 military time is?

13 A. 9:55.

14 Q. 9:55?

15 A. Yes, sir.

16 Q. You testified also that you received a telephone call
17 from Ms. Pratt?

18 A. Yes, sir, I did. It was from the Panther Parlor.

19 Q. This is a log of telephone calls on January the 8th?

20 THE COURT: Exhibit number, please, sir.

21 MR. GOWDY: I'm sorry, Your Honor, Exhibit No.

22 22.

23 BY MR. GOWDY:

24 Q. That's your telephone number?

25 A. Yes, sir.

1 Q. And this is from the Panther Parlor, 10:12, from Ms.
2 Pratt to you?

3 A. Yes, sir.

4 Q. Thank you. Please answer any questions that the
5 defendant may have.

6 CROSS EXAMINATION BY MR. STARNES:

7 Q. Hi, Dawn.

8 A. Hello.

9 Q. Dawn, referring to State's Exhibit No. 22, that's your
10 telephone number 755-3299?

11 A. Yes, it is.

12 Q. On January the 8th at any time did I call your
13 residence?

14 A. Not that I recall.

15 Q. Did you receive a call from Mr. Bill Welborn at around
16 10:12 p.m., on January the 8th?

17 A. I did not.

18 Q. Did you receive any telephone calls from Mr. Bill
19 Welborn on January the 8th?

20 A. Yes, I did.

21 Q. Do you know -- did you know where that telephone call
22 was being placed from?

23 A. No, I did not. He was very quiet.

24 Q. Very quiet.

25 And that's your telephone number, 755-3299?

1 A. Yes, it is.

2 Q. You received a telephone call from Ms. Karen Pratt?

3 A. Yes, I did.

4 Q. And did she tell you where she was calling from?

5 A. I believe she did.

6 Q. Could you tell us where that was at?

7 A. She said that she was waiting for the guys at the
8 Panther Parlor. Norman Starnes Panther Parlor.

9 Q. And would that have been around 10:12 p.m., on January
10 the 8th?

11 A. Yes.

12 Q. Referring to State's Exhibit No. 21, Dawn, do you
13 recognize that phone number right there?

14 A. That's my phone number.

15 Q. Connect hour 21. Connect minute 55. Would that be
16 21:55 in military time?

17 A. I'm not familiar with that form, but 21:55 military
18 time is 9:55, yes. But I -- I don't know anything about
19 that form.

20 Q. Did you receive a call from Mr. Bill Welborn at 9:55?

21 A. Yes, I did.

22 Q. On January the 8th?

23 A. Yes, sir.

24 Q. At any time on January the 8th of 1996, Dawn, did I
25 call your residence and ask for Bill Welborn?

1 A. I don't know. I don't remember. I don't remember
2 speaking to you that day.

3 Q. How about the day before?

4 A. I don't remember speaking to you on the 7th either.

5 Q. Thank you, Dawn.

6 THE COURT: Thank you, ma'am. You may stand down.

7 MR. BULSA: Kelvin Crimminger.

8 SLED AGENT KELVIN CRIMMINGER, having been first
9 duly sworn, testified as follows:

10 THE CLERK: Can you take a seat on the witness
11 stand and state your full name and spell your last name for
12 the record, please.

13 THE WITNESS: Kelvin Crimminger,
14 C-R-I-M-M-I-N-G-E-R.

15 DIRECT EXAMINATION BY MR. BULSA:

16 Q. Mr. Crimminger, where are you employed?

17 A. I'm employed with the State Law Enforcement Division,
18 also known as SLED.

19 Q. In what capacity?

20 A. I'm an agent assigned to the aviation unit. I'm a
21 helicopter pilot now, but when this incident happened, I was
22 assigned to the crime scene unit.

23 Q. Okay. How long have you been with SLED?

24 A. Since 1992.

25 Q. And back in '96, how long had you been with the crime

1 scene unit?

2 A. Four years.

3 Q. Four years.

4 A. That's where I started.

5 Q. Okay. And explain briefly to the jury what you would
6 do as part of a crime scene unit.

7 A. We responded throughout the State to mostly violent
8 crimes, and we processed the scenes for evidence, to include
9 photographs, fingerprints, footwear, tire tread. Anything
10 of evidentiary value we would process.

11 Q. And you said anything of evidentiary value. When you
12 respond to the scene, you are trying to identify what
13 happened and what could help tell what happened?

14 A. Yes, sir.

15 Q. And if you were able to respond immediately or soon
16 after the incident, what would you -- what do you think that
17 you could learn?

18 A. Well, the first thing we did when we respond is we were
19 briefed by an investigator. SLED is an assisting agency.
20 We don't just go to every crime scene. We go when we are
21 called. And in this incident Lexington County called.

22 And the first thing that you do, you are briefed by an
23 investigator, somebody there. And we will do a walk-thru of
24 the area to see exactly what we have. And then we will do
25 an overall photographs, and then we will start processing.

1 We will do a sketch of the scene, and then we will do --
2 start looking for evidence at the scene.

3 Q. In this case what was the first scene that you
4 responded to?

5 A. We responded to the site where the victims were buried,
6 over in Aiken County.

7 Q. Okay. This is State's Exhibit No. 6. Can you see that
8 from where you are?

9 A. Yes, sir.

10 Q. We don't have the computer up so we are going to use
11 this.

12 I'll get you a pointer.

13 Down here at the bottom part of this map, 674 Clinton
14 Church Road, is that the location where the bodies were
15 found?

16 A. Yes, sir.

17 (Poster Board Map marked as State's Exhibit No. 24
18 for identification)

19 MR. BULSA: I would offer State's Exhibit No. 24
20 into evidence, without objection.

21 THE COURT: No objection, Mr. Starnes?

22 MR. STARNES: No objection, Your Honor.

23 THE COURT: It's admitted without objection.

24 BY MR. BULSA:

25 Q. State's Exhibit No. 24, can you describe to the jury

1 what this would show?

2 A. This was 641 -- 674 Clinton Church Road in Aiken. And
3 I believe that was -- I'm not sure. If I remember
4 correctly, but the uncle's house, and it had a barn in the
5 back. And also off the back corner was the site where we
6 found the burial site.

7 Q. Can you step down here, if you would?

8 A. Yes, sir.

9 (Witness off the witness stand)

10 Q. Step to the side so all the jury could see.

11 If you would point to where you would come in on this
12 property off the roadway.

13 A. We came in through this area here.

14 Q. Okay.

15 A. And this is the residence.

16 And the barn that was behind, or to the side of the
17 residence.

18 And in the back was the -- what looked like disturbed
19 dirt or plain there where nothing was growed.

20 Q. And what is this property up here?

21 A. Okay. That must be the uncle's residence there.

22 Q. And --

23 A. 674.

24 Q. This home back behind it, did that appear to be lived
25 in at the time?

1 A. I can't -- I can't remember about that house there.

2 Q. Okay. And did you go directly to this scene?

3 A. We were called. We were off that day. I think it was
4 Memorial Day, and we were called, and we went stood by,
5 close by, until they got a search warrant. And when they
6 obtained that, that's the first place we went.

7 Q. Okay. Were you briefed at this scene about what?

8 A. We were briefed at the scene. They said we were
9 looking for two missing people. Looking for a burial site.

10 Q. You can have a seat back up there.

11 (Witness back on the witness stand)

12 (Photograph marked as State's Exhibit No. 25 for
13 identification).

14 (Photograph marked as State's Exhibit No. 26 for
15 identification)

16 BY MR. BULSA:

17 Q. Let me show you what's been marked as State's Exhibits
18 25 and 26. Can you identify those for us?

19 A. Yes, State's Exhibit No. 25 and 26 is a photograph.
20 One is a close-up and one is a little bit further away of
21 the disturbed area and the bare dirt area behind the block
22 house.

23 Q. Do those pictures accurately depict what you found on
24 May 26th, 1996?

25 A. Yes, it does.

1 MR. BULSA: Your Honor, I will move these into
2 evidence, State's 25 and 26.

3 THE COURT: Has Mr. Starnes seen those?

4 MR. BULSA: Yes, sir, he has.

5 THE COURT: Show him.

6 Any objection?

7 MR. STARNES: No objection.

8 THE COURT: They are admitted without objection.

9 BY MR. BULSA:

10 Q. Just to give the jury an understanding of what you
11 found. Did you have an idea what you were looking for?

12 A. Yes, we were told it was missing persons involved and
13 we were told that it was a burial site, so -- and they said
14 it was in close proximity behind the barn or behind that
15 shed, or whatever. And we were basically just looking for
16 disturbed dirt or a bare area in the ground.

17 Q. And this is what you saw?

18 A. That's what we found first, yes, sir.

19 Q. Now, what did you do when you found that area?

20 A. Well, of course, we took photographs first. You know,
21 we weren't positive that was the area that they were at.

22 We went over and went over with a metal probe. It's
23 just a -- all it is is a metal rod with a T handle to see if
24 the dirt was soft or if it was hard, and we found that it
25 was soft in some areas and a little bit harder in other

1 areas.

2 Q. Do you recall how long you had to search for an area?

3 A. It wasn't long. I don't know the exact time, but we
4 weren't there long when we found that.

5 Q. Okay. And what did you do once you determined that it
6 was a possible burial site?

7 A. After we took the pictures, we started -- you know,
8 gotten the shovels and started digging and noticed that the
9 ground was loose. Started hitting something hard. It felt
10 like concrete to me. I'm not sure what it was, but it felt
11 like a piece of concrete. And started digging through that.
12 Pulled that up. I think it -- I don't remember the exact
13 dimensions, but it was like two or three feet by five feet,
14 or something like that, or maybe smaller than that. I'm not
15 sure.

16 Q. Do you remember how far down you had to dig?

17 A. I'm not sure. It wasn't very far when we hit that.

18 Q. It could have been more than two feet?

19 A. I would think around two feet. I don't think it was
20 too much more than that.

21 Q. Okay. You started digging and you hit what you thought
22 was concrete and then what happened?

23 A. We flipped it over. And embedded in it was a bone,
24 like -- it looked like a leg bone to me. And I think, if I
25 remember correctly, there was a shoe, a tennis shoe of some

1 type and it had a bone in it or something in it. I assumed
2 it was a foot. And, you know, took pictures of that.

3 You know, we take it step by step as we go, you know.
4 You find something, you take a picture of it. You find
5 something else, you take a picture it.

6 So we dug on further until we located the victims.

7 Q. And how much further below the concrete did you have to
8 dig?

9 A. I don't remember exactly. A foot or so.

10 Q. Okay. And was there any other substance, like lime?

11 A. There was a white -- a white powdery substance mixed in
12 the dirt. And, you know, I'm not sure to this day what that
13 was. Somebody said at the scene it was lime, but I don't
14 know if that's what it was or not.

15 Q. And how were the bodies positioned in that grave?

16 A. They were very, very decomposed. I think it had been
17 four or five months. The smell was terrible, as you can
18 imagine, but they were wrapped in something, like a blanket,
19 or a sheet, or something something. And it appeared that
20 one -- you know, they were head to toe. One of them's head
21 was at the other one's foot.

22 Q. Could you tell there were two bodies there?

23 A. Yes.

24 Q. Was there any attempt to identify them at the scene?

25 A. No, they were so decomposed, they were almost fused

1 together, is what it looked like to me. So it was -- it was
2 a task in itself just to get them out of the hole together
3 because they were falling apart. They were so decomposed,
4 that pieces were falling off as we were trying to pick them
5 up.

6 Q. Did you call anybody in particular to help remove the
7 bodies?

8 A. Yeah, the coroner was on the scene, so he was actually
9 in charge of, you know, removing the bodies. So if I
10 remember correctly, we took a sheet and tried to, you know,
11 wedge it under them so that they would stay together, you
12 know.

13 Q. Why did you do that?

14 A. Just in case, you know, it was any evidence. You know,
15 a bullet or anything would fall out, you would have it all
16 together whenever it went to the autopsy. The pathologist,
17 you know, that's the way he likes it all, everything
18 together. So that's why we tried to wedge that sheet up
19 under them so that we could keep them together so they could
20 be transported together like that.

21 Q. Okay. And is it safe to say that you took great care
22 in how you handled the bodies?

23 A. We tried, yes, sir.

24 Q. Okay. And was recovery, did that take place all in one
25 day?

1 A. Yes, sir. It was late that night when we got through
2 with it.

3 Q. So this was the first scene that you went to. Did you
4 go anywhere else after that?

5 A. Yes, sir, we went to a residence in Pelion. I believe
6 it was Mr. Starnes house in Pelion, to process it.

7 Q. And when did you go there?

8 A. We went that night, but there was a thunderstorm, a bad
9 storm, while we were digging the bodies up, and there was no
10 power at the house. And we thought we would wait until
11 daylight to where we would see better and look for evidence
12 better. We secured it with a Lexington County deputy
13 remaining on the scene while we went and took all the
14 evidence back -- or some of the evidence back from the grave
15 site and then we came back in the morning.

16 Q. Did you get a search warrant for Mr. Starnes'
17 residence?

18 A. Lexington County did, yes, sir.

19 Q. Okay. So Lexington County was still in charge, but you
20 were handling the crime scene for them?

21 A. Yes, sir.

22 Q. Okay. Now, were you -- did you have any idea about
23 when the crime had occurred?

24 A. Just from listening to the investigators and listening
25 to what they said about the witnesses and all, we thought it

1 was four or five months, back in January, and this was in
2 May when we were there.

3 Q. Did you have any -- what was the purpose of going to
4 Mr. Starnes residence five months later?

5 A. It was my understanding that that's where the crime was
6 committed, possibly, so we were going there to look for
7 evidence.

8 Q. And is that unusual to go that late after the crime?

9 A. It is unusual. I mean, ideally you would like to go
10 right after the crime is committed, and ideally you would
11 like to go when the scene is undisturbed. And in this case
12 it had been four or five months and someone had lived there
13 for that -- you know, that amount of time, so --

14 Q. Explain to the jury so they may have an understanding,
15 but ideally why is it best to go that soon after the crime?

16 A. Well, you want to do a crime scene reconstruction, you
17 know, basically, and you want to look for evidence
18 pertaining to this crime. And the best way to do that is go
19 as quickly as possible, if the scene is undisturbed. The
20 evidence still there, the blood may still be on the floor or
21 on the wall, or the bullet holes may be still in the wall.
22 The casings from the gun may have fallen on the floor.

23 But in a case like this, when it's been so much time
24 and someone has lived there, we don't know if the carpet has
25 been changed. We don't know if the holes has been patched.

1 We don't know if the stuff had been picked up. We don't
2 know if the walls has been cleaned, you know, with the blood
3 on them. There is so many variables, you just -- it's
4 better to go as quickly as possible in a scene that has been
5 secured just so you can get the most evidence that you can.

6 Q. If the body had been there -- if you had responded the
7 day of the crime, the bodies had been there, could you have
8 done anything to determine whether they had potentially
9 handled a weapon?

10 A. Yes.

11 Q. What?

12 A. There is a gunshot residue kit that you can do on their
13 hands called a GSR kit and it's done by us or a serologist,
14 somebody that's on the scene that's helping us. And that
15 just tells whether they either fired a gun or handled a gun
16 that had been fired. That's something that we could have
17 done.

18 We could have also fingerprinted them, the bodies.
19 They were too decomposed, you know, that late to do anything
20 with fingerprints, but we could have fingerprinted them to
21 see if they had handled one of the guns, or a gun at the
22 scene, or if they had been in a certain room. We could have
23 noted the position of the bodies. We could have possibly
24 did a little better than finding evidence, as far as crime
25 see reconstruction and that kind of thing.

1 MR. BULSA: Beg the court's indulgence.

2 (Off the record)

3 (Back on the record)

4 BY MR. BULSA:

5 Q. Did you photograph this house?

6 A. Yes, sir.

7 Q. What was the purpose of photographing it?

8 A. Just to document what it looked like when we got there
9 and, if possible, to photograph even any evidence, if we
10 found any.

11 (Photograph marked as State's Exhibit No. 27 for
12 identification)

13 (Photograph marked as State's Exhibit No. 28 for
14 identification)

15 (Photograph marked as State's Exhibit No. 29 for
16 identification)

17 (Photograph marked as State's Exhibit No. 30 for
18 identification)

19 (Photograph marked as State's Exhibit No. 31 for
20 identification)

21 (Photograph marked as State's Exhibit No. 32 for
22 identification)

23 (Photograph marked as State's Exhibit No. 33 for
24 identification)

25 (Photograph marked as State's Exhibit No. 34 for

1 identification)

2 (Photograph marked as State's Exhibit No. 35 for
3 identification)

4 BY MR. BULSA:

5 Q. I'm going to show you a series of photographs.

6 MR. STARNES: Your Honor, if I may.

7 MR. BULSA: All I'm going to do is get him to
8 identify them.

9 THE COURT: He's going to get him to see if he can
10 identify them, Mr. Starnes.

11 BY MR. BULSA:

12 Q. State's Exhibit No. 27 through 35 for identification.
13 If you would look at those and see if you recognize those.

14 A. Witness viewing photographs)

15 Yes, sir, I do.

16 Q. Do those appear to be photographs that you took of this
17 residence on May 28th of 1996?

18 A. Yes, sir.

19 Q. They are accurate depictions of what you saw that day?

20 A. Yes, sir.

21 Q. And you went to search for evidence?

22 A. Yes, sir.

23 THE COURT: Any objection, Mr. Starnes?

24 MR. STARNES: I'm sorry?

25 THE COURT: Any objection to these being admitted?

1 MR. STARNES: No objection.

2 THE COURT: Admitted without objection.

3 MR. BULSA: Thank you.

4 BY MR. BULSA:

5 Q. Agent Crimminger, I'm going to go through these on the
6 overhead.

7 Starting with State's Exhibit No. 35, is that the
8 residence on Forts Pond Road that you went to?

9 A. Yes, sir, it is.

10 Q. And you went to process that house?

11 A. Yes, sir.

12 Q. All right. Was there anybody there when you got there?

13 A. A Lexington County deputy that was securing it
14 overnight for us, and there was several investigators of
15 Lexington County, but not on the inside of the house.

16 Q. Okay. Now, you went there May 28th --

17 A. Yes, sir.

18 Q. -- is that right?

19 A. Yes.

20 Q. And you are looking for evidence of a crime that took
21 place on January the 8th?

22 A. Yes, sir.

23 Q. Do you have any idea what you might find?

24 A. No idea at that point.

25 Q. Okay. Some of these pictures -- you took a variety of

1 pictures. Let me start with State's Exhibits No.32. Go to
2 State's Exhibit No. 32. What is that supposed to depict?

3 A. That's just the bedroom and it's just from a different
4 angle. We try to go in each room and go from each corner
5 and show back. It's just an overall of the bedroom showing
6 the entrance to the bedroom.

7 Q. All right. Is there any particular reason why you took
8 that picture?

9 A. Just an overall picture.

10 Q. All right. This is State's Exhibit No. 31.

11 A. That's also an overall picture. It's just from a
12 different angle of that same bedroom.

13 Q. Okay. Did you have information about anything
14 happening in that bedroom?

15 A. We had information there was a crime in that house, and
16 that's the information that we had.

17 Q. Okay. So you were photographing all the rooms?

18 A. We photographed all the rooms. We tried to, yes, sir.

19 Q. Okay. And State's Exhibit No. 29, what's that supposed
20 to show us?

21 A. There was a discolored area on the carpet on the floor,
22 and that's at the corner of that bed of that same bedroom
23 that -- of the previous photograph.

24 Q. And what was the significance about that?

25 A. Just -- we -- it was just discolored carpet and we

1 didn't know if it was blood or what, so we collected that
2 for evidence.

3 Q. Had you arrived on January the 9th, 1996, could you
4 have possibly discovered if that were blood?

5 A. Yes, sir.

6 Q. How so?

7 A. Well, it would have been a lot more fresh, and there
8 might have been more blood on the walls. There might have
9 been blood on that -- you know, if it occurred in there, it
10 could have been on the bedspread. It could have been in
11 different areas, but with that much time going by, you are
12 kind of limited to do what you can do.

13 Q. Do you remember any other discolorations of the carpet
14 on May the 28th?

15 A. The only one I remember right now is the one in the
16 bedroom.

17 Q. And that was this reason you took the picture?

18 A. Yes, sir.

19 Q. Because what's -- because it was so far later, do you
20 know if that was important or not?

21 A. I didn't know at the time. I just saw a discolored
22 piece of carpet. And, you know, blood is not my area of
23 SLED. At that time it wasn't. And we cut it up and sent it
24 to a different department, to our serology department, form
25 them to analyze it and tell us whether, first of all, if

1 it's blood. And then if it's animal or human. And then
2 they can type it after that.

3 Q. Okay. Had somebody not soaked that blood up or tried
4 to clean it up, would you have been able to make it more
5 definitive, gain more definitive information?

6 A. I would think so, but that's -- you know, that's not my
7 area, but I would think the serologist could answer that
8 better, but I would think so.

9 Q. Okay. Now, I show you State's Exhibit No. 28. What is
10 that?

11 A. That's a hole in the wall, and I believe that's the
12 wall that's leading into that bedroom.

13 Q. That's what's shown in State's Exhibits 31?

14 A. Yes, sir, I think it's that wall that's going in where
15 that mirror is.

16 Q. Okay. So your memory is is that this hole in State's
17 Exhibit 28 was behind that mirror?

18 A. Yes, sir.

19 Q. Do you know what kind of hole that was?

20 A. No, you assume -- a shooting took place, you assume
21 it's bullet holes, but looking at it, looking at the size of
22 it, looking at the time that's gone by and what's been done
23 to the hole, you can't conclude if it's a bullet hole or
24 not. You can assume it is, but --

25 Q. Did you try to take any dimensions of the size of that

1 hole?

2 A. I photographed that hole, I believe, with some scale
3 tape to show the size of that hole.

4 Q. Let me show you State's Exhibit No. 30. What does that
5 depict?

6 A. That's a hole in the closet in that same bedroom.

7 Q. Okay. State's Exhibit 31, that shows the mirror and
8 closet. You tell me that other hole is the back side of the
9 hole from the mirror?

10 A. Yes, sir.

11 Q. Let me show you State's Exhibits 33 and 34. What do
12 those show us, please?

13 A. These are just close-ups of those holes and it's got
14 the scale tape on them.

15 Q. And those are photographs that you took?

16 A. Yes, sir, I took them.

17 Q. Okay.

18 MR. BULSA: Your Honor, we would move those into
19 evidence. Mr. Starnes has seen them.

20 MR. STARNES: No objection, Your Honor.

21 THE COURT: They are admitted without objection.

22 MR. BULSA: For the record State's Exhibit No. 33
23 and 34.

24 BY MR. BULSA:

25 Q. First State's 34, zooming in, if I can.

1 Why do you put scale tape on them?

2 A. Just to show the size of them.

3 Q. What's the size of that hole?

4 A. It appears to be little bit over an inch, inch and a
5 half.

6 Q. What size bullet makes that hole?

7 A. 12-gauge slug, probably.

8 Q. And it would?

9 A. Maybe.

10 Q. Would a .38 make that size hole?

11 A. Not likely, no, sir.

12 Q. About how big of a hole would a .38 make?

13 A. I'm not sure on the dimensions of a 38-caliber bullet,
14 but it would not be an inch and a half.

15 Q. All right. State's Exhibit 33. Do it this way.

16 What's the size of that hole?

17 A. It appears to be about the same size, roughly an inch
18 and a half.

19 Q. Looking at how that wallboard is around that picture,
20 does that appear to be a bullet hole?

21 A. It doesn't appear to be, no, sir.

22 Q. Okay. So from your review of this crime scene, your
23 experience, can you draw any conclusions from that?

24 A. That could have been a bullet hole. It is possible,
25 but when five months have gone by, I don't know if somebody

1 tried to dig that bullet out, routed out with a knife and
2 pull it out, or to look to see. That's what we do if we
3 find a bullet hole. After we photograph it and scale tape
4 it, then we start digging and we photograph while we are
5 digging to try to get that bullet out of there. And then
6 that's what the hole looks like after we have dug through
7 it. But that -- you know, that might have been a bullet
8 hole at one time.

9 Q. Would it be important to have the exact dimensions of
10 the hole?

11 A. Yes.

12 Q. To help determine the type of caliber weapon?

13 A. It could, but it would be so many different -- you
14 know, I'm not a firearms expert, but smaller bullets are so
15 close together in size, I don't know if you could tell the
16 exact caliber with a hole.

17 Q. Okay.

18 A. But the importance of the hole being smaller, you can
19 take a metal probe or a wooden probe. This is a wooden
20 dowel. And we go to a scene like that and we are doing a
21 crime scene reconstruction, we will stick that dowel through
22 until it either stops or goes through another hole on the
23 other side. We will step back and we can see an angle. And
24 we try to pick a dowel that's the same size as that hole.

25 In that case like this, you put one in and it's going

1 to move. And there are so many different angles, it just
2 wasn't -- with that size, there was just nothing that we can
3 do with it.

4 Q. So assuming it was a .38, if we had information a .38
5 was used, we put a dowel the size of a .38, that would be
6 much smaller than that hole?

7 A. Yes, sir.

8 Q. So I think you are telling the jury that you could move
9 that dowel in any different directions?

10 A. There would be so many different scenarios of which way
11 it could come from, because the hole is so big and it's -- a
12 suspected hole, a bullet hole was small.

13 Q. So can you -- could you tell where the shot came from?

14 A. No, sir.

15 Q. Had you been there on January the 9th, would you have
16 had a better opportunity to find out where the shot came
17 from?

18 A. If that was a bullet hole, and it was the size of a .38
19 caliber, or the appropriate caliber, we would have had a lot
20 better chance.

21 Q. Had it not been tampered with?

22 A. Yes, sir.

23 Q. Now, State's Exhibit No. 27 is a picture of what?

24 A. That's a dumpster that was behind the house.

25 Q. Why did you take a picture of that?

1 A. We were going to search inside. We did search inside.
2 I physically climbed inside that dumpster and went through
3 all that stuff looking for evidence.

4 Q. And was there anything unusual about that dumpster?

5 A. Some of it was I guess what you call fresh garbage, and
6 a lot of it was burnt.

7 Q. Okay. When you say burned, does it appear somebody had
8 made a fire in the bottom of it?

9 A. Yes. Some of the trash had been burned, yes, sir.

10 Q. Somebody burned trash in that dumpster?

11 A. Yes, sir.

12 Q. I'm going to show you what's been marked as State's
13 Exhibit No. 8, a diagram of that residence. Does the layout
14 of that appear accurate?

15 A. Yes, sir.

16 Q. If you had been able to arrive the day after the
17 incident and found a fresh scene, do you think you could
18 have made a determination as to what might have occurred
19 inside?

20 A. We would have certainly had a better chance at it.

21 Q. Maybe could have told where the shooting had actually
22 occurred?

23 A. We would have had a better chance at it, yes, sir.

24 Q. About how long did you stay at that scene?

25 A. We arrived at nine a.m. and left at 1:30 p.m..

1 Q. What were those times again?

2 A. 9:30 a.m. until one p.m., I believe.

3 Hold on just a second.

4 Nine a.m. until 1:30 p.m..

5 Q. Okay.

6 A. The same day.

7 Q. Is that a long time to spend at a crime scene?

8 A. That's not. You know, I have spent longer on a crime
9 scene.

10 Q. If that would have been a fresh crime scene, how long
11 would you have been there?

12 A. It would have been longer. You know, depending upon
13 the evidence what was there and what we had to do.

14 Q. Okay. All right. Did you process anything else in
15 relation to this case?

16 A. Some vehicles.

17 Q. Did you process a particular Chevy Caprice?

18 A. Yes, sir.

19 Q. Do you remember where you processed that vehicles?

20 A. At the SLED VPA. It's the vehicle processing area of
21 SLED.

22 Q. So somebody towed it to SLED to process it?

23 A. Yes, sir.

24 MR. BULSA: Get these marked.

25 (Photograph marked as State's Exhibit No. 36 for

1 identification)

2 (Photograph marked as State's Exhibit No. 37 for
3 identification)

4 (Photograph marked as State's Exhibit No. 38 for
5 identification)

6 (Photograph marked as State's Exhibit No. 39 for
7 identification)

8 (Photograph marked as State's Exhibit No. 40 for
9 identification)

10 (Photograph marked as State's Exhibit No. 41 for
11 identification)

12 BY MR. BULSA:

13 Q. Agent Crimminger, let me show you another series of
14 photographs, State's 35 through 41. Do you recognize those?

15 A. (Witness reviewing photographs)

16 Yes, sir, those are photographs that I took.

17 Q. And do they show a Chevrolet Caprice?

18 A. Yes, sir.

19 Q. And do you have records that show who this was
20 registered to?

21 A. No, sir, I don't.

22 Q. Okay. You don't know who the owner was?

23 A. No, sir, I don't know.

24 MR. BULSA: I would move these into evidence.

25 MR. STARNES: No objection.

1 THE COURT: They are admitted without objection.

2 BY MR. BULSA:

3 Q. What were you looking for in this vehicle, State's
4 Exhibit No. 35?

5 A. We were looking for evidence pertaining to this crime.
6 It was our understanding that the victims were killed in one
7 area and transported to another area. They had to get there
8 somehow, so we were looking for evidence, to include blood,
9 or fingerprints, or anything pertaining to this crime in
10 that vehicle.

11 Q. Okay. Did you find anything out of this vehicle?

12 A. We found I think a 38-caliber cartridge case -- or a
13 cartridge out of the glove box. I had a serologist with me
14 that did the blood part. I don't know if she found
15 anything. I don't think she did, but she will have to
16 answer that.

17 Q. State's 40, does that show the glove box?

18 A. Yes, sir.

19 Q. What do we see in that picture?

20 A. That's the 38-caliber cartridge that we found in the
21 glove box.

22 Q. Okay. Just for the jury's view, State's 41 is another
23 view of the interior.

24 And I have three pictures. I'll show one to you as
25 State's 39 on there. What is that area?

1 A. That's the trunk area of the Chevy Caprice.

2 Q. Does anything appear unusual about that picture?

3 A. The fact that the liner had been removed.

4 Q. The liner. By liner you mean the carpet?

5 A. The carpet lining, yes, sir.

6 Q. I'm about finished, Agent Crimminger.

7 I want to take you back to this burial scene depicted
8 in State's 24.

9 When you testified about seeing and hitting the
10 concrete and overturning it, finding the two bodies
11 intertwined, how many shoes did you find at the scene, do
12 you recall?

13 A. I can remember one, but -- I don't remember the exact
14 amount, but I remember one because it was by itself.

15 Q. That was one that came up with the concrete?

16 A. Yes, sir.

17 Q. So your memory, you don't remember if all four went to
18 the coroner?

19 A. I don't remember.

20 Q. Was any form of identification found in the burial
21 site?

22 A. Not by us, no, sir.

23 Q. So when you lifted the bodies, nothing fell out?

24 A. No, sir, body parts, but nothing.

25 Q. I believe I may have asked you this, but were you --

1 were the bodies in any condition for you to be able to
2 search for items of that nature, like wallets to help
3 identify them?

4 A. Not in their condition. They were so decomposed, they
5 were almost stuck together. There was liquid dripping out
6 of them and that kind of thing.

7 Q. Do you remember if there was any effort to identify
8 anything?

9 A. Not at the scene I don't remember.

10 Q. Okay. And who did you turn the bodies over to?

11 A. To the coroner.

12 Q. To be transported to the pathologist?

13 A. Yes, sir.

14 Q. Thank you, agent. Answer any questions Mr. Starnes may
15 have.

16 CROSS EXAMINATION BY MR. STARNES:

17 Q. How are you today, Agent Crimminger?

18 A. I'm doing good.

19 Q. Did you say that you were a helicopter pilot?

20 A. Yes, sir.

21 Q. With the South Carolina Law Enforcement Division?

22 A. Yes, sir.

23 Q. Pretty exciting.

24 Agent Crimminger, when you went out to the house at 375
25 Forts Pond Road, did you have an opportunity to take

1 measurements of the rooms or anything?

2 A. Is that the house in Aiken -- in Pelion?

3 Q. Yes, sir.

4 A. We didn't take any measurements of the rooms.

5 Q. You didn't take any measurements there?

6 A. No.

7 Q. Kind of what did y'all do, if you would? Tell the jury
8 what all you did out there, other than take photographs.

9 A. We took photographs. We dusted for fingerprints,
10 looked for blood. Looked for evidence, basically.

11 Q. Did you draw any diagrams of the house or anything?

12 A. We drew a diagram of the inside of the house, yes.

13 Q. Would you recognize that diagram?

14 A. Yes, sir.

15 MR. STARNES: May I approach the witness, Your
16 Honor?

17 THE COURT: Yes, sir.

18 BY MR. STARNES:

19 Q. Does that look like your diagram, Agent Crimminger?

20 A. Yes, sir. Either mine or Bret Bakers', an agent
21 assisting me on the scene.

22 (Pencilled Drawing marked as Defendant's Exhibit
23 No. 8 for identification)

24 BY MR. STARNES:

25 Q. Agent Crimminger, referring to --

1 THE COURT: Let me ask you first, did you get it
2 admitted?

3 MR. STARNES: I'm sorry. I marked it. I'll show
4 it.

5 MR. BULSA: No objection.

6 MR. STARNES: No objection.

7 THE COURT: Admitted without objection.

8 MR. STARNES: Thank you, Your Honor.

9 BY MR. STARNES:

10 Q. Agent Crimminger, referring to Defendant's Exhibit No.
11 8, do you recognize the handwriting right here?

12 A. Yes.

13 Q. Do you recognize these initials right here?

14 A. That's my initials.

15 Q. That's your initials?

16 A. Yes.

17 Q. And Agent Crimminger, did you draw this diagram?

18 A. It might have been Brett Baker. His initials are up
19 there also. And -- one of us drew it. I think he might
20 have draw that. That's doubtful, but it was under my
21 supervision. I was the agent in charge and we usually take
22 somebody to assist us. We will divvy up the duties.
23 Somebody will draw. Somebody will take pictures. Somebody
24 will dust for fingerprints. We just divvy up the duties
25 while we are there.

