

VOLUME SIX OF NINE

STATE OF SOUTH CAROLINA

In The Supreme Court

APPEAL FROM LEXINGTON COUNTY

Lee S. Alford, Circuit Court Judge

RECEIVED

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S.C. SUPREME COURT

THE STATE,

RESPONDENT,

V.

NORMAN STARNES,

APPELLANT

RECORD ON APPEAL

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25	S-46	AUTOPSY DRAWING		

	EXHIBITS			
	NO.	DESCRIPTION	ID.	EV.
1				
2				
3	S-47	AUTOPSY DRAWING		
4	S-48	KNIGHT SYSTEMS FORM		1456
5	S-49	KNIGHT SYSTEMS FORM		1456
6	S-50	PHOTOGRAPH		1482
7	S-51	PHOTOGRAPH		1482
8	S-52	PHOTOGRAPH		1483
9	S-53	PHOTOGRAPH		1484
10	S-54	PHOTOGRAPH		1493
11	S-55	PHOTOGRAPH		1493
12	S-56	PHOTOGRAPH		1493
13	S-57	PHOTOGRAPH		1493
14	S-58	PHOTOGRAPH		1564
15	S-59	PISTOL		1590
16	S-60	BULLET		1578
17	S-61	PHOTOGRAPH		1585
18	S-62	PHOTOGRAPH		1585
19	S-63	PHOTOGRAPH		1585
20	S-64	PHOTOGRAPH		1585
21	S-65	PHOTOGRAPH		1585
22	S-66	PHOTOGRAPH		1585
23	S-67	PHOTOGRAPH		1585
24	S-68	FIREARMS PURCHASE RECORD		1595
25	S-69	PICTURES OF DRIVER'S LICENSE		1605

		EXHIBITS		
	NO.	DESCRIPTION	ID.	EV.
1				
2				
3	S-70	LETTER - 8/21/96		
4	S-71	LETTER - 8/19/96		
5	S-72	LETTER - 8/11/96		
6	S-73	TRAFFIC TICKETS		2523
7	S-74	TRAFFIC TICKETS		2513
8	S-75	TRAFFIC TICKETS		2426
9	S-76	TRAFFIC TICKETS		2439
10	S-77	TRAFFIC TICKETS		2523
11	S-78	INDICTMENT		2436
12	S-79	PHOTOGRAPH		2620
13	S-80	PHOTOGRAPH		2620
14	S-81	PHOTOGRAPH		2620
15	S-82	PHOTOGRAPH		2620
16	S-83	PHOTOGRAPH		2620
17	S-84	PHOTOGRAPH		2620
18	S-85	PHOTOGRAPH		2620
19	S-86	PHOTOGRAPH	2379	
20	S-87	PHOTOGRAPH	2379	
21	S-88	PHOTOGRAPH	2379	
22	S-89	PHOTOGRAPH		2620
23	S-90	PHOTOGRAPH		2620
24	S-91	PHOTOGRAPH		2620
25	S-92	PHOTOGRAPH		2620

	EXHIBITS			
	NO.	DESCRIPTION	ID.	EV.
1				
2				
3	S-93	PHOTOGRAPH		2649
4	S-94	PHOTOGRAPH		2649
5	S-95	PHOTOGRAPH		2637
6	S-96	PHOTOGRAPH		2637
7	S-97	PHOTOGRAPH		2637
8	S-98	PHOTOGRAPH		2637
9	S-99	PHOTOGRAPH		2637
10	S-100	PHOTOGRAPH		2649
11	S-101	PHOTOGRAPH		2649
12	S-102	PHOTOGRAPH		2649
13	S-103	LIST OF TICKETS		2432
14	S-104	PICTURES		2613
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16				
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	EXHIBITS		
	NO.	DESCRIPTION	ID. EV.
1			
2			
3	D-1	POSTERBOARD CALENDAR	1089
4	D-2	PHOTOGRAPH	1101
5	D-3	PHOTOGRAPH	1101
6	D-4	PHOTOGRAPH	1110
7	D-5	PENCILLED DRAWING	2071
8	D-6	PENCILLED DRAWING	1345
9	D-7	TELEPHONE RECORD	1401
10	D-8	PENCILLED DRAWING	1440
11	D-9	PHOTOGRAPH	1510
12	D-10	AUTHORIZATION FOR AUTOPSY	2071
13	D-11	AUTHORIZATION FOR AUTOPSY	2071
14			
15			
16			
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1	EXHIBITS			
2	NO.	DESCRIPTION	ID.	EV.
3	CT-1	JUROR TYPE INFORMATION SHEET	148	
4	CT-2	NEWSPAPER ARTICLE	148	
5	CT-3	JURY PANEL SHEETS	1012	
6	CT-4	SELECTED JURY LIST	1012	
7	CT-5	JUROR NOTE	1646	
8	CT-6	JUROR NOTE	1646	
9	CT-7	LETTER (4 PAGES)		
10	CT-8	NEWSPAPER	1773	
11	CT-9	JUROR NOTE	1773	
12	CT-10	DVD	2094	
13	CT-11	DEFENDANT'S MEMO FOR REQUEST FOR	2330	
14		IMPERFECT SELF-DEFENSE		
15	CT-12	DEFENDANT'S REQUEST TO CHARGE #A	2330	
16	CT-13	DEFENDANT'S REQUEST TO CHARGE #B	2330	
17	CT-14	DEFENDANT'S REQUEST TO CHARGE #C	2330	
18	CT-15	DEFENDANT'S REQUEST TO CHARGE #D	2331	
19	CT-16	DEFENDANT'S REQUEST TO CHARGE #1	2331	
20	CT-17	DEFENDANT'S REQUEST TO CHARGE #2	2331	
21	CT-18	DEFENDANT'S REQUEST TO CHARGE #3	2331	
22	CT-19	DEFENDANT'S REQUEST TO CHARGE #4	2331	
23	CT-20	DEFENDANT'S REQUEST TO CHARGE #5	2331	
24	CT-21	DEFENDANT'S REQUEST TO CHARGE #6	2331	
25	CT-22	DEFENDANTS' REQUEST TO CHARGE #7	2331	

		EXHIBITS		
	NO.	DESCRIPTION	ID.	EV.
1				
2				
3	CT-23	DEFENDANT'S REQUEST TO CHARGE #8	2331	
4	CT-24	DEFENDANT'S REQUEST TO CHARGE #9	2331	
5	CT-25	DEFENDANT'S REQUEST TO CHARGE #10	2331	
6	CT-26	DEFENDANT'S REQUEST TO CHARGE #11	2331	
7	CT-27	DEFENDANT'S REQUEST TO CHARGE #12	2332	
8	CT-28	DEFENDANT'S REQUEST TO CHARGE #13	2332	
9	CT-29	DEFENDANT'S REQUEST TO CHARGE #14	2332	
10	CT-30	DEFENDANT'S REQUEST TO CHARGE #15	2332	
11	CT-31	DEFENDANT'S REQUEST TO CHARGE #16	2332	
12	CT-32	DEFENDANT'S REQUEST TO CHARGE #17	2332	
13	CT-33	DEFENDANT'S REQUEST TO CHARGE #18	2332	
14	CT-34	DEFENDANT'S REQUEST TO CHARGE #19	2332	
15	CT-35	DEFENDANT'S REQUEST TO CHARGE #20	2332	
16	CT-36	DEFENDANT'S REQUEST TO CHARGE #22	2332	
17	CT-37	DEFENDANT'S REQUEST TO CHARGE #23	2332	
18	CT-38	DEFENDANT'S REQUEST TO CHARGE #24	2332	
19	CT-39	DEFENDANT'S REQUEST TO CHARGE #25	2332	
20	CT-40	DEFENDANT'S REQUEST TO CHARGE #26	2333	
21	CT-41	DEFENDANT'S REQUEST TO CHARGE #27	2333	
22	CT-42	DEFENDANT'S REQUEST TO CHARGE #28	2333	
23	CT-43	DEFENDANT'S REQUEST TO CHARGE #29	2333	
24	CT-44	DEFENDANT'S REQUEST TO CHARGE #30	2333	
25	CT-45	DEFENDANT'S REQUEST TO CHARGE #31	2333	

EXHIBITS

NO.	DESCRIPTION	ID.	EV.
CT-46	DEFENDANT'S REQUEST TO CHARGE #32	2333	
CT-47	DEFENDANT'S REQUEST TO CHARGE #33	2333	
CT-48	DEFENDANT'S REQUEST TO CHARGE #34	2333	
CT-49	DEFENDANT'S REQUEST TO CHARGE #35	2333	
CT-50	DEFENDANT'S REQUEST TO CHARGE #36	2333	
CT-51	DEFENDANT'S REQUEST TO CHARGE #37	2333	
CT-52	DEFENDANT'S REQUEST TO CHARGE #38	2334	
CT-53	JURY NOTE	2334	
CT-54	PHOTOGRAPH	2614	
CT-55	PHOTOGRAPH	2615	
CT-56	PHOTOGRAPH	2615	
CT-57	JURY NOTE	2821	
CT-58	JURY SHEET OF NO FINDING OF STATUTORY AGGRAVATING CIRCUMSTANCES AS TO VICTIM JARED CHAMPLIN	2838	
CT-59	JURY SHEET OF RECOMMENDATION OF LIFE IMPRISONMENT AS TO VICTIM JARED CHAMPLIN	2838	
CT-60	JURY SHEET OF NO FINDING OF STATUTORY AGGRAVATING CIRCUMSTANCES AS TO VICTIM WILLIAM WELBORN	2838	
CT-61	JURY SHEET OF RECOMMENDATION OF LIFE IMPRISONMENT AS TO VICTIM WILLIAM WELBORN	2838	

1 (PROCEEDINGS, November 14, 2007)

2 (Whereupon, the following was an in-chambers
3 hearing)

4 THE COURT: Let me ask you two or three procedural
5 things first.

6 Number one, it's been awhile since I have tried
7 one of these. In the guilt phase, since the defense put up
8 testimony and evidence, the State gets the last argument,
9 correct, or not correct?

10 MR. DELGADO: Correct.

11 THE COURT: Not in the penalty phase?

12 MR. BULSA: I believe -- our solicitor believes
13 that he gets last argument, both phases.

14 MR. DELGADO: You know, what, Your Honor, there is
15 a case on that. I apologize.

16 THE COURT: He gets last argument?

17 MR. DELGADO: No matter what.

18 THE COURT: Even in the guilt phase?

19 MR. DELGADO: Yes.

20 THE COURT: I needed to get that straight, because
21 I wasn't sure about it, and I couldn't find anything. In
22 any of my cases that I looked at, I couldn't find anything.

23 All right. So the State will go first.

24 Defense will get the last argument.

25 The next thing is what charges to submit to the

1 jury.

2 We have got two charges, two murder charges. We
3 will submit verdict forms on each of those. And as I told
4 us yesterday, I would put the names where it says verdict on
5 the form underneath that to distinguish between the two
6 individuals, the two charges. One with Jared Lee Champlin
7 and other William C. Welborn, to distinguish between the two
8 forms.

9 And, again, the possibilities, and we will talk
10 about that.

11 Possession of a firearm during the commission of a
12 violent crime. I'm confused by that, because this is
13 added -- really this is one of those indictments that has
14 three counts on it, and on the third count it says
15 possession of firearm during the commission or attempt to
16 commit a violent crime. And it says possession of a firearm
17 during the commission of a violent crime or crimes, to-wit:
18 The murder of William C. Welborn and/or the murder of Jared
19 Lee Champlin. So is this one count?

20 MR. COLER: Yes, sir.

21 THE COURT: Or two counts?

22 MR. COLER: If they convict on either of the
23 murders, or if you submit the lesser charge.

24 THE COURT: So it's on the one count? That's what
25 I got to be sure of.

1 MR. COLER: Yes, sir, one count.

2 THE COURT: So we will have verdict forms based on
3 all three possibilities with names and everything. So we
4 will just submit one without a name.

5 MR. COLER: Yes, sir.

6 THE COURT: And, of course, I will tell them on
7 when I'm charging on them, possession of a firearm during
8 commission of a violent crime, if they don't convict him of
9 a violent crime, they can't convict him of that and they
10 will just not consider it. So that will be in there.

11 All right. Now, I have prepared a defense of
12 habitat charge myself last night. And I did that in looking
13 at the cases in the charge book, and I developed a charge on
14 habitat that I think fits this, the facts of this particular
15 case, and I'm going to read that to you.

16 I'm going to charge this in conjunction with
17 self-defense, which is what the cases say should be done.

18 And --

19 MR. COLER: Near that fourth element?

20 THE COURT: Fourth element. It would be the
21 fourth element.

22 And here is what I plan to charge them. Here is
23 what it says. Let me see. On number 4, what I'm saying is
24 "the defendant has no duty to retreat, if by doing so, the
25 danger of being killed or suffering serious bodily injury

1 would increase. Likewise, the defendant has a duty to
2 retreat before defending himself if he is on his own
3 premises.

4 "The defendant has raised the defense of
5 habitation. The defense of habitation is the defense of
6 one's dwelling house. If the defendant or a member of the
7 defendant's household is attacked in the defendant's own
8 home, then the defendant may use the force which appears to
9 be needed to protect himself or his household from death or
10 serious bodily injury. When attacked in his own house, the
11 defendant may justify or excuse the killing of his
12 assailant, if such act is apparently necessary to save his
13 own life or to protect himself from great bodily harm."

14 Defense of habitat.

15 There is no evidence that he sought to declare him
16 a trespasser and tried to put him off the property. There
17 is -- most of the defense of habitat is when someone is
18 breaking in or forcing their way in, that kind of stuff,
19 although I think if someone obviously is in your home even
20 as an invitee and they try to kill you, obviously you have a
21 right to protect your own home and not retreat out of your
22 own home, but to kill the person, if he's trying to kill
23 you, and that's what defense of habitat says.

24 It really comes up where somebody comes in and is
25 threatening the person, or his family, or something like

1 that, and it's necessary -- or you tell a person to leave.
2 They are acting out and you tell them to leave and they
3 don't leave. Then you can use such force as is reasonably
4 necessary to evict them from the house, even to the point of
5 killing them, if that's what it takes.

6 But it goes on to say -- this is a whole lengthy
7 charge in there about it. It says first you got to use only
8 such force as is necessary. First, if they refuse to leave,
9 you have got to lay hands on them and try to push them out,
10 or something, or throw them out, I guess. And you are only
11 justified in using -- in killing them if it's -- you know,
12 if that's the only way you can get rid of them.

13 Basically that's not the situation here. You have
14 got a situation where you were attacked in your own home and
15 you have a right to defend yourself in your home. I'm
16 charging that.

17 MR. STARNES: Your Honor, I believe I had
18 submitted five charges; charge No. 7, 13, 15, 21 and 22.
19 Could I get those copies back?

20 THE COURT: Well, 13 I'm considering using
21 demeanor in what they can consider with regard to prior
22 difficulties. I'm throwing that in there, because he's
23 requested demeanor of the victim, so I'm thinking about
24 doing that. So I am considering putting that one in there.

25 Do you want 15 back?

1 MR. STARNES: 13 -- 7, 13, 15, 21 and 22, I
2 believe.

3 THE COURT: Here is 7. I decline to charge that.
4 It's included in my charge.

5 Defense of habitation. I'm charging defense of
6 habitat. There is 22.

7 Here is 13. As I say, I may go ahead and put
8 demeanor in there. Do you want me to keep this, or do you
9 want it back?

10 MR. STARNES: I just need a copy of it, if you
11 want to keep that.

12 THE COURT: Go ahead and take it and I won't
13 charge anything. I know what you are going to do, so go
14 ahead and do it.

15 It's not my favorite thing as a judge, I can tell
16 you that, because I bend over backwards to do everything
17 that I can to accommodate everybody in fashioning the
18 charge. I give everybody their full opportunity to discuss
19 it, hear everybody out on it before i decide on the final
20 charge. And I have done that in this case. We spent
21 considerable time doing that late yesterday. That's not --
22 it's obviously not the intent of Mr. Starnes is to get me to
23 consider, just to come up with something that he's pulled
24 out of some cases not out of any charge book.

25 All right. I have decided -- and I had to give a

1 lot of thought to it, as you know, and I have debated and
2 listened to everybody on it, but I have decided not to
3 charge, submit voluntary manslaughter to the jury, and I'm
4 going to explain why I'm not going to submit it, because I
5 think it's important for me to do it.

6 I begin by saying I have looked at the whole
7 thing. This is not -- this is not my reason, but the case
8 was previously tried. Judge Westbrook did submit voluntary
9 manslaughter to the jury, which is true, and I looked at
10 that and considered that. There is no reasoning on there as
11 to why he submitted it to them. As a matter of fact, the
12 State did not object to it being submitted to the jury, so
13 it was submitted to the jury. And, of course, the jury
14 found the defendant guilty of murder. And that was an
15 option they had, voluntary manslaughter, but they found him
16 guilty of murder.

17 The Supreme Court reversed it because -- for a
18 couple of reasons, but the primary one being that the charge
19 on self-defense was incomplete, that there should have been
20 some additional charges on self-defense, with which I agree
21 that those should have been included in the charge. They
22 also found a couple of other things, but that was the
23 primary thing that they found. They sent it back on that
24 basis.

25 Now, when looking at it again, after we have tried

1 it this time, with what evidence we have on the record this
2 time is what I have got to look at, not what was done
3 before. Obviously what was done before is not binding on
4 this court at all.

5 This time, though, the State does object to the
6 charge of voluntary manslaughter being submitted to the
7 jury.

8 The defendant, Mr. Starnes, who is representing
9 himself, does not request specifically the court to charge
10 voluntary manslaughter, neither does he request that it not
11 be charged to the -- or submitted to the jury or charged to
12 the jury. His position is basically no position, that he
13 requests the court to charge the appropriate law, based on
14 the facts of the case. That's his position. And I have
15 asked him two or three times what his position is. That's
16 what he stated to the court.

17 Now, it's true that he turned over to Mr. Nettles
18 and let him argue some reasons why it may apply, but he
19 doesn't say it applies. As a matter of fact, in his
20 testimony he specifically says it does not apply. And his
21 position, his theory, is it was purely self-defense - "I was
22 not angry. I was not upset. It was a drug deal gone bad.
23 I was not upset with them when I, you know, left the bar, or
24 anything like that. I took them to my house. They wanted
25 some drugs. I went and got somebody to drink them there to

1 let them make the drug deal. That when we came in -- "after
2 we have got in, Jared Champlin pulled a gun on Jody Fogle.
3 And so I ran into the bedroom, got a pistol. I was going to
4 leave. I went to the door. Mr. Welborn pulled a pistol
5 on -- like said whoa, where are you going, and pointed a
6 pistol directly at me and I defended myself."

7 THE CLERK: Your Honor --

8 THE COURT: I'm in the middle of putting something
9 on the record, please, ma'am.

10 That's his theory of the case. He was trying to
11 get away and he had no choice but to defend himself, because
12 Welborn was pointing a pistol at him and he thought he was
13 going to kill him and he defended himself.

14 He then turned and shot Champlin because he had
15 seen Champlin with a pistol shortly before that
16 threatening -- and he had to defend himself, and he thought
17 that Champlin had a pistol and would shoot him, so he shot
18 Champlin. That's his theory of the case.

19 His theory is at no time was he angry. At no time
20 did this carry over -- did anything carry on from that. He
21 didn't think anything about it. That's his testimony from
22 the stand.

23 So there is -- there is no theory -- he does not
24 put up any theory that this was voluntary manslaughter, any
25 evidence of voluntary manslaughter at all. Neither is that

1 the theory of his defense. His whole defense is
2 self-defense. Not anything else.

3 Now, obviously if he was angry and upset and out
4 to get these two men, then that would negate self-defense,
5 although it might bring into play voluntary manslaughter.
6 It would negate the defense of self-defense, because you
7 can't go there with the intent or hurting somebody, mad at
8 them and then all of the sudden claim self-defense.

9 I specifically find --

10 And let me say for the record that it would not be
11 fair to Mr. Starnes for the court to submit voluntary
12 manslaughter to the jury when his defense, his whole theory
13 of his case, is self-defense, and he has not requested that
14 I even charge voluntary manslaughter, just to charge the law
15 on the facts. So it would not be fair for me to submit that
16 to them, when there is no evidence to support it, because if
17 the jury then should somehow compromise between self-defense
18 and murder, it wouldn't be fair to him, because voluntary
19 manslaughter carries 30 years on each count without parole
20 and then five years on the possession. So he's facing 65
21 years max. It wouldn't be fair to him, because that's
22 not -- there is no evidence to support it and that's not his
23 theory of the case.

24 It wouldn't be fair to the State for the court to
25 submit it, because if the jury should get hung up between

1 murder and self-defense, and there is no evidence really to
2 support voluntary manslaughter, but they choose voluntary
3 manslaughter as a compromise, then, of course, what happens
4 at that point is they essentially have acquitted him of
5 murder. And you cannot retry him on that charge, because of
6 double jeopardy. He then can appeal the voluntary
7 manslaughter. And, indeed, his strategy is not to even ask
8 for it, that I charge it specifically on it, that I charge
9 the law on the facts. So then he is free to say "I did not
10 request that," and it does not apply in this case under any
11 theory. There is nothing. "I specifically testified that I
12 was not afraid of these gentlemen. I wasn't mad at them
13 when I went there, or anything. This all has to do with
14 self-defense. And the jury couldn't convict me of voluntary
15 manslaughter, because there is no evidence whatsoever on the
16 record to support it. I specifically said that I wasn't
17 angry with them. I wasn't mad with them when I went there.
18 This all happened so fast, it was self-defense to keep me
19 from being killed." So he can appeal that. If he is
20 successful on that appeal, and he might very well be,
21 because I don't see any evidence to support it. Then he
22 can't be retried on murder. He can't be retried to
23 voluntary manslaughter, and what's left? Involuntary
24 manslaughter, which carries a maximum of five years. So
25 that's his strategy not to request it that it be charged.

1 But if it is charged then, he has an option either way to
2 either say on the murder conviction, if he gets a murder
3 conviction, he should have submitted voluntary manslaughter.
4 If he's convicted on voluntary manslaughter, he can say "I
5 shouldn't have been convicted on voluntary manslaughter. It
6 was nothing to support it."

7 And so the court has got to look at all of that.
8 And I have debated with counsel trying to get you to try to
9 explain it to me why I should or shouldn't submit it. I
10 thought about it after you left yesterday. I researched. I
11 read cases. You really don't get a lot of guidance, really,
12 frankly. And then I studied it and thought about it
13 overnight, slept on it. I got up this morning and still
14 thinking about it and finally made up my mind that this is
15 just evidence to support it. And because there is no
16 evidence to support it --

17 You know, it's -- when you got a lesser included
18 offense, like voluntary manslaughter, it's kind of like a
19 safety blanket for the judge. Even though if you think
20 well, it's not really any evidence there to support it, but
21 I'm going to throw it in there anyway just as a safe -- it's
22 kind of a safety blanket, you know, and you leave it up to
23 the jury to decide it. But the cases have said, really,
24 that's not a jury issue, whether there is any evidence to
25 support it or not. That's a matter for the court, and the

1 court shouldn't just say it's a factual issue for the jury
2 in every case and let them decide it. The consequences I
3 have just explained of the court's decision.

4 Let me say that insofar as the original event that
5 took place in the bathroom, that was -- he said that Mr.
6 Welborn put his arm around him and put something up to his
7 head, something cold. He couldn't tell what it was. It
8 could have been a cigarette lighter. It could have been a
9 gun. He didn't know. He denies that he was hurt. If there
10 was any redness, or any cut on his -- scratch on his head,
11 or anything like that, he denies that, and he says he was
12 not mad and he let that go.

13 And the fact that he -- he had his options then.
14 If he was really angry with them at that time, he could have
15 gotten in his car and drove off and left them there. He
16 could have taken them back to the restaurant where the
17 girlfriend of Jared Champlin was waiting on them. She could
18 have taken them on home and done whatever they wanted to do.
19 He could have done all that. Or, you know, obviously if he
20 felt like he had been wronged, he could have called the
21 police. He could have done that.

22 Now, we got two versions. We have got one is
23 that -- I'm sorry, his girlfriend is -- was --

24 MR. COLER: Gwen.

25 THE COURT: Gwen. She testified he came back to

1 the restaurant and got a gun after he had taken the two to
2 his house then went and picked up Fogle.

3 Mr. Starnes' testimony is that he didn't go back
4 to the restaurant, that he took them -- there was some --
5 let me say there was some amount of time passed between the
6 incident in the bathroom and Bill Welborn's -- I don't know
7 why -- if he was serious about it, why he would make an open
8 threat to kill Norman, or something, unless he was doing it
9 kind of in a joking manner and playing with Mr. Starnes.
10 But, in any event, when that happened, the question is
11 whether he was serious about it. Anybody would take them
12 seriously if he's doing it when he's drinking and in a bar
13 and out in front of everybody saying something like that,
14 where if anything like that happened, obviously the police
15 would know he said that. So -- but, in any event, there was
16 some period of time after the little bathroom incident
17 there, number one.

18 Number two, Mr. Starnes took them from there to
19 his house. I don't know how much time elapsed, but some
20 period of time. It had to be -- you know, it had to be at
21 least 10, 15 minutes from the time the incident happened in
22 the bathroom and the other statement by Welborn until he
23 took them home. There was some period of time. I have no
24 way of knowing how much, but it had to take some time,
25 because you have to pay a tab. You have to go outside. You

1 have to get in the car. He has to drive them to his house.
2 If the door is locked, he's got to open the door and let
3 them in. If it's not locked, they still have got to go in.
4 Then he's got to drive from there to Jody Fogle's house,
5 which is a little ways away. And then he's got to wake Jody
6 Fogle up. Jody Fogle has got to get up and get dressed.
7 He's got to explain to him why he wants him to go with him.
8 We have got a difference in testimony about that, but he's
9 got to explain that to him. Mr. Fogle has got to tell his
10 girlfriend, or wife, or whoever was living with him, you
11 know, what he's doing, or is leaving. They get in the car.
12 They drive then back to Mr. Starnes' house.

13 Now, you know, all of this has got to take -- we
14 don't have anything definitively on it. Nobody testified
15 about how long it took, or they looked at clock, or watch,
16 or anything else, but he also had a chance to talk to Mr.
17 Fogle about it, about, you know, anything he wanted to talk
18 to him about it from the time -- there is a difference of
19 opinion about that of the testimony, but he had a chance to
20 talk with him, and he had somebody else with him, in a car
21 by himself. And so there was at least -- the court would
22 say at least 20 minutes, and probably longer, took place
23 between the time the incident of the bathroom or anything
24 said by Welborn to him at the bar and the time he and Jody
25 Fogle came back into the house. And that is plenty of time,

1 when he was out by himself, riding in a car, went and picked
2 up somebody else, had a chance to talk with him, come back
3 to the house, plenty of time for him for any passion to have
4 dissipated and for him to exercise cool reflection during
5 that period of time. Any reasonable person would have had
6 plenty of time for cool reflection and to cool off, if he
7 was upset at the time. Now, that's the court's finding.
8 And so it was plenty of time for him to have done that.

9 Then based on his own testimony, too, that he was
10 not angry or upset when he went back there and he took them
11 there. There is no evidence then of sudden heat and passion
12 as set forth in the statute, and the court so finds.

13 Now, what happened after they went in and he says
14 it was totally self-defense and he didn't go there out of
15 anger or intent to harm anybody. So that's where -- that's
16 my reason. I wanted to make sure it's all on the record so
17 when the appellate court gets it, they can understand my
18 reasoning and difficulty I have had with it, but I don't
19 think it's fair to the defendant and I don't think it's fair
20 to the State's case for me to submit that issue to the jury.
21 And I'm more concerned about fairness to the defendant in
22 this particular instance to make sure, but I just don't find
23 anything. And I have thought about it and thought about it
24 and thought about it and that I just don't see any evidence
25 of it, and he, himself, says there is no evidence of it,

1 so -- all right.

2 MR. STARNES: Your Honor, could I add something to
3 that?

4 THE COURT: Yes, sir.

5 MR. STARNES: Yesterday when we were in here
6 having this discussion, I believe we were in chambers for
7 numerous amounts of hours and the court reporter didn't pick
8 all that up.

9 THE COURT: I agree with that, because we were
10 simply discussing, but if you want to say -- if you disagree
11 with what I say, the position that you took, you can saw so
12 now.

13 MR. STARNES: Yes, sir.

14 THE COURT: All right.

15 MR. STARNES: I disagree with that, Your Honor.

16 In addition, there was numerous requests to
17 charge. In the original trial, Judge Westbrook, and most of
18 the transcripts that I read, that's why I prepared all these
19 charges, is the cases -- all the cases that I have read is
20 they submit these to the court for review and then overnight
21 they usually look at them in the cool of the evening, like
22 Judge Westbrook and I believe Judge Anderson said in a
23 couple of his --

24 THE COURT: Mr. Starnes, let me correct you right
25 there. Let me correct you right there. That's not true,

1 because we came back here. You gave me no requests to
2 charge whatsoever. You knew -- we knew on Monday night that
3 you were going to rest your case on Tuesday. We knew
4 yesterday -- that's yesterday, Tuesday. We knew that the
5 State had some short reply witnesses and we would probably
6 get into arguments and charge yesterday after lunch. And as
7 a matter of fact, we were ready to get into arguments and
8 charge. I let the jury eat lunch. I gave them an hour and
9 a half. They brought in lunch for them. I gave them an
10 hour and a half to eat lunch, and give us a little time to
11 go over my proposed charge, which I already put together. I
12 received no requests to charge from anybody up to that
13 point. I came back here. I went through my charge with
14 you, my proposed charge with you, and we got into a question
15 about whether voluntary manslaughter should be submitted,
16 and the State objected to it being submitted. And then --
17 but I went through all my charge with you. And the one
18 issue that we hadn't decided really was on voluntary
19 manslaughter. I was still thinking about that. And after
20 we did that, and finally I let the jury go home, because I
21 couldn't make a decision right then. I wanted to look at
22 some case law on that and see what I could find on it just
23 to support whatever decision I came out with. Then, and
24 only then, did Mr. Starnes suddenly pull out -- when we
25 would have already been charging the jury, we would have

1 been in arguments and charge at that particular time, had we
2 not got hung on voluntary manslaughter. He then pulls out a
3 stack of requests to charge, when I was ready to charge
4 right then, and he pulls out a stack of requests to charge.

5 Not only that. These are not charges from any
6 charge book, recognized charges in a charge book. They are
7 excerpts - sometimes one sentence, a couple -- two or three
8 sentences, or a paragraph taken from cases which he says
9 substantiate his -- which means that I have to get my law
10 clerk to start pulling up these cases to see if, in fact,
11 because just because it applies in one case, it may not
12 apply in another case. And I have that happened. So I have
13 to have time to look it up. So I would have been in the
14 middle of arguments and charge by the time you submitted
15 these things to me.

16 We went through them, though. We stayed here
17 until -- we stayed here three or four hours and I went
18 through them. My law clerk sat right here trying to pull up
19 these cases. Some of them were from out of state that
20 didn't -- you know, a lot of them were out of state. Some
21 of them you requested that I charge were already in my
22 charge, although you have a hard time understanding how
23 something be included in my charge which has slightly
24 different language, but covers what you are asking me to
25 cover. You have a hard time understanding that. All you

1 are interested in is getting some charges and saying you
2 didn't charge them. I tried to explain all that to you. We
3 spent a lot of time doing that. And so you didn't
4 request -- you didn't give them to me the day before so I
5 would have an opportunity to look at them overnight. You
6 gave them to me not at all until I would have already been
7 in arguments and charge by the time that you handed them to
8 me. So let's be clear on that.

9 And I did, in fairness to you, go through every
10 one of them, with counsel present, my law clerk pulling up
11 case after case and after case and me looking at them, and a
12 lot of times telling me they don't apply. But in those that
13 did apply, I have given you those. Defense of habitat was a
14 primary one. I gave it to you. Not in this elongated thing
15 that you gave me, because all of it doesn't apply, but I
16 gave it to you as it applies in this case, that you have a
17 right to defend your habitat, even to the point of killing
18 somebody, and so I have got it in here. I added a couple of
19 things, but some of what's already in here on self-defense
20 is included with the language that you gave me.

21 So let's be clear about that. I spent a lot of
22 time going through those, and I went through every single
23 one of them last night with you present and the lawyers
24 present and my law clerk pulling up cases.

25 All right. What else?

1 MR. STARNES: Your Honor, I filed them with the
2 clerk of court this morning just to make sure --

3 THE COURT: That's fine. You make them part of
4 the record. They are part of the record.

5 Let the record so reflect Mr. Starnes wishes to
6 have these requests to charge in the record, most of which
7 are included in my regular charge, just in slightly
8 different language or inclusive, but it addresses the issues
9 he wishes, but he wish to have these made Court Exhibits, so
10 we will make these Court's Exhibits for Mr. Starnes, the
11 defendant.

12 Anything else, sir?

13 MR. STARNES: The issue on imperfect
14 self-defense --

15 THE COURT: I declined to charge imperfect
16 self-defense. Mr. Starnes has requested we make that a
17 Court Exhibit. I have declined to charge that.

18 He has handed me up some cases from other
19 jurisdictions, like Pennsylvania, Maryland, and some other
20 jurisdictions, which he says imperfect defense. Nothing
21 from South Carolina, because we haven't specifically
22 recognized imperfect defense. He's handed up these cases..

23 Now, the cases that he handed me say that these
24 are states where once somebody is convicted of killing
25 somebody, or charged with killing somebody, and they admit

1 they have killed them, then they have to show by a
2 preponderance of the evidence that it was done in sudden
3 heat and passion. The State doesn't have to prove it. They
4 have to prove it. And the cases have said that -- the
5 federal cases have said that's a burden shifting from the
6 State to the defendant, unconstitutional shifting of the
7 burden and is not allowed. And so I -- so that -- we don't
8 have that in South Carolina.

9 In South Carolina the State has got to prove the
10 elements of murder in order for the jury, in fact, for the
11 jury to convict. The State has got to prove the elements of
12 the voluntary manslaughter in order for the jury to convict.
13 And so those issues -- the burden is all on the State, not
14 on the defendant.

15 South Carolina has not recognized imperfect
16 self-defense as voluntary manslaughter. We have specific
17 voluntary manslaughter charges, so I'm going to charge them
18 on that, voluntary manslaughter, but -- I am not going to
19 charge them on that, because I just don't find any elements
20 of it.

21 Have you got something that you specifically want
22 me to look at, beyond what I looked at?

23 MR. STARNES: The Knoten case, Your Honor, which
24 was the voluntary manslaughter, and I'm not going to -- if
25 that's your position Your Honor, I understand. I don't

1 think the record will pick it up. State v. Knoten, 555 S.E.
2 2d --

3 THE COURT: Wait, let me see. Let me get -- see
4 if my clerk -- ask my clerk to come in and bring her
5 computer.

6 (Off the record)

7 (Back on the record)

8 THE COURT: I need you to pull that Knoten case
9 again.

10 LAW CLERK: Knoten?

11 THE COURT: I'll take another look at it.

12 You can give her the cite, please, sir.

13 MR. STARNES: It's --

14 LAW CLERK: Give me one second.

15 MR. STARNES: Yes, ma'am.

16 THE COURT: I'll write it down. Give me the cite.

17 MR. STARNES: 555 S.E. 2d --

18 THE COURT: Wait a minute, 555.

19 MR. STARNES: S.E. 2d 391.

20 And then State v. Lowery, 434 --

21 THE COURT: Wait a minute. This is Knoten.

22 MR. STARNES: Yes, sir.

23 THE COURT: And Lowery, what's the cite on that
24 one?

25 MR. STARNES: 434 S.E. 2d 272.

1 And then State v. Smith is the one I cited
2 yesterday, 403 S.E. 2d 162.

3 And I believe Your Honor has already looked at
4 Wiggins. I believe you have already reviewed that case.
5 That's 500 S.E. 2d 489.

6 LAW CLERK: There is Knoten.

7 THE COURT: Well, how does that support anything
8 about imperfect defense, self-defense? It says -- this is
9 what's getting me, Mr. Starnes. I have been through all
10 these cases. Now I have to go back through them again, and
11 I told you last night while you were sitting there they
12 didn't apply. Some of them apply to involuntary
13 manslaughter and that's not an issue in this case.

14 In this case, this guy is messing around with this
15 girl. They are into it. She cuts him twice with a knife.
16 He runs outside in his car and gets a pipe and comes back up
17 and she cuts him again and he hits her with the pipe. And
18 they said they should have charged voluntary manslaughter.
19 I don't disagree with that. She tries -- she cut him again
20 right then, and he -- I mean, that wasn't sufficient time to
21 cool. I mean, certainly it was a jury issue.

22 That's not what we got here now. It has got
23 nothing to do with imperfect self-defense.

24 MR. STARNES: It's got something to do with
25 manslaughter, but I'm --

1 THE COURT: Well, I understand -- well --

2 MR. STARNES: I understand. I understand Your
3 Honor's ruling, Your Honor.

4 THE COURT: Well, you know, I'm trying to give you
5 every opportunity to convince me, but you -- we did all that
6 one last night. I just --

7 At any rate, anything else?

8 MR. COLER: No, sir.

9 THE COURT: Anything else?

10 MR. COLER: No, sir.

11 THE COURT: Again --

12 MR. STARNES: I'm sorry I upset you, judge.

13 THE COURT: You are not upsetting me. I get a
14 little frustrated. That's just me. That's my nature. But
15 you see I have been fair to you. Thirty seconds after I
16 become frustrated I'm not frustrated. That's my nature, but
17 I spent so much time on this and I have tried to explain to
18 you, and it's kind of exasperating, Mr. Starnes, to explain
19 to a lay person when they go over and over the same stuff
20 and you try to explain it to them. A lawyer would have been
21 satisfied a long time ago with my explanations. And it's a
22 little frustrating. I'm not angry with you. You are in a
23 difficult position and I understand that. I'm certainly
24 aware of that, but I have gone through all these cases last
25 night that you gave me, including this one, and I don't

1 disagree with the court's ruling in that case, but I got to
2 go by this case. And the concern I got is it's not fair to
3 you and it's not fair to the State for me to submit
4 voluntary manslaughter where there is no evidence to support
5 it, and I don't find any. So I think it's error for me to
6 submit it and I'm not going to submit it.

7 All right. Anything else?

8 MR. COLER: No, sir.

9 THE COURT: If you want to -- if you have already
10 given it to the clerk.

11 MR. STARNES: Yes.

12 THE COURT: All your requests, we will make those
13 a court exhibit.

14 Now, some of them I'm charging, so are you just
15 submitting the ones I'm not charging?

16 MR. STARNES: I have submitted all of them.
17 Everything in the memorandum with imperfect self-defense
18 with the four charges.

19 THE COURT: You can submit that, of course.

20 MR. STARNES: I just submitted everything just for
21 the record. That's all, Your Honor.

22 THE COURT: All right. All right. I think we
23 have sufficiently covered everything. I went through some
24 of those requests to charge last night, but I think I have
25 adequately dealt with them today. I have given you back the

1 ones that I told you are included in my charge, and I
2 fashioned the charges for defense of habitat, and I'm
3 including that in my self-defense charge, defense of
4 habitat, and your other requests about prior relationships
5 and problems and that kind things, I put all that in here,
6 so I think -- I think it covers it.

7 Anything else from anybody?

8 MR. COLER: No, sir.

9 THE COURT: All right, let's go.

10 (Whereupon, the in-chambers hearing was concluded)

11 (Whereupon, the following was conducted in the
12 courtroom)

13 THE COURT: Good morning, solicitor, Mr. Starnes.

14 MR. GOWDY: Good morning, judge.

15 THE COURT: We previously had discussions in
16 chambers on the record, and I assume now everybody is ready
17 to proceed.

18 Is the State ready to proceed?

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

20 THE COURT: Is the defense ready to proceed, Mr.
21 Starnes?

22 MR. STARNES: Your Honor, I would just like the
23 record to reflect that the defendant is not waiving any
24 requests to charge regarding voluntary manslaughter. I
25 believe there was some records --

1 THE COURT: No, sir, we have already addressed
2 that issue, sir. Please be seated.

3 You can state whatever you wish to state
4 afterwards, after I have completed my charge.

5 MR. STARNES: Your Honor, I cannot make that
6 argument now?

7 THE COURT: No, sir. Well, you have already made
8 that argument and I have ruled. You have not made that
9 argument. I have ruled back in chambers on that.

10 MR. STARNES: Your Honor, I just think I should be
11 able to preserve the record, but if that's your ruling, I
12 understand.

13 THE COURT: I didn't -- I never said you waived
14 it, sir. I said that you requested it. I instructed the
15 appropriate law on the facts, because you never specifically
16 requested that I charge it. Not that you waived it. I
17 never said that.

18 Let's proceed. Anything else?

19 MR. STARNES: I just want to make sure that I have
20 requested it, because I think there is a misunderstanding
21 there, Your Honor, and there is --

22 THE COURT: Mr. Starnes, you make your argument --
23 or you take your position, and then I ruled, and now you are
24 changing your position, and so the record will so reflect.
25 Let's move on.

1 All right. Anything else from anyone before we
2 get started and bring the jury in?

3 MR. GOWDY: The State is ready, Your Honor.

4 THE COURT: Please bring the jury in.

5 (The following takes place in the presence of the
6 jury panel)

7 THE COURT: Good morning, Mr. Foreman, ladies and
8 gentlemen of the jury, I hope you had a pleasant night last
9 night.

10 Let me ask whether any members of the jury panel
11 have read, listened to, or watched any media account of this
12 trial since you left the courtroom yesterday? If you have,
13 please raise your right hand.

14 Let the record reflect no juror raises their hand
15 in response to the questions.

16 We are ready to proceed.

17 Mr. Foreman, ladies and gentlemen of the jury, we
18 are to that part of the trial where each side will make
19 their final closing arguments to you, following which I will
20 instruct you on the law that applies to the issues in this
21 case. I would ask that you listen attentively now as
22 counsel address you in final argument.

23 Counsel, ready to proceed.

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

25 THE COURT: Solicitor.

1 MR. GOWDY: December of 1995, Bill Welborn, Jared
2 Champlin, Dawn Brudose are trying to market a little company
3 called the Drop Zone. They want to advertise in the Swansea
4 Christmas parade, so they get somebody to jump out of an
5 airplane in a Santa suit. And a man named Norman Starnes
6 sees it and he calls, and he calls, and he calls asking them
7 to jump in the Pelion Christmas parade. And even though it
8 takes moving heaven and earth to do so, Dawn, Bill and Jared
9 jump out of an airplane in the Pelion Christmas parade.

10 We go from Santa suits to cement caskets in three
11 weeks. In mid-December, after jumping out of an airplane in
12 a Christmas parade, to January the 8th they are laying on a
13 top of one another in a shallow grave on Norman Starnes
14 family farm. How did we get there? How do you get from
15 Santa suits and airplanes to cement caskets?

16 Ladies and gentlemen, Judge Alford is the judge of
17 the law. No one can tell him what the law is, but you are
18 judges too. You are judges of the facts. You don't have on
19 a black robe. This may be the only time that you ever come
20 into a courtroom, but you are judges of the facts in this
21 case. You, and you alone, will decide what happened to Bill
22 Welborn and Jared Champlin on January the 8th.

23 Each one of you represents a different life
24 experience, a different background, a different perspective,
25 if you will. You have been chosen on this occasion in this

1 courtroom for this case. You are judges the facts. You can
2 consider the testimony that you have heard from the witness
3 stand. You can consider the exhibits. You can consider the
4 words that have been read into the record in the form of
5 letters.

6 One of the primary things that you will do as
7 judges of the facts is to separate fact from fantasy, the
8 truth from a lie. And that may seem like a daunting task in
9 a case that none of you knew anything about two weeks ago.

10 How do we separate the truth from a lie. Ladies
11 and gentlemen, I would submit to you that you do it every
12 single day in your personal lives. As a spouse, as a
13 co-worker, as a friend, as a parent, as a child, you make
14 hard decisions every day. You separate fact from fiction,
15 fact from fantasy. You separate the truth from what is not
16 the truth. You have every tool that you need to decide this
17 case, and you had it before you ever walked into this
18 courtroom last week.

19 Corroboration. Corroboration is more than one
20 person telling you something and it's backed up by the
21 evidence. It's a word that lawyers like to use. It just
22 means two people saying the same thing and there is
23 evidentiary support to support it.

24 Now, when I think about corroboration, I think
25 about the two people who were closest to Norman Starnes in

1 January of 1996: Gwen Ott-Bailey and Jody Fogle. For all
2 the things that they did wrong, for all the things that they
3 did wrong, at least Gwen Ott Bailey came forward at some
4 point. She was the first one to come forward.

5 Jody Fogle, for all the things that he did
6 wronging, and they both accepted responsibility and pled
7 guilty for what they did wrong. At some point both of them
8 came forward, and their stories, even though they are
9 different ends on January the 8th, their stories are the
10 same, that this intent to kill was formed before he ever set
11 foot inside his house. That is corroboration. That is more
12 than one person telling you the same thing.

13 The bar fight. Gwen tells you that Norman Starnes
14 walked in, that he was crying, that he was upset, that he
15 was angry, that he had been roughed up by Bill Welborn in a
16 bathroom. Then he goes and gets his gun. And I asked her,
17 and I asked her on purpose, "on a scale of one to a hundred,
18 with a hundred being the certainty that you are sitting in
19 that chair, how certain are you that Norman Starnes walked
20 into the Panther Parlor and got a gun?" And she said "one
21 hundred." One hundred percent certainty that the intent to
22 kill was formed well before they ever got to Norman Starnes'
23 house.

24 Jody Fogle. When Norman Starnes came to pick him
25 up, at first it was to move a refrigerator. And then it was

1 to watch his back. . And Jody Fogle, for whatever
2 difficulties he may have had in life, when Norman Starnes
3 showed him what had happened to him and put a gun to his
4 head and said "I think I'm going to kill them," Jody Fogle,
5 and I won't quote him verbatim, but he said "that's not a
6 real good idea, Norman. That's not a real good idea."