1 Q. Okay. Agent Crimminger, the position of what's marked
2 as bed here in the bedroom, was that the way the bed was in
3 the bedroom when you took those photographs?

4 A. As far as I'm concerned, it is. As far as I can
5 remember.

6 Q. As far as you can remember?

7 A. Yes.

8 Q. Agent Crimminger, referring to Defendant's Exhibit No.
9 6, do you recognize that diagram?

10 A. No, sir.

11 Q. That is nothing that you drew or anything?

12 A. No.

13 Q. Agent Crimminger, I believe you previously stated that
14 a crime had taken place on 375 Forts Pond Road?

15 A. Yes.

16 Q. Were you at 375 Forts Pond Road on January 8th when
17 this shooting happened?

18 A. No, sir.

19 Q. Can you specifically tell this jury that a crime
20 happened?

21 A. No, sir.

22 Q. As an agent with the South Carolina Law Enforcement
23 Division, do you carry a firearm?

24 A. Yes, sir.

25 Q. Agent Crimminger, when you went to the property down at

1 Aiken County, how did you locate the burial site?

2 A. Just visually. Just searching around the property.

3 Q. And how did you do that?

4 A. We walk around the area and we -- it was told to us
5 that this is a possible site where they were buried. We
6 searched the area until we found a place that was the most
7 likely place where there was some bare dirt, bare ground.

8 Q. Did you use a tool to try to locate anything?

9 A. When? When we first got there?

10 Q. Yes, sir.

11 A. No, not -- not a tool, no, sir.

12 Q. Did I hear you say that you used a metal probe to probe
13 the ground?

14 A. Yes, sir, after we found that site, we did, yes.

15 Q. What was the size of this metal probe that you used to
16 probe the dirt?

17 A. I don't remember. Four foot, maybe.

18 Q. Four foot?

19 A. Something like that.

20 Q. And when you are probing the dirt, how far are you
21 probing to?

22 A. We are just checking the top to see how soft it is.
23 We -- you know, we are just seeing if it's an area that
24 shows if the area is disturbed or not.

25 Q. And you are looking to see if some digging had taken

1 place?

2 A. Yes, sir.

3 Q. And if the dirt was harder in some places, then maybe
4 it wasn't any digging taking place? Is that -- would that
5 be correct?

6 A. Well, you have to look at the totality. You are
7 looking at bare dirt. If you go to a place that's got a lot
8 of grass in it and it's a little bit harder, you probably
9 wouldn't want to dig there, but the bare dirt with the soft
10 dirt, that's a good place to start.

11 Q. Agent Crimminger, referring to State's Exhibit No. 25,
12 did you use a probe to probe the area around here?

13 A. Yes.

14 Q. Did you stake the area off to mark where this burial
15 site was?

16 A. No.

17 Q. Did you use a metal detector when you excavated the
18 dirt and scanned for evidence?

19 A. Yes.

20 Q. Did you find any evidence in the dirt?

21 A. No.

22 Q. How long did it take to excavate this burial site?

23 A. Hold on just one minute and I will tell you how long we
24 were at the scene.

25 We were called at one o'clock. And then we were on

1 standby waiting on a search warrant. Time of arrival was
2 4:30 p.m., and we were -- we left at 10:30 p.m..

3 Q. Just a couple more questions, Agent Crimminger.

4 This -- the probe that you used at this burial site,
5 how big around was it that you used? In other words, the
6 probe that you are putting into the ground, is it like a T?

7 A. It has a T handle, a little plastic T handle.

8 Q. So you were at Aiken County using that probe into the
9 ground on May the 27th, when you were excavating this burial
10 site here, is that correct?

11 A. Yes.

12 Q. Would that probe have been as big around as a pen?

13 A. I don't remember. I would -- it's kind of like about a
14 car antenna. Like a radio antenna on a car. In between
15 that and that pen, I guess. I don't remember. I don't
16 remember the exact size. I don't remember.

17 Q. Is it possible that it could have been as big around as
18 a .38 copper jacket?

19 A. I don't know.

20 Q. You are not sure?

21 A. I don't know. I can't -- I can't answer that.

22 Q. So you have never measured it, the circumference of the
23 probe --

24 A. No.

25 Q. -- and circumference of a .38 metal jacket?

1 A. No.

2 Q. That photographs that you took of the Chevrolet
3 Caprise, were you aware that the car had been wrecked?

4 A. No, sir.

5 Q. Were you aware the car wasn't even operable?

6 A. No, I don't remember. No, sir.

7 Q. While you were processing the house, did you try to
8 start the vehicle?

9 A. No.

10 Q. Than you, Agent Crimminger.

11 MR. BULSA: Briefly in reply, Your Honor.

12 REDIRECT EXAMINATION BY MR. BULSA:

13 Q. Agent Crimminger, Mr. Starnes talked about the use of a
14 probe. At what point did you use the probe --

15 A. At the --

16 Q. -- at the site?

17 A. At the very beginning.

18 Q. At the very beginning?

19 A. Yes.

20 Q. And what were you feeling for?

21 A. We were just trying to find an area of disturbed dirt
22 or softness of the dirt is all we were looking for. And
23 once we found the area was soft, that's where we said, you
24 know, this is the most likely place to start digging.

25 And we have gone places and had to dig somewhere else.

1 This was the most likely place, this is where we started.

2 Q. How far did the probe go in the ground?

3 A. Less than a foot.

4 Q. Okay. So you would not even have hit the concrete that
5 was over these bodies?

6 A. We didn't -- we hit the concrete with a shovel.

7 Q. Okay. So the probe could in no way have punctured the
8 bodies?

9 A. That's not likely, no, sir.

10 Q. Was there any part of the bodies outside of the
11 concrete?

12 A. No, sir.

13 Q. Okay. So the bodies were protected by a layer of
14 concrete?

15 A. It appeared to be concrete, yes.

16 Q. What you thought was concrete?

17 A. Yes.

18 Q. Some hard substance?

19 A. Yes.

20 Q. That a probe couldn't go through?

21 A. Right.

22 Q. In fact, your shovel didn't even go through it, did it?

23 A. No. We had to pick it up with the shovel, pry it up
24 with a shovel and physically move it off of it.

25 Q. At what point did you use the metal detector?

1 A. At the very end.

2 Q. Was this after the bodies were removed?

3 A. We ran them over the bodies briefly. And then as they
4 moved them onto the sheets, we put them over the bodies. We
5 didn't get any hits, and then we did the bare dirt where the
6 bodies had been laying.

7 Q. So we got a hole in the ground where these bodies had
8 laid?

9 A. Yes, sir.

10 Q. I'm trying to get a picture of this. You are out there
11 with a metal detector --

12 A. Yes.

13 Q. -- searching that whole area?

14 A. Yes, sir.

15 Q. For what purpose?

16 A. Anything of evidentiary value, especially bullets,
17 cartridge casings, that kind of thing.

18 Q. Trying to be thorough in collecting evidence from that
19 scene?

20 A. Yes, sir.

21 Q. Okay. Mr. Starnes talked about that being in Aiken
22 County. The house that you searched, was that -- that was
23 in Lexington County?

24 A. Right, yes, sir.

25 Q. And he said -- he asked you specifically if you had

1 been at the house on January the 8th. Do you remember that
2 question?

3 A. Yes, sir.

4 Q. Of course you weren't?

5 A. Absolutely not.

6 Q. Were you there January the 9th, after the crime
7 happened?

8 A. No, sir.

9 Q. And had you been there on January the 9th --

10 Well, he asked you a question about whether you could
11 tell that a crime had occurred at 375 Forts Pond Road. Do
12 you remember that question?

13 A. Yes, sir.

14 Q. And your response was?

15 A. I didn't know.

16 Q. You didn't know on May 27th, or May 28th, when you were
17 there?

18 A. No, no way.

19 Q. Is that right?

20 A. Yes.

21 Q. If you had been there on January the 9th, 1996, could
22 you have told whether there was a crime?

23 A. It would have been more likely, especially two murders
24 and two bodies there, I think there would have been a lot
25 more blood, a lot more evidence, I think.

1 Q. Thank you, agent.

2 RECROSS EXAMINATION BY MR. STARNES:

3 Q. Agent Crimminger, did you say two murders? Did I just
4 hear you say two murders?

5 A. Yes.

6 Q. And you weren't in that house on January the 8th?

7 A. Absolutely not, no, sir.

8 Q. And you can't tell these jurors what happened in that
9 house on January the 8th, 1996, can you?

10 A. I cannot, no, sir.

11 Q. You just told this jury two -- what was the word that
12 you used?

13 A. Murders. We were investigating a homicide. That's
14 what we were.

15 Q. A homicide.

16 Is a homicide a murder?

17 A. Yes, sir.

18 Q. Is murder killing someone premeditated?

19 MR. BULSA: I'm going to object to this. It's
20 argumentative.

21 THE COURT: I'm going to sustain the objection.

22 BY MR. STARNES:

23 Q. Agent Crimminger, I believe I heard you say it's not
24 likely that you would have probed and punctured those
25 bodies. Is that what I heard you say?

1 A. Right.

2 Q. Not likely?

3 A. Right.

4 Q. Are you one hundred percent sure, one hundred percent
5 sure -- when you were probing this site, can you tell this
6 jury one hundred percent sure that you didn't probe those
7 bodies?

8 A. I can't say one hundred percent, but I can say it's
9 unlikely.

10 Q. Thank you Agent Crimminger.

11 MR. BULSA: Nothing further.

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

14 MR. BULSA: We ask he be excused.

15 THE COURT: Any objection to him being excused?

16 MR. STARNES: Your Honor, we have a matter we
17 might need to take up. The hearing we had on the 1st and
18 Agent Crimminger was on vacation. I don't know if Your
19 Honor wants to take that up. I don't believe he really
20 would be necessary. It's up to the court.

21 THE COURT: Well, I'm -- I don't have total recall
22 of that, so maybe you better hang around a little bit. We
23 will make that determination.

24 MR. STARNES: Your Honor, can we approach?

25 THE COURT: Yes, please approach.

1 (Whereupon, the lawyers and the defendant
2 approached the bench for an off the record discussion)

3 THE COURT: All right. We will excuse Agent
4 Crimminger for now, but subject to recall if we need to get
5 in touch with you.

6 All right, let's take a short recess.

7 Mr. Foreman, ladies and gentlemen of the jury, we
8 will take a short recess at this time. I would ask you --
9 those of you that would like to smoke, if there are smokers
10 on there that would like to smoke during this break, it's
11 been a while, we will take about 10 or 12 minutes or so.
12 You may refresh yourselves during the break.

13 Please do not begin discussing the case. I'm
14 saying that a lot, but I need to do that, but go ahead.

15 (The following takes place outside the presence of
16 the jury panel)

17 THE COURT: All right, counsel, we will take about
18 ten minutes or so.

19 (Whereupon, proceedings were recessed)

20 (Whereupon, proceedings were reconvened)

21 (Poster Board Diagram marked as State's Exhibit
22 No. 42 for identification)

23 (Poster Board Diagram marked as State's Exhibit
24 No. 43 for identification)

25 (Autopsy Drawing marked as State's Exhibit No. 44

1 for identification)

2 (Autopsy Drawing marked as State's Exhibit No. 45

3 for identification)

4 (Autopsy Drawing marked as State's Exhibit No. 46

5 for identification)

6 (Autopsy Drawing marked as State's Exhibit No. 47

7 for identification)

8 (Whereupon, proceedings were recessed)

9 (Whereupon, proceedings were reconvened)

10 THE COURT: We are ready to proceed.

11 MR. STARNES: Yes, sir.

12 THE COURT: All right. Please bring the jury in.

13 (The following takes place in the presence of the
14 jury panel)

15 THE COURT: Ready to proceed.

16 MR. GOWDY: Yes, sir, Your Honor.

17 THE COURT: Please call your next witness, sir.

18 MR. BULSA: The State calls Robert Knight.

19 ROBERT KNIGHT, having been first duly sworn,

20 testified as follows:

21 THE CLERK: If you will have a seat and state your
22 name, spelling your last for the record, please.

23 THE WITNESS: My name is Robert Knight, last name
24 spelled K-N-I-G-H-T.

25

1 DIRECT EXAMINATION BY MR. BULSA:

2 Q. Good afternoon, Mr. Knight.

3 A. Good afternoon.

4 Q. Would you tell us what your occupation is?

5 A. I own a transportation company.

6 Q. And --

7 A. Or did at the time of this.

8 Q. What kind of transportation company?

9 A. A company -- I contracted with Lexington County to
10 transport their human remains.

11 Q. Okay. And Mr. Knight, back on May 28th of 1996, was
12 your company contracted to remove some bodies from Aiken
13 County?

14 A. It was May 27th.

15 Q. And do you remember about approximately where you went?

16 A. Yes, sir, it's right across Lexington County line into
17 Aiken, near the Edisto River.

18 Q. Was this kind of your specialty?

19 A. Yes, sir.

20 Q. Could you tell the jury what you found when you
21 responded to that area?

22 A. The coroner's office had called me to -- generally they
23 would call me to tell me to come to a scene and give me the
24 address. But on this occasion, since it was in another
25 county, he asked me -- I met them and followed them in to

1 the scene.

2 Q. And what was taking place when you got there?

3 A. They were unearthing a grave that had person or persons
4 in it at the time, is what I was told.

5 Q. And what did you do to help remove those bodies?

6 A. I examined -- they had unearthed the grave, and -- I
7 had body bags with me to put the remains in the bag, but
8 they wanted to take both remains out at the same time, so I
9 didn't have a bag big enough to hold both of them. So I
10 left and went back to my place of business and made a bag
11 big enough for both remains.

12 Q. And how is it that you actually removed the bodies from
13 the site?

14 A. I took had took -- taken some vinyl back with me,
15 and -- we had unearthed around the edge of the bodies and
16 rolled the plastic -- had some vinyl. Rolled it under and
17 then tilted the remains back and rolled the vinyl under and
18 picked them up out of the grave that way.

19 Q. Why did you use a technique like that?

20 A. For several different reasons, one of which the remains
21 had been there awhile and had decayed pretty bad. And to
22 keep them intact and to preserve that evidence.

23 Q. Okay. So you were trying to preserve what you could
24 from that scene?

25 A. Yes, sir.

1 Q. Were you concerned about any valuables that these
2 people may have had on them?

3 A. That wasn't part of my job. It was just to -- that
4 was -- that would have been done later at the autopsy.

5 Q. Okay. So when you transported, it was one big mass of
6 human remains?

7 A. Yes, sir.

8 Q. All right. And I imagine it was still pretty dirty?

9 A. Yes, sir.

10 Q. Did you create contracts for those?

11 A. I'm sorry.

12 Q. Did you have a contract of some sort that you created
13 in order to get paid?

14 A. Yes, sir.

15 Q. Do you have those with you?

16 A. Yes, sir, I do.

17 Q. Could you pull those out for me?

18 A. Yes, sir.

19 Q. Just take one from for each individual, if you would.

20 Can you separate them? I'm going to introduce them in
21 evidence, or try to.

22 A. Sure.

23 Q. After you have removed that staple, let me get them
24 marked, if I may.

25 (Knight Systems Form marked as State's Exhibit No.

1 48 for identification)

2 (Knight Systems Form marked as State's Exhibit No.

3 49 for identification)

4 MR. STARNES: No objection, Your Honor.

5 BY MR. BULSA:

6 Q. Mr. Knight, let you me get you to identify these and
7 then we will move them into evidence. State's Exhibit No.
8 48 and 49.

9 A. Yes, sir.

10 Yes, sir.

11 Q. Identify what those are for us.

12 A. It's a transportation slip for each remain. It has the
13 date of removal from the scene, where I actually picked them
14 up at, where I took them, who was there, what equipment I
15 used, what agencies were on the scene --

16 Q. Okay.

17 A. -- and the times.

18 Q. Okay.

19 MR. BULSA: I would move State's Exhibits 48 and
20 49 into evidence.

21 THE COURT: Admitted without objection.

22 MR. BULSA: They are without objection.

23 BY MR. BULSA:

24 Q. I'm going to direct your attention to the screen,

25 You have a listing for deceased on these. How are they

1 identified?

2 A. At the time I was told only that they were John Doe.

3 Q. You didn't know who you were transporting?

4 A. No.

5 Q. State's Exhibit 48. 49.

6 Okay. And down below there towards the bottom, it says
7 list of valuables.

8 A. Yes, sir.

9 Q. You show none?

10 A. Right.

11 Q. I believe this is same on State's Exhibit 48?

12 A. Yes, sir.

13 Q. In particular, do you recall in this case whether you
14 even looked for valuables?

15 A. The remains were in an advanced state of decomposition.
16 And even though I could tell some of it appeared to have
17 clothing, it was -- it was very nasty. And as a rule, they
18 generally go through the clothing when they separate -- do
19 the autopsy and go through and check for any valuables.

20 I didn't notice any.

21 Q. If you would have taken any valuables, what would you
22 have done with them?

23 A. I wouldn't have taken them. The coroner or deputy
24 coroner would have taken them off and taken them with him.

25 Q. You would have listed them and you would have shown

1 them going to the coroner?

2 A. Yes, sir.

3 Q. But in this case you list none, so none were taken from
4 them?

5 A. None was brought to my attention, and I didn't search
6 the bodies for any.

7 Q. So you put them in the bag?

8 A. Yes, sir.

9 Q. And transported them to where?

10 A. To Lexington Medical Center.

11 Q. And turned them over to?

12 A. To security in the morgue.

13 Q. And they stayed in the bag?

14 A. Yes.

15 Q. Was the bag secured in any way?

16 A. They were zipped up.

17 Q. Thank you.

18 MR. BULSA: That's all of I have.

19 MR. STARNES: If it please the court, Your Honor?

20 THE COURT: Yes, sir.

21 CROSS EXAMINATION BY MR. STARNES:

22 Q. How are you today, Mr. Knight?

23 A. Fine.

24 Q. Mr. Knight, have you had any training in the processing
25 and preserving of evidence?

1 A. No, sir.

2 Q. You have had no training?

3 A. No, sir.

4 Q. You contracted for the Lexington County coroner's
5 office back then?

6 A. Yes, sir.

7 Q. Were they aware -- I am they, was the Lexington County
8 coroner's office aware that you had no training in any
9 processing and preserving evidence?

10 A. Yes, sir.

11 Q. Okay. Did I understand correctly, Mr. Knight, when you
12 said the bodies were zipped up in a bag?

13 A. Yes, sir.

14 Q. Was there any evidence tape or any way to seal that bag
15 so nobody could tamper with anything?

16 A. No, sir. I don't recall any evidence tape on it
17 sealing it.

18 Q. So they were just zipped up and anyone could have
19 unzipped that body bag, is that correct?

20 A. Yes.

21 Q. And where did you take the bodies to after you left
22 Aiken County?

23 A. Straight to Lexington Medical Center.

24 Q. To Lexington Medical Center?

25 A. Yes.

1 Q. And did you have an opportunity the next morning to do
2 anything with those bodies?

3 A. Yes, sir.

4 Q. Tell the jury what you did with the bodies the next
5 morning.

6 A. I went to Lexington Medical Center and picked the
7 bodies up, the same bag, and took it to Newberry County
8 Memorial Hospital.

9 Q. The Newberry County Memorial Hospital?

10 A. Yes, sir.

11 Q. At the time that you received the bodies from Aiken
12 County and placed them into the body bag, was there any
13 documentation of a chain of custody on those bodies?

14 A. When you say I, I helped put the remains in the body
15 bag. I myself did not put them in by myself.

16 Q. Okay. Did you transport them?

17 A. I did.

18 Q. Was there a document reflecting a chain of custody on
19 that body bag?

20 A. I don't recall.

21 Q. You don't recall.

22 Was there a document reflecting the chain of custody
23 when you picked them up the following day from Lexington
24 Medical Center?

25 A. I don't recall.

1 Q. So you -- you received these bodies from Aiken County,
2 took them to the Lexington Medical Center, picked them up
3 the next day and then took them to Newberry for the autopsy,
4 that's correct?

5 A. Yes, sir.

6 Q. And at no time, from the time they left Aiken to the
7 time they got to Newberry, did you see any documentation
8 reflecting a chain of custody on those two bodies?

9 A. I don't recall seeing any.

10 Q. Thank you, Mr. Knight.

11 MR. STARNES: I have no further questions.

12 A. Yes.

13 MR. BULSA: Just briefly.

14 REDIRECT EXAMINATION BY MR. BULSA:

15 Q. Mr. Knight, did you observe whether the bags had been
16 tampered with in any way?

17 A. No, sir.

18 Q. Would you have been able to determine that?

19 A. Yes, sir.

20 Q. How many years have you been doing this?

21 A. 23.

22 Q. So why did you take them to Lexington County Hospital?

23 A. To place in a cooler until they could -- to keep them
24 cool until Dr. Sexton -- an appointment could be made with
25 Dr. Sexton to perform an autopsy.

1 Q. You kept them cool to help preserve evidence?

2 A. Yes.

3 Q. Were you there when Dr. Sexton opened the bags?

4 A. I, myself, took them to Newberry. I recall putting
5 them in the morgue. I don't recall being there for the bag
6 opening.

7 Q. Thank you.

8 MR. STARNES: Nothing further.

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

10 MR. BULSA: We ask he be excused.

11 THE COURT: Any objection?

12 MR. STARNES: No objection, Your Honor.

13 THE COURT: Thank up for coming, sir.

14 THE WITNESS: You are welcome.

15 MR. BULSA: The State calls Dr. Sexton.

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

18 THE CLERK: State your name and spell your last
19 for the record, please.

20 THE WITNESS: Dr. Joel Steven Sexton. And it's
21 S-E-X-T-O-N.

22 DIRECT EXAMINATION BY MR. BULSA:

23 Q. Good afternoon, doctor.

24 A. Good afternoon.

25 Q. Would you tell us the field of your expertise?

1 A. I'm a pathologist, which is a physician who has studied
2 after finishing medical school and becoming licensed; has
3 studied the field of pathology, which deals with diagnosing
4 disease and illness by examining tissue or under the
5 microscope, or by examining various types of body fluids.

6 So that a pathologist is the person that supervises the
7 laboratory where various technologists examine body fluids
8 and helps your physician interpret those results, as well as
9 making sure they are done accurately and promptly.

10 The pathologist does examination of tissue removed at
11 surgery to determine if cancer is present, or some other
12 condition. And oftentimes we will do that at the time of
13 the surgery so that the surgeon knows whether to be more
14 aggressive at that time, or to stop the surgery at an
15 intermediate stage.

16 Pathologists also examine people who die in the
17 hospital and where the surgeon or the internist wished to
18 know more about that death and what the symptoms were due
19 to.

20 We do autopsies to determine as many facts as we can
21 about that illness or disease.

22 I have a subspecialization in forensic pathology, which
23 means that I examine, along with my associates, persons that
24 die of sudden deaths or violent deaths, to determine, first,
25 the cause of death, and then more particularly the

1 circumstances surrounding that death, which help to be
2 classified into either a natural, accidental, homicidal,
3 suicidal, or undetermined type of death.

4 Q. Could you give us the benefit of your education,
5 doctor?

6 A. I graduated from the University of Virginia on a naval
7 scholarship, so I spent three years serving in the Navy.

8 And then came to Charleston to train at the then
9 Medical College of South Carolina in the field of chemistry,
10 receiving a Masters in chemistry, and then went to the
11 medical school.

12 So in 1968, I graduated with an M.D. Degree and became
13 licensed in this state to practice medicine.

14 I then studied at the Medical University in the field
15 of pathology, and in 1972, became nationally board certified
16 in anatomic pathology, clinical pathology and forensic
17 pathology.

18 I then taught at the Medical University until 1983,
19 when I moved to Newberry, where I'm the director of
20 pathology and supervise the lab in Newberry County Hospital
21 and consulting forensic pathologist for approximately 26 of
22 the county coroners in the upper part of the state.

23 Q. So you have been involved in forensic pathology how
24 long?

25 THE COURT: Excuse me just a minute. Some jurors

1 indicate they are having trouble hearing. Doctor, could you
2 please speak up just a little bit?

3 THE WITNESS: Yes, sir.

4 THE COURT: You don't have much room. Talk kind
5 of in the microphone. So people are having trouble hearing
6 you.

7 BY MR. BULSA:

8 Q. How long have you been involved in the field of
9 forensic pathology?

10 A. Since 1968, is when I graduated from medical school. I
11 actually did some pathology during my period of time in
12 medical school, doing autopsies on weekends and during
13 holidays. So really since 1968, but I started in '66, as
14 well.

15 Q. Some 40 years?

16 A. That's correct.

17 Q. Have you ever testified in court before?

18 A. Over 700 times.

19 Q. Been qualified as expert in the field of forensic
20 pathology?

21 A. Yes, that's correct.

22 MR. BULSA: Your Honor, I would offer Dr. Sexton
23 as an expert in the field of forensic pathology.

24 THE COURT: Any voir dire?

25 MR. STARNES: No objection.

1 THE COURT: Without objection, he's so qualified.
2 Please proceed.

3 BY MR. BULSA:

4 Q. Dr. Sexton, back on May, I believe it would have been
5 the 28th of 1996 --

6 THE COURT: Excuse me.

7 MR. STARNES: I'm sorry, if I may, I would ask
8 that the court's instruction on expert testimony. Please
9 instruct the jury regarding expert testimony.

10 THE COURT: All right, sir.

11 Ladies and gentlemen of the jury panel, I charge
12 you with regard to expert witnesses, that although lay
13 witnesses are limited to testifying about facts within their
14 knowledge, not allowed to give opinions, certain witnesses.
15 Who by training, education, experience considered as experts
16 in a particular field may give opinions in that field, based
17 upon the facts of a matter and their conclusions. And these
18 opinions constitute evidence to be considered by you in
19 connection with all the other evidence and testimony in the
20 case. And it is for you, the jury, to give such weight as
21 you and your experience and discretion may determine. By
22 this I mean that you must weigh such evidence and accept it
23 or reject it in the same manner as you treat all other
24 evidence in the case.

25 The value of expert testimony does not depend upon

1 the skill and knowledge professed by experts, but upon the
2 skill and knowledge they actually possess. Expert testimony
3 is given for the purpose of enlightening you and not for the
4 purpose of controlling your judgment.

5 Please proceed, sir.

6 MR. BULSA: Thank you, Your Honor.

7 BY MR. BULSA:

8 Q. Dr. Sexton, back on May 28th, 1996, did you have an
9 occasion to receive a large -- I guess an overlarge bag from
10 the Robert Knight System?

11 A. Yes, we did.

12 Q. And what did you do with that bag, that package?

13 A. We had first been contacted by the Lexington County
14 coroner and asked to do an autopsy on bodies that were found
15 in a shallow grave, and they were delivered by Buddy Knight
16 Service in one big bag. In other words, they left it all
17 intact so we could separate the two bodies from each other
18 to see if there was anything commingled or some part of one
19 body was with another, rather than them trying to separate
20 it in the field. And we were able to do that and separate
21 the two individuals and put them on separate tables and
22 examine them and do autopsies on each.

23 Q. And when you went to open the bag, did it appear that
24 it had been tampered with in any way?

25 A. No, it did not.

1 Q. When you opened the bag, what actually did you observe?

2 A. We observed the two bodies together with a lot of dirt
3 still around both of them.

4 Q. And in what stage of decomposition were they in?

5 A. Part of the bodies were skeletonized, particularly the
6 lower extremities.

7 They had already started losing soft tissue and having
8 mostly bone left.

9 There was some white pasty material present in the dirt
10 and on the bone as well.

11 Q. You said they came together?

12 A. Yes, sir.

13 Q. Do you have any idea about who would have been on top
14 or the positioning of the bodies?

15 A. I have no notes on that in my records, and it's been
16 too long for me to remember that.

17 Q. Okay.

18 MR. BULSA: Mr. Starnes, have you seen these?

19 MR. STARNES: No objection.

20 BY MR. BULSA:

21 Q. Okay.

22 MR. BULSA: Your Honor, the State is going to
23 offer State Exhibit 42 and 43 without objection.

24 THE COURT: They are admitted without objection.

25 MR. BULSA: Diagrams of the bodies.

1 BY MR. BULSA:

2 Q. I show you State's Exhibit No. 43. Can you see that
3 from where you sit?

4 A. Yes, I can.

5 Q. And this is a drawing of the body of Bill Welborn.
6 The yellow would show decomposition.

7 Is that your recollection of how that body looked?

8 A. Yes, that's a fair representation.

9 As I mentioned, mostly the lower extremities in this
10 case were decomposed, so we could see bone and some soft
11 tissue remaining, as well as some of the left arm was also
12 de-fleshed to the point where we saw bone.

13 Q. Now, you used the word skeletonized?

14 A. Correct.

15 Q. Does that mean the flesh is completely removed from the
16 bone?

17 A. It means that you could see the skeleton. Sometime
18 it's completely removed. Sometimes it's partially removed,
19 but it means that you can actually see that portion of bone
20 underneath the soft tissue in that location.

21 Q. And now this drawing has the upper torso appearing to
22 be intact?

23 A. Correct.

24 Q. How did it observe to you?

25 A. How did it what?

1 Q. How secure was that flash to Mr. Welborn?

2 A. Well, the areas where there was flesh was secure, but
3 recognize all of this is sort of -- it's not a definitive
4 change between where there is decomposition and where there
5 is not. All of the body showed some decomposition.

6 Fortunately the areas where there was flesh where some of
7 the areas where injuries were present.

8 Q. And looking at the skull portion, how much -- or was
9 there flesh on the skull?

10 A. There was none on top of the skull, and a great deal
11 was missing from the facial region.

12 Q. From your experience and expertise, doctor, based on
13 the condition of Mr. Welborn's body, could you tell whether
14 his face had any wounds to it?

15 A. Could not. In other words, there could have been
16 wounds to the face that we would not see.

17 There were no fractures, because we could see and feel
18 the bones and there were no fractures, plus we took x-rays.
19 And there was no bruising of any tissue there. Yet there
20 was bruising elsewhere in the body.

21 So there was no evidence of any injury, but we
22 certainly could have missed injury because of having
23 decomposed in certain areas.

24 Q. If Mr. Welborn had been pistol whipped shortly after
25 death, would the decomposition affect your ability to

1 determine if that was correct or not?

2 A. It would depend upon the force of impact and where it
3 occurred. In other words, if there were areas of bruising
4 deep in the tissue, which some of which still remained, then
5 we might see that. And if it had broken any bones, we would
6 have seen that, but certainly there is possibility of
7 someone being struck during the time the heart is beating.

8 You said after death. Normally the heart is not
9 beating after death, so you see no injuries or no bruising
10 in a person that's struck after death, normally.

11 Q. So that's if the body is intact?

12 A. Correct.

13 Q. How about in this state of decomposition, could you
14 tell either way?

15 A. Well, like I say, if the person is dead and the heart
16 is not beating, then you don't see bruising, because there
17 is no blood being forced out of the ruptured vessels. So
18 regardless of whether decomposed or not, we wouldn't be able
19 to tell.

20 Q. Okay. Now, were you able to determine any wounds to
21 Mr. Welborn?

22 Well, let me back up. How were these individuals
23 clothed?

24 A. Mr. Welborn was wearing clothing that consisted of a
25 jacket, a dress shirt and a T-shirt, and there were holes in

1. each of these. We were able to follow the path of bullets
2 through the body by the holes that were in those items of
3 clothing.

4 Starting with the Navy blue jacket, we could see a hole
5 here in the right front, and we could see an exit in the
6 left back.

7 When a bullet strikes clothing, just like it is when it
8 strikes a piece of paper, or anything in one direction, it
9 pushes things through that hole so that the hole of entry in
10 the clothing is generally round. The hole of exit is
11 generally a tear and the clothing bulges out at that
12 location.

13 So we could see where the bullet entered the right
14 jacket, entered the shirt, entered the T-shirt, and there
15 was a hole in the tissue underneath that location.

16 We could see where it passed across through the heart
17 and lungs and came out the left back, again going through
18 all three layers of clothing - the inner T-shirt, the blue
19 and white striped dress shirt, and this dark blue flight
20 jacket.

21 Q. Okay. Did he have a complete set of clothing on him,
22 including shoes?

23 A. He didn't have -- I don't recall the shoes or the feet
24 being attached to the body. Let me look at my evidence
25 transfer and see if we actually transferred shoes.

1 No, we transferred no shoes or socks. That was not
2 with body when we received it.

3 Q. Okay. So Mr. Welborn didn't have his shoes?

4 A. Correct.

5 Q. Now, once you get this mass and you separate the
6 bodies, how do you clean it up in order to perform an
7 autopsy?

8 A. We carefully examine the clothing by just wiping
9 material away to see what was there, to try to understand
10 what was there and how it related to any injuries in the
11 body. Then once we were able to do that, we remove the
12 clothing, undress the body, essentially, not cutting it, but
13 simply removing it and washed it up to make sure that we
14 were not missing other holes and to more carefully evaluate
15 and be able to photograph the holes that were there in the
16 clothing.

17 Q. What kind of a washing system do you use?

18 A. It's just a large sink. We just take one at a time --
19 and just like people used to do in the old days, just sort
20 of rinse it real good and then squeeze it out.

21 Q. Now, would that method have washed off potential
22 evidence?

23 A. It could have, but we felt like the injuries were more
24 significant than any type of trace evidence. We were
25 dealing with sometimes an inch or two of mud caked on the

1 outer surface, and so any evidence that might have been
2 there, as far as hairs or other things that might be traced
3 to an individual, would have been very difficult to find if
4 we hadn't washed it off.

5 Q. From your experience and expertise, doctor, would there
6 have been any tests available to you to determine if anybody
7 had urinated on Mr. Welborn?

8 A. I don't know of any. Urine is composed of fluids from
9 the body and some of the minerals and electrolytes from the
10 body. So body fluid and urine is fairly similar, although
11 there are certain things in urine that give it the odor that
12 it sometimes has, but I don't know of any way we could have
13 detected urine on the material that we were examining
14 because of all the mud and the fact we were rinsing it off.
15 It's not uncommon if somebody urinates after death and they
16 are fresh and we see the person, we can smell that urine and
17 see it on the clothing. But in this condition where the
18 decomposed in the ground for a good while, even if it had
19 been there, I don't think that we would have been able to
20 detect that.

21 Q. So ad you found the bodies a day or so after the
22 incident and somebody had urinated, could you have detected
23 that, possibly?

24 A. Oftentimes you can. You can smell it and actually see
25 the yellow stain.

1 Q. Okay. All right. So you washed the clothes. You look
2 at it for holes, and you described one set of holes going
3 through Mr. Welborn. How many holes -- or how many wounds
4 did he actually have to his body?

5 A. There was evidence that three missiles passed through
6 his clothing. One gunshot wound entered the jacket on the
7 right side, as I mentioned, near the nipple on the left and
8 exited the left back.

9 One entered only hitting the T-shirt here at the top of
10 the T-shirt just below the collar, and that bullet went
11 straight down through the heart and ended up going into the
12 largest blood vessel coming out of the heart, called the
13 aorta, which lies on top of the spine. And that bullet
14 actually impacted itself or stuck in the spine. And it made
15 a long groove indicating the direction that it came, which
16 was from above. It made a groove in the 12th thoracic
17 vertebrae, which is the -- our spinal column is made up of
18 little building blocks. They are stacked on each other.
19 And the one closest to your feet is the 12th one. It went
20 through that in a grazing fashion and embedded itself in the
21 first lumbar, which is the one in your abdominal region, the
22 larger building blocks. So you could tell it was the one
23 that came through this hole and went straight down. We were
24 able to recover that bullet.

25 The other set of holes was in the collar of both the

1 dress shirt and the jacket. There was no injury to the
2 either side of the neck, but that tissue was missing. So
3 there could have been injury there, but there was not enough
4 tissue left that we could say whether there was or was not a
5 grazing wound through the side of the neck, but there was
6 definitely an entrance hole in the middle of the collar in
7 the back and then exited on the back side of the collar of
8 the shirt and then an entrance in the jacket and exit on the
9 back of the jacket.

10 Q. Dr. Sexton, did you prepare diagrams to help document
11 those wounds that you just described?

12 A. Yes, I did.

13 Q. I show you State's Exhibits 44 and 45. Do you
14 recognize those?

15 A. Yes, these are copies of the diagrams that I made at
16 the time of autopsy.

17 Q. Okay.

18 MR. BULSA: Your Honor, I would offer these into
19 evidence. Mr. Starnes has seen them.

20 MR. STARNES: No objection, Your Honor.

21 THE COURT: They are admitted without objection.

22 BY MR. BULSA:

23 Q. If I may, doctor, I direct your attention to the
24 screen, and this is State's Exhibit 45, Mr. Welborn, Bill
25 Welborn?

1 A. Will that focus a little bit?

2 Yes, that's better.

3 Q. Okay. Let me hand you a pointer.

4 A. Thank you.

5 Q. If I understand your testimony correctly, you described
6 three wounds or three bullets passing through him?

7 A. Correct, two gunshot wounds, they actually went through
8 the body, and one set of holes. The set of holes are here
9 in the collar of the shirt inside the -- they enter the
10 inside of the shirt collar, the jacket and shirt, and exit
11 and enter the inside of the jacket and exit that.

12 The one I described in the chest enters here on the
13 right side and goes across and out the left back.

14 The one I described in the T-shirt that entered right
15 below the neck of the shirt enters here, goes straight down
16 through the heart, through part of the liver, ends up
17 embedding itself in the spine at that location.

18 Q. And similarly State's Exhibit No. 44, what does that
19 show?

20 A. This shows the same thing from a lateral view showing
21 that the one that I arbitrarily designate number one, it has
22 nothing to do with what sequence they were fired in, but
23 this one enters here in the upper chest, goes down and into
24 the spine at this location.

25 One goes through the collar of the shirt.

1 One goes into the right chest and across and out the
2 left back.

3 Q. Doctor, is it your expert opinion that Mr. Welborn was
4 shot at three times?

5 A. Yes, that's correct.

6 Q. And two bullets struck him for sure?

7 A. That's correct.

8 Q. And one passing all the way through his body?

9 A. Correct.

10 Q. One you recovered in his lower back?

11 A. Yes.

12 Q. And then one to his neck could have grazed his neck or
13 could not have?

14 A. That's correct.

15 Q. We did know from the marks in the clothing that that
16 was a bullet wound, bullet shot?

17 A. In my opinion it was a bullet hole through the
18 clothing.

19 Q. Okay. Can you give an opinion as to how Mr. Welborn
20 could have been positioned when he received these wounds?

21 A. There will be a number of different positions that a
22 person could be in, depending upon whether the individual
23 shooting and the individual being shot are on the same level
24 surface. Assuming they are, say, in a room, so they are
25 both standing on the floor, obviously this shot in the upper

1 chest would have to be with Mr. Welborn either bent very far
2 forward, so that somebody standing in front of him could
3 hold a gun nearly parallel to the floor and still have it go
4 downwards, as it did, as you on the side-view of the body.

5 The one in the back of the shirt could occur in the
6 same position.

7 On the other hand, the one in the back of the shirt
8 could occur just by turning your head far enough in one
9 direction and have it go in, so the person could be standing
10 upright.

11 The one in the right chest that comes out the left back
12 could be standing upright.

13 I recognize the person could be shot lying down to get
14 this one in the chest. And if the person is close enough to
15 them, they could be lying down or turning on their side to
16 be shot in the side.

17 So there are a number of different positions that the
18 person could be in that would give these same paths.

19 Q. So you can't -- in your expert opinion, can you give
20 one exact sequence as to how this could have occurred?

21 A. No, I would have to have people give me scenarios and
22 say, yes, that would fit; or, no, that would not fit,
23 because each one has a position that could be different from
24 the other. A number of positions for each one could be
25 positioned in which they were in.

1 Q. Okay. The one to the -- I believe you had it labeled
2 number one?

3 A. The upper chest.

4 Q. Could that have been inflicted when Mr. Welborn could
5 have been standing -- going from a seated position to a
6 standing position?

7 A. Coming from a seated to a standing?

8 Q. Yes, sir.

9 A. Sure. A person coming from a seated position to
10 standing would tend to lean forward to get up, and that
11 could be a position in which he could receive that gunshot
12 wound that I labeled arbitrarily number one.

13 Q. Could he have received that wound if had been laying on
14 the ground?

15 A. Could have.

16 Q. How about gunshot wound number two, could he have been
17 standing, or laying, or sitting --

18 A. Could.

19 Q. -- to receive that?

20 A. If he's lying down, he would have to be rolled up sort
21 of on his left side, depending on how far a person -- how
22 far away the person with the gun was at the time.

23 If he's seated and the person could -- because we don't
24 always -- people don't always hold guns out at a high level.
25 Sometimes they hold them at waist level. It could be

1 somebody seated beside him could hold it at waist level and
2 inflict that wound, or he could be standing.

3 Q. And the shot to the collar, it could have been in a
4 standing, seated, or prone position for that one as well?

5 A. Through the collar?

6 Q. Yes.

7 A. Yes, it could be in any of those positions, depending
8 on the position of the head, because the collar was not
9 buttoned. It was a loose collar.

10 (Photograph marked as State's Exhibit No. 50 for
11 identification)

12 (Photograph marked as State's Exhibit No. 51 for
13 identification)

14 BY MR. BULSA:

15 Q. Let me show you State's Exhibit No. 50 and 51. What
16 are those photographs of?

17 A. These are photographs that are duplicates of the ones
18 that I took at the time of autopsy that I have copies of
19 here that show intermediate view of the bullet hole in the
20 inside of the shirt collar and the outside of the shirt
21 collar.

22 Q. Those are the -- that's the shirt that Mr. Welborn was
23 wearing?

24 A. Yes, that's correct.

25 Q. And --

1 A. Blue and white striped dress shirt.

2 Q. Was that the hole depicted in your diagram as gunshot
3 number three?

4 A. That's correct.

5 MR. BULSA: I would move these into evidence.

6 MR. STARNES: No objection, Your Honor.

7 THE COURT: They are admitted without objection.

8 MR. BULSA: I would publish this to the jury, if I
9 may.

10 BY MR. BULSA:

11 Q. Could you point to the --

12 A. It's going to be a little hard to see on this
13 intermediate view. You may need the close-up view.

14 The hole is right here in the label, but because the
15 hole is black and the label is black, it's hard to see it.

16 You can see it okay on the photograph, but I do have a
17 more close-up view that would show it easier, I think.

18 Q. Okay.

19 MR. BULSA: Get this one marked.

20 (Photograph marked as State's Exhibit No. 52 for
21 identification)

22 BY MR. BULSA:

23 Q. State's Exhibit No. 52, is that what you are speaking
24 of?

25 A. Yes, that is.

1 MR. BULSA: Your Honor, we would move State's 52
2 into evidence.

3 A. I might mention the same is true of the exit.

4 THE COURT: Any objection?

5 MR. STARNES: No objection.

6 A. Here on the close-up view you can see a little better.
7 The hole is right here. You can see some the white fabric
8 that's there. There is a tear up above that's caused by the
9 bullet going through here and actually pulling the sewn part
10 away, but here is the hole, which is a round hole inside the
11 collar, indicating that it entered from that location.

12 BY MR. BULSA:

13 Q. In your expert opinion is that a bullet hole?

14 A. It is.

15 I might mention that I'm a pistol shooter and a rifle
16 shooter, and have since 1954, when I went off to college. I
17 have shot hundreds of thousands of rounds. I coach a team
18 at the Citadel that's nationally ranked and a number of
19 juniors, and I'm a nationally ranked shooter myself in
20 international competition. And when a bullet goes through a
21 target, you see the same thing that you see in clothing.
22 You see a round hole at the point of entry. Or in the
23 cardboard that's backing the target, you see a round hole
24 where it enters and a flared tear on the other side.

25 (Photograph marked as State's Exhibit No. 53 for

1 identification)

2 BY MR. BULSA:

3 Q. I show you State's 53. What is that a picture of?

4 A. This is a picture of the inside of the collar of the
5 jacket, and it also shows the front of the jacket where the
6 zipper is located.

7 Q. Does it show the corresponding hole?

8 A. It does. It's a little hard to see on this. It should
9 be a closer view that would show it even better.

10 Q. Let's see if we can project this up.

11 MR. BULSA: Your Honor, we would move this into
12 evidence as State's 53.

13 THE COURT: Did Mr. Starnes see it?

14 MR. STARNES: No objection.

15 THE COURT: It would be admitted without
16 objection.

17 BY MR. BULSA:

18 Q. Could you point that out to us?

19 A. Yes, the hole -- first, this is the back of the jacket.
20 You can see the zipper here in the front..

21 The hole is located right here. And, again, it's a
22 round hole, compared to the exit in the back and compared to
23 the exit in the back of the shirt.

24 Q. Doctor, could I get you to circle that hole on this
25 picture? I have a marker right here.

1 A. (Witness marking photograph)

2 Q. For the record, you have circled a hole and initialed
3 it on State's 53.

4 Doctor, in your expert opinion, what was the cause of
5 death of Bill Welborn?

6 A. In my opinion, the gunshot wound to the upper chest was
7 most probably the fatal wound, because it went through the
8 aorta, which is the largest vessel in the body, the largest
9 artery, and the heart.

10 However, the wound through the right chest also went
11 through the heart and the lung.

12 So he bled to death, which we refer to as
13 exsanguination, and it was contributed to by both the
14 gunshot wound here in the upper chest that went downward
15 into the heart and the aorta, and the gunshot wound in his
16 right chest that went through his heart and lung.

17 So, in my opinion, he died of the two gunshot wounds
18 that caused him to bleed to death.

19 Q. Doctor, could Mr. Welborn -- how long could Mr. Welborn
20 have lived with these wounds?

21 A. It varies. Certainly going through the heart and the
22 aorta with a bullet that's going to produce a significant
23 hole in two locations in the heart and one location in the
24 aorta, every time the heart beats, you are going to lose
25 some blood through those holes. And it doesn't take long.

1 Usually a minute or two is the history we get when people
2 are shot under circumstances where you do have reliable
3 history, that they are bleeding enough to pass out. And
4 once they have done that, they are generally not able to be
5 revived, because the bleeding continues after they pass out.

6 Q. Would you have expected to find any blood as a result
7 of any of these wounds?

8 A. It's quite variable. Recognize the bullet going into
9 the right chest has gone through muscle layers, has gone
10 into a cavity where there is a lung that's inflated, because
11 there is a vacuum in the cavity. And so blood has to
12 accumulate and force its way. You have to fill up the
13 cavity and then force its way out through that hole through
14 the muscle layers.

15 The same is true in the back. The same is true up here
16 in the upper chest. You have got to first fill up that
17 cavity with blood and then have enough force to have it come
18 out, if you are upright or if you are on your back.

19 If you are face down, then it could come out a little
20 sooner, but we often will see a body arrive with hardly any
21 blood, and yet three or four gunshot wounds to the chest.
22 And yet on other occasions, a single gunshot wound will
23 bleed very profusely. So it's very quite variable as to
24 whether you get bleeding or not.

25 Q. How about if the shot to the collar at the neck area,

1 how about if that had passed through the fleshy part of his
2 neck? Would you have expected that to bleed?

3 A. There would be some bleeding, and that would be
4 probably easier to see externally, because it would be here
5 in an area where there may not be clothing over it. But,
6 again, it may be very little blood, depending on the vessels
7 that it strikes there. Because most of this is flesh and
8 muscle, there is blood there, blood vessels, but it's not
9 richly profused with blood.

10 Q. Well, in your expert opinion, doctor, if a bullet had
11 entered his neck, would it have been through a fleshy part?

12 A. Sure, it would have had to have gone through the flesh
13 on one side or the other, because the spinal column was
14 intact. There was no damage to the spinal column.

15 Q. Which of these wounds would you have expected to bleed
16 more readily, or is there any wound expected?

17 A. I don't think I could say that one would be more likely
18 than the other.

19 The one here in the neck would be more readily
20 recognized and would more likely bleed out, as opposed to
21 being on the clothing.

22 Q. All right.

23 A. It would tend to be say on the floor or somewhere where
24 he was laying.

25 Q. If Mr. Welborn had received a wound to the neck, that

1 could have resulted in blood on the carpet?

2 A. That's correct. And the others, too, could have
3 resulted in blood on the carpet.

4 Because of the condition of the body and how long it
5 had been in the ground and the fact we washed all this up,
6 the blood would not have been easily seen by us, and yet
7 there could have been a great deal of blood there at the
8 time that he was first shot.

9 Q. Do you have an opinion as to how close his shooter
10 would have been to him?

11 A. There was nothing on the clothing after we washed it up
12 to indicate that it was close range. The hole in the jacket
13 was a round hole.

14 If a gun is right against the clothing, sometimes it
15 will cause enough energy to go in there to actually split
16 the clothing, and we will see tearing of the clothing at the
17 point of entry with embedding of powder particles and
18 coating with soot, and none of that was evident here or on
19 the T-shirt, and certainly not on the inside of the collar,
20 so nothing was there to indicate contact range. But it
21 could have been within a foot, or less, but powder and
22 powder particles or soot on the clothing that may have been
23 washed off or may have been lost due to the decomposition.

24 Q. So had the bodies been found the day of the shooting,
25 would it have been possible to find more evidence?

1 A. Oh, definitely it would have been possible to find more
2 evidence.

3 Q. So the burial and the decomposition, could that have
4 caused the loss of evidence?

5 A. It definitely could.

6 In fact, the other case a bullet was found between --
7 or a bullet ended up between the skin and shirt and was not
8 with the body, so that bullet could have been found.

9 And if there was any soot or any powder particles on
10 the clothing, they could have been found, and other evidence
11 could have been there as well.

12 Q. So your efforts actually could have washed away some
13 evidence?

14 A. That's correct.

15 Q. Did you take any samples from Mr. Welborn?

16 A. We did, and there was an agent from Lexington County
17 that picked that up, Charley Cato. And that consisted of
18 clothing and some brain tissue and some liver tissue. We
19 actually had a small quantity of blood that they were able
20 to put in two tubes, one for DNA, although the decomposition
21 made it -- it probably made it difficult to do DNA on it,
22 and one for analysis. And we also had the fluid from the
23 right chest and from the left chest, which we sent as well,
24 in addition to the blood we were able to get out of each
25 chest.

1 Q. Did you turn the bullet over to Mr. Cato?

2 A. We did.

3 Q. Did you turn over any valuables from Mr. Welborn?

4 A. Yes, he had a necklace with an arrowhead.

5 It seemed like there was one other item. Just a
6 moment. Oh, the other item was just a portion of the belt.
7 The buckle and part of the cloth belt.

8 Q. How about his wallet?

9 A. No, did not find a wallet.

10 Q. Did you search the clothing?

11 A. We did.

12 Q. Did you find any identification on Mr. Welborn?

13 A. No, we did not.

14 Q. How then, doctor, did you identify him?

15 A. By dental records, because we examined the jaws,
16 x-rayed the jaws and recorded where the restorations were
17 located, compared those with the pre-mortem dental records
18 that matched.

19 Q. So, other than the clothing he was wearing, the only
20 personal effects you found on Mr. Welborn was the necklace?

21 A. Yes, that's correct.

22 Q. Now, if we may move to Mr. Champlin.

23 Well, let me ask you one other question. Based on the
24 extent of the decomposition, do you have an opinion as to
25 who would have been on top and who would have been on the

1 bottom?

2 A. That varies. Sometimes the body on top will decompose
3 more rapidly, because it's closer to the air. It's closer
4 to where animals -- and animals did get to the body. Closer
5 to animals can gets to the tissue. And sometimes that's not
6 the case. But certainly Mr. Welborn had more lost tissue,
7 with you might suggest he was on top, but when we received
8 the bodies, they were just together side by side.

9 Q. Now, Mr. Champlin, how was he clothed?

10 A. Mr. Champlin also had on jeans and a T-shirt, a
11 skydiving type T-shirt.

12 Let me find my clothing list here.

13 He had socks and shoes and a type of denim, a blue
14 denim jacket, with a blue cotton liner with a hood.

15 Q. Was the jacket on his person?

16 A. Yes.

17 Q. And what was his state of decomposition?

18 A. You know, let me rephrase it. Let me check my
19 photographs.

20 I think his jacket was not on. I apologize. His
21 jacket was with him. His jacket was not on. He only had a
22 T-shirt on.

23 His state of decomposition was very similar. Again,
24 most of the leg region of the body, being the part that was
25 decomposed, but there was less decomposition than Mr.

1 Welborn.

2 Q. Did he have his shoes?

3 A. He did have shoes.

4 Q. So you had one pair of shoes and one pair without
5 shoes?

6 A. That's correct.

7 Q. Did you have to clean the clothing of Mr. Champlin the
8 same as you did Mr. Welborn?

9 A. Yes, that's correct.

10 Q. So you washed his clothing in the same fashion?

11 A. Yes.

12 Q. And what wounds, if any, did you find for Mr. Champlin?

13 A. Mr. Champlin had only one gunshot wound. It entered
14 his back near the spine, but to the left of the spine. It
15 exited the front of his chest, but it did not exit the
16 T-shirt in the front. It actually entered the jacket from
17 the rear, passed through the jacket and passed through the
18 T-shirt, passed through his left lung and then stopped
19 between the skin and the T-shirt. There was no hole in the
20 T-shirt.

21 (Photograph marked as State's Exhibit No. 54 for
22 identification)

23 (Photograph marked as State's Exhibit No. 55 for
24 identification)

25 (Photograph marked as State's Exhibit No. 56 for

1 identification)

2 (Photograph marked as State's Exhibit No. 57 for
3 identification)

4 BY MR. BULSA:

5 Q. Dr. Sexton, let me show you a diagram. Can you
6 identify these?

7 A. Yes, these are copies of the diagram that I made at the
8 time of autopsy of Mr. Champlin.

9 Q. And could you look at those pictures?

10 A. Yes, these are copies of the pictures that I took of
11 Mr. Champlin's jacket and the T-shirt.

12 MR. BULSA: And the State would move State's
13 Exhibits 46, 47, 55 -- excuse me, 54 through 57 into
14 evidence.

15 MR. STARNES: No objection.

16 THE COURT: They are admitted without objection.

17 BY MR. BULSA:

18 Q. Start with the jacket of Mr. Champlin. The jacket
19 shows a hole to what part of it?

20 A. The upper left back of the jacket, right above this
21 label, which is a one-inch label, there is a hole right
22 above the seam right at this location. It really shows up
23 better on the close-up view.

24 Q. Let me show you State's Exhibit 55, a picture of the
25 shirt.

1 A. Right, this is the shirt. It's in front of the shirt
2 that Mr. -- I'm sorry, it's the back of the shirt that Mr.
3 Champlin was wearing with this design on the back. Here is
4 the label, and that's the location of the hole in
5 relationship to the design.

6 Q. So did that hole correspond with the hole in the
7 jacket?

8 A. It did correspond with the hole in the jacket.

9 Q. And I believe you testified that there was an exit
10 wound to his chest, but not to his T-shirt?

11 A. That's correct.

12 Q. Could you explain that to us?

13 A. The bullet ended up between the skin and the shirt.

14 It's not uncommon for a bullet to get all the way
15 through the body, and because of the amount of force that it
16 has, pushing the skin away from the body, sometimes that
17 will trap the bullet, and so we often find the bullet on the
18 other side of the body just under the skin.

19 Sometimes it will go just through the skin and we will
20 see it there in the almost complete exit, and sometimes it
21 falls out.

22 In this case it did not penetrate the shirt, so
23 presumably it fell out of that hole somewhere in transport.

24 Q. Can you explain why it wasn't found with the body?

25 A. Well, I don't know specifically why, but presumably at

1 some point in time when the body was moved by someone from
2 where the death occurred to where the body was found buried,
3 that it fell out of the clothing at that time.

4 Q. So had the body been left where it was, the bullet
5 presumably would have been recovered?

6 A. That's correct.

7 Q. I show you State's Exhibit No. 46. Does that depict
8 the wound?

9 A. It does. This shows the front of the body. I normally
10 just a symbol a sort of a little star to represent an exit
11 wound, although sometimes they are simply slit shaped, but
12 that's just the symbol I use.

13 I use a round circle for the entrance. And when it's
14 dotted, as it is there, that means it's on the other side
15 the body.

16 So the exit is before the left nipple. The entrance is
17 on the back of the body just to the left of the spine.

18 Q. Now, State's Exhibit No. 47 shows a side view?

19 A. This shows the bullet entering here and exiting here on
20 the front of the chest.

21 Q. All right.

22 A. It's showing it slightly upwards here. That was
23 difficult to evaluate because of the decomposition, but it
24 looked like it was going very slightly upward.

25 Q. So is it your expert opinion, doctor, that he was shot

1 in the back?

2 A. That's correct.

3 Q. Do you have an idea of the proximity of the shooter to
4 Mr. Champlin?

5 A. I do not.

6 The clothing did have some tearing of the entrance hole
7 in the outer garment of the jacket, but this looked more
8 like wear from being in the ground as opposed to -- and/or
9 animals getting involved with it, as opposed to any kind of
10 tearing you would see from a contact.

11 Again, anything that might have been there in the way
12 of powder or soot could have been washed away by my washing
13 the jacket or by the decomposition fluids wiping it away.
14 So it could have been an intermediate range, but there was
15 no evidence of it being contact.

16 Q. Can you give us your expert opinion as to how Mr.
17 Champlin could have been positioned when he received this
18 wound?

19 A. There are a number of positions. He could have been
20 lying down on his right side and shot from someone across
21 the room.

22 He could have been standing up and moving in the other
23 direction, or standing and shot from the rear.

24 He could have been seated and bent forward a little
25 bit, perhaps, depending on where the shooter was located and

1 shot from the rear.

2 Q. Would this wound have immobilized Mr. Champlin?

3 A. No, it would not. It probably would have been painful.
4 It went through the second rib posteriorly, which decreased
5 the energy to the point where that's probably why it fell
6 out of the front of the chest instead of going through the
7 T-shirt. So it may have been painful, but it would not have
8 immobilized him.

9 Let me rephrase that. There are people who are
10 standing in line about to get a shot and they pass out.

11 There are people who are shot, maybe shot in the foot
12 and pass out.

13 But as far as incapacitating him by injuring a part of
14 his body, it would not have done that, but he may have
15 passed out upon being shot, or realized that he had been
16 shot.

17 Q. Doctor, from your expert opinion, what was the cause of
18 death of Jared Champlin?

19 A. Again, bleeding to death. We call it exsanguination,
20 from passing through the lung. The lung is a vascular
21 organ, and so -- and also it's a low pressure system, so it
22 doesn't tend to prevent bleeding, once bleeding starts. And
23 in a matter of minutes -- in his case it didn't go through
24 the heart or the aorta, so it would have taken longer, but
25 certainly in a matter of minutes he would have been

1 incapacitated to the point where he would have died, not
2 given treatment.

3 And in both type wounds I don't think a person could
4 have been treated quickly enough, even if they got to a
5 hospital right away, to have survived, because you would
6 have to surgically go in right quick and find the bleeding
7 sources and, you know, tie those off, which would have been
8 very difficult in both of these cases.

9 Q. What valuables did you find on Mr. Champlin?

10 A. Let me check that. I think the only thing we found was
11 a watch. Let me make sure of my photographs.

12 Well, we found a watch and we found three unspent
13 bullets, but the watch is a Timex watch that was still
14 present. And then we found in the dirt an unspent round, or
15 a bullet -- a complete cartridge, and we found two in his
16 jacket pocket.

17 Q. Did you find his wallet?

18 A. I did not.

19 Q. Any form of identification?

20 A. No, no form of identification.

21 Q. How did you identify this body?

22 A. Again, by pre and postmortem dental records. He had
23 extensive dental work.

24 Or, I'm sorry, one of them had extensive dental work.

25 Let me check that. I'm not sure if this was the one.

1 No, he had dental restorations, very sufficient. There
2 was something like about 12 different fillings. And when
3 you look at a filling on x-ray, it's like looking at the
4 State of South Carolina on the map of the United States.
5 Each state is shaped a little bit differently. Each filling
6 is a little different in shape. So we can look at the
7 x-rays taken during life and x-rays after death, and not
8 only will that unusual shape filling be present, it would be
9 in a certain tooth, and it would be in the same tooth in
10 both.

11 Mr. Welborn had more extensive dental work, but both
12 had sufficient dental work that we could identify them.

13 Q. Dr. Sexton, did you find any evidence of some sort of
14 lime material in either body?

15 A. I couldn't say it was lime. There was some white
16 material, some sort of pasty material that was present in
17 the dirt and on the bodies.

18 Q. Did you find any evidence that animals had gotten to
19 either person?

20 A. Yes, there was evidence, particularly around the legs
21 of Mr. Welborn and his clothing, but there was evidence that
22 animals had gotten to them.

23 Q. Did you take any samples from Mr. Champlin?

24 A. Yes, we did. We were able to get similar samples to
25 those that we had from Mr. Welborn.

1 We always take tissue from the liver and the brain
2 because it's concentrated and can be used for chemical
3 analysis. We took some hair. We also took -- various
4 clothing items were present, as well as the three intact
5 bullets that were present. So brain, liver tissue, head,
6 hair, the bullets, and the clothing.

7 Q. I didn't hear any blood, doctor.

8 A. Correct, we were not able to get blood from Mr.
9 Champlin.

10 Q. Why is that?

11 A. Decomposition. In other words, when you are in a state
12 like this where your body is slowly decomposing, blood is
13 one of the things that the body loses. It's decomposed in
14 the body.

15 Q. What is the purpose of taking those samples?

16 A. The blood samples, or the other samples?

17 All of those are for various purposes. One is for
18 analysis for toxicology. That's the primary purpose.
19 Sometimes they are used for DNA analysis.

20 Q. Did you transfer all these items and liquids and
21 samples to Charley Cato?

22 A. Yes, I did.

23 Q. For both individuals?

24 A. Yes, that's correct, for both individuals.

25 Q. Okay. Dr. Sexton, if you had had the opportunity to

1 autopsy these gentlemen the day after they died, would you
2 have expected to find more evidence?

3 A. Yes. As I mentioned earlier, I would think there would
4 be more evidence than there was at this time, due to the
5 lack of decomposition -- or decomposition always destroys
6 some things. We were able to find the cause of death and
7 identify them, but there may have been other evidence that
8 would have given more facts about what happened.

9 Q. Thank you, doctor.

10 MR. STARNES: If it please the court, Your Honor.

11 THE COURT: Yes.

12 MR. STARNES: Your Honor, could we get the lights
13 turned up a little bit?

14 THE COURT: Yes, sir. Please turn the lights up.

15 CROSS EXAMINATION BY MR. STARNES:

16 Q. How are you doing today, Dr. Sexton?

17 A. I'm fine, thank you.

18 Q. Forensic evidence can help the State and also help the
19 defense, can't it?

20 A. Yes, definitely can help both sides.

21 Q. When you received these body bags from Mr. Knight, was
22 there a chain of custody paperwork that followed them?

23 A. Just the individuals themselves. And the agents that
24 who were there were presumably the agents that were at the
25 scene when the bodies were picked up. So they identified

1 what was brought to us.

2 Q. In your file did you receive an authorization from the
3 Lexington County coroner's office?

4 A. Yes, in both cases there was an authorization set.

5 MR. BULSA: May we approach, Your Honor?

6 THE COURT: Yes.

7 (Whereupon, the lawyers and the defendant
8 approached the bench for an off-the-record discussion)

9 BY MR. STARNES:

10 Q. Dr. Sexton, you received an authorization from the
11 Lexington County coroner's office to autopsy both of these
12 individuals?

13 A. Yes, that's correct.

14 Q. Do you have those documentations in your file?

15 A. I do.

16 Q. Would you, please, in your file look at the
17 documentation regarding the authorizations for the
18 autopsies?

19 A. I have got them in front of me.

20 Q. You have got them in front of you.

21 When you received these documents, Dr. Sexton, did you
22 take a look at them very good before you performed the
23 autopsy?

24 A. Not really. We normally glance through them, but we
25 primarily have them so we have authorization. We do get the

1 information from them that goes into our records.

2 Q. On the authorization for the autopsy for Mr. Welborn,
3 the clothing where it identifies the decedent's clothing,
4 would you please read to the jury the clothes that Mr.
5 Welborn had?

6 A. According to this, Mr. Welborn, the clothing is
7 described as blue jeans, a white dress shirt, a green flack
8 jacket, and tennis shoes.

9 Q. Does that say brown shoes or did you say tennis shoes?

10 A. My copy simply says tennis shoes.

11 Q. Tennis shoes.

12 Was that be singular or pleural?

13 A. Pleural.

14 Q. Meaning more than one?

15 A. Correct.

16 Q. Would you please take a look at the same thing
17 regarding Mr. Jared Champlin?

18 A. It describes the clothing as blue jeans, T-shirt, a
19 blue denim jacket and brown shoes.

20 Q. Brown shoes.

21 Singular or pleural?

22 A. Pleural.

23 Q. Meaning more than one?

24 A. Correct.

25 Q. So Dr. Sexton, according to the documents that you have

1 and the authorization for the autopsy report on these
2 individuals, Mr. Welborn and Mr. Champlin both had shoes.
3 Would that be correct?

4 A. That's what's described here. I don't know whether
5 that's a description of what they were last seen wearing or
6 whether that's a description of how the bodies appeared when
7 they were found.

8 Q. And these documents were from the Lexington County
9 coroner's office, correct?

10 A. Yes, that's correct.

11 Q. The individual or the persons transporting the bodies
12 was from Knight System?

13 A. That's correct.

14 Q. And Knight System transported both of the bodies?

15 A. That's correct.

16 Q. Dr. Sexton, I believe you testified that there were no
17 fractures to Mr. Welborn's skull indicating where any pistol
18 whipping had been done?

19 A. That's correct.

20 Q. Any bruising to Mr. Welborn?

21 A. Well, as I mentioned earlier, because of the
22 decomposition there may have been bruising that had been
23 destroyed by decomposition, but we saw no bruising.