7 Corroboration on the bar fight. Even Claudette
8 Harbert, Mr. Starnes' friend from the bar. Even she says
9 there was an altercation at the bar. He passes it off now.
10 In 2007, he says it was no big deal. He has to say that.
11 In 1996, he walked into a restaurant and got a gun because
12 it made him mad, and he went and got Jody Fogle's because it
13 made him mad. Claudette Harbert told you that the bar
14 fight, the fact that the intent to kill existed before he
15 ever got inside his house.

16 The two people closest to him told you that. His
17 former girlfriend, his former live-in girlfriend, and Jody
18 Fogle, who is closer to him than anybody else in this case.

19 So you have corroboration on the fight at the bar.
20 You have corroboration on the fact that the gun and the
21 intent to kill existed ahead of time.

22 You have corroboration, ladies and gentlemen, on
23 the fact that the phone was tampered with. Jody Fogle says
24 they left. They got about a half mile down the road and
25 Norman turned around and drove back and he pulled into the

1 front and he went to the side of the house and he saw him
2 either cutting or pulling telephone numbers. Now, one of
3 the first witnesses we called in this case, and you may have
4 been scratching your head saying what are they doing trying
5 to show us how a telephone works in Pelion in 1996. What we
6 were trying to show you is how easy it is to disable and
7 then enable a telephone. And that's exactly what he did.
8 Jody Fogle's tells you that.

9 Gwen Ott-Bailey says that when they got to the
10 house, he sells "Bill was gurgling, so I went and unplugged
11 the phone." She's absolutely certain before he called Tony
12 Tindal, he had to go plug the phone back in. That is
13 corroboration. That is more than one person telling you
14 something supported by the evidence.

15 Tony Tindal. Gwen tells you his truck was
16 involved. He tells you his truck was involved.

17 The telephone records tell you that the call was
18 made. Dawn Brudose told you that Bill called her from
19 Norman's house at 9:55. We know he was alive then.

20 Karen Pratt tells you he walked into the Panther
21 Parlor, hurriedly walked by her and walked back out.

22 Corroboration. More than one person telling you
23 something and it's supported by the evidence. You have it
24 on the gun. You have it on the intent to kill. You have it
25 on the fight. You have it on the telephone. You have it on

1 the telephone calls that are made, and you have it on the
2 murder weapon.

3 Gwen Ott-Bailey said this is the bridge he threw
4 it off of. And they go to that bridge and Amanda Simmons
5 finds the gun. And not only is it just a gun, it's the gun
6 with the serial number that comes back to Norman Edwin
7 Starnes. That is corroboration.

8 After corroboration you have the tool of
9 consistency. Do people tell you the same thing over time?

10 Gwen Ott-Bailey. Again, for all the things that
11 we can judge her on, at least her story has remained
12 consistent from day one. On May 27th, the very first time
13 she interacted with law enforcement, she explicitly said "he
14 told me 'I am going to kill them tonight'." Plural. From
15 the very first time she ever talked to law enforcement until
16 she sat in here during this trial her story has never
17 changed.

18 Jody Fogle, on the intent to kill being formed
19 before he got there: The guns in the car; two guns in the
20 car; Norman Starnes putting a gun to his head and saying "I
21 think I'm going to kill them," and Jody Fogle saying "I
22 don't think that's a real good idea." Consistency.

23 Then I guess the antithesis of consistency would
24 be inconsistency. Defendants in criminal trials have
25 absolutely no responsibility whatsoever to testify, and no

1 inference of guilt or suggestion of guilt can be taken if
2 they do not. However, when they do you are free to judge
3 their testimony by the exact same standard that you judge
4 anybody else's. And when I talked about inconsistency, I'm
5 talking about moving from "I don't know anything about it,"
6 to "I didn't pull the trigger," to "if I pulled the trigger,
7 it's only because I had to because they were on one drug."
8 And then when you prove they weren't on that drug, "I'm
9 going to move to another drug." And "I'm going to tell you
10 I threw the gun in a creek," until you search the creek, and
11 then I'm going to come up with a name that you never heard
12 of of a road. You have got consistency you have got
13 inconsistency. Those are tools to help you separate fact
14 from fiction.

15 And you have contrasts. Dawn Brudose, you could
16 tell how she cared very deeply about Bill Welborn; from
17 writing out that detailed log while he was missing, upon the
18 hopes that some of that detail might help find him. You can
19 tell she cared about Bill Welborn. She told you that in the
20 years she knew him she did not see one scintilla's worth of
21 evidence of drug use. This is a 25 year military man.
22 Starnes himself asked her "what's the military policy on
23 drugs?"

24 "Zero tolerance."

25 He wouldn't even take his back medicine if he was

1 going to be flying. You twist the top off on a beer and we
2 are going to shut the Drop Zone down.

3 You got Dawn Brudose telling you about Bill
4 Welborn. You have got Karen Pratt acknowledging that on
5 January the 8th, "yes, we four of us split a 12 pack of
6 beer." You have got not one single shred of testimony by
7 either one of them about elicit drug use.

8 And you have something more than that. You have
9 two imminently qualified toxicologists, both of whom have
10 respect for one another. They were clear about that. Their
11 names were mentioned to one another and they both have
12 respect for one another. This is a science. It's a field
13 of medicine. The numbers don't lie. They both said there
14 is an absolutely no evidence of cocaine use. There is
15 absolutely not one shred of evidence of methamphetamine use.
16 I couldn't even convict them for being publicly drunk, based
17 on the blood alcohol. You can't even tell the difference
18 between decomposition and what they drank. So you have got
19 that on one side.

20 And then under the heading of contrast, you have
21 got a disgruntled former girlfriend who talks to law
22 enforcement for nine times. Nine times she meets with law
23 enforcement and they asked her about illegal activities,
24 anything that you can tell us. She does not mention drug
25 use. Until when? Until she hears in a prior proceeding

1 that Bill Welborn was seeing somebody else.

2 I will note the irony of Mrs. Donna Benson
3 complaining about Bill Welborn seeing someone else. And
4 then I will leave it for you to disregard the reliability of
5 anything someone says when they admit they only came forward
6 when they found out he was seeing someone else.

7 And then we got a guy, Marion Powell, who is
8 finally able to look through 12 years of meth dust and smoke
9 and say "oh, yeah, I remember Bill Welborn."

10 And do you remember that log I told you about that
11 Dawn came up with while they were missing, because she
12 wanted to help find them? If you look at that log, they
13 know from the calendar that was up here for January, they
14 know Dawn could account for Bill Welborn on the evening of
15 the 5th, and the 6th, and the 7th, and the 8th, up until the
16 time he dies. Well, that leaves what? That leaves the 5th.
17 So they want to pile as much methamphetamine use as they
18 can.

19 Now, ladies and gentlemen, the hair doesn't lie.
20 And there is absolutely no evidence, except a disgruntled
21 former girlfriend and a guy who surfaces out of the dust and
22 the smoke of 12 years. You know he's not telling the truth
23 because Dawn said he came home at 9:30 or ten and never
24 left. So you can disregard this nonsense about a twelve to
25 two a.m. meth tryst.

1 Donna Benson. I would just say you have got that
2 and you have got two toxicologists. That's contrast.

3 And then on the forensic pathology, you have got
4 Dr. Joel Sexton, who tells you that they -- that Bill was
5 shot at three times and wounded twice. You have got a
6 cartoon video that only has two shots. That's contrast.
7 You decide whether you believe the forensic pathologist or
8 cartoon video.

9 And then I'm going to leave this area by simply
10 noting the hypocrisy: The hypocrisy of burying two bodies
11 and then complaining that there is not enough blood to test;
12 the hypocrisy of the way he treated those two bodies and
13 then complaining that there is not enough to test.

14 We have corroboration, we have consistency, we
15 have contrast, and we have common sense.

16 On January the 6th Bill Welborn wakes up. He
17 works all day and he goes to Wings & Ale, and he invites
18 some other people to come along, including Norman Starnes
19 and Gwen, and he's having a good time. Dawn give you a
20 glimpse of his personality, but he's having a good time and
21 he's a joker and he's trying to hustle pool and he's making
22 appointments. Keep in mind, he's making appointments for
23 Tuesday to fly an airplane and jump out of an airplane.
24 Tuesday at one o'clock. He's making appointments. And in
25 an effort to hustle some guys at pool, he puts some money in

1 Norman Starnes' pocket, but Norman doesn't give it all back.
2 \$40 doesn't mean anything. That's not like that. It's
3 about right. "I would have given it to you. Why did you
4 take it?"

5 Then to make matters worse, when Dawn counts it
6 and I realize I'm short, I call him. There might be an
7 innocent explanation. It might have been a mistake, but the
8 normally loquacious Norman Starnes won't call back. He
9 doesn't call back on the night of Saturday night. He
10 doesn't call back on Sunday. He doesn't all day Monday.
11 And I'm quite certain when they were sitting around the Drop
12 Zone after work and there were discussions about where to
13 eat, I'm quite certain the name Panther Parlor came up. And
14 I'm quite certain that in the back of his mind Bill Welborn
15 said this would be my opportunity to ask about my money. So
16 they go. They go to the Panther Parlor. Karen Pratt
17 drives. They get there. Norman Starnes takes them to his
18 car. His car, his car keys, to C.J.'s.

19 And Karen Pratt, God bless her soul, is good
20 enough to drive around another lady's friend to try to make
21 a telephone call, to try to go here. She doesn't know the
22 lady, but that's just the decent thing to do. She's not at
23 the Panther Parlor the whole time.

24 Bill and Jared are at C.J.'s with Norman Starnes.
25 I wasn't in the bathroom. I can't tell you what happened.

1 I can't tell you whether Bill said "where is my \$40?" I
2 can't tell you whether Bill -- I don't know what happened.
3 I just know that Norman came out crying and upset and red
4 marks on his face and he left to go to the Panther Parlor,
5 and he got a gun.

6 And he took them to his house, these drugged-out,
7 wide-eyed, hyper, meth-laden men that he now wants you to
8 believe that he took them to his house. And what were they
9 doing? Sitting on a couch. Sitting on the couch. And
10 Norman leaves to go pick up Jody Fogle, and he's got two
11 guns in the car with him. And they walk in and Jody walks
12 this way and Norman goes this way and he's fumbling in the
13 bedroom. Jody said he's fumbling. And then he walks out,
14 according to Jody Fogle, hands the gun to Jared. I don't
15 know what happened between Jared and Jody. I don't know. I
16 can tell you that neither one of them shot the other one.
17 And I can tell that you whatever happened Jody said was
18 over. Bob Coler sat right here with Jody Fogle on the
19 witness stand who was going to count to 30. I don't think
20 he made it much past 15, but he was going to count for 30
21 seconds to give you an idea of how much time had passed.
22 Bill Welborn disengages, calms down whatever situation
23 existed. And Jody Fogle tells you Norman Starnes came out
24 and he shot Bill Welborn three times and then he shot Jared
25 Champlin in the back. He emptied his gun. It holds five

1 bullets. He shot five times.

2 Norman wants you to believe that he did not have a
3 gun, that it's on the headboard of his bed. Ladies and
4 gentlemen, if you remember when Dawn let Norman spend the
5 night at her house? He comes in and sleeps on the mat. And
6 she walks across the mat and she finds a gun. If you need a
7 gun to sleep on the floor with a bunch of children, do you
8 really think that gun was on the headboard of his bed? Do
9 you think it was right in here? Jody Fogle said he saw it.
10 Gwen Ott-Bailey said she saw it.

11 He goes to the door -- his version. He goes to
12 the door to open it. He sets a 25 year military veteran has
13 a gun pointed right at him. And then in a move that John
14 Wayne and Rambo and Dirty Harry could not pull off, he
15 reaches into his pocket, pulls out a gun, aims it, fires it
16 with 13 pounds of trigger pressure, before a 25 year
17 military veteran can get off a single shot. Common sense.
18 That can't happen. That didn't happen.

19 Then he shoots Jared Champlin in the back.

20 And then you come to that moment. Jody says "get
21 me the F out of here."

22 And he undoes the telephone and he starts cleaning
23 up the crime scene. He goes and gets Gwen. He brings her.
24 They leave the child at the restaurant. He bring her home.
25 She says he's cussing them. He's asking them how it feels.

1 He's pistol whipping the bodies. He takes their wallets.
2 He takes their identification. You know they had money.
3 You know they did, because he says he paid them back \$40,
4 and Karen said Jared had 10. And he's quick to take credit
5 for paying the bar tab. He takes their money, burns their
6 personal effects, loads the bodies in the car, is panic
7 stricken, can't think straight, has the wherewithal to know
8 he doesn't want the bodies anywhere near his house. He
9 takes them to his uncle's property and he buries them.
10 Before he buries them, he has trouble with his car. He has
11 to drive all the way back to get another car to drive all
12 the way back. All the time in the world to reflect and
13 think.

14 And then the police start coming. Robert Doray,
15 Chris Lorick, Darren Amick, Carlisle McNair. We've got a
16 telephone repairman and a television reporter, all of whom
17 he lies to. And I have to note for you the progression of
18 the lies. It begins with "I don't know anything about
19 anything."

20 And then when they find the bodies, it's "I didn't
21 pull the trigger."

22 And when they find the gun, then it becomes "I had
23 to do it." You see the progression, ladies and gentlemen?

24 They can't ever catch Norman Starnes because he's
25 moving. Says "you have got to cover up. You have got the

1 urination. I'm just going to simply note this. I asked her
2 the same thing I asked her about the gun, "on a scale of one
3 to a hundred, how certain are you that you saw him urinate
4 on the faces of two dead men?" And she said "I'm absolutely
5 certain." And then he got in the car and "I pissed in their
6 faces."

7 Ladies and gentlemen, we go from a missing person,
8 lies to law enforcement, lies to family members, calling in
9 false leads. It's one thing to lie if you are asked a
10 question. To pick up the phone and affirmatively call a law
11 enforcement officer and give them a false lead?

12 And then we move to the jail cell. Ladies and
13 gentlemen, his explanation, when I asked him yesterday, was
14 that he panicked; that it happened so fast; that he never
15 shot anyone. Then at one point he said the president lied.
16 There was no panic at all in August of 1996. This was the
17 cool reflection of a man sitting in his own jail cell. And
18 this is what he had to say: "They still have not found the
19 murder weapon. And only I know where it is. They, the
20 police, know that it's an important key to this case. The
21 motive is still a mystery to them too. One other suspect in
22 this case knows that answer, but he wouldn't tell for
23 nothing in the world. He will have no choice one day.
24 Enough of that. How the hell are you?"

25 "One other suspect in the case knows that answer

1 but he wouldn't tell for nothing in the world." Guess what?
2 He told in May and June of '96. He may not have known it,
3 but Jody Fogle had already talked to the police, and he told
4 you this week.

5 And then we move to August. "The family doesn't
6 know what happened on the night the two were killed. They
7 only know what's been told to them by the police. The
8 police don't know because they weren't there when it
9 happened. They do not know a motive, where the murder
10 weapon is, or who pulled the trigger. The police have no
11 witnesses to the murder. Just hearsay. That's all. Yes,
12 they were killed in my living room. Yes, they were buried
13 on uncle Charles property, but that doesn't mean I was the
14 one who killed them." And this is long after the police
15 quit talking to him. He's not panicked. He's not nervous.

16 Do you remember I asked him yesterday "will you at
17 least admit to me that people lie because they think the
18 truth will get them in trouble?" Of course they do. What
19 other reason is there to do it? He won't even admit that.
20 And months after the bodies are found he's denying
21 involvement.

22 Then I'm going to read one more to you. I'm not
23 going to read you any more letters. "They don't know what
24 happened on the night the two were murdered because Jody has
25 lied in his statement. Gwen does not know because she has

1 already told the police she was not present at the time the
2 shooting took place. I cannot tell you about the guns that
3 were involved because that alone would prove that I did not
4 pull the trigger. I can't tell you where the guns are. I
5 can tell you that the police will not find them. That is a
6 question that only one person can answer. The police still
7 have no murder weapon. They will have it when I go to
8 court. I do not trust the police one bit. I would be
9 stupid to say here it is and then go to court and then make
10 it look like I pulled the trigger. The asses already have
11 my fingerprints. Who is to say they wouldn't tamper with
12 the evidence to cover their ass for charging the wrong
13 person."

14 Ladies and gentlemen, the police did not charge
15 the wrong person. They did not make the wrong charge. He
16 is charged with two counts of murder.

17 Murder in South Carolina is an intentional killing
18 with malice aforethought.

19 You will not hear the word premeditation when the
20 judge reads you the definition of malice. Can malice be
21 premeditation? Of course. If you plan something two weeks
22 in advance, is that evidence of malice? Absolutely, but
23 malice can arise in an instant. Malice is a wicked or
24 depraved intent. It is an evil heart. It is the conscious
25 doing of a wrong act. It is the intentional infliction of

1 serious bodily injury or death on someone else. Malice is
2 bad intentions. That's what malice is.

3 And aforethought -- you listen to the judge, like
4 I know that you will, I believe he is going to tell you that
5 it doesn't have to exist for any appreciable amount of time.
6 It just has to exist in the mind of the shooter at the time
7 of the shooting.

8 Malice, bad intentions, how does it manifest
9 itself? One way it manifests itself is walking into a bar
10 and telling -- or a restaurant and telling your girlfriend
11 "I'm going to kill them tonight." That's about as good of
12 evidence as malice as you will ever find.

13 Malice can be telling your muscle, your
14 refrigerator mover, that "I think I'm going to kill them."
15 That is malice.

16 Malice, ladies and gentlemen, can be inferred and
17 implied simply from the use of a deadly weapon.

18 Malice aforethought. Bad intentions that exists
19 in the mind of the shooter an instant before the fatal blow
20 was struck.

21 I have sat here and listened to the word
22 premeditation 20 or 25 times. You see it, you hear it, in
23 the definition of malice. You see if it is a requirement
24 that something be scheduled on the calendar and planned out
25 in advance. That's nonsense.

1 Murder in South Carolina can happen like that.
2 Malice has to exists for that long before the fatal blow is
3 struck.

4 You have malice. You have aforethought. You have
5 expressed malice, and you have implied malice. You can
6 infer malice from the use of a deadly weapon. You don't
7 have to.

8 I think the best evidence of malice in this case
9 are the two people that know him the most, that talked to
10 him before he did what he said he was going to do.

11 And then sometimes, ladies and gentlemen, the best
12 evidence of what is in the heart of somebody beforehand is
13 what they do after hand. Sometime that is the best
14 indicator.

15 Motive. What was in their heart ahead of time you
16 can sometimes tell by what they did afterwards. Think about
17 what he did to the bodies. Think about what he did to the
18 crime scene. Think about how he acted in January, February,
19 March, April. Malice.

20 He wants you to let him go today. He wants to
21 walk out the back of the courtroom. Make no mistake about
22 that. He is going to stand in front of you and ask you to
23 let him walk out the back of the courtroom. He's going to
24 do it based on self-defense. And the judge is going to
25 charge you on self-defense and he's going to tell you that

1 the State has to disprove self-defense. There are four
2 elements and the State just has to disprove one.

3 I want us to look at the first element, that the
4 defendant is without fault in bringing on the difficulty.
5 Think about that. That he's without fault in bringing on
6 the difficulty. He may have slipped up a little yesterday
7 when he was testifying, because he conceded, and this was a
8 direct quote, "I am partly to blame." Partly? Do you
9 think? Took them to your house, went and got a gun, went
10 and got a friend.

11 Ladies and gentlemen, I have listed 25 things that
12 I would submit to you he could have done to avoid this. You
13 keep in mind the phrase that the defendant is without fault.
14 Keep in mind he's already admitted "I'm partly to blame."

15 He took two men he claims that were hyper and
16 agitated to a bar to drink some more.

17 He could have left them at C.J.'s, but he didn't.

18 His car. His car keys. I asked him several
19 times. He could have left.

20 He went back and forth between the Panther Parlor
21 and C.J.'s.

22 He could have called for help at C.J.'s.

23 He could have taken advantage of Claudette
24 Harbert's offer to call for help at C.J.'s.

25 He could have taken Bill and Jared back to Karen

1 Pratt and said "take these guys home. I'm tired of being
2 with them."

3 He could have called Dawn Brudose and said "look,
4 I don't know what's in Bill. You got to come get him. I
5 can't deal with him."

6 He could have gone to the Panther Parlor and
7 stayed. One of the times he was taking money out of the
8 till, he could have just stayed. And he didn't have to go
9 get his gun.

10 He could have had someone call the police.

11 If he felt like he was assaulted in the bathroom
12 at C.J.'s, call the police. He could have called them.

13 He could have had somebody call them.

14 He had the car keys. He had the car. He was in
15 control and he took these men to his house.

16 Keep in mind, the defendant is without blame. He
17 takes them to his house and then he leaves.

18 He could have kept driving. If he felt this urge
19 of whatever in him, he could have kept driving. He just
20 drove far enough to go to Jody Fogle's house.

21 He tells Jody it's a refrigerator. Jody tried to
22 convince him that it wasn't a good idea. I'm not going to
23 use the language he used, but I think you remember it.

24 "It's not a good idea Norm. Let it go. That's stupid."

25 He's got both guns in the car, according to Jody

1 Fogle. He takes both the guns into the house.

2 If you believe the State's version, Norman was
3 upset about C.J.'s, he formed the intent to do something
4 about it when he went and got the gun from the Panther
5 Parlor.

6 Even, according to his own version, for which
7 there is not one scintilla of medical or scientific
8 evidence, but let's just play along for a second. Despite
9 the fact that there is no evidence of any drug use, let's
10 just play along for a second. Under his version he
11 introduced guns into a drug deal and he wants you to say he
12 is without fault.

13 Twenty-five things he could have done differently.

14 That's element number one.

15 He must be in imminent danger of losing his life
16 or suffering serious bodily injury, or must have actually
17 believed that that was the case. I am Jared Champlin. My
18 back is to you. I am unarmed. What threats do I pose to
19 you?

20 Jody Fogle said that Bill had disengaged the
21 situation. It had been over. It had calmed down and Norman
22 comes out and starts shooting.

23 The defendant had no other probable means of
24 avoiding the danger. He didn't have to introduce guns into
25 it. That's number one.

1 You know, he says his hand was on the doorknob.
2 He didn't have to bring Jody Fogle.
3 He didn't have to take Bill and Jared back to his
4 house.

5 Ladies and gentlemen, innocent people act a
6 certain way. When you back into someone's car at Wal-Mart,
7 we leave a note. We say "hey, call me. I made the mark on
8 your car."

9 When we borrow our spouse's -- in my case, when I
10 take money from my wife's wallet because I don't have any
11 cash, I let her know. I say "this is what I have done." If
12 you are borrowing a stapler from a co-worker, you send them
13 an E-mail or you put a little post-it. That's the way
14 people who do not have bad intentions act.

15 He did none of this. He concealed every piece of
16 evidence that could possibly help you, and SLED, and
17 everybody else, understand the crime scene, and instead he
18 brings in a cartoon video that he wrote. Innocent people
19 don't act that way. Innocent people don't burn evidence.
20 Innocent people want the truth to come out. Innocent people
21 shout it from the mountain tops. Innocent people say "let
22 me tell you my story. Let me tell you what happened." They
23 don't say ten minutes is too long. They don't say two days
24 is too long. It's never too late for the truth. And he
25 waits eleven years to come tell you what he told you.

1 Innocent people don't act that way.

2 Ladies and gentlemen, when I graduated from
3 college my father gave me a book on quotes. He loves them.
4 He loves quotes about famous important people. I guess he
5 wishes his son did do. All I -- I can read golf magazines
6 and a little bit of Amelia Bedelia. That's about the only
7 time I have now. I don't have time for quotes. But as I
8 was preparing to come to Lexington from Spartanburg, I got
9 out that quote book, because I wanted to be able to tell
10 y'all something about the truth. I wanted to be able to
11 tell you something about a lie. Something smart. And I
12 couldn't come up with it, and I started flipping through
13 that book my dad gave me and I find something by a German
14 philosopher named Friedrich Nietzsche. Way smarter than me.
15 It had a lot of quotes in this book. I didn't understand
16 most of them, but I under this one. "I'm not just upset
17 with you because you told me a lie. I'm upset with you
18 because I can't believe another thing you ever tell me."

19 "I'm not upset with you because you told me a lie.
20 I'm upset because I can't believe another thing you ever
21 tell me."

22 Trust. What a fragile, fragile thing. It takes a
23 lifetime to build up and can be gone in an instant. Trust.
24 Truth. The ability to rely on someone's word. What a
25 beautiful thing that is in a relationship in a courtroom.

1 Trust. The ability -- because I do believe there is
2 something called the truth. I do believe there is fact. I
3 don't believe that we should be able to change our version
4 anytime we want to. There is something called the truth,
5 and I think you could find it.

6 When you go back to the jury room, you will have a
7 form with you that is called a verdict. And it's borrowed
8 from the Latin and it means to speak the truth.

9 This gun killed Bill Welborn and Jared Champlin in
10 Lexington County in January of 1996. At one point the
11 defendant himself referred to it as the murder weapon. I'm
12 going to refer to it as the murder weapon. That's the gun
13 that killed Bill and Jared.

14 I'm going to wait and see if the defendant comes
15 and puts the gun he says caused him to have to kill them
16 right here. He's not going to. He did exactly what he set
17 out to do that night.

18 And, you know, ladies and gentlemen, it's enough
19 to shoot a 25 year military man three times. It's enough to
20 shoot a man in the back. It's enough to bury them where the
21 animals can get to them, and it's enough to go re-bury them
22 with lime and concrete. That's enough. To then come in and
23 try to disparage their reputations and their names without
24 one single shred of medical or scientific evidence, that's
25 too much.

1 When you come back in this courtroom, I want you
2 to speak your verdict that speaks the truth, and this indeed
3 is a murder weapon.

4 THE COURT: Mr. Starnes.

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

6 THE COURT: Yes, sir.

7 MR. STARNES: Ladies and gentlemen, I don't
8 believe from the opening statement that I denied killing
9 Bill and Jared.

10 I think as a public official and being a solicitor
11 for anywhere in the State of South Carolina that they could
12 have easily called Mr. Fogle, but they didn't. He was there
13 and he seen what happened. I can't get Jody and I can't
14 force him to tell you the truth.

15 The very little bit of time that I knew Bill
16 Welborn, I trusted Bill with my life. I jumped out of an
17 airplane with him. He was a real nice guy until one night.
18 When we was at the party at the Panther Parlor was the first
19 time Bill Welborn met Jody Fogle.

20 One January the 6th he puts \$200 in my pocket for
21 a reason. Now, Dawn doesn't know that reason, because she's
22 in the military, and Bill Welborn knows the military rule on
23 drugs. It's a no-no, you can't do that. But business was
24 real good at the Drop Zone on Saturday, but Dawn has to
25 write Lou Ridley a \$400 check on the 8th. I don't know if

1 any of y'all are retired from the military, but the military
2 pays on the 1st of the month, but Bill Welborn is broke on
3 the 8th, and he's broke for a reason, because Bill Welborn
4 had a drug habit.

5 Mr. Gowdy was right. He didn't know what happened
6 in that house on January the 8th, because he wasn't there.

7 And it was wrong for me not to pick the phone up
8 and call 911, but I don't think any of y'all sitting on the
9 jury know what it's like to kill anybody.

10 I did bury them on my uncle's property. I did
11 pour lime on top of the ground and two bags of concrete, and
12 that was terribly wrong and I'm sorry for that, but I was
13 put in a situation where I had a choice to make and a choice
14 to make with only a second.

15 Out of all the evidence that the State put up,
16 they never can explain why Jared pulled the gun on Jody.
17 Somebody that Jody claims he never met before, "the first
18 time I have ever met him." Walks into the house. What does
19 Jared say? "You got any dope?" He didn't say "good day.
20 How are you doing? What's your name? Are you a friend of
21 Norm's?" What did he ask for?

22 The State wants to allege that I had two firearms
23 when I walked in that house, but that I needed Jody Fogle to
24 watch my back with two firearms. Does that make any sense?
25 Someone with murder on their mind, a plan to kill someone,

1 it would seem to cut the phone wires, walk in and
2 immediately shoot them. But Mr. Gowdy wants y'all to
3 believe that I walk into the house and hand Jared a firearm.
4 Premeditation? Willfulness? Deliberation? I don't think
5 nobody with murder on their mind, malice in their heart, is
6 going to walk in a house and give someone a firearm and then
7 shoot them.

8 Y'all heard the testimony of Ms. Demi Garvin. She
9 was the toxicologist, that did the toxicology on Bill and
10 Jared. Out of all the questions that Mr. Derrick asked her,
11 he didn't ask her "did you test for methamphetamine?"

12 And as a rule of fairness, we called Dr. Mason
13 here from Boone, North Carolina to give y'all his testimony.
14 We attempted to do the test. The State didn't.

15 \$40. The State wants you to believe that I shot
16 and killed Bill Welborn over \$40 and Jared Champlin for \$10.
17 But yet Mr. Gowdy wants y'all to believe that I'm coming and
18 going in the restaurant taking money out. And then I'm
19 going to kill two individuals, one for \$40 and the other one
20 I believe he said for \$10.

21 They could have called Karen Pratt. She was
22 there, but they decided not to, so I had to call Jody and
23 Karen both. I haven't seen or talked to Jody in 11 years.
24 I had no idea what he was going to say when he got up there.
25 I didn't get a chance to meet with witnesses from the State

1 and prepare their testimony. I called these people. They
2 come up and testified.

3 Jody is not going to tell you what he was there
4 for. He wants you to believe that he was there to watch my
5 back. A man that the State says has two firearms, and I
6 need Jody Fogle to watch my back.

7 If I was in imminent danger in the restaurant, or
8 I thought that my life was in danger, or that it was a fight
9 in the bathroom, Bill would have never got in the car with
10 me.

11 Y'all heard Dawn's testimony. "Welborn is really
12 upset with Norm about \$40 and impatient because Norm hasn't
13 called all day." Well, it's obvious I'm avoiding Bill
14 Welborn, because I know at Wings & Ale on the 6th what he
15 wants. He puts that money in his pocket not to confuse it
16 with the other money, but yet he takes that money and he
17 gives it to me and asked me to go to Pelion to find Jody
18 Fogle, and I don't do it.

19 I don't call on the 7th, because if I call on the
20 7th I know what Bill Welborn is going to want, so I avoid
21 him.

22 On January the 8th, unexpectedly Bill and Jared
23 and Karen show up at the restaurant. I didn't call them
24 over there. I didn't invite them over there, and I didn't
25 ask them to come over there, and I hadn't called Bill

1 Welborn, because I knew if I did what he was going to want.

2 I believe the State's case, and they have put up a
3 lot of evidence of what happened after this, and this is a
4 shooting. I wrote those letters in the jail. I don't deny
5 that. Mr. Gowdy has never been locked up, never been in
6 prison. I'm writing a girl that's asking me questions and
7 I'm telling her anything that she wants to know to keep her
8 to write me letters.

9 Gwen had five months to come forward. She didn't
10 do it. When she moved in with Tony Tindal is when I got
11 arrested. She didn't pick the phone up and call the police.
12 Why? I believe she said in her testimony, and y'all can
13 hear that testimony if you need to, "it sounds like
14 self-defense." On her first statement that she gives to
15 Carlisle McNair when she comes to the sheriff's office, "I
16 didn't know about it until afterwards." And y'all can hear
17 that testimony again if you need to hear it.

18 Carlisle McNair specifically asked her "did Norman
19 talk about killing them?"

20 "I didn't know about it until afterwards," and
21 that's the truth. She didn't know about this until
22 afterwards.

23 What happened after the shooting is terrible. I
24 should have picked the phone up and called the police, and I
25 can't change that. My fear escalated from day to day. And

1 maybe some y'all can understand. Maybe y'all shot somebody
2 before. Maybe one of y'all on the jury know what it's like
3 to shoot and kill somebody, but I experienced something that
4 I have never experienced before. I'm in my own home. I
5 bring them down there and I'm trying to do them a favor and
6 get them away, because Bill Welborn wanted crystal
7 methamphetamine and Jody Fogle could provide it for him.

8 But the State wants you to believe that this is a
9 premeditated killing. The State wants you to believe that
10 Jody Fogle is there to watch my back.

11 Premeditation? Deliberation? That's for y'all to
12 decide.

13 Is it self-defense? The judge is going to
14 instruct you on the law on self-defense. The State has the
15 burden to disprove it, and that's for y'all to decide.

16 Cases aren't won or lost on who is the loudest
17 prosecutor who yells the loudest at the witnesses. I could
18 have done that. I could have cross-examined Gwen a lot
19 harder, but I just didn't think it was the appropriate thing
20 to do. You heard her testimony. She's a very sensitive
21 woman. And if I would have did all the things that she said
22 I did, there is no way that Gwen would have stayed with me
23 another day. Thank you.

24 Your Honor, I would like to play the animation one
25 time for demonstrative purposes in closing. I understand it

1 not going into evidence. I would just like them to see it
2 one more time before they deliberate.

3 THE COURT: Counsel approach just a minute,
4 please.

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

7 THE COURT: Anything further?

8 MR. GOWDY: No, sir.

9 (Whereupon, at 11:55 a.m., the court gave the jury
10 panel the jury instructions)

11 THE COURT: Mr. Foreman, ladies and gentlemen of
12 the jury, you have heard the final arguments of counsel.
13 It's now time for me to charge you, that is to say instruct
14 you with regard to the law that applies to the issues in
15 this case.

16 Now, in this case the State charges Norman Starnes
17 with three offenses. They charge him with two counts of
18 murder - that being the murder of Jared Lee Champlin and
19 also of William C. Welborn - and they charge him with
20 possession of a firearm during the commission of a violent
21 crime.

22 To these charges the defendant has pled not
23 guilty, which then places upon the State the burden of
24 proving the defendant guilty of each of these charges beyond
25 a reasonable doubt.

1 A person charged with committing a criminal
2 offense in South Carolina is never required to prove himself
3 innocent. I charge you that it is a vital important rule of
4 law that a defendant in a criminal trial, no matter how
5 great or serious may be the offenses for which he's charged,
6 must always be presumed innocent until his guilt has been
7 proved beyond a reasonable doubt. This presumption of
8 innocence remains with the defendant at all times throughout
9 the trial, and is only removed when, and if, the State has
10 proved guilt beyond a reasonable doubt.

11 For it is your solemn duty, ladies and gentlemen,
12 if not clearly convinced of the guilt beyond every
13 reasonable doubt to the contrary to find the defendant not
14 guilty.

15 So the State has the burden of proving the
16 defendant guilty beyond a reasonable doubt.

17 What is a reasonable doubt? Some of you may have
18 served as jurors in civil cases where you were told that it
19 is only necessary to prove the fact is more likely true than
20 not, such as by the greater weight or preponderance of the
21 evidence.

22 However, in criminal cases the State's proof must
23 be more powerful than that. It must be beyond a reasonable
24 doubt.

25 Now, ladies and gentlemen, proof beyond a

1 reasonable doubt is proof that leaves you firmly convinced
2 of the defendant's guilt. There are very few things in this
3 world that we know with absolute certainty. And in criminal
4 cases the law does not require proof that overcomes every
5 possible doubt.

6 A reasonable doubt may also be described as a kind
7 of doubt that would cause a reasonable person to hesitate to
8 act.

9 If you have such a doubt as to the guilt of the
10 defendant, then he would be entitled to a verdict of not
11 guilty.

12 Reasonable doubt may arise from evidence which is
13 in the case, or from the absence or lack of evidence in the
14 case.

15 If, based on your consideration of the evidence,
16 you are firmly convinced that the defendant is guilty of the
17 crimes charged, you must find him guilty.

18 If, on the other hand, you think there is a real
19 possibility that he is not guilty, you must give him the
20 benefit of the doubt and find him not guilty.

21 You alone must make the determination of whether
22 or not reasonable doubt exists as to the guilt of the
23 defendant.

24 Mr. Foreman, ladies and gentlemen of the jury,
25 there are two types of evidence which are generally

1 presented during a trial. There is direct evidence and
2 circumstantial evidence.

3 Direct evidence is the testimony of a person who
4 asserts or claims to have actual knowledge of a fact, such
5 as an eyewitness.

6 Circumstantial evidence is proof of a chain of
7 facts and circumstances indicating the existence of a fact.

8 The law makes absolutely no distinction between
9 the weight or value to be given to either direct or
10 circumstantial evidence, nor is a greater degree of
11 certainty required of circumstantial evidence than of direct
12 evidence.

13 You should weigh all the evidence in the case.
14 After weighing all the evidence, if you are not convinced of
15 the guilt of the defendant beyond a reasonable doubt, you
16 must find the defendant not guilty.

17 Mr. Foreman, ladies and gentlemen of the jury,
18 under the Constitution of South Carolina you are the finders
19 of the facts in this case. I do not have the right to pass
20 upon the facts or even to express any opinion I might have
21 as to the facts, nor may I suggest in any way what I may
22 think about the guilt or innocence of the defendant. You
23 should form no opinion in that regard from anything that I
24 may have said or any ruling I have made during the course of
25 the trial.

1 Now, you have heard the testimony of witnesses who
2 have special knowledge, skill, experience, training, or
3 education in a particular field who have given opinions as
4 to matters in which they are skilled. In determining the
5 weight to be given such opinions, you should consider the
6 qualifications and credibility of the expert witnesses and
7 the reasons given for their opinions. You are not bound by
8 such opinions. Give them the weight, if any, you deem them
9 entitled.

10 As the sole judges of the facts in this case, you
11 are also necessarily the sole judges of the credibility or
12 believability of each of the witnesses that have testified
13 during the course of the trial.

14 Now, there are a number of factors which you may
15 consider when you are arriving at your assessment as to a
16 particular witness' credibility or believability. Some
17 factors I'm going to list for you. And should you think of
18 other factors that you believe also ought to be considered
19 when you go back into your jury room on the question of
20 credibility, then you should consider those factors as well.

21 But you may consider the demeanor of the witness
22 from the witness stand. What was that witness' manner of
23 appearance? Was the witness straightforward in answering
24 questions or hesitant in responding to questions? Simply
25 put, do you believe that the witness is telling the truth or

1 not telling the truth?

2 Do you believe that the witness knew of what that
3 witness testified or did not know of what that witness
4 testified?

5 You may consider whether or not the testimony of a
6 witness is consistent or inconsistent with that witness' own
7 testimony or with other testimony or evidence presented
8 during the course of the trial.

9 You may also consider how the witness came to know
10 the facts to which he or she testified.

11 You may consider the opportunity that a witness
12 had to observe or hear, that is, to perceive the existence
13 of a fact by means of their senses.

14 You may also consider whether or not a witness is
15 biased or prejudiced. That simply means do you find that a
16 particular witness had some reason to come into court and
17 testify one way or another to help or hurt one side or the
18 other.

19 You may also consider whether or not the testimony
20 of a witness was strengthened or weakened by other testimony
21 or other evidence presented during the course of the trial.

22 You as the finders of the facts in this case and
23 you as the judges of the credibility or believability of
24 each of the witnesses that have testified may believe as
25 much or as little of what a witness testifies to as you deem

1 appropriate.

2 You may believe all of what a witness says. You
3 may believe none of what a witness says, or you may believe
4 only part of what a witness says. You may believe one
5 witness as against several, or several as against one.
6 Whatever your good judgment and common sense tells you is
7 the most believable testimony is the testimony that you
8 should accept, and reject that testimony which you find not
9 to be credible or believable.

10 Mr. Foreman, ladies and gentlemen of the jury, the
11 same Constitution that makes you the finders of the facts
12 makes me the sole and only instructor in the law. You must
13 accept as correct the law that I charge, and apply to the
14 law the evidence as you find it and reach your verdict. Put
15 aside any conceptions that you may have had as to the law
16 before coming here and today and accept the law as I
17 instruct it to be.

18 You, for purposes of your duty as jurors today,
19 should not be concerned about what the law ought to be, but
20 what I charge you the law is now in this state.

21 Mr. Foreman, ladies and gentlemen, I charge you
22 with regard to criminal intent. Criminal intent is a
23 necessary element of each crime that must be proved by the
24 State beyond a reasonable doubt. Criminal intent is always
25 a matter that must be determined by the jury from the

1 circumstances surrounding the situation.

2 There is no way to prove intent to a mathematical
3 certainty. There is no way medical science can dissect a
4 person's brain and determine what he had in mind. So the
5 law says that criminal intent may be inferred from the
6 circumstances shown to have existed. This is how the jury
7 makes a determination whether or not the element requiring
8 intent was present.

9 Criminal intent is a state of mind, which operated
10 jointly with an act is the commission of a crime.

11 Criminal intent is a mental state, a conscious
12 wrongdoing. So it is up to you, the jury, to determine what
13 the defendant intended to do, based on the circumstances
14 shown to have existed.

15 I tell you that the State must prove criminal
16 intent beyond a reasonable doubt, just as the State must
17 prove every element beyond a reasonable doubt.

18 It is not necessary to establish intent by direct
19 and positive evidence, but intent may be established by
20 inference, in the same way as any other fact, by taking into
21 consideration the acts of the parties and all other facts
22 and circumstances of the case.

23 While the State may prove motive, it is
24 unnecessary that the State do so. However, the State must
25 prove intent.

1 Mr. Foreman, ladies and gentlemen of the jury, I'm
2 going to charge you specifically now with the law as to the
3 particular offenses for which the defendant is charged by
4 the State in this case. I would tell you you are not going
5 to have these charges written down for you back in the jury
6 room, so you will have to call on your collective memories
7 as to what I instruct you the law is. However, once you
8 begin your deliberations, if you are not sure about what the
9 law is, if you wish to be re-instructed on any part of it,
10 or all of it, for that matter, I will be glad to re-instruct
11 you on it, upon your request. Simply write that down on a
12 tablet provided for you in the jury room. Give it to the
13 bailiff, if you wish to have an instruction, or
14 re-instructed on any part of it, or all of it, for that
15 matter. But I would ask that you listen attentively now as
16 I go through these particular charges and the elements of
17 them.

18 Now, first of all, the defendant is charged with
19 two counts of murder.

20 What is murder? Murder is the willful felonious
21 killing of a human being by another human being with malice
22 aforethought, that malice being either express malice or
23 inferred malice.

24 Malice is hatred, ill will, or hostility toward
25 another person. It is the intentional doing of a wrongful

1 act without just cause or excuse and with an intent to
2 inflict an injury or under circumstances that the law will
3 infer an evil intent.

4 Malice aforethought may be express or inferred.
5 These terms, express or inferred, do not mean different
6 kinds of malice, but merely the manner in which malice may
7 be shown to exist; that is, by direct evidence or inference
8 from the facts and circumstances which are proved during the
9 case.

10 Now, express malice is shown when a person speaks
11 words which express hatred or ill will for another, or when
12 the person prepared beforehand to do the act which was later
13 accomplished.

14 For example, lying in wait for a person, or any
15 other acts of preparation going to show that the deed was
16 within the defendant's mind would be express malice.

17 Malice is said to be express where it's manifested
18 a violent deliberate intention unlawfully to take away the
19 life of another human being.

20 Malice is implied where one intentionally and
21 deliberately does an unlawful act which he or she then knows
22 to be wrong and in violation of the duty to another and
23 where no excuse or legal provocation appears and when the
24 circumstances attending a killing show an abandoned heart, a
25 malignant heart fatally bent upon mischief.

1 Malice may be inferred from conduct showing a
2 total disregard to human life.

3 Inferred malice may also arise when the deed is
4 done with a deadly weapon.

5 A deadly weapon is any article, instrument or
6 substance which is likely to cause death or great bodily
7 harm. The following are examples of instruments which may
8 be deadly weapons: A pistol, a shotgun, a rifle, a knife,
9 slingshot, metal knuckles, a razor, gasoline, firebomb,
10 etcetera.

11 If facts are proved beyond a reasonable doubt
12 sufficient to raise an inference of malice to your
13 satisfaction, this would simply be an evidentiary fact to be
14 taken into consideration by you, the jury, along with other
15 evidence in the case, and you may give it such weight as you
16 find it should receive.

17 You, as jurors, are free to accept or reject this
18 permissive inference, depending upon your view of the facts.

19 In other words, if such conduct results directly
20 in the death of another and such conduct was so culpable and
21 inexcusable, so aggravated and grossly reckless as to show
22 an active intentional disregard of the consequences of human
23 life, thus denoting a malignant spirit, a heart devoid of
24 social duty and fatally bent on mischief, inference of
25 malice may arise.

1 Furthermore, it is not just carelessness nor mere
2 recklessness or a passive indifference to the safety of
3 others. This conduct, when it shows a deliberate and
4 intentional design to so use or employ or handle a deadly
5 weapon or dangerous instrumentality so as to endanger the
6 life of another, or of others, without just cause or excuse,
7 may be sufficient to raise this inference. However, it is
8 for you, the jury, to decide beyond a reasonable doubt
9 whether upon all the facts and circumstances of this case
10 the defendant's alleged use of a deadly weapon demonstrated
11 such an intentional disregard for human life, that malice
12 may be inferred from the use of a deadly weapon. It is for
13 you, the jury, to decide what weight should be given this
14 fact.

15 A permissive inference is one that you may or may
16 not make, based on your view of the facts and evidence in
17 the case.

18 And it would be observed, ladies and gentlemen,
19 that there must be malice aforethought. And while the law
20 does not require that malice shall exist for any particular
21 length of time before the commission of an act, it must be a
22 forethought. There must be a combination of the previous
23 evil intent and the act producing the fatal result.

24 If the evidence should show under what
25 circumstances a fatal injury was inflicted, then you, the

1 jury, would have to determine whether under such
2 circumstances the act was malicious.

3 Mr. Foreman, ladies and gentlemen of the jury, I
4 charge you now with regard to the defense of self-defense.
5 The defense of self-defense has been raised in this case.