24 Q. Dr. Sexton, could it have been possible to retrieve any
25 urine if the clothing had not been washed?

1 A. I guess it's possible. But as I mentioned, there was a
2 lot of mud caked on the clothing, and urine is part of --
3 part and parcel of what we are composed of. So it's the
4 same sort of fluid that is leaking out during decomposition,
5 except the presence of urea, which is in higher
6 concentrations than urine. So I guess that's a possibility,
7 but I doubt it because of the amount of mud and the
8 decomposition.

9 Q. And what date was it that you did this autopsy on these
10 bodies?

11 A. That was on May 28th of 1996.

12 Q. On May the 28th?

13 A. That's correct.

14 Q. At some point in time did you have -- between when the
15 bodies were recovered to the time that you did the autopsy,
16 did you have an occasion that you were able to talk with
17 Detective Darren Amick?

18 A. It's been too long ago for me remember that.

19 It's my understanding and my recollection that he did
20 come with the bodies and was there. On the other hand, I
21 don't really have that specific knowledge at this time.

22 Q. Did anyone from the Lexington County sheriff's office
23 call you and ask you to preserve evidence on the clothing
24 regarding any allegations of urination on the bodies?

25 A. That may have occurred. I don't have any written

1 notation of that.

2 Q. To be a pathologist, do you have to have a degree or an
3 expert in toxicology?

4 A. No, but forensic pathologists do study toxicology, but
5 we don't have to have a degree in it. In other words, we
6 only do enough to try to understand a little bit about the
7 nature of the effects of drugs on people and what might
8 cause their death, but we are not toxicologists.

9 Q. In your expert medical opinion, Dr. Sexton, how long
10 would it have taken for Mr. Welborn to die?

11 A. In both cases it could have been as short as a matter
12 of one or two minutes because of the large vessel that the
13 bullet penetrated and the fact that it went through his
14 heart. So he could have died in a few minutes. It could
15 have been a little longer, but it varies, depending upon
16 whether the vessel goes into spasm. In the case of the
17 aorta, it's attached to the spinal column, so it really
18 can't contract very well like the vessel that might be cut
19 in two, so I would think just a matter of a few minutes.

20 Q. A matter of minutes?

21 A. That's correct.

22 Q. Did you give an opinion or write that both individuals
23 would have died in a matter of minutes after being shot?

24 A. Did I give an opinion at what time? I did a moment ago
25 in the courtroom, and I probably did it at some other time,

1 but I don't specifically recall that.

2 Q. How long would it take for Mr. Champlin to live -- to
3 have -- excuse me, to die?

4 A. It could have been a little longer period, because it
5 only went through the lung, primarily, but it did go through
6 the region of the heart as well. So, again, I would think
7 it would be a matter of minutes.

8 Q. Dr. Sexton, referring to State's Exhibit No. 44, did
9 you draw this diagram of Mr. Welborn?

10 A. I did not draw the diagram. I put the bullet paths on
11 it.

12 Q. And the shot that you have labeled, I believe shot
13 number two -- you have one and then three?

14 A. Correct.

15 Q. Okay. Shot number two would have been the shot number
16 for Mr. Welborn?

17 A. The one I arbitrarily designated number two, correct.

18 Q. Now, that doesn't mean that that was the order in which
19 he was shot at, is that correct?

20 A. That is correct. It only means the order in which I
21 numbered them. It has nothing to do to the sequence in
22 which these shoots occurred.

23 Q. And Dr. Sexton, if you could explain to the jury the
24 direction of the path of this bullet wound to Mr. Welborn?

25 A. This is one that entered about the level of the nipple

1 on the right and exits in the back in the middle on the left
2 back. So it's going across from front to back and to the
3 left with pretty much horizontal path.

4 Q. So, Dr. Sexton, could it have been possible that Mr.
5 Welborn could have been standing at an angle when he was
6 shot?

7 A. He definitely was standing at an angle, so that this
8 part of his body is facing the gun. So the gun is in this
9 direction. From my body, in order to give that shot, it
10 comes in from this direction from my right, goes through the
11 chest and out the back.

12 Q. And Dr. Sexton, on the shot that you have labeled
13 number one, would it have been possible for Mr. Welborn to
14 be leaned over when being shot, on this shot number one?

15 A. Definitely, because if you lean far enough and two
16 people are in the same plane, you can lean far enough to
17 have the upper part of the body leaning enough to have the
18 shot come level across the floor, but go downward into the
19 body. So he could have been leaning farther forward at the
20 time that shot occurred.

21 Q. Dr. Sexton, shot number three, would it have been any
22 way possible that someone could have took a metal probe and
23 stuck through that clothing?

24 A. It's possible. The clothing, though, had the
25 appearance -- and realize it went through a double collar

1 here and then a jacket of a nice sharp edge at the point of
2 entry and a tear at the point of exit.

3 A sharp enough probe conceivably could do that, but
4 normally speaking it takes something that's moving fairly
5 fast. So, in my opinion, it's more likely it's -- or in my
6 opinion within a reasonable medical certainty it's a bullet
7 path through there, but certainly a probe can do that sort
8 of thing.

9 Q. I believe, Dr. Sexton, you testified you was a shooting
10 instructor at the Citadel?

11 A. That's correct.

12 Q. Are you familiar a 38-caliber pistol?

13 A. Yes.

14 Q. What size would the copper jacket of a 38-caliber
15 pistol be?

16 A. The diameter is what we refer to as caliber. So a .38
17 is normally nominally .38 inches in diameter, although more
18 commonly it's actually .356, .357. Like the 357 magnum is
19 that designation, because that's really the diameter of the
20 bullet that's often in that gun, but we refer to them as
21 .38's.

22 Q. And if someone had a metal probe probing it in the
23 ground, would it be possible that they could probe this
24 clothing?

25 A. I won't say it's not possible, but certainly it's

1 possible. You would have to have a fairly sharp probe. It
2 would have to be about three-eighth inch in diameter, which
3 is about the size of a .38. And the soil underneath that
4 item of clothing would have to be firm enough so that you
5 could push it on through. If it was as soggy as the rest of
6 material that was with the body, I think it would simply
7 push against it instead of through it. But if it's sharp
8 enough and pushed hard enough, it would be possible.

9 Q. Dr. Sexton, when you performed the autopsy on Mr.
10 Champlin's body, did you find any unspent cartridges?

11 A. There were three. One was in the soil. Two were in a
12 pocket.

13 Q. Dr. Sexton, were you able to identify the caliber of
14 those cartridges?

15 A. I did not try to. We leave that to the ballistics
16 people.

17 MR. BULSA: No objection.

18 MR. STARNES: May I approach the witness, Your
19 Honor.

20 THE COURT: Yes, sir.

21 A. This is a copy of the photograph that I took of the
22 three unspent cartridges.

23 (Photograph marked as Defense Exhibit No. 9 for
24 identification)

25 THE COURT: If you are offering that, it's

1 admitted without objection.

2 MR. BULSA: No objection.

3 BY MR. STARNES:

4 Q. Dr. Sexton, referring to Defendant's Exhibit No. 9,
5 does this accurately reflect the photograph on your file?

6 A. Yes, it does.

7 Q. Does that accurately reflect the bullets that you
8 removed from Mr. Champlin's pocket?

9 A. It reflects two from the pocket and one from the soil,
10 correct.

11 Q. Dr. Sexton, one more question. Would you please tell
12 the jury the different classifications of a homicide?

13 A. Of a homicide?

14 Q. Yes, sir.

15 A. We normally leave that to the legal people.

16 We classify natural, meaning a natural disease cause of
17 death; an accident, meaning it's some accident, such as
18 lightening or drowning; a suicide, where somebody inflicts
19 death upon themselves; and homicide, simply meaning death at
20 the hands of another. It has nothing to do with intent. It
21 simply means that someone else caused the death. The
22 individual themselves did not inflict that death.

23 Now, there are other classifications of homicide that
24 are legal classifications. What I'm telling you now is
25 simply a medical classification of homicide.

1 Q. Dr. Sexton, I didn't understand you. You said
2 something about intent?

3 A. Homicide has no intent as part of the definition. It
4 simply means at the hands of another, where some of the
5 legal definitions -- some deal with intent. Some deal with
6 not having any intent.

7 Q. Dr. Sexton, have you ever performed an autopsy on an
8 individual that was killed in self-defense?

9 A. I'm sure I have.

10 Q. Thank you, Dr. Sexton.

11 A. You are welcome.

12 MR. BULSA: Briefly, Your Honor, for a minute.

13 REDIRECT EXAMINATION BY MR. BULSA:

14 Q. Dr. Sexton, how big is a .38 or a 38?

15 A. It's about a third of an inch. A little over a third
16 of an inch.

17 Q. A third of an inch?

18 A. Right. It's close to four-tenths of an inch.

19 Q. Do you see that, doctor? Can you see that?

20 A. Yes, I can.

21 Q. All right.

22 MR. BULSA: Your Honor, for the record, that's
23 State's Exhibit No. 34.

24 BY MR. BULSA:

25 Q. Does it appear to be a hole to you?

1 A. Yes, it does.

2 Q. Is that a scale?

3 A. There is a scale present. The scale here is one inch,
4 two inch. These are centimeters over here. So this is an
5 inch and corresponds to being close to the size of this. It
6 looks like it's about an inch and a quarter, as far as the
7 diameter of that hole.

8 Q. How many .38 bullets could go through that hole?

9 A. Recognize depending upon the composition of something,
10 the bullet diameter may not agree with the hole diameter,
11 but that looks likes a round hole. It looks like it's in
12 material that would normally give you a diameter of the hole
13 similar to the bullet. And certainly that's greater than
14 the diameter of a .38.

15 Q. So you could actually fit two or three .38's in that?

16 A. Just about.

17 Q. Side by side?

18 A. Well, two, because .38 goes right about to there. From
19 here to there. It's nearly four-tenths of an inch. There
20 is a .38 is almost .4. So certainly two could fit through
21 that hole.

22 Q. Okay. And doctor, when you received these bodies,
23 could you tell what they were wearing?

24 A. Yes, except for the jacket that Mr. Champlin had with
25 him.

1 Q. I'm talking about in the condition that they were in.
2 Did you have to clean it up before you could actually tell
3 what kind of clothing they were wearing?

4 A. Oh, I'm sorry, I understand your statement now.

5 The question was could I recognize what was there
6 before I cleaned them up? It was very difficult to see what
7 was there, because there was just a lot of mud caked on the
8 outside. In the photograph that I have of that, all I could
9 see is a little bit of blue jeans from one of them.

10 Q. So while Mr. Starnes mentioned the description,
11 clothing description, you can't tell that clothing
12 description from the bodies that were found, could you?

13 A. Not in the condition that they were in when they came
14 to us.

15 Q. Thank you, doctor.

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

17 THE WITNESS: You are welcome.

18 MR. STARNES: Nothing further.

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

21 THE WITNESS: May I be excused, Your Honor?

22 THE COURT: Any objection to his being excused?

23 MR. STARNES: No objection.

24 MR. BULSA: No.

25 THE COURT: Thank you for coming, sir. You may be

1 excused.

2 THE WITNESS: You are welcome. Thank you, sir.

3 THE COURT: All right. I believe that's all we
4 can stand for one day, seat-wise and mind-wise, perhaps.
5 It's probably a good time to call it a day.

6 Mr. Foreman, ladies and gentlemen of the jury, we
7 are going to go ahead and recess for the evening. By the
8 courtroom clock it's about five minutes to seven. We will
9 go ahead and recess.

10 I'm going to ask you -- for working late, I'm
11 going to give you a little more time to come in in the
12 morning. We are going to start about 9:30 in the morning.
13 That will give you a little more time to get up and get
14 going. So I'm going to ask you to please be back in the
15 jury room ready to go at 9:30. Okay.

16 Please have a good night tonight.

17 Let me remind you of a couple of things, please.
18 I'm sure there will probably be some media coverage of this
19 trial. Please do not read, listen to, or watch any media
20 accounts of the trial until after the trial is over.

21 If there is some and someone will save it for you
22 until after the trial, you are welcome to read, look at it,
23 listen to it, watch it after the trial is over, but not
24 until then and after the verdict is in in the trial. Please
25 do not do that.

1 Please do not discuss the case among yourselves or
2 with anyone else. Someone is going to want to discuss it
3 with you, I assure you. Please do not discuss it with them.
4 Tell them that you have been instructed not to do that and
5 you will talk with them about it after the trial is over, be
6 glad to do that, or that would be up to you whether you talk
7 to them or not.

8 Thank you. Please have a pleasant night and we
9 will see you in the morning.

10 (The following takes place outside the presence of
11 the jury panel)

12 THE COURT: All right. Any matter we need to take
13 up at this time out of the presence of the jury from either
14 side?

15 MR. BULSA: No, sir.

16 MR. STARNES: Nothing, Your Honor.

17 THE COURT: Okay. Well, have a good night and we
18 will see all of you in the morning.

19 (Whereupon, proceedings were adjourned to November
20 9, 2007)

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

THE STATE)
-vs-) TRANSCRIPT OF RECORD
NORMAN EDWIN STARNES,) 1996-GS-32-3339
Defendant.) NOVEMBER 9, 2007
Lexington, South Carolina

(VOLUME V)

B E F O R E:
THE HONORABLE LEE S. ALFORD, JUDGE. ; and a jury.

A P P E A R A N C E S:
HAROLD "TREY" GOWDY, III, SOLICITOR
ROBERT P. COLER, ASSISTANT SOLICITOR
DERRICK BULSA, ASSISTANT SOLICITOR
ATTORNEYS FOR THE STATE

MR. NORMAN EDWIN STARNES
DEFENDANT APPEARING PRO SE

JOHN DELGADO, ESQUIRE
APPEARING WITH THE DEFENDANT

WILLIAM NETTLES, ESQUIRE
APPEARING WITH THE DEFENDANT

Michael R. Watts
Circuit Court Reporter

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1 (PROCEEDINGS, November 9, 2008)

2 (Photograph marked as State's Exhibit No. 58 for
3 identification)

4 (Pistol marked as State's Exhibit No. 59 for
5 identification)

6 (Bullet marked as State's Exhibit No. 60 for
7 identification)

8 (Authorization for Autopsy marked as State's
9 Exhibit No. 10 for identification)

10 (Authorization for Autopsy marked as State's
11 Exhibit No. 11 for identification)

12 THE COURT: Are we ready to proceed then?

13 Solicitor, ready?

14 MR. GOWDY: Yes, sir, Your Honor.

15 THE COURT: Defense ready?

16 MR. STARNES: Yes, sir, Your Honor.

17 THE COURT: All right. Let's bring the jury in,
18 please, sir.

19 (The following takes place in the presence of the
20 jury panel)

21 THE COURT: Good morning, Mr. Foreman, ladies and
22 gentlemen of the jury. I hope you had a pleasant night last
23 night. We are now ready to resume with the trial.

24 Counsel, ready to proceed?

25 MR. BULSA: Yes, Your Honor.

1 THE COURT: Please call your next witness.

2 MR. BULSA: The State calls Tony Tindal.

3 TONY TINDAL, having been first duly sworn,
4 testified as follows:

5 THE CLERK: If you will have a seat and state your
6 name and spell your last for the record, please.

7 THE WITNESS: Tony Tindal, T-I-N-D-A-L.

8 DIRECT EXAMINATION BY MR. BULSA:

9 Q. Good morning, Mr. Tindal.

10 A. Good morning.

11 Q. Where do you live, sir?

12 A. Pelion.

13 Q. How long have you lived in Pelion?

14 A. 37 years.

15 Q. Born and raised there?

16 A. Yes.

17 Q. What kind of work are you in?

18 A. I'm self-employed. I work on HUD houses.

19 Q. Okay. Do you know Norm Starnes?

20 A. Yes.

21 Q. How?

22 A. He was a friend of mine. We had -- I had a thrift
23 store in Pelion. He had a restaurant beside me.

24 Q. The name of your thrift store was what?

25 A. Tony's Thrift Store.

1 Q. And his business was the Panther Parlor?

2 A. Correct.

3 Q. Okay. How long would you say that you knew him?

4 A. About five years.

5 Q. I'll show you State's Exhibit No. 14.

6 Do you see the building in the middle of that picture?

7 A. Yes.

8 Q. Is that where your thrift shop was?

9 A. Yes.

10 Q. Which side of the building would have been yours?

11 A. The right side.

12 Q. The one painted the lighter color?

13 A. Yes.

14 Q. And who owned that building?

15 A. Martin Bradley.

16 Q. And were you leasing it from him?

17 A. Yes.

18 Q. Did you have any interest in Mr. Starnes' business?

19 A. No interest, no.

20 Q. Did you get a license put in your name?

21 A. Yes.

22 Q. Explain that to the jury, please.

23 A. Well, Norman was having some financial problems and he
24 had got behind in his taxes, sales tax with the Tax
25 Commission and we put the -- we put the license in my name.

1 Q. So while you didn't have an interest, you had -- you
2 didn't have an interest in the actual business part of it,
3 you were interested in what he was doing?

4 A. Correct.

5 Q. Because you were on record? You were on record with
6 that tax liability, right?

7 A. Yes.

8 Q. Now, Mr. Tindal, do you remember the evening of January
9 the 7th, January the 8th, 1996?

10 A. Yes.

11 Q. Did you receive a phone call from Mr. Starnes that
12 evening?

13 A. Yes.

14 Q. Approximately when was that phone call?

15 A. Somewhere around midnight.

16 Q. And what was your phone number?

17 A. It's been so long ago, I don't even remember.

18 Q. You don't remember?

19 A. No, I sure don't.

20 Q. Okay.

21 MR. BULSA: May I approach, Your Honor?

22 THE COURT: Yes, sir.

23 BY MR. BULSA:

24 Q. Let me show you what's been marked State's Exhibit No.

25 20. Does that document help refresh your memory?

1 A. I'm sorry, right there at the top. 894-4116.

2 Q. That was your phone number?

3 A. Yes.

4 Q. So he would have called that number sometime around
5 midnight?

6 A. Correct.

7 Q. And what was the purpose of that call?

8 A. He asked to borrow a pickup.

9 Q. Did that seem unusual to you?

10 A. No.

11 Q. At that time of night that wasn't unusual?

12 A. No, it really wasn't unusual, because a lot of times we
13 worked around the restaurant or the store late at night when
14 there wasn't people in and out.

15 Q. And where did you live in relation to Mr. Starnes?

16 A. I lived a mile and a half, two miles, probably.

17 Q. I don't know that you have seen this, but this is
18 State's Exhibit No. 6. Can you see that from where you are?

19 A. Yes, sir.

20 Q. That shows some of the major roads in that area. I'm
21 going to set it up right here.

22 Do you see the Panther Parlor here in the middle --
23 excuse me, here in the middle?

24 A. Okay.

25 Q. Then Norman Starnes' residence on Forts Pond Road?

1 A. Okay.

2 Q. Where would your home be in relation?

3 A. It would be off Jeff Shoal.

4 Q. You can stand right there and point to it.

5 A. Right about there.

6 Q. Right in there?

7 A. Yes.

8 Q. About how far is that from Mr. Starnes' house?

9 A. I would say maybe two miles. I don't know. Mile and a
10 half, two miles.

11 Q. When he called to borrow the truck, how long was that
12 conversation?

13 A. A short conversation. That's pretty much. He called
14 and asked if he could borrow a truck, and that was it.

15 Q. Well, did he -- did you let him borrow it?

16 A. Yes.

17 Q. How did you let him borrow it?

18 A. I went and picked him up from his house and brought him
19 back to my house and he got the truck.

20 Q. Were you sleeping when that happened?

21 A. Yes. I was asleep when I got the phone call.

22 Q. Okay. When you woke up and got dressed and drove to
23 his house?

24 A. Yes.

25 Q. Just a short distance?

1 A. Correct.

2 Q. And what took place when you got to his house?

3 A. I just went to his house. He was standing on the porch
4 and he got in the pickup and we went back to my house and he
5 got the truck and left.

6 Q. Okay. Was there any conversation at his house?

7 A. No.

8 Q. Do you remember how he was acting at that point?

9 A. No, not really. I mean, I had just been woke up out of
10 the bed. I probably wasn't very conversational.

11 Q. Did it appear to you that anything was wrong?

12 A. No.

13 Q. Did he say why he needed to use your truck?

14 A. He said he was out of gas.

15 Q. Did he have a vehicle in his yard?

16 A. Yes.

17 Q. What kind of vehicle?

18 A. It was a Chevrolet.

19 Q. Would it have been a Chevrolet Caprise?

20 A. Yeah, I think so.

21 Q. I'll show you State's Exhibit No. 36. Does that look
22 like the vehicle that was in his yard?

23 A. Yes.

24 Q. Was that parked in front of the house?

25 A. Well, I think it was. I'm not sure.

1 Q. Okay. Do you know who owned that car?

2 A. I believe it was his mother's.

3 Q. Okay. Is that the car that you took to be out of gas?

4 A. Yes.

5 Q. Was that the only vehicle that you saw there?

6 A. That's the only one I saw, yes.

7 Q. So did he invite you in his home?

8 A. No.

9 Q. Did you see anybody else at the house?

10 A. No.

11 Q. Could you tell if there was any activity inside the
12 house?

13 A. No, I couldn't.

14 Q. So you picked him up and drove him back to your house?

15 A. Yes.

16 Q. Was there any conversation on your way to the house?

17 A. No.

18 Q. Did he at any time tell you that something had just
19 happened inside his house?

20 A. No.

21 Q. What kind of truck did he borrow from you?

22 A. It's a Mitsubishi pickup.

23 Q. I'll show you what's been marked State's Exhibit No.

24 58. Do you recognize that vehicle?

25 A. Yes.

1 Q. Is that your Mitsubishi?

2 A. Yes.

3 MR. BULSA: Your Honor, the State would move 58
4 into evidence.

5 MR. STARNES: No objection, Your Honor.

6 THE COURT: Admitted without objection.

7 BY MR. BUSLA:

8 Q. Did you have any idea where he needed to go at that
9 time of night?

10 A. No.

11 Q. He did not tell you anything like that?

12 A. No.

13 Q. How long did he keep your truck?

14 A. Until the next day.

15 Q. How did you get it back?

16 A. He drove it to my house. I went by the Panther Parlor
17 and he drove to it my house and I picked him up and brought
18 him back to the Panther Parlor.

19 Q. Did you know -- when did you learn of the two men that
20 was missing?

21 A. Well, when I found out that my pickup and Gwen had went
22 to Lexington County. I didn't know anything about it until
23 then.

24 Q. You didn't see any missing persons posters around?

25 A. I'm sure I did, but I didn't pay it much attention,

1 though.

2 Q. Did you know the men that were missing?

3 A. No.

4 Q. Do you know if Mr. Starnes had those posters in his
5 business?

6 A. I'm not sure.

7 Q. You don't remember?

8 A. No.

9 Q. So the first that you recall is when the police came to
10 you about the truck?

11 A. Correct.

12 Q. Did Mr. Starnes ever talk to you about what he had done
13 with your truck?

14 A. No.

15 Q. What he had used it for?

16 A. No.

17 Q. Did you ever notice anything different about your
18 truck?

19 A. No.

20 Q. When the police recovered it, was the truck in the same
21 condition it was when Mr. Starnes borrowed it?

22 A. No, I'm sure it wasn't, because I've used it since.

23 Q. Was there a bed mat in it?

24 A. It wasn't in it, no.

25 Q. It was when he borrowed it, but it wasn't when he --

1 A. I'm not sure about that. I'm don't know whether it was
2 or it wasn't.

3 Q. Do you remember the police coming to your house and --

4 A. They asked could they get it, yes.

5 Q. Thank you Mr. Tindal. Answer any questions Mr. Starnes
6 may have.

7 A. Okay.

8 MR. STARNES: May it please the court, Your Honor?

9 THE COURT: Yes, sir.

10 CROSS EXAMINATION BY MR. STARNES:

11 Q. Hi, Mr. Tindal. How are you doing today?

12 A. Good.

13 Q. Mr. Tindal, calling you late at night and asking to
14 borrow your truck, that was pretty unexpected, wasn't it?

15 A. Well, unexpected, but not at all.

16 Q. I didn't ask you earlier in that day that I was going
17 to need to borrow your truck, or anything like that?

18 A. No.

19 Q. Did I ever discuss anything to you that night about
20 killing anyone?

21 A. No.

22 Q. Borrowing the truck, did I ever say that I was going to
23 kill anyone?

24 A. No.

25 Q. Mr. Tindal, have you ever heard me tell you that I was

1 going to kill anyone anytime?

2 A. No.

3 Q. Mr. Tindal, you had a business next to the Panther
4 Parlor?

5 A. Yes.

6 Q. Have you ever had financial problems?

7 A. I think we all have, yes.

8 Q. Mr. Tindal, referring to State's Exhibit No. 36, this
9 vehicle right here, did that vehicle like look that on
10 January the 8th?

11 A. No. I don't think so, no.

12 Q. Had it been wrecked?

13 A. I don't think so. I just don't remember.

14 Q. You don't remember.

15 Mr. Tindal, referring to State's Exhibit No. 14, you
16 are familiar with this area?

17 A. Yes.

18 Q. Now, the Panther Parlor would have been in this side of
19 the building here?

20 A. Correct.

21 Q. And next to the Panther Parlor would have been your
22 business over here?

23 A. Correct.

24 Q. Are you pretty familiar with the dining room area of
25 the Panther Parlor?

1 A. Yes.

2 Q. The kitchen?

3 A. Yes.

4 Q. How many times have you been in that building, Mr.
5 Tindal?

6 A. Lots of times.

7 Q. Lots of times.

8 Could you give us an estimate?

9 A. A hundred times. I don't know.

10 Q. Now, there is this door on the side here of this
11 building, is that correct, Mr. Tindal?

12 A. Correct.

13 Q. And if you are in that Panther Parlor seated, could you
14 see someone enter that side door?

15 A. Yes, you could.

16 Q. There is a -- is there a table where -- next to the
17 cash register in the dining room area where the bubble gum
18 machine sit?

19 A. Yes.

20 Q. And if you were sitting at that table, could you see
21 through those double doors and see who was coming in that
22 side door right there?

23 A. If you had your back to it, no, but if you were sitting
24 on one side, I guess you could.

25 Q. You could see through there and you could see in that

1 kitchen, is that correct?

2 A. Yes.

3 Q. Now, Mr. Tindal, there is a food service window in
4 between the dining room and the kitchen, is that correct?

5 A. Yes.

6 Q. Would you tell the jury how big that food service
7 window is?

8 A. Probably two by five foot, something. Two foot by five
9 foot.

10 Q. If you are in the kitchen area and --

11 Well, let me ask you this, Mr. Tindal. If you are in
12 the kitchen area of the restaurant -- or excuse me, if you
13 are in the dining room area of the restaurant, can you see
14 into the kitchen?

15 A. If you are sitting down, no, except through the
16 doorway.

17 Q. Except through the double doorway?

18 A. Right.

19 Q. Can you see through the food service window and see
20 everything that's going on in the kitchen?

21 A. Well, you can see people moving around. You can't see
22 what they are doing.

23 Q. My question is, Mr. Tindal, if someone comes in that
24 side door and walks to one of those shelves, you could see
25 that, couldn't you?

1 A. Yes.

2 Q. And you could see that plainly, couldn't you?

3 A. Yes.

4 Q. That dining room in that Panther Parlor is pretty
5 small, isn't it?

6 A. Yes.

7 Q. That kitchen in that Panther Parlor was pretty small,
8 wasn't it?

9 A. Yes.

10 Q. If you're in the kitchen area -- excuse me, if you are
11 in the dining room area and somebody walks through that back
12 door, you could see them, isn't that correct?

13 A. Yes.

14 Q. Now, Mr. Tindal, you know a lady by the name of Gwen
15 Ott-Bailey?

16 A. Yes.

17 Q. And did you know that she at a point in time lived with
18 me?

19 A. Yes.

20 Q. At some point in time Gwen and I separated, is that
21 correct?

22 A. Yes.

23 Q. And where did Gwen go live at when she and I separated?

24 A. She went to my home.

25 Q. Did she live with you?

1 A. Yes.

2 Q. And when would that have been, Mr. Tindal?

3 A. I'm not sure of the date, but it was probably a month
4 before all this come up, or whatever.

5 Q. A month before I was arrested?

6 A. Yes.

7 Q. So how long would that have been after January the 8th
8 that Ms. Ott still lived with me?

9 A. I don't know. I would say a month. I'm not sure.

10 Q. Do you recognize this building right here, Mr. Tindal?

11 A. Yes.

12 Q. Could you please tell the jury what building that is
13 right there?

14 A. That's the bank.

15 Q. Is there an ATM machine at that bank?

16 A. Yes.

17 MR. STARNES: May I approach the witness, Your
18 Honor?

19 THE COURT: Yes, sir.

20 BY MR. STARNES:

21 Q. Mr. Tindal, if you would please be kind enough to show
22 the jury where that ATM machine is at?

23 A. It's right there.

24 Q. Now, would you show the jury where the side door to the
25 Panther Parlor is at?

1 A. It would be right there.

2 Q. Okay. Thank you, Mr. Tindal.

3 REDIRECT EXAMINATION BY MR. BULSA:

4 Q. Mr. Tindal, Mr. Starnes asked you about Ms. Ott coming
5 to live with you. What kind of relationship did you have
6 with her?

7 A. Just friends.

8 Q. You don't recall when she left Mr. Starnes?

9 A. No.

10 Q. She moved in with you because you were a friend of
11 hers?

12 A. Correct.

13 Q. All right. Thank you.

14 RECROSS EXAMINATION BY MR. STARNES:

15 Q. Mr. Tindal, I believe that the solicitor asked you, you
16 and Ms. Ott never had a relationship?

17 A. That's correct.

18 Q. At any time during the time that she lived with you,
19 did she tell you that I was going to kill anybody or I had
20 planned to kill anybody?

21 A. No.

22 Q. She never told you that I premeditatedly planned to
23 kill two individuals, did she?

24 A. No.

25 Q. Thank you.

1 REDIRECT EXAMINATION BY MR. BULSA:

2 Q. Did you ever discuss that?

3 A. No.

4 Q. And was she still with you when she went to the police?

5 A. Yes, she was there until that time, yes.

6 Q. She was at your house and left when she went to Ms.
7 Kaiser's house?

8 A. When she went where?

9 Q. When she went to Ms. Kaiser's house, Vickie Kaiser?

10 A. Yeah, I guess, yes.

11 Q. Okay. She didn't leave your house and go to the
12 police, did she?

13 A. I don't know. I mean, I don't know where she -- I was
14 working. I don't know when she went or anything else.

15 Q. Do you remember her leaving your house in the middle of
16 the night?

17 A. No.

18 Q. Around Memorial Day?

19 A. That's possible, yes.

20 Q. '96.

21 A. I just don't remember.

22 Q. Did Mr. Starnes come over there that day?

23 A. Yes.

24 Q. Did Ms. Ott leave as a result of him coming over there?

25 A. At some point in time, yes, but I wasn't there.

1 Q. Thank you.

2 THE COURT: All right. Thank you, sir. You may
3 stand down, sir.

4 MR. BULSA: The State calls Charley Cato.

5 CHARLIE CATO, having been first duly sworn,
6 testified as follows:

7 THE CLERK: If you will have a seat, stating your
8 name and spelling your last name for the record, please.

9 THE WITNESS: My name is Charles Cato, C-A-T-O.

10 DIRECT EXAMINATION BY MR. BULSA:

11 Q. Mr. Cato, where do you live at this time?

12 A. In West Columbia.

13 Q. And what is your occupation at this time?

14 A. I'm the director of maintenance for Heartland Hospice
15 in Columbia and Augusta.

16 Q. And you formerly worked for the Lexington County
17 sheriff's office?

18 A. I did.

19 Q. In what capacity?

20 A. I was a forensics investigator.

21 Q. And how long had you been employed with the Lexington
22 County?

23 A. I'm sorry?

24 Q. How long had you been employed with Lexington County?

25 A. 17 years.

1 Q. Back in January -- back in May of 1996, what were your
2 duties with Lexington County?

3 A. Forensics investigator and evidence custodian.

4 Q. Mr. Cato, did you have occasion to go to a scene, a
5 burial scene, in Aiken County on May 27th of 1996?

6 A. I did, sir.

7 Q. What was the purpose of your going there?

8 A. The possible location of two bodies being buried on a
9 piece of property.

10 Q. Was SLED called in for assistance?

11 A. That's correct, sir.

12 Q. Who was actually in charge of that burial scene?

13 A. SLED.

14 Q. So did you assist SLED?

15 A. I did, sir.

16 Q. And what did you witness take place there?

17 A. At that time, sir, we were directed to a location. It
18 was near a residence we go into, and there was an overgrown
19 field to where we were directed to go to look for two
20 bodies.

21 Q. And we know that the bodies were found. Did you
22 witness the recovery of the bodies?

23 A. I did, sir.

24 Q. Approximately how deep were those bodies buried?

25 A. I'm going to say approximately two feet.

1 Q. Do you remember if they were covered with any kind of
2 substance?

3 A. They were covered with dirt. There was a hard
4 substance on top of them resembling concrete.

5 Q. Did you witness the concrete being removed?

6 A. I did, sir.

7 Q. From your position and your vantage point, were those
8 bodies protected by the concrete?

9 A. They were, sir.

10 Q. Now, was there any attempt to identify those bodies at
11 the scene?

12 A. No, sir, I don't believe so. Not that I can recollect.

13 Q. Do you remember Buddy Knight coming in and taking the
14 bodies off?

15 A. Yes, sir.

16 Q. And did you have the occasion to go to the autopsy of
17 these two individuals?

18 A. I did, sir, at the Newberry County Hospital with Dr.
19 Joel Sexton.

20 Q. Would that have been the next day?

21 A. Yes, sir.

22 Q. Did you receive any valuables from either of these
23 individuals?

24 A. I remember receiving -- I remember receiving clothing,
25 a -- I believe a necklace. I can't remember anything else.