6 The law recognizes the right of every person to
7 defend himself from death or serious bodily harm. And to do
8 this, he may use such force as is necessary, even to the
9 point of taking a human life. In other words, self-defense
10 is a complete defense and entitles one charged with unlawful
11 homicide to an acquittal if the legal elements of the plea
12 of self-defense are shown to your satisfaction by the
13 evidence.

14 Now, there are four elements of self-defense and
15 all four elements have to be shown.

16 Now, the first element is that the defendant was
17 not at fault in bringing about the immediate difficulty of
18 the necessity for his taking of the human life.

19 That at the time that the defendant fired the
20 fatal shot, he believed in good faith that he was in
21 imminent danger of losing his own life or sustaining serious
22 bodily harm.

23 Imminent harm means the immediate. Not past or
24 future.

25 And third, that such belief was reasonable, and

1 that a reasonable, careful and prudent man, a man of
2 ordinary firmness and courage, situated in like
3 circumstances, would have reached a similar conclusion.

4 And, fourth, the defendant had no other
5 reasonable, safe, adequate, or obvious means of escape or a
6 way of avoiding the danger of losing his life or sustaining
7 serious bodily harm except to act as he did.

8 Provided, Mr. Foreman, ladies and gentlemen of the
9 jury, that where a person is on his own premises, he has no
10 duty to retreat before defending himself.

11 I'm going to go over these four elements of
12 self-defense with you in a little more detail.

13 I would tell you that the State must prove the
14 charges against the defendant beyond a reasonable doubt.
15 Therefore, the prosecution has to prove the absence of
16 self-defense beyond a reasonable doubt. In other words,
17 they have to disprove the elements of -- excuse me, disprove
18 the defense of self-defense in proving their case.

19 The first element of self-defense is that the
20 defendant was without fault.

21 Now, let me say they have to disprove the defense
22 of self-defense beyond a reasonable doubt.

23 The first element of self-defense is that the
24 defendant was without fault in bringing about the difficulty
25 or the necessity for his taking of human life.

1 Obviously, one cannot through his own fault bring
2 on the difficulty and then claim self-defense.

3 The second element is that at the time the
4 defendant inflicted the fatal injury, he believed in good
5 faith that he was in imminent danger of losing his own life
6 or sustaining serious bodily harm.

7 Imminent again means immediate. Not past or
8 future, but present.

9 The third element is such belief was reasonable
10 and that a reasonably careful and prudent man, a man of
11 ordinary firmness and courage, situated in like
12 circumstances would have reached a similar conclusion.

13 The fourth element is that the defendant had no
14 other probable means of avoiding the danger of losing his
15 own life or sustaining serious bodily injury than to act as
16 he did in this particular instance.

17 Now, Mr. Foreman, ladies and gentlemen of the
18 jury, the defendant has no duty to retreat, if by doing so,
19 the danger of being killed or suffering serious bodily
20 injury would increase. Likewise, the defendant has no duty
21 to retreat before defending himself on his own premises.

22 I charge you further with regard to the defense of
23 habitat in this regard. The defendant has raised the
24 defense of habitation.

25 The defense of habitation is the defense of one's

1 dwelling house. If the defendant or a member of the
2 defendant's household is attacked in the defendant's own
3 home, the defendant may use the force which appears to be
4 needed to protect himself or his household from death or
5 serious bodily injury. When attacked in his own house, the
6 defendant may justify or excuse the killing of his
7 assailant, as such act is apparently necessary to save his
8 own life or to protect himself from great bodily harm.

9 Now, Mr. Foreman, ladies and gentlemen of the
10 jury, the person assaulted being himself without fault and
11 that is legal fault, reasonably apprehends death or serious
12 bodily harm unless he kills his assailant, the killing is
13 excusable and the accuser is entitled to be acquitted.

14 The party attacked is the judge of the his own
15 peril and can act safely on appearances, facts and
16 circumstances surrounding him at the time.

17 And the situation should be determined from the
18 standpoint of the defendant, it being for you, the jury, to
19 say whether or not his apprehension of immediate danger of
20 death or of serious bodily harm was reasonable and would
21 have been felt by a man of ordinary reason and firmness.

22 Now, whether there was such a reasonable
23 appearance of danger as would justify the killing is a
24 question for you, the jury, in making your determination.
25 You should consider the condition of the parties, including

1 their demeanor. And if the appearance was to the defendant
2 at the time the fatal shots were fired such that he could
3 not reasonably and safely avoid taking the life of the
4 deceased and a man of ordinary reason and courage would have
5 arrived at the same conclusion, it is not necessary for him
6 to go any further and he should be acquitted, if he is free
7 from fault in bringing on the immediate difficulty.

8 Now, one has a right the use force in repelling
9 force or protecting himself and he cannot be required to
10 make a nice calculation as to the degree or quantity or
11 amount of force which may be necessary for his complete
12 protection from loss of his life or serious bodily harm to
13 himself.

14 Where the defendant sets up, as here, the plea of
15 self-defense and undertakes to prevent a case of apparent
16 danger, which is honestly believed in as the defense, the
17 jury should and justice to the accused consider all of the
18 surrounding circumstances and facts calculated to influence
19 motive.

20 Mr. Foreman, ladies and gentlemen of the jury, I
21 instruct you further with regard to imminent danger.

22 The defendant in imminent danger of death or
23 receiving bodily harm is reasonable, the defendant need not
24 wait until actual attack or injury or until force is used by
25 the aggressor before exercising the right to use deadly

1 force or self-defense. In other words, the defendant need
2 not wait until the assailant gets the drop on him in order
3 to be entitled to use force in self-defense.

4 One of the elements of self-defense is that the
5 defendant must have actually believed he was in imminent
6 danger of losing his life or sustaining serious bodily
7 injury, or he actually was in such imminent danger.

8 In determining whether the defendant had
9 reasonable belief of such imminent danger or whether the
10 defendant actually was in such imminent danger, you may
11 consider any prior instances of violence with regard to the
12 defendant and the victims.

13 Mr. Foreman, ladies and gentlemen of the jury,
14 with regard to self-defense, the intoxication of the victims
15 may be considered in deciding whether defendant's fear of
16 death or bodily harm was reasonable.

17 Mr. Foreman, ladies and gentlemen of the jury, in
18 considering self-defense and the defendant's belief of
19 imminent danger, you may consider the fact that there were
20 two alleged victims in this case.

21 In deciding whether the defendant actually was or
22 believed he was in imminent danger of death or serious
23 bodily injury, you should consider all the facts and
24 circumstances surrounding the incident, including the
25 physical condition, demeanor and characteristics of the

1 defendant and the alleged victims.

2 Mr. Foreman, ladies and gentlemen of the jury, if
3 the defendant is justified in using force in defending
4 himself, the defendant is also justified in continuing to
5 use force until it is apparent that the danger of death or
6 serious bodily injury has completely ended.

7 Mr. Foreman, ladies and gentlemen of the jury, you
8 may consider evidence of prior difficulties as it reflects
9 the attitude of the parties to each other and may be
10 considered in defending whether a threat existed, whether
11 the defendant believed the threat existed, and how serious
12 that threat was.

13 Mr. Foreman, ladies and gentlemen of the jury,
14 words accompanied by hostile acts may, depending upon the
15 circumstances, establish self-defense.

16 If you have a reasonable doubt of the defendant's
17 guilt, after considering all the evidence, including the
18 evidence of self-defense, then you must find him not guilty.

19 On the other hand, if you have no reasonable doubt
20 of the defendant's guilt, after considering all of the
21 evidence, including the evidence of self-defense, then you
22 must find him guilty.

23 Mr. Foreman, ladies and gentlemen of the jury, I
24 charge you that it is unlawful for a person to present or
25 point at another person a loaded or unloaded firearm. This

1 must not be construed to abridge the right of self-defense
2 or to apply to theatricals or like performances.

3 Mr. Foreman, ladies and gentlemen of the jury, the
4 defendant is also charged in this case with possession of a
5 firearm during the commission of a violent crime.

6 Pursuant to Section 16-23-490, the South Carolina
7 Code of Laws, which states as follows: If a person is in
8 possession of a firearm or visibly displays a firearm during
9 the commission of a violent crime and is convicted of
10 committing a violent crime, as defined in Section 16-1-60,
11 South Carolina Code, he is guilty of this offense.

12 Section 16-1-60 defines a violent crime in South
13 Carolina to include the crime of murder.

14 You may not consider the charge of possession of
15 firearm during the commission of a violent crime, unless you
16 first find the defendant guilty of murder.

17 If you do not find him guilty of murder, then you
18 would not find him guilty of discharge and would not
19 consider it in your deliberations.

20 In other words, the defendant must be found guilty
21 of a violent crime and the State must have proved beyond a
22 reasonable doubt that the defendant was in possession of a
23 firearm or visibly displayed a firearm during the commission
24 of that violent crime before you may find the defendant
25 guilty of this charge.

1 Mr. Foreman, ladies and gentlemen of the jury,
2 nothing that I may have said or done during the course of
3 this trial has been in any way intended to express or
4 suggest a view of the case, an opinion as to the facts, the
5 weight of the evidence, or the credibility of the witnesses.
6 If any of my actions or words have seemed to so indicate,
7 you will disregard such and form your own opinion as to the
8 these matters.

9 Mr. Foreman, ladies and gentlemen of the jury, you
10 have been selected as fair and impartial jurors, sworn to
11 impartially try and determine the facts of this case. When
12 you comply with your oath to do so, then no one would have a
13 right to criticize your verdict and you will have fully
14 discharged your duty as jurors.

15 You are to decide this case according to the
16 testimony you are heard from the lips of the sworn
17 witnesses, along with other evidence introduced during the
18 course of the trial.

19 I charge you that as jurors you must decide the
20 issues in this proceeding without bias and without prejudice
21 to any party. You cannot allow yourself to be governed by
22 sympathy, by prejudice, by passion, by public opinion, or
23 any other arbitrary factor. Both the State and the
24 defendant have the right to expect that each of you will
25 carefully and impartially consider all of the evidence in

1 the case and that you will follow the law as I have
2 explained it to you.

3 Mr. Foreman, ladies and gentlemen of the jury,
4 whatever your verdict in this case is, it must be your
5 unanimous verdict. All twelve jurors must agree on the
6 verdict, which the foreperson would be authorized to write
7 on behalf of the jury.

8 Mr. Foreman, ladies and gentlemen of the jury, I
9 have prepared for your use in the jury room --

10 Let me explain to you further that the exhibits
11 which are actually admitted into evidence would be sent back
12 to the jury room for you to consider further in your
13 deliberations.

14 Now, I have prepared for your use in the jury room
15 three verdict forms. On these verdict forms -- there are
16 two verdict forms as to the two separate charges of murder.
17 What I have done, Mr. Foreman, is under the word verdict
18 form as to the two murders, I have listed the name of the
19 alleged victim, that being Jared Lee Champlin and William C.
20 Welborn. So those verdict forms have the alleged victim's
21 name at the top under the word verdict form, so you can
22 distinguish between the two verdict forms.

23 On those two forms there are two possible verdicts
24 which appear on the verdict form. They are as follows:

25 We, the jury, find the defendant guilty of murder;

1 Or, we, the jury, find the defendant not guilty.

2 Likewise, you have the same choices on possession
3 of a firearm during the commission of a violent crime.

4 Mr. Foreman, ladies and gentlemen of the jury, in
5 putting the possible verdicts on the verdict form, I have to
6 put them down in some order. I do that the same way every
7 time. The order in which they appear means absolutely
8 nothing and you should infer nothing from it.

9 What you should do, Mr. Foreman, ladies and
10 gentlemen of the jury, you should deliberate. Mr. Foreman,
11 once the jury has reached a unanimous verdict, you will
12 simply then go to the verdict forms, find the verdict which
13 conforms to the verdict reached by the jury. You will put a
14 check mark by that particular verdict and sign your name on
15 the line above the word foreperson. Date it. Once you have
16 done that with regard to all three of these charges,
17 completed the three verdict forms, you will then knock on
18 the door, let the bailiff know that you have reached a
19 verdict, and I will bring you back out to receive those
20 verdicts.

21 Now, again, whatever your verdict, it must be your
22 unanimous verdict.

23 Now, Mr. Foreman, ladies and gentlemen of the
24 jury --

25 Mr. Foreman, let me instruct you that once you

1 begin your deliberations, that all who wish to participate
2 and be heard in those deliberations be allowed to do so;
3 that you moderate and maintain some order in those
4 deliberations. And then, as I asked you earlier, is to
5 record the verdicts of the unanimous verdict on the verdict
6 forms that's provided.

7 I would instruct you that you must consider each
8 of these charges separately and make a separate finding as
9 to each of these charges.

10 So I'll ask you at this time, if you will, to
11 retire to the jury room, all except the alternates.

12 Now, at this time I'll ask the alternates not to
13 go in the jury room with the jury, but be maintained in a
14 separate room, the three of them, until further instructions
15 of the court.

16 Now, Mr. Foreman, ladies and gentlemen of the
17 jury, if you will retire to the jury room, but do not yet
18 begin your deliberations. I have to give counsel an
19 opportunity to request additional instructions on the law.
20 If additional instructions are requested and I deem them
21 necessary, I will bring you back out and give you those
22 additional instructions. It follows then that you should
23 not begin deliberating until we make sure all the
24 instructions are complete.

25 If no additional instructions are necessary, I

1 would send to you by means of the bailiff all exhibits which
2 are admitted into evidence, the verdict forms and
3 instructions to begin deliberating. Please do not begin
4 deliberating until you get that instruction. Thank you.

5 Please retire to the jury room.

6 (Whereupon, at 11:30 a.m., the jury panel retired
7 to the jury room, awaiting instructions to begin
8 deliberations)

9 THE COURT: All right. Exceptions or additional
10 requests to charge, from the State?

11 MR. GOWDY: No exceptions, no objections.

12 THE COURT: All right. Exceptions or additional
13 requests to charge from the defense, Mr. Starnes?

14 MR. STARNES: Yes, sir, Your Honor.

15 At this time I would like to renew my request for
16 voluntary manslaughter. The cases I was relying on, I
17 believe I have already put some of those on the record.
18 Also, Your Honor, Beck v. Alabama, 447 U.S. 625. It's a
19 1980 case; Mullaney v. Wilbur, 421 U.S. 684, a 1975 a U.S.
20 Supreme court.

21 Also Your Honor, filed with the court was a
22 memorandum in support of defendant's request to charge the
23 doctrine of imperfect self-defense. It is the defendant's
24 position that under certain facts and circumstances that
25 this could be charged. Douglas v. State, 504 S.E. 2d 307.

1 That is a 1998 decision.

2 Also, Your Honor, it was discussed in State v.
3 Wiggins, 500 S.E. 2d 489.

4 The proposition from the defendant is that the
5 jury could fail to find all of the evidence of self-defense
6 and conclude imperfect self-defense. This is recognized in
7 various jurisdictions, Your Honor. In Maryland, State v.
8 Faulkner, 483 A.2d 759, which cites --

9 THE COURT: I think you have already handed those
10 up, haven't you, counsel, or have you already made those
11 part of the record?

12 MR. STARNES: Yes, sir, I'm just --

13 THE COURT: Well, that is all you need to do. I'm
14 going to decline to charge them. If you want to make them
15 part of the record, you are welcome to do that.

16 MR. STARNES: Yes, sir. I just thought it was --

17 THE COURT: Well, you don't have to put it on the
18 record if it's in there. We will make it a court exhibit
19 and make it a part of the record and then the appellate
20 court would consider it on appeal.

21 Anything else?

22 MR. STARNES: Yes, sir, regarding these charges --
23 I guess you don't want to go over them, Your Honor?

24 THE COURT: No, sir.

25 MR. STARNES: All right. Can I just recite them?

1 THE COURT: You can go over specific charges, but
2 I'm just saying I'm not going to instruct the jury with
3 regard to imperfect self-defense.

4 As I told you earlier, and that's on the record,
5 these cases are from other jurisdictions. And in those
6 jurisdictions the law is different than it is in South
7 Carolina. In South Carolina and these other jurisdictions
8 the defense, if they want to raise sudden heat and passion
9 to mitigate murder down to voluntary manslaughter, then they
10 have to prove by a preponderance of the evidence that there
11 was sudden heat and passion and legal provocation. In South
12 Carolina that's not the case.

13 So in South Carolina, the burden -- there is no
14 burden whatsoever on the defendant. The burden is entirely
15 upon the State to prove the elements of each of the offenses
16 to which they are going to follow, and that would include
17 murder and voluntary manslaughter. So that's not the case
18 in South Carolina. So -- all right. We put that all on the
19 record already, but if you want to -- but if you want to
20 provide anything with regard to that, I think that you have
21 a memorandum that cites the cases. The court has looked at.
22 If you want to hand them up and make them a court exhibit
23 and make them a part of the record for appellate purposes.

24 MR. STARNES: Yes, sir.

25 Also Your Honor, defense request No. 5,

1 characteristics of the defendant.

2 Request charge number 8, pursuant to State v.
3 Hendrix, 244 S.E. 2d 503, a 1978 decision.

4 Also, Your Honor, it false under State v.
5 McCaskill, 387, S.E. 2d 268. That's a 1990 decision from
6 the South Carolina Supreme Court.

7 Also, I believe, Your Honor, that falls under
8 South Carolina Constitution, Article 120, and United States
9 Constitution, Second Amendment, regarding the right to arm.

10 THE COURT: I have seen all those. You have made
11 them a part of the record, have you not?

12 MR. STARNES: Yes, sir.

13 THE COURT: We will make those court exhibits for
14 appellate purposes.

15 I have reviewed all of those at length. We have
16 done that in chambers, and I declined -- I have incorporated
17 a number of your requests to charge in my charge. Some of
18 them are already included. Some of them are not. They are
19 appropriate charges. We have been through all of those in
20 chambers and put it on the record back there. It's not
21 necessary to do it again now.

22 If you wish to hand them up and add your requests
23 that I charge those, make them a court exhibit. I think you
24 have already given them to the court reporter or to the
25 clerk and they will be marked as courts exhibits, and I

1 understand your position. We have been through that at
2 length in chambers on the record.

3 MR. STARNES: Yes, sir.

4 THE COURT: I decline to charge those.

5 MR. STARNES: Your Honor --

6 THE COURT: Most of them have been included in my
7 charge, to be honest with you, but -- so they are on the
8 record.

9 MR. STARNES: Your Honor, just one thing I'm
10 concerned about is when we were in chambers yesterday, the
11 court reporter didn't record everything. And we were back
12 there numerous amounts of hours, and I'm -- what I'm -- what
13 I don't want to happen is we get down the road and this
14 isn't into the record.

15 THE COURT: Well -- but they are, because you have
16 handed them up and you made them part of the record. And,
17 of course, I went over with you all that. It may not be on
18 the record, but this morning you put it all on the record
19 back there as you requested those. And so I think they are
20 part the record, but go ahead. I'm not trying to prevent
21 from you doing that. I think you have already done that,
22 but go ahead.

23 MR. STARNES: Your Honor, that was request to
24 charge No. 8.

25 Request to charge No. 15, State v. Bellamy, 359

1 S.E. 2d 63, a 198 decision.

2 It also cites State v. Fuller, 377 S.E. 2d 328.
3 "You may consider prior instances of violence or of
4 unprovoked aggression by the assailant or assailants
5 involved."

6 THE COURT: I charged that. I cited it. I
7 cited -- I charged that. I guess maybe you weren't
8 listening, Mr. Starnes. I decided to charge that as I was
9 going through my charge and added to it. I guess you
10 overlooked that.

11 MR. STARNES: Okay. Defense Exhibit No. 16,
12 citing Allen v. United States, 157 U.S. 675. It's an old
13 case. It's an 1895 decision.

14 THE COURT: Well, I know what they all stand for.
15 Just hand them up, sir, and let's make them a court
16 exhibits. The appellate court will have them. They can
17 review those cases, if they wish. You don't have to put
18 them all on the record at this time. Just make them a part
19 of the record. Make them court exhibits. I have reviewed
20 them all. I declined to make any further changes in my
21 charge, but your request are noted for the record. Just
22 hand them up and they will be part of the record.

23 MR. STARNES: Your Honor, I am just doing what I
24 thought I was supposed to do.

25 THE COURT: Okay.

1 MR. STARNES: I'm not trying to be frustrating.

2 THE COURT: Well, I understand. There is no
3 requirement that you stand up and read every case that you
4 are relying on. I have already looked at those cases. I
5 reviewed them. I did that for hours last night, as you well
6 know.

7 MR. STARNES: Your Honor, I just wanted to make
8 sure I'm protected also. I know that we discussed it at
9 length my request for voluntary manslaughter. There is some
10 cites here.

11 THE COURT: Okay. I understand you requested
12 that, and the record will reflect that I went through
13 substantial reasons of why I was not going to submit that
14 issue to the jury.

15 I would note it for the record the record is clear
16 that the defendant initially did not specifically request
17 the court to charge that when I asked them, but rather just
18 took the position that the court should charge the law,
19 based on the facts of the case, and didn't specifically
20 request it.

21 Now, before we started arguments this morning,
22 once I had ruled I was not going to submit voluntary
23 manslaughter to the jury and the defense had not
24 specifically requested it, once I had made that decision,
25 then the defense changed its position and said you want to

1 specifically request it.

2 The record will so reflect that you have
3 specifically requested it and I declined to charge it. And
4 anything that you wish to hand up in the way of supporting
5 that, make it a part of the record, you are welcome to do
6 that.

7 MR. STARNES: Your Honor, it was -- it was never
8 our intention to withdraw any request regarding voluntary
9 manslaughter.

10 THE COURT: I never said that you withdrew it or
11 requested it. You never made the request. And so when I
12 asked you if you were specifically requesting that, your
13 answer was that you wished the court to instruct the
14 appropriate law, based on the facts of the case. And you
15 turned it over to the defense attorney then to state to the
16 court any reasons why you thought the facts might justify a
17 charge on that. But each time you specifically took the
18 position that you were not specifically requesting that.
19 You just wished the court request the law.

20 Now, this morning before final arguments, before I
21 instructed them on the jury on their charge, once I had
22 ruled as to my reasons for not submitting it, then you
23 changed your position and said that you now want to
24 specifically request that I charge voluntary manslaughter.
25 And that's noted for the record. You have requested it and

1 I am declining to charge it, but it's part of the record.

2 Anything else?

3 MR. STARNES: As long as I'm protected, Your
4 Honor, that's all.

5 THE COURT: You know, the record I think is
6 protected, but if you can -- if you wish to offer a court
7 exhibit, anything that you have shown to the court, you are
8 welcome to do that.

9 I have incorporated in my charge most of what you
10 requested. Some I have not, I don't think it's appropriate,
11 but the great majority of is it incorporated in my charge,
12 included in the charge. And so -- but anything that you
13 believe I did not charge that you requested, you can make
14 those court exhibits, and they will become part of the
15 record for appellate purposes. You will be protected on the
16 record.

17 MR. STARNES: Yes, sir.

18 THE COURT: All right.

19 MR. STARNES: One other thing, Your Honor. I
20 wanted to use the animation for the closing argument. I
21 understand it doesn't go back to the jury room as, you know,
22 substantive evidence, but I would just like the record to
23 reflect that I endeavored to use the animation in closing
24 argument.

25 THE COURT: The record will so reflect.

1 And the record should also reflect that in making
2 my ruling on whether you would be able to use that video
3 animation or not, you had requested to use it twice - once
4 to be able to show it all the way through first, and then to
5 be able to go through it in detail with stopping and
6 starting so that you could illustrate any point that you
7 wanted to make. That was your request. I allowed you to do
8 that.

9 Now, when you finished your argument, went back to
10 the bench. Then you said "I want them to review the
11 animation one more time." And so that was not part of what
12 was originally requested, and it is not what the court
13 originally agreed to allowing you to use the video
14 animation. And so your request was to simply put it up
15 there and run again for the jury and I declined to do that.
16 The record will so reflect that.

17 MR. STARNES: Thank you, Your Honor.

18 THE COURT: Anything else?

19 MR. STARNES: No, sir.

20 THE COURT: All right.

21 Counsel, Mr. Starnes, y'all check to make sure --
22 before the exhibits go back, I want to make sure only those
23 exhibits that were admitted into the record go back to the
24 jury room, please.

25 (Off the record)

1 (Back on the record)

2 THE COURT: All right. Are all the exhibits
3 accounted for all?

4 COURT REPORTER: Yes, sir.

5 THE COURT: All those are going back.

6 Counsel, do you agree that the exhibits are all
7 accounted for?

8 MR. COLER: Yes, sir.

9 THE COURT: Mr. Starnes?

10 MR. STARNES: Yes, sir.

11 THE COURT: Do you agree all the exhibits are
12 perfect for that?

13 MR. STARNES: Yes, sir.

14 THE COURT: Thank you. You may take them back and
15 tell them to begin deliberating.

16 We will be at ease.

17 (Whereupon, at 11:45 a.m. the jury panel was
18 instructed to begin deliberations)

19 (Whereupon, at 11:45 a.m., proceedings were
20 recessed, pending the verdict of the jury panel)

21 (Whereupon, at 3:00 p.m., proceedings were
22 reconvened)

23 THE COURT: Are you ready Mr. Court Reporter?

24 COURT REPORTER: Yes, sir.

25 THE COURT: Please bring the jury in please, sir.

1 (Whereupon, at 3:01 p.m., the jury panel returned
2 to open court)

3 THE COURT: Mr. Foreman, ladies and gentlemen of
4 the jury, I have your note and question that you asked,
5 "what was the caliber of the bullet found in the glove
6 compartment?"

7 And based on that, we have noted two places where
8 there is testimony concerning caliber of bullets, and we are
9 going to ask you whether you want us to replay that
10 testimony to you, and you indicated that you do want to hear
11 it. So we are going to do that at this time. And what will
12 happen is the court reporter will actually read to you the
13 testimony from two witnesses in that regard.

14 All right.

15 (Whereupon, the court reporter read back the
16 requested testimony to the jury panel)

17 THE COURT: Let me ask, Mr. Foreman, ladies and
18 gentlemen of the jury, you were nodding?

19 JURY FOREMAN: Yes, sir.

20 THE COURT: Do you want to hear it more? I think
21 there was one other reference to it? Do you want to hear
22 more from the another witness?

23 (Whereupon, the court reporter read back the
24 requested testimony to the jury panel)

25 THE COURT: Mr. Foreman, ladies and gentlemen of

1 the jury, I hope that is the response to the question that
2 you asked.

3 If you need any additional information, you can
4 request that in the same way that you requested this.

5 Please retire back to the jury room to resume your
6 deliberations.

7 (Whereupon, at 3:05 p.m., the jury panel returned
8 to the jury room to continue deliberations)

9 THE COURT: Any exceptions to what was provided to
10 the jury? We agreed to that in advance.

11 MR. GOWDY: Not from the State.

12 THE COURT: Defense?

13 MR. STARNES: Not from the defense, Your Honor.

14 THE COURT: And we will be at ease, and we will
15 make this note a court exhibit, please, sir.

16 (Whereupon, at 3:07 p.m., proceedings were
17 recessed pending the verdict of the jury panel)

18 (Memorandum in Support of Defendant's Request to
19 Charge the Doctrine of Imperfect Self-Defense marked as
20 Court's Exhibit No. 11 for identification)

21 (Defendant's Request to Charge A marked as Court's
22 Exhibit No. 12 for identification)

23 (Defendant's Request to Charge B marked as Court's
24 Exhibit No. 13 for identification)

25 (Defendant's Request to Charge C marked as Court's

1 Exhibit No. 14 for identification)

2 (Defendant's Request to Charge D marked as Court
3 Exhibit No. 15 for identification)

4 (Defendant's Request to Charge No. 1 marked as
5 Court's Exhibit No. 16 for identification)

6 (Defendant's Request to Charge No. 2 marked as
7 Court's Exhibit No. 17 for identification)

8 (Defendant's Request to Charge No. 3 marked as
9 Court's Exhibit No. 18 for identification)

10 (Defendant's Request to Charge No. 4 marked as
11 Court's Exhibit No. 19 for identification)

12 (Defendant's Request to Charge No. 5 marked as
13 Court's Exhibit No. 20 for identification)

14 (Defendant's Request to Charge No. 6 marked as
15 Court's Exhibit No. 21 for identification)

16 (Defendant's Request to Charge No. 7 marked as
17 Courts' Exhibit No. 22 for identification)

18 (Defendant's Request to Charge No. 8 marked as
19 Court's Exhibit No. 23 for identification)

20 (Defendant's Request to Charge No. 9 marked as
21 Court's Exhibit No. 24 for identification)

22 (Defendant's Request to Charge No. 10 marked as
23 Court's Exhibit No. 25 for identification)

24 (Defendant's Request to Charge No. 11 marked as
25 Court's Exhibit No. 26 for identification)

1 (Defendant's Request to Charge No. 12 marked as
2 Court's Exhibit No. 27 for identification)

3 (Defendant's Request to Charge No. 13 marked as
4 Court's Exhibit No. 28 for identification)

5 (Defendant's Request to Charge No. 14 marked as
6 Court's Exhibit No. 29 for identification)

7 (Defendant's Request to Charge No. 15 marked as
8 Court's Exhibit No. 30)

9 (Defendant's Request to Charge No. 16 marked as
10 Court's Exhibit No. 31 for identification)

11 (Defendant's Request to Charge No. 17 marked as
12 Court's Exhibit No. 32 for identification)

13 (Defendant's Request to Charge No. 18 marked as
14 Court's Exhibit No. 33 for identification)

15 (Defendant's Request to Charge No. 19 marked as
16 Court's Exhibit No. 34 for identification)

17 (Defendant's Request to Charge No. 20 marked as
18 Court Exhibit No. 35 for identification)

19 (Defendant's Request to Charge No. 22 marked as
20 Court's Exhibit No. 36 for identification)

21 (Defendant's Request to Charge No. 23 marked as
22 Court's Exhibit No. 37 for identification)

23 (Defendant's Request to Charge No. 24 marked as
24 Court's Exhibit No. 38 for identification)

25 (Defendant's Request to Charge No. 25 marked as

1 Court's Exhibit No. 39 for identification)

2 (Defendant's Request to Charge No. 26 marked as
3 Court's Exhibit No. 40 for identification)

4 (Defendant's Request to Charge No. 27 marked as
5 Court's Exhibit No. 41 for identification)

6 (Defendant's Request to Charge No. 28 marked as
7 Court's Exhibit No. 42 for identification)

8 (Defendant's Request to Charge No. 29 marked as
9 Court's Exhibit No. 43 for identification)

10 (Defendant's Request to Charge No. 30 marked as
11 Court's Exhibit No. 44 for identification)

12 (Defendant's Request to Charge No. 31 marked as
13 Court's Exhibit No. 45 for identification)

14 (Defendant's Request to Charge No. 32 marked as
15 Court's Exhibit No. 46 for identification)

16 (Defendant's Request to Charge No. 33 marked as
17 Court's Exhibit No. 47 for identification)

18 (Defendant's Request to Charge No. 34 marked as
19 Court's Exhibit No. 48 for identification)

20 (Defendant's Request to Charge No. 35 marked as
21 Court's Exhibit No. 49 for identification)

22 (Defendant's Request to Charge No. 36 marked as
23 Court's Exhibit No. 50 for identification)

24 (Defendant's Request to Charge No. 37 marked as
25 Court's Exhibit NO. 51 for identification)

1 (Defendant's Request to Charge No. 38 marked as
2 Court's Exhibit No. 52 for identification)

3 (Jury Note marked as Court's Exhibit No. 53 for
4 identification)

5 (Whereupon, at 3:20 p.m., proceedings were
6 reconvened)

7 THE COURT: We have all the alternates up?

8 THE BAILIFF: Yes, sir.

9 THE COURT: Please bring all the jurors in.

10 (Whereupon, at 3:23 p.m., the jury panel returned
11 to open court to report its verdict)

12 THE COURT: Mr. Foreman, have you and the jury
13 reached a unanimous verdict in this case?

14 JURY FOREMAN: Yes, sir.

15 THE COURT: Could you please hand the verdict
16 forms up to the bailiff?

17 The clerk will please publish the verdicts.

18 THE CLERK: Thank you, Your Honor.

19 In the matter of the State versus Norman Starnes,
20 96-GS-32-3339, we, the jury, find the defendant guilty of
21 murder.

22 In the State versus Norman Starnes, 96-GS-32-3339,
23 Jared Lee Champlin, we, the jury, find the defendant guilty
24 of murder.

25 In the State versus Norman Starnes, 96-GS-32-3339,

1 we, the jury, find the defendant guilty of possession of a
2 firearm during the commission of a crime.

3 And, Your Honor, I believe the first form I read,
4 State versus Norman Starnes, the verdict form for William C.
5 Welborn, we, the jury, find the defendant guilty of murder.

6 Mr. Foreperson, ladies and gentlemen of the jury,
7 was this your verdict and is this still your verdict now?
8 If it is, please signify by raising your right hand.

9 Your Honor, it is signed by the foreperson for
10 each form.

11 THE COURT: I couldn't see some of the jurors.
12 All the jurors raised your hand, is that correct?

13 (Whereupon, all the jurors raised their hand)

14 THE COURT: Let the record reflect all jurors
15 raised their hand who were on the jury panel.

16 Any questions of the jury panel, from the State?

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

18 THE COURT: Any questions of the jury panel from
19 the defense?

20 MR. STARNES: None from the defense, Your Honor.

21 THE COURT: Mr. Foreman, all right, just let me
22 ask you to please just to retire back to the jury room for
23 the moment and we will decide where we go from here, when we
24 are going to get back together.

25 And I'll ask the alternates to be kept separate,

1 please. If you put them somewhere separate here. All
2 right.

3 Please retire to the jury room. We'll be with you
4 in just a minute.

5 (Whereupon, at 3:25 p.m., the jury panel returned
6 to the jury room)

7 (Whereupon, at 3:25 p.m., the alternate jurors
8 were taken to their separate room)

9 THE COURT: Any matter we need to take up out of
10 the presence of the jury at this time, from the State?

11 MR. GOWDY: Not from the State, Your Honor.

12 THE COURT: From the defense?

13 MR. STARNES: Your Honor, I'm just not going to
14 waive my 24 hour cooling off period.

15 THE COURT: Sir?

16 MR. STARNES: We are going to have a 24 hour
17 cooling off period?

18 THE COURT: Absolutely, sir.

19 MR. STARNES: Could we start Friday morning, or
20 when does Your Honor --

21 THE COURT: Well, that's what we are going to
22 discuss in just a moment, but did you have any other motions
23 you would like to make at this time, or any other matter you
24 want to take up at this time?

25 MR. STARNES: No, sir.

1 THE COURT: Then let me ask you to approach just a
2 minute and let's discuss the time.

3 Madam Clerk, if you would as well.

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

6 THE COURT: All right. We will be adjourned until
7 3:30 p.m. tomorrow.

8 I would ask everyone else from both sides to meet
9 with me at two o'clock in chambers. All right.

10 MR. GOWDY: Thank you, Your Honor.

11 THE COURT: Thank you.

12 (Whereupon, at 3:32 p.m., the jury panel returned
13 to open court)

14 THE COURT: Mr. Foreman, ladies and gentlemen of
15 the jury, the law requires that we have a 24 hour waiting
16 period before we start the second phase, the penalty phase
17 of the trial. And so I'm going to excuse you and I'm going
18 to ask you to return back to the jury room tomorrow at 3:30.
19 Tomorrow at 3:30. It's a mandatory 24 hour waiting period.
20 We have no control over that. And so that's what I would
21 ask you to do.

22 I will remind you on the overnight recess or after
23 you leave court today, again, please do not read, listen to,
24 or watch any media account of this trial. It's still
25 extremely important that you not do that.

1 In somebody wants to save it for you until after
2 the trial, you are welcome to read, listen to, or watch any
3 media account after the trial. But in the meantime do not
4 do that.

5 When we ask you to return back tomorrow, the
6 twelve jurors will be together. The alternates need to
7 return as well, and they will be maintained separately.
8 Well, I beg your pardon. I guess we will put them all back
9 together tomorrow when you come in. So I guess all of you
10 will come to the same jury room.

11 So when you report back tomorrow, the bailiffs
12 will show you where to come. Just come back to the jury
13 room and be there at 3:30. We will try to get started
14 promptly at 3:30.

15 Thank you, Mr. Foreman, ladies and gentlemen. You
16 are free to go at this time.

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

19 THE COURT: All right. We will be adjourned.
20 We'll see you tomorrow at two o'clock. Thank you.

21 (Whereupon, proceedings were adjourned to November
22 15, 2007)

23

24

25

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

3
4 THE STATE)
5 -vs-) TRANSCRIPT OF RECORD
6 NORMAN EDWIN STARNES,) 1996-GS-32-3339
7 Defendant.) NOVEMBER 15, 2007
8) Lexington, South Carolina

9 (VOLUME IX)

10 B E F O R E:

11 THE HONORABLE LEE S. ALFORD, JUDGE. ; and a jury.
12

13
14 A P P E A R A N C E S:

15 HAROLD "TREY" GOWDY, III, SOLICITOR
16 ROBERT P. COLER, ASSISTANT SOLICITOR
17 DERRICK BULSA, ASSISTANT SOLICITOR
ATTORNEYS FOR THE STATE

18 MR. NORMAN EDWIN STARNES
19 DEFENDANT APPEARING PRO SE

20 JOHN DELGADO, ESQUIRE
APPEARING WITH THE DEFENDANT

21 WILLIAM NETTLES, ESQUIRE
22 APPEARING WITH THE DEFENDANT

23 Michael R. Watts
24 Circuit Court Reporter
25

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(NOVEMBER 5, 2007)

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1 (PROCEEDING, November 15, 2007)
2 (Traffic Tickets marked as State's Exhibit No. 73
3 for identification).
4 (Traffic Tickets marked as State's Exhibit No. 74
5 for identification)
6 (Traffic Tickets marked as State's Exhibit No. 75
7 for identification)
8 (Traffic Tickets marked as State's Exhibit No. 76
9 for identification)
10 (Traffic Tickets marked as State's Exhibit No. 77
11 for identification)
12 (Indictment marked as State's Exhibit No. 77 for
13 identification)
14 (Photograph marked as State's Exhibit No. 79 for
15 identification)
16 (Photograph marked as State's Exhibit No. 80 for
17 identification)
18 (Photograph marked as State's Exhibit No. 81 for
19 identification)
20 (Photograph marked as State's Exhibit No. 82 for
21 identification)
22 (Photograph marked as State's Exhibit No. 83 for
23 identification)
24 (Photograph marked as State's Exhibit No. 84 for
25 identification)

1 (Photograph marked as State's Exhibit No. 85 for
2 identification)

3 (Photograph marked as State's Exhibit No. 86 for
4 identification)

5 (Photograph marked as State's Exhibit No. 87 for
6 identification)

7 (Photograph marked as State's Exhibit No. 88 for
8 identification)

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10 identification)

11 (Photograph marked as State's Exhibit No. 90 for
12 identification)

13 (Photograph marked as State's Exhibit No. 91 for
14 identification)

15 (Photograph marked as State's Exhibit No. 92 for
16 identification)

17 (Photograph marked as State's Exhibit No. 93 for
18 identification)

19 (Photograph marked as State's Exhibit No. 94 for
20 identification)

21 (Photograph marked as State's Exhibit No. 95 for
22 identification)

23 (Photograph marked as State's Exhibit No. 96 for
24 identification)

25 (Photograph marked as State's Exhibit No. 97 for

1 identification)

2 (Photograph marked as State's Exhibit No. 98 for
3 identification)

4 (Photograph marked as State's Exhibit No. 99 for
5 identification)

6 (Photograph marked as State's Exhibit No. 100 for
7 identification)

8 (Photograph marked as State's Exhibit No. 101 for
9 identification)

10 (Photograph marked as State's Exhibit No. 102 for
11 identification)

12 THE COURT: Mr. Starnes approach just a minute.
13 I need to talk to him privately.

14 (Whereupon, the defendant approached the bench for
15 an off-the-record discussion)

16 THE COURT: We got all our jurors?

17 THE BAILIFF: Yes, sir.

18 THE COURT: All 15?

19 THE BAILIFF: Yes, sir, Your Honor.

20 THE COURT: Wait just a minute.

21 Are we ready to proceed?

22 MR. GOWDY: The State is ready, Your Honor.

23 THE COURT: Mr. Starnes?

24 MR. STARNES: The defense is ready, Your Honor.

25 THE COURT: Please bring the jurors in.

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

3 THE COURT: Good afternoon, Mr. Foreman ladies and
4 gentlemen of the jury. I hope had you a pleasant night last
5 night. We are now ready to resume with the trial.

6 As you know, because the defendant Norman E.
7 Starnes was found guilty of murder charges, it is necessary
8 that this separate proceeding be conducted. The law
9 requires there be a 24 hour recess between the first phase
10 of the trial and the second phase of the trial, and a
11 conviction for murder is issued, was found by the jury, so
12 we are going to this separate sentencing proceeding.

13 In this sentencing proceeding, the State and
14 defendant will have the opportunity to present additional
15 evidence in extenuation, aggravation, or mitigation, and
16 both sides will have an opportunity to present arguments for
17 and against the death penalty.

18 The burden of proof is upon the State to prove the
19 existence of at least one statutory aggravating circumstance
20 beyond a reasonable doubt.

21 The defendant has no burden of proof.

22 South Carolina Code Section 16-3-20 provides that
23 if during this sentencing proceeding the State proves and
24 you find beyond a reasonable doubt the existence of one
25 statutory aggravating circumstance, you, the jury, will

1 recommend a sentence of either life in prison without the
2 possibility of parole or the death penalty.

3 The statute uses the word recommendation and it
4 provides that the jury must recommend the sentence. Let me
5 tell you, however, that it is not a recommendation. It is
6 the imposition of the sentence. I'm required by law to
7 follow the recommendation that you make when you find the
8 existence of a statutory aggravating circumstance. So
9 whatever recommendation you make, that will be the sentence
10 that I would impose. They refer to it as a recommendation,
11 but, in fact, I, as the trial judge, am required to impose
12 the sentence that the jury recommends, if a statutory
13 aggravating circumstance is proved beyond a reasonable
14 doubt.

15 Now, we are going to go, as I instructed you
16 earlier when we began the guilt phase of the trial, to
17 please not -- to keep an open mind, not make up your mind
18 about any issue, but keep an open mind and wait until you
19 have heard all the testimony and evidence during this phase
20 of the trial before you start making up your mind and
21 forming an opinion as to what to be done. There is a lot of
22 information to be provided to you, so please keep an open
23 mind. Please do not make up your mind until you have had an
24 opportunity to receive all of the information provided by
25 each side and the court has had an opportunity to instruct

1 you on how to receive that information and the law in that
2 regard.

3 As I had instructed you throughout the trial, and
4 I will continue to do that, please do not, again, read,
5 listen to, or watch any media account of this trial until
6 after the trial is over.

7 If there should be someone who wants to save it
8 for you, you are welcome to read, listen to, or watch any
9 media account after the trial is over.

10 Please do not begin discussing the case again
11 until after all the information is in and I have instructed
12 you upon the law and you began your deliberations. Do not
13 discuss it among yourselves with anyone else you might see
14 on the break from court, including family or friends.

15 I would tell you that it appears that we are going
16 to go -- we are going to work Saturday. And it appears that
17 we will probably be working at least Monday. I'm telling
18 you so you can kind of plan in advance. I know you do not
19 want to hear that news, but I'll tell you in advance that
20 you can plan accordingly. It may very well be -- we will
21 see how we go and we maybe will discuss Saturday whether we
22 want to try to work maybe Sunday afternoon or not, but I
23 guess it kind of depends on how we are going at that point,
24 and we may discuss that with you. I may discuss that with
25 you a little later, but right now it appears that we will be

1 certainly be working tomorrow and Saturday and probably on
2 Monday, so you can plan accordingly.

3 Thank you for your kind attention, Mr. Foreman,
4 ladies and gentlemen of the jury. I now ask you to listen
5 attentively as counsel address you in opening statement in
6 this phase of the proceeding.

7 MR. BULSA: If it please the court, Your Honor?

8 THE COURT: Solicitor.

9 MR. BULSA: The State would first move to
10 incorporate all the evidence from the previous phase into
11 this phase.

12 THE COURT: That motion is granted.

13 MR. BULSA: Thank you.

14 Good afternoon, ladies and gentlemen.

15 Bill Welborn, as you have heard, was a retired
16 military man. He served his country for 25 years. Over 25
17 years in the United States Air Force. When he left that Air
18 Force, he began a business doing what he loved. He tried to
19 grow a business at the Drop Zone for skydiving.

20 Jared Champlin was a young man who had just
21 discovered his calling in life. He discovered a love for
22 skydiving. He met Bill Welborn. Bill Welborn took him
23 under his wing as an apprentice and allowed him to join him
24 in his business.

25 Jared Champlin was trying to get a new start on

1 his life. He left his family from the Upstate of South
2 Carolina and moved down to Lexington. They were going to
3 work together. As you had heard, they actually lived
4 together for a short while. As you know, they died
5 together.

6 Ladies and gentlemen, you have heard how on
7 January the 8th of 1996, their lives came to a screeching
8 halt. Their parachutes would open no more.

9 This phase of the trial is about what should
10 happen to the defendant.

11 The law allows for the punishment of death under
12 these circumstances.

13 The judge mentioned the aggravating circumstances
14 to you. I submit to you, ladies and gentlemen, you have
15 already decided one of those aggravating circumstances. The
16 law in South Carolina allows for the death of someone if
17 they committed two murders. And you have already found him
18 guilty of the murder of Bill Welborn and the murder of Jared
19 Champlin.

20 You will hear evidence. You will hear about how
21 the defendant had a disregard for the law. You will hear
22 things you didn't hear in the first phase, based on the
23 Rules of Evidence.

24 Recall how the defendant brought in the drug use,
25 or tried to insinuate the drug use of these two individuals.

1 In this phase, ladies and gentlemen, you will hear about his
2 drug use, his addiction the crack cocaine, during the time
3 period in which these actions occurred.

4 You will hear about why it took Gwen some time to
5 come forward. You will hear about the fear and control she
6 was under by that man.