1 Q. Did you receive -- do you remember receiving any
2 wallets or any --

3 A. A wallet, yes, sir.

4 Q. Did you receive a wallet?

5 A. I believe so.

6 Q. Could you look at your --

7 A. Could I?

8 Q. Yes, sir, please.

9 Mr. Cato, do you have evidence transfer sheets?

10 A. I do, sir, but I don't see a wallet on here.

11 Q. So would that be safe to say that you did not recover
12 any wallets?

13 A. That's correct.

14 Q. Do you remember or have records of recovering any
15 identification of either person?

16 A. No, sir.

17 Q. Okay. And did you receive from Dr. Sexton bodily
18 fluids from each of these individuals?

19 A. I did, sir.

20 Q. Such as blood, liver matter, brain matter, head hair.
21 What would you have done -- and also the clothing.
22 What would you have done with those items?

23 A. Those items were transferred with me back to the
24 Lexington County sheriff's office.

25 Q. And did you also receive one bullet, one spent bullet?

1 A. I did, sir.

2 Q. Okay. I show you what's been marked State's Exhibit

3 No. 60. Do you recognize that object?

4 A. Yes, sir, this is the projectile that was recovered at
5 the autopsy by Dr. Sexton.

6 Q. Was that transferred to you as well?

7 A. It was.

8 Q. Did you, yourself --

9 MR. BULSA: Your Honor, I would move 60 into
10 evidence.

11 MR. STARNES: No objection, Your Honor.

12 THE COURT: Admitted without objection.

13 BY MR. BULSA:

14 Q. Did you take the bullet yourself to SLED?

15 A. I did, sir.

16 Q. And how about the blood and other bodily fluids from
17 the two individuals?

18 A. No, sir.

19 Q. What did you do with those?

20 A. Those were stored in the refrigeration unit at the
21 sheriff's office.

22 Q. That was in a secured facility?

23 A. Yes, sir.

24 Q. Do you have records showing that Darren Amick took
25 those items to SLED?

1 A. I do, sir.

2 Q. At that would have been in January of 1997?

3 A. Correct.

4 Q. And the clothing, where were they secured?

5 A. They were secured at the sheriff's office.

6 Q. Thank you. Please answer any questions Mr. Starnes may
7 have.

8 CROSS EXAMINATION BY MR. STARNES:

9 Q. Hi, Mr. Cato. How are you doing today?

10 A. Fine.

11 Q. Mr. Cato, on May the 31st of 19 -- May the 31st of
12 1996, did you contact a gentleman by the name of Agent
13 Barron?

14 A. Give me just one second.

15 What was the date again, Mr. Starnes?

16 Q. It was 5-31-96.

17 A. Yes, sir.

18 Q. In your investigative report.

19 A. Yes, sir.

20 Q. Mr. Cato, were you aware during the course of your
21 investigation --

22 You were at Aiken County when the bodies were
23 recovered?

24 A. That's correct.

25 Q. Were you aware at that time that there was an

1 allegation of the defendant urinating on the bodies?

2 A. No, sir.

3 Q. At any time did you learn that?

4 A. No, sir.

5 Q. Okay. Could you tell the jury why you contacted Agent
6 Barron about recovering any trace evidence?

7 A. As I said in my investigative report, the -- since the
8 bodies had been buried, the clothing and the bodies were in
9 such a big mass when we dug the bodies up out of the ground,
10 that when we got the bodies to the autopsy to get the
11 clothes off and everything, Dr. Sexton washed the clothing
12 in a large -- it looks like a large urinal, to be honest
13 with you, and all the trace evidence and everything would
14 have been flushed down the -- when he emptied the water out.

15 Q. At any point during the time at the Lexington County
16 sheriff's office, did you or any agent with the Lexington
17 County sheriff's office attempt to do any DNA testing on
18 that clothing?

19 A. I can't -- I can't speak for anybody else. I know I
20 didn't, or I didn't submit anything.

21 Q. When did you leave the Lexington County sheriff's
22 office?

23 A. I believe it was around 1999.

24 Q. Up until 1999, did you know of anyone who --

25 A. I don't have any recollection.

1 Q. No recollection?

2 A. No.

3 Q. If someone would have attempted to do DNA testing,
4 would that have went through you?

5 A. It's possible.

6 Q. It's possible?

7 A. I mean, it was another person working in the sheriff's
8 office, though, in this division, so, you know --

9 Q. Who was that individual?

10 A. Jim Hickman.

11 Q. Thank you, Mr. Cato.

12 THE COURT: Anything further, solicitor?

13 MR. COLER: No, sir.

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

15 THE WITNESS: Thank you, sir.

16 MR. BULSA: We ask that he be excused.

17 THE COURT: Any objection to him being excused?

18 MR. STARNES: No objection.

19 THE COURT: Thank you. You may be excused at this
20 time.

21 MR. COLER: May it please the court, the State
22 calls Amanda Simmons.

23 SLED AGENT AMANDA SIMMONS, having been first duly
24 sworn, testified as follows:

25 (Photograph marked as State's Exhibit No. 61 for

1 identification)

2 (Photograph marked as State's Exhibit NO. 62 for
3 identification)

4 (Photograph marked as State's Exhibit No. 63 for
5 identification)

6 (Photograph marked as State's Exhibit No. 64 for
7 identification)

8 (Photograph marked as State's Exhibit No. 65 for
9 identification)

10 (Photograph marked as State's Exhibit No. 66 for
11 identification)

12 (Photograph marked as State's Exhibit No. 67 for
13 identification)

14 DIRECT EXAMINATION BY MR. COLER:

15 Q. Ms. Simmons, tell us where you work.

16 A. I'm currently employed with the South Carolina Law
17 Enforcement Division.

18 Q. That's also known as SLED?

19 A. That is correct.

20 Q. Tell us what your title and position is with the SLED.

21 A. I'm currently a lieutenant and I manage the computer
22 forensics lab at SLED.

23 Q. Lieutenant Simmons, how long have you been in the
24 computer division?

25 A. I have currently been in the computer division, as of

1 today, approximately -- I having handling computer forensics
2 since 1998. The unit actually formed in 2001, and split
3 from the our narcotics unit and technical services unit.

4 Q. And, briefly, what do you do for the computer division
5 at SLED?

6 A. We handle any seized computers, the analysis, the data
7 recovery, whether it be computers, media, cellphones, any
8 type of electronic media, such as that. We do the data
9 recovery on that with the appropriate court documentation.

10 Q. Lieutenant, before going to work for SLED in the
11 computer division you had a different career, occupation?

12 A. That is correct. I spent approximately eleven years
13 with the Lexington County sheriff's office.

14 Q. What was your title and duties with the Lexington
15 County sheriff's department?

16 A. I held various positions at the sheriff's office. When
17 I departed Lexington County and went to SLED, I was a marine
18 patrol investigator assigned to Lake Murray, with
19 investigative duties and patrol duties on Lake Murray.

20 Q. What does a marine patrol officer do at Lexington
21 County?

22 A. Okay. They patrol Lake Murray, via the substation,
23 which is located on Lake Murray. At that time we had an
24 agreement with all four sheriff's, so we patrolled the
25 entire lake and handle calls on the entire lake, via boat.

1 In addition to that, we had a drowning or some other
2 diving situation, we would do dive recovery on the lake.
3 And also like I said, mentioned, look for drowning victims
4 as well.

5 Q. How often would your duties require you to dive and
6 recover evidence?

7 A. It varied. You know, sometimes we would dive several
8 times a month, and then sometimes we would, you know, skip
9 several months. So it depended on, you know, the accidents
10 and things like that on Lake Murray and other bodies of
11 water throughout the county.

12 Q. Back in 1996, in late July, or early August of 1996,
13 were you requested as a diver to attempt to recover evidence
14 for this case?

15 A. I was.

16 Q. Go ahead.

17 A. I, along with several of the other divers from the dive
18 team, we went to the North Edisto River, which is located at
19 the Lexington, Aiken County line off of Highway 302, and we
20 sat up searches in the river looking for a gun and various
21 other articles.

22 Q. Lieutenant Simmons, is it fair to say that this area
23 right here is the area you were requested to dive and look
24 for evidence? Can you see that?

25 A. Can I step up there, so --

1 Q. Yes, ma'am.

2 (Witness off the witness stand)

3 (Witness back on the witness stand)

4 A. That is correct.

5 BY MR. COLER:

6 Q. I'll leave this up there in case you need that.

7 What evidence were you requested to look for in
8 relation to this case?

9 A. The one I was mentioned was a handgun that had possibly
10 been put in the river, and I received that information from
11 the Lieutenant Clark Rowe, who was my supervisor at the
12 time. I believe he is now Captain Clark Rowe.

13 Q. I'm going to show you some photographs that have been
14 premarked State's Exhibit 62, 61, 63, 64, 65, 66, and 67,
15 and first ask you if you recognize those photographs?

16 A. I do.

17 Q. Okay. Do these photographs appear to accurately
18 portray the dive that y'all performed back in early July,
19 late August -- late July, early August, 1996, at the North
20 Edisto River?

21 A. They do.

22 MR. COLER: Your Honor, we would offer to publish
23 them to the jury.

24 MR. STARNES: No objection.

25 THE COURT: The are admitted without objection,

1 and you may publish.

2 BY MR. COLER:

3 Q. I'm going to show you just briefly to orient us, what's
4 that a picture of?

5 A. That's a photograph of the bridge going into Lexington
6 County on Highway 302.

7 Q. And the way we are looking at this picture on our map,
8 which direction is that road going on our map?

9 If you are on the bridge here, is that looking into
10 this direction, towards Lexington?

11 A. That's correct, it's going back into Lexington County.

12 Q. This area over here on the photograph, what is all
13 that?

14 A. That is the particular area that we dove in and we
15 actually set up search lines in that area.

16 MR. COLER: And, Your Honor, I'm showing her
17 State's No. 65.

18 BY MR. COLER:

19 Q. What is this a picture of and what are we looking at?

20 A. Again, that's an aerial view of the location that we
21 dove in, the North Edisto River and Highway 302.

22 Q. Is this the river here?

23 A. Yes, that is correct.

24 Q. And this is that staging area that y'all used?

25 A. That is correct.

1 Q. Just again to orient us --

2 MR. COLER: Your Honor, I'm showing her State's
3 67.

4 BY MR. COLER:

5 Q. What's this a picture of?

6 A. Again, a picture of the bridge, Highway 302 at the
7 North Edisto.

8 Q. I don't know if you can see this here, this county line
9 sign. Going up this road is going toward Aiken County?

10 A. I previously looked at the photograph and it is Aiken
11 County in that direction.

12 And you are correct, it is quite difficult to see.

13 Q. What are we looking at in this photograph?

14 MR. COLER: Your Honor, for the record it's
15 State's 62.

16 BY MR. COLER:

17 Q. What's that a picture of?

18 A. That's a photograph of the bridge abutment. There are
19 pylons underneath the bridge.

20 Anytime we dive in an environment, such as this, you
21 have a pretty strong current, obviously. On the surface it
22 looks pretty slow moving, but anyone who has ever swam in a
23 river realizes it's pretty swift environment, so we set up
24 search lines and safety lines to get into that environment.

25 Right at the right edge of the photograph you see a

1 safety line that allows us to get out to the center of the
2 river. Without that line, we wouldn't be able to swim
3 against that current.

4 You can also may be able to vaguely see the line going
5 down the river. Is that one of the others?

6 Q. Lieutenant, if you want to use that pointer, point that
7 out for the jury.

8 A. This being the safety line. Basically when we would
9 come off the river's bank, in many cases, particularly in
10 rivers, the banks are very mushy or boggy on the side, so we
11 would use that safety line to ensure that we didn't get
12 hurt. And then once you get right past the edge here, the
13 current will pick up and we would have to hold onto this
14 line to get to this center bridge abutment.

15 And then on the bridge abutment we tied a line that
16 would literally go down river so that we could search.

17 And, again, it looks pretty slow moving on its surface,
18 but once you get in the water you realize it's rapidly
19 moving.

20 In order to search, we would have to hold onto this
21 line here and literally wrap a line around one arm or some
22 appendage so that you could search the bottom, and then
23 release the line and move yourself an arm's length down
24 river so that you could continue to search in a methodical
25 method.

1 Q. Describe for us that methodical method, the process of
2 searching patterns the way that you approached looking for
3 evidence.

4 A. Okay. In this type of environment, with current, what
5 you do is you use that pendulum sweep and literally you
6 start right here an arm's length from the bridge, if that's
7 where your search starts. Again, you wrap that line around
8 your arm so that you can be stable in the water and not be
9 blown down river or being swept down river.

10 You will literally sweep to this side and then sweep
11 back to this side, and then move the line just an arm's
12 length and extend, and you will sweep this direction. Move
13 the arm's length and sweep a little bit further out. And
14 you will repeat that pattern until you have searched the
15 area that you deemed is -- or your witness testimony deems
16 it appropriate.

17 Q. Did you eventually recover a gun from the North Edisto
18 River in the area that you were searching?

19 A. Yes, I did.

20 Q. I'm going to show you what's been premarked as State
21 Exhibit No. 59.

22 MR. COLER: Your Honor, I verified several times
23 with the officers that this is an unloaded handgun.

24 MR. STARNES: No objection, Your Honor.

25 THE COURT: There's a guard on it, in any event,

1 correct?

2 MR. COLER: It does, Your Honor.

3 BY MR. COLER:

4 Q. I'm going to show you what's been premarked as State's
5 Exhibit No. 59 and ask you to take a look at that.

6 Does that appear to be the gun that you recovered from
7 the North Edisto River as a result of your search in this
8 case?

9 A. Yes, that does appear to be the handgun that was
10 recovered.

11 Q. Does it appear to be in the same or substantially the
12 same condition today as when you recovered it in 1996?

13 A. That is the case.

14 MR. COLER: Your Honor, at this point we would
15 offer it into evidence.

16 THE COURT: It was no objection, sir?

17 MR. STARNES: No.

18 THE COURT: Admitted without objection.

19 MR. COLER: Thank you.

20 BY MR. COLER:

21 Q. Describe for me just a little bit about the recovery of
22 the gun. What do you do with it once you find it in the
23 water and attempt to bring it up?

24 A. As with any item of potential evidentiary value, what
25 we try and do is process that the same as we would on land.

1 In most cases, if we have a camera available, we would
2 get a camera actually in and photograph it underwater. But
3 before I would leave obviously an item underwater, I'm going
4 to put some sort of buoy marker on it, so that literally you
5 will have a marker on the surface, because in many cases it
6 takes several days to find something underwater and you
7 obviously don't want to leave it after you do locate it.

8 So, in essence, what we would do is put a marker
9 actually on the surface with a line going down toward the
10 item is on the bottom with a small lead weight, so that I
11 could literally go over to the bank and tell my dive -- my
12 safety diver I have located the item, can you call for a
13 camera. In this particular situation, the night helmet
14 camera was not functioning, so we do not have any underwater
15 photos of it, but we did mark it with the marker, as you see
16 there.

17 And then we also try and gather any potential evidence
18 that may be in the immediate vicinity around it. We use PVC
19 pipes, the large pipes with caps on each end. And what we
20 will do is we will go -- if this were the item of evidence, we
21 would take that piece of PVC pipe and literally scoop up the
22 item, as well as any surrounding dirt in the water with it,
23 and the water and the dirt that's immediately surrounding it
24 and the item would go to SLED from that point.

25 Q. That PVC pipe that you were just talking about, I'm

1 showing you State's Exhibit No. 66 on the overhead, is that
2 that bucket-like object we are looking at there?

3 A. That is that bucket-like object. That's a piece of PVC
4 pipe with the caps on it.

5 Q. You keep the piece of evidence in water and with the
6 surroundings that it was in when you recovered it?

7 A. That is correct. With any item that's been in water,
8 as long as the air has not hit it. The oxygen causes things
9 to rust, so we try and keep it in the environment that it
10 came out of until it is forensically processed. And so
11 basically the water, the surrounding sand, and any other
12 particles in the item of evidence were collected at that
13 point.

14 Q. I'm showing on the overhead State's Exhibit No. 63.

15 Can you point to a location, a general location, where
16 you did find the gun?

17 A. Okay. Obviously this is me as I'm exiting the river.

18 The area that the gun was located was right down in
19 this general area right here, and it was buried in about a
20 foot and a half to two foot of sand, and I was able to
21 locate it with an underwater metal detector.

22 Q. After recovering the gun, you turned it over to
23 Lexington County sheriff's office representatives to carry
24 to State Law Enforcement Division?

25 A. That is correct.

1 Q. For further processing?

2 A. That is correct.

3 Q. As a result of your search in this area, is that the
4 only weapon that you recovered?

5 A. That is the only weapon that I recovered.

6 Q. Thank you, ma'am. Please answer any questions that the
7 defendant has. Thank you, lieutenant.

8 MR. STARNES: Your Honor, I have no questions for
9 this witness.

10 THE COURT: Thank you, ma'am. You may stand down.

11 THE WITNESS: Thank you.

12 MR. COLER: If there is no objection, we would ask
13 Lieutenant Simmons be released.

14 THE COURT: Any objection to this witness being
15 excused?

16 MR. STARNES: No objection.

17 THE COURT: Thank you for coming, ma'am. You may
18 be excused at this time.

19 MR. COLER: May it please the court, the State
20 calls Ronnie Thrailkill.

21 RONNIE THRAILKILL, having been first duly sworn,
22 testified as follows:

23 THE CLERK: Get close to the microphone, state
24 your full name and spell your last name for the record.

25 THE WITNESS: Okay. My name is Ronnie Thrailkill,

1 T-H-R-A-I-L-K-I-L-L.

2 DIRECT EXAMINATION BY MR. COLER:

3 Q. Mr. Thraikill, tell us what you do for a living.

4 A. I am in the firearms business.

5 Q. How long have you been in that business?

6 A. 18 years.

7 Q. Who do you currently work for?

8 A. Shooters Choice in West Columbia.

9 Q. What is Shooters Choice in West Columbia?

10 A. It's a firearms retail store and/or shooting range.

11 Q. Back in 1991, were you -- you were in the firearms
12 retail business?

13 A. Yes, sir, I was.

14 Q. Who were you working for then, do you recall?

15 A. Palmetto Firearms.

16 Q. And you regularly sold firearms as a part of your job?

17 A. I did.

18 Q. You are familiar with the documentation required when
19 you sell a firearm?

20 A. Yes, I am.

21 Q. I'm going to hand you an item.

22 (Firearms Purchase order marked as State's Exhibit
23 No. 68 for identification)

24 BY MR. COLER:

25 Q. I'm handing you what's been premarked as State's

1 Exhibit No. 68. Are you familiar with that document?

2 A. Yes, I am.

3 Q. Tell the jury what that is.

4 A. This is a federal firearms transfer form regulated by
5 ATF. This is required on every firearm transfer that a
6 dealer would make to an individual private sale.

7 Q. Does that particular form relate to a particular
8 firearm sale?

9 A. Yes, sir, it does.

10 Q. Okay. Is it related to the sale of a firearm to the
11 defendant Norman Starnes?

12 A. Yes, sir, it is Norman Starnes.

13 Q. Let me just hold it for one second.

14 MR. COLER: Your Honor, at this point we would
15 offer State Exhibit No. 68 into evidence.

16 THE COURT: Any objection, Mr. Starnes?

17 MR. STARNES: No objection.

18 THE COURT: Admitted without objection.

19 BY MR. COLER:

20 Q. Let me hand that back to you, Mr. Thrailkill.

21 A. Okay.

22 Q. That document relates to a sale of a particular firearm
23 to a particular individual, is that correct?

24 A. Yes, sir, it does.

25 Q. And the sale is to who?

1 A. Norman E. Starnes.

2 Q. And the weapon that was sold, can you tell us what that
3 weapon was?

4 A. It was a revolver. The brand name was Rossi, Model 68,
5 a .38 special.

6 Q. And is there a serial number that goes along with that?

7 A. Yes, sir, it is.

8 Q. What's that?

9 A. The serial number is D, as in dog, 474555.

10 Q. I'm going to hand you what's been admitted now as
11 State's Exhibit No. 59 and ask you if this is the firearm
12 that you sold to Norman Starnes in relation to that form?

13 A. Yes, sir, this is the firearm.

14 Q. And on what date did you sell that firearm to Mr.
15 Starnes?

16 A. December the 10th, 1991.

17 Q. If I could hold that form.

18 I'm going to show you on the overhead State's Exhibit
19 No. 68 and just ask you to walk us through a couple of items
20 on this document.

21 Show us where on here the name of the buyer is?

22 A. The name of the buyer would be under line 1 where it
23 says transferee.

24 Q. If you will use that laser pointer. Use that laser
25 pointer to point that out for the jury.

1 A. That would be this line right here where it says Norman
2 E. Starnes.

3 Q. And where -- is his height and weight and race listed
4 on that form?

5 A. It would be male. Height, six foot. Weight 160. Race
6 white.

7 Q. Is his address listed on there?

8 A. Yes, sir, it's listed at 375 Forts Pond Road, Pelion,
9 South Carolina.

10 Q. Who filled out that top portion?

11 A. The top part is filled out by the buyer.

12 Q. Moving down the document, is there a signature of the
13 buyer on that form?

14 A. Yes, sir, this is where the buyer would be required to
15 sign the gun form, and this would be the date of the
16 purchase.

17 Q. And according to this document, did Mr. Starnes, in
18 fact, sign that form indicating he purchased this particular
19 firearm?

20 A. That would be his signature, Norman E.. I would assume
21 that does say Starnes there.

22 Q. And where is the date of purchase?

23 A. The date of purchase right here, 12-10-91.

24 Q. Moving down further, I see a South Carolina driver's
25 license and a driver's license number. Whose driver's

1 license number is that?

2 A. That would be Mr. Starnes.

3 The bottom section would be filled out by me, as
4 required by law.

5 Q. Who fills -- I guess you answered my question. Who
6 fills out that bottom portion?

7 A. I do.

8 Q. You wrote in SCDL and his number?

9 A. Yes, sir.

10 Q. Where did you get that number from?

11 A. Off of his driver's license, picture ID.

12 Q. You require the buyer to produce a driver's license?

13 A. Yes, sir.

14 Q. And just a bit further down, can you show us where the
15 form indicates the type of weapon and serial number that was
16 purchased?

17 A. This line here would describe the gun as a revolver,
18 the model being the Model 68, 38 special. This would be the
19 serial number and this would be the manufacturer, which is
20 Rossi.

21 Q. Does that information correspond with what you just saw
22 on State's Exhibit 59 with the handgun?

23 A. It does, yes.

24 Q. And there is an initial by the serial number. What's
25 that?

1 A. That is Mr. Starnes initial. Our company policy
2 required when you did the transfer of the gun, to have the
3 purchaser verify the serial number on the documentation was
4 the serial number on the firearm, and have them initial
5 that.

6 Q. And to the best of your recollection, did Mr. Starnes,
7 in fact, do that?

8 A. Yes, sir. That would be why those initials are there.

9 Q. Just one further question, Mr. Thrailkill.

10 If you will take a look at State's 59, the handgun, can
11 you tell me how many rounds that handgun will hold?

12 A. It's a five-shot revolver.

13 Q. Can it hold any more than five?

14 A. No, sir.

15 Q. That's all the questions, Mr. Thrailkill.

16 Please answer questions of the defense.

17 CROSS EXAMINATION BY MR. STARNES:

18 Q. How are you doing, Mr. Thrailkill?

19 A. Yes, sir.

20 Q. How long have you been selling firearms?

21 A. 18 years.

22 Q. 18 years?

23 A. Yes, sir.

24 Q. To purchase a firearm, you have to come in and show a
25 South Carolina driver's license?

1 A. The law requires a government issued picture ID.

2 Q. So, in other words, someone couldn't just come into
3 Palmetto Firearms or Shooters Choice and just say I want to
4 get a firearm --

5 A. That is correct.

6 Q. -- and give you some money and leave?

7 A. That is correct.

8 Q. You have to show driver's license?

9 A. A picture ID.

10 Q. You have to prove of who you are?

11 A. Yes, sir.

12 Q. By the picture ID?

13 A. By the picture ID.

14 Q. Referring to State's Exhibit No. 8, can you identify
15 this number at the bottom, Mr. Thrailkill?

16 A. That's the federal firearms license number of that
17 particular dealer that would be transferring the firearm,
18 and it's Palmetto Firearms or Palmetto Distributors, FFL.

19 Q. So when a firearm is purchased, the Federal Government
20 knows the individual who is purchasing the firearm? There
21 is a record of it?

22 A. There is a permanent record that's held by that dealer.
23 It doesn't go anywhere from there, but it stays at the
24 dealer level. If they need information, they have access to
25 it.

1 Q. When a firearm is purchased, the South Carolina Law
2 Enforcement Division is also notified, aren't they?

3 A. Yes, sir. There is a second document that is issued,
4 or that would have been filled out, and that goes to the Law
5 Enforcement Division.

6 Q. How long have you worked at the Shooters Choice, Mr.
7 Thrailkill?

8 A. Since 1992.

9 Q. And how long have you been selling firearms?

10 A. For 18 years. I started in '89.

11 Q. Can a convicted felon buy a firearm?

12 A. The way the laws are set up, no, sir. He is forbidden
13 from purchasing a firearm.

14 Q. A convicted felon is prohibited from possessing or
15 purchasing a firearm?

16 A. Yes, sir.

17 Q. In the years that you have been selling firearms, you
18 have sold how many handguns, do you think?

19 A. I have not a clue. A lot.

20 Q. Customers that come into Palmetto Firearms and buy
21 handguns, what do they buy them for?

22 MR. COLER: Your Honor, I'm going to object to
23 that.

24 THE COURT: I sustain the objection as to
25 relevance.

1 BY MR. STARNES:

2 Q. At Palmetto Firearms, do y'all have an indoor firing
3 range?

4 A. No, sir.

5 Q. At Shooters Choice, do you have an indoor firing range?

6 A. Yes, I do.

7 Q. Do individuals buy handguns to use in self-defense?

8 MR. COLER: Objection to relevance, Your Honor.

9 THE COURT: I sustain the --

10 MR. COLER: I don't understand the cope of his --

11 THE COURT: I sustain the objection. He wouldn't
12 know why a person is buying a revolver or a weapon.

13 BY MR. STARNES:

14 Q. Mr. Thrailkill, have you ever purchased a handgun?

15 A. Yes, sir.

16 MR. COLER: Objection to relevance again, Your
17 Honor.

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

19 (Off the record)

20 (Back on the record)

21 MR. STARNES: No further questions, Your Honor.

22 REDIRECT EXAMINATION BY MR. COLER:

23 Q. Just one followup.

24 Mr. Thrailkill, you control the sale of firearms and
25 sale to only to people who can legally buy them, is that

1 correct?

2 A. That is correct.

3 Q. You have absolutely no control over who possesses those
4 firearms outside of when you sell them?

5 A. That is correct.

6 MR. COLER: That's all I have.

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

8 MR. COLER: Your Honor, if there is no objection,
9 we would ask Mr. Thrailkill be excused.

10 THE COURT: Any objection to him being excused?

11 MR. STARNES: No objection, Your Honor.

12 THE COURT: Thank you for coming. You may be
13 excused at this time.

14 I think it might be a good time to take a short
15 break, please, counsel.

16 MR. COLER: Can we approach for one second before
17 we do that? We can do it after we --

18 THE COURT: Mr. Foreman, ladies and gentlemen of
19 the jury, we will take a short break at this time. You may
20 refresh yourselves during the break. Those that would like
21 to smoke during this break, I would allow you to do that
22 during this break. We will probably take 10 or 15 minutes.

23 (The following takes place outside the presence of
24 the jury panel)

25 THE COURT: All right, if you want to approach.

1 MR. COLER: Judge, I wonder. The next witness is
2 the DMV representative. We listed Marie Wearing as that
3 representative. The DMV has sent Ms. Johnson in her place.
4 Unless there is an objection, we can get Ms. Wearing here.
5 She's going to testify that Norm Starnes driver's license
6 number is 8336511.

7 MR. STARNES: No objection.

8 THE COURT: No objection to that, Mr. Starnes?

9 MR. STARNES: No objection whatsoever.

10 THE COURT: Anything else?

11 MR. COLER: No, sir.

12 THE COURT: Let's take about ten quick minutes.

13 MR. STARNES: Your Honor, I will stipulate to it.
14 They don't even have to call that witness.

15 MR. COLER: We will accept that stipulation. We
16 will just offer -- we are going to put a picture of the
17 driver's license along with that, if you have no objection.

18 MR. STARNES: I have no objection to that.

19 THE COURT: All right.

20 MR. COLER: Thank you, Your Honor.

21 (Picture of Driver's License marked as State's
22 Exhibit No. 69 for identification)

23 (Whereupon, proceedings were recessed)

24 (Whereupon, proceedings were reconvened)

25 THE COURT: Ready to proceed.

1 MR. COLER: The State is, Your Honor.

2 THE COURT: Defense?

3 MR. STARNES: Yes, sir, Your Honor.

4 THE COURT: Please bring the jury in, sir.

5 MR. COLER: Your Honor, would it be okay to put
6 that stipulation on the record?

7 THE COURT: All right.

8 MR. COLER: I was going to do it in front of the
9 jury.

10 THE COURT: Yes, that would be fine.

11 (The following takes place in the presence of the
12 jury panel)

13 THE COURT: Solicitor.

14 MR. COLER: Thank you, Your Honor.

15 May it please the court.

16 Judge, it's my understanding after talking to the
17 defendant that the defense stipulates that the defendant's
18 driver's license number is, in fact, 008336511. And as a
19 result of that stipulation, the State would offer State's
20 Exhibit No. 69, which is a photograph of defendant's
21 driver's license. I believe that's without objection.

22 MR. STARNES: No objection, Your Honor.

23 THE COURT: Admitted without objection.

24 MR. COLER: Can we just publish that to the jury
25 right now?

1 THE COURT: Yes, sir.

2 MR. COLER: And, for the record, I'm showing you
3 jury State's Exhibit No. 69.

4 Thank you, Your Honor.

5 May it please the court, the next witness?

6 THE COURT: Yes, sir.

7 MR. COLER: David Collins.

8 AGENT DAVID COLLINS, having been first duly sworn,
9 testified as follows:

10 THE CLERK: Take a seat on the witness stand and
11 speak directly into the microphone and state your full name
12 and spell your last name for the record, please.

13 THE WITNESS: David Jeffrey Collins,
14 C-O-L-L-I-N-S.

15 DIRECT EXAMINATION BY MR. COLER:

16 Q. Mr. Collins, if you would, tell the jury where you
17 work.

18 A. I am currently employed by the Richland County
19 sheriff's department.

20 Q. What is your title or position with Richland County?

21 A. With Richland County, I'm employed as a firearm and
22 tool marks examiner in the forensics laboratory.

23 Q. What are your general duties as a firearms and tool
24 mark examiner with the Richland County sheriff's department?

25 A. As a firearm and tool marks examiner, I am responsible

1 for examining any type of firearm or tool mark related
2 evidence that is submitted to the laboratory.

3 The type of examination that you may be most familiar
4 with would be examining fired bullets and fired cartridge
5 cases and comparing them with specimens from a suspect
6 firearm to determine if they were fired by that gun.

7 However, we do other examinations to include looking at
8 any type of fired bullets and cartridge cases to determine
9 what caliber they are and what types of firearms may have
10 fired them in those cases where we don't have a firearm
11 submitted.

12 In cases where it could be done, we attempt to do
13 muzzle-to-target distance determinations. We can restore or
14 attempt to restore serial numbers on firearms that have had
15 the serial numbers obliterated. For essentially any type of
16 firearm specific examination that is required, or tool mark
17 specific examination.

18 A tool mark is an item of evidence that has been simply
19 marked by another object. And many ways this is closely
20 tied into firearms examination. A good example of tool mark
21 evidence would be a padlock shackle that's been used by a
22 pair of bolt cutters, for instance. That's the type of
23 items that we would examine.

24 Q. What percentage of your day is devoted to firearms
25 examination as opposed to tool mark examination?

1 A. Typically I would say if you were to break it down over
2 the course of a year and look at the average amount of time
3 spent on each, it would be about 99 percent of it is dealt
4 with firearms.

5 Q. Before going to work for the Richland County sheriff's
6 department who were you employed with?

7 A. I was employed by the State Law Enforcement Division,
8 commonly referred to as SLED. I started with SLED in 1990,
9 and moved from there to Richland County sheriff's department
10 in 2002.

11 Q. Were your duties with the State Law Enforcement
12 Division and your job essentially the same as what you now
13 do for Richland County?

14 A. Yes, it was exactly the same.

15 Q. If you would, give the jury the benefit of your
16 background, your education, your training and your
17 experience that enables you to perform the duties that you
18 do for Richland County.

19 A. When I first became employed at SLED, I entered what
20 was essentially an on-the-job training program in firearms
21 and tool marks examination. At that time there were no
22 schools in the country, or, in fact, to my knowledge,
23 anywhere in the world that actually teach that type of
24 skill. It's almost always given as an on-the-job training,
25 or essentially an apprenticeship-type training program.