7 Ladies and gentlemen, you just heard me stand up
8 and ask the judge to incorporate all the evidence, which
9 includes the exhibits and testimony. I ask that you recall
10 all that. Recall the lies, the deception, the coverup, how
11 this man treated this crime. Recall the callousness in
12 which he treated the bodies of Bill and Jared. Recall how
13 he pistol whipped them, urinated on them, dumped them on the
14 ground, left them to the exposure for animals.

15 Ladies and gentlemen, as I was preparing this
16 short brief opening statement, a picture came to mind. It's
17 one that -- you have already seen it, and you may have
18 already picked up on this yourself. The vehicle, a Chevy
19 Caprice, was used to dispose of these bodies. Notice the
20 front tag: "Don't wait for the hearse to take you to
21 church." This vehicle became the hearse for Bill Welborn
22 and Jared Champlin, but they weren't taken to a church.
23 They weren't given a proper burial. Their families weren't
24 allowed to have a proper visitation. Their families
25 received decomposed bodies. Their families suffered,

1 wondering and waiting to learn the fate of their loved ones.

2 This case is about what should happen to the
3 defendant. I submit to you that now is the time to consider
4 what the proper punishment should be. Thank you.

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

6 THE COURT: Yes, sir.

7 MR. STARNES: Good afternoon, ladies and gentlemen
8 of the jury. We have reached that stage.

9 There is no doubt that I caused a lot of grief and
10 a lot of pain to Mr. Welborn's family and Mr. Champlin's
11 family.

12 You are going to hear evidence of a drug addiction
13 that I had for eight months. A drug called crack cocaine.
14 I had a drug addiction.

15 The penalty phase: Life without the possibility
16 of parole, or the death penalty. That's your own individual
17 decision.

18 I can't change what happened. There is nothing I
19 can do to do that. I wish I could. I can't change what
20 happened on January the 8th.

21 You are going to hear evidence from Ms. Ott about
22 a violent argument we had on the 26th of May. You are going
23 to hear evidence of a stolen vehicle that was recovered off
24 my property in Pelion.

25 Life without the possibility of parole or the

1 death penalty. That's your individual decision.

2 You are going to hear evidence from Mr. Welborn's
3 family. You are going to hear them testify. And there is
4 no doubt that I did cause them a lot of pain and a lot of
5 grief, but I can't change that and I'm deeply sorry for it.

6 You are going to also hear something called
7 mitigation.. Mitigation is things good about the defendant.
8 Maybe some school teachers, my upbringing. I was raised by
9 my mother, a single parent. And I drove a school bus at the
10 Brooklyn-Cayce High School. In 1985, I was school bus
11 driver of the year.

12 Then I opened the business in Pelion the Panther
13 Parlor and did pretty good, until I had an experience with
14 crack cocaine and that's when my life went downhill.

15 We respect your verdict, but the decision whether
16 to put me to death or give me life without parole is yours,
17 and your individual decision.

18 This part of the penalty phase is going to be very
19 emotional. It's going to be very emotional for everyone in
20 the courtroom. Thank you.

21 THE COURT: Please call your first witness.

22 MR. COLER: May it please the court, the State
23 calls Evelyn Chapel.

24 EVELYN CHAPEL, having been first duly sworn,
25 testified as follows:

1 THE CLERK: Please take the stand and state your
2 full name and spell your last name for the record, please.

3 THE WITNESS: My name is Evelyn Miles -- Evelyn
4 Marie Miles Chapel, C-H-A-P-E-L.

5 DIRECT EXAMINATION BY MR. COLER:

6 Q. Ms. Chapel, tell us where you presently live.

7 A. Montana.

8 Q. How long have you been in Montana?

9 A. 11 years.

10 Q. Before moving to Montana, where did you live?

11 A. In West Columbia, South Carolina.

12 Q. And you spent a considerable portion of your life in
13 the West Columbia, Lexington County area of South Carolina?

14 A. Yes.

15 Q. You moved to Montana on approximately what date? When
16 did you go?

17 A. I left here June 11th of '96.

18 Q. How close in time was that to the date Gwen Ott came
19 forward to the authorities and told them everything that
20 they knew about Norman Starnes?

21 A. Approximately a week and a half later, two weeks.

22 Q. How much of your decision was made based on those
23 events?

24 A. A good portion of it.

25 Q. Do you know Norman Starnes?

1 A. Yes, sir.

2 Q. Had you worked for Norman Starnes back in 1995, 1996?

3 A. Yes, sir.

4 Q. Do you remember when you started working for him?

5 A. It was about the early part of January of '95.

6 Q. Okay. And where did you work for him?

7 A. At the Panther Parlor in Pelion.

8 Q. What did you do for him at the Panther Parlor?

9 A. Cooked.

10 Q. And how long did you stay as an employee of Norman
11 Starnes at the Panther Parlor?

12 A. Until approximately April of the following year.

13 Q. If I were to direct your attention to April 13th of
14 1996, as the end of your employment with Norman Starnes,
15 would you agree with me?

16 A. Yes.

17 Q. That date sticks out in your mind?

18 A. Yes.

19 Q. We will get to that in a minute.

20 Before going to work for Mr. Starnes at the Panther
21 Parlor, did you know him before that?

22 A. Yes.

23 Q. How did you know him and where would you see him?

24 A. We both worked together. Well, we didn't work
25 together. We worked for K-Mart, and he was dating a young

1 lady who worked there. Periodically he would come into the
2 restaurant, you know, and they would eat lunch and --

3 Q. All right. You were working for K-Mart, correct me if
4 I'm wrong, back in 1987?

5 A. I started -- yeah, about 1987.

6 Q. And between '87 and 1995, before you went to work for
7 the defendant, would you see him occasionally?

8 A. Yeah.

9 Q. And what was the nature of your relationship or your
10 contact?

11 A. My ex-husband owned a bar in Pelion, right outside of
12 Pelion, and he had come in, not quite as often, but a few
13 times, and, you know, I kind of recognized him. He
14 recognized me. We got to talking and we -- my ex-husband
15 and I would, you know, order food from the restaurant, and,
16 you know, he would come and deliver it, or either I would
17 pick it up.

18 Q. What was your ex-husband's name?

19 A. Al Miles.

20 Q. Al Miles?

21 A. Uh-huh.

22 Q. And you would be in the restaurant bar that your
23 ex-husband was running. What would you do? What was your
24 job at the bar? What would you be there for?

25 A. Just -- mainly just to help the customers, you know,

1 when he was off doing running errands, or something. You
2 know I wouldn't work that often, but just mainly on my days
3 off I would help him out, or during the evenings when I
4 would take him dinner down.

5 Q. Okay. Did you ever have an occasion to meet the two
6 skydivers, Bill and Jared?

7 A. Yes.

8 Q. What can you tell the jury about those two guys?

9 A. They were very nice. You know, very -- they just never
10 met a stranger. I mean, they just acted like they knew
11 everybody and they were very, very polite guys. Just --

12 Q. Where would you see them?

13 A. The first time I met them was in -- I can't even think
14 of the name of the town, but -- Swansea.

15 Q. Swansea?

16 A. Swansea, yeah. They had done a jump for Christmas for
17 the kids and we saw them jumping out of the plane, you know,
18 in Santa suits and -- it was pretty cool.

19 Q. Who did you go to that Santa jump with, do you
20 remember?

21 A. It was me, Gwen, my ex-husband and Norman and Tyler.

22 Q. How old was Tyler back then, about?

23 A. I think about 11, 12.

24 Q. What impact did the Santa jump have on Mr. Starnes?
25 Did you notice anything?

1 A. We were all excited about it. You know, we were just
2 all upbeat about it. It was pretty cool seeing two guys
3 jumping out of the plane in Santa suits.

4 Q. And you had occasion a couple of times after that to
5 interact with Bill and Jared?

6 A. A couple times. Not as often as they did.

7 Q. When you say they, you mean Mr. Starnes?

8 A. Mr. Starnes and Gwen, yes.

9 Q. During the time that you knew the defendant, did you
10 know him to carry a gun?

11 A. Yes.

12 Q. And where would he carry that gun when he had it?

13 A. Most of the time he would have it under his shirt in
14 the back of his pants.

15 Q. When he wasn't carrying it under his shirt in the back
16 of his pants, where else would you have seen it?

17 A. I have actually seen it up on the dash of the car.

18 Q. Anyplace else?

19 A. Somewhere close and beside him. Somewhere that it was
20 close.

21 Q. Now, did you see him carry the gun more frequently
22 after some event?

23 A. Yeah.

24 Q. What was that event?

25 A. He was shot.

1 Q. How much more frequently would he carry the gun after
2 he got shot?

3 A. All the time.

4 Q. Do you know anything about the circumstances
5 surrounding him getting shot?

6 A. Just hearsay. Just what I heard.

7 Q. But you know he got shot?

8 A. Uh-huh.

9 Q. And went to the hospital for a gunshot wound?

10 A. Yeah. We visited him in the hospital, my ex-husband
11 and I.

12 Q. And the gun he carried, of course, it was a handgun, am
13 I correct?

14 A. Yes.

15 Q. Did you ever see him shoot that gun around you?

16 A. I didn't see it, but I heard it.

17 Q. Describe for us that event that you recall hearing him
18 shoot a gun around you.

19 A. Well, Gwen and I were clearing -- closed the
20 restaurant. We were cleaning it up. I was in the back room
21 doing some dishes and I heard somebody come in the side door
22 and I kind of glanced back and it was Norman. And I turned
23 back to do my dishes and the next thing I know, I heard this
24 pop and scared the living daylights out of me. And he just
25 laughed about it and he said "did I scare you?" And I said

1 "yeah, you scared me." I said "I hate guns," and he, you
2 know, apologized. He said he was sorry, but --

3 Q. So I understand, he fired a handgun inside the Panther
4 Parlor?

5 A. Yes.

6 Q. Did you see any reason for him to shoot that gun?

7 A. No. It was just Gwen and I there.

8 Q. What was his reaction when he fired a handgun inside
9 the Panther Parlor and scared the living daylights out of
10 you?

11 A. He just laughed.

12 Q. What can you describe for us about his demeanor around
13 that general time when that event happened?

14 A. Just wired, just like bouncing kind of off the walls
15 and never stood still. He never stuck around. He was
16 always on the go.

17 Q. Did you become aware of his use of illegal drugs at
18 sometime during your acquaintance with him?

19 A. Yes.

20 Q. Describe for us what his -- how his demeanor, his
21 behavior, how that all progressed from the use of illegal
22 drugs.

23 A. Well, like I said, he would just come in. He would,
24 you know, ask if we needed anything, and we would tell him
25 yeah, and he would be off, going off, you know, somewhere

1 else. And -- I mean, he would just -- I would ask Gwen, you
2 know, "what in the world was going on with him?" He always
3 had some in the side of his cheek or in front, and, you
4 know, she's like "I don't know." She said "it ain't no
5 telling what's going on." He was just always gone all the
6 time. I mean, he never stuck around. He come in the front
7 door and out the side door and off he would go.

8 Q. And when you say the front door and the side door, you
9 are talking about the Panther Parlor?

10 A. The Panther Parlor, yeah.

11 Q. Do you mean during the business hours that the Panther
12 Parlor was open and serving customers?

13 A. Actually most of the time when he would come in no
14 customers would be around. It would be after our lunch
15 rush.

16 Q. Was he regularly there during regular business hours
17 when the restaurant was open and serving?

18 A. No, he always found an excuse to leave.

19 Q. And who then was left to run the restaurant?

20 A. Gwen and I.

21 Q. How much were you paid as an employee of Mr. Starnes to
22 work in his restaurant?

23 A. I very seldom got paid.

24 Q. Is it fair to say that you essentially worked for tips?

25 A. Yeah.

1 Q. I'm sorry?

2 A. Yes.

3 Q. Okay. And how many days a week would you work at the
4 Panther Parlor?

5 A. Like seven days, until toward the end of it. Then it
6 would be, you know, I would get a lot of days off and --

7 Q. As a result of not getting paid regularly by Mr.
8 Starnes, did that create a financial hardship in your life?

9 A. Yes, very much so.

10 Q. As a result of that, did you eventually lose your
11 apartment that you were renting?

12 A. I was staying with a couple, and -- yeah, I -- I was
13 asked to leave because I didn't have employment or money
14 coming in.

15 Q. Tell me a little bit more about his behavior when he
16 would show up at the Panther Parlor during these infrequent
17 or irregular visits. What was his behavior like?

18 A. Just buzzing.

19 Q. I'm sorry?

20 A. Just buzzing around. Just come in and he would just
21 look at a few things and grab some money from the register
22 and off he would go again. He would say "I'll be right
23 back," and we would never see him.

24 Q. Did it appear to you that he was under the influence of
25 some sort of drug?

1 A. He was under something, but I just didn't know what.

2 Q. Did you ever become personally aware of him using
3 illegal drugs?

4 A. Yeah.

5 Q. Describe for us what you saw.

6 A. He had actually showed me how to smoke crack. And I
7 noticed that there was some Pepsi cans in the back room, and
8 I asked Gwen about them, and, you know, she I guess said
9 something to Norman, but Norman finally told me that he was,
10 you know, smoking crack, and proceeded to show me how to
11 bend the Pepsi can and put it up on top and, you know, smoke
12 it. But he flat out told me, he said, "Evelyn, don't ever
13 do this." And I said "I don't want any part of it." And
14 then we just left it at that.

15 Q. So I understand, so he essentially made a pipe out of a
16 Pepsi can?

17 A. A Pepsi can, yeah.

18 Q. And he would smoke crack?

19 A. Uh-huh.

20 Q. Did he ever show you the crack cocaine he was smoking?

21 A. Yeah.

22 Q. What did it look like?

23 A. Just like a little -- tiny little crystal like thing.

24 Just --

25 Q. And he told you what about it?

1 A. He just told me never to do it, that it wasn't no good
2 because it will ruin your life.

3 Q. Now, all the time that you worked at the Panther Parlor
4 and he would buzz in and out and you were working for tips,
5 have you ever been paid for all the time that added up for
6 all that?

7 A. Not really. I would ask him for, you know, money
8 for -- you know, my rent money. And he would give me, you
9 know, that cash, but that's about all I saw.

10 Q. How would you keep or collect the tips that you and
11 Gwen worked for at the Panther Parlor?

12 A. Well, Gwen and I would put them in a jar. And at the
13 end -- we put our tips together. At the end of the week we
14 would split it between the two of us.

15 Q. Did that tip jar ever get stolen or have any money
16 taken out of it?

17 A. Yeah, we went in there one morning and there was no
18 money whatsoever in it, and Norman finally confessed that he
19 had taken it. He had to borrow it to buy some stuff for the
20 restaurant.

21 Q. About how much money did he steal from the tip jar that
22 you and Gwen worked for that week?

23 A. I would say there was close to 40, almost \$50.

24 Q. Was that a significant amount of money to Evelyn Miles
25 Chapel back in 1996?

1 A. Yeah. Yes, it was.

2 Q. Was that going to be used for your rent?

3 A. Yeah.

4 Q. Your food?

5 A. Uh-huh.

6 Q. Your clothing?

7 A. Yeah.

8 Q. Transportation?

9 A. All -- Gwen was -- yeah, Gwen and Norman brought me
10 back and forth to work, so I didn't have to worry about the
11 transportation part.

12 Q. During this time of him buzzing around the restaurant,
13 showing up there regularly, did you ever learn about a
14 stolen car incident?

15 A. Yeah.

16 Q. Tell us what -- involving Mr. Starnes?

17 A. Which part do you want? When we found out about the --

18 Q. Tell us what you know about the stolen car involving
19 Mr. Starnes.

20 A. Well, he had actually one day had showed my ex-husband
21 and I the car that he had and it was back behind his house
22 in the woods and he had it all set up to where if you went
23 by, you wouldn't even know it was there. And then, you
24 know, it stayed there for quite awhile. A long time.

25 And one night Norman had made a comment to me that he

1 had stole the car. This was after Gwen's original car was
2 repossessed. Then that car came out. And he had told me he
3 was high on Vodka, but he had told me that he had gone to
4 test drive a car and when they went back to the -- take it
5 back to the car lot, he had thrown the keys into some
6 bushes, because there was nobody around. None of the car
7 salesmen were around. And that one of the car salesmen come
8 out to approach him and he had told him that he had give the
9 keys to somebody else and he had left. And later that night
10 he said he went back and got the car because he knew where
11 the keys were.

12 Q. That car that he stole was to replace a car that he and
13 Gwen had repossessed?

14 A. Uh-huh.

15 Q. Was it your understanding that the car he stole was
16 very similar to the car that was repossessed?

17 A. Yeah, it was almost a spitting image, except for the
18 pinstripe down the side of it.

19 Q. Was it your understanding he stole that car and was
20 going to try to pass that off for insurance and registration
21 purposes as the car that got repossessed?

22 A. Yeah. That's my understanding, yes.

23 Q. There is another incident I want to ask you about for a
24 second.

25 Your ex-husband is Allen Miles?

1 A. Yes.

2 Q. I'm sorry?

3 A. Yes.

4 Q. Was arrested and charged with driving under the
5 influence?

6 A. Yes.

7 Q. Do you remember that incident?

8 A. Yeah.

9 Q. Tell us first about your ex-husband getting in his
10 vehicle and leaving someplace and being under the influence.
11 Were you aware of that?

12 A. Yes, I had told him not to drive to the bar, that they
13 to close it down themselves. And he kept saying "no, I need
14 to go. I need to go. I need to get it closed down." Well,
15 I get a phone call that -- I heard the phone ringing
16 probably about 1:30, two o'clock in the morning and I ain't
17 answering it because I didn't know who it was. Well, I got
18 a phone call from work -- at work the next day and that Al
19 was in jail. And so we had gotten him out.

20 And Norman -- I had found out that Norman was trying to
21 keep Al from being locked up, so he had told the police that
22 he was the one driving the vehicle.

23 Q. All right. Let me back up a little bit. The night
24 your ex-husband left your home?

25 A. Uh-huh.

1 Q. He was intoxicated?

2 A. Yes, and I told him not to drive.

3 Q. And where did he go after he left your home?

4 A. He went to close the bar down on --

5 Q. Did he get into his vehicle?

6 A. Yes, his truck.

7 Q. And did he drive away from your home?

8 A. Yes.

9 Q. Was there anybody else with him when he left your home?

10 A. No.

11 Q. And he was intoxicated?

12 A. Uh-huh.

13 Q. And then you found out later he was arrested while
14 making that drive to the bar?

15 A. Yes.

16 Q. And he was charged and had a court date set?

17 A. Yes.

18 Q. And then tell us what you know about the defendant Mr.
19 Starnes, participating in that court date and your husband's
20 DUI trial.

21 A. Well, in order to get Al out of the pickle that he was
22 in, Norman, Al and another gentleman named Ed had made up
23 plans to go into court with Al and tell them that Norman was
24 driving the vehicle, the truck, and Ed was a witness, he was
25 with him. And he was a witness that Al was not the one

1 driving the vehicle.

2 Q. Do you know if Norman Starnes in fact went and
3 testified for your husband?

4 A. Yes.

5 Q. And do you know if he told the magistrate judge
6 presiding over the trial that he was driving the vehicle?

7 A. That's what was supposed to be said. I did not go. I
8 stayed in Pelion with Gwen and we opened up and worked the
9 restaurant.

10 Q. And was that a true or a false statement by Norman
11 Starnes?

12 A. That was a false statement.

13 Q. And as a result of that, your husband, Allen Miles, was
14 actually found not guilty of DUI by the magistrate?

15 A. Yes.

16 Q. You talked about April 13th of 1996, as being your last
17 day that you ever worked for Norman Starnes and the Panther
18 Parlor?

19 A. Yes.

20 Q. Can you tell us why that date or that time frame stands
21 out in your mind?

22 A. Because we had gone to Rockingham, North Carolina to
23 see the drag races.

24 Q. Who decided to go to Rockingham, North Carolina, to see
25 drag races?

1 A. Norman.

2 Q. Who went with Norman to Rockingham?

3 A. It was Norman, Gwen, me, Gwen's son Tyler and Gerald, a
4 friend of Norman -- a good friend of Norman's.

5 Q. So Norman and Gwen go?

6 A. Uh-huh.

7 Q. And I presume they're riding in the front of the
8 vehicle?

9 A. Yes.

10 Q. And then in the back is you?

11 A. Tyler.

12 Q. Gwen's 11 year old son Tyler?

13 A. Uh-huh.

14 Q. And then who else?

15 A. Gerald.

16 Q. And y'all went to Rockingham, North Carolina?

17 A. Yes.

18 Q. Do you remember what day of the week it was?

19 A. I think we left there on a Saturday night. Saturday
20 morning.

21 Q. Okay.

22 A. Friday night we had stayed at their house and then we
23 left the next morning.

24 Q. Stayed at whose house?

25 A. At Norman and Gwen's.

1 Q. This was in April of 1996?

2 A. Uh-huh.

3 Q. Did you have any inkling what had happened in that home
4 three and a half months prior to you staying in that house?

5 A. No.

6 Q. Where did you sleep in the house?

7 A. On the couch.

8 Q. Which couch?

9 A. The couch that Jared had died on.

10 Q. You and Norman and Gwen and Tyler and Gerald woke up
11 the next morning and went to Rockingham?

12 A. Yes.

13 Q. Tell us what happened when y'all got up there on
14 Saturday afternoon.

15 A. When we got up there, everything was fine. You know,
16 we got a motel room and the five of us stayed in that room
17 and just had a good old time. You know, everything was
18 normal. You know, Norman stayed around. We all went to
19 sleep. The next morning we got up. We went into Rockingham
20 to the drag races and everything was great.

21 Q. Did something happen when it was about time to leave on
22 Sunday afternoon from the drag races?

23 A. Norman was really upset.

24 Q. Describe his demeanor, his behavior, or his physical
25 condition on Sunday afternoon.

1 A. When we got there, Norman had been gone all day off and
2 on. You know, he -- we watched more of the drag race than
3 he did.

4 When he finally come back, he was just wired. Gwen and
5 I had made a comment. You know, we told him that we would
6 go to the car to get another beer and we would be back.
7 Well, we didn't come back. We were talking to a couple of
8 security guards down there, and I went and made a comment
9 that, you know, "we need to hurry up and get back because
10 Norman is going to be mad because we are not back. We have
11 been gone too long."

12 Q. Let me stop you right there. You and Gwen left
13 Norman's presence for a period of time?

14 A. Yes.

15 Q. Was Norman in your presence the entire day prior to
16 that?

17 A. No.

18 Q. What was he doing?

19 A. He was off out somewhere. We don't know where he went.

20 Q. He was back and forth running around?

21 A. We don't even know if he was on the grounds anymore.
22 We know he did leave at one time, leave the grounds to go
23 and by a white sheet because the Saddlemeyers were
24 supposed -- they were a jet fuel and they were supposed to
25 run. Well, they weren't letting them run because of this

1 big air thing they had displayed at the end of the track.
2 And because their flames come out so much, they weren't
3 going to let them, you know, run. Well, Norman was upset
4 about that, so he had left and come back probably two, three
5 hours later. I can't remember. But I had a white sheet and
6 he had wrote on there, you know, about the Saddlemyers. And
7 him and I had walked up and down in front of the, you know,
8 patrons that were there. It didn't work, so --

9 Q. Let me make sure I understand. He went to get a sheet
10 to make a sign to encourage the promoters to let --

11 A. Let the Saddlemyers --

12 Q. Run their drag strip jet fuel car, whatever it is?

13 A. Yes.

14 Q. And that didn't work?

15 A. No.

16 Q. He spent a couple of hours leaving --

17 A. It took him a couple of hours to go and get the sheet.

18 Q. All right. But then you and Gwen -- the only time that
19 you and Gwen ever left his presence was to go and y'all went
20 to get something in the car?

21 A. I think we missed like the last half our of the run.

22 Q. What did you go to the parking lot to get, do you
23 remember?

24 A. A beer.

25 Q. Okay. And you stopped somewhere along the way before

1 going back to your seats?

2 A. Uh-huh.

3 Q. All right. And where did you stop?

4 A. We had stopped at one of the gates talking to one of
5 the security guys -- a couple of the security guys.

6 Q. While you were there talking to the security guys, what
7 was your concern?

8 A. Getting back to Norman before he got upset.

9 Q. All right. You believed that Norman would be upset
10 because you and Gwen were gone too long?

11 A. Yeah.

12 Q. Was that his normal behavior at that time?

13 A. Uh-huh.

14 Q. Is that how he treated you?

15 A. Yes.

16 Q. Is that how he treated Gwen?

17 A. When he would get mad at Gwen, he would take it out on
18 me. He wouldn't talk to me.

19 Q. Did you eventually leave talking to the two young
20 security guards and go back to Norman and where he was
21 sitting?

22 A. Well, when we finally left from talking to these guys,
23 because we were -- we were asking the security about a lot
24 of -- you know, about North Carolina, and they were asking
25 us about South Carolina. And -- well, when we started back,

1 because, you know, the race was over, Norman was sitting on
2 the hood of the car and he was pissed.

3 Q. Was he intoxicated?

4 A. Yes.

5 Q. Was he under the influence of something more than
6 alcohol?

7 A. Yes.

8 Q. Do you know specifically what it was?

9 A. No, at that time I didn't.

10 Q. What happened next?

11 A. We -- he told us -- he told me to go and find Gerald
12 and Tyler and to get to the car because we were leaving. So
13 we didn't have to go far. They were right behind me, and we
14 got in the car. And Gwen tried to explain to him and he
15 just told her to shut up and -- more or less told everybody
16 to shut up.

17 And he was too intoxicated to drive, to begin with, and
18 Gwen had made comments that, you know, he didn't need to
19 drive. And he just told her flat out to shut up.

20 So we are going down the road and Gerald had made a
21 comment that, "you know, Norman why don't you pull over and
22 let me drive," and so Norman agreed. He pulled over. So
23 they switched positions. It was Gwen and Gerald, me behind
24 her, Tyler, and then Norman.

25 And Gwen proceeded to start talking again and he told

1 her that he did not want to hear anything she had to say.
2 He told her to shut up. And she told him that she was not
3 going to shut up, that she was tired of shutting up, so
4 there was the argument.

5 Norman proceeded to reach over Gerald and telling him
6 to pull the car over and had ahold of the steering wheel.
7 Gerald is telling him to let go, because he will pull the
8 car over. When we finally get the car pulled over, Norman
9 turns the ignition off, pulls the keys out and gets out,
10 comes around to Gwen's side, opens her door and proceeds to
11 try to pull her out.

12 Tyler is screaming at him to let go of his mom. I'm
13 telling him, "you know, Norman, let go." And Gerald is
14 behind Norman telling him, "Norman, let her go. I'll get
15 here out."

16 "You better get her out. You better get this bitch out
17 of my car."

18 And while Gerald was trying to get him off, Norman had
19 reached around and put him into like a lock hold and told
20 him if he didn't back off and leave him alone, that he was
21 going to hurt him. He says "Norman, I just want to get Gwen
22 out of the car. Just let her go." So he proceeds to come
23 around. He agreed to, and he let go of Gwen.

24 He come to the back door, grabbed me, jerked my arm. I
25 hit my head, my shoulder, and I had a scrape and a bruise on

1 my elbow from him trying to pull me out. And I told him,
2 "Norman, let me go. I have got -- "I will get out of the
3 car." And he told me, he says I better get out of the car.

4 So I get out of the car. Tyler comes behind me. And
5 Tyler had asked Norman if he can have our suitcases. And he
6 opened up the trunk. I was back behind Norman and he told
7 me, he says, "don't you get in that car." I said "don't
8 worry, I'm not going to get in the car. Just give me my
9 bag." So he handed me my bag. He dropped it on the ground.
10 So I picked it up and I moved away while Tyler was getting
11 their bags.

12 He goes around to get into the driver's side, tells
13 Gerald "come on, let's go. Get in the car."

14 "No, I'm saying with these guys. I'm not leaving
15 them."

16 Norman says "fine. Do what you want." He gets in the
17 car and takes off. He left us in the middle of nowhere.

18 Somebody had seen what was going on and called for
19 help. A couple of paramedics, a male and female, had come
20 up and picked us up, took us to the fire station, checked us
21 over. Checked all the wounds that I had on me and they
22 called the sheriff's department. The sheriff's department
23 come and picked us up and we sat there until probably about
24 12:30, one o'clock. But, anyway, I had pressed charges
25 against Norman for assault.

1 And Gerald finally had gotten ahold of his sister and
2 she had come and got -- his sister and I can't remember if
3 it was another gentleman that was with her. I couldn't
4 remember if it was her husband or her boyfriend come and
5 picked us up and took us to Norman's mom's house, and that's
6 where we stayed that night.

7 When Gwen and I got into bed, she had made a comment to
8 me, she said "Evelyn, you should have never done that."

9 And I says "what are you talking about, Gwen."

10 "You shouldn't have done that." And she just started
11 turned over and went to sleep.

12 Q. That was in April of 1996?

13 A. Yes.

14 Q. That was about six weeks before Gwen came over?

15 A. Yeah.

16 Q. About six weeks later, May 26th of 1996, do you
17 remember the events of that evening?

18 A. Yeah.

19 Q. Tell us where you went that evening.

20 A. I had called Gwen because I had been throwed out of the
21 place I lived. She come -- she was staying at Tony Tindal's
22 house. She had called, talked to him and he had told her
23 that I could come and stay the night, you know, with them.
24 Well, Gwen had come and picked me up and that's where we had
25 gone.

1 Later that night Tyler and I were sitting in the
2 recliners watching a movie and Gwen was doing some other
3 things. You know, everything was great. You know, we were
4 just laughing and carrying on and all of the sudden she
5 hears something outside. So she goes and looks out the back
6 door and she comes in and she says "Norman is out there."
7 And she says "I'll be right back." She goes outside and she
8 had been out there for quite awhile, probably 15, 20
9 minutes. He started dragging her in the house.

10 Q. Did Norman come in the house before him and Gwen --

11 A. Yeah, that's right. Yeah, he did. He came in the --
12 he -- oh, he wanted to talk to her. They both sat at the
13 kitchen table. I could see -- from where I was sitting I
14 could see his back. And they sat there for probably five
15 minutes or so and then Gwen said that -- you know, he got up
16 and left. And Gwen said "she will be right back." And
17 that's -- 15, 20 minutes later, that's when they came back
18 in the house. Norman had Gwen by the wrist pulling her in.
19 She was trying her best to keep -- and he had made a comment
20 that "we are going to take care of this problem now." And
21 she was telling him "no. Don't Norman."

22 He finally let go of her, and she was soaking wet,
23 because it had been raining, full of sand. I don't know
24 what happened outside, but he stood at the doorway of the
25 kitchen just staring at me. I mean, it was just like it was

1 nobody there. He then walks over to the couch and he says
2 "how are you doing," and I said "fine." He sits down.
3 Still just a dead stare. Then he gets up. And I knew he
4 had the -- he carried that gun, and I didn't know if he had
5 it or not, but he reaches under his shirt like he's going
6 for it and I'm thinking oh, god, I'm going to die, all
7 because I pressed charges against him. Well, he pulled his
8 hand out. Thank God there was nothing there.

9 He proceeds to walk over to where I was sitting, kneels
10 down, takes my hand, puts my finger in his mouth, and I
11 think, you know, he's going to bite it off. And he asked
12 me, he says "Evelyn, do you want to fuck with me?" And I
13 said "no, Norman, I don't. I'm sorry for what I did. I
14 should have never done it." And he -- he says "you are
15 right. You don't want to fuck with me, but I forgive you."
16 The whole time I was just holding my breath. He then licked
17 my leg, told me that he still loved me, got up and out the
18 door he went.

19 Gwen followed him out and come back in a few minutes
20 later and I says "Gwen, where is he?" She said "he's passed
21 out in the car." And I told her, I said "let's get out of
22 here. We have got to get out of here. We have got to get
23 Tyler out of here." She says "I got to take a shower." I
24 said "no, don't worry about the damn shower. Let's get the
25 hell out of here before he gets up."

1 Well, she showers. We call a friend, go to her house
2 that night, tell her a little bit about what's going on.
3 She barricades the doors. And sitting there a few hours,
4 that's when Gwen confessed to what had happened to Bill and
5 Jared.

6 And sitting there listening to all of this, and I
7 finally asked her, I says, "Gwen," I says "you are going to
8 tell me if he had that gun tonight, that he would have used
9 it on me," and she said "he probably would have," and I
10 just --

11 MR. COLER: That's all questions that I have,
12 Evelyn. Please answer questions that Mr. Starnes may have.

13 CROSS EXAMINATION BY MR. STARNES:

14 Q. Hi Evelyn, how are you doing?

15 A. All right.

16 Q. Would you agree with me that when I had a drug habit,
17 that I was pretty bad person, wasn't I?

18 A. Yes, you were.

19 Q. You knew me back in 1985?

20 A. Yes.

21 Q. And we worked at K-Mart together?

22 A. Yes.

23 Q. Did you ever know me to carry a gun in 1985?

24 A. No.

25 Q. Did you ever see me drunk in 1985?

1 A. No.

2 Q. Tell the jury what type of person I was back then.

3 A. Tell you you were a great guy back then, Norman. Very
4 quiet, very -- just stayed more to yourself.

5 Q. Come to work on time most of the time?

6 A. All the time.

7 Q. Worked in receiving?

8 A. Yes.

9 Q. Never seen me act violent at K-Mart?

10 A. No.

11 Q. Evelyn, can you tell the jury when the last time was
12 that you seen me?

13 A. Personally saw you?

14 Q. Yeah.

15 A. Probably that weekend in Rockingham.

16 Q. You haven't seen me in the last 11 years?

17 A. I went to your last trial.

18 Q. You hadn't seen me since I have been incarcerated?

19 A. No.

20 Q. Do you know anything about my prison record or anything
21 like that?

22 A. No.

23 Q. You can't tell the jury anything about me from the last
24 ten years?

25 A. I haven't been in South Carolina. I have been in

1 Montana for the last 11 years.

2 Q. On the 27th, that was the day I come over to Tony
3 Tindal's. Gwen and I had the argument. I was drunk, passed
4 out in the car?

5 A. I think so, yeah.

6 Q. I believe you told the jury that Gwen said if I had had
7 a gun, I would have killed you that night?

8 A. She said she believed that you would have used it.

9 Q. Did you see a gun on me that night?

10 A. No, because you didn't have it with you.

11 Q. So on the 27th of May, when this argument happened with
12 Gwen and I, you didn't see a firearm on me at that point?

13 A. No, because you didn't pull it out from behind your
14 shirt. From what I understand, it was thrown in the woods
15 and you couldn't find it.

16 Q. Thrown in the river?

17 A. No.

18 Q. North Edisto River?

19 Did Gwen ever say anything about me throwing a firearm
20 in the river?

21 A. No.

22 Q. Now, when we were at the race track, did there a come a
23 time that we all separated?

24 A. You separated from us for quite awhile.

25 Q. Do you remember Gwen having a two-way radio on her and

1 we could all communicate at the race track?

2 A. No, we never had one.

3 Q. We never had a radio at the race track?

4 A. No.

5 Q. But you remember the Saddlemyers being there with the
6 jet powered funny car?

7 A. Yeah, because we had lunch with them.

8 Q. Do you remember me working with the Saddlemyers?

9 A. Uh-uh.

10 Q. You don't remember?

11 A. No.

12 Q. Do you remember who got the Saddlemyers to come from
13 Ohio and race in Rockingham?

14 A. No.

15 Q. When we went to Rockingham, Evelyn, do you remember who
16 drove up there?

17 A. You did.

18 Q. I drive the entire way?

19 A. Yeah.

20 Q. Who paid for the motel room?

21 A. You did.

22 Q. Did we all stay in the same motel room?

23 A. Yes.

24 Q. While we were at the race track, did you ever see me
25 with a firearm then?

1 A. No, I didn't see it.

2 Q. Did you see one on the dashboard of the car or anything
3 going up there?

4 A. Not that day, no.

5 Q. I believe you testified that your ex-husband had a bar
6 in Pelion?

7 A. Yeah, right outside of Pelion.

8 Q. Did he have anybody to work for him?

9 A. No, not really.

10 Q. Did a gentleman by the name of Jody Fogle ever work for
11 him?

12 A. No. He bounced. He didn't bar tend.

13 Q. Can you explain to the jury what bouncing is?

14 A. It's where if somebody gets into a fight, they break it
15 up and they make them leave.

16 Q. Did you ever know Jody Fogle to sell drugs in your
17 husband's bar?

18 A. No.

19 Q. I believe you testified to the jury that a firearm
20 discharged in the Panther Parlor, but you said you didn't
21 see it happen?

22 A. You were right behind me, Norman.

23 Q. I understand, but --

24 A. You had the gun in your hand when I turned around.

25 Q. Did you know I had dropped the gun and it discharged?

1 A. I didn't hear it hit the ground before it discharged.

2 Q. But you heard a pop?

3 A. I heard you -- yeah.

4 Q. What I just need clarification on, Evelyn, did you see
5 me take that gun with my hand and fire it?

6 A. No, but it was in your hand when I turned around, and I
7 didn't see you bending over to pick it up.

8 Q. Now, I believe you testified that you worked at the
9 restaurant seven days a week?

10 A. Yeah.

11 Q. We were open on Sunday?

12 A. Yeah.

13 Q. The entire time that you worked there, were we open on
14 Sunday?

15 A. Yeah.

16 Q. Did you know anything about Jody Fogle stealing that
17 Toyota Corolla?

18 A. No.

19 Q. How do you know that I stole it?

20 A. Well, you didn't say who took it. You just said
21 that -- you were the one who told me that you threw the keys
22 in the bushes and then y'all went back later. I don't know
23 who y'all is.

24 Q. Your husband had a prior DUI?

25 A. A couple of them, from what I understand.

1 Q. Thank you, Evelyn.

2 MR. COLER: Just one, Your Honor.

3 REDIRECT EXAMINATION BY MR. COLER:

4 Q. In the 1980's, Norman was an okay pretty good guy?

5 A. Yes.

6 Q. In '96, Norman was someone that you thought might shoot
7 and kill Evelyn Miles?

8 A. Yes.

9 MR. COLER: That's all.

10 THE COURT: Anything else?

11 MR. STARNES: No.

12 THE COURT: Thank you, ma'am. You may stand down.
13 Any other witnesses to call?

14 MR. COLER: Yes, sir.

15 If there is no objection to her being excused?

16 THE COURT: Any objection to her being excused?

17 MR. STARNES: No objection.

18 THE COURT: Thanks for coming, ma'am. You may be
19 excused.

20 MR. BULSA: Call Captain Gamble.

21 CAPTAIN MARION JONES GAMBLE, having been first
22 duly sworn, testified as follows:

23 THE CLERK: Have a seat and state your full name
24 and spell your last name for the record, please.

25 THE WITNESS: Marion Jones Gamble, G-A-M-B-L-E.

1 DIRECT EXAMINATION BY MR. BULSA:

2 Q. Captain Gamble, you are in uniform. You are with the
3 highway patrol?

4 A. Yes.

5 Q. How long have you been with the highway patrol?

6 A. Just over 21 years.

7 Q. And you have risen to the rank of captain?

8 A. Yes, sir.

9 Q. Do you recall having any occasions to run across Norman
10 Starnes?

11 A. Several -- several occasions with Mr. Starnes.

12 Q. Did you used to patrol the Pelion area?

13 A. Yes, sir.

14 Q. Do you recall an incident back in October, October 29th
15 of 1988?

16 A. I do.

17 Q. Please describe that incident to the jury.

18 A. I was working the night shift that night and I had gone
19 home for dinner. It was about six, seven o'clock, somewhere
20 along in there, and I overheard radio transmission from a
21 car that Trooper Wade Abby was requesting assistance. He
22 was involved on high speed pursuit on Highway U.S. 321 just
23 outside the city of Cayce near Fish Hatchery Road and he was
24 pursuing a motorcycle for failing to stop.

25 Q. What did you do?

1 A. I got my keys to my car and got back in my car and
2 proceeded in that direction to assist him.

3 Q. And were you able to catch up with him to assist him?

4 A. Sometimes later I did. The pursuit lasted about 20 --
5 20 plus minutes and covered about 30 miles. It started just
6 outside of Cayce and it ended off of Forts Pond Road in the
7 woods off of -- which I believe is off of U.S. 178 right
8 outside of Pelion.

9 Q. What kind of roadways were you on?

10 A. Well, it was mostly on the highways. You know, U.S.
11 highways going into Pelion, and Forts Pond is a secondary
12 road. And then after we -- when I caught up to Wayne --
13 Wayne was directly behind the motorcycle. When I caught up
14 to Wayne, we made a right onto a -- like a pig path. It was
15 like a -- like a -- it was a very -- it was a road that was
16 not made for vehicular travel. Probably a farm road, or
17 a -- you would use it for farm vehicles. It was very
18 narrow. It was very rutted. It was like plowed, where when
19 the would plow the field, they would plow the road as well.
20 So it was very -- not real good for a vehicle to travel.

21 Q. So the chase continued onto that road?

22 A. It did. We went -- we probably reached 40, 50 miles an
23 hour, something like that, if my memory is correct, which is
24 pretty good speed for that type road. I remember the cars
25 were bottoming out. The car would -- you know, when you

1 would hit those ruts, dirt would come on up through the hood
2 and the fender area of the car. It just wasn't conducive to
3 ride on that type road.

4 Q. Were you able to stop Mr. Starnes?

5 A. No, we were not able to stop him. He proceeded -- he
6 proceeded down that road for I would say for several miles,
7 or felt like several miles, and basically ended up in a
8 plowed field. And the only way he stopped is he was riding
9 a -- just a regular street motorcycle, not a dirt bike. It
10 was a regular street motorcycle and it just wouldn't go any
11 further. He went -- he was in a plowed field and the cars
12 were as well, and he just waited until he couldn't anymore
13 and the motorcycle fell over. At that point in time he got
14 off and ran on foot and Trooper Abby caught him on foot.

15 Q. Did you later catch up to him and Trooper Abby?

16 A. Yes, I did.

17 Q. Could you tell the jury Mr. Starnes' condition at that
18 time?

19 A. No question he was intoxicated. He was intoxicated. A
20 high odor of alcoholic beverage about his person. No doubt
21 he was --

22 Q. Do you recall what you charged with him with?

23 A. If I remember correctly, he was charged with driving
24 under the influence, operating an uninsured motor vehicle,
25 driving under suspension, and failed to stop for a police

1 vehicle.

2 Q. So let me show you what's been marked State's Exhibit
3 No. 75. Do you recognize those documents?

4 A. I do.

5 Q. Are those copies of the tickets that you wrote him?

6 A. Yes, sir, these are Trooper Abby's tickets.

7 Q. Does it include an indictment for failing to stop for a
8 blue light?

9 A. Yes, sir.

10 Q. Was he convicted of failing to stop for a blue light?

11 A. Yes, sir. It looks like on October the 29th, 1988.
12 I'm sorry, I'm not sure how to read the --

13 Q. Okay?

14 A. -- conviction on that.

15 MR. BULSA: Your Honor, I would move these into
16 evidence. They speak for themselves.

17 MR. STARNES: No objection.

18 THE COURT: They are admitted without objection.

19 BY MR. BULSA:

20 Q. So he was convicted of failing to stop for a blue light
21 and received a three years sentence, suspended to three
22 years probation, shock probation; and also convicted of the
23 other traffic offenses, driving under suspension?

24 A. It looks like those tickets were signed off on February
25 the 8th --

1 Q. Okay.

2 A. -- of the following year.

3 Q. So those were separate court dates?

4 A. I would have to look at them and see.

5 Yes, sir, these are handled in Magistrate's Court.

6 Q. Okay.

7 A. The top three were handled in Magistrate's Court and
8 failure to stop was in General Sessions.

9 Q. We have a driving under suspension, driving under the
10 influence, operating an uninsured vehicle, and failing to
11 stop for a blue light?

12 A. Yes, sir.

13 Q. Okay. Was that your only encounter with Mr. Starnes?

14 A. Yes, sir.

15 Q. So do you recall having another encounter with him
16 about a year later?

17 A. November 25th, 1989.

18 Q. Describe that incident to the jury.

19 A. Trooper G.T. Gault and I had been working DUI
20 enforcement I believe at the Chitlin Strut in Salley. We
21 worked all afternoon, all evening, and we were coming home.
22 It was about 1:00, 1:30, something like that in the morning.
23 If I remember correctly it was an early, early Sunday
24 morning, and we got between -- we were on S.C. 6. I'm
25 sorry, we were on S.C. 302, between the two splits of S.C.

1 6, and we clocked two vehicles at 80 miles an hour in that
2 55 zone.

3 We both turned around and pursued the two vehicles.
4 The first one was an older model Chevrolet Monte Carlo. The
5 second one was like an old police car. It was an '81 Ford.
6 It was light in color. It took us several miles naturally
7 to run them down at that speed.

8 When -- I was the -- during that time we were
9 patrolling using unmarked Ford Mustangs. Both of us were
10 driving unmarked Mustangs. When we were coming home, Ted
11 was in the lead and I was behind him, so we turned around.
12 I was the lead car. When we got several miles up 302, we
13 headed toward Pelion, we -- the old police car pulls out.
14 It's very obvious from the length of time it took us to run
15 these cars down that we were probably running 120, 125.
16 From the time it took us to catch up, it's very obvious that
17 their speed had increased considerably above 80 miles an
18 hour. We were gaining on them. The old police car pulls
19 out, passes the Monte Carlo and pulled back in front of the
20 Monte Carlo. They do this for a short distance and the old
21 police car makes a right-hand turn onto a secondary road.

22 I then radioed to Ted to stop the -- to go after the
23 Ford, and I would -- I would stop the lead car. I then
24 caught up to the Monte Carlo and got it stopped short --
25 right outside of Pelion, if my memory serves me correctly.

1 Q. What took place when you made the stop?

2 A. Let me refresh my memory with my notes.

3 When I went up to the vehicle, I asked the individual
4 for his driver's license. He could not produce a driver's
5 license. And I asked him for his name and he gave me a name
6 of Michael Libran Starnes. He gave me a date of birth to go
7 along with that.

8 I went back and tried that through our computer
9 database. It wasn't successful in matching that up with him
10 having a driver's license, which is normally a sign that we
11 have been given the wrong information, because even if it's
12 a suspended license or expired license, the information is
13 still in the system.

14 So at that time I radioed Ted to -- Trooper Gault and
15 asked me to ask the young lady that he had stopped if she
16 knew who was driving the first car. She said his name was
17 Norman. So I went back up to the car and asked him. I
18 didn't recognize him from the first -- when I stopped him
19 the second time, I had not recognized him at that point in
20 time until later.

21 When I went back up and asked him if his name -- or I
22 went back up told him I knew his name was Norman and for him
23 to give me his full name and date of birth, and he did, and
24 at that time I found his license to be under suspension from
25 the prior incident.

1 Q. Okay. Captain, let me show you what's been marked
2 State's Exhibit No. 76, a copy of two tickets. Do you
3 recognize those?

4 A. I sure do.

5 Q. And are those the tickets for driving under suspension
6 and speeding?

7 A. I charged him with speeding 110 in a 55 and driving
8 under suspension.

9 MR. BULSA: Your Honor, I would move these into
10 evidence, State's Exhibit 76.

11 MR. STARNES: No objection.

12 THE COURT: Admitted without objection.

13 BY MR. BULSA:

14 Q. Was he convicted on each of those charges?

15 A. Yes, sir.

16 Q. Did you consider charging him for false information?

17 A. I did not.

18 Q. Thank you. Answer any questions that Mr. Starnes may
19 have.

20 A. Okay.

21 MR. STARNES: I don't have any questions for him.

22 THE COURT: Thank you, sir.

23 THE WITNESS: Thank you, Your Honor.

24 MR. BULSA: We ask he be excused.

25 THE COURT: Any objection to this witness being

1 excused, Mr. Starnes?

2 MR. STARNES: No objection.

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

5 THE WITNESS: Thank you, judge.

6 MR. COLER: May it please the court, the State
7 calls Brenda Johnson, records custodian, Department of Motor
8 Vehicle.

9 BRENDA JOHNSON, having been first duly sworn,
10 testified as follows:

11 THE CLERK: Take a seat and state your full name
12 and spell your last name for the record, please, ma'am.

13 THE WITNESS: Okay. Brenda Ann Johnson,
14 J-O-H-N-S-O-N.

15 MR. COLER: Beg the court's patience one minute.

16 (List of Tickets marked as State's Exhibit No. 103
17 for identification)

18 DIRECT EXAMINATION BY MR. COLER:

19 Q. Ms. Johnson, tell us who you work for.

20 A. The Department of Motor Vehicles.

21 Q. And what do you do for the Department of Motor
22 Vehicles?

23 A. I'm a senior compliance specialist and handles drivers
24 record certifications.

25 Q. Is one of your duties then to keep records of drivers

1 records, drivers history?

2 A. Yes.

3 Q. People licensed to drive here in South Carolina?

4 A. Yes, sir.

5 Q. Did I ask you to pull the driver's history of Norman
6 Starnes?

7 A. Yes, sir.

8 Q. Were you able to do that?

9 A. Yes, sir.

10 Q. I'm going to show you what's been premarked now as
11 State's Exhibit 103.

12 Did you have an opportunity to look at this before the
13 trial started?

14 A. Yes, sir.

15 Q. Before you are came in here?

16 A. Yes, sir.

17 Q. Does this, State's Exhibit 103, accurately reflect
18 convictions of Norman Starnes for driving offenses?

19 A. Yes, sir.

20 MR. COLER: Your Honor, we would offer 103 and
21 offer to publish it to the jury.

22 MR. STARNES: No objection.

23 THE COURT: Admitted would objection. You may
24 publish.

25 MR. COLER: Just for the record, Your Honor, I

1 would ask Ms. Johnson to step down and read into the record,
2 starting with the date and the offense all the traffic
3 offenses that Mr. Starnes has progressing to February of
4 1996.

5 (Witness off the witness stand)

6 A. January 14th, 1984, speeding.
7 January 14th, 1984, no driver's license in possession.
8 11-24-1984, speeding.
9 2-27-1985, speeding.
10 March 2nd, 1985, speeding.
11 5-22-85, driving left of center.
12 5-22-85, disobedience to sign or signal.
13 5-22-85, simple assault.
14 5-22-85, no proof of ownership.
15 8-11-95, passing unlawfully.
16 8-25-85, disobedience to center.
17 11-31-87, disobedience to sign.
18 10-9-1987, public drunk conviction.
19 10-19-1987, violation of ABC Act.
20 11-3-1987, speeding.
21 10-29-1988, failure to stop for blue light.
22 10-29-1988, driving under the influence.
23 10-29-1988, operating uninsured vehicle.
24 10-29-1988, driving under suspension.
25 11-25-1989, speeding.

1 11-25-1989, driving under suspension.
2 6-12-1982, speeding.
3 6-15-1991, speeding.
4 1-19-1993, speeding.
5 11-27-1993, speeding.
6 12-18-1993, speeding.
7 2-11-1994, too fast for conditions.
8 3-13-1994, speeding.
9 4-13-1994, speeding.
10 8-28-1994, speeding.
11 1-4-1995, speeding.
12 5-15-1995, speeding.
13 5-18-1995, speeding.
14 9-4-1995, speeding.
15 12-15-1995, driving under suspension.
16 And 2-1-1996, driving under suspension, second offense.

17 BY MR. COLER:

18 Q. Thank you, Ms. Johnson.

19 MR. COLER: That's all the questions that I have.

20 MR. STARNES: No questions.

21 THE COURT: Thank you, ma'am.

22 THE WITNESS: You are welcome.

23 THE COURT: Any objection to the witness being
24 excused?

25 MR. STARNES: No objection.

1 MR. COLER: Thank you, Your Honor.

2 THE COURT: Thank you, ma'am. You may be excused.

3 MR. BULSA: The State calls Scott Smith.

4 OFFICER SCOTT SMITH, having been first duly sworn,
5 testified as follows:

6 THE CLERK: Take a seat, state your full name,
7 spell your last name for the record, please.

8 THE WITNESS: Robert Scott Smith, S-M-I-T-H.

9 DIRECT EXAMINATION BY MR. BULSA:

10 Q. Who are you employed with, sir?

11 A. Lexington County sheriff's department.

12 Q. How long have you been with Lexington County?

13 A. Right at 23 years now.

14 Q. Did you review some records back in February of '96
15 involving a Norman Starnes?

16 A. I did.

17 Q. And on what day in February did you have occasion to
18 contact with him?

19 A. February the 1st of 1996.

20 Q. Describe the incident to the jury, please.

21 A. Actually I was on duty for the sheriff's department on
22 that day. It was about nine o'clock in the evening. I was
23 operating stationary radar on Highway 302 south of Pelion
24 down below I think it's called Sand Spur Road. I observed a
25 vehicle come by traveling at a high rate of speed. I

1 measured the speed on radar at 76 miles an hour. I turned
2 around and stopped the vehicle. I walked up to the vehicle
3 and asked the driver for a driver's license and
4 registration. He produced a registration but no driver's
5 license, and then informed me that he didn't have one, and
6 that it was under suspension. And at that time I obtained
7 his name and date of birth and went back to the car. And at
8 that point in time we actually had NBT's in the car and
9 radioed the information in and confirmed that the name and
10 date of birth that he provided for me indicated that the
11 license was under suspension. And I then returned to the
12 vehicle and asked him to step out and placed him under
13 arrest for driving under suspension, second offense.

14 Q. Let me show you State's Exhibit No. 78. This is an
15 indictment for driving under suspension involving the
16 incident on February the 1st?

17 A. Correct.

18 MR. BULSA: The State would move in State's
19 Exhibit 78.

20 THE COURT: Any objection?

21 MR. STARNES: No objection.

22 THE COURT: Admitted without objection.

23 BY MR. BULSA:

24 Q. And do you recall whether he was convicted of that
25 charge?

1 A. He was.

2 Q. I believe this was actually the last --

3 A. It was.

4 Q. -- charge that was written on this big sheet?

5 A. Correct.

6 Q. Okay. Thank you. Answer any questions that Mr.

7 Starnes may have.

8 MR. STARNES: No questions, Your Honor.

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

10 MR. GOWDY: Your Honor, may we approach just very
11 briefly?

12 THE COURT: Yes, sir.

13 Do you want to approach, Mr. Starnes?

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

16 THE COURT: All right. Mr. Foreman, ladies and
17 gentlemen of the jury, we have gone through -- we did it a
18 little quicker than we thought, but we gone through the
19 witnesses that the State had prepared today to present, and
20 opening statements went pretty fast as well, so we are going
21 to finish up for the day. We will go ahead and adjourn for
22 the day.

23 I'm going to ask you, please, to be in the jury
24 room in the morning at nine o'clock and we will try to get
25 started promptly at nine. It's moving along pretty good, so

1 maybe we can finish a little earlier than we had hoped. We
2 never know about that.

3 But on overnight recess, again, please do not
4 read, listen to, or watch any media account. Please do not
5 discuss the case among yourselves or with anyone else.

6 Please have a pleasant night tonight and we will
7 see in the morning at nine o'clock. Thank you.

8 (The following takes place outside the presence of
9 the jury panel)

10 THE COURT: All right. Is there any matter for me
11 to take up out of the presence of the jury from either side
12 at this time?

13 MR. GOWDY: Not from the State, Your Honor.

14 THE COURT: Anything?

15 MR. STARNES: No, Your Honor.

16 THE COURT: We will adjourn then. Let's try to be
17 her a little before nine and get started promptly at nine.

18 MR. GOWDY: Thank you.

19 (Whereupon, proceedings were adjourned to November
20 16, 2007)

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

3
4 THE STATE)
5 -vs-) TRANSCRIPT OF RECORD
6 NORMAN EDWIN STARNES,) 1996-GS-32-3339
7 Defendant.) NOVEMBER 16, 2007
8) Lexington, South Carolina

9 (VOLUME X)

10 B E F O R E:

11 THE HONORABLE LEE S. ALFORD, JUDGE. ; and a jury.
12

13
14 A P P E A R A N C E S:

15 HAROLD "TREY" GOWDY, III, SOLICITOR
16 ROBERT P. COLER, ASSISTANT SOLICITOR
17 DERRICK BULSA, ASSISTANT SOLICITOR
ATTORNEYS FOR THE STATE

18 MR. NORMAN EDWIN STARNES
19 DEFENDANT APPEARING PRO SE

20 JOHN DELGADO, ESQUIRE
APPEARING WITH THE DEFENDANT

21 WILLIAM NETTLES, ESQUIRE
22 APPEARING WITH THE DEFENDANT

23 Michael R. Watts
24 Circuit Court Reporter
25

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1 (PROCEEDINGS, November 16, 2007)

2 (Pictures marked as State's Exhibit No. 104 for
3 identification)

4 THE COURT: All right, gentlemen, are we ready to
5 proceed this morning?

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

7 THE COURT: Defense ready, Mr. Starnes?

8 MR. STARNES: Yes, sir, defense is ready, Your
9 Honor.

10 THE COURT: All right. Any matters we need to
11 take up before I bring the jury in?

12 MR. GOWDY: Not from the State, Your Honor.

13 THE COURT: From the defense, anything?

14 MR. STARNES: Your Honor, the solicitor wanted to
15 move in some traffic tickets. I believe under Rule 1006,
16 South Carolina Rules of Evidence, they are bringing in the
17 summary chart. I don't believe the actual tickets would be
18 admissible under the rule.

19 MR. BULSA: These are traffic tickets that were
20 referred to, that the chart refers to. We just wanted to
21 introduce them so the jury would have them all to look at.

22 THE COURT: Well, they have already been
23 introduced, haven't they?

24 MR. BULSA: Some of them has on the chart. Some
25 of them have been introduced through other officers. We

1 have a series of others that we will not have officers
2 respond -- come to court, so we have the remaining tickets
3 we were going to move in as self-authenticating.

4 THE COURT: What rule are you referring to, Mr.
5 Starnes?

6 MR. STARNES: Rule 1006, the South Carolina Rules
7 of Evidence, Your Honor.

8 They moved in the summary. I believe the tickets
9 would be just duplicate, and the testimony, Your Honor.

10 THE COURT: Well, I don't read it that way. Tell
11 me how you read that, Mr. Starnes.

12 MR. STARNES: Your Honor, if I could, I would like
13 my standby counsel, Mr. Nettles, to make this argument a
14 little bit clear for the court.

15 THE COURT: All right, sir.

16 Mr. Nettles?

17 MR. NETTLES: Well, Your Honor, it just seems that
18 they moved in through somebody from the South Carolina
19 Department of Transportation yesterday. They moved in a
20 summary and they published that. They came in and said
21 he -- you know, failure to stop for blue lights, sped, all
22 these traffic offenses. All right. That's in. That's --
23 they published that to the jury. And now they are bringing
24 in -- I suppose what they want to do is bring in a highway
25 patrolman to talk about the speeding ticket. Well,

1 that's --

2 And secondly -- so I can talk about that in a
3 second. And other thing, just brief a overview where I'm
4 going, you are talking about tickets that are
5 self-authenticating. A lot of the -- first of all, it's
6 moved in through the 106.

7 And secondly, Norman shouldn't be objecting that
8 it's hearsay. He should be objecting to it's a violation of
9 the confrontation clause. I mean, the Rules of Evidence are
10 not suspended just because we are in the penalty phase. So
11 I'm guessing if he's saying he's going to bring in tickets
12 without people who know about them, that Norman should be
13 objecting to them. And he should register objection early,
14 number one.

15 Number two, as it relate to 1006, he's already
16 moved in the summary under 1006 summary. I guess that's
17 what they were doing. He moved in the lady from the
18 Department of Corrections who moved -- I mean the Department
19 of Transportation moved in that long list of things. That's
20 in. It's in front of the jury. And now they want to bring
21 in the officers to talk about it again.

22 THE COURT: Well, 1006 seems to say just the
23 opposite. If you have got a number of these tickets and --
24 or writings and that sort of stuff, that you are allowed to
25 put a chart summary or compilation, provided the underlying

1 evidence is admissible, which would substantiate it's a --

2 MR. NETTLES: Right. And I apologize if it's
3 unclear. I don't think Norman is objecting that the summary
4 comes in under 1006.

5 I believe the objection is is since they have come
6 in under 1006, and that's okay, they don't get to then sort
7 of -- its duplicitous is what it is. It's they moved it in.
8 They published it. It's in front of the jury. And then to
9 bring in all the officers to talk about it again, first of
10 all, it's misleading. And it's clearly more prejudicial
11 than probative at this point, in light of the fact it's
12 already been in and published to the jury. It almost seems
13 like it's happening again, like he's got twice as many
14 offenses as it looks like.

15 MR. GOWDY: Your Honor, the reason it's happening
16 again, and I know Mr. Nettles knows this, because he's done
17 capital cases for a long time. There is a stark distinction
18 between a conviction and the circumstances in the character
19 of the crime. This is all about character in this phase.

20 The fact that he was convicted of failure to stop
21 may or may not be particularly prejudicial. We are going to
22 hear from the officer who may have had to chase him for 20
23 feet, may have had to chase him for 20 miles. That's the
24 character part of it. We don't just -- we are not limited
25 just to put in a conviction. We can call victims. We can

1 call -- we can call victims on uncharged conduct in this
2 phase. So the notion that all we can do is move in a
3 conviction and not call the officer who is actually
4 assaulted by Mr. Starnes is not the law.

5 MR. NETTLES: And perhaps I haven't been very
6 clear. I'm not -- I mean, I think that's a separate
7 objection Mr. Starnes has not chosen to make, for whatever
8 reason.

9 My objection is not that they can't do it. It's
10 that in light of the fact that they brought the lady from
11 the Department of Transportation in and published that, that
12 now -- it's not relevant now. I mean, it's more prejudicial
13 than probative now, in light of the fact that -- had they
14 not brought the lady in from the Department of
15 Transportation and published that long list of traffic
16 violations, I would not be in a position to make this
17 argument. It's because of the way they have chosen to do
18 this case, that now it's more prejudicial than probative, in
19 light of the fact that it's already come in through the
20 summary.

21 THE COURT: What else do you plan to offer with
22 regard to these traffic charges?

23 MR. GOWDY: We have got at least one more officer.
24 We have got one more officer and the underlying
25 tickets.

1 The jury doesn't have to believe that summary
2 chart. They may say I would rather see the tickets
3 themselves, so we are moving in the ticket and we have one
4 more officer who had an interaction with Mr. Starnes.

5 THE COURT: All right, sir.

6 I'll allow it over objection. You may proceed.

7 MR. BULSA: Your Honor, that --

8 THE COURT: I think there is other things that the
9 jury could learn that would not be determinative from the
10 summary. And even though it's somewhat duplicitous, but it
11 will add to it and -- add to the information that's
12 contained in that summary. Although it's such a long list
13 of those, a summary certainly would be helpful to the jury
14 in being able to see it and determine what all was involved,
15 so I will allow it over objection.

16 Anything else?

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

18 THE COURT: Okay. Then let's proceed. Please
19 bring the jury in, sir.

20 (The following takes place in the presence of the
21 jury panel)

22 THE COURT: Good morning, Mr. Foreman, ladies and
23 gentlemen of the jury. I hope you had a pleasant night last
24 night. We are ready now to resume with the trial.

25 Counsel, ready to proceed.

1 MR. GOWDY: May it please the court, Your Honor,
2 the State would call Mr. Burke Fitzpatrick.

3 BURKE FITZPATRICK, having been first duly sworn,
4 testified as follows:

5 THE CLERK: If you will take a seat and state your
6 full name and spell your last name for the record.

7 THE WITNESS: My name is Burke Fitzpatrick, last
8 spelling is F-I-T-Z-P-A-T-R-I-C-K.

9 DIRECT EXAMINATION BY MR. GOWDY:

10 Q. Good morning Mr. Fitzpatrick.

11 A. Good morning.

12 Q. Can you tell the jury where you work and how long you
13 have been there?

14 A. Yes, sir. I work for the South Carolina Department of
15 Public Safety. I'm the administrator of the Office of
16 Justice Programs, which is one of the divisions of the
17 Department of Public Safety.

18 I've been working with that agency since its creation
19 in '93, and was previously with the Governor's office in the
20 Division of Public Safety programs.

21 Q. Is the South Carolina Department of Public Safety what
22 we would consider to be a cabinet level agency within our
23 state government?

24 A. It is. It reports directly to the governor, yes, sir.

25 Q. Mr. Fitzpatrick, did you know a gentleman by the name

1 of Bill Welborn?

2 A. I did.

3 Q. Can you tell the jury how you knew him?

4 A. Well, I -- as a hobby I'm a skydiver, and I have been
5 skydiving since 1978, since I was in graduate school at USC
6 in '90.

7 In '85, I and some partners opened a parachute center
8 in Lugoff, South Carolina, Kershaw County. And after that
9 time, Bill Welborn, who was also a jumper, would come up to
10 our parachute center and jump with us. And he was also a
11 pilot. And when we were short of pilots, he would fly for
12 us. So we became friends during that time.

13 Q. Did he consult with you or were you aware that he had
14 relocated to Lexington?

15 A. Yes, he was interested in opening up his own parachute
16 center, and he relied upon some of my advice where perhaps a
17 suitable place might be in the Midlands area, as far as air
18 traffic control and suitable airstrips and that sort of
19 thing, yes, sir.

20 Q. Accepting that your interaction with Mr. Welborn was
21 primarily recreational, what can you tell the jury about his
22 personality that they may find helpful?

23 A. Bill was -- Bill was a delightful fellow. We -- he
24 really had a zest for life, as many skydivers do, but had
25 truly a, you know, magnetic personality. When we were all

1 skydiving together as a group, he was often the leader. And
2 he was really someone that we all cared about and respect to
3 love very much.

4 Q. Mr. Fitzpatrick, this jury who has heard about Santa
5 Clause jumping out of airplane. Are you Santa Clause?

6 A. Yes, sir, I am.

7 Q. For the Swansea Christmas parade in 1995, and the
8 Pelion Christmas parade, did you jump out of airplanes
9 either for or with Bill Welborn?

10 A. I did. On December 3rd of 1995, Bill Welborn asked me
11 to jump into the Swansea Christmas parade with another
12 jumper, Robert Scott, from the Sumter area. And I have a
13 Santa Clause suit, and regularly around December I'll make
14 charity jumps into Christmas events for kids. And since I
15 was experienced with the suit and was experienced with
16 the -- an experienced skydiver, he asked me to jump in,
17 which we did.

18 And also, again, in Pelion on December 16th also jumped
19 in as Santa Clause and greeted the kids and went through the
20 normal procedures after we landed as Santa Clauses usually
21 will do.

22 Q. Promising everything everybody wanted for Christmas?

23 A. Yes, sir, that's exactly what I did. I met every kid
24 in town.

25 Q. Okay. Mr. Fitzpatrick, did you have occasion to meet

1 the defendant, Norman Starnes, during that Pelion Christmas
2 parade jump?

3 A. At the conclusion of the jump and my duties as Santa, I
4 did meet Mr. Starnes. He approach me and the other -- and
5 Bill Welborn and Robert Scott to thank us for our
6 performance, and at that time gave me two tickets to a
7 concert at the Carolina Colosseum that was scheduled in
8 January. That was a Bob Segar concert.

9 Q. Did you go to the concert?

10 A. I did. My girlfriend at the time and I went to the
11 concert, yes, sir.

12 Q. Did you see Mr. Starnes at the concert?

13 A. We did. Our tickets -- our seats were in very upper
14 part of the colosseum. He was sitting in the front section,
15 but he walked up to say hello to us and see how we were
16 doing, returning again I think about halfway through the
17 concert. And there was a line of seats that he had
18 purchased to our left and they were empty.

19 At the time I think that day there had been an accident
20 out at the parachute center. One of the jumpers got
21 injured, and the other people with those tickets weren't
22 there. During -- sometime during the concert some other
23 people behind us noticed the seats were empty and they
24 filled those seats. Norman came back the second time and
25 noticed the people were sitting in the seats that he had

1 bought and became very, very distressed, left us, and then a
2 few minutes later I saw a law enforcement officer walking up
3 the steps and he pointed to me and gestured for me to come
4 with him. So I followed him outside and he -- when I got to
5 the area there, there was another officer that I knew from
6 USC, Steve Wright, and he was talking with Mr. Starnes, and
7 they asked me what was going on, because Mr. Starnes at the
8 time is about maybe 20 feet from me and was crying and
9 hysterical appearing to me and was very, very upset. And
10 apparently, as far as we could make out, this was because
11 someone was sitting in the seats at that time.

12 Q. Thank you, Mr. Fitzpatrick. Please answer any
13 questions that the defendant may have for you.

14 MR. STARNES: May it please the court.

15 THE COURT: Yes, sir.

16 CROSS EXAMINATION BY MR. STARNES:

17 Q. How are you doing, Burke?

18 A. Fine. Thank you, sir.

19 Q. Did it appear to you that I was upset at the concert?

20 A. It did.

21 Q. I was crying, wasn't I?

22 A. Yes.

23 Q. Something must have been bothering me?

24 A. Something must have, yes, sir.

25 Q. Thank you.

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

3 MR. GOWDY: We would ask Mr. Fitzpatrick be
4 excused, Your Honor.

5 THE COURT: No objection, Mr. Starnes?

6 MR. STARNES: No objection.

7 THE COURT: Thank you, Your Honor, for coming.
8 You may be excused at this time.

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

10 The State calls Keith Allen Hartley.

11 KEITH ALLEN HARTLEY, having been first duly sworn,
12 testified as follows:

13 THE COURT: State your full name and spell your
14 last name for the record, please.

15 THE WITNESS: Keith Allen Hartley. That's
16 H-A-R-T-L-E-Y.

17 DIRECT EXAMINATION BY MR. COLER:

18 Q. Good morning, Mr. Hartley.

19 A. Good morning.

20 Q. Tell the jury, if you would, where you are presently
21 incarcerated?

22 A. Right now?

23 Q. Yes, sir.

24 A. It's at Walden Farms.

25 Q. Where is that?

1 A. On Broad River Road.

2 Q. Here in -- it's actually in Richland County, right?

3 A. Yes, sir.

4 Q. And you are incarcerated for an armed robbery
5 conviction?

6 A. Yes, sir.

7 Q. And you have about four years to go on that charge?

8 A. About four -- about four and a half years.

9 Q. And Walden is a low security facility?

10 A. Yes, sir.

11 Q. Do you know Norman Starnes?

12 A. Yes, sir.

13 Q. Describe -- tell the jury how you know Mr. Starnes.

14 A. I know him from when I was around 14, 15 years old,
15 somewhere around 16. He moved over there in that
16 neighborhood, and that's how I become -- started to know
17 Norman. Him and my cousin and my brother and all of us know
18 each other.

19 Q. Do you remember where that neighborhood was?

20 A. Riverland Park in Cayce.

21 Q. How old were you back then?

22 A. Around 15 or 16, somewhere around in there.

23 Q. How old was Mr. Starnes?

24 A. He was probably about the same age. Somewhere close
25 right in there. Maybe a little younger.

1 Q. Okay. And you admit you smoked some marijuana back
2 then?

3 A. Yes, sir.

4 Q. Occasionally would you get some -- get marijuana from
5 Mr. Starnes?

6 A. Yes.

7 Q. Buy it from him?

8 A. Yes, sir.

9 Q. Did you know him to sell any other illegal drugs?

10 A. I think we was all drinking. I think I seen him sell
11 acid, some other stuff. I mean, pills here and there,
12 but --

13 Q. You knew him to sell marijuana?

14 A. Yes, sir.

15 Q. And acid?

16 A. Yes, sir.

17 Q. And maybe pills?

18 A. Yes, sir.

19 Q. At some point you moved away from that neighborhood?

20 A. Yes, sir, I got married and moved away from there.

21 Q. Would you see the defendant occasionally after moving
22 away?

23 A. Yeah, because my wife's parents still lived in
24 Riverland Park, and I would still see him every once in a
25 while, but really didn't have a whole lot of contact with

1 him. Used to see him, see what was going on, you know,
2 around the neighborhood.

3 Q. But over the years you continued to see him and you
4 would recognize him when you would run into him?

5 A. Well, yeah, I knew he had a place out in Pelion and all
6 that, you know. I knew what was going on with him and --
7 you know, through the years, yeah.

8 Q. All right. In 1996, in May of '96, you were
9 incarcerated at the Lexington County detention center?

10 A. I think it was '97, wasn't it?

11 Q. This would have been May of 1996.

12 A. Okay, that's right, it could have been.

13 '96, yes, sir. I remember that.

14 Q. Did you have an occasion to run into or see Mr. Starnes
15 at the detention center after he got arrested on these
16 charges?

17 A. Yes, sir.

18 Q. Would you talk to him about -- well, would you talk to
19 him?

20 A. Yes, sir, I talked to him just about every time I would
21 come out.

22 Q. When you say come out, what do you mean?

23 A. We got certain hours they would let you out on the
24 floor and certain times they locked up each wing. Each wing
25 comes out at certain times. They don't let the whole floor

1 off, because something might kick off or something and they
2 can't control it, so there are certain wings that come out
3 at certain times.

4 Q. Okay. So there was a common area that you would be
5 able to be in and Mr. Starnes would be in that common area
6 occasionally?

7 A. Yes, sir, it would be like a dayroom or in the hallway,
8 like we could use the phone in certain hallways and leave
9 that open, or we would be in the dayroom where we could
10 watch TV.

11 Q. And would y'all talk?

12 A. Yes, sir.

13 Q. Did you ever talk to him or did he ever talk to you
14 about his murder charges?

15 A. Yes, sir, he said some things here and there about it.

16 Q. Let me ask you about those things he said here and
17 there. Did he ever tell you some of the details of the
18 incident that happened on January 8th, 1996?

19 A. Yes, sir, he did. He'd tell me about how he shot, you
20 know, two people and how he was unloading a gun on two
21 people. He didn't mention no names.

22 Q. Let me back up. He said something about unloading the
23 gun on them?

24 A. Yes, sir.

25 Q. What did you understand that to mean?

1 A. That he -- unloaded the gun means that he emptied the
2 gun out on, you know, two people. He shot them.

3 Q. He fired the gun until it was empty?

4 A. Yes, sir. I mean, he acted like it wasn't nothing, you
5 know, which wasn't nothing to it, you know, the way he was
6 talking. You know, it was like, hey, you know.

7 Q. And he never gave you any names or you don't recall the
8 names that he may have said of the two victims?

9 A. No, sir.

10 Q. Did he ever describe the two victims and how he knew
11 them and what their relationship was?

12 A. He said they was his buddies. They used to skydive
13 with him. I do remember him saying that.

14 Q. What, if anything, did he tell you about the motive or
15 the events that precipitated him shooting them?

16 A. It had do with money and drugs, from what I was
17 understanding him saying to me.

18 Q. Did he ever use the term robbery?

19 A. Yes.

20 Q. What, if anything, do you recall him telling you about
21 his plan to rob the two men?

22 A. I just remember him -- just him saying something about
23 it or trying to rob them and getting the money that they
24 had. I think the dope that they had, is what I remember
25 about it.

1 Q. And he was telling you this where?

2 A. I think it was on the second floor of the Lexington
3 County jail.

4 Q. And y'all were talking freely?

5 A. Yes, sir, me and him. I mean, he always come out, you
6 know, and showed me pictures of, you know, stuff that was
7 going on, you know, years ago that I didn't know he was into
8 drag racing and showing me places -- you know, out in
9 Pelion, his place out in Pelion, the pizza parlor he had out
10 there, and all that. He's show me a lot. You know, we'd
11 come out and talk, you know, just kind of catch up on old
12 times and stuff like that. We ain't seen each other in a
13 while.

14 Q. Let me ask you one more thing about the robbery.

15 When he described for you or told you about robbery
16 participating or being the motive for this thing, did he say
17 anything about having to kill the two individuals?

18 MR. STARNES: Your Honor, I object. I believe he
19 has been leading this witness.

20 THE COURT: All right. Please avoid leading.

21 MR. COLER: I'll rephrase it, Your Honor.

22 BY MR. COLER:

23 Q. What, if anything, did he tell you about -- in addition
24 to robbing them, what, if anything, did he tell you about
25 these two men?

1 A. How they -- it's been such a long time ago. What I can
2 remember about him, it is just, you know, what he was saying
3 about being -- you know, wanting to rob them. And when
4 he -- about unloading the gun on them. And when they got
5 through, you know, how he and somebody else had helped
6 cleaned up and got them out of there and buried them.

7 MR. COLER: Your Honor, may I approach the witness
8 and offer him an opportunity to refresh his recollection?

9 THE COURT: Yes, sir.

10 MR. STARNES: Your Honor, I object to that.
11 He's -- we can do this out of the presence if the jury, or
12 we can do it side bar.

13 THE COURT: Mr. Foreman, ladies and gentlemen of
14 the jury, if you will retire to the jury room for a brief
15 time. It would be very brief. We will bring you back in in
16 a minute.

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

19 MR. STARNES: If we could ask the witness to be
20 sequestered through this argument. This is about his
21 recollection. We are going to be going into his testimony
22 and I don't think that would be fair.

23 THE COURT: Just tell me what your objection is to
24 his letting refresh his memory. I presume it's from a
25 transcript taken of previously sworn testimony somewhere.

1 What's your objection in allowing him to refresh his memory?

2 MR. STARNES: I believe it's improper use. If I
3 could let Mr. Nettles make this argument a little bit better
4 for me, since the jury is not in?

5 THE COURT: Mr. Nettles?

6 MR. NETTLES: Well, it seems to me that he hasn't
7 done it right. There is a way to refresh somebody's
8 recollection, and you don't just get to say I don't remember
9 and then walk up and show him something.

10 THE COURT: Well, counsel, he has said "this has
11 been a long time ago. I can't remember. I remember
12 generally him saying this, but it's been a long time ago,"
13 and I guess it's probably been ten or eleven years, and
14 he -- he indicated he's having trouble remembering exactly
15 what he said to him. So you are saying you should say
16 "would it help to refresh your memory if I showed you this?"

17 MR. NETTLES: That's the rules as I understand it.
18 That's the way I always thought I had to do it.

19 THE COURT: Well, inferentially that's what he's
20 doing, but if you wanted to ask him that, if he can remember
21 on his own, or it would be helpful for him to remember if he
22 could see this previously sworn.

23 MR. NETTLES: That would be my objection, if I
24 were -- I mean, he just hadn't done it right. There is a
25 right way and wrong way to do it. He hasn't done it right.

1 THE COURT: Then, counsel, you need to lay a
2 proper foundation for utilizing the previous sworn testimony
3 to refresh his memory and establish that he cannot remember
4 on his own, etcetera. So, I mean, you know what the rule
5 is.

6 MR. COLER: Yes, sir.

7 THE COURT: All right. That's your objection?

8 MR. NETTLES: Yes, sir.

9 THE COURT: I'll sustain the objection and require
10 that the State to properly lay a foundation to be able to
11 use any prior testimony on the recollection.

12 All right. Please bring the jury in.

13 (The following takes place in the presence of the
14 jury panel)

15 THE COURT: Please proceed.

16 MR. COLER: May it please the court.

17 BY MR. COLER:

18 Q. Mr. Hartley, do you recall testifying previously in a
19 hearing in 1997?

20 A. Yes.

21 Q. Regarding this incident?

22 A. Yes.

23 Q. Are you having difficulty recalling some of that
24 testimony?

25 A. Yes, sir, that's been a long time ago.

1 Q. Would it help to refresh your recollection to review
2 your -- a transcript of your testimony from that hearing?

3 A. Yes, sir.

4 MR. COLER: Your Honor, may I approach and allow
5 the opportunity for this witness to refresh his
6 recollection?

7 THE COURT: Yes, sir.

8 BY MR. COLER:

9 Q. Don't read this out loud.

10 Starting here, read this over to yourself and read to
11 the bottom.

12 A. (Witness reviewing document)

13 All right.

14 Q. Does that help refresh your recollection?

15 A. Yes.

16 Q. Let me ask you, Mr. Hartley, what, if anything, did Mr.
17 Starnes tell you about the robbery of the two skydivers?

18 A. He did say something about a couple days ahead of time
19 about trying to rob them when they come in and he had money
20 and drugs, that -- that's what it was about. He said it was
21 always -- he had planned it a couple days of ahead of time
22 is what he was telling me.

23 I do remember -- I remember him saying something about
24 using a .38. I do remember that.

25 As far as a lot more detail, I really can't say. I

1 think that's about what I can remember of, you know, what
2 went on, what he was talking about. It was so much talk
3 about it all that time.

4 You know, it's kind of -- I tried to touch on the bits
5 and pieces I do know. And I do remember him saying, you
6 know, stuff like, you know, what he was using, you know,
7 ahead of time, you know, thinking about what he was going to
8 do a couple a days ahead a time when they got there at that
9 house. I do remember that. But other than that, that's
10 about it.

11 Q. Okay. What did he tell you about what he did with the
12 bodies?

13 A. He told me he had dug them up and put them in a hole
14 and buried them, but he had got called back out to move them
15 again because they started stinking, so they had to take
16 them out of the hole to move them from where they were at
17 and took them and reburied them. He said something about
18 liming them down at that time so they wouldn't stink.

19 Q. He said something about what?

20 A. Liming them down so they wouldn't stink.

21 Q. Liming them down?

22 A. Yes, sir.

23 Q. What, if anything, do you recall him telling you about
24 his girlfriend at the time?

25 A. That when the process was over and they had done what

1 they had done, it was him and her and some other guy where
2 they had cleaned up the mess after everything was done at
3 the house. I remember him saying she was involved to help
4 take care of that and get it all taken care of, to help bury
5 them and all that.

6 Q. Did he ever tell you about what he thought he should do
7 to her?

8 A. Yeah.

9 Q. What did he tell you?

10 A. He said if he knew what he knew now, he would have took
11 care of her a long time ago and wouldn't have to worry about
12 it.

13 Q. What specifically did he say about taking care of her?

14 A. Killing her.

15 Q. Did he ever indicate to you why he thought he got
16 caught?

17 A. Yeah, because of her.

18 Q. One other question.

19 Back when you were housed at the detention center,
20 where were the males and females housed in the detention
21 center?

22 A. The males were down at a separate place at the back of
23 the jail. We was housed on the first and second and third
24 floor.

25 Q. Did you have a female pen pal in the detention center?

1 A. Yeah. Yes, I sure did.

2 Q. Did you know if Mr. Starnes had a pen pal?

3 A. Yes, sir, he did.

4 Q. Do you remember what her name was?

5 A. Not offhand. It's holly, or -- I can't -- I just can't
6 remember exactly what it was. You know, I'm not sure.

7 Q. Did Mr. Starnes ever ask you to send a letter to your
8 female pen pal about his pen pal?

9 A. Yes, sir, he did.

10 Q. What did he ask you to do?

11 A. Try just to take -- you know, get word to his friend
12 out there or the girl he was with out there, you know, hey,
13 get somebody to try to take care of her because of what was
14 going on, that he had found out, you know, about what he was
15 hearing she was doing, you know, testifying against him and
16 all.

17 Q. What, if anything, specifically did he tell you he
18 heard she was doing against him?

19 A. Testifying. That's what was said.

20 MR. COLER: I believe that's all the questions
21 that I have, Mr. Hartley. Thank you for being here.

22 A. Yes, sir.

23 MR. COLER: Please answer any that defendant may
24 have.

25 MR. STARNES: May it please the court, our Honor?

1 THE COURT: Yes, sir.

2 CROSS EXAMINATION BY MR. STARNES:

3 Q. Keith, when you testified back in 1997, you talked to
4 the solicitor about a deal, didn't you?

5 A. No, he didn't give me no deal.

6 Q. You didn't get no deal?

7 A. No, I got 17 years. And I got to do 14 years and five
8 months off of 17 years for armed robbery.

9 Q. But you were facing 225 years, is that correct?

10 A. Well, I mean, everybody knows that when you are in --
11 get incarcerated, they always take and give you a plea
12 bargain, no matter. That's just the mandatory thing they
13 do. They don't give you that full sentence on nothing.
14 Anybody knows that.

15 Q. You did time before. How much time have you did,
16 Keith?

17 A. No, I ain't never did no time, not as far as SCDC-wise.

18 Q. So this is your first time doing time?

19 A. Yes.

20 Q. You have been in the Lexington County jail plenty of
21 times, haven't you?

22 A. Yeah, I have been in there a couple of times.

23 Q. Over ten?

24 A. Over ten what?

25 Q. Over ten times?

1 A. No. Probably about what, two, three times, maybe.

2 Q. So you know how jailhouse snitches work in there, don't
3 you?

4 A. Not really. I mean, I didn't really -- not -- the
5 first time I was in there, I got out over the next night.

6 The second time -- I'm going to say it wasn't but one
7 or two times I had been in that jail.

8 The next time I stayed. That's when I was with you, I
9 believe.

10 Q. Okay. You broke in Becky Sherman's house, didn't you?

11 A. Yeah.

12 MR. COLER: Objection, Your Honor.

13 THE COURT: Sustained.

14 BY MR. STARNES:

15 Q. Did you know a lady by the name of Rebecca Sherman?

16 A. Yeah.

17 Q. Did you break into her house?

18 MR. COLER: Objection, Your Honor.

19 THE COURT: Counsel approach just a minute.

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

22 BY MR. STARNES:

23 Q. Mr. Hartley, you have been convicted of armed robbery?

24 A. Yeah.

25 Q. First degree burglary?

1 A. No.

2 Q. Possession of marijuana?

3 A. Yeah.

4 Q. These incidents about me selling marijuana and I
5 believe you said acid, where did this take place at?

6 A. In Riverland Park.

7 Q. Where at in Riverland Park?

8 A. I'm wanting to say it was around your house, if I ain't
9 mistaken. It's been such a long time ago. You are talking
10 probably 25 or so years ago.

11 Q. What did you do with the LSD and the marijuana?

12 A. Probably the same thing you did, smoke and took it.

13 Q. Okay. I believe you made a comment to the jury that
14 you said that the defendant robbed them for their dope?

15 A. The money, yeah.

16 Q. So these individuals -- in other words, you are telling
17 this jury that I told you that these individuals had drugs
18 and that I had robbed them for drugs?

19 A. Money, yeah.

20 Q. Didn't you just say robbed them for their dope?

21 A. And drugs and money I think is what I said, wasn't it?

22 Q. Let me ask you this direct question. Did you tell this
23 jury that I robbed them for their drugs? That's yes or no.

24 That's easy.

25 A. Yeah.

1 Q. Did you know at the time that I was arrested that my
2 girlfriend at the time had already given multiple statements
3 to the law enforcement officers? Did you know that, Mr.
4 Hartley?

5 A. No, I didn't.

6 Q. You had no idea about that, did you?

7 A. No.

8 Q. Do you remember an investigator coming and talking to
9 you about a year ago, Skidmore & Associates, my private
10 investigator?

11 A. Yeah, I remember that.

12 Q. You refused to talk to him, didn't you?

13 A. Yeah, I did.

14 Q. But you talked to these investigators and these
15 solicitors, is that correct?

16 A. Yeah.

17 Q. Thank you, Mr. Hartley.

18 A. Uh-huh.

19 MR. COLER: Nothing further, Your Honor.

20 THE COURT: Thank you, sir. You may step down.

21 MR. COLER: May it please the court?

22 THE COURT: Yes.

23 MR. COLER: State calls Stuart Prettel.

24 STUART PRETTEL, having been first duly sworn,
25 testified as follows:

1 THE CLERK: Please take a seat and state your full
2 name and spell your last name for the record, please.

3 THE WITNESS: Stuart J. Prettel, P-R-E-T-T-E-L.

4 DIRECT EXAMINATION BY MR. COLER:

5 Q. Officer Prettel, would you tell us what you now do for
6 a living?

7 A. Right now I'm retired. I'm a full time father of a 13
8 year old. Single dad.

9 Q. And where are you retired from?

10 A. Aiken County.

11 Q. Aiken County sheriff's office?

12 A. Yes, sir.

13 Q. How long were you with the Aiken County sheriff's
14 office?

15 A. I was with Aiken County about six years. I'm a state
16 constable also now.

17 Q. Prior to working for Aiken County sheriff's office,
18 were you also in law enforcement?

19 A. Yes, sir, since 1975.

20 Q. What other law enforcement agencies did you work for?

21 A. I started in Petersburg, Virginia. Then I went to -- I
22 was recruited to come to South Carolina. I worked
23 narcotics. Metro -- Charleston, Berkeley, Dorchester, metro
24 narcotics squad.

25 Q. How many years altogether were you in law enforcement?

1 A. I have been 32 years. Since 1975.

2 Q. Back in May of 1985, were you a police officer?

3 A. Yes, sir, with the city of Cayce.

4 Q. What was your assignment or your duties with the Cayce
5 police department in 1985?

6 A. I was a patrol officer.

7 Q. Specifically on May 22nd of 1985, did you have an
8 occasion to come in contact with the defendant?

9 A. Yes, sir, I did.

10 Q. Would you describe for the jury the incident that
11 occurred with the defendant.

12 A. Yes, sir, on May 22nd, 1985, I was on patrol in the
13 City of Cayce. I was eastbound on New State Road going into
14 Old State where there is a curve. At that time a 1966 Chevy
15 I observed was about a foot and a half over the double
16 yellow line, which caused me to put my patrol car into the
17 bushes, in the dirt. I was -- I thought at the time he was
18 probably DUI, driving under the influence.

19 At that time I allowed the vehicle to pass me. I
20 turned around and turned on my blue lights and went after
21 the vehicle. The vehicle went through a stop sign. I was
22 behind him with the lights on. He -- I believe he turned
23 left on Granite Hill and pulled into a driveway. But while
24 I was in back of him going after him I called for backup at
25 the time because I thought he was running from me.

1 When he pulled into the driveway, I pulled up in back
2 of him, got out of my vehicle, approached him, asked him for
3 his license and registration. He had gotten out of the
4 vehicle and faced me. There was a passenger, Rebecca
5 Sherman. When I had asked for license and registration, he
6 had told me he only had a driver's license but no
7 registration.

8 Ms. Sherman then got out of the vehicle, told me that
9 she was going in the house for the registration, but it was
10 ridiculous, because I had no reason to stop them.

11 I asked Mr. Starnes to come back to my vehicle at the
12 time to get him away from his, which is standard procedure.
13 I asked -- at the time he only had jeans on. He had no
14 shirt, no shoes, just only jeans. I had asked him at the
15 time if he had been drinking. He started getting really
16 obnoxious and then he started blowing in my face and then
17 started walking away. I told him to stop, that I needed to
18 talk to him, that we are not finished yet. He started
19 running for the door. I told him to stop again and he still
20 took off. I took off behind him and told him to stop, that
21 he was under arrest. He got to the front door, I grabbed
22 his arm. As I grabbed his arm, we both fell into the house.

23 At that time he got up and started running through the
24 house yelling for his mom, which I believe is Sylvia Evans.

25 Rebecca Starnes -- Rebecca Sherman, yeah, was screaming

1 at me to leave them alone. She started getting in between
2 me and him. I caught him down in the -- went down the
3 hallway, caught him in the left back bedroom, attempted to
4 handcuff him. He had swung at me at the front door. When I
5 caught him in the bedroom, he started swinging at me again.
6 When I had ducked, I lost the grip on him. He went down the
7 hallway again. Rebecca Sherman was still trying to get in
8 our way. I caught him into the bathroom, where we ended up
9 in the bathroom. The mother was still screaming at me. At
10 that time I had grabbed him again. We fell into the
11 bathtub. Ms. Sherman was still yelling at me. The mother
12 was still screaming at me. I finally -- every time I went
13 to handcuff him, Mr. Starnes started swinging at me.

14 Finally I pinned him up against the bathtub and tried
15 to use my radio to call for backup. I had one hand against
16 his throat and the other hand trying to get my radio.