1 That program lasts for approximately two and a half years.

2 After completion of that course I was certified by SLED
3 as a firearms and tool marks examiner and then began doing
4 case work on my own.

5 In addition to that training, I have received
6 continuing training and education in my field, both from our
7 professional association, which is the Association of
8 Firearms and Tool Marks Examiners, or AFTME, and through
9 other schools that I have attended. These schools include
10 firearms repair or armors courses provided by such
11 manufacturers as Glock, Baretta, Sig, and others.

12 I have also successfully completed training in shooting
13 scene reconstruction.

14 Q. You have had occasions to testify in General Sessions
15 court previously?

16 A. Yes, I have testified in the General Sessions courts in
17 South Carolina in excess of 200 times in the area of
18 firearms and tool marks examinations.

19 I have also qualified as an expert in that field in
20 Federal Court and in the state courts of Georgia and North
21 Carolina and in the military court system.

22 MR. COLER: Your Honor, at this point we would
23 offer Investigator Collins as an expert in the areas of the
24 firearms examination and tool marks examination.

25 MR. STARNES: No objections, Your Honor.

1 THE COURT: Without objection, he's so qualified.

2 BY MR. COLER:

3 Q. As part of your duties with the State Law Enforcement
4 Division back in 1996, were you asked to examine a gun and a
5 projectile that relates to this case?

6 A. Yes, I was.

7 Q. I'm going to hand you two items of evidence. I'm
8 handing you what's been admitted as State's Exhibit No. 59,
9 the handgun, and ask if you recognize that item?

10 A. Yes, this is the firearm that I examined in this case.
11 It's the same make, model, caliber, and bears the same
12 serial number, as well as it also has markings that I placed
13 on it in the laboratory so I could identify it later.

14 Q. You also -- I'm going to also hand you what's been
15 premarked, or has been admitted now as Exhibit No. 60, and
16 ask you if you had an opportunity to examine that piece of
17 evidence?

18 MR. COLER: And for the record, Your Honor, I'm
19 handing the witness the item that's been admitted as the
20 projectile that was recovered from the body of Bill Welborn.

21 A. Yes, this is also the fired bullet that I examined in
22 this case. It also bears markings that I placed on it so
23 that I could identify it.

24 BY MR. COLER:

25 Q. If you will start with -- describe for the jury the

1 condition of the firearm when you or your lab took
2 possession of it. And I know that you weren't there the
3 first day it came in. Describe for us the history of that.

4 A. When this firearm was received in the laboratory, it
5 was received in a container of water. The firearm had been
6 recovered from the water, and so, therefore, it is our
7 policy that a firearm coming in should be kept in the same
8 water from which it was recovered until we receive it. The
9 purpose for this is to try to prevent any further corrosion
10 or rusting to the firearm. As long as it stays submerged in
11 the water, it will actually not corrode as fast as if it was
12 taken out of the water and oxygen is allowed to get to the
13 surfaces and it will rust actually faster. So when it was
14 received in the laboratory, it was then taken from the
15 container and oiled heavily to displace the water and get it
16 away from the metal and also to try to preserve the metal in
17 as much -- in as good a condition as possible.

18 Q. Now, you just said that when the gun would stay in
19 water, it would deteriorate slower, but water is still bad
20 for a handgun?

21 A. Yes, it is.

22 Q. It could have negative effects on your ability to
23 perform your job as an analyst?

24 A. Yes, it can.

25 Q. And, as a matter of fact, in this case we saw some of

1 that negative effects?

2 A. Yes, when I actually got around to examining the
3 firearm -- when this gun came in, I was on vacation. So
4 when I got back from vacation, the first thing I did was to
5 remove it from the package to -- I got all the excess oil
6 off of it and then began my examination process.

7 That process starts off by just taking notes. The
8 first thing I'm going to do is take notes about the firearm,
9 what condition it's in, what make it is, what model,
10 caliber, etcetera. And from that I will move into the test
11 firing process. However, during my initial examination, one
12 of the things that I will do is look down into barrel of the
13 firearm to check for obstructions and to check to see if
14 there is any fouling inside of the barrel of the firearm.
15 And in this case, due to it's submerged -- having been
16 submerged in water, I was able to note that there was some
17 rust damage in the barrel of the firearm, which I would have
18 expected.

19 Q. And that ultimately affected your ability to make some
20 determinations about this gun, correct?

21 A. Yes. After doing my note taking, I test fired the
22 firearm in order to determine if it functioned properly. I
23 was able to function -- to fire the firearm and to obtain
24 what we call test specimens from it.

25 The specimens we are looking for in this case were

1 bullets, because we a bullet submitted to the laboratory,
2 and they wanted to know if this bullet had been fired by
3 this gun. The way that we can do that is that when the
4 firearm is manufactured, there are microscopic defects left
5 on the inside of the barrel that will scratch the surface of
6 the bullet when it is fired through that barrel. And that
7 pattern of scratch marks on the surface of that bullet can
8 be used as individual characteristics to identify that
9 bullet as having been fired by that gun and by another
10 bullet. In this case, when I got my test fired bullets from
11 this firearm, I attempted to do that microscopic comparison
12 between these test specimens and the evidence bullet from
13 the autopsy. However, due to the damaged condition of this
14 barrel, I was unable to come to a conclusion as to whether
15 or not that bullet had been fired by this gun.

16 There are -- in all firearms of this type there are
17 what we call general rifling characteristics. Rifling
18 grooves are the spiraling grooves that you will see inside
19 the barrel of some firearms. Each manufacturer uses a
20 certain number of rifling grooves that are twisting in a
21 particular direction, either left or right, and those
22 rifling grooves will have a pretty specific diameter. And
23 that is impressed onto the surface of the bullet.

24 I was able to determine that this fired bullet had the
25 same general rifling characteristics as those that were

1 produced by the test bullets fired in this gun. However,
2 the small microscopic scratch marks or striations that I
3 used to determine if it was fired by this gun specifically
4 were simply not there to the degree that I needed to make an
5 identification.

6 Q. Let me back up just a little bit just to make sure we
7 all understand. Just walk us through the process of loading
8 a bullet or a live round into a revolver and how we end up
9 with what you refer to as a projectile and a spent shell
10 casing and that type of thing.

11 A. Well, in the case of a revolver, such as this, a live
12 round of ammunition, a live cartridge, would be placed in
13 the chamber of the cylinder here. This particular firearm
14 will hold a total of five rounds. Once you have loaded it
15 with as many as -- you can put just one in there, if you
16 would like, or you can put as many as five. You would then
17 close the cylinder. And then in the case of this firearm
18 there is two different ways that you could fire it. You
19 could pull the trigger all the way through and that would
20 cock the hammer. And then when it gets to a certain point
21 release it and it fires the gun, or you can thumb cock the
22 hammer manually, which is called single action firing and
23 then just pull the trigger. That requires less trigger pull
24 to fire the gun.

25 When the cartridge is fired in the gun, the bullet

1 passes through the barrel, exits here at the muzzle. During
2 that process it will be marked by the barrel in the manner
3 that I described before. The cartridge case will remain
4 behind in the cylinder of the firearm until the gun is
5 unloaded at a later time.

6 Q. And you talked a little bit about taking the projectile
7 that you were given and attempting to match it to that
8 firearm?

9 A. Yes.

10 Q. And if I understood you correctly, you weren't able to
11 do that positively because of the damage to the firearm?

12 A. Yes, there are three basic conclusions, that is, a
13 firearms examiner we can give. We can render a positive
14 conclusion, which means that that particular item was fired
15 by that particular firearm and no other gun.

16 We can render a negative conclusion, which means that
17 that particular bullet could not have been fired by that
18 gun, and there are various reasons we can come up with that.

19 In between those two is what we call inconclusive. And
20 this examination resulted in an inconclusive result. The
21 inconclusive is due to the fact that I cannot exclude this
22 bullet as having been fired by this gun, largely because of
23 the fact that we have the surviving general rifling
24 characteristics that are similar to this gun. However,
25 there were no individual agreements sufficient for me to be

1 able to say that it was fired by this gun specifically.

2 Q. Was the projectile that you examined the correct
3 caliber for that exact or that particular weapon?

4 A. This bullet is 158 grain, consistent with a 158 grain
5 38 special caliber projectile, and that is the type of
6 ammunition that this firearm and others similar to it are
7 designed to fire.

8 Q. When you or your lab recovered the -- or received the
9 handgun, to your knowledge, were there any shell casings
10 with that weapon?

11 A. No, there were not.

12 Q. Describe for the jury, if you would, after that weapon
13 would be fired, how you would eject or remove the spent
14 shell casings from that gun.

15 A. To open this gun to remove the shell casings, there is
16 a latch on the side here that you would press forward that
17 would allow the cylinder to swing out, just like you see in
18 here. The spent or fired cartridge casings would be in the
19 back in these chambers in the revolver. And to eject them,
20 you would just press down on this rod, which extracts them
21 from the chambers. And then they will just fall to the
22 ground or fall in your hand, if you were able to do so.

23 Q. Now, if I understood you correctly, it takes a
24 conscious effort -- it take an effort to do that. I know
25 some guns automatically eject shell casings. Does that gun

1 ever in any way automatically eject the shell casing?

2 A. No, it does not. It does take a specific set of steps
3 by someone to unload this firearm.

4 Q. You test fired that handgun, is that correct?

5 A. I did.

6 Q. Did you note anything while you were test firing to
7 indicate that it was more prone to go off accidentally? I
8 guess you determine a hair trigger, for lack of a better
9 term?

10 A. If I could refer to my notes for a moment?

11 Q. Yes.

12 A. During the process of test firing this firearm, it's a
13 common process that we also measure the trigger pull; that
14 is to say, how much pressure on the trigger does it take to
15 fire this firearm. And during my testing of this firearm --
16 and I tested it both ways, both in the double-action method,
17 pulling the trigger all the way through, or by manually
18 cocking it and firing a single action.

19 The single action, the trigger pull was five and
20 three-quarters to five and one -- excuse me, four and
21 three-quarters to five and one-quarter pounds.

22 In double action, the trigger pull was 13 to 13 and
23 one-half pounds.

24 And those are well within what I would expect to find
25 for this type of firearm when functioning normally. I

1 didn't see any defects on this firearm that would -- when I
2 fired it, when I tested it, that would lead me to believe
3 that it would fire due to an excessively light trigger pull.

4 Q. And that's my question. In the double action mode,
5 where you just point the gun and squeeze the trigger, 13 or
6 13 and a half pounds, that's a significant or a conscious
7 effort to pull that trigger, correct?

8 A. To me that would indicate a conscious effort. But one
9 thing to remember in the case of this firearm is that it has
10 been submerged in water for a period of time and have
11 been -- had mud in it, had debris in it. That could in a
12 way somewhat alter the effects of this trigger pull testing.
13 However, having been rinsed and washed and then re-oiled, I
14 wouldn't expect a great deal of variation, but the condition
15 of this firearm as received may not be completely
16 representative of its condition at the prior date.

17 Q. And then the other way to fire that weapon is the
18 method of pulling back, cocking back the hammer and
19 squeezing the trigger? That's the -- that's the single
20 action method?

21 A. Yes.

22 Q. And, of course, the pressure required to pull the
23 trigger is less than that method, but if I understand
24 correctly, you have to manually pull back the hammer every
25 single time that you want to fire it?

1 A. If you are going to fire it with that method, single
2 action method of firing, you will have to manually cock the
3 hammer each time you do that, yes.

4 Q. And that would, in your expertise, take a conscious and
5 significant effort to pull back the hammer, squeeze the
6 trigger, pull back the hammer, squeeze the trigger, pull
7 back the hammer and squeeze the trigger?

8 A. Yes, to me that would indicate that you would have to
9 make a conscious effort to do that.

10 Q. Just for the record, I'm not sure if you said the make,
11 model, and serial number of the weapon that you examined.
12 Could you tell us that?

13 A. It was a Rossi brand firearm. It was a model 68,
14 chambered in 38 special caliber ammunition, and the serial
15 number was D474555.

16 Q. That's all the questions that I have for you, Agent
17 Collins. Thank you for being here and please answer any
18 questions that the defendant has.

19 MR. STARNES: May it please the court, Your Honor.

20 THE COURT: Yes, sir.

21 CROSS EXAMINATION BY MR. STARNES:

22 Q. How are you doing today, Agent Collins?

23 A. Doing fine, sir.

24 Q. Mr. Coler, if I heard him correctly, he said something
25 about a conscious effort if you cocked the hammer back?

1 A. Yes.

2 Q. Okay. Now, you can take that firearm and squeeze it
3 and still empty it, is that correct?

4 A. That's correct. That's called the double action method
5 of firing.

6 Q. Double action method.

7 How long would it take an individual -- you said it was
8 five and three-quarter pounds of pressure?

9 A. The double action method is 13 to 13 and one-half.

10 Q. 13 to 13 and one-half.

11 How long would it take to pull that trigger and empty
12 all the shells out of it?

13 A. That would depend upon the capability of the shooter.
14 That's not necessarily limited by the mechanism of the
15 firearm, but it could be done very quickly.

16 Q. Very quickly.

17 Three seconds?

18 A. I could do it in three seconds.

19 Q. Agent Collins, did you have an opportunity regarding
20 this case to identify three unspent round cartridges?

21 A. During the course of my examination in this case I
22 received one unfired .38 special caliber cartridge at one
23 point.

24 If I could refer to my notes for a moment.

25 Q. Yes, sir.

1 A. There were also at one time three .32 caliber
2 cartridges submitted.

3 Q. They were three .32 caliber?

4 A. That's what the take-in documentation indicates. I'm
5 attempting to find my notes concerning that examination at
6 this time.

7 Q. And at the time the three .32 caliber bullets were
8 submitted, was there a wristwatch submitted?

9 MR. COLER: I would ask him to give the witness to
10 opportunity to catch up with him.

11 THE COURT: Yes, sir.

12 MR. STARNES: I'm sorry.

13 A. The cartridges were listed on the take-in sheet as
14 submitted as being .32 caliber. However, my examination
15 revealed it would be three unfired .25 auto caliber
16 cartridges.

17 BY MR. STARNES:

18 Q. During the course of your investigation, was there some
19 photographs submitted?

20 A. Yes, there were.

21 Q. And you were asked to identify the caliber of the
22 weapon?

23 A. There were some photographs submitted to me of a dog
24 lying on a couch with a handgun lying on the couch next to
25 the dog, and I was asked to try to attempt to determine what

1 type of firearm, what caliber firearm that was from the
2 photographs.

3 MR. COLER: Judge, I'm going to object to
4 relevance there regarding any further questions --

5 THE COURT: How is that relevant?

6 MR. STARNES: Beg the court's indulgence just one
7 moment.

8 (Off the record)

9 (Back on the record)

10 MR. STARNES: Your Honor, may we approach?

11 THE COURT: Yes.

12 (Whereupon, the lawyers and the defendant
13 approached the bench for an off-the-record discussion)

14 BY MR. STARNES:

15 Q. Agent Collins, what date was it that you was able to
16 examine these .32 caliber cartridges or unspent rounds?

17 A. Well, the rounds that were submitted as .32 caliber
18 cartridges, which actually were, as I previously stated, .25
19 caliber, that examination was conducted on -- this is April
20 11th of 1997.

21 MR. STARNES: Your Honor, we are missing an
22 exhibit picture of the three unspent firearms.

23 (Off the record)

24 (Back on the record)

25 BY MR. STARNES:

1 Q. Agent Collins, referring to Defendant's Exhibit No. 9,
2 does that look like the unspent cartridges that you
3 examined?

4 A. It very well could be, yes.

5 Q. It very well could be.

6 Thank you. Answer any questions that they have.

7 REDIRECT EXAMINATION BY MR. COLER:

8 Q. Agent Collins, you never in the course of your
9 investigation received a gun and were asked in attempt to
10 match these projectiles to a gun?

11 A. I have never received a firearm capable of firing that
12 ammunition, no, sir.

13 MR. COLER: That's all, thank you.

14 MR. STARNES: Nothing further.

15 THE COURT: All right. Thank you, sir. You may
16 stand down.

17 MR. COLER: May it please the court, subject to
18 him being recalled, we ask that he be released from the
19 subpoena today and he be available.

20 THE COURT: Sir, if you just have a number where
21 you can be reached for recall, if you would, please. In all
22 likelihood it would not be today, but probably be the first
23 of week.

24 THE WITNESS: Yes, sir, Your Honor.

25 MR. BULSA: The State calls J.R. Berry.

1 J.R. BERRY, having been first duly sworn,
2 testified as follows:

3 THE COURT: If you will state your full name for
4 the record and spell your last name for the record, please.

5 THE WITNESS: My name is J.R. Berry, B-E-R-R-Y.

6 DIRECT EXAMINATION BY MR. BULSA:

7 Q. Good morning, Mr. Berry.

8 A. Good morning.

9 Q. Thank you for being here.

10 Could you tell us what your occupation is?

11 A. I am the evening anchor for WLTX News 19.

12 Q. How long have you been with that business?

13 A. I have been with Channel 19 since December of 1990.

14 Q. So back in 1996, what was your position with them?

15 A. In 1996, I was the morning anchor and I was the senior
16 reporter.

17 Q. Mr. Berry, did you have an occasion to visit the Pelion
18 area relation to a missing persons report?

19 A. I did. I went to Pelion to cover the story and I
20 stopped by C.J.'s Lounge. And I also went into the little
21 town of Pelion trying to cover the story.

22 Q. And did you look for anybody in particular while you
23 were getting ready for that story?

24 A. My first stop I went to C.J.'s, and I was told by an
25 individual there -- and I don't remember the individual, but

1 I was told by an individual I should contact Norman Starnes,
2 so I went looking for Norman Starnes.

3 THE COURT: Wait just a minute.

4 MR. STARNES: I have object to that about another
5 individual told him.

6 THE COURT: All right. Sustained as to hearsay,
7 counsel.

8 BY MR. BULSA:

9 Q. Did you -- as a result of going to C.J.'s, did you look
10 for Mr. Starnes?

11 A. I looked for Norman Starnes. I went into Pelion. I
12 went into several businesses in Pelion looking for Norman.
13 I couldn't find him.

14 Q. Did you leave a message for him?

15 A. I left a message. In fact, I went to one particular
16 business several times and I left messages that if Mr.
17 Starnes were to show up, I would be down at C.J.'s Lounge
18 and I would like to talk to him.

19 Q. Did you ever speak with Mr. Starnes that day?

20 A. I did. Mr. Starnes showed up about 15 minutes before
21 our six o'clock newscast that night. It was about 5:45 and
22 he showed up to talk with me.

23 Q. And were you able to interview him?

24 A. Not live on television or on camera. He didn't want to
25 do that, but I did have a chance to talk with him, yes.

1 Q. And would you tell the jury what your conversation was?

2 A. I asked Mr. Starnes if he had seen the missing men. He
3 said that he believed that their disappearance was drug
4 related. I asked him what he meant by that, and he told me,
5 he said there was an airstrip right behind C.J.'s Lounge. I
6 remember seeing that airstrip earlier in the day, but it was
7 dark at this point, so I didn't see the airstrip at that
8 time, but he told me he thought it was drug related and that
9 they had gotten on a plane and they were gone.

10 Q. And did he tell you that he was one of the last people
11 that saw them alive?

12 A. I don't recall if he told me he was one of the last
13 people, but he told me that he thought it was drug related
14 and they were gone.

15 Q. And did you ask if he would go on air with that?

16 A. I did. I asked Norman if he would talk with me live on
17 television, because we were doing a live report that night.
18 He declined to go live on TV that night, but he did stand
19 there and watch me do the live report.

20 Q. Did you talk with him after the report?

21 A. I did. I asked him what he thought of the live report.
22 He thought it went well. We broke down our live truck, my
23 crew and I, and then we headed back to Columbia.

24 Q. Thank you, Mr. Berry. Answer any questions that Mr.
25 Starnes may have.

1 CROSS EXAMINATION BY MR. STARNES:

2 Q. How are you doing, Mr. Berry?

3 A. Fine.

4 Q. Thank. Do you think that you will be on the news
5 tonight?

6 A. I will be there.

7 Q. Thank you, sir.

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

9 THE WITNESS: Thank you.

10 MR. BULSA: We ask he be excused.

11 THE COURT: Any objection to his being excused,
12 Mr. Starnes?

13 MR. STARNES: No objection, Your Honor.

14 THE COURT: Thank you for coming, Mr. Berry. You
15 may be excused at this time.

16 THE WITNESS: Thank you.

17 MR. BULSA: The State recalls Darren Amick just
18 briefly, Your Honor, on one matter.

19 MR. STARNES: Your Honor, may we approach?

20 THE COURT: Yes, sir.

21 (Whereupon, the lawyers and the defendant
22 approached the bench for an off-the-record discussion)

23 REDIRECT EXAMINATION BY MR. BULSA:

24 Q. Captain Amick, did you have occasion to retrieve some
25 evidence in this case and take it to SLED?

1 A. Yes, sir, I did.

2 Q. And was that in January of 1997 --

3 A. It was.

4 Q. -- that you retrieved it?

5 A. Yes.

6 Q. Did you retrieve the blood and bodily fluids from Mr.
7 Welborn?

8 A. From our property room, yes, I did.

9 Q. From your property room.

10 And did you receive the bodily fluids from Mr. Champlin
11 from your property room?

12 A. That's correct, I did.

13 Q. And did you transport them to the South Carolina Law
14 Enforcement Division?

15 A. Yes, sir, I did.

16 Q. And what did you do when you got there?

17 A. They have a process that could explain it a lot better
18 than I can, but it was signed into their evidence for their
19 processing.

20 Q. And when you turned it in, was it placed into a sealed
21 package?

22 A. While I was there, correct.

23 Q. And were those packages then distributed into a
24 toxicology box?

25 A. That's correct.

1 Q. And that was for further processing?

2 A. That's correct.

3 Q. Thank you.

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

5 THE WITNESS: Yes, sir.

6 THE COURT: Any questions?

7 MR. STARNES: I have no questions.

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

9 MR. GOWDY: One moment.

10 THE COURT: Yes, sir.

11 MR. GOWDY: Literally one moment.

12 (Whereupon, the lawyers and the defendant
13 approached the bench for an off-the-record discussion)

14 THE COURT: Mr. Foreman, ladies and gentlemen of
15 the jury, the next witness is on his way, not quite here
16 yet, so we will go ahead and take just a brief break. Take
17 about a five minutes or so break. You can refresh yourself
18 during the break. Please do not begin discussing the case.
19 Thank you.

20 (The following takes place outside the presence of
21 the jury panel)

22 THE COURT: We will be in recess, solicitor. Let
23 me know.

24 MR. GOWDY: I'm sorry, judge, it would just be a
25 moment.

1 THE COURT: Yes, sir.

2 (Whereupon, proceedings were recessed)

3 (Whereupon, proceedings were reconvened)

4 THE COURT: Ready to proceed?

5 MR. GOWDY: Yes, sir, Your Honor.

6 THE COURT: Please bring the jury in.

7 (The following takes place in the presence of the
8 jury panel)

9 THE COURT: All right. Ready for proceed.

10 MR. GOWDY: Yes, sir, Your Honor. Thank you for
11 the Court's patience.

12 The State would call Special Agent Joe Powell.

13 SLED AGENT JOSEPH POWELL, having been first duly
14 sworn, testified as follows:

15 THE CLERK: If you will have a seat, stating your
16 name, spell your last for the record, please.

17 THE WITNESS: My name is Joseph D. Powell,
18 P-O-W-E-L-L.

19 DIRECT EXAMINATION BY MR. GOWDY:

20 Q. Good afternoon, sir.

21 A. Good afternoon, sir.

22 Q. Could you tell this jury where you work and in what
23 capacity?

24 A. I'm currently employed as a supervisor of the trace
25 evidence section at the South Carolina Law Enforcement

1 Division, commonly known as SLED.

2 Q. How long have you worked for SLED?

3 A. 25 years.

4 Q. Have you previously been qualified as an expert in
5 either state or federal court in the areas of gunshot
6 residue testing, gun metals and/or trace materials?

7 A. Yes, sir, I have been qualified in both federal, state,
8 and also in city court in the area of trace evidence, as it
9 relates to various aspects, such as hairs, fibers, paints,
10 explosives, gunshot residue, bullet hole analysis and other
11 areas.

12 Q. Can you give the jury a sense of how many times that
13 you have been qualified as an expert?

14 A. I have been qualified in total in my career over six
15 hundred times with both drug analysis, as well as trace
16 evidence. With trace evidence it's about half that, around
17 three hundred times.

18 MR. GOWDY: Your Honor, at this point I would move
19 Special Agent Powell in as an expert in the fields of trace
20 evidence, gunshot residue, and gun metals analysis.

21 MR. STARNES: No objection, Your Honor.

22 THE COURT: Without objection, he's so qualified.

23 BY MR. GOWDY:

24 Q. Special Agent Powell, can you give the jury a short
25 course in gunshot residue?

1 A. Yes, sir. When a weapon is discharged and you pull the
2 trigger, the hammer will strike the back of a cartridge
3 causing a small explosion to occur. This is called the gun
4 primer. The gun primer ignites lighting the gunpowder. And
5 these in combination will create a lot of force or pressure
6 to cause the bullet to separate.

7 Following the bullet will come a blue gray cloud of
8 debris. We call it as gunshot residue. It's made up of a
9 primer, as well as bits and pieces of the bullet and other
10 materials that will come flying out of this weapon.

11 As you are holding the weapon, your hands, which are
12 the closest to that weapon, will become covered with smoke
13 and gunshot residue, as well as it will proceed up your arms
14 and onto your clothing.

15 We have a test that we perform to see if we could
16 capture this smoke. The test is basically broken up into
17 two parts. The first part is a flattened piece of aluminum
18 with a sticky adhesive on it, which is gone over the skin to
19 see if we can pick up particles and debris and materials
20 that are found on the hands. It is then followed up with
21 cotton swabs, which are wetted with a weak acid solution to
22 mop up any residue that was missed by the first sampling.
23 And we continue that process on four areas: The right palm,
24 the right back, the left palm, and the left back.

25 Those samples are submitted to me. I will run analysis

1 of the contents. And then based upon what I find, determine
2 if someone has fired a weapon, maybe been around a weapon,
3 or just handled a weapon. What I mean by that is if you
4 handle a weapon only, the materials we have found on the
5 palms of your hands only. So this is consistent with
6 someone is holding a weapon; whereas, if you discharge or
7 fire the weapon, you will find it on the palms, as well as
8 the back.

9 If someone is in a defensive posture, meaning that they
10 are throwing their hands up in front of the weapon, you will
11 find very, very high levels of materials, and usually the
12 areas of the skin, which is facing the weapon, would be
13 extremely high in this type of material, and we are able to
14 say if it's a defensive posture or not.

15 Q. So if I understand your testimony correctly, there are
16 tests that you can perform, or your lab can perform, that
17 indicate whether or not someone has simply held a gun in
18 their hand, fired a gun, or been around a fired gun?

19 A. Yes, sir.

20 Q. Special Agent Powell, is there a window of time within
21 which that test has to be done?

22 A. Yes, sir. If you are alive, we have found after
23 repeated testing and checking to verify this, that because
24 the human body is constantly passing perspiration, the heart
25 is beating blood, it will absorb the materials on yours

1 hands. So if you discharge your weapon, we have found after
2 six hours there is no materials left on your hands, because
3 the body will absorb it; or, you can wipe your hands, go to
4 the bathroom and clean your hands off.

5 For someone who is deceased, once the heart is stopped,
6 now we are dealing with it will last longer on the hands.
7 It must physically removed. Either someone will wash the
8 hands for the person, or they will go through decay. As you
9 begin to go through decay, it will also be removed.

10 Q. I want you to assume -- it's today. I have lost track
11 the time, 7th, 8th?

12 A. 9th.

13 Q. 9th.

14 I want you to assume a shooting on November the 9th,
15 2007, at noon.

16 A. Yes, sir.

17 Q. All right. If you get there within six hours, will you
18 have the ability to gather evidence that could tell you
19 whether or not someone handled a gun?

20 A. Yes, sir. Within that six hour window, the materials
21 that were found on that weapon could also be found on the
22 hands and we can examine for that.

23 Now, there are -- what will happen is sometimes someone
24 may wash their hands. So within that six hours windows they
25 may lose some time because of washing of hands, but that six

1 hour window is what we normally use to collect any evidence
2 on someone's hands to determine if they either fired a
3 weapon or handled a weapon.

4 Q. I want you to assume further a hypothetical that, say,
5 someone was shot at 12:10 and were not able to wash their
6 hands or able to rub their hands on their clothes. Would
7 you be able, if you had been called in sufficient time, to
8 tell us -- laying aside and washing other things that can
9 take it off, are there tests that you could have done to
10 determine whether or not that person had even handled a gun?

11 A. Yes, sir. Again, if you handled a weapon, the material
12 will be on the palm of the hands and we would be able to
13 find that. Especially if someone is shot and dies
14 immediately, the hands are absolutely pristine. They remain
15 until something happens to those hands.

16 Q. The same analysis holds true for gunshot residue in
17 terms of whether a gun was fired, perhaps how close you were
18 to the gun? The same analysis with respect to the six hour
19 time period?

20 A. Yes, sir. What you are describing is absolutely
21 correct.

22 Q. All right. If you found two bodies in an earthen grave
23 four months after a shooting, are there any tests of any
24 evidentiary value whatsoever that could tell you whether or
25 not those persons handled the gun?

1 A. No, sir. After -- when someone is buried, they are
2 actually in a condition where there is moisture, dampness,
3 it will destroy any materials that are there. So if someone
4 is interned in the ground I have been able to find a gunshot
5 residue for up to about a day or two, if someone has been in
6 the ground, but after three or four days it's not going to
7 be there. What you described is months, and, no, sir it
8 won't be there.

9 Q. Okay. I want you to assume -- I'm going to draw on
10 your expertise in trace evidence for a moment.

11 I want you to assume that clothes, pants, shoes have
12 been in the ground for four months. And then once they are
13 excavated from the grounds, the clothes are washed. Would
14 you expect to find anything of evidentiary value from a
15 trace standpoint under that scenario?

16 A. From the point of view of what's called biologicals,
17 this would be materials that are produced by a living
18 entity, no, you would not find any type of materials that
19 you could work with.

20 You could find possibly fibers, because fibers can last
21 a long time. They can stay even in situations where you
22 might think it's hostile, but they could survive, but that's
23 about it.

24 Most of the most materials we talk about are destroyed
25 because of the natural action of the decaying process.

1 Q. Again, if you are called immediately, if your lab is
2 called immediately, there are a variety of tests that you
3 could run that could help answer questions, is that fair to
4 say?

5 A. That is fair to say, yes, sir.

6 Q. After four months in an earthen grave and being washed
7 during the autopsy process, are your abilities to run tests
8 greatly hampered?

9 A. It is dwindled to very few tests that can be performed
10 to answer any questions.

11 Q. Thank you, Special Agent Powell. Please answer any
12 questions that the defendant may have for you.

13 CROSS EXAMINATION BY MR. STARNES:

14 Q. Hi, Mr. Powell. How are you doing?

15 A. Just fine, sir.

16 Q. It is possible if someone has handled the weapon and
17 not fired it, you are saying one hundred percent sure that
18 you could tell that that individual has handled that gun?

19 A. Not always, because unfortunately once you discharge a
20 weapon, then what you do with your hands can move this
21 material around, so it can be sometimes confusing. You may
22 not have a clear answer.

23 But we can say, based upon what we find, the levels,
24 what is most probable, based upon the data that we have.

25 Q. So if someone has handled a weapon that hasn't been

1 discharged, it wouldn't have any gun stain or gunshot
2 residue on it?

3 A. If that weapon has never been fired, that would be
4 absolutely true, or if that weapon has been cleaned very
5 well before it was stored.

6 If a weapon is just shot and then put in storage,
7 someone picks it up, they are going to have residue on their
8 hands. Even if they do not discharge that weapon, they will
9 still pick up residue on their hands.

10 Q. By doing the tests that you do on the I believe it's
11 gunshot residue or CSR?

12 A. Gunshot residue, sir, yes, sir.

13 Q. That doesn't tell what happened when the gun was fired,
14 does it?

15 A. In most cases, no, sir.

16 There has been times I have been able to say that
17 someone has been in a defensive posture. For example, I
18 have found levels on someone's palms of their hands too high
19 from handling or discharging a weapon, so it must be from
20 someone being in front of the weapon and being shot at, but
21 in most cases I cannot say what happened. I can tell you
22 the existence of materials. How it got there, I can just
23 give you the best case scenarios.

24 Q. How long have you worked for SLED, Mr. Powell?

25 A. 25 years.

1 Q. Do you carry a firearm?

2 A. Yes, sir.

3 Q. Thank you.

4 MR. GOWDY: Nothing on redirect and would ask that
5 Special Agent Powell be excused, Your Honor.

6 THE COURT: Any objection to his being excused?

7 MR. STARNES: No.

8 THE COURT: Thank you for coming. You may be
9 excused.

10 THE WITNESS: Thank you, sir.

11 MR. GOWDY: Your Honor, the next witness would
12 more than consume the lunch hour.

13 THE COURT: Well, it's probably a good time to go
14 ahead and take lunch then.

15 MR. GOWDY: Thank you, Your Honor.

16 THE COURT: Mr. Foreman, ladies and gentlemen of
17 the jury, we are going to go ahead and recess for lunch.

18 What time do you think you would be prepared?
19 Anytime?

20 MR. GOWDY: We will be ready. I think Madam Clerk
21 had the lunches coming at 12:30.

22 THE COURT: Yes, sir.

23 MR. GOWDY: Your Honor, we will be ready at 1:30,
24 or whatever you tell us.

25 THE COURT: I think 1:30 would probably be a

1 pretty good time.