17 The mother was still screaming at me. Ms. Sherman was
18 yelling. I told the mother to go in and call backup,
19 because I couldn't get to my radio. I was afraid that Ms.
20 Sherman was going to grab my gun at the time. A lot of
21 officers are killed with their own gun. That was one fear
22 that I had at that moment, because I was fighting him, and
23 Ms. Sherman was to my right where my gun was.

24 I yelled at the mother. I said "go call 911. Get back
25 up here. Tell them where we are and tell them to get here

1 right now."

2 Every time I tried to handcuff him he would start
3 swinging at me and fighting.

4 Finally I put him in a headlock away from my gun. At
5 that time Ms. Sherman started punching me in the back. The
6 mother is still screaming. I told her to go and call 911
7 and get the backup here, get some help. Nothing ever
8 helped.

9 Finally my backup arrived. The mother was still
10 yelling. Like I said, Rebecca Sherman was still hitting me
11 at the time. When the other officers arrived, that's when I
12 was able to subdue Mr. Starnes, and he was handcuffed at
13 this time.

14 Q. It took both officers to subdue him?

15 A. Yeah, when the other officer arrived, then I was able
16 to get the handcuffs on him. I was just really afraid at
17 the time. We had just had a murder in Augusta where one of
18 the detectives --

19 MR. STARNES: Objection. That has nothing to do
20 with this. Nothing.

21 THE COURT: I'll sustain the objection.

22 MR. COLER: I'll ask him.

23 BY MR. COLER:

24 Q. Before he left your presence outside in the driveway
25 and went into his home, do you recall him saying anything in

1 response to your direction to stop?

2 A. He told me that he didn't have to do a damn thing I
3 said.

4 MR. STARNES: Your Honor, if we could, could we
5 have a side bar, please?

6 THE COURT: Yes.

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

9 THE COURT: Mr. Foreman, ladies and gentlemen of
10 the jury, I would ask that you please disregard the
11 statement by this witness about what happened in Augusta, or
12 something that happened before. It has absolutely nothing
13 to do with this case, so disregard it. Give it no
14 consideration whatsoever. Thank you.

15 Please proceed.

16 MR. COLER: Thank you, Your Honor.

17 BY MR. COLER:

18 Q. Mr. Starnes was arrested and convicted as a result of
19 this incident?

20 A. Yes, sir.

21 Q. I'm going to hand you what's been premarked as State's
22 Exhibit No. 74.

23 MR. COLER: May I approach the witness, Your
24 Honor?

25 THE COURT: Yes, sir.

1 BY MR. COLER:

2 Q. Officer, if you will take a look at State's Exhibit No.
3 74 and tell us if you recognize those four documents?

4 A. Yes, sir.

5 Q. Are those the tickets issued and the convictions as a
6 result of this incident?

7 A. Yes, sir.

8 I also -- the resisting arrest, I believe I gotten on a
9 warrant, so it wasn't written on a blue copy or ticket.

10 MR. COLER: Your Honor, we would offer State's
11 Exhibit No. 74 into evidence at this time.

12 THE COURT: Any objection, Mr. Starnes?

13 MR. STARNES: No objection, Your Honor.

14 THE COURT: Admitted without objection.

15 BY MR. COLER:

16 Q. Thank you for being here, Officer Prettel. Please
17 answer any questions that Mr. Starnes has.

18 A. Yes, sir.

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

20 THE COURT: Yes.

21 CROSS EXAMINATION BY MR. STARNES:

22 Q. How are you doing, Officer Prettel?

23 A. Hello.

24 Q. This bathroom where this incident took place, could you
25 describe it to the jury?

1 A. Yeah, the bathtub was on the left-hand side.

2 On the right side there was a mirror with lights.

3 And the door, as you entered -- as you entered, the
4 bathtub was on the left-hand side.

5 I believe the showerhead was against the wall on the
6 outside wall.

7 Q. Okay. We actually went through my mother's bedroom?

8 A. Not went through it, no. No, there was -- it was --
9 the bedroom is the left back corner of the house and there
10 was no way to get through it. You had gone into the
11 bedroom. That's where I caught you that first time, or the
12 second time after the front door.

13 Q. Did you know there is not even a bathtub in that
14 bathroom?

15 A. Well, may have been a shower then. I was fighting. I
16 know I was in something where water comes down and you wash
17 yourself.

18 Q. Are you certain about that?

19 A. Uh-huh.

20 Q. Do you remember me going to the Lexington County
21 hospital afterwards?

22 A. No. The only thing after that I remembered that you
23 admitted that were wrong. The reason that you ran was
24 because you didn't know the law and you didn't know what was
25 going to happen as a result of the traffic stop.

1 Q. But do you remember beating me in the mouth with a
2 walkie-talkie?

3 A. I couldn't get to my walkie-talkie.

4 Q. You don't remember that?

5 A. No, I was just -- I had you pinned up against the
6 bathtub, and then I had you in a headlock to keep you from
7 my gun and Rebecca Sherman from my gun.

8 Q. This happened when, Officer Prettel?

9 A. May 22nd, 1985.

10 Q. At some time I become a federal witness against you in
11 a police brutality case, isn't that true?

12 A. No, that's not true. You had me confused with Officer
13 Gowings. I had read the reports.

14 I was sued one time. I was backing up another officer.
15 He hit the officer to go for his gun to kill this officer.
16 I hit this suspect to get him off my partner, put him on the
17 ground and handcuffed him. At that time later on I was
18 sued, probably about a year and a half later when there were
19 a lot of lawsuits coming out of Cayce when they went through
20 a lot of the reports for altercation.

21 As far as what they had asked me ten years ago, I don't
22 have a clue. That's not me. That was Officer Gowings.

23 Q. But you don't remember me being a witness against you
24 in Federal Court? You were sued several times.

25 A. I never went to Federal Court. I have no idea what you

1 are talking about.

2 Q. So it was settled out of court, would that be correct?

3 A. Yeah. The insurance company told me it would take
4 \$50,000 to litigate the case. They paid 16,500 to make it
5 go away.

6 Q. So just -- instead of litigating it, they just went --

7 A. They just -- it just went away. I begged them. I
8 begged them to go to court.

9 Q. You begged them to go to court?

10 A. I begged them, and they said we would win the case with
11 no problem, but here they are saving \$35,000. Unfortunately
12 it made the officers look bad.

13 Q. And you were one of those officers they made look bad,
14 would that be correct?

15 A. They sued I think 15 officers from altercations
16 throughout the years.

17 Q. And you were one of those officers, is that correct?

18 A. As a result of that, one altercation where he was going
19 to shoot my partner, yes.

20 Q. And Norman Starnes was a witness in that case in
21 Federal Court?

22 A. I have -- I never went to Federal Court. I don't know.

23 Q. Because it was settled out --

24 A. We never went to trial.

25 Q. It was settled out of court, is that correct?

1 A. Yeah.

2 Q. You're a state constable today?

3 A. Uh-huh, yes.

4 Q. Are you in law enforcement?

5 A. Yes.

6 Q. I thought that you were a retired officer?

7 A. I am, but in the State of South Carolina we take legals
8 each year, go to shoot with SLED. We are commissioned
9 through the State of South Carolina. I have statewide
10 jurisdiction.

11 Q. Are you working today?

12 A. I'm a witness today.

13 Q. Is that why you wore your uniform?

14 A. Yes, I'm a state constable.

15 Q. Thank you.

16 MR. COLER: Just briefly, Your Honor, to clarify.

17 REDIRECT EXAMINATION BY MR. COLER:

18 Q. The case where your partner was shot at and you hit
19 that individual to stop, that has nothing to do with Norman
20 Starnes?

21 A. No, absolutely nothing to do with Norman Starnes.

22 Q. That case was resolved by your insurance department at
23 the police department.

24 As far as Mr. Starnes alleging that you were sued by
25 him in any Federal Court anywhere, that is absolutely not

1 correct?

2 A. No. The individual that was -- that was involved in
3 the lawsuit, he was arrested and convicted. I have -- I
4 have no idea about federal.

5 Q. Thank you, officer.

6 RECROSS EXAMINATION BY MR. STARNES:

7 Q. Officer Prettel, when this lawsuit come about, do you
8 remember the year that was?

9 MR. COLER: Your Honor, which lawsuit is he
10 talking about? The one that this officer is not involved
11 in?

12 MR. STARNES: The one --

13 THE COURT: Clarify.

14 BY MR. STARNES:

15 Q. The lawsuit that you were involved in where you were
16 sued, do you remember what year that was?

17 A. The lawsuit where the guy was trying to get my
18 partner's gun, where I hit him and handcuffed him, that's
19 the only one there was.

20 I don't know. I was never served papers. I was never
21 served with anything. I have no idea. I only heard about
22 it through the police chief.

23 Q. But you left Cayce police department soon after, didn't
24 you?

25 A. I was hired in the State of South Carolina as a

1 detective, yes, sir.

2 Q. Thank you.

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

4 THE WITNESS: Thank you, Your Honor.

5 MR. COLER: If there is no objection, Your Honor,
6 we would ask Officer Prettel to be excused.

7 THE COURT: No objection to his being excused?

8 MR. STARNES: No objection.

9 THE COURT: Thank you for coming. You may be
10 excused at this time.

11 MR. BULSA: Your Honor, the State would move in
12 State's Exhibits 73 and 77. They are the remaining
13 convictions on Mr. Starnes.

14 THE COURT: Have you seen these?

15 MR. BULSA: It's the remainder of the charges that
16 were shown to the jury.

17 MR. STARNES: Can we take this up side bar?

18 THE COURT: Yes, sir.

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

21 THE COURT: Mr. Foreman, ladies and gentlemen of
22 the jury, there's a matter I need to take up with the
23 parties. Please retire to the jury room for a brief time.
24 This would be very brief, I assure you. We are coming right
25 back in.

1 (The following takes place outside the presence of
2 the jury panel)

3 THE COURT: All right, Mr. Starnes, I'll hear you
4 with regard to your objection.

5 MR. STARNES: Your Honor, in reference to the
6 records, I think the violation of Federal Sixth Amendment,
7 state and federal, the right to confront the witnesses
8 against me. I can't -- I can't cross-examine a sheet of
9 paper, you know, what -- for witness advice, or whatever.

10 In addition, Your Honor, I believe they could have
11 brought this stuff up when I testified. Prior convictions,
12 I guess they chose not to do it.

13 THE COURT: Well, I mean, they have a right to
14 offer it in this phase of the trial, if they wish to offer
15 it.

16 Now, your objection is -- these come in under --
17 these are authenticated. They are certified true and
18 accurate records from the Cayce Public Safety Department and
19 signed by a clerk there and certified on the forms
20 themselves, and so which would appear to come in then
21 under --

22 MR. STARNES: 1005.

23 THE COURT: Evidentiary Rule 1005 as certified
24 public records.

25 Now, I think it would be -- if there is subjective

1 opinions -- these were actual convictions, as I understand
2 it. They are not just incident reports or something like
3 that, but rather these are certified convictions.

4 Do you deny that these are certified convictions
5 from their records? I mean, you have looked at them.

6 MR. STARNES: I'm not denying it, but I can't
7 cross-examine the officers that wrote these tickets.

8 THE COURT: Well, they are not -- as I understand
9 it, they are not offering anything regarding the
10 circumstances of the charges or the arrests. They are only
11 offering convictions, and they are certified records,
12 certified to be true and accurate. They would appear to
13 come in under Evidentiary Rule -- South Carolina Evidentiary
14 Rule 1005.

15 Why would they not come in? That's what I'm
16 asking you.

17 MR. STARNES: Well, I can't confront the officers,
18 Your Honor, who wrote the tickets.

19 THE COURT: But they are convictions on your
20 record, nevertheless, are they not?

21 MR. STARNES: Your Honor, I can't cross-examine
22 the basis for which the tickets -- why they were wrote --
23 written, the circumstances behind it, and things of that
24 nature, Your Honor.

25 THE COURT: That surely doesn't answer my

1 question.

2 It appears under the rule that they come in.

3 Why does the rule not apply? I guess that's my
4 question to you.

5 Just to simply say I would like to confront the
6 officer who wrote the ticket -- you know, they are not
7 offering -- as I understand it, these are not subjective
8 opinions or incident reports and that kind of thing they are
9 offering. They are offering a certified record of
10 conviction from -- why would that not come in under 1005
11 under public records, which says "the contents of an
12 official record, or of a document authorized to be recorded
13 or filed and actually recorded or filed, including data
14 compilations in any form, if otherwise admissible, may be
15 proved by copy, certified as correct in accordance with Rule
16 902 or testified to be correct by a witness."

17 We have got the certification on the forms by the
18 person who would simply come in and say they are certified.

19 Why do they not come in is my question to you?

20 MR. STARNES: Your Honor, I'm not arguing they
21 don't come in under hearsay. I'm arguing I have a right
22 under the confrontation clause, and that's my objection.

23 THE COURT: Overruled.

24 You may proceed.

25 MR. STARNES: Okay.

1 THE COURT: Bring the jury back.

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

4 THE COURT: All right. We are ready to proceed.

5 MR. BULSA: State does move State's Exhibits 73
6 and 77 into evidence. It's over objection.

7 THE COURT: Admitted over objection.

8 MR. BULSA: Thank you, your Honor.

9 MR. COLER: May it please the court?

10 THE COURT: Yes, sir.

11 MR. COLER: State calls Brian Mayfield.

12 OFFICER BRIAN MAYFIELD, having been first duly
13 sworn, testified as follows:

14 THE CLERK: Take a seat, state your full name and
15 spell your last name for the record, please.

16 THE WITNESS: Brian Wayne Mayfield.

17 DIRECT EXAMINATION BY MR. COLER:

18 Q. Tell us who you work for, if you would, sir.

19 A. The South Carolina Highway Patrol.

20 Q. Trooper Mayfield, how long have you been with the South
21 Carolina Highway Patrol?

22 A. Going on 17 years.

23 Q. What is your present assignment or duty with the
24 highway patrol?

25 A. I work the road, enforce traffic laws, work traffic

1 accidents, and check on disabled motorists. Just patrol the
2 highways in the State of South Carolina.

3 Q. I'm going to direct your attention back to May of 1994.
4 Did you have occasion to review your documents regarding an
5 incident with involving Mr. Starnes?

6 A. Yes, sir.

7 Q. Tell us about the traffic stop and the arrest of an
8 individual named Al Miles and the resulting incident?

9 A. Yes, sir. In May of 1994, I arrested a Mr. Allen Miles
10 for driving under the influence in Lexington County off
11 Highway 302 in front of a bar down there just outside of
12 Pelion, and it came to trial sometime later. When it came
13 to trial sometime later, Mr. Starnes testified that he was
14 driving instead of Mr. Miles.

15 Q. Was that true?

16 A. No, sir.

17 Q. Was there anybody else in the vehicle when you stopped
18 and arrested Mr. Miles for DUI?

19 A. No, sir.

20 Q. As a result of Mr. Starnes testimony, what happened to
21 Al Miles' charge?

22 A. He was found not guilty.

23 Q. I believe that's all the questions that I have for you,
24 trooper. Thank you for being here. Please answer anything
25 Mr. Starnes has.

1 MR. STARNES: No questions, Your Honor.

2 THE COURT: Thank you.

3 MR. COLER: If there is no objection, Your Honor,
4 we would ask the trooper be excused.

5 THE COURT: No objection, Mr. Starnes, to him
6 being excused?

7 MR. STARNES: No, objection.

8 THE COURT: Thank you for coming. You may be
9 excused at this time.

10 MR. GOWDY: May it please the court, Your Honor,
11 the State would call Ms. Gwen Ott-Bailey.

12 THE COURT: Let me --

13 If you don't mind, I apologize, but it's -- we
14 have been going almost an hour and a half and so -- I would
15 expect she would be a little while on the stand, so why
16 don't we just take a short break.

17 MR. GOWDY: Yes, sir.

18 THE COURT: Mr. Foreman, ladies and gentlemen of
19 the jury, you have been able to go back and forth. The rest
20 of us have still been here this time, so it's been almost an
21 hour and a half since we started. We will take a brief
22 recess. The next witness may be running lengthy so we will
23 take a break. Thank you.

24 Please don't begin discussing the case. Thank
25 you.

1 (The following takes place outside the presence of
2 the jury panel)

3 THE COURT: Let's take about ten minutes or so, if
4 you will.

5 (Whereupon, proceedings were recessed)

6 (Whereupon, proceedings were reconvened)

7 THE COURT: Ready to proceed?

8 MR. GOWDY: Yes, sir.

9 THE COURT: Please bring the jury in.

10 (The following takes place in the presence of the
11 jury panel)

12 THE COURT: All right, sir.

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

14 THE COURT: Yes, sir.

15 MR. GOWDY: The State would call Ms. Gwen
16 Ott-Bailey.

17 GWEN BAILEY, having been first duly sworn,
18 testified as follows:

19 THE CLERK: Take a seat, speak loudly, state your
20 full name and spell your last name for the record, please,
21 ma'am.

22 THE WITNESS: Gwen Bailey, B-A-I-L-E-Y.

23 DIRECT EXAMINATION BY MR. GOWDY:

24 Q. Good morning, Ms. Bailey.

25 A. Good morning.

1 Q. Gwen, you keep your voice up, a good strong voice so
2 the last two jurors in the jury box can hear you, okay?

3 A. Okay.

4 Q. I want you to start off by telling the jury about the
5 night that led you to go to law enforcement in that. Tell
6 them what happened at Tony Tindal's house.

7 A. Norman had come over that evening to retrieve a few
8 items that I still had that he wanted back. And when I
9 refused to give him those items, he then offered me money
10 for those items, which I refused. Then he got a little
11 belligerent about it. That led from one thing to another.
12 So he was leaving the residence where I stayed and ran his
13 mother's car up in the bushes. So I stood at the door
14 watching him to make sure he was leaving. He then backed
15 out of the bushes and drove on down the driveway.

16 I then again heard another crash, so I listened. I
17 heard another crash and then a horn blaring. So I said
18 well, he's wrecked the car again. So I walked to the end of
19 the driveway and I looked down the road a little bit and he
20 was up in the trees. And I figured he was hurt, because the
21 horn was blaring and he was laying on the horn. So I stood
22 there a watched a little bit. No movement. So I walked a
23 little closer to the vehicle to see if I could see him. So
24 I just stood there. I was scared to go too close to the
25 vehicle, because he was angry and I was scared.

1 And then Tony Tindal came up in his pickup and noticed
2 that he was up in the bushes. And he asked me what
3 happened, and he proceeded to get closer to the vehicle so
4 he could help pull the vehicle out of the bushes, out of the
5 trees.

6 So I stood there watching him. And when Norman got out
7 of the car. Him and Tony talked a little bit, and then Tony
8 went to his pickup to get a chain to pull him out. And as
9 Tony was getting the chain to hook up to pull him out,
10 Norman went back into the car and pulled out a pistol. And
11 every little move that Tony would make, he was on his back
12 holding the gun up to him, threatening him, cussing him a
13 little bit, telling him he didn't trust him, so he had the
14 gun on his back the whole time.

15 Tony then proceeded to ask me, after he pulled him out,
16 if I would take him home. And I just wanted him away from
17 us, so I agreed that I would take him home, because Tony had
18 to leave. So I got in the car. He was on the passenger's
19 side, and I thought he was passed out. I was just going to
20 drive the car to his house and walk back home to get him
21 away from me. So I tried to drive the car off and it kept
22 cutting off on me. So I coasted back into our driveway as
23 far as it would go and then just completely shut off.

24 So I tapped him on his shoulder to tell him that I
25 could not get him home. And when I tapped him on his

1 shoulder, he just went livid. He was like a wild man. He
2 started pushing on me, holding me down, telling me not to
3 move, that "this was not good. This is not good. And I'm
4 going -- he is searching around the car and going behind his
5 back. And I'm asking him "what are you doing? What are you
6 doing," because I knew he had the pistol. And I said
7 "Norman, leave the gun alone. Please leave the gun alone."
8 I didn't know he couldn't find it.

9 So he proceeds to still hold me down and telling me not
10 to move and then crawls on top of me to go over me and gets
11 out of the car. And then he pulls me out of the car, takes
12 me to the trunk of the car and makes me spread eagle. Then
13 he puts my head down on the trunk of the car and tells me
14 not to move, that he would show me what hell was like. And
15 he asked me if I wanted to see what hell was like, and I
16 told him I was living it.

17 So then he proceeds to pull my head up and puts me in a
18 choke hold to the point of passing out. Everything went
19 black and I just could remember praying "God, please help
20 me."

21 The next thing I know he's letting me go. He pulls me
22 away from the car a little bit and makes me just stand
23 there, and he's looking at me, calling me names, cussing me.
24 He keeps telling me "it's not good. It's not good." I said
25 "no, it isn't."

1 He takes me over to the pickup, makes me spread eagle
2 again, throws my head down on the pickup, on the front of
3 the pickup, and takes my hand, makes me grab the windshield
4 wiper. He said "if you let go, I'll show you what hell was
5 like." And I told him I wouldn't let go.

6 The next thing I know he's choking me again, and I'm
7 praying for God to help me, to the point of passing out
8 again. Everything was going black. I can remember just
9 trying to breath and catching every little breath I could,
10 and then he let's me go again.

11 Then he starts dragging me to the house.

12 There was a point before he put me to the pickup, I can
13 remember hearing the door open. And he told me "if he looks
14 out that door one more time, I'm going to blow his fuckin'
15 head out." And I asked him "are you talking to my son or
16 about my son," and he said "no, I'm not talking about him.
17 I was talking about somebody else." And that's when he took
18 me to the pickup.

19 After the incident at the pickup, then he proceeded to
20 drag me to the house. So I'm pulling back on him, because I
21 don't want him to go in, but he keeps dragging me by my
22 wrists. He's got my hands together and pulling me by my
23 wrists and he tries to hold me with one hand to open the
24 door and he couldn't get it open, so he kicks it in. The
25 whole facing of the door went in with the door. And he

1 makes me stand in the kitchen.

2 Then he proceeds to walk, and then he tells me not to
3 move. So I stood there. And then my son says "what's going
4 on?" And he hollers at him to just shut up. And I did a
5 little motion telling him not to say anything. So Norman
6 proceeded to sit down on the couch facing Evelyn. And he
7 asked Evelyn if she was mad at him, and she said no. He
8 said "I'm not mad you either." They had other words. I
9 couldn't hear everything.

10 And then he got up, stuck his hand behind his back and
11 then he walked over to her and he sat down, kneeled in front
12 of her and took her hand and stuck her finger in his mouth.
13 Then the next thing I see him licking up her leg, and he
14 says "I love you," and she said "I love you too, Norman."
15 And then he got up and walked out the door.

16 So I walked to the door to make sure he was out, and he
17 went back to the car and was sitting in the car. So I made
18 sure that he was out again and wasn't coming back in and
19 went and got our things together. I called a friend of
20 mine, Vickie, and told her what had happened, if we could
21 come over, and then that's where we went.

22 The next morning I went to the police.

23 Q. All right. Ms. Bailey, this jury heard from Ms. Vickie
24 Kaiser in the guilt phase. They heard about the tail end of
25 that conversation. What you just told this jury is what

1 precipitated that meeting with Vickie Kaiser, correct?

2 A. Yes, sir.

3 Q. And then Vickie Keiser and others persuaded you to go
4 to law enforcement?

5 A. Yes, sir.

6 Q. And that was on May the 27th?

7 A. Yes, sir.

8 Q. Ms. Bailey, I want you to tell the jury what it was
9 like working at the Panther Parlor.

10 Start by telling them what your wages were?

11 A. Zero wages. When I first started working for him, I
12 had wages, but when I moved in with him, there were no
13 wages.

14 Q. Was he making your car payment for you?

15 A. No, sir.

16 Q. Was he supposed to make your car payment for you?

17 A. Yes, sir.

18 Q. What happened to your car?

19 A. It was repossessed.

20 Q. How were you surviving financially?

21 A. Living off my tips I could get and I had things to eat
22 where I worked, a roof over my head, but if I even wanted a
23 pack of cigarettes, I had to save my tip money to get
24 cigarettes.

25 Q. What hours would you work at the Panther Parlor?

1 A. Normally an hour before opening, an hour or two hours
2 after closing.

3 Q. And what hours would Ms. Miles work?

4 A. The same.

5 Q. And what hours could we expect to find the proprietor
6 of the Panther Parlor there, Mr. Starnes?

7 A. Only if you got lucky. Occasionally he would stay and
8 help through the lunch rush, but that was occasionally.

9 Q. When did he come into the restaurant, what would he do?

10 A. Usually took money out of the till and left again.

11 Q. Ms. Bailey, at some point did you become convinced that
12 Mr. Starnes had a substance abuse problem?

13 A. Yes, sir.

14 Q. When did that become most readily apparent to you?

15 A. I don't remember what time of year it was, but a friend
16 of ours -- after Norman got shot, a friend of ours had come
17 to stay over and spend the night. In the process of right
18 after that I was rearranging the furniture and I found a
19 little baggy with something in it and I questioned him about
20 it, and he said it was our mutual friends, and then that's
21 when I started noticing changes in him.

22 Q. Tell the jury what changes that you noticed in his
23 demeanor, the way he interacted with other people, his
24 physical appearance.

25 A. Well, he was gone all the time. He very seldom came

1 home at night. It would be the next morning before he would
2 come home.

3 Wild eyed. They were always wild and like he was just
4 paranoid. Always looking around and make sure that nobody
5 was watching him. He didn't bathe. Very seldom saw him
6 bathe. If he did, it was when I was at work. Be shuttled
7 looking lately. Lost a lot of weight.

8 Q. Ms. Bailey, did the defendant continue to use drugs
9 after he was shot?

10 A. Yes, sir.

11 Q. Are you convinced of that?

12 A. Yes, sir.

13 Q. What percentage of the time would the defendant carry a
14 firearm?

15 A. 90 percent of the time, if not more.

16 Q. How many automobiles did you and Mr. Starnes have when
17 you were living with him?

18 A. We had his mother's car and the stolen vehicle and
19 mine, until it was repossessed.

20 Q. On the nights that Mr. Starnes would not come home, you
21 had to open the Panther Parlor, how would you get to the
22 restaurant?

23 A. I had at one time rode a bicycle just to open up the
24 restaurant, because I know that's how it fed me.

25 Q. You rode a bicycle?

1 A. Yes, sir, I did. Walked it half the way because I
2 couldn't pedal most of the way.

3 Q. Ms. Bailey, at any time point did you or others
4 intervene and try to get this defendant into an addiction
5 center or a rehabilitation center?

6 A. Yes, sir, we did.

7 Q. What facility did you try to get him into? Do you
8 remember the name?

9 A. I don't remember the name of the facility, but what --
10 it was in Charleston.

11 Q. Was the defendant ready to concede or admit that he
12 needed treatment?

13 A. No, sir.

14 Q. So your intervention efforts failed?

15 A. Yes, sir.

16 Q. Ms. Bailey, the jury this morning heard from a
17 gentleman by the name of Burke Fitzpatrick about a Bob Segar
18 concert.

19 A. Yes, sir.

20 Q. Do you know whether or not the defendant gave out
21 tickets to that concert to Mr. Fitzpatrick or others?

22 A. I knew he gave out other tickets.

23 Q. When was the last time that you saw tickets to the Bob
24 Segar concert, other than the night that you went?

25 A. When Norman took Bill and Jared's wallet and he took

1 the tickets out of their wallet. I don't know which wallet
2 it was, so I just remember seeing the tickets, him saying it
3 was a waste.

4 Q. He took Bob Segar tickets out of Bill or Jared's
5 wallet?

6 A. Yes, sir, he did.

7 Q. And said it would be a waste?

8 A. Yes, sir.

9 Q. All right, Ms. Bailey, the jury has heard about a trip
10 to Rockingham to drag races. Tell them your perspective on
11 the Rockingham drag race trip.

12 A. It started out pretty good.

13 Some incidents happened there that I wasn't able to
14 watch the race too much. I was back and forth to him and to
15 Evelyn. I wanted to keep an eye on Evelyn. She was free
16 and fancy, you know, being just her jolly self, and so
17 afraid of what she might do, as far as she was flashing and
18 just having a good time. So I wanted to keep my eye on her,
19 so I was back and forth, and he was getting angry at me,
20 started accusing me of doing something at the races.

21 So on the way home he just kept throwing accusations at
22 me, telling me what I was doing, which I wasn't. I was
23 trying to keep an eye on Evelyn to make sure she was safe.

24 Q. Who was in the car to listen to this conversation?

25 A. Me, my son Tyler, Evelyn, and Gerald.

1 Q. And your son was how old?

2 A. About 12.

3 Q. And he heard this?

4 A. Yes, sir.

5 Q. Okay. Tell the jury what happened on the way home.

6 A. He got angry with me.

7 At one point Gerald was driving, and Norman kept
8 throwing accusations at me, and I just got a little fed up.
9 I had had enough, so I threw a cassette at him and I missed
10 him and that just infuriated him. So he lunged over
11 Gerald's back, who was driving, and was screaming at him to
12 "pull over. Pull over." And Gerald told him to please back
13 off, he was getting it off the road.

14 So he got the car off the road. He made Gerald get
15 out. He made my son get out. And I told Evelyn "don't
16 move, you stay in this car, because if you get out of the
17 car and he makes me get out of the car, he's going to leave
18 us here," so Evelyn stood fast.

19 He kept trying to get me out and trying to get her out.
20 Finally him yanking on her hard enough, he kept banging her
21 head up against the door frame, pulling on her arms, pulling
22 on her legs trying to get her out, and she just finally gave
23 up and got out, because he was hurting her.

24 Then he came to me and was trying to pull me out and
25 refused to get out. I knew that he would leave me and my

1 son and everybody else on the side of the road. I had no
2 idea where I was at. So he's pulling on me and I wedged my
3 feet up in the frame of the front windshield and the door so
4 he couldn't pull me out. And I reared back so I could get
5 leverage. And when that didn't work, he came in on me,
6 choking me. At one point I thought he was going to poke my
7 eye out. Pulling my hair, kneeling me in my legs trying to
8 get me unwedged. And then my son kept saying "dad, please
9 leave her along. I'll get her out. I'll get her." And
10 just to hear my son call him dad just hurt me so bad,
11 finally just decided to get out. I didn't want my son to
12 see me getting abused anymore. It was the last thing I
13 wanted, so I finally got out, and he did exactly what I
14 thought he would do and leave us there.

15 Q. How did y'all get home?

16 A. Well, I made everybody stay and I started walking. I
17 said "I'm going for help." I got a little bit up the road
18 and I'm going "god, there is no houses close here. Where am
19 I going? I don't know where I'm going. I can't leave them
20 there," so we all started walking. And we came to what
21 looked like a rescue house, ambulance, fire, rescue, and we
22 went in there and we called the police. The police came and
23 took us to the police station. And then Gerald called some
24 of his family to come and get us.

25 Q. Ms. Bailey, you made reference -- when I asked you

1 about going to work, you had to ride a bicycle on occasion.

2 You made reference to a stolen car.

3 A. Yes, sir.

4 Q. Do you know how Mr. Starnes came in possession of a
5 stolen car?

6 A. He had someone steal it for him.

7 Q. Do you know where he had someone steal it from?

8 A. It was a Toyota dealership.

9 Q. Where would he keep the car?

10 A. Various places. Behind the shed in the back of our
11 house. At his grandmother's.

12 Q. At one point did the defendant own a truck?

13 A. Yes, sir.

14 Q. What did he have done to the truck?

15 A. He had it torched. He had it set fire.

16 Q. For what reason?

17 A. He didn't want a truck payment anymore, since we had my
18 car.

19 Q. Do you know a man named Al Miles?

20 A. Yes, sir.

21 Q. Did you know that Al Miles had been arrested by Trooper
22 Mayfield for driving under the influence?

23 A. Yes, sir.

24 Q. Do you know what role, if any, Norman Starnes played in
25 Al Miles DUI trial?

1 A. He told the police officer that he was driving.

2 Q. Was that his plan before trial, to go commit perjury?

3 A. Yes, sir.

4 Q. Please answer any questions that the defendant may have
5 for you.

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

7 THE COURT: Yes, sir.

8 CROSS EXAMINATION BY MR. STARNES:

9 Q. How are you doing, Gwen?

10 A. Not good.

11 Q. After all that you just told this jury, are you still
12 concerned about me?

13 A. Yes.

14 Q. I believe you mentioned at one point that you and Tyler
15 moved in there at the house on 375 Forts Pond Road?

16 A. Yes.

17 Q. At some point did Tyler sign up for football?

18 A. Oh, yeah.

19 Q. Who did that?

20 A. Who signed him up?

21 Q. Yes, ma'am.

22 A. Well, I did to start with. He was in football for
23 several years.

24 Q. His coach was a gentleman that I went to school with,
25 Myron Tims? Do you remember Myron and Pam?

1 A. Yes, I do.

2 Q. We spent some time over at Myron and Pam's house,
3 didn't we?

4 A. A couple of times.

5 Q. Went out to the airport and seen the Carolina Gamecocks
6 come in on an airplane. Do you remember that?

7 A. Yes.

8 Q. Gatlinburg, Tennessee. Tyler had never seen the
9 mountains before. Do you remember us taking him up to see
10 the mountains?

11 A. I sure do.

12 Q. Can you tell the jury a little bit about that?

13 A. He treated my son very well. He treated me like a
14 piece of shit. Excuse me.

15 The family was not happy that I was there. I was very
16 uncomfortable, but I went anyway for my son and for him --
17 for you.

18 Tyler had a good time. And I felt like he's not here
19 with me, he's here with my son. You left me behind you all
20 the time.

21 Q. Tyler --

22 A. I felt like I had to walk five foot behind you, like
23 the Japanese do, because it was like I wasn't even there.

24 Q. Tyler and I spent a lot of time together, Gwen?

25 A. You got more time with him than I did.

1 Q. Took him on his first helicopter ride?

2 A. From what I recall, yes.

3 Q. When we were in Gatlinburg?

4 A. Yes.

5 Q. We all went to Myrtle Beach?

6 A. Who is we all?

7 Q. Dorothy and Jack and me and you and Tyler? Do you
8 recall that?

9 A. I recall us going there and you meeting me there.

10 Q. That was in Myrtle Beach?

11 A. Yes, sir.

12 Q. We had a good time?

13 A. Yes, sir.

14 Q. I wasn't on drugs then, was I?

15 A. Not that I knew of.

16 Q. Crack cocaine changed my life, didn't it, Gwen?

17 A. Yes, it did.

18 Q. Tell the jury what type of person I was before crack
19 cocaine.

20 A. Excuse me.

21 You swept me off my feet. You would have given anybody
22 the shirt off your back, but I also saw a mean streak in
23 you. I recall one time that you asked me how would I feel
24 about you if you told me that you had spent time in jail or
25 in prison, and I said the past is the past. It's who you

1 are now.

2 I seen you do a couple of ugly things, but love is
3 blind.

4 MR. GOWDY: Your Honor, I may not know what the
5 defendant is getting ready to try to do, but I may, and I
6 would like to approach.

7 THE COURT: Please approach.

8 MR. STARNES: All right.

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

11 A. Mr. Starnes, if I have to look at something, may I get
12 my glasses?

13 BY MR. STARNES:

14 Q. Sure.

15 (Witness off the witness stand)

16 (Witness back on the witness stand)

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

19 THE COURT: Mr. Foreman, ladies and gentlemen of
20 the jury, I'm going to ask you to retire to the jury room
21 for a brief time. I'll have you back shortly. Thank you.

22 (The following takes place outside the presence of
23 the jury panel)

24 THE COURT: All right. Let's go ahead and look at
25 it while the jury is still out and see if there is any

1 objection to it.

2 (Whereupon, the DVD was played in the courtroom)

3 MR. STARNES: I won't even have to show this much,
4 it doesn't even have to be this much.

5 THE COURT: Any objection?

6 MR. GOWDY: I don't have any objection. I just
7 don't know who these people are. I mean, are all of them
8 connected somehow to Mr. Starnes, or are we --

9 MR. STARNES: I have already asked her questions
10 about that.

11 THE COURT: And he can follow up with that. He
12 can ask her questions about it. I think he's allowed to
13 show it.

14 MR. GOWDY: I don't have a problem with it. I
15 just -- I don't recognize -- I mean, people change in 10 or
16 15 years. I don't recognize who it is, so --

17 THE COURT: Well, Mr. Starnes, are these Ms.
18 Bailey and her son? Is that who you are showing?

19 MR. STARNES: Yes, sir.

20 THE COURT: Or somebody else?

21 MR. STARNES: Ms. Bailey and her son and two
22 guests that they were with.

23 THE COURT: Okay. Well, bring the jury back,
24 please, sir.

25 (The following takes place in the presence of the

1 jury panel)

2 THE COURT: Please proceed.

3 BY MR. STARNES:

4 Q. Ms. Bailey, as I play this video, can you explain to
5 the jury who these individuals are in this video and where
6 they are located?

7 (Whereupon, the videotape was started)

8 A. That's my son Tyler. We are at the water park at
9 Myrtle Beach.

10 BY MR. STARNES:

11 Q. When you say, we who are you talking about?

12 A. Dorothy and her son that just came down together right
13 there. She's my ex-sister-in-law. And that's you. Me on
14 the bottom right, and you.

15 Q. I was the one taking the video?

16 A. Yes.

17 Q. This was before I was on drugs, is that correct?

18 A. Correct, to my knowledge.

19 Q. Is this your son Tyler?

20 A. Yes, sir.

21 Q. Ms. Bailey, if you could, could you give the jury an
22 idea of how we come to know each other?

23 A. From going to your restaurant to eat. That's how we
24 began to know each other. Me coming to the restaurant to
25 eat and to see you.

1 Q. When was that?

2 A. Probably '90, '91.

3 Q. Is that the time that you were married to a gentleman
4 named Rick Ott?

5 A. Yes, I was.

6 Q. While you were married to Rick, that's when you and I
7 started dating?

8 A. Yes, sir.

9 Q. How long were we together, Gwen?

10 A. From then on to this incident.

11 Q. On and off?

12 A. On and off.

13 Q. On and off relationship?

14 A. Yes, sir.

15 Q. Prior to the hearing in Spartanburg we had, have you
16 had an opportunity to visit me in prison?

17 A. Have I had an opportunity?

18 Q. Yes.

19 A. I'm sure the opportunity was there, but I chose not to.

20 Q. You never come to prison and visited me or anything?

21 A. No, sir.

22 Q. Or at the jail.

23 So you can't tell the jury what type of person that I
24 have been in the last ten years, is that correct?

25 A. That's correct.

1 Q. Before I was on drugs, would you agree with me that I
2 was a pretty decent person?

3 A. To my knowledge, yes, sir, but there was also some bad
4 things.

5 Q. We all got bad things, don't we, Gwen?

6 A. I know.

7 Q. Through all that we have been through, Gwen, do you
8 still love me?

9 A. I will always love you. I will always love my
10 ex-husband. I loved who you were, not who you became.

11 Q. And at one time I was a pretty decent person, wasn't I?

12 A. Yes, sir.

13 Q. Thank you.

14 A. You are welcome.

15 MR. STARNES: I have no further questions, Your
16 Honor, at this time.

17 THE COURT: Any redirect?

18 MR. GOWDY: Very briefly, Your Honor.

19 THE COURT: Yes, sir.

20 MR. GOWDY: I'll give the defendant a chance to
21 unplug it.

22 REDIRECT EXAMINATION BY MR. GOWDY:

23 Q. Ms. Bailey, I want to ask you about a different kind of
24 ride the defendant took your son on. Did he ride him in a
25 car with two corpses in the trunk in January of 1996?

1 A. Yes, sir.

2 Q. I want to ask you about a different kind of video.

3 About a month ago did you receive a video from this
4 defendant entitled "Remember the Good Times"?

5 A. I did.

6 Q. And had you had any contact with him over the past
7 decade?

8 A. No, sir.

9 Q. And how did you interpret that video that he sent you?

10 A. At first I was hurt by it. Then if that's how he truly
11 felt about me, how could he do the things that he did to me?
12 I cried a lot over it. Where he stated "remember the good
13 times," bad was right after it. So the good times -- my
14 immediate thoughts after was but what did you do after that.

15 Q. Did you view it as an attempt to either influence your
16 testimony --

17 MR. STARNES: Your Honor, I have to object. He's
18 leading.

19 THE COURT: Please avoid leading, counsel.

20 MR. STARNES: She knows, Your Honor.

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

22 MR. STARNES: She knows me.

23 A. Can I speak?

24 BY MR. GOWDY:

25 Q. Were you asked not to testify?

1 A. I was asked if I would consider pleading the Fifth, and
2 that's when I knew it was just a ploy. That's what it made
3 me file like. Up to that point I wasn't sure how to feel
4 but when Pete asked me if I would consider pleading the
5 Fifth, then I knew.

6 Q. Well, let me ask you this. From a timing standpoint,
7 can you give the jury a sense of timing from when you got
8 the video and when you were asked to plead the Fifth? Would
9 that be the same day?

10 A. Yes, sir, immediately after.

11 Q. Thank you, Ms. Bailey.

12 A. You are welcome.

13 RECROSS EXAMINATION BY MR. STARNES:

14 Q. Ms. Bailey, have I ever asked you to plead the Fifth
15 and not testify?

16 A. You have not.

17 Q. As a matter of fact, Mr. Pete Skidmore -- you advised
18 Mr. Pete Skidmore before you seen that video that you were
19 coming to Mr. Gowdy's office and talk to him the next day?

20 A. Yeah. He knew before that video. I told him when --
21 that night he came and subpoenaed me, I told him that I was
22 to appear in front of Mr. Gowdy.

23 Q. So he knew -- you knew before he showed you the video?

24 A. Yeah.

25 Q. And Mr. Skidmore knew before you seen the video that

1 you were coming to Mr. Gowdy's office?

2 A. Yes.

3 Q. Thank you.

4 MR. GOWDY: No.

5 THE COURT: Thank you, ma'am. You may stand down
6 now.

7 The State calls Stanley Gleaton.

8 STANLEY GLEATON, having been first duly sworn,
9 testified as follows:

10 THE CLERK: If you take a seat and speak loudly
11 and state your name and spell your last name for the record,
12 please.

13 THE WITNESS: Stanley Gleaton, G-L-E-A-T-O-N.

14 MR. COLER: May it please the court?

15 THE COURT: Yes, sir.

16 DIRECT EXAMINATION BY MR. COLER:

17 Q. Mr. Gleaton, you are presently incarcerated in the
18 South Carolina Department of Corrections?

19 A. Yes, sir.

20 Q. Do you know Mr. Starnes?

21 A. Yes, sir.

22 Q. Tell the jury when you first met or began to know Mr.
23 Starnes.

24 A. Right after he opened the Panther Parlor in Pelion.

25 Q. Do you know about what year that would have been?

1 A. '91, '92.

2 Q. Okay. After meeting him, at some point did you help
3 him obtain crack cocaine?

4 A. Yes, sir.

5 Q. Describe for us first the meeting of how you came to
6 meet him at the Panther Parlor and then how that progressed
7 to you helping him get crack cocaine.

8 A. I met him -- we was at the old store Mr. D.L.
9 Shumpert's, and I meet him through a friend of mine, you
10 know. He told me about Norman was dealing with him, you
11 know, and if I wanted to stay high, get hooked up with
12 Norman, because he came pretty regularly to see him, you
13 know, on buying some hard. And so I started talking to
14 Norman. And Norman started coming down where I was staying
15 at the time down at a little place called The Bottom, right
16 off of 178, Glover Road. Norman started coming down there
17 and I got hooked up with him then.

18 I used to serve the dope to him through -- you know, in
19 other words I was the middle man. And when I had served
20 Norman, me and him would ride off and get high together, you
21 know.

22 Q. Let me back up. Describe for the jury where this area
23 you called The Bottom off Glover Road. Describe for them
24 where that is.

25 A. It's right off 178 down in Pelion.

1 Q. And were you staying down there at that time?

2 A. Yes, sir.

3 Q. Describe how Norman Starnes got to come to that area to
4 get crack cocaine.

5 A. He drove -- he used to drive down from the restaurant.
6 And when he pulled in, you know, I would go out to the car
7 and he would tell me what he wanted. I would go back and
8 get it and come back, get the money, get in the car with him
9 and we would ride on up Glover Road. It's a little dirt
10 road that leads back out to 302.

11 Q. When you said he would tell you what he wanted, what
12 did he want?

13 A. 40, sometimes 50. Maybe sometimes a \$100 worth.

14 Q. Just -- you will have to describe for them what you
15 mean when you say 40, a 50, or a \$100 worth.

16 A. \$40 is like two 20 rocks. Two pieces.

17 Q. Pieces of what?

18 A. Hard rock. Crack cocaine.

19 Q. All right. Is that the usual quantity that he would
20 purchase?

21 A. At the beginning when we started -- when I started
22 dealing with him it was.

23 Q. Okay. How many times a week would he come when he
24 first started coming and getting crack cocaine from you at
25 The Bottom?

1 A. When I first got with him, it might have been about
2 twice a week.

3 Q. Okay.

4 A. When I first started dealing with him.

5 Q. Did it progress?

6 A. Yeah. On down the road, Norman would come by the house
7 at least two or three times a day, every day, except for on
8 Sunday. On Sunday you might would see him once or twice.

9 Q. Okay. Did you ever go with him anywhere else to get
10 crack cocaine besides the place that you described as The
11 Bottom?

12 A. Yeah. Yeah. I done took him several other places.
13 And then if there wasn't no dope there at the house, then I
14 would take him other little areas.

15 Q. Can you tell us where some of those other areas were
16 that you would take Mr. Starnes to get crack cocaine?

17 A. Yeah. One area was about a mile, mile and a half on
18 down the road from my house, which was called Austin Court.

19 Q. Okay.

20 A. And then from there we would go to Swansea. Out past
21 the feed mill, in the back of the feed mill.

22 I have took him to a little town going into Wagener
23 called Perry's, to the trailer park over there.

24 Them about the only places right there.

25 Q. When he first started coming, how would he pay for the

1 crack cocaine?

2 A. With cash.

3 Q. Okay. As your relationship with him progressed, would
4 he pay with other things?

5 A. Yeah, on down -- on down the line, like when he would
6 run out of money, then he would go back to his restaurant
7 and open up and go in, get boxes of hamburger meat or boxes
8 of bacon and bring it back and swap it off with us for the
9 dope. And if it wasn't that, then he would go to the
10 restaurant and go in the game -- the game -- the game things
11 and get all the change out of the game machines and come
12 back with bags -- with bags of change and we would take the
13 change too.

14 Q. You say the game thing. Are you referring to poker
15 machines?

16 A. Yeah.

17 Q. Take change out of there?

18 A. Yeah.

19 Q. You were with him on a number of occasions when he
20 consumed the crack cocaine?

21 A. Yeah.

22 Q. Describe for the jury how you smoke a rock of crack
23 cocaine.

24 A. On a -- well, you know, like a tire gauge that you
25 check your air on your car tires with, have that fixed up

1 with a piece of rubber, a brillo, which is a pot scratcher
2 that you use to clean your pots with --

3 Q. Uh-huh.

4 A. -- and you smoke it out of that with what you call a
5 stem.

6 Q. Are you describing a homemade crack pipe?

7 A. Yeah.

8 Q. Can you smoke crack with a Pepsi can?

9 A. Yeah.

10 Q. How do you do that?

11 A. Just bend it in the middle, punch holes it in with any
12 kind of sharp object, put your cigarette ashes on it, put
13 your rock on it.

14 Q. Can you estimate for us the number of times that you
15 helped or provided Mr. Starnes with crack cocaine during
16 your relationship?

17 A. Every time he would come to The Bottom, you know, most
18 of the time he would deal with me, unless I wasn't there,
19 you know. But the majority of the time I would be there,
20 because I already knew he was coming, you know, so I would
21 sit there and wait on him. And when he come, I already know
22 it's time to get high.

23 Q. And describe for me -- he was a good customer for you?

24 A. Yeah.

25 Q. Describe to me what you would get out of providing a

1 rock of crack to Mr. Starnes? How would that work?

2 A. Well, from starters I would get high by just riding off
3 with him, because he would turn me onto the dope that he
4 would buy too. And then when I get back, then whoever I get
5 the dope from, they would either give me more dope or either
6 give me the money, you know, from what I had done made from
7 selling the dope to him.

8 Q. And you could use some of that crack to smoke yourself?

9 A. Yeah.

10 Q. And you would -- would you also get money from the
11 drug?

12 A. Yeah.

13 Q. And what would you do with that money?

14 A. Buy more dope.

15 Q. Did you ever see Mr. Starnes purchase larger quantities
16 than the normal 40 or \$50 quantities that he purchased?

17 A. Yeah, at times he had come over and over and over and
18 buy a \$100 piece of it at a time, which they call a slab.
19 That's one solid piece --

20 Q. Okay.

21 A. -- you know.

22 If he catch the boy before he get it cut up, you know,
23 he would just say he would want a \$100 piece. Well, then he
24 will sell him the whole slab.

25 Q. What would an individual -- what would he do with a

1 whole slab of crack?

2 A. Well, if -- if it's just only me and him riding, we
3 just ride until we smoke it. And then he would come back
4 and we would maybe get another one, and we would ride until
5 we smoke it. Then he might leave and go back to the
6 restaurant for about 30, 40 minutes, and then he would come
7 back and we would just rotate during the same thing, day in
8 and day out.

9 Q. Did you observe a change in his behavior or his
10 demeanor over the course of your relationship?

11 A. Yes, pretty much.

12 Q. Describe for us that change that you observed.

13 A. Well, he had done pretty much got into the point where
14 when he first started, he could just smoke and leave and go,
15 and you might not see him no more that day. But as -- as it
16 came on down the road when he started smoking, when he would
17 take a hit and be driving down the road, I would be riding
18 with him. I would have to grab the steering wheel and keep
19 us from hitting the bank, or the ditch, or something,
20 because he say he see men in the trees, men jumping out the
21 trees in army suits. And he is saying all kind of things,
22 and so I knew right then he was -- he was into it pretty
23 good then.

24 Q. Did you ever see a change in his temper?

25 A. Yeah, he used to get -- he used to get mad when I used

1 to tell him that, you know, "Norman, turn around, man." Or
2 if I tell him "Norman, you are about to hit the bank, man,"
3 he would get a little loud and tell me to leave him alone,
4 let him drive, he got he, he got it, you know. Or he would
5 get mad and turn around and go and put me out and tell me
6 I'm f'in up his high and this and that, you know, so I could
7 tell that he was -- he was -- he was tripping real hard on
8 that crack.

9 Q. Finally, on one occasion you ended up shooting Norman
10 Starnes, correct?

11 A. Yes, sir.

12 Q. Describe for us what happened. Talk about the events
13 that led up to that incident and describe for us what
14 happened.

15 A. Well, one night my cousin, Joe Davis, Jr., his sister
16 lived right up Glover Road from The Bottom, was having a
17 birth night party, a yard party, and we was -- we was all
18 getting ready to go up there. So all the boys with the dope
19 was already up there. And I was the last one to leave the
20 house getting ready to go up there.

21 Norman came up and he told me he wanted some dope. I
22 told him all the boys was up there at the party. I told
23 him, I say, "well, Fred up there to the party." He said
24 "well, now, you go up there and get me something from Fred?"
25 I said "yeah, I'll ride up there and get you something from

1 Fred." So when we got up there, Mr. Starnes gave me seven
2 dollars and he told me to see what I could get with that
3 from Fred, with seven dollars. So I told him, I said,
4 "well, it's going to take me a few minutes to find Fred,"
5 because the yard was crowded with people. So when I did
6 found Fred, I told him I needed to get a dime. So when Fred
7 gave me the dime, I gave him -- he said "who are you getting
8 this for? And I said "I'm getting it for somebody else."
9 He said, "well, let me the seven dollars." I gave him
10 seven. He said "who is this for," and I gave it. I said
11 "it's for Norman." He said "well, you tell Norman when
12 Norman pay me my money that he already owes me, I'll sell
13 him some more dope." So he took the seven dollars and put
14 it in his pocket. So I said, "okay, I'll go tell him."

15 So when I came back to find Norman, Norman's car wasn't
16 nowhere in the park. He had done left. So a fight broke
17 out and they said they were calling the police. Well,
18 everybody started leaving the party.

19 So when I went back to The Bottom to the block house, I
20 went in the house and I came back out and I was getting
21 ready to walk up -- to walk up the highway to go up to
22 Annie's Club right there on 178. And by that time Norman
23 came down the road, came in another friend of mine's, Jerome
24 Williams. And when he stopped, he asked me where his
25 fuckin' money or his dope was. And I told him, I said "you

1 need to go up there and talk to Fred." I said "Fred didn't
2 give me no dope. Fred kept your money. He told me to tell
3 you if you pay him, he will sell you some more dope." And
4 Norman said "Gleaton, you're a lying mother-fuckin nigger."
5 And I told Norman, I said, "Norman, if you come out your
6 mouth and say that again," I told him like this, "I'm going
7 to bust a cap in your ass." And he said "Gleaton, you're a
8 lying mother-fucking nigger." And when I went to walk up to
9 the car, he hit me with the door. And when he leaned over
10 in the seat to reach for his pistol, I just ran back up to
11 the car and shot him in the neck. And he throwed up both
12 his hands. Jerome jumped out of the car and ran around the
13 other side and said "Gleaton, you done shot him. Don't
14 shoot him no more." By that time Norman said "you shot me.
15 You shot me." He put the car in reverse and backed all the
16 way back up the road to 178 and drove home, and that was the
17 last time I seen Mr. Starnes.

18 Q. That's all the questions I have, Mr. Gleaton. Please
19 answer any that Mr. Starnes has.

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

21 THE COURT: Yes, sir.

22 CROSS EXAMINATION BY MR. STARNES:

23 Q. Mr. Gleaton, do you remember giving the Lexington
24 County sheriff's office a written statement when this
25 incident happened?

1 A. Not to my knowledge.

2 Q. Do you remember telling Roger Crook, the deputy, that
3 we were outside tussling over the gun and that you shot me
4 and it was an accident?

5 A. Yeah, I remember that.

6 Q. Do you remember telling him it was an accident?

7 A. Yeah.

8 Q. But today you are telling this jury that I made some
9 racial comments at you and you shot me as a result of that?

10 A. That's right.

11 Q. Could you tell the jury which is true, what you told
12 the deputy when you were arrested back then for shooting me,
13 or what you are telling this jury today?

14 A. Well, back then, like I told them then, when I told the
15 deputy that, I wasn't -- I wasn't sworn in up under oath,
16 but today I'm sworn in under oath to tell the truth.

17 Q. So it's different? It's okay to lie, unless you are in
18 court? Is that what you are saying?

19 A. When you ain't under oath, whatever you say can't be
20 held against you. But today I put my hand on the Bible and
21 swore in to tell the truth.

22 Q. Okay. So telling a lie out of court is okay?

23 MR. COLER: Objection, argumentative.

24 THE COURT: It's proper cross. I'll allow it.

25 MR. COLER: Okay.

1 BY MR. STARNES:

2 Q. So telling a lie to a law enforcement officer and not
3 in the court of law, that's okay?

4 A. When I'm not -- when I'm -- when I'm -- when I'm not --
5 when I'm not on the urge of letting them know that, yeah, I
6 was the one that shot him, because before I told them that,
7 I told him it was a lot of people at the party also
8 shooting. And, you see, the incident at that time too then
9 didn't even happen at the party. It was -- it was right up
10 above the block house.

11 Q. As a matter of fact, Mr. Gleaton, you did not receive
12 any time. They did not even process your charges for
13 shooting me, is that correct?

14 A. Yeah, I -- I stayed in Lexington County for four
15 months.

16 Q. But you never went to prison for it?

17 A. No.

18 Q. They didn't process it? You didn't even --

19 A. No.

20 Q. -- go before a judge, did you?

21 A. No, I didn't.

22 Q. That's correct, you didn't.

23 As a matter of fact, before they let you out, you
24 talked with a solicitor about my case, is that correct, in a
25 prior proceeding?

1 A. The solicitor was talking to me about your case.

2 Q. Okay. And then after the solicitor talked to you and
3 you give the solicitor the information, they let you out of
4 jail?

5 A. No, I bonded out of jail.

6 Q. But they didn't charge you with anything? In other
7 words, you were never -- you were never charged or did one
8 day for shooting me, is that correct?

9 A. Yeah, I did four months for shooting you, but I wasn't
10 charged with the shooting.

11 Q. Did you plead guilty to any offense as a result of
12 shooting me?

13 A. No, I did not.

14 Q. Thank you.

15 How much did we hang out together before I started
16 using crack cocaine, Stanley?

17 A. The only time I would see you before I started knowing
18 that you was hanging out -- I mean doing cocaine with Norman
19 was when I would come into your restaurant.

20 Q. Would you see me in there often?

21 A. Not -- may be once or twice. Usually you would be
22 gone.

23 Q. How long of a relationship did we have, as far as me
24 coming to you for buying drugs?

25 A. Two years.

1 Q. Eight months sound about right?

2 A. No, maybe two, three years at the most.

3 Q. You say that I opened the restaurant in 1992?

4 A. Yes, something like that. '91, or '92.

5 Q. 19 --

6 A. My knowledge.

7 Q. 1989 sound about right? March of 1989?

8 A. Well, I mean, I know it was '91, '92, somewhere along
9 in there when me and you got in cahoots.

10 Q. After the night that you shot me, you never seen me
11 anymore, is that correct?

12 A. No.

13 Q. Did you ever see me in the Pelion Peanut Parade?

14 A. No.

15 Q. You didn't attend the parade, did you?

16 A. No.

17 Q. Would you agree with me, Stanley, that crack cocaine is
18 a very destructive and very addictive drug?

19 A. Only if you let it get to your mind.

20 Q. Only if you let it get to your mind?

21 A. Yeah, it will -- it will do damage to you.

22 Q. So I guess what you are telling the jury is you can
23 smoke crack cocaine over a period of six or eight months and
24 some people it just doesn't get to their mind?

25 A. Yeah.

1 Q. How about crystal methamphetamine? Have you ever used
2 crystal methamphetamine?

3 A. Never messed with it. Seen it, been around it, but
4 never did nothing with it.

5 Q. Have you ever seen anybody under the influence of
6 crystal methamphetamine?

7 A. Yes.

8 Q. How do they act?

9 A. They be speeding like they are on speed. They are just
10 constantly moving or doing things.

11 Q. On the night that you shot me, Stanley, you didn't call
12 law enforcement, did you?

13 A. No. You did.

14 Q. Okay. Where did you shoot me at?

15 A. In the neck.

16 Q. Did you intend to kill me?

17 A. No.

18 Q. You were just shooting?

19 A. Just -- just keeping you from drawing on me.

20 Q. When you give your statement to law enforcement, you
21 never -- you never mentioned that I was pulling a gun on
22 you. That's the first time that we have heard this, is that
23 correct?

24 A. I don't know if that's the first time you heard it, but
25 no, I did not tell them that you was reaching for a gun,

1 because why? I told them that I was the one that didn't
2 shoot you at that time. That was on my statement.

3 Q. You have testified in a previous proceeding in this
4 case, have you not ten years ago?

5 A. That's right.

6 Q. And you said nothing about Norman Starnes pulling a gun
7 on you then, did you?

8 A. No, I told them that you reached for a gun.

9 Q. You said that back ten years ago?

10 A. Yeah, that you reached for a gun. I didn't say you
11 pulled it. You reached for the gun.

12 Q. Did the solicitor here give you a copy of that
13 transcript to let you review?

14 A. No, I didn't see no transcript.

15 Q. Did they talk with you about that?

16 A. They talked to me about the case.

17 Q. Okay. Talking about recently.

18 A. About the case.

19 Q. Would you agree with me that crack cocaine is a very
20 destructive drug?

21 A. Sure, it is.

22 Q. And it's bad?

23 A. Sure, it is.

24 Q. How many times have you been arrested for selling crack
25 cocaine, Stanley?

1 A. Probably three times.

2 Q. How many times have you been in the penitentiary for
3 selling crack cocaine?

4 A. Three times.

5 Q. Is it easy to get crack in the penitentiary?

6 A. No, not where I'm at now. I don't know. I never been
7 behind the fence. I've always been to an A camp.

8 Q. Now, when you say behind the fence, would you explain
9 that to the jury?

10 A. That's a level three camp.

11 Q. Have you used any crack cocaine since you have been
12 incarcerated?

13 A. No, and that's since 2005.

14 Q. It's difficult to get drugs in jail, isn't it?

15 A. I have seen it in there. It's not difficult to get it
16 in there. I seen it from the last camp I left to before
17 where I'm at now.

18 Q. As a result of you shooting me, you didn't get any time
19 for that, is that correct?

20 A. Correct.

21 Q. Thank you.

22 MR. COLER: Couple of questions, Your Honor?

23 THE COURT: Yes.

24 REDIRECT EXAMINATION BY MR. COLER:

25 Q. Mr. Gleaton --

1 A. Yes, sir.

2 Q. -- Mr. Starnes just asked you if you recall the
3 previous testimony from ten years ago.

4 Do you have -- do you recall every single thing that
5 you said ten years ago in that testimony?

6 A. Not everything.

7 Q. If I were to hand you a recorded transcript of your
8 previous testimony, would that assist you in recalling or
9 recollecting your testimony?

10 A. Sure would.

11 MR. COLER: Your Honor, may I approach and hand
12 the witness his testimony?

13 THE COURT: Yes, sir.

14 BY MR. COLER:

15 Q. If you will read -- don't read it out loud yet. Read
16 this question to yourself and then read that answer.

17 A. (Witness reviewing document)

18 Uh-huh.

19 Q. Does that assist you in recalling what you testified to
20 ten years ago?

21 A. Uh-huh.

22 MR. COLER: Your Honor, I'm going to ask him the
23 question that's on the testimony, if the court will permit
24 me.

25 THE COURT: Yes.

1 BY MR. COLER:

2 Q. Were you asked about the shooting, "what happened?"

3 A. Uh-huh.

4 Q. What was your answer? Tell us what your answer was.

5 A. When he asked me what?

6 Q. When you were asked the question "what happened," can
7 you read your answer?

8 A. Oh, I -- yeah. "He asked me where his money was. And
9 I told him, I said I told you Fred had your money. And he
10 said well, where is my dope? And I said Fred didn't give me
11 no dope. And so I don't know if he had no gun or not, but
12 he reached across the seat and then when he turned back
13 around to open the door, that's when I shot him."

14 Q. Thank you, Mr. Gleaton.

15 A. Uh-huh.

16 MR. COLER: Beg the court's indulgence just one
17 minute.

18 (Off the record)

19 (Back on the record)

20 BY MR. COLER:

21 Q. Mr. Starnes asked you about methamphetamine.

22 Back in 1995, when you were dealing with Mr. Starnes,
23 would you have been in a position to know whether
24 methamphetamine was around the area?

25 A. At that time -- at that point in time, sir, I hadn't

1 seen nobody that I knew that was into that at that time.

2 Q. Let me ask you, were you in the circle of information
3 that you would know or hear about that type of drug being in
4 the -- in this area?

5 A. Yeah, yeah, sure, I would have. As small as Pelion is,
6 it don't take long for information to move.

7 Q. That's all I have, Mr. Gleaton. Thank you.

8 MR. STARNES: Nothing further, Your Honor.

9 THE COURT: Thank you, sir. You may step down.

10 OFFICER MITCHELL MCCARTY, having been first duly
11 sworn, testified as follows:

12 THE CLERK: Have a seat. State your full name and
13 spell your last name.

14 THE WITNESS: My name is Mitchell McCarty,
15 M-C-C-A-R-T-Y.

16 DIRECT EXAMINATION BY MR. BULSA:

17 Q. Mr. McCarty, you are with the highway patrol?

18 A. That's correct.

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

20 A. A total of almost 17 years.

21 Q. Were you ever with Lexington County?

22 A. I was.

23 Q. What position?

24 A. I was a road deputy. I started in the summer of 1990,
25 and I left there in about summer of 1995.

1 Q. Back in 1995, did you have occasion to come into
2 contact with Mr. Starnes?

3 A. I did.

4 Q. Why did you come in contact with him?

5 A. I believe it was around February of 2005 -- I mean,
6 excuse me, 1995. I was assigned to the Swansea area and I
7 was patrolling down Highway 302 and I was flagged down by a
8 truck driver. He said he saw a vehicle that was on fire
9 that Pulls Mill Crossing. I went down there and it was a
10 Mitsubishi truck that was just starting to catch fire. I
11 was able to get up to it before it really caught real bad
12 and noticed that it was a -- like a lighter fluid can that
13 was sitting on the seat of the truck. Then I was able to go
14 to the rear of the truck and get the tag number and write it
15 down, so I could call it in so they could run the
16 information on it to see who it was registered to.

17 Q. Did you learn who it was registered to?

18 A. It was -- I believe it was registered to Norm's Panther
19 Parlor. I believe that's what it's called.

20 Q. What did you do with that information?

21 A. Called in, had the fire department respond to the
22 scene. We found out to see if it was registered to Norm's
23 Panther Parlor, and we -- as soon as the fire and everything
24 was put out on it, we went to Mr. Starnes' residence. By
25 that time I believe it was about probably three or four

1 o'clock in the morning. Pulled up into the front yard and
2 before I could really get out of the car very well, Mr.
3 Starnes met me out on his front porch. He was fully clothed
4 and shoes on and everything at that time.

5 Q. What time of the morning was this?

6 A. By this time it was probably about four o'clock in the
7 morning.

8 Q. Okay. And this would have been February the 1st of
9 1995?

10 A. Yes, sir.

11 Q. Okay. Do you remember about how long you were with the
12 car before you went to see Mr. Starnes?

13 A. Probably a couple hours, from what I can remember. I
14 remember it was very cold that night and we had to wait for
15 the Lexington fire department to get everything taken care
16 of. And then we went over to Mr. Starnes' residence and
17 that's when he met us up there. When he met me on his front
18 porch, he told me that he had been asleep.

19 Q. Did it appear that he had been asleep?

20 A. No, sir, not a bit.

21 Q. Thank you. That's all the questions. Answer any
22 questions Mr. Starnes has.

23 MR. STARNES: No questions.

24 THE COURT: Thank you. You may step down.

25 MR. BULSA: Judge, I ask that he may be excused.

1 THE COURT: Any objection?

2 MR. STARNES: No.

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

5 MR. BULSA: Jay Bruner.

6 JAMES EDWARD BRUNER, JR., having been first duly
7 sworn, testified as follows:

8 THE COURT: Have a seat. Once you have a seat,
9 speak up loud and clear, spelling your last name.

10 THE WITNESS: James Edward Bruner, B-R-U-N-E-R,
11 Jr..

12 DIRECT EXAMINATION BY MR. BULSA:

13 Q. Who are you presently employed?

14 A. I currently own and operate an independent insurance
15 agency.

16 Q. Did you used to be with South Carolina Farm Bureau?

17 A. Yes, sir, I was.

18 Q. In what capacity?

19 A. I was with South Carolina Farm Bureau for about 15 and
20 a half years in the capacity of special investigator and
21 field supervisor of the special investigations unit.

22 Q. Were you an investigator back in 1995?

23 A. Yes, sir, I was.

24 Q. Did you have an occasion to investigate a claim filed
25 by Mr. Starnes?

1 A. I did.

2 Q. Would you describe the nature of that claim?

3 A. Mr. Starnes had reported that his 1994 Mitsubishi
4 pickup was stolen from his restaurant in Pelion and it was
5 found burned at Whetstones Crossroads in the Pulls Mill area
6 just outside of Pelion, and I conducted an investigation
7 into the circumstances surrounding that claim.

8 Q. In your investigation, how close was the location to
9 his residence?

10 A. It was approximately 10 miles.

11 Q. Did you have occasion to actually inspect the vehicle?

12 A. I did.

13 Q. And in your inspection did you notice anything unusual
14 about it?

15 A. The vehicle was heavily burned. The engine compartment
16 and the passenger's compartment were completely gutted by
17 fire. There was remains of what appeared to be a
18 charcoal -- a starter type of charcoal fluid, metal can,
19 found in the front seat. The radio was not in the vehicle
20 at the time of the fire. The tires on the truck were all
21 mismatched; in other words, they were not same brand, any
22 two of the tires. There were lug nuts missing from several
23 of the lug stems on each tire.

24 Q. And this was what year truck?

25 A. A 1994 truck.

1 Q. And this was February of 1995?

2 A. February 1st of 1995, correct.

3 Q. What was the nature -- or what was the status of Mr.
4 Starnes' insurance?

5 A. The insurance policy on that truck had actually been
6 reinstated at 4:50 p.m. on January the 31st of 1995, which
7 was several hours before this event took place.

8 Q. Thank you, Mr. Bruner. Answer any questions that the
9 defense would you have.

10 MR. STARNES: No questions, Your Honor.

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

13 MR. BULSA: We ask that he be excused.

14 THE COURT: No objection to him being excused?

15 MR. STARNES: No, sir.

16 THE COURT: Thank you for coming, sir. You may be
17 excused at this time.

18 MR. BULSA: The State calls Jay Ward.

19 JAY FRANK WARD, having been first duly sworn,
20 testified as follows:

21 THE CLERK: Have a seat, please, sir. Once you
22 have a seat, state your full name and spelling your last
23 name for the record, please.

24 THE WITNESS: My name is Jay Frank Ward.

25

1 DIRECT EXAMINATION BY MR. BULSA:

2 Q. Who are you employed with, sir?

3 A. I own a real estate company in Beaufort, South
4 Carolina.

5 Q. Did you used to live in Lexington County?

6 A. I did.

7 Q. When?

8 A. Excuse me?

9 Q. When?

10 A. Well, I actually lived in Newberry and I worked at
11 Toyota Center in West Columbia.

12 Q. The Toyota Center in West Columbia?

13 A. Yes.

14 Q. Would you have worked there back in 1994-1995 time
15 frame?

16 A. Part -- yeah, '94, and I think I left somewhere
17 between -- I don't even -- October, I think, of '94, first
18 part of '95.

19 Q. Did you know Mr. Starnes?

20 A. He came into our car lot to buy a car and that's the
21 first time that I had ever seen him.

22 Q. You didn't know him before then? He just came to buy a
23 vehicle?

24 A. That's correct.

25 Q. And do you recall approximately when that was?

1 A. You know, that's -- I can't really remember dates,
2 because it's been so long. I mean --

3 Q. Okay. That's fine.

4 Tell us what took place in your interaction with Mr.
5 Starnes.

6 A. He and his girlfriend came in and looked at a car.
7 They test drove it. We -- at that particular time we were
8 advertising interests rates and payments. I know it had to
9 be -- it was on a Friday, because we would -- it's called
10 spotting a car. If you take a preliminary bureau report and
11 you think it can be sold on Monday, a lot of times you will
12 go ahead and trade cars in and spot it and then send
13 everything to the bank on the following Monday. In this
14 case we sent everything to the bank and could not get the
15 car approved, the loan approved.

16 Q. Let me stop you a minute. Are you telling us that you
17 let Mr. Starnes drive off with a vehicle?

18 A. He and his -- we actually billed it out to him and his
19 girlfriend.

20 Q. So you began the process of selling it?

21 A. Yes.

22 Q. And they took it -- you took a trade-in?

23 A. We did.

24 Q. Okay. So this was over the weekend. They drove off
25 with your vehicle. What kind of vehicle was it?

1 A. It was a Toyota Corolla.

2 Q. And then you said you sent the paperwork to be
3 processed and something happened?

4 A. Yeah, the bank turned it down. They would not approve
5 it, so we had to call them back to bring the car back in.

6 Q. And what happened when you made that call?

7 A. Certainly they wasn't happy. Mr. Starnes wasn't happy.
8 And when they came back in that afternoon, he was really
9 irate and was going to call his lawyer, we had
10 misrepresented the advertisement. And I asked for the
11 paperwork back and the keys to my car and I would give him
12 back his trade-in. And, again, he was very irate and
13 belligerent. He would not give me the paperwork back, and
14 he says "I'm going to have a copy of all of this paperwork.
15 I'm going to go get the copies of it and then I'll give it
16 to you, because I'm going to take it to my lawyer," and he
17 did. He left and to my -- I really -- I think he went to
18 Eckard's down in the Fork Shoals Road, somewhere down in
19 that area. It wasn't Eckard's. I don't know where it was,
20 to tell you the truth. But when he came back, he had
21 copies, but he didn't have keys to the car. And he claimed
22 that he put the keys on the podium before he left.

23 At that time I called West Columbia police department
24 and made a report, because I wasn't going to give him the
25 keys to his car back and I wasn't going to let mine leave

1 the lot again. West Columbia came, made a report and they
2 actually searched him. Did not have a key. And, therefore,
3 I had to give him his trade-in and let him go.

4 Q. So he left there, and, as far as you know, he did not
5 have the keys?

6 A. We did not have the keys, and that was reported to West
7 Columbia in the report.

8 Q. Okay. And did something happen to that vehicle
9 sometime later?

10 A. Yes, sir. It was about two weeks later we had to -- at
11 that time we were -- all our cars were on floor plan and
12 every month the bank would come in and do an inventory. And
13 at that time that particular car that the keys were missing
14 from actually came up missing.

15 Q. So the car was no longer on the lot?

16 A. No.

17 Q. What did you do at that time?

18 A. Well, we called West Columbia again and we made another
19 report. And in that report I actually mentioned the fact
20 that this was the same car that Mr. Starnes had driven over
21 the weekend and that we missed the keys when he came back.

22 Q. Okay. Mr. Ward, let me show you what's been marked
23 State's Exhibit No. 104. This is the vehicle and -- the
24 upper right-hand corner look like the vehicle?

25 A. Yes, sir.

1 Q. And when you filed the police report, did you provide
2 the identification number to the police?

3 A. We did.

4 Q. Let me show you a copy of that report. Can you see
5 where the VIN number is? Do you see it listed on that page?

6 A. I'm sure it is. It's --

7 Q. Down here in the body of it?

8 A. Yes, sir.

9 Q. Okay. And in State's Exhibit No. 104, does the VIN
10 number showed in the upper left-hand corner match that VIN
11 number on that sheet?

12 A. 132037, yes, sir.

13 Q. So this would be the vehicle that was stolen from your
14 lot?

15 A. Yes, sir.

16 Q. That appears to be the vehicle that Mr. Starnes had?

17 A. That appears to be, yes, sir. The serial number
18 matches my report.

19 Q. Okay. Thank you, sir. That's all I have. Answer any
20 questions that Mr. Starnes has.

21 CROSS EXAMINATION BY MR. STARNES:

22 Q. How are you doing, sir?

23 A. Doing good.

24 Q. Did you work with the gentleman by the name of Jim
25 Hunter?

1 A. I did.

2 Q. Do you remember who come in and purchased the vehicle?

3 A. I think your girlfriend came in first and then you came
4 in afterwards.

5 Q. You processed the paperwork. Whose name was the
6 paperwork in?

7 A. As many years as it's been, I remember you. I don't
8 remember -- if I had to think, I think it was processed in
9 her name.

10 Q. Do you remember her father being with her?

11 A. I remember several people being in and out.

12 Q. So this bank loan that you did would have been in her
13 name, would that be correct?

14 A. If it was processed in her name, yes, sir.

15 Q. Do you remember Mr. Hunter calling her and asking her
16 to bring the vehicle back?

17 A. I remember a call being made for the vehicle to come
18 back, yes, sir, because I remember the bank turning it down.

19 Q. The interest was 7.5. Does that sound about right?

20 A. Probably right.

21 Q. And then when you all went to refinance the vehicle, it
22 was 10 percent, which would have been over a \$1,000
23 difference. Do you remember that?

24 A. I remember that the credit did not justify it.

25 Everything we advertised was subject to credit approval and

1 the approval was based on credit worthiness.

2 Q. Yes, sir.

3 And then later credit was approved, but it was at an
4 inflated interest rate, is that correct?

5 A. If -- well, -- the interest may have differed, yes, sir,
6 because when the bank wouldn't take it at advertised -- as
7 we advertised it, it did not qualify, then we made every
8 effort to get it approved, yes, sir.

9 Q. Do you remember me then coming to the Toyota Center and
10 calling West Columbia because you wouldn't give the lady who
11 traded the vehicle in, you had took a Blazer, a Chevy Blazer
12 on a trade-in? Do you remember that?

13 A. I remember taking a trade-in, yes, sir.

14 Q. And you all wouldn't give her the keys back to her
15 Blazer?

16 A. Until we got the keys back to ours, and -- I remember
17 you coming in and being very belligerent.

18 Q. Do you remember checking the trunk of the vehicle and
19 checking through the vehicle?

20 A. Of the red car?

21 Q. Yes, sir.

22 A. Yes.

23 Q. Do you remember leaving the keys in the trunk?

24 A. No, sir.

25 Q. Thank you.

1 MR. BULSA: Nothing further, Your Honor.

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

3 MR. BULSA: We ask that he be excused.

4 THE COURT: Any objection to his being excused?

5 MR. STARNES: No objection, Your Honor.

6 THE COURT: Thank you for coming. You may be
7 excused at this time.

8 Counsel, let's take a very short break.

9 Mr. Foreman, ladies and gentlemen of the jury, we
10 will take a very short break. We are going to break for
11 lunch at about one, so lunch is being ordered in, so we will
12 break about one for lunch, but we have been at it now for
13 about an hour and a half this time, so let's go ahead and
14 take a very short break.

15 You won't smoke during this break, but I will
16 allow you to smoke during lunch break. Okay.

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

19 THE COURT: All right. Well, I think everybody
20 needs a few minutes break. We are not going to take long.
21 We will take at the most ten minutes and get started.

22 (Whereupon, proceedings were recessed)

23 (Whereupon, proceedings were reconvened)

24 THE COURT: We need to get everybody else in here.
25 We need to get the jury back.

1 THE COURT: All right. Let's bring the jury in.

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

4 THE COURT: Ready to proceed?

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

6 May it please the court?

7 THE COURT: Yes, sir.

8 MR. GOWDY: The State would call Mr. Claude Ray.

9 CLAUDE RAY, having been first duly sworn,
10 testified as follows:

11 THE CLERK: Have a seat right up there, please. I
12 need you to speak up loud and clear and state your full name
13 and spell your last, once you have a seat.

14 THE WITNESS: Claude Ray. C-L-A-U-D-E, Pelion,
15 South Carolina.

16 DIRECT EXAMINATION BY MR. GOWDY:

17 Q. Good afternoon, Mr. Ray.

18 Can you tell the jury where you live and how long you
19 have lived there?

20 A. I live on 138 Austin Court, about three miles out of
21 Pelion. I have been staying there about I would say 35
22 years.

23 Q. If you don't mind my asking, Mr. Ray, what age
24 gentleman are you?

25 A. What?

1 Q. What age gentleman are you?

2 A. 56.

3 Q. All right. Do you have a family?

4 A. Yes, I do.

5 Q. A wife and children?

6 A. Right.

7 Q. What do you do for a living, Mr. Ray?

8 A. I run a front-end loader out on -- at CMC.

9 Q. How long have you been there?

10 A. 35 years.

11 Q. Okay. Do you know the defendant Norman Starnes?

12 A. Well, by him running the restaurant. You know, I used
13 to go to the restaurant and eat sometimes.

14 Q. Did you know him in any other capacity? Did you ever
15 sell drugs to Mr. Starnes?

16 A. Yes, I have.

17 Q. Can you tell the jury about that?

18 A. Well, back during the time -- I have been knowing
19 Norman from going there eating, and just like I said, late
20 '95, or early '96, you know, by me doing a little dealing
21 and that, that's -- he come and bought some crack from me a
22 time or two there.

23 Q. Where would he go to buy the crack cocaine from you,
24 Mr. Ray?

25 A. He would he come to my house. Come to the house there

1 a few times. And like I go down there to eat at his cafe,
2 me and him deal there, but we didn't do no dealing as long
3 as his old lady was around. We always did that secretive.

4 Q. Let me see if I heard you correctly. You did not do
5 any dealings while his girlfriend was around?

6 A. While his girlfriend was around.

7 Q. Okay. And why was that?

8 A. He didn't want her to know, just like I didn't want my
9 wife to know I was doing it.

10 Q. Can you tell the jury how much money he would spend
11 with you? Would he buy one rock, two rocks?

12 A. Well, he would buy 20's at times. A few times he might
13 buy 40. Then other times when he got good money, he might
14 get a slab, but that's about the highest.

15 Q. How much of your fingernail would a \$20 rock be?

16 A. It would be about half the distance of my fingernail.
17 Something like about half of that.

18 Q. You said sometimes he would buy what in drug vernacular
19 is called a slab?

20 A. Right.

21 Q. Okay. Have you ever heard a place called The Bottom?

22 A. Right, that's right down the road from me.

23 Q. Okay. Is that where he would come to purchase crack
24 cocaine?

25 A. Well, with them down there, you know, but -- yeah, he

1 would go down there most of it. They would sell it. I got
2 to know him, like one of my friends. I live up on the hill,
3 you know.

4 All I know is that when me and him had the dealing, he
5 come to -- me and him talked whenever I go to the cafe, you
6 know.

7 Q. He would come to your house?

8 A. Right, when my wife was gone. She was a church lady.
9 She would be in church all the time. I told him if he come
10 by there and don't see the car, he can come in, you know
11 what I'm saying. Kept everything a secret, you know, on my
12 wife.

13 Q. Would he ever pay you with anything other than dollar
14 bills?

15 A. Well, if he had 20. Then sometimes the money run low,
16 he may have some change or something like that. 50, you
17 know, but sometimes it was in a check. Sometimes he don't
18 have no money, he write me a check there a time.

19 Q. Were those checks ever good, Mr. Ray?

20 A. The check bounced.

21 Q. Mr. Ray, if you had to estimate for the jury how many
22 times that you engaged in drug transactions with Mr.

23 Starnes, what would the number be?

24 A. Well -- well, I tell you now, because -- I'm going to
25 say about six or seven sometimes, something like that.

1 Might have been -- we -- really not that long. Really
2 didn't count the times, you know.

3 Q. I'm sure that you didn't think that somebody would be
4 asking you eleven years later about that?

5 A. That's right.

6 Q. And your testimony was late 1995, early 1996?

7 A. Right.

8 Q. Thank you, Mr. Ray. Please answer any questions that
9 the defendant may have for you.

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

11 THE COURT: Yes.

12 CROSS EXAMINATION BY MR. STARNES:

13 Q. How are you doing, Claude?

14 A. Good. You?

15 Q. Would you agree with me that I had a drug habit from
16 late 1995, early '96? Eight months? Does that sound about
17 right?

18 A. I would say -- well, I would say during the time there,
19 you know, because -- yeah, you had a little bit of habit
20 there, yes. It was few times there, you know, like stop by
21 and get some. And then you come by a couple of times at
22 nights. And during the day, you know, I work all the time
23 and I didn't see you then. I know mostly when I get off,
24 you come check with me a few times at night.

25 Q. So when you would come to the restaurant to sell me

1 crack cocaine, where would I be at, when you would come to
2 the restaurant and sell it to me?

3 A. Well, you be in the restaurant.

4 Q. What would I be doing?

5 A. You know -- you know, I come to the restaurant. If
6 your wife -- if your friend there, we don't do no dealings.
7 Like if she ain't there, you know, I would go in the
8 bathroom and drop off what you order, you know.

9 Q. Before I used crack cocaine, tell the jury what type of
10 person I was.

11 A. A nice person to me. A nice personality. Didn't seem
12 like no -- you know, a guy with an attitude, you know. All
13 right with me. You know, me and my friend Charlie Wilson
14 used to come and play your machines a whole lot.

15 Q. When you would come through Pelion, I would be in the
16 restaurant working, is that correct?

17 A. Yeah. At that time when I would get off in the
18 evenings, you would be there, or your friend.

19 Q. Did you ever see me in a fight or anything in Pelion?

20 A. Not as I know of.

21 Q. Did you ever see me pull a gun on anybody in Pelion?

22 A. No.

23 Q. Occasionally you would see me at the race track,
24 though, correct?

25 A. Yes.

1 Q. Do you remember a gentleman --

2 A. Yeah.

3 Q. -- my stepson Tyler?

4 A. Uh-huh.

5 Q. Do you see us at the race track together?

6 A. Yeah.

7 Q. You wouldn't see me using drugs at the race track,
8 would you?

9 A. No, not as I remember.

10 Q. So let me see if I understand this right, Claude. You
11 would agree with me that I had a drug habit for about eight
12 months?

13 A. Well, during the time that I knew you, you come to see
14 me. A lot other times you be going to them other fellows.
15 This was from during the time you were dealing with me off
16 and on.

17 Q. Would you agree with me that crack cocaine is a very
18 destructive drug?

19 A. Ah -- yeah, it is.

20 Q. It causes people to spend money they normally wouldn't
21 spend, doesn't it?

22 A. Uh-huh.

23 Q. It ruins families, doesn't it?

24 A. Uh-huh.

25 Q. You were arrested for selling crack cocaine back in

1 '95, '96?

2 A. Yeah.

3 Q. And you give it up?

4 A. Yeah.

5 Q. As a result of it, you are a better person, is that
6 correct, Claude?

7 A. Yes.

8 Q. Thank you, Claude.

9 MR. GOWDY: No. I have nothing on redirect, Your
10 Honor.

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

12 MR. GOWDY: I would ask that Mr. Ray be excused.

13 THE COURT: No objection to his being excused, Mr.
14 Starnes?

15 MR. STARNES: No objection, Your Honor.

16 THE COURT: Thank you for coming. You may be
17 excused at this time.

18 MR. COLER: The State calls Bobby Phillips.

19 BOBBY PHILLIPS, having been first duly sworn,
20 testified as follows:

21 THE CLERK: Have a seat up there, will you,
22 please, sir. And once you have a seat, speak up loud and
23 clear, state your full name, spelling your last name.

24 THE WITNESS: My name is Bobby Phillips,
25 P-H-I-L-L-I-P-S.

1 DIRECT EXAMINATION BY MR. COLER:

2 Q. Mr. Phillips, tell the jury where you worked back in
3 1995.

4 A. I worked at D.L. Shumpert's.

5 Q. What did you do at D.L. Shumpert's?

6 A. Gas attendant. Pump gas and working in the grocery
7 store.

8 Q. I'm going to show you a picture that's been admitted as
9 State's Exhibit No. 15. I want you to look at it first.
10 Can you see D.L. Shumpert's and the Panther Parlor in that
11 photograph?

12 A. Yes, sir.

13 Q. I would ask you, Mr. Phillips, to take this pointer and
14 for the jury -- push there and point. Just show them on
15 that photograph where D.L. Shumpert's is and where the
16 Panther Parlor is.

17 A. That is the Panther Parlor.

18 There is Shumpert's.

19 Q. Back when you were working at Shumpert's, around the
20 time of the shooting, when Stanley shot Norman, did you have
21 an occasion to speak to Mr. Starnes about that incident?

22 A. Well, I spoke to him after he got out of the hospital.
23 He came back to the restaurant and was working. And he came
24 over one day to get some gas in a jug. And me and my friend
25 was working there and we asked him how was doing and he said

1 fine. And I asked him was he going to press charges against
2 Stanley. He said no, he was going to handle it himself.
3 And I asked him what he meant by that and he said "I'm going
4 to shoot him, just like he shot me. Show how it feels to be
5 shot."

6 Q. That's all the questions that I have, Mr. Phillips.
7 Thank you for being here and please answer any that the
8 defendant has.

9 CROSS EXAMINATION BY MR. STARNES:

10 Q. Hi, Bobby, how are you doing?

11 A. I'm doing all right.

12 Q. Did I shoot Stanley?

13 A. No.

14 Q. At any point when you worked over at D.L. Shumpert's,
15 did you ever know that I had a drug habit?

16 A. No.

17 Q. Did you see me over to the restaurant quite often?

18 A. Yeah. Every time I see you, you be working, cutting
19 grass around the place. That's why I figured you come to
20 get gas in a jug.

21 Q. After the time that Stanley shot me, did I spend a lot
22 of time at work working?

23 A. Well, I just seen that day. You was coming back
24 cutting grass. That's when we asked you how you felt, and
25 that's the only time that I basically paid any attention to

1 it.

2 Q. But you would see me over at D.F.'s quite often when I
3 would cross the street from the Panther Parlor?

4 A. Yeah, you would always come to get gas.

5 Q. Did you ever see me get in any fights or anything like
6 that?

7 A. No.

8 Q. Did you ever see me threaten anybody?

9 A. No.

10 Q. Have I ever been disrespectful or rude towards you?

11 A. No, you was all right, though.

12 Q. Other than that incident that happened over at D.F.'s,
13 you never heard me threaten anybody, have you?

14 A. No.

15 Q. Have you ever been shot before?

16 A. No. I'm my own guy.

17 Q. Thank you, Bobby.

18 MR. COLER: Nothing further, Your Honor.

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

20 MR. COLER: If there is no objection, we would ask
21 that Mr. Phillips be excused from his subpoena.

22 MR. STARNES: No objection, Your Honor.

23 THE COURT: Thank you for coming. You may be
24 excused.

25 MR. COLER: The State calls Nehemiah Mayes.

1 NEHEMIAH MAYES, having been first duly sworn,
2 testified as follows:

3 THE CLERK: You can have a seat, speak up loud and
4 clear and state your full name and spell your last, please.

5 THE WITNESS: Nehemiah Jamie Mayes, M-A-Y-E-S.

6 DIRECT EXAMINATION BY MR. COLER:

7 Q. Mr. Mayes, where do you presently work?

8 A. Bob Bennett Ford.

9 Q. What do you do for Bob Bennett?

10 A. I do the oil changes.

11 Q. Back in 1995, where did you work?

12 A. D.F. Shumpert's.

13 Q. What did you do at Shumpert's?

14 A. Serviced the gas and did the oil changes.

15 Q. Back around the time of when Stanley Gleaton shot
16 Norman Starnes, did you have an occasion to talk to Mr.
17 Starnes?

18 A. My friend Bobby did, and we was just standing there
19 talking to him and asked him how he was doing.

20 Q. Did you have an occasion to observe another incident
21 and then speak to Mr. Starnes after that incident regarding
22 it?

23 A. Yes, sir.

24 Q. Tell us what you observed, and if you will, using that
25 pointer, and show us where you were, what you saw, and then

1 what happened then after that?

2 A. That's where I worked.

3 That's the Panther Parlor.

4 Q. Okay. Did you see Mr. Starnes come from the Panther
5 Parlor and approach a vehicle?

6 A. Yes, sir.

7 Q. Show us where the vehicle was.

8 A. It was right about in here.

9 Q. Okay. Where did Mr. Starnes come from?

10 A. From here.

11 Q. Describe for us, if you will, the manner in which Mr.
12 Starnes approached that vehicle.

13 A. Well, he ran out to the vehicle. Then he ran back
14 inside the store and came over to the store and was showing
15 us -- if Stanley was in the car, he was going to shoot him
16 like he did him.

17 Q. Let me back up. When he came over to your store, did
18 you ask him about what you had just seen?

19 A. No, sir.

20 Q. How did it come up? How did it come about that he
21 explained to you what he had just done?

22 A. He just came over there and was telling us.

23 Q. What exactly did he say?

24 A. He said that he was going to shoot Stanley like he shot
25 him. Show him how it felt.

1 Q. He said what now?

2 A. Show him how it would feel.

3 Q. Show who how it would feel?

4 A. Stanley. Show him how it feels when he shot him.

5 Q. Was Stanley, in fact, in the car, or do you even know
6 that?

7 A. No, sir.

8 Q. That's all questions that I have, Mr. Mayes. Thank
9 you.

10 CROSS EXAMINATION BY MR. STARNES:

11 Q. Hi, Nehemiah. How are you doing?

12 A. Doing all right.

13 How are you doing.

14 Q. What date did this incident happened, if you remember?

15 A. I don't know what date it was. It's been so long ago.
16 I don't know what date that was what happened.

17 Q. How long after Stanley shot me that you claim that this
18 incident happened?

19 A. I didn't even know Stanley shot you until you came over
20 there and was telling us about it.

21 Q. Do you remember how far it was from the time he shot me
22 or until he was arrested?

23 A. No, sir, I didn't even know -- like I said, I didn't
24 even know he shot you until you came over and was telling us
25 about it. And then after you was telling us about it, then

1 Bobby was telling me that Stanley got arrested. There
2 wasn't no more about it until the last time we came to
3 court.