2 Mr. Foreman, ladies and gentlemen of the jury, we
3 will recess for lunch at this time. Madam Clerk is having
4 lunch brought in. Usually it's here about 12:30, or so, but
5 we will take a recess and allow you to smoke during this
6 break. Refresh yourselves. Please don't begin discussing
7 the case.

8 (The following takes place outside the presence of
9 the jury panel)

10 THE COURT: We will adjourn until 1:30.

11 MR. GOWDY: Thank you, Your Honor.

12 (Whereupon, proceedings were recessed)

13 (Whereupon, proceedings were reconvened)

14 THE COURT: All right. Approach just a minute,
15 please.

16 (Whereupon, the lawyers and the defendant
17 approached the bench for an off-the-record discussion)

18 THE COURT: Let the record reflect what we are
19 addressing now is the bailiff brought the court a note
20 during a lunch break. It was not signed by anybody. It
21 didn't come from the foreperson of the jury. It's not
22 signed by anyone on the jury, but it's a note that does not
23 appear to be in the foreperson's handwriting, because I had
24 a note from him when he was appointed as foreperson. So it
25 appears to be somebody else on the jury.

1 In any event, they asked this question that came
2 up, "Jared Champlin had a gun the evening of the incident.
3 Was Jared's gun ever found?"

4 This is one individual juror's question. It does
5 not come from the foreperson of the jury as a whole. I can
6 try to find out who that is, bring them out here, if you
7 want to. I don't think it's any indication that the jury is
8 deliberating. This is one juror's question they had, so --
9 it did not come from the foreperson. It's not in the
10 foreperson's handwriting. It's not signed by the
11 foreperson. We can try to find out who it is, if you want
12 to do that. It's not coming from the foreperson.

13 MR. STARNES: Beg the court's indulgence just one
14 minute.

15 (Off the record)

16 (Back on the record)

17 MR. STARNES: Your Honor, to preserve the record,
18 I think we need to find out the juror who sent the note out.

19 THE COURT: All right. Get the bailiff for me,
20 please.

21 (Off the record)

22 (Back on the record)

23 THE COURT: We got another note?

24 THE BAILIFF: Yes, sir.

25 THE COURT: From now on don't bring any notes

1 unless the person signs it who is giving the note to me.

2 THE BAILIFF: All right.

3 THE COURT: I want it signed.

4 THE BAILIFF: Yes.

5 THE COURT: And so that we will know which juror
6 done this.

7 Counsel, approach just a minute.

8 (Whereupon, the lawyers and the defendant
9 approached the bench for an off-the-record discussion)

10 THE CLERK: They want to know if they are allowed
11 to, judge.

12 THE COURT: Madam Clerk may not want it, but I
13 would normally let them bring it in the jury box, if they do
14 allow anything then.

15 Y'all let them bring water into the jury box,
16 Madam Clerk.

17 THE CLERK: Bring water in the jury box? I think
18 so. We have given it to them before, so I guess.

19 THE COURT: They want to bring it in sit and with
20 it in the jury box while testimony is going on so they can
21 sip on the water during testimony.

22 Will you allow that?

23 Well, if you have a policy.

24 THE CLERK: I think before -- I think they have
25 before, sir.

1 THE COURT: All right. As for that note, you can
2 tell them they can bring their water in.

3 Now, I want to please go back. And the juror who
4 wrote me a note, this note right here --

5 THE BAILIFF: Yes, sir.

6 THE COURT: -- just ask whoever wrote this note,
7 gave it to you, I need to see them in here.

8 THE BAILIFF: All right.

9 (Off the record)

10 (Back on the record)

11 THE COURT: Let me ask counsel. What do you want
12 me to do? Do you want me to ask questions about
13 deliberation, or is this one individual juror's request?
14 What do you want me to do?

15 MR. GOWDY: Your Honor, I guess once the court --
16 of course, the court has been very consistent in admonishing
17 them not to deliberate. Once the court assures itself that
18 that rule has not been broken, I think at some point perhaps
19 the court may want to let them know --

20 THE COURT: Well, I will, but what I want to know
21 of this individual juror -- what do you want me to ask this
22 individual juror?

23 I can ask her if they have been deliberating,
24 discussing this, since her question is --

25 (Whereupon, Juror Number 171 was brought into the

1 courtroom)

2 THE COURT: Ma'am, come in and have a seat right
3 here, if you will, please.

4 JUROR NUMBER 171: Yes, sir.

5 THE COURT: You are not in trouble.

6 JUROR NUMBER 171: Okay.

7 THE COURT: Have a seat right there. I just need
8 to ask you a question just to clarify one thing.

9 JUROR NUMBER 171: Okay.

10 THE COURT: You sent a note out to the court
11 asking a question.

12 JUROR NUMBER 171: Uh-huh.

13 THE COURT: The question arises as to whether the
14 jury has been discussing this case, and you are asking this
15 question on behalf of the jury, or this your individual
16 question? And have you discussed that with any other
17 jurors?

18 JUROR NUMBER 171: We haven't discussed it, and it
19 was my individual question.

20 THE COURT: You have not discussed it among the
21 jury members?

22 JUROR NUMBER 171: No, sir.

23 THE COURT: It is your individual question?

24 JUROR NUMBER 171: Yes, sir. Yes, sir, I wrote it
25 down. I did ask how I spelled his name, because I wasn't

1 sure, but that was it.

2 THE COURT: All right. Give us your name and
3 number for the record.

4 JUROR NUMBER 171: Paula Mallory, number 171.

5 THE COURT: All right. Thank you, ma'am. You may
6 return back to the jury room.

7 (Whereupon, Juror Number 171 returned to the jury
8 room)

9 THE COURT: All right. What's your pleasure?

10 MR. STARNES: Your Honor, I believe that's
11 sufficient enough. As long as they were not deliberating, I
12 believe we don't need to go no further with that one.

13 THE COURT: Well, let me say this. This is not
14 unusual at all to get an inquisitive juror with a very
15 detailed mind. They will ask a question. I have asked now
16 that they write their name down. It comes to the
17 foreperson. I have a concern if it's coming from the jury,
18 but I knew this was not the foreperson's signature. I mean
19 this handwriting. So I knew it didn't come from him. If it
20 come from him, I have more questions now.

21 Some jurors come from a jurisdiction where they
22 are allowed to question -- ask questions during the trial,
23 and that's not unusual. Somebody sat on the jury, say, in
24 some other state, some of them allow the jurors to ask
25 questions during the trial. We normally don't. We normally

1 write it down and send it out and let it be dealt with that
2 way. And so that's probably the reason for it.

3 I would admonish the jury again, as I have, that
4 each -- probably at least a dozen times so far not to
5 discuss the case among yourselves, and I will remind them
6 again of that when they come in.

7 You have no problems with the note and my response
8 to the note? I showed you my response to the note that I
9 would send back to the jury. If you decide to have any
10 questions about that? Do you want to look at it again?

11 (Whereupon, the lawyers and the defendant
12 approached the bench for an off-the-record discussion)

13 THE COURT: We will make this a Court Exhibit as
14 well.

15 (Juror Note marked as Court's Exhibit No. 5 for
16 identification)

17 (Juror Note marked as Court's Exhibit No. 6 for
18 identification)

19 THE COURT: If you would take that back and give
20 it to the same juror who just --

21 THE BAILIFF: You only want her eyes to see that,
22 Your Honor.

23 THE COURT: Yeah, just give it to her and let her
24 read it and bring it back to me. We will make it a Court's
25 Exhibit.

1 THE COURT: Yes, sir?

2 MR. STARNES: Your Honor, the other day, would it
3 please the court, put on the record I believe there was a
4 question from maybe another juror.

5 THE COURT: Well. Now, we addressed that. Y'all
6 had no problems with it. And, you know, I'm not even sure I
7 still have it.

8 The foreperson had -- the foreperson's name on it
9 said we had a question. We did have a question that said
10 "when did -- and, again, this was in the handwriting that's
11 not the foreperson's, because I had the foreperson in a
12 separate note as to who he was. In that he wrote down his
13 name and his number and that, and he was the foreperson, as
14 the foreperson. It was not in his handwriting, and it may
15 have been this same person. I can find out. I guess we can
16 call her back and ask her, but the question was -- for the
17 record, the question was we took up at the bench "when did
18 Gwen leave Norman Starnes house?" Is that not the question?

19 MR. STARNES: I believe.

20 THE COURT: Is that not the question? We didn't
21 respond to that question. And so we put that on the record,
22 though, now. And each side agreed we just didn't do
23 anything. We didn't respond to that. And so I let you know
24 that they had asked that question in the event either one of
25 you wanted to address it in your questions and answers or

1 whatever you provided by way of testimony.

2 MR. STARNES: I believe that's sufficient enough,
3 Your Honor.

4 THE COURT: But it's on the record.

5 This may have been the same person. The hand -- a
6 it's printed -- the note is printed, but it appears to be
7 the same person. They didn't sign it. From now on I'm not
8 going to receive one from the bailiff unless it's signed,
9 whoever is asking the questions. Okay.

10 MR. STARNES: Thank you, Your Honor.

11 THE COURT: We will make that a court exhibit and
12 give it to the court reporter.

13 All right. I think we are ready to proceed now.
14 Please bring the jury in.

15 (The following takes place in the presence of the
16 jury panel)

17 THE COURT: Mr. Foreman, ladies and gentlemen of
18 the jury, I've responded to your note about bringing water
19 in and I just hadn't thought to address that. I really was
20 not sure what the policy was here in Lexington County, since
21 I'm not the resident judge here. We do allow it at home,
22 and the clerk tells me that you are welcome to bring it
23 here. You are certainly welcome to bring water in to sip
24 on. As you say in your note, the attorneys and myself are
25 drinking water, and you would like to drink some too. You

1 are welcome to do that.

2 UNKNOWN JUROR: Thank you, sir.

3 THE COURT: I just hadn't thought about it, to
4 tell you the truth. That's a housekeeping matter.

5 I want to tell you one other thing, remind you
6 that we are still in this case. You are not allowed to
7 discuss this case among yourselves or with anyone else.
8 Please -- you might be tempted to do that. Please do not
9 discuss the case among yourself, or with anyone else, on the
10 break of the court. It's very important. Please do not do
11 that. Thank you, Mr. Foreman, ladies and gentlemen.

12 We are ready to proceed.

13 MR. BULSA: Yes, sir.

14 The state calls Dr. Demi Garvin.

15 DR. DEMI GARVIN, having been first duly sworn,
16 testified as follows:

17 THE CLERK: If you would have a seat and state
18 your name, spelling your last for the record, please.

19 THE WITNESS: My name is Dr. Demi, D-E-M-I,
20 Garvin, G-A-R-V-I-N.

21 DIRECT EXAMINATION BY MR. BULSA:

22 Q. Good afternoon, Dr. Garvin.

23 Would you tell us what your profession is?

24 A. Yes, I'm a clinical and forensic toxicologist and drug
25 chemist.

1 Q. Who are you employed with?

2 A. I'm currently employed as assistant laboratory director
3 of the forensic sciences for the Richland County sheriff's
4 department here in Columbia, South Carolina.

5 Q. Were you formerly employed with South Carolina Law
6 Enforcement Division?

7 A. Yes, sir, I was.

8 Q. How long were you employed with them?

9 A. I was employed as a staff toxicologist and a drug
10 chemist from June of 1984, until October of 2000.

11 Q. When did you join Richland County?

12 A. In October of 2000.

13 Q. Okay. Could you give us the benefit of your education?

14 A. Yes, sir, I have a Bachelor of Science Degree in
15 Biology and Chemistry from Furman University in Greenville,
16 South Carolina.

17 I have a Doctorate in Clinical Pharmacology Or Clinical
18 Pharmacy from the University of South Carolina College of
19 Pharmacy.

20 I am board certified in forensic toxicology as a
21 specialty, and also am a registered pharmacist here in the
22 State of South Carolina.

23 Q. Have you ever testified in court before as an expert?

24 A. Yes, I have, over 250 times.

25 Q. And is your expertise as a clinical and forensic

1 toxicology and drug chemistry?

2 A. That's correct.

3 MR. BULSA: The State would offer Dr. Garvin as an
4 expert in those fields.

5 MR. STARNES: Certainly. No objection, Your
6 Honor.

7 THE COURT: Without objection, she's so qualified.

8 BY MR. BULSA:

9 Q. Dr. Garvin, back in 1997, did you receive a sample in
10 relation to victims William Welborn and Jared Champlin?

11 A. Yes, I did.

12 Q. Could you identify for the jury what samples that you
13 received?

14 A. Yes, sir. I received blood samples taken from Mr.
15 Welborn, William Welborn, in addition to a specimen of brain
16 tissue and also a specimen of liver tissue taken from Mr.
17 Welborn.

18 And additionally I received a specimen of brain and
19 liver from Mr. Jared Champlin.

20 Q. How were those packaged?

21 A. They were packaged -- they were separately packaged.
22 In other words, the blood sample was in a blood tube. The
23 tissue specimens were in individual packages. And then all
24 of those packages were placed under what we refer to as heat
25 sealed in a plastic bag, if you will, which is resistant to

1 leakage or any spillage that might occur. And it is then
2 heat sealed at the time the evidence is submitted. So that
3 when I receive it, I can ascertain that I received it with
4 the appropriate integrity prior to analyzing it.

5 Q. So in your examination of those packages had they been
6 tampered with?

7 A. No, sir.

8 Q. And were you the one that opened those packages?

9 A. Yes, I was.

10 Q. And, doctor, what tests did you perform on those
11 samples?

12 A. With regard to the specimens submitted bearing the name
13 William Welborn, I conducted -- on the blood sample I
14 conducted an analysis for the presence of drinking alcohol
15 or ethanol.

16 In addition, I conducted individual screening tests for
17 the presence of barbiturates, benzodiazepines, valium-like
18 compounds; cocaine and cocaine breakdown products or
19 metabolites, opiates, which are the traditional narcotic
20 analgesics, tricyclic antidepressants. And I also conducted
21 what is known as an extended volatiles analysis, which is
22 composed of a number of different other alcohols that we
23 commonly see generated after death, if you will.

24 On the submitted brain and liver specimens for Mr.
25 Welborn, I did not conduct any testing, pursuant to the fact

1 that the specimens were decomposed and precluded any
2 analysis by myself.

3 The brain and liver samples for Mr. Jared Champlin were
4 also severely decomposed, and I was unable to analyze them
5 for the presence of drugs, alcohols, or any other poisons.

6 Q. Dr. Garvin, do I understand that the only sample
7 suitable for analysis was the blood of Mr. Welborn?

8 A. That's correct.

9 Q. And the drug screen that you ran on that sample, was
10 that a standard drug screen?

11 A. Yes, that would have been a standard drug screen for
12 the type of case that this was submitted under at the time,
13 yes.

14 Q. And is that the type of drug screen that you would
15 perform on any person who had just been killed, absent any
16 other specific information?

17 A. Well, actually more specifically it would have been my
18 standard panel for someone whose specimens were submitted
19 with a history of gunshot -- death by gunshot.

20 Q. Okay. Doctor, what was the results of the analysis of
21 the blood Mr. William Welborn?

22 A. Well, I found the blood sample contained 0.09 percent
23 blood alcohol. That is the alcohol that is commonly
24 referred to as drinking alcohol, that which we find in
25 distilled spirits - beer or whiskey.

1 And I also found that the screening test that I
2 performed for the drugs that I previously mentioned -
3 barbiturates, benzodiazepines, cocaine, opiates, tricyclic
4 antidepressants were negative. None were present at our
5 detection limits.

6 And also the volatiles analysis for the other alcohols
7 was also negative.

8 Q. So do I understand that Mr. Welborn's blood was
9 negative for any of those drugs?

10 A. That's correct.

11 Q. And what can you tell us about the level of the blood
12 alcohol found?

13 A. Well, in cases where the decedent has -- the body has
14 decomposed or has begun to decompose and there has been a
15 substantial period of time between the death and when the
16 specimens are collected for analysis, there is a phenomenon
17 that we refer to in the profession as postmortem generation
18 of alcohol. And this essentially occurs when after death,
19 as the body tissues begin to break down, alcohol -- the same
20 alcohol that we find in beer, wine, and distilled spirits is
21 actually generated in the body's tissues, including the
22 blood, if the specimens are not preserved in a timely
23 fashion. And that alcohol level can reach rather remarkable
24 concentrations, concentrations that are similar to
25 individuals who may be drinking in life and may be presumed

1 to be impaired. Concentrations in excess of .1 percent,
2 sometimes .2 percent, and higher, depending on the tissue.

3 And so in this particular instance, unless we have
4 alternative samples available to us, particularly the
5 vitreous fluid or eye fluid that we can test, it is
6 virtually impossible to determine whether the alcohol that
7 is measured in the blood sample or the tissue, the
8 biological solid tissue, is the result of drinking, or more
9 likely the result of decomposition.

10 Q. Do I understand that -- are you saying that you can't
11 attribute the .09 percentage to drinking alcohol?

12 A. That's correct, I cannot.

13 Q. So can we draw the assumption that Mr. Welborn had been
14 drinking?

15 A. No, sir, we can't. All of the alcohol concentration
16 present in that specimen could have come merely from
17 decomposition.

18 Q. And because of the negative drug screen, can we presume
19 that he had not used any of those types of drugs?

20 A. For the drugs that I tested for, yes, sir, that's
21 correct.

22 Q. Thank you, doctor. Answer any questions that Mr.
23 Starnes may have.

24 CROSS EXAMINATION BY MR. STARNES:

25 Q. Good evening, ma'am.

1 You were formerly Ms. Demi Jones?

2 A. Yes, that's correct.

3 Q. Okay. You could also draw the conclusion from your
4 analysis that he could have been drinking, is that possible?

5 A. Some portion of the alcohol could have been attributed
6 to drinking.

7 Q. Ms. Garvin, did you happen to do any tests regarding
8 methamphetamine?

9 A. Which particular specimen?

10 Q. Mr. Welborn.

11 A. Well, I did not test the solid tissues at all. And the
12 blood sample that was submitted to me, no, sir, I did not
13 test for methamphetamine.

14 Q. Would you please explain to the jury, Dr. Garvin, why
15 you did not test for methamphetamine?

16 A. Yes, sir. In fact, there were two primary reasons, the
17 first of which would be that for the history that was
18 provided at the time the specimens were submitted, which
19 were specifically gunshot wound -- death due to gunshot,
20 excuse me, the panel that was performed by myself was the
21 panel that would have been performed in that instance, which
22 did not include methamphetamines.

23 In addition to that, there was no further history
24 provided to me that would indicate that methamphetamine was
25 a compound that should have been looked for at that time.

1 Q. Dr. Garvin, did anyone from the Lexington County
2 sheriff's office contact you and ask you to test for
3 methamphetamine?

4 A. No, sir.

5 Q. Did anyone from the solicitor's office call you and ask
6 to check for methamphetamine?

7 A. No, sir.

8 Q. Dr. Garvin, can you tell us where you attended school?

9 A. Yes, sir, I believe I did earlier. Undergraduate at
10 Furman University in Greenville, South Carolina, and USC
11 College of Pharmacy in Columbia.

12 Q. Do you know a Dr. Andrew Mason?

13 A. Oh, yes, I know him very well.

14 Q. Thank you, doctor.

15 A. Sure.

16 MR. BULSA: Nothing further of Dr. Garvin.

17 THE COURT: Thank you, ma'am. You may stand down.

18 THE WITNESS: Thank you.

19 THE COURT: Your Honor, I believe the next witness
20 is going to require that we take up some other matters.

21 THE COURT: All right, sir.

22 Ms. Foreman, ladies and gentlemen of the jury,
23 there is a matter I need to take up with counsel out of your
24 presence. This may take a little while. I just can't say
25 how long, but probably at least 10 or 15 minutes, so please

1 retire to the jury room. You may refresh yourselves. We
2 will have you back.

3 (The following takes place outside the presence of
4 the jury panel)

5 THE COURT: Yes, sir.

6 MR. GOWDY: Your Honor, the State intends to call
7 Captain Darren Amick. He came into possession of some
8 letters that were written by the defendant in 1996 and 1997,
9 which are exculpatory statements. They are statements
10 denying culpability of matters that are demonstrably false.
11 They fall under the general number of consciousness of
12 guilt, and I had agreed to let the defendant know before we
13 called that witness. He has a Sixth Amendment argument I
14 think that he would like to make which may require the
15 taking of testimony. I'm delighted to call Captain Amick
16 now and go through the Massiah aspect of it.

17 I'm happy to have him read portions of the letter,
18 too, if the court wants him to.

19 MR. STARNES: Your Honor, I have to object to
20 that.

21 I beg the court's indulgence for just one moment.

22 (Off the record)

23 (Back on the record)

24 MR. STARNES: Your Honor, part of this is from
25 Detective Amick and part of it is from an individual by name

1 of Teresa Holland.

2 I believe I have got a Sixth Amendment right under
3 United States v. Henry, 447 U.S. 264, 100 S.Ct 2183.

4 THE COURT: Give me the site again. 447 --

5 MR. STARNES: 447 U.S. 264. It's a U.S. Supreme
6 Court case, United States v. Billy Gail Henry, a 1980
7 decision. I believe that that decision cites United States
8 v. Massiah. That cite, Your Honor, is 377 U.S. 201.

9 Your Honor, in these decisions -- in Massiah v.
10 United States, it's a case in which I believe a naval
11 officer was smuggling drugs into the country. And upon
12 arrest, Massiah's co-defendant cooperated with the
13 government. They in turn allowed him to wear a body wire
14 and continue conversation with Mr. Massiah. Mr. Massiah's
15 co-defendant was acting as a government agent. Unbeknownst
16 to him he made statements to this government informant,
17 which was his co-defendant. The U.S. Supreme Court ruled
18 that was a Sixth Amendment violation because he was acting
19 as a government agent.

20 In United States v. Henry, the U.S. Supreme Court
21 revisited Massiah as it related in the context of a
22 jailhouse setting. I believe in United States v. Henry,
23 police officers put an informant in close proximity of Mr.
24 Henry to induce statements, which were later used against
25 him in court, and the United States Supreme Court court said

1 that was a direct violation of Massiah.

2 And obviously, Your Honor, I believe we are going
3 to have to take testimony from Teresa Holland, because there
4 is going to be evidence introduced as to her conversations
5 with Detective Amick and things that Mr. Amick asked her to
6 do.

7 Your Honor, I do have documented evidence that
8 Teresa Holland is going to say that she was acting as a
9 government agent and doing what Detective Amick asked her to
10 do.

11 THE COURT: Let me see it.

12 MR. STARNES: Your Honor, what I propose to do is
13 I have a video here.

14 What the video is is after I was convicted, went
15 to death row originally in the first trial, Ms. Holland
16 contacted a defense attorney in Columbia. At that time
17 there was an interview that took place in which three
18 defense attorneys was present and they asked her questions
19 regarding various different cases that she was an informant
20 on in the Lexington County detention center. Two of those
21 attorneys are here today. The other one is Mr. Joe
22 McCullough.

23 What I would propose to do is if the court would
24 like to take a look at this. And this is a witness --

25 THE COURT: Let me ask you before you go that far.

1 Are you saying that she gave information at that time of
2 this conversation with the attorneys and the solicitor's
3 office, or that some kind of arrangement was made for her to
4 go back and get information?

5 MR. STARNES: Your Honor, what --

6 THE COURT: Which position?

7 MR. STARNES: Can I give you a background of --

8 THE COURT: Answer my question. I think it's a
9 pretty simple one to answer.

10 Are you saying that she had this information at
11 the time she met with the government officials and her
12 lawyers, or are you saying that it's something that she got
13 after that? They made some kind of arrangement at that
14 meeting and she went back and got whatever information they
15 wanted to provide for that? Which is it?

16 MR. STARNES: The second one. She made
17 arrangements with Detective Amick. She wrote me. She asked
18 me various questions about this case. I believe Detective
19 Amick told her about some evidence in the case. She wrote
20 me numerous letters questioning me about this case. They
21 promised her deals. They promised her to merge her charges
22 that were in Lexington County and in Richland County.

23 THE COURT: All right. Why don't we put up Agent
24 Detective Amick to see what he's got to say about it first?

25 MR. GOWDY: Be delighted to, Your Honor. We would

1 call Captain Darren Amick.

2 THE COURT: Sir, You have previously been sworn
3 and you continue to be sworn and under oath.

4 THE WITNESS: Yes, sir.

5 DIRECT EXAMINATION BY MR. GOWDY:

6 Q. Captain Amick, can you begin by telling His Honor who
7 Teresa Holland -- although I think that's her name, but I
8 counted and I think ten aliases. Is that the name that you
9 knew her by?

10 A. Yes, sir.

11 Q. All right. Teresa Holland, who was she and what was
12 she doing in the Lexington County jail?

13 A. She was an inmate at the Lexington County jail. She
14 had contacted me through a correctional officer in reference
15 to some information that she had.

16 Her original charge I'm not sure. Fraud type, white
17 collar type charge, I believe.

18 Q. Forgery, fraud, identification theft, something like
19 that?

20 A. Correct.

21 Q. All right. She contacts you or gets word to you and
22 you go meet with her?

23 A. I do.

24 Q. All right. Did she give you some letters that this
25 defendant had written her?

1 A. Originally not. She asked what was in it for her. I
2 told her I don't know what she's talking about. I have
3 nothing to do with that. That would be the prosecutor's
4 offers. I didn't even really know her charge or where it
5 was from, and then she produced some letters.

6 Q. All right. She produced letters that were authored by
7 this defendant to her?

8 A. Correct.

9 Q. All right. And how did you leave it with her?

10 A. I beg your pardon?

11 Q. How did you leave it with her? How did that
12 conversation end, sir?

13 A. Basically this. She wanted to give the records to me
14 or the letters to me. I did at that time a quick voucher,
15 if you will, on notebook paper as for me receiving them.

16 Then she had a plethora of questions after that, but
17 basically I advised her that, you know, I couldn't give her
18 any information in reference to the case, anything of that
19 nature, but if she wanted to forward information to me, like
20 these letters, that was up to her.

21 Q. You did not give her a list of questions to ask this
22 defendant?

23 A. Absolutely not.

24 Q. You did not say "I want you to invade the defense camp
25 and figure out where they are going"?

1 A. No.

2 Q. Did she continue over the course of time to produce
3 letters to you?

4 A. Three more occasions after the initial one.

5 Q. And at no point did you say "here is what I want you to
6 ask him"?

7 A. Absolutely not.

8 Q. In fact, Captain Amick, was she not prepared to testify
9 for the State the last time this case was prosecuted?

10 A. That's correct.

11 Q. None of this came up last time?

12 A. It did not.

13 Q. That's all I have. If you would answer any of the
14 defense questions.

15 CROSS EXAMINATION BY MR. STARNES:

16 Q. How are you doing today, Mr. Amick?

17 A. Good.

18 Q. What was your purpose of meeting with Ms. Holland?

19 A. She advised that she may have some information in
20 reference to this case.

21 Q. Was she working in connection with another case, Mary
22 Banshy?

23 A. Mary Banshy? She was in that case.

24 Q. She was in that case.

25 And did you have information that she was placed in Ms.

1 Banshy's cell and various other inmate's cells to steal
2 mail?

3 A. I have no knowledge of that.

4 Q. Did you ever discuss or have any conversations with Ms.
5 Holland on the telephone?

6 A. On the telephone?

7 Q. Sure.

8 A. Not that I recall.

9 Q. Not that you recall?

10 A. Right.

11 Q. Do you recall her calling you from the Richland County
12 detention center after she left Lexington?

13 A. Not offhand I do not.

14 Q. Did he even know that they put me in that room for
15 stealing --

16 THE COURT: Sir, please turn around. Don't face
17 the cameras. Face the court reporter so he can hear what
18 you are saying.

19 BY MR. STARNES:

20 Q. Did Riddle even know -- did he even know --

21 A. I still didn't understand. Don't who?

22 Q. Did Riddle -- she was talking to David Riddle with you
23 on the telephone in Richland County. You don't remember
24 that phone call?

25 A. I remember it being with David Riddle in reference to

1 preparation for this case, but the exact phone call or
2 whether it did or did not take place, I do not recall.

3 Q. Okay. Did she ask you --

4 MR. GOWDY: What's he reading from, Your Honor? I
5 don't have a clue of what he's reading from.

6 THE COURT: How about showing it to the solicitor,
7 whatever it is you are looking at?

8 MR. STARNES: What this is, Your Honor, is Teresa
9 Holland called Detective Amick --

10 THE COURT: Show the solicitor whatever you are
11 asking questions from, sir.

12 BY MR. STARNES:

13 Q. Did this phone call --

14 THE COURT: Hold up a minute. Let him look at it.

15 MR. GOWDY: Your Honor, could I ask if he laid a
16 foundation of who recorded it, who was involved with the
17 recording and who the principals are, because all I have got
18 is a transcript with no foundation whatsoever.

19 MR. STARNES: I have to bring Ms. Holland in to do
20 that, to lay this foundation. That's why I proposed --

21 THE COURT: What's the source of the transcript,
22 sir?

23 MR. STARNES: The source of the transcript, Your
24 Honor, is Ms. Holland calls Detective Amick from the
25 Richland County detention center.

1 THE COURT: Who made the transcript? How is the
2 transcript made?

3 MR. STARNES: Compuscript.

4 THE COURT: Is this supposed to be her testimony?

5 MR. STARNES: It was --

6 THE COURT: Sworn testimony --

7 MR. STARNES: It's a telephone call conversation.
8 It's a recorded telephone conversation. She called and
9 spoke to Detective Amick.

10 THE COURT: What's -- that's not a recorded
11 telephone conversation, sir, you have in your hand.

12 MR. STARNES: This is a transcript of a telephone
13 conversation that she had with Detective Amick. She called
14 Detective Amick --

15 THE COURT: I mean, you have got to establish how
16 that transcript was made and the accuracy of it and that
17 sort of thing. That's what the solicitor is talking about
18 laying a foundation.

19 MR. STARNES: I don't object to that, but I have
20 to have Ms. Holland here to do that. And my position is is
21 before we get to these letters that she's going to have to
22 testify that "is this what you talked to Detective Amick
23 about; is this what he said; is this what you said in this
24 transcript?" I can easily do this.

25 And, Your Honor, I also have copies of these

1 tapes. There were multiple conversations between Teresa
2 Holland and Detective Amick about him going to the
3 solicitor's office in Richland County and helping her on her
4 charges from what she did in this case. I have him on tape.
5 When she called him, he did not know that he was being
6 taped. I have those tapes. I'll be glad -- I'll be glad
7 when I get back to the detention center to provide those
8 tapes to the solicitor's office.

9 MR. GOWDY: When were the phone calls made?

10 MR. STARNES: They were made after my case was
11 over with in 1997, when she left Richland County -- or left
12 Lexington County and went to Richland County because she was
13 upset, because the promises that Detective Amick had made to
14 her he did not go through with. He -- he promised her that
15 he would take care of her charges in Richland County, and he
16 fell through with that promise. At that point she contacted
17 the defense attorney and told him about it and they
18 interviewed her. Two of those attorneys that interviewed
19 Ms. Holland are sitting at that table right there.

20 MR. GOWDY: I guess what I don't understand is
21 Detective Amick promised her what? That he would help her?
22 That he would give her consideration if she cooperated with
23 the State?

24 The issue in Massiah is was she a government agent
25 acting in his direction when those letters were received?

1 That doesn't even get to the issue of the fact that this
2 defendant wrote the letters. He didn't have to respond to
3 any of them. These are all in his handwriting. He wrote
4 her.

5 I have heard nothing that establishes that she was
6 a government agent at the time these letters were written.
7 Whether he wants to help her afterwards or not, that happens
8 all the time.

9 MR. STARNES: Your Honor, we have to have her
10 testimony first.

11 MR. GOWDY: Your Honor, we knew two weeks ago this
12 issue was coming up. We discussed it in Spartanburg. We
13 told him he needed to get her up here from Georgia so I
14 could cross-examine her and she's not here.

15 MR. STARNES: I can't predict when he's going to
16 stop his case, Your Honor. She's on her way here from
17 Georgia right now. She's being transported from Georgia.

18 Your Honor, if I may, can I play this recording?

19 THE COURT: No, sir.

20 You say she's -- it's going to be necessary for
21 her to be here. Somebody is going to have to verify all
22 this, lay a foundation to verify it --

23 MR. STARNES: I agree with that, Your Honor.

24 THE COURT: -- Mr. Starnes. She's not here to do
25 that.

1 You know, the question remains -- the solicitor
2 raises the issues, and she can clear that up, or she can at
3 least give her testimony as to her understanding of it what
4 she believed to be true.

5 The question is not whether she provided
6 information to the sheriff's department in hopes of them
7 helping her in some way or helping her some way with her
8 charges. The question is whether she was acting pursuant to
9 their direction as an agent of theirs. And so it comes down
10 to whether there was any kind of arrangement between the
11 sheriff's department and this person who is in the detention
12 center, or if she was doing this on her own in order to help
13 herself with regard to her charges. And so the question is
14 you have to be able to establish -- if you wrote these
15 letters to her, you have to establish that they are a result
16 of her acting as an agent procuring that information from
17 you as an agent of the sheriff's department. And that's the
18 question.