4 Q. Did you know that I was in the hospital for a week?

5 A. No, sir.

6 Q. Do you know that after I got out of the hospital,
7 Stanley was already in jail?

8 A. No, sir.

9 Q. Did you ever know me to have a drug problem?

10 A. No, sir.

11 Q. Did you ever come over to the restaurant often?

12 A. Oh, yes.

13 Q. A lot pretty much?

14 A. Yes.

15 Q. What would I be doing?

16 A. You would be behind the counter. I come in and play
17 the machine, and sometimes you even gave me quarters to play
18 the machine.

19 Q. So you are telling this jury that I gave you money to
20 play video games and stuff?

21 A. Yes, sir.

22 Q. Did you ever see me cut grass?

23 A. Yes, sir.

24 Q. But you never knew me when I had a drug problem?

25 A. I never knew you had a drug problem. You know, you was

1 pretty cool to me. You seemed like a good fellow when I
2 was --

3 Q. Always treated you pretty nice?

4 A. Yes, sir.

5 Q. Did you ever see me get in any fights?

6 A. No, sir.

7 Q. Other than this incident, have you ever heard me
8 threaten anybody?

9 A. No, sir.

10 Q. Thank you, Nehemiah.

11 MR. COLER: Nothing further.

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

14 Is there any reason why this witness couldn't be
15 excused?

16 MR. COLER: Not from the State, Your Honor.

17 THE COURT: Thank you for coming in, sir. You may
18 be excused, if you wish.

19 MR. GOWDY: Could I inquire when the court would
20 like to break for lunch?

21 THE COURT: We are planning on breaking about one.
22 If the food has arrived, probably about one o'clock.

23 Do you have a short witness or not a short
24 witness?

25 MR. GOWDY: The next witness we have is not short

1 and we have witnesses coming in at one, so that's my
2 dilemma.

3 THE COURT: Okay.

4 MR. GOWDY: I'm happy to call a witness. It's
5 just going to be --

6 THE COURT: Well, we're not going to finish
7 probably before we eat lunch.

8 All right. We will just go ahead and take lunch.
9 Maybe have lunch around -- it's a few minutes early.

10 Mr. Foreman, ladies and gentlemen of the jury, we
11 are going to go ahead and recess at this time. We will have
12 lunch.

13 Those of you who would like to smoke during this
14 break would be allowed to do so. Take them down to smoke.
15 And so -- by the courtroom clock it's about fifteen to one.
16 Let's just plan to resume at 1:45. Okay? That will give us
17 an hour. We will resume at 1:45. We will call you back.
18 Thank you.

19 (The following takes place outside the presence of
20 the jury panel).

21 THE COURT: My understanding is lunch has just
22 arrived for the jury. They still haven't distributed it.
23 We will try to resume about 1:45. That's about an hour from
24 now. Thank you.

25 MR. GOWDY: Thank you.

1 (Whereupon, proceedings were recessed)

2 (Whereupon, proceedings were reconvened)

3 THE COURT: All right, counsel, are we are ready
4 to proceed?

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

6 MR. STARNES: Defense is ready, Your Honor.

7 THE COURT: All right.

8 Please bring the jury in.

9 (The following takes place in the presence of the
10 jury panel)

11 THE COURT: All right, counsel, ready to proceed.
12 Please call your next witness.

13 MR. GOWDY: Thank you, Your Honor.

14 May it please the court, the State could call Mr.
15 Freddy Jones.

16 FREDRICK JONES, having been first duly sworn,
17 testified as follows:

18 THE CLERK: Have seat up there, please, sir. Once
19 you have a seat, I need you to speak up loud and clear and
20 state your full name and spell your last name, please.

21 THE WITNESS: My name is Fredrick Lavern Jones,
22 J-O-N-E-S.

23 DIRECT EXAMINATION BY MR. GOWDY:

24 Q. Good afternoon, Mr. Jones.

25 A. Good afternoon.

1 Q. I want you to speak up.

2 Your name is Fredrick Jones. You go by Freddy?

3 A. Yes, sir.

4 Q. Tell the where you work, Mr. Jones?

5 A. I work at Drew Sax Body & Frame. I do mechanic work.

6 Q. You talk kind of fast. I think you said body and
7 frame?

8 A. Yes, sir.

9 Q. How old are you, Mr. Jones?

10 A. 36.

11 Q. And how long have you worked at Drew Sax Body & Frame?

12 A. About two years, three years, something like that.

13 Q. Are you from the Pelion area?

14 A. Yes, sir.

15 Q. All your life?

16 A. Yes, sir.

17 Q. Do you know the defendant Norman Starnes?

18 A. Yes, sir.

19 Q. How did you know him?

20 A. Selling dope to him.

21 Q. Specifically when you use the word dope, what drug are
22 you talking about?

23 A. Crack.

24 Q. And on how many different occasions would you have sold
25 crack cocaine to the defendant?

1 A. Numerous times.

2 Q. Too many to count?

3 A. Yes, sir.

4 Q. The jury heard from a man name Stanley Gleaton. Do you
5 know Mr. Stanley Gleaton?

6 A. Yes, sir.

7 Q. They heard him testify that he gave seven dollars to a
8 man named Fred.

9 A. That would be me.

10 Q. That would be you?

11 A. Yes, sir.

12 Q. Do you do you remember that incident?

13 A. Yes.

14 Q. Why did you take the seven dollars?

15 A. Because he owed me money. And I told him when he
16 brings me more money, he can get something. Until he paid
17 me, I took the seven dollars.

18 Q. And that's what precipitated the shooting?

19 A. Yes, sir.

20 Q. That's what led to it?

21 A. Yes.

22 Q. How would Mr. Starnes pay you?

23 A. Sometimes he would pay me food. Sometimes he would pay
24 me change, a bunch of change, you know.

25 Q. Would you ever do business at the restaurant, or would

1 it be confined to another part of Lexington County?

2 A. Sometimes at the restaurant, sometimes at my place.

3 Q. The area where you lived in Lexington, does it have a
4 name? Does it have a street name?

5 A. Talking about now?

6 Q. No, back then.

7 A. No, it was Shuffle Mill Road. Off of Shuffle Mill
8 Road.

9 Q. Where is The Bottom? Where is the place called The
10 Bottom?

11 A. On Shuffle Mill Road.

12 Q. Mr. Jones, you mentioned trading things with Mr.
13 Starnes for drugs. Did he ever trade firearms with you for
14 drugs?

15 A. Yes, sir.

16 Q. Can you describe to the jury what one of those firearms
17 looked like?

18 A. One of them was a -- I think it was a .32, and it was a
19 9-millimeter Uzi. 9-millimeter Uzi one time.

20 Q. An Uzi?

21 A. Yes.

22 Q. Do you remember what kind of clip it had?

23 A. It was like a banana clip. Kind of crooked like.

24 Q. When did you quit dealing with Mr. Starnes?

25 A. After that, when he got locked up. Up to the day he

1 got locked up.

2 Q. Thank you, Mr. Jones. Please answer any questions that
3 the defendant may have for you.

4 CROSS EXAMINATION BY MR. STARNES:

5 Q. How are you doing, Freddy?

6 A. All right.

7 Q. Would you agree with me that crack cocaine is a very
8 destructive drug?

9 A. Yes. Sir.

10 Q. Did you know me prior to me using crack cocaine?

11 A. Who, me? Yeah, you used crack cocaine.

12 Q. I understand that. Before using crack cocaine, did you
13 ever know me from the restaurant?

14 A. No, not before.

15 Q. Okay. You just knew me from using drugs?

16 A. Yeah.

17 Q. Were there occasions that I brought food down to The
18 Bottom?

19 A. Oh, yeah.

20 Q. You all had a house down there that didn't have any
21 water or lights in it, is that correct?

22 A. Yes, sir.

23 Q. So I would bring food down there to y'all, would that
24 be correct?

25 A. (Shaking head yes)

1 Q. You didn't actually observe the shooting when Stanley
2 shot me, did you?

3 A. No.

4 Q. You weren't there for that, were you?

5 A. No.

6 Q. Thank you Mr. --

7 A. I just heard about it.

8 MR. STARNES: Thank you.

9 MR. GOWDY: I have nothing further for Mr. Jones.
10 We would ask that he be excused.

11 THE COURT: No objection to his being excused?

12 MR. STARNES: No objection.

13 THE COURT: Thank you for coming. You may be
14 excused at this time.

15 MR. GOWDY: Your Honor, the State would call Mr.
16 Tyler Ott.

17 CHAD TYLER OTT, having been first duly sworn,
18 testified as follows:

19 THE CLERK: Have a seat up there, please, sir.
20 Once you have a seat, I need you to speak up loud and clear .
21 and state your full name and spell your last name, please.

22 THE WITNESS: My name is Chad Tyler Ott, O-T-T.

23 DIRECT EXAMINATION BY MR. GOWDY:

24 Q. Tyler, how old are you?

25 A. 24, sir.

1 Q. Where do you work?

2 A. Scott's Furniture.

3 Q. How long have you been there?

4 A. A little over six years.

5 Q. You graduated from Pelion High School?

6 A. Yes, sir.

7 Q. And tell the jury your momma's name.

8 A. Gwen Ott, now Bailey.

9 Q. Where do you live?

10 A. I live just behind her in Pelion.

11 Q. Tyler, I want to go back to when you were a boy.

12 A. Yes, sir.

13 Q. 10, 11.

14 Do you remember living with the defendant Norman
15 Starnes?

16 A. Absolutely.

17 Q. Can you give the jury a sense of what life was like
18 with Mr. Starnes after drugs?

19 A. After drugs?

20 Q. After drugs.

21 A. There would be an occasional good moment, only if he
22 allowed it. I mean --

23 Q. Do you remember an incident in Rockingham?

24 A. Yes, sir.

25 Q. What do you remember about that?

1 A. I don't recall what the argument was about, but there
2 was an altercation between him and my mother. He tried to
3 take control of the car. The car eventually got off the
4 road. He proceeded to get out, gets everybody out of the
5 car and -- I mean, I got out by myself. It's not like he
6 yanked me out or anything. But my mother refused to get out
7 of the car, so he proceeds to force her to get out of the
8 car. And he's choking her. He's on top of her in the
9 passenger's seat. And Jared -- I mean Gerald Evans, which
10 was a friend of Norman Starnes, was trying to pull him off
11 of my mother, and I'm there right beside Gerald saying
12 "please get off of my mother. Please get off of my mother."

13 Q. You wound up being left on the roadside?

14 A. Yes, sir.

15 Q. Tyler, do you remember an incident at Tony Tindal's
16 house?

17 A. Yes, sir.

18 Q. Would you have been inside or outside?

19 A. I was inside.

20 Q. Would you have ever peaked outside to see what was
21 going on?

22 A. Yes, sir.

23 Q. Once Mr. Starnes came inside, can you tell the jury
24 what you remember?

25 A. I remember him coming in, and honestly don't remember

1 saying anything to him for him to tell me to shut up. I
2 just remember being kind of awestruck. He came in, went to
3 Evelyn, got in front of her and was talking slick, you know
4 what I'm saying, all smooth. And I don't remember any of
5 the actual conversation. I just remember him taking her
6 hand and putting her finger in his mouth and sucking on it.

7 Q. Tyler, do you remember a night when you were left alone
8 in the restaurant?

9 A. Yes, sir.

10 Q. Was it only one night that you can ever remember being
11 left alone?

12 A. Yes, sir, because other than that, my mother was there
13 24/7 running that place.

14 Q. All right. While you were left there, what were you
15 doing? Playing drums?

16 A. Yes, sir.

17 Q. And at some point they came back and got you?

18 A. Yes, sir, later on that night.

19 Q. And you rode back?

20 A. Yes, sir.

21 Q. What did you notice when you got home?

22 A. The first thing I noticed was a bullet hole in the
23 wall.

24 Q. And what did you say?

25 A. I said just that, "another bullet hole in the wall."

1 It wasn't too surprising to see another bullet hole inside
2 of that house.

3 Q. When you say another, tell the jury why you used the
4 word another.

5 A. I have witnessed Norman Starnes fire off a pistol in
6 the house in his bedroom before.

7 Q. What percentage of the time that you saw Norman Starnes
8 would he have had a firearm?

9 A. For me, it was a hundred percent of the time. I always
10 known him to have his pistol in the small of his back.

11 Q. Do you recall times when the defendant would be gone or
12 absent for periods of time?

13 A. Yes, sir, very often.

14 Q. Tyler, I want you to answer any questions that the
15 defendant may have.

16 A. Yes, sir.

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

18 CROSS EXAMINATION BY MR. STARNES:

19 Q. Hi, Tyler, how are you doing?

20 A. I'm doing all right.

21 Q. Actually you used to call me your fifth cousin, is that
22 true?

23 A. Yes, sir, it is.

24 Q. Can you tell the jury a little bit about Norman Starnes
25 before crack cocaine?

1 A. You were a cool dude, man. You were. I mean, I looked
2 forward to seeing you. At that time in the beginning I
3 never seen anything harmful towards my mother.

4 Q. It wasn't until drugs that you seen a different change
5 in my behavior?

6 A. I don't know exactly when drugs came into it, but all I
7 noticed was my mother crying more and more and more and
8 more.

9 Q. Did you ever remember me having a conversation with you
10 telling you, Tyler, I had a drug problem?

11 A. Yes, sir, but it was after that Al had -- you found out
12 that Al had told me that you had been using crack. And then
13 that's when we sat down in Al's bar at the table with me and
14 my mother, and you told me that you were on crack.

15 Q. Do you remember taking your first airplane ride?

16 A. Yes, I do.

17 Q. Would you tell the jury a little bit about that?

18 A. It was fun. A new experience.

19 Q. Do you remember who was flying the airplane?

20 A. You were. I remember getting sick.

21 Q. Do you remember us going to Gatlinburg, Tennessee?

22 A. Yes, I do.

23 Q. The first time that you ever seen the mountains?

24 A. That I can recall, yes, sir.

25 Q. That you can recall.

1 Did we ever go to Myrtle Beach together?

2 A. I remember being at Myrtle Beach and you were there,
3 but I don't think that you rode with us. It seemed like you
4 had showed up afterwards.

5 Q. How about Atlanta? Didn't we go and spend the weekend
6 in Atlanta?

7 A. Honestly I can't recall Atlanta.

8 Q. Do you remember Lou and Bob Saddlemeyer had a jet
9 powered funny car?

10 A. Yes, I do. I do recall that.

11 Q. You recall that?

12 A. Yes, I do.

13 Q. You were about eleven back then?

14 A. Yes, sir, ten or eleven.

15 Q. And before -- before drugs you say I was a pretty cool
16 dude?

17 A. Yeah, man.

18 Q. Thanks, Tyler.

19 A. You are welcome..

20 MR. GOWDY: No.

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

22 MR. BULSA: Kelvin Crimminger.

23 AGENT KELVIN CRIMMINGER, having been first duly
24 sworn, testified as follows:

25 THE CLERK: Have a seat, please, sir, and speak up

1 loud and clear. Upon having a seat, state your full name
2 and spell your last name, please.

3 THE WITNESS: Kelvin Crimminger,
4 C-R-I-M-M-I-N-G-E-R.

5 DIRECT EXAMINATION BY MR. BULSA:

6 Q. Agent Crimminger, we heard from you in the guilt phase.
7 You are with SLED, correct?

8 A. Yes, sir.

9 Q. And you went and processed the crime scene at 375 Forts
10 Pond Road?

11 A. Yes, sir, I did.

12 Q. Let me show you what's been marked State's Exhibit No.
13 104. During your processing of that scene, did you come
14 across a Toyota?

15 A. Yes, sir.

16 Q. Do these pictures represent the vehicle and portions of
17 the vehicle that you took?

18 A. Yes, sir, I took those pictures.

19 Q. Okay. Do they accurately reflect the condition of that
20 Toyota and location found?

21 A. Yes, sir.

22 MR. BULSA: The State would move State's 104 into
23 evidence.

24 MR. STARNES: No objection, Your Honor.

25 THE COURT: Admitted without objection.

1 BY MR. BULSA:

2 Q. Do you remember that vehicle that was found on the
3 property?

4 A. It was behind the house beside a shed.

5 Q. Was it hidden from view?

6 A. Yes, sir. From the road, yes, sir.

7 Q. Okay. Agent, I want to take you back to the burial
8 scene. We have got some photographs I want you to look at.

9 Let's see if you can identify them for us first.

10 MR. STARNES: Your Honor, if we could, could we
11 have a side bar on this?

12 THE COURT: Yes, sir.

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

15 THE COURT: Mr. Foreman, ladies and gentlemen of
16 the jury, I ask you to retire to the jury room for a brief
17 time. I need to take up with counsel a point.

18 (The following takes place outside the presence of
19 the jury panel)

20 THE COURT: All right, counsel, approach. All of
21 you approach, if you will.

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

24 (Photograph marked as Court's Exhibit No. 54 for
25 identification)

1 (Photograph marked as Court's Exhibit No. 55 for
2 identification)

3 (Photograph marked as Court's Exhibit No. 56 for
4 identification)

5 THE COURT: All right. We are back on the record.

6 The defense has objected to a number of
7 photographs of the grave, burial site, and the bodies in
8 various stages of being taken out from -- as they are being
9 found and taken out from the burial scene.

10 The court has determined that State's Exhibit No.
11 88, which is marked as Court's Exhibit No. 54 for the
12 record; State's Exhibit No. 87, which is offered, and is
13 also Court's Exhibit No. 55; State's Exhibit No. 86, which
14 is Court's Exhibit No. 56.

15 The court finds that these are very graphic and
16 certainly would be prejudicial to the defense, if they come
17 in. And so I can't see that the probative value of
18 admitting these outweighs the prejudice to the defense.
19 Though I'm sure the State would like to have these in, I'm
20 not going to allow those in. They would be part of the
21 record as court exhibits and not go to the jury.

22 I certainly want the appellate court to know when
23 they get them that I took out the worst ones that I thought
24 were more prejudicial and less probative.

25 A number of others have been offered that you can

1 go by by number. I'm allowing those in. Most of them I
2 don't find are prejudicial to the defendant. They certainly
3 wouldn't allow to impassion the jury. Those are not. They
4 show the crime scene and around -- excuse me, the burial
5 scene and around the burial scene. And they show digging
6 them out and putting the sheet and that kind of stuff. It
7 doesn't show the bodies or anything.

8 There is one exhibit, which does show the body in
9 it and the skull and the teeth in it and what appears to be
10 the bodies lumped together and how they are lumped together
11 with clothing and what have you, which, in the court's mind,
12 illustrates what the pathologist has testified to about
13 decomposition around the neck with regard to the bullet and
14 where it went in, the clothes and that kind of thing.

15 Also it shows what the pathologist said he found
16 with the bodies and he couldn't tell which one was which and
17 he had to separate them and what he had to do in order to
18 get clothing and test the clothing and that kind of thing.

19 And although it certainly is prejudicial to the
20 defendant, it's probative to the extent that it shows what
21 the pathologist described what he found when he got the
22 bodies and had to separate it and that kind of thing.

23 I think it's less prejudicial to the defendant
24 than these ones that I'm keeping out and not allowing them
25 to be put in.

1 I understand all of them came in at the last
2 trial, and that's not for this court. I have to make my own
3 ruling based upon what I see and what I find. So, at any
4 rate, that's going to be the ruling of the court.

5 So State's Exhibit No. 91 I'm allowing in. I know
6 it's prejudicial to some extent, and I also find it
7 probative for what the description of -- what the
8 pathologist said he found, what he had to separate and why
9 they couldn't get anymore evidence and about the
10 decomposition around the neck, and generally why he was not
11 able to get -- you know, had to separate them out and wash
12 clothing and that kind of stuff to get them out, so that's
13 it.

14 Go ahead and put your objection on the record, Mr.
15 Starnes.

16 MR. STARNES: Your Honor, we would object to -- I
17 believe it's State's Exhibit 91 and 92 pursuant to Rule 403,
18 substantially outweighs the probative value.

19 Your Honor, under State v. Kornahrens, State v.
20 Patrick and State v. Milton, the defendant's position is
21 these photographs should not be seen by the jury. I believe
22 the Kornahrens case is the leading case on it.

23 THE COURT: All right. I have given it a lot of
24 thought. I'm going to stand by the decision I made and
25 admit 92 and 91.

1 Is that the two that you cited?

2 MR. STARNES: Yes, sir, 91 and 92, sir.

3 THE COURT: I'm going to allow those two in.

4 I think 92 really basically shows some dirt and
5 that, and it shows a sheet underneath trying to get
6 something out. You really can't tell much about it. It's a
7 standard hole and shovel, so you really can't tell much
8 about it. Obviously I don't find that objectionable at all.
9 I think that could have come in during the guilt phase, as
10 far as that goes. It's certainly not -- it's more probative
11 than prejudicial I find.

12 The one -- I have ruled out the three that I think
13 are the most prejudicial to the defendant, although they are
14 probative as to the burial site and unearthing the bodies.
15 I think that they are more prejudicial than probative in
16 this case.

17 And I'm going to allow 91 in. I have given quite
18 a bit of thought to this one. And it is somewhat gruesome,
19 but it does show that two bodies one lumped together in a
20 pile, and it shows some -- in the first place, there are
21 allegations in this case that the defendant went and dug the
22 bodies up and re-buried them. So to that extent I think it
23 goes to character, as far as digging it up and how they were
24 re-buried -- after they were dug up and how they were
25 re-buried. This is exactly what they said, that's how they

1 found. So I think from a character standpoint of how these
2 bodies are lumped together in a mass here and when they were
3 unearthed like that and lime and that on them, it goes to
4 the his character.

5 I also think that this particular exhibit, State's
6 Exhibit 91, it does show how the bodies were lumped
7 together. It describes how the pathologist found them and
8 tried to separate them and had to separate them out, what --
9 it illustrates why there was some decomposition around the
10 neck why he might not been able to find whether a bullet
11 going through there, whether it went through there or not.
12 It was -- part of it is missing there, and with regard to
13 the difficulty he had in cleaning up the clothing and that
14 kind of stuff, the problems he had separating the bodies and
15 how he had to do that. So I'm going to let it in for that
16 purpose.

17 I think it is prejudicial to the defense, but I
18 think it's more probative to be able to illustrate what's
19 found and describe what the pathologist found and the
20 problems he had separating the bodies and getting any kind
21 of materials to test; the decomposition around the neck, and
22 that, so I'm going let it in. I find it more probative than
23 prejudicial in this sentencing phase. It may not -- I don't
24 know if it would come in the guilt phase, maybe so, but it
25 still would illustrate a number of things that the

1 pathologist described and problems he had in doing the
2 autopsies of these two men.

3 So I'm keeping out the three that I find are more
4 prejudicial than probative. The others I'll allow in to
5 find they are more probative than prejudicial. All right.

6 Note the objection for the record.

7 MR. STARNES: Thank you, Your Honor.

8 THE COURT: Let's move on. Bring the jury in.

9 (The following takes place in the presence of the
10 jury panel)

11 THE COURT: Please proceed, solicitor.

12 MR. BULSA: Thank you, Your Honor.

13 BY MR. BULSA:

14 Q. Agent Crimminger, let me show you a series of
15 photographs. Would you identify those for us?

16 A. Those are the photographs that I took of the crime
17 scene.

18 Q. Those are at the burial scene?

19 A. Yes, sir.

20 Q. Recovery of the bodies?

21 A. Yes, sir.

22 Q. Accurately depict various stages of the recovery?

23 A. Yes, sir, it does.

24 MR. BULSA: The State would move into evidence
25 State's Exhibit 91, 92, 85, 84, 83, 90, 81, 79, 82, 80, 89.

1 THE COURT: 91 and 92 are admitted over objection
2 from the defense and the others are admitted without
3 objection.

4 BY MR. BULSA:

5 Q. Agent Crimminger, you responded on this crime scene on
6 May 27th --

7 A. Yes, sir.

8 Q. -- 1996.

9 A. Yes, sir.

10 Q. State's Exhibit 25 was entered in the guilt phase.
11 It's a picture of the burial site?

12 A. Yes, sir.

13 Q. Okay. And you located that area with a probe?

14 A. Well, we saw that visually, and then we probed it to
15 see if the dirt was soft.

16 Q. And that you started digging?

17 A. That's where we started digging, yes, sir.

18 Q. And then State's Exhibit No. 79. Please describe to
19 the jury what that shows.

20 A. After we dug for a little while, we found something
21 hard. I don't know if it was lime, or concrete, or
22 something. It was a hard surface. And we had to actually
23 pry that up with our shovels and then two or three of us
24 picked it up and flipped it over and then took a photograph
25 of it. And what you see sticking out appeared to be a bone,

1 a leg bone, or something.

2 Q. This portion right here?

3 A. Yes, sir.

4 Q. Was that embedded into the concrete?

5 A. Yes, sir.

6 Q. I'll show you State's Exhibit No. 81. What does that
7 show us?

8 A. That's a tennis shoe that was recovered after we
9 flipped over that hard surface also.

10 Q. Was that embedded into the concrete?

11 A. It was -- yes, sir.

12 Q. So that came out with the concrete when you turned it
13 over?

14 A. Yes, sir.

15 Q. State's Exhibit No. 90, describe what that would show
16 us.

17 A. That's an overall picture after we removed that hard
18 surface that shows the victims in the hole.

19 Q. Is that before you were able to dig around the bodies?

20 A. Yes, sir.

21 Q. State's Exhibit No. 83, what does that show us?

22 A. That's also an overall picture from a different angle
23 showing the victims in the hole.

24 Q. And at this stage you were able to unearth some of the
25 dirt around the bodies?

1 A. Yes, sir, as we dug around the side and on the end.

2 Q. Were you able to tell what you were looking at at that
3 point?

4 A. We knew it was two bodies. We could smell it.

5 Q. Okay. Could you see two skulls at that point?

6 A. We saw one, in particular. I'm not sure if we could
7 see two at that point.

8 Q. Could you tell how they were positioned, the bodies?

9 A. I'm not sure at that point if we could.

10 Q. State's Exhibit No. 84?

11 A. That's about the same picture, just from a different
12 angle and after we had dug deeper around each side and
13 around each end.

14 Q. State's Exhibit No. 85?

15 A. That's a picture of a ruler showing how deep the bodies
16 were in the hole.

17 Q. I believe the bodies were still in the hole, is that
18 correct, and you see in the lower portion of the picture?

19 A. Correct.

20 Q. So that the depth to the bottom of the bodies was just
21 over two feet?

22 A. Yeah, between two and three feet, yes, sir.

23 Q. State's Exhibit No. 92?

24 A. That's a picture of the bodies as we were trying to
25 recover them from the hole. We were trying to slide a sheet

1 up under them, and had two shovels on either end lifting
2 them up, or prying them up, and trying to get a sheet under
3 them so we could get them out of the hole.

4 Q. Trying to keep them together?

5 A. Yes, sir.

6 Q. State's Exhibit No. 91?

7 A. That's a photograph after they had been taken out of
8 the hole.

9 Q. Is that in about the condition in which they were put
10 in the bag and taken to Dr. Sexton's?

11 A. Yes, sir.

12 Q. And the sheet that they are actually on them, was that
13 closed with them into the bag?

14 A. Yes, sir.

15 Q. Thank you, agent. Answer any questions Mr. Starnes may
16 have of you.

17 MR. STARNES: No questions, Your Honor.

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

19 MR. BULSA: I would ask that he be excused, Your
20 Honor.

21 THE COURT: Any objection to him being excused?

22 MR. STARNES: No objection.

23 THE COURT: Thank you for coming, sir. You may be
24 excused at this time.

25 MR. BULSA: Dr. Joel Sexton.

1 DR. JOEL SEXTON, having been first duly sworn,
2 testified as follows:

3 THE CLERK: Have a seat and state your name for
4 the record, spelling your last name.

5 THE WITNESS: I'm Dr. Joel Steven Sexton. That's
6 S-E-X-T-O-N.

7 MR. BULSA: The State would offer Dr. Sexton as an
8 expert in forensic pathology, based upon his earlier
9 testimony.

10 MR. STARNES: No objection.

11 THE COURT: Without objection, he's so qualified.

12 DIRECT EXAMINATION BY MR. BULSA:

13 Q. Dr. Sexton, I want to talk briefly about the
14 examination of the two bodies.

15 I'll first show a picture to you. It's not of the
16 autopsy. It's one of the scene.

17 If you could tell us if this is substantially the
18 condition of the bodies when you received them, sir?

19 State's Exhibit No. 91.

20 A. You may need to dim the lights a little.

21 Yes, that's very consistent with my photographs of how
22 the bodies appeared when they were received -- when we
23 received them.

24 Q. So you took them out of the body bag in substantially
25 the same condition?

1 A. Yes, that's correct.

2 Q. What difficulty did you have in separating the bodies?

3 A. It wasn't really that difficult. They were intact to
4 the point where we could easily separate them.

5 One had pretty much all of its skin intact.

6 The other had missing a lot of soft tissue and skin
7 from the lower legs.

8 And one of the leg bones was separate, the one that had
9 the old fracture that had healed improperly, so we could
10 separate them fairly easily.

11 Q. Dr. Sexton, are you familiar with the stages of
12 decomposition?

13 A. Yes.

14 Q. And if a body is left on the ground uncovered, would
15 that tend to decompose quicker than one buried?

16 A. Basically the temperature and moisture are the things
17 that aid decomposition. They are also the things that aid
18 infections, because bacteria and other such animals and
19 bacteria, so forth, grow in a warm moist environment. So if
20 you cleanse things and let them dry out, then they don't
21 grow.

22 So a body that's found in a cold environment that's dry
23 can just mummify and slowly -- in fact, you may have heard
24 about The Iceman that was found in ice up in the northern
25 part of the world. Those bodies can last a long time and

1 not show decomposition.

2 Moisture tends to increase the rate of decomposition.

3 And exposure to the elements, obviously. If there are
4 animals that can get to the body, if there are flies that
5 can lay eggs that turn into or develop into maggots that can
6 eat the body, all of this helps to increase the rate at
7 which our bodies decompose. It's being out on the surface,
8 being in an environment that's wet and warm.

9 Sometimes in a week's time -- I have seen animals
10 completely skeletonize in just a week's time in the middle
11 of the summer in a warm, real hot environment where it's
12 damp.

13 Q. If you buried someone in a shallow grave, would you
14 suspect that animals to try to dig those up?

15 A. Yes, they do. They are able to smell the body even
16 underneath the soil, if it's not deep enough.

17 Q. And in this case did you have evidence that animals had
18 gotten to either one of these bodies?

19 A. Yes. In the case of Mr. Welborn, there was evidence
20 that the animals had gotten to his body, because it had --
21 there were teeth marks or claw-type marks most likely from
22 teeth in the clothing, particularly his pants.

23 Q. And is it Mr. Welborn that did not have any feet or
24 shoes?

25 A. That's correct.

1 Q. Would that suggest that an animal or something took
2 those away?

3 A. Most probably, or they may have been found and just not
4 sent to us. But up on the clothing on the legs and the
5 flesh was gone off of one leg completely and most of the
6 other leg.

7 Q. What effect would reburying a body do? If it's been
8 buried, unearthed, and then re-buried?

9 A. I don't know of any effect, depending upon where the
10 body was initially. If it was in an environment that was
11 not hot, was not moist, putting it in an environment where
12 it would be hot and moist would tend to cause it to
13 deteriorate more quickly. So it depends on whether it went
14 from an environment that would hasten decomposition, or
15 whether it went to an environment that would hasten
16 decomposition.

17 Q. What effect would lime have on a body, if you put lime
18 on it?

19 A. Lime in some cases -- and it's a little overrated, but
20 in some cases it will tend to help dissolve the soft tissue,
21 because it has an ability chemically to aid in the
22 dissolving of the soft tissue.

23 Q. How about if you pour concrete into that?

24 THE COURT: Doctor, if I can get you to slide up
25 just a little bit. I think a couple jurors are having a

1 hard time hearing you. Thank you.

2 BY MR. BULSA:

3 Q. What effect would pouring of concrete in a powdered
4 form have on the bodies?

5 A. I'm not aware of concrete having any sort of effect on
6 the body.

7 Q. Okay. Other than perhaps attaching to the body,
8 State's Exhibit No. 79, pulling pieces of the body with it?

9 A. I'm not familiar with the picture. I see a portion of
10 the leg. I don't know whether that's the bodies that we are
11 seeing there in the that looks sort of yellow or whether
12 that's something else. Are you saying --

13 Q. That is the concrete that was removed from on top of
14 these bodies with that.

15 A. So the concrete was on top of --

16 Q. Yes, sir.

17 A. -- the bodies.

18 If anything, it might insulate them to a degree and
19 decrease the decomposition.

20 Q. Okay.

21 A. It depends upon how deep in the ground they were.

22 Q. They were about two feet.

23 A. Usually you have to get down about five or six feet for
24 it to be cool enough and not enough animals that can get to
25 the body. Some of the ones that burrow will get to the body

1 as well.

2 Q. Now, doctor, you testified in the guilt phase about Mr.
3 Welborn having two wounds and then a third shot to at least
4 the clothing that you are able to identify?

5 A. Yes, that's correct.

6 Q. What was the condition of his -- or was the condition
7 of his neck such that you were not able to definitively tell
8 if he had been shot in the neck?

9 A. There was some areas on either side of the neck that
10 were lost. In other words, tissue that was missing. Soft
11 tissue from each side of the neck, but the vertebral bodies
12 were intact. So, yes, there was some tissue missing which
13 made it impossible to know if the bullet went through that
14 soft tissue on either side of the neck and then struck the
15 collar from the inside or if it just struck the collar.

16 Q. And did the first picture that I put up there show
17 you -- showing you the nature of the skulls, did that --
18 would that aid the jury in seeing how the tissues were not
19 around the neck?

20 Do you want me to show it again?

21 A. I'm not sure you can tell from this. The darkness of
22 the --

23 Q. Let me just show it to you, doctor.

24 A. When the body is decomposed, unless you have
25 experience, as we in forensic do, it's very difficult to

1 evaluate.

2 I think everybody could recognize this as being a
3 skull. I'm not sure they could tell what tissue is missing
4 beneath it.

5 Q. But in your expertise can you tell?

6 A. Right, when we had the body at the morgue and we were
7 able to cleanse the area and make sure there was no dirt
8 there, we could definitely tell, but the -- basically
9 everything turns brown when you get decomposition of this
10 stage, so dirt and decomposition material can look very
11 similar. So you have to cleanse it and look at it carefully
12 and know enough about the anatomy to know what should be
13 there and what's not there.

14 Q. But there was clearly not enough tissue for you to
15 determine a third shot?

16 A. Not enough tissue to determine whether it did wound to
17 the person on either side.

18 Q. Yes, sir.

19 A. That's correct.

20 Q. Thank you, Dr. Sexton. That's all I have.

21 Answer any questions Mr. Starnes may have.

22 MR. STARNES: Your Honor, I don't have any
23 questions for Dr. Sexton.

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

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

2 MR. STARNES: No.

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

5 THE WITNESS: Thank you, Your Honor.

6 MR. GOWDY: Your Honor, may it please the court?

7 THE COURT: Yes, sir.

8 MR. GOWDY: The State would call Ms. Dawn Holrath.

9 DAWN MARIE HOLRATH, having been first duly sworn,
10 testified as follows:

11 THE CLERK: Have a seat in the box and state your
12 name for the record and spell your last name.

13 THE WITNESS: My name is Dawn Marie Holrath,
14 H-O-L-R-A-T-H.

15 DIRECT EXAMINATION BY MR. GOWDY:

16 Q. Good afternoon, ma'am.

17 A. Good afternoon.

18 Q. I want to clear up two -- not clear up, but go further
19 into two incidents that have been briefly touched upon so
20 far, and then I want to change the subject completely and
21 talk about something else. Okay?

22 A. Okay.

23 Q. You testified to the jury that the defendant spent the
24 night at your house one time and left a firearm?

25 A. Yes, he did.

1 Q. Can you tell the jury why he wound up spending the
2 night, and who made the decision, and what they had to go to
3 to convince him to spend the night?

4 A. Norman Starnes had been drinking and we were afraid to
5 let him drive home. He was kind of adamant that he wanted
6 to go home, and the guys went out -- Bill, Jared and Norman
7 Starnes went outside, and Bill and Jared convinced him that
8 his tire was flat and that he couldn't go home so he came
9 back in and spent the night.

10 Q. So Bill and Jared convinced Norman that his tire was
11 flat?

12 A. Yes.

13 Q. Even, though, it wasn't, to keep him from driving
14 drunk?

15 A. Yes, sir.

16 Q. Okay. The Bob Segar concert in Columbia.

17 A. Yes.

18 Q. Did you receive tickets to it?

19 A. Yes.

20 Q. From who?

21 A. Norman Starnes.

22 Q. Were you able to go?

23 A. No, I was not.

24 Q. Why not?

25 A. Ken Berg had injured at the Drop Zone earlier that

1 morning. Norman Starnes had come out. He called right when
2 the accident happened and I told him that someone had gotten
3 hurt, I had to go, and I hung up the phone. And before the
4 ambulance even got there, he was there asking me if I was
5 going to use those tickets. But Donna Benson and I were
6 supposed to go and she wasn't there right then, and I said
7 "I don't know. You know, Donna has the tickets. I don't
8 know if we are going." I mean, this guy was laying on the
9 ground and I didn't know if we were going to use them, but
10 later Donna said she needed the stress relief and she wanted
11 to go.

12 Q. All right. And did you wind up going?

13 A. No, we did not.

14 Q. In fact, that gentleman who was hurt wound up going to
15 the hospital?

16 A. Yes, he did.

17 Q. All right. Did you see the defendant again later that
18 night?

19 A. I did.

20 Q. Tell the jury about that encounter.

21 A. I was on the phone with Donna Benson and she was
22 telling me the condition of Ken Berg. His mom had gotten
23 there and she was giving me an update, and Norman called and
24 I -- I had call waiting. I answered and he asked me where I
25 had been, and I said "can I call you right back? I have got

1 someone on the other line." And he said "never mind, I'll
2 be there in a minute," and he hung up. And it really -- I
3 didn't know why he was coming to my house. It was between
4 11:30 and 12:30 at night. I didn't really want him coming,
5 so I called Detective Amick and left a message and told him
6 who was in the house and that we were worried. We tried to
7 beeping him. I didn't think to call 911, but I called the
8 detective.

9 Q. Did Mr. Starnes wind up coming to your house?

10 A. He did.

11 Q. Tell the jury how he acted when he got there.

12 A. He was very angry. I kept telling him that I had the
13 tickets. And he kept telling me it wasn't about the
14 tickets, and I -- I didn't know -- he kept telling me "you
15 embarrassed me." And he said at the -- "you weren't there.
16 You embarrassed me." And I said "well, I have the tickets."
17 I thought that -- I thought that he thought I had given the
18 tickets to somebody else and I hadn't. I had them on my
19 kitchen table and I kept saying "I have the tickets." He
20 said "it's not about the tickets." And I said "what is this
21 about?"

22 But, in the meantime, when he said he was coming and I
23 couldn't get in touch with Detective Amick, I had called one
24 of our pilots, Lou Ridley, had been out that visiting with
25 Storm and he had left 45 minutes before, so I had called him

1 also, but he was on his way. And so Norm just stood in the
2 door. When Lou got there, he just stood with his arms
3 crossed and we all stood there silent for a few minutes, and
4 then Lou finally said "can I get a drink?" So we went to
5 the kitchen. And Norm asked Storm a few questions about why
6 Lou didn't speak to him at the hospital, because he had even
7 gone to the hospital to try to get those tickets back from
8 Donna. And then Lou said that he thought Norm had a gun and
9 that's why he wanted to get away from the door. And -- but
10 he kept -- he was adamant that Lou recognized him and
11 wouldn't speak to him. And eventually he just turned and
12 ran back out the door. And I called Detective Amick again
13 and told me he had left.

14 Lou Ridley asked if I wanted him to stay for a couple
15 of hours, so he did. He stayed until about six in the
16 morning. So about an hour, hour and a half later Norm
17 called me again and said "is Lou still there?" And I said
18 "yes, he is," and he just hung up the phone. And then the
19 next day when I talked to Detective Amick, he told me that
20 if Norm ever contacted me again to call 911.

21 Q. But just so I'm clear in my mind, Bill and Jared --
22 this is after January the 8th?

23 A. Yes, January the 31st.

24 Q. Bill and Jared are missing?

25 A. Yes.

1 Q. Had been missing and bodies had not been found?

2 A. Correct.

3 Q. And Norman Starnes showed up to your house to tell you
4 that you had embarrassed him?

5 A. Yes, sir.

6 Q. All right. Let's let that go and change the subject
7 completely, okay?

8 A. Okay.

9 Q. I want to show you State's 95, 99, 96, 97 and 98 and
10 ask you if you recognize who and what are depicted in those
11 pictures?

12 A. State's Exhibit 95 is --

13 Q. You don't have to describe them yet.

14 A. Yes.

15 Q. Just if you do, because I'm going to put them up on the
16 screen, okay?

17 A. Okay. Yes, sir.

18 Q. Okay. Thank you.

19 MR. GOWDY: Your Honor, I would move 97, 98, 96,
20 99 and 95 into evidence and ask permission to publish them
21 to the jury.

22 THE COURT: Any objection?

23 MR. STARNES: No objection, Your Honor.

24 THE COURT: Admitted without objection. You may
25 publish.

1 MR. GOWDY: Thank you, Your Honor.

2 BY MR. GOWDY:

3 Q. Dawn, can you tell the ladies and gentlemen of the jury
4 who is in that picture?

5 A. That's a picture of Bill and Jared. You can't see my
6 son Ryan. He's behind Jared. And that's Chris at the end
7 of the table, and then Karen and I on the other side.

8 Q. So that's Karen Pratt that we see left? Her far left,
9 and you are behind her, slightly obscured?

10 A. Yes, sir.

11 Q. And what is the occasion for the celebration?

12 A. It was Tommy Moore's fiftieth birthday. We were at the
13 community center with his family.

14 Q. All right. Dawn, you have been good enough over the
15 last two weeks to give the jury a sense of who Bill Welborn
16 was.

17 Can you give them a sense of who Jared Champlin was?

18 A. Jared was a big kid. He -- he played with my boys and
19 he -- he just had a lot of fun. He loved to play guitar.
20 We used to sing in the band, the kids and him, and we all --
21 Bill would be driving somewhere and we would all be singing
22 songs in the car. He loved to draw. He loved skydiving.
23 He idolized Bill. Just wanted to be just like him, and --
24 just a really neat guy.

25 Q. You mentioned art. Was he an accomplished artist, in

1 your judgment?

2 A. His drawings were amazing. I don't think he published
3 anything, I don't know, but they were just beautiful
4 drawings. Amazing. This one, it was a fireplace scene and
5 it made you feel like you were there. It drew you right
6 into that picture.

7 Q. You trusted Jared with your own two boys?

8 A. I did.

9 Q. Let me show you State's 99. Do you know who took that
10 picture?

11 A. Karen Pratt took that picture in Myrtle Beach.

12 That's Jared Champlin.

13 Q. State's 96, who is that?

14 A. That's Jared on one of his first skydives and --
15 probably in Orangeburg.

16 Q. Is that how you skydive?

17 A. In that position there he had his brakes -- his toggles
18 at half brakes, which is kind of slowing you down before you
19 land. You put your feet and knees together and you get
20 ready to roll, so he was in his feet and knees together so
21 he's coming into land right there.

22 Q. State's 97. Tell the jury what they are looking at.

23 A. The man in the red jumpsuit is Jared Champlin. He is
24 talking to his AFF instructor Jim Hare in the red and white
25 shirt, and next to him is the Ken Burg. He's the gentleman

1 that was hurt the day of the Bob Segar concert.

2 Q. That's the gentleman that was the reason that you were
3 not able to go to the concert?

4 A. Correct.

5 Q. Dawn, let me show you State's 98. Who are those two
6 people?

7 A. That is Jared Champlin with his nephew Timmy. And
8 Timmy just followed Jared everywhere. He just loved those
9 kids. He had two nephews and a niece and he just talked
10 about them all the time. He couldn't wait to see them.

11 Q. Jared is survived by his mother?

12 A. Yes, he is. And his sister and brother. His mom is
13 not doing real good.

14 Q. Dawn, you have given the jury a glimpse of Bill
15 Welborn. Tell us what you miss the most about him.

16 A. I learned a lot from him, and I just looked forward to
17 learning a lot more from him. He just had this zest for
18 life that nobody else I ever met had. His goal I think was
19 to make everyone in the world happy, and -- he just always
20 had fun. And you -- you can just never get that back.
21 You -- he just made life fun.

22 Q. If you could say one more thing to him, what would it
23 be?

24 A. Just that I loved everything about him.

25 Q. Please answer any questions that the defendant may

1 have.

2 MR. STARNES: No questions, Your Honor.

3 THE COURT: Thank you, ma'am.

4 MR. GOWDY: Your Honor, the State would call Monty
5 Welborn.

6 MONROE WELBORN, having been first duly sworn,
7 testified as follows:

8 THE CLERK: Please have a seat and state your name
9 for the record and spell your last name.

10 THE WITNESS: My name is Monroe Monty Welborn,
11 W-E-L-B-O-R-N.

12 DIRECT EXAMINATION BY MR. GOWDY:

13 Q. Is it okay for me to call you Monty, Mr. Welborn?

14 A. That would be fine.

15 Q. Can you tell the jury what relation you were to Bill
16 Welborn