19 So, you know, you can talk and give your version
20 of it, but you aren't -- you are not a party to that
21 conversation that you say happened, so you can't verify what
22 happened. She would need to do that. And so -- and
23 whatever her relationship was insofar as the sheriff's
24 department I don't know. I have no idea, but you would have
25 to establish that.

1 If you wrote letters to her and she turned them
2 over to them, it's incumbent upon you then to show that she
3 was working as an agent for them and pursuant to their
4 direction. Are you able to do that?

5 MR. STARNES: I can do that, but we have to have
6 testimony from her, Your Honor.

7 THE COURT: Solicitor, we will have to wait until
8 she's available, if she's on her way. They are assuring me
9 that she's on her way and available, so --

10 MR. GOWDY: Your Honor, this appears to be a
11 transcript of several telephones calls. I only see one with
12 Captain Amick. Am I missing something?

13 MR. STARNES: I believe there is two with Captain
14 Amick that she recorded. There is some with some of the
15 staff at the detention center.

16 MR. GOWDY: Can you cite me to the page and line
17 where she alleges that there was a violation of your Sixth
18 Amendment Right and that she was signed up an as agent to
19 write you questions while you were in prison at his
20 direction?

21 MR. STARNES: I --

22 MR. GOWDY: No, no, you were questioning him from
23 this. I want to know the line and the page. You made the
24 allegation. What's the line and the page?

25 MR. STARNES: Your Honor, this is on the DVD, on

1 this tape. He can't cross-examine a DVD, and that's why we
2 need her.

3 THE COURT: Yes, sir. You can't take something
4 that you say is a transcript for that conversation and
5 cross-examine from it without laying a proper foundation.
6 You can't do that either.

7 I know your attorney is sitting right there and
8 he's advising you. Ask him about it.

9 MR. STARNES: I understand, Your Honor.

10 THE COURT: You can't do that. You have been
11 talking to him the whole time. You can't do that. Ask him.
12 You can't do it. You got to lay some kind of foundation.

13 (Off the record)

14 (Back on the record)

15 MR. STARNES: Your Honor, can I let Mr. Nettles
16 address the court on this issue?

17 THE COURT: Yes, sir, I will allow him to address
18 the court.

19 MR. GOWDY: Your Honor, my concern is he just held
20 up a transcript and was reading it to this witness as if it
21 had something to do with the Massiah violation, and I'm
22 asking for the specific point and line where this witness
23 promised something to Teresa Holland.

24 THE COURT: Mr. Nettles, you don't have anything
25 to do with that, so let him answer that question, and then

1 I'll hear from you on legal argument.

2 MR. STARNES: I'm not going to cross him on it. I
3 just need Ms. Holland here. That's all, to lay the
4 foundation.

5 MR. GOWDY: He stood right there and insinuated
6 that there was a Massiah violation with this witness. He
7 didn't say anything about a videotape. He held this up and
8 represented that it was a Massiah violation, and I want him
9 to prove it in this court. Where is it in here?

10 MR. STARNES: Your Honor, I never held this up and
11 said it was a Massiah violation. I never did that. The
12 record will reflect that.

13 THE COURT: Mr. Starnes, you were standing there,
14 with it wide open, turned the pages and asking him questions
15 from it. Now, asking him questions from it that were in
16 there.

17 If you weren't doing that, you certainly gave the
18 appearance that you were doing that.

19 Now, if you were not really doing that, but you
20 were standing up, opening it up, holding it to pages like
21 you were asking him questions from it, you certainly gave
22 that appearances, and that's what he's asking you where in
23 the -- in this -- you say the transcript taken from a DVD.
24 Where is --

25 (Off the record)

1 (Back on the record)

2 MR. STARNES: Your Honor, I just asked Detective
3 Amick did he have any phone conversations with Teresa
4 Holland and that's when I was impeaching him on.

5 These transcripts -- this is not the transcript of
6 this DVD. This is a total separate point -- not separate
7 point, but separate things. These are telephone
8 conversations. This is a videotaped interview where Teresa
9 Holland is interviewed by three attorneys with a private
10 investigator.

11 I asked Detective Amick did he have any phone
12 conversations with Teresa Holland on the phone, and that's
13 what I was referring to.

14 THE COURT: And you opened it to pages and it
15 appeared that you were asking questions from the transcript,
16 asking him wasn't this so. Is that not true?

17 MR. STARNES: That's correct, Your Honor. I was
18 impeaching him on his recollection to these phone
19 conversations. He said he didn't have any, or he couldn't
20 recall any, and that's what I was asking Detective Amick
21 for, these phone conversations that he denied.

22 MR. GOWDY: And my point, Your Honor, is the phone
23 conversations have nothing to do with the Massiah violation.
24 The fact that he talked to her years later about conferring
25 a benefit on her has nothing to do with what happened at the

1 time these letters were written. And to suggest otherwise
2 creates the wrong impression in everybody's mind, and it's
3 just not fair to this witness. That's my point.

4 MR. STARNES: Your Honor, pretty much -- I believe
5 Detective Amick made it clear that what I asked him, he was
6 denying, was not true. And I need -- I need Ms. Holland
7 here to lay a foundation for these telephones conversations
8 and the interview with these attorneys.

9 THE COURT: Well, let's get back to the original
10 issue, okay? Can you establish -- I think in Henry that you
11 recited, the government paid an informant to go get
12 information and they paid him for what he was able to get.
13 He didn't get anything, he didn't get paid. If he was able
14 to get something to help the government, they paid him
15 money. Is that correct?

16 MR. STARNES: I believe so.

17 THE COURT: But if he didn't get anything, they
18 didn't pay him any money, so he was under contract, a paid
19 employee, essentially, to get information. Isn't that
20 correct?

21 MR. STARNES: Yes, sir, I believe so, but he was
22 acting as a government informant.

23 THE COURT: Well, he was getting paid to do that,
24 was he not?

25 MR. STARNES: Paid or promised.

1 THE COURT: He was getting paid money. He was
2 paid -- he would be paid for what information that he could
3 get. So he was paid to get information. And he only got
4 paid if he got the information, is that correct?

5 MR. STARNES: Yes, sir, I believe so.

6 THE COURT: All right. Well, that's the situation
7 here, isn't it?

8 MR. STARNES: Yes, sir, because he made a promise
9 to her. He made a promise to her to help her on her charges
10 if she would act as government agent and inform on me.

11 Now, the line of -- the line of state cases --

12 THE COURT: Well, let me ask you. Let me go back
13 to my original question.

14 Was this information that she already had in her
15 possession, that she was seeking to get some assistance from
16 him for turning it over to them? Is that the situation?

17 MR. STARNES: I believe that to be the situation.
18 There is six hundred --

19 THE COURT: Hold on. Now, if she already had
20 letters in her possession you had written her which she
21 thought would be of some benefit to the government, and then
22 she says "I'll turn these letters over to you, provided --
23 or if you are -- "if I'm going to get something out of it,
24 you are going to help me." Is that the situation?

25 MR. STARNES: Your Honor, I'm sorry, I

1 misunderstood you. She wrote me letters at Detective
2 Amick's request and direction. This investigator --

3 THE COURT: All right. I'm going to let you
4 explain it, but now I want you to answer the question first
5 so I can understand what your objection is.

6 MR. STARNES: Yes, sir.

7 THE COURT: At the time that you say that the
8 attorneys met, I guess with someone from the -- either the
9 solicitor's office, or somebody from the sheriff's
10 department, someone, along with their respective clients, at
11 the time that you say that they met with them, had the
12 letters already been written and she claimed to have the
13 letters in her possession? That's my question.

14 Had the letters already been written by you and
15 were in her possession?

16 (Off the record)

17 (Back on the record)

18 MR. STARNES: Your Honor, if I understand
19 correctly, are you asking me at the time that they met with
20 her, did she have the letters then?

21 THE COURT: You understood my question, Mr.
22 Starnes. You are a lot smarter than that, and I don't know
23 what you are talking to your attorney about over there, but
24 I asked you --

25 I don't need you, Mr. Nettles. Please be seated.

1 I asked you a specific question and that's a very
2 simple answer. At the time she had conversations that --
3 you say she had a conversation with the sheriff's department
4 or the solicitor's office and her attorney was present, at
5 that time had these letters already been written by you and
6 she already -- not that she had them that particular day and
7 she turned them over, but she claimed to have these letters
8 already in her possession at the time of that meeting?

9 MR. STARNES: No, sir.

10 THE COURT: All right. That's what I wanted you
11 to answer. That's simple it appears to me.

12 MR. STARNES: Your Honor, her -- her attorney
13 wasn't there. Detective Amick comes to the detention
14 center. She was an inmate at the Lexington County detention
15 center.

16 THE COURT: Well, you sure are confusing me,
17 because you said that this was a meeting that took place
18 with three attorneys and three clients and she was one of
19 them. That's what I understood you to say.

20 MR. STARNES: That's a separate meeting. That's a
21 separate thing. That's what's on the DVD.

22 MR. NETTLES: Judge, could I give a chronology?
23 My understanding is here's what happened. It's been a long
24 time. There was a -- it's my understanding, and I wasn't
25 there, but there was a meeting between Ms. Holland --

1 I haven't seen the DVD forever, but my
2 understanding is that the DVD will show that Ms. Holland
3 said at some point prior to Norman's trial, that she and
4 Detective Amick met. It's my understanding that she will
5 say that Detective Amick asked her to write letters to
6 Norman in an attempt to get Norman to write her back, so
7 that she could then take those letters and deliver them to
8 Detective Amick. Okay.

9 THE COURT: And are the letters we are talking
10 about today, is it his allegation that they were written
11 after the meeting and something was promised to her that
12 they were written after that?

13 MR. NETTLES: Yes.

14 Just -- so we weren't trying to squirrel on you,
15 judge. What then happened was after this conviction -- my
16 understanding is that she was writing a number of other
17 inmates in the jail at the direction of Detective Amick.
18 She then found out who those people's criminal defense
19 lawyers were.

20 It's my understanding that some discussions where
21 she and Detective Amick determined what she had been
22 promised went bad, that "let me tell you what was going on."

23 At that meeting -- this is what was the source of
24 our confusion. She had already been sentenced and was
25 waiting to be sent back to Georgia. She did not have a

1 lawyer and asked to speak with some criminal defense
2 lawyers, because she knew that she had been instrumental in
3 obtaining convictions in their cases.

4 So -- so whatever the court was asking us about
5 letters, those were two separate meetings that took place
6 years apart.

7 THE COURT: Okay. Well --

8 MR. NETTLES: And I apologize if perhaps we had
9 explained that more clearly earlier, we wouldn't have had
10 ourselves in that position.

11 THE COURT: Well, I ask a simple question and get
12 a simple answer instead of getting something else.

13 But, in any event, I'm just trying to understand
14 what Mr. Starnes' position is, and that's all. I just need
15 to know what his position is. And the only way I can know
16 that is to understand what he's saying and when it happened
17 and what happened.

18 MR. NETTLES: Yes, sir.

19 THE COURT: And so --

20 MR. NETTLES: Mr. Starnes can correct me if I'm
21 wrong, but I mean, I'm not -- that's my understanding of the
22 chronology on that.

23 Is that correct?

24 MR. STARNES: Yes.

25 MR. NETTLES: All right.

1 MR. GOWDY: What Detective Amick's testimony was
2 was that he was contacted by Teresa Holland. She already
3 had some letters. There had already been correspondence.
4 He did not start this pen pal relationship. It preexisted.
5 She offers him letters in exchange for something. His
6 testimony, as I understand it, was "I didn't promise you
7 anything. That's up to the solicitor." She turns the
8 letters over.

9 She called again with another batch of letters.
10 And the last batch of letters, and you correct me if I'm
11 wrong, Captain Amick, were abandoned in a jail cell, which
12 is abandoned property. She didn't turn them over to him.
13 She just left them there. They are all written by him, and
14 I have not heard one scintilla of evidence that he wrote out
15 a list of questions designed to elicit testimony from him.
16 They had a preexisting letter writing -- I can't even ask
17 the court to read the letters. They are so salacious. I
18 mean, these letters are clearly between a boyfriend and a
19 girlfriend, and that is -- it's hard to say romantic,
20 because it was a prison relationship, but that salacious
21 relationship preexisted Darren Amick becoming involved. He
22 tried to benefit from the fact, obviously, that a girlfriend
23 of an inmate wanted to trade their letters for help for her.
24 That's not his fault.

25 THE COURT: All right. Let me put it that way.

1 All right. I think we need to make a determination, though,
2 if there are letters that predated her ever talking to
3 Detective Amick, they obviously would come in, because they
4 weren't done pursuant to any kind of arrangement she had
5 pursuant to any efforts made by the sheriff's department.
6 If they had already been done between boyfriend and
7 girlfriend in prison, personal letters, or that had been
8 written and she offered to turn that information over,
9 obviously she's not doing that pursuant to any kind of
10 governmental agency, so those obviously can come in.

11 Anything that she would have done, if she -- if
12 they made an arrangement with her to go out specifically and
13 ask specific questions on that and try to gain information
14 Mr. Starnes, that may not be -- you may not be able to use
15 those letters. I don't know. I would have to hear
16 everything, but I do believe I'll probably have to hear from
17 her, unless you can establish that there were letters
18 written before she ever had any kind of meeting with
19 Detective Amick.

20 If these are letters that were written by Mr.
21 Starnes and she had them in her possession before she ever
22 talked to Detective Amick, or anyone on the sheriff's
23 department, about trying to get in favorite consideration
24 turning the information over, then obviously she couldn't
25 have been working as an agent for them when she already had

1 the letters in her possession when she talked to them the
2 first time. So if there are such letters, then they come
3 in.

4 MR. GOWDY: There are four letters that I purport
5 to use from August of '96, and one from October of '96.
6 They were used in the previous trial. They were just used
7 differently. They were used to cross-examine Mr. Starnes,
8 and this issue was never brought up, and they said he didn't
9 know about it, but I need to -- I can either ask Detective
10 Amick if his notes reflect when he first met her --

11 THE COURT: He can, but I think we are going to
12 have to hear from her before I'm going to be able to make
13 that determination.

14 MR. GOWDY: I understand that.

15 THE COURT: And so, you know, unfortunately she's
16 not here, but we just have to wait. We will just have to
17 hold that. I'll allow you to put it in once she's available
18 and hear the testimony. And so, you know, I'll give you an
19 opportunity then to do that. Even if we have to wait until
20 Monday to do that. When we resume on Monday, we may have to
21 do it then.

22 MR. GOWDY: Yes, Your Honor.

23 THE COURT: Or we can do that, and we wouldn't
24 have to close -- you come close before then, you wouldn't
25 have to close until after that then.

1 MR. GOWDY: Well, he is actually our last witness
2 so --

3 THE COURT: Why don't we do this, the State put up
4 whatever testimony we can from him about it. Do you want to
5 do that, or do you want to wait until Monday when Ms.
6 Holland is available? Then we can do that all at one time.
7 Whatever you want to do.

8 MR. GOWDY: Is she coming today?

9 MR. NETTLES: The short answer is I don't know.

10 Let me tell you who this is. No, no. Here is
11 why. Here is why. Here is why.

12 MR. GOWDY: I'm smiling.

13 MR. NETTLES: No, I know what you are smirking --

14 MR. GOWDY: I'm smiling. I'm not laughing.

15 MR. NETTLES: That's fine. I accept that. I
16 appreciate that.

17 This is the witness that we had that Norman had to
18 get that's being held in jail in Atlanta that we had to
19 domesticate the subpoena and then send the sheriff to go get
20 her. That is all I know.

21 As far as where that is in that process, I may
22 have to ask Norman. I think -- Norman, where is it?

23 The stuff is supposed to be getting Fed X'd.
24 First we had to hire a lawyer for her. There is -- my
25 understanding there was a hearing yesterday. It all went

1 well and so she should be getting Fed X'd to us today. And
2 we will notify the sheriff's department. There is already
3 an order signed by the court that upon receiving that
4 domesticated subpoena, we can dispatch the sheriff to go get
5 her.

6 Is that fair to say?

7 MR. STARNES: Yes.

8 THE COURT: She's not on her way, as Mr. Starnes
9 indicated earlier.

10 MR. STARNES: Your Honor, the order that Your
11 Honor signed had to be sent to Georgia to get --

12 THE COURT: I understand all that.

13 Do you think that you could answer one question I
14 ask without giving me something else? Is she on her way or
15 not? That's what you said.

16 MR. STARNES: Yes, sir, she is.

17 THE COURT: She's in transport at the present
18 time?

19 MR. STARNES: I don't know, Your Honor.

20 THE COURT: All right.

21 MR. STARNES: She was supposed to be here today.
22 That's what was in the order.

23 THE COURT: But is there something that would have
24 withheld the order, effectiveness of the order that would
25 have held it up to be carried out?

1 MR. STARNES: I can't answer that, Your Honor.

2 THE COURT: So we don't know when she's going to
3 be available?

4 (Off the record)

5 (Back on the record)

6 MR. STARNES: Your Honor, if they would let me use
7 the telephone, I'll find out.

8 THE COURT: All right. Well, why don't we take a
9 break and allow him to see -- let him call and see if he can
10 find out.

11 Do you want to ask him some questions while he's
12 on the stand, or do you just want to wait?

13 MR. GOWDY: Well, what I was going to ask the
14 court, because I know it's unusual. I -- I think Captain
15 Amick has notes that reflect when this relationship, such as
16 it was, began between he and Teresa Holland. Ordinarily I
17 cannot talk to a witness while -- I don't know if it applies
18 in a preliminary evidentiary hearing or not. I mean, I
19 don't want to talk to him on a break if I'm not supposed to,
20 but he is my source.

21 THE COURT: He hasn't started. He hasn't really
22 started testifying yet.

23 MR. STARNES: Your Honor, I don't object to that.

24 THE COURT: He hasn't started testifying yet, so
25 he's not really on the stand. We haven't -- I did tell him

1 he was still under oath for his testimony. We haven't
2 gotten to any -- there was an objection made, so he hasn't
3 started testifying yet.

4 MR. GOWDY: Yes, sir.

5 MR. STARNES: Your Honor, if Detective Amick has
6 notes on this, I think I'm entitled to them under the
7 discovery rule.

8 MR. GOWDY: I don't know. That's why I wanted to
9 ask --

10 THE COURT: He wanted to be able to talk to him.
11 He doesn't know if he has got anything or not that would
12 reflect when it started his relationship. It wouldn't
13 necessarily have anything to do with this case.

14 All right. We are going to do that. Let's do
15 this. Let's take a break. Let Mr. Starnes have access to a
16 phone and call and see if he can try to find out when she's
17 going to be available.

18 MR. GOWDY: Given the fact that Detective Amick
19 was a party to this conversation, or parts of it, can he
20 have access to the transcript of see what he has purported
21 to have said in the telephone call? I mean, if he was a
22 party to it.

23 THE COURT: Well --

24 MR. GOWDY: I don't know whether he's ever seen
25 that.

1 THE COURT: I think the defense is required to
2 turn it over.

3 MR. STARNES: Your Honor, I believe I just give
4 them a copy. I have got the original.

5 MR. GOWDY: Right. I just don't want to show it
6 to him if there is an issue with that. I mean, I don't
7 think he's seen that before.

8 MR. STARNES: He can have the original, Your
9 Honor.

10 THE COURT: All right. So he can have it and have
11 access to it.

12 He hadn't started testifying yet, so you are free
13 to question him about it and ask him what he knows about it.
14 If he has any notes about it. It may not be in this file.
15 It may be in a different file.

16 MR. GOWDY: Yes, sir.

17 THE COURT: Because she may have tried to provide
18 information in other cases, apparently, and they have not
19 been just in this case.

20 MR. GOWDY: All right.

21 THE COURT: Let's take a break.

22 MR. GOWDY: The only other thing I'll let the
23 court know, I don't have a copy of that DVD. I don't know
24 what she said to --

25 THE COURT: Well, he needs to make it available so

1 you can make a copy.

2 MR. GOWDY: Thank you.

3 THE COURT: If it's certainly going to be
4 something that's coming in then.

5 MR. GOWDY: Thank you, judge.

6 THE COURT: We will take about 15 minutes, or so,
7 and let Mr. Starnes check on her and see what information is
8 available. We may have to recess until Monday, if possible.

9 (Whereupon, proceedings were recessed)

10 (Whereupon, proceedings were reconvened)

11 THE COURT: Yes, sir.

12 MR. GOWDY: Your Honor, may it please the court,
13 on the break we -- thank you for the break.

14 In material that's previously been disclosed to
15 the defendant, the very first interaction that Captain Amick
16 ever had with Teresa Holland was on September 10th, 1996.
17 There is a handwritten note where he took receipt of
18 letters. He had not had any communication with her prior to
19 that. He wrote a receipt.

20 His testimony will be today that he did not give
21 her any questions to ask.

22 I think what is most significant is I, even on
23 that brief break, found eight different letters where this
24 defendant is discussing his criminal case with this female
25 inmate before she ever met Darren Amick, up to and including

1 discussion, "no murder weapon; no motive; it's buried on my
2 uncle's property, but that doesn't mean I did it; the police
3 have nothing." All of this is before they ever met one
4 another.

5 THE COURT: That's what I was trying to get at.
6 He evaded by my questions. He evaded, evaded, evaded, tried
7 to use Mr. Nettles -- conversation with Mr. Nettles trying
8 to evade it. And all I asked was a simple question, and
9 that was were these letters written before she had contact
10 with Mr. Amick and talked about any kind of arrangement.
11 And she had these letters already, and she -- she made those
12 letters were already written in her part of the deal.
13 She -- or what she claimed to be a deal. I don't know what
14 she claims. And I'm not aware of what her testimony will
15 be, but she and Mr. Amick may not agree about that. It
16 wouldn't surprise me at all.

17 But the fact of the matter is were the letters
18 written and she had already had them when she first got in
19 contact with Mr. Amick? That's the question. Because if
20 that's true, then she can't possibly have been working for
21 the sheriff's department or the State in trying to get
22 information at their urging or with them giving specific
23 questions to ask. So if have all these -- if these letters
24 are written before ever made any contact with him or had any
25 kind of -- tried to get any kind of an agreement with them,

1 then obviously any agreement that she might have tried to
2 get later on, not that -- these letters are not going to be
3 affected by them, because they are already in existence.
4 But if they didn't come into existence because of anything,
5 involvement by the sheriff's department or the State, and
6 that's the case.

7 Do you just disagree with that, Mr. Starnes?

8 MR. STARNES: No, sir, I agree with that, but only
9 she can answer that question, Your Honor.

10 THE COURT: No. I mean, are they dated? Are the
11 letters dated?

12 MR. GOWDY: Yes, sir, the letters are dated and
13 his receipt from her is dated.

14 Now, I will say this, and I hope the court would
15 give me a chance to convince the court that there are three
16 letters -- there are four letters that I would purport to
17 use today. Three of them predate him ever talking to her.
18 One postdates it, but it's the same material that they were
19 discussing ahead of time. So my argument would be how can
20 he give her questions? He's already talking -- he's already
21 discussing the intimate details of his case before these
22 conversations ever takes place? He is literally discussing
23 his case with another inmate before she ever meets Darren
24 Amick.

25 Three of the letters I want to use today predate

1 him ever meeting Teresa Holland. Only one postdates it, but
2 it still refers to the same information he has been saying
3 previously.

4 Now, if he testifies, there are other letters on
5 other issues I would like to ask him about it. So maybe
6 Teresa Holland would be instructive on other matters, but
7 the discussion of "murder weapons, burying bodies, I didn't
8 do it, I didn't pull the trigger," all of that predates him
9 ever talking to Teresa Holland.

10 THE COURT: Well, I believe those would come in,
11 Mr. Starnes, if you wrote these letters before she ever had
12 any kind of contact with Detective Amick.

13 MR. STARNES: I can't answer that question. Ms.
14 Holland can answer that question.

15 Not only is it Detective Amick, there is another
16 officer at the detention center that's involved in this,
17 because she put Teresa Holland in various cells on another
18 case to steal mail which --

19 THE COURT: Well, I mean, you know, are
20 these flaming allegations. When? Whom? What it's got to
21 do with this case? How is it relevant to this case?

22 MR. STARNES: Because this officer talked to her
23 about writing me.

24 THE COURT: Well, that was after you had already
25 written her, apparently, but what they are saying a number

1 of times and the letters they want to use, all of them
2 except one, they are talking about four -- or three of them
3 were written before she ever even talked to Detective Amick.

4 MR. STARNES: Your Honor, only Teresa Holland can
5 answer that question. I can't say when she met Detective
6 Amick. The exact date I believe it was before that.

7 MR. GOWDY: Your Honor, Detective Amick is here.
8 He has a notation. He had no idea what she wanted to talk
9 to him about, so all he could do is write it on a scratch
10 piece of paper that "I'm taking receipt of letters already
11 written by this inmate." His testimony is he had no idea
12 what she even wanted to discuss.

13 The issue of stolen letters, I'm not getting into
14 stolen letters. These are letters that he wrote to her. I
15 don't care about other inmate's letters. They came up at
16 the last trial, but I'm not getting into that.

17 There is nothing stolen about it. He wrote them
18 to her. He no longer has an expectation of privacy in it.
19 She gave it to somebody else.

20 It's the exact same analysis, frankly, as you
21 engage in when you tape somebody's telephone conversations.
22 You have no expectation of privacy in them. He lost it when
23 he mailed the letter. She decided to give them to Darren
24 Amick.

25 THE COURT: Well, I agree with the everything that

1 you are saying. And if that was done prior to her ever
2 talking to them about getting information for them and she
3 just simply offered it in hopes of getting a better deal on
4 whatever charges were against her, it would not make any
5 difference, because she would not be a government agent
6 trying to get this information. She would have already have
7 had the information. And so that's the very question I was
8 trying to ask over and over and over and over, and I got
9 dodged and dodged and dodged and dodged about it. Then I
10 get some kind of deal about whether there were a couple
11 meetings, blah, blah, blah, and you still are not answering
12 my question, and that is had these letters been written to
13 her before she ever had any conversations with Detective
14 Amick about your case at all?

15 MR. STARNES: If the first contacts she had with
16 Detective Amick was September 10th, then the letters would
17 have been written before that, if that was her first
18 contact.

19 THE COURT: Right.

20 MR. STARNES: But I can't answer that question,
21 because I can't speak for Ms. Holland, Your Honor.

22 THE COURT: Well, apparently you have spoken to
23 her quite a bit.

24 MR. STARNES: Yes, sir, 638 pages.

25 THE COURT: She didn't answer that question for

1 you?

2 MR. STARNES: No, sir.

3 THE COURT: She didn't answer that question for
4 you?

5 MR. STARNES: No, sir. There was 638 pages of
6 letters that I wrote her.

7 THE COURT: You know, I'm not asking -- I'm not
8 interested in 638 pages of letters, Mr. Starnes. I'm
9 interested in what they are seeking to try to offer into
10 evidence. I'm not talking about everything she ever wrote
11 to you and those that she wrote to you sometime after she
12 had her first contact with Detective Amick. I'm not talking
13 about those. I'm only talking about these letters that they
14 are seeking to introduce. And you have apparently had quite
15 a bit of conversation with her. You have got a C.D., or
16 whatever, the information on it that you say you have got
17 this, that, or the other on it. You are calling her as a
18 witness in the case. I assume you have had some contact
19 with her, either you or by someone else, and so that should
20 be a relatively available answer to that, when her first
21 contact with Detective Amick was and whether you had already
22 written her some letters that they are trying to introduce
23 parts of it into evidence or not at that time.

24 MR. STARNES: I understand, Your Honor.

25 (Off the record)

1 (Back on the record)

2 (DVD marked as Court's Exhibit No. 10 for
3 identification)

4 MR. STARNES: Your Honor, I guess the only way to
5 resolve it is to have her here and to give sworn testimony
6 in court.

7 Now, there was a hearing this morning that was
8 scheduled and they were going to have Ms. Holland here, but
9 she was on work release. Monday is a holiday, and I
10 understand we have got court coming, and in Georgia it's a
11 holiday. She could be here Tuesday morning and the State
12 could put this evidence up in rebuttal. I'll tell them
13 right now I'm going to take the stand and testify. I
14 understand that they are from out of town and that time is
15 of the essence for them.

16 In the event that this jury convicts me of two
17 counts of murder and we go into a penalty phase, I can -- I
18 will wave the 24 hour cooling off period and let them go
19 directly into the penalty phase trial. Your Honor, that's
20 the best I can do.

21 THE COURT: You mean to tell me, Mr. Starnes, you
22 may want to get this lady here to try to cast aspersions and
23 that on the credibility of the sheriff's department. You
24 may want to do that. They are here.

25 My question to you is -- can you answer this

1 question for me? These letters written before -- some of
2 these letters were written before she ever had contact with
3 Detective Amick. You talked to her, and I think you know
4 the answer to that, and if you know it, tell me the answer
5 to it.

6 MR. STARNES: Your Honor, if I know she was
7 talking to Detective Amick, I would have never wrote her.

8 THE COURT: I realize that, but you talked to her
9 since then. She's come to testify on your behalf in this
10 trial, I presume since your subpoena, and gone to a lot of
11 trouble to get her out of prison to bring her up here, you
12 mean to tell you haven't discussed with her what some of
13 these letters were written to you before she ever had any
14 contact with Detective Amick?

15 MR. STARNES: No, sir, because when they turned
16 these letters over to us, I ceased all contact with her. I
17 had no contact with her.

18 There was an interview with Mr. Nettles, Mr.
19 Delgado, and Mr. McCullough, and that's when I learned of
20 all this information.

21 THE COURT: How about since you have been
22 preparing for this trial?

23 MR. STARNES: I have had no contact with her, not
24 directly. I have had no contact with her.

25 THE COURT: But you have had it through third

1 persons, you know, and you mean you don't know whether any
2 of these letters were written before she ever had any
3 contact with Detective Amick? Are you telling me that?

4 MR. STARNES: No, sir, I cannot.

5 THE COURT: Well -- and I'm talking out loud now,
6 but why couldn't we proceed on taking the testimony on
7 these -- at least these three? And if she claims Detective
8 Amick was going to testify, I assume, under oath that he had
9 his first contact with her was on a certain date and he
10 signed for letters that date, and these letters were already
11 in existence at that time, Mr. Starnes, why couldn't we let
12 those come in? And then you can put her up and rebut it, if
13 you wish to do it, let her rebut it, if she needs to rebut
14 it? Wouldn't that be an appropriate procedure?

15 MR. GOWDY: Your Honor, I'm happy to do that. I
16 mean, obviously this is very important evidence for us or we
17 wouldn't be ending with it, so the notion that I'm going to
18 stop my case and let him go forward, and then -- I mean,
19 it's very important. All four letters are important.

20 If it will speed matters up, I'm happy to put in
21 three and sacrifice the fourth, even though it is an
22 important letter.

23 THE COURT: Well, I mean, we could put -- what I'm
24 saying is why couldn't we proceed to put three in. And then
25 when she's available, you know, if gets on the stand and

1 testifies, you can ask -- you can make a determination about
2 the fourth one at that time.

3 MR. GOWDY: Yes, sir.

4 (Off the record)

5 (Back on the record)

6 MR. NETTLES: Could we approach?

7 THE COURT: Yes, sir.

8 (Whereupon, the lawyers and the defendant
9 approached the bench for an off-the-record discussion)

10 (Whereupon, proceedings were recessed)

11 (Whereupon, proceedings were reconvened)

12 THE COURT: All right. Thank you.

13 Detective Amick?

14 MR. GOWDY: He's on his way back, Your Honor.

15 THE COURT: If you would come back and take the
16 stand, Detective Amick.

17 THE WITNESS: Yes.

18 THE COURT: Let me state for the record before I
19 bring the jury back in.

20 We have had quite a bit of bench discussion - Mr.
21 Gowdy, Mr. Starnes, Mr. Nettles - to some extent. Mostly
22 Mr. Starnes, but some advise of Mr. Nettles and some
23 information from Mr. Nettles. We have had a bench
24 discussion about whether some of these letters, admittedly
25 written by Mr. Starnes to Mrs. -- what is her name again?

1 MR. GOWDY: Teresa Holland. That's one of the
2 names.

3 THE COURT: Okay. Whether they were -- that
4 information was gained through her being an agent of the
5 State, or of the Lexington County sheriff's department, or
6 not.

7 And I understand the Mr. Amick's position we'll
8 see, he is going to testify under oath, but the position is
9 that three of the letters that the State -- not just three
10 letters, but three of the letters that the State will seek
11 to introduce portions of today through Detective Amick were
12 written before he had first contact with Ms. Holland. At
13 the time he first met with her, these letters were already
14 in existence and had been written. This will be his
15 testimony. It's not Ms. Holland's testimony. It's his
16 testimony. We don't have any from her at this point. And
17 that these letters were handed -- these letters, along with
18 some other letters were handed over to him and he signed for
19 them at the time that he first met her.

20 Am I correct about that, solicitor?

21 MR. GOWDY: Yes, sir.

22 THE COURT: And so what -- there was another
23 letter, a fourth letter, that the solicitor seeks to get
24 information out of that letter in, rather than portions of
25 it, and it was written after the first meeting that Mr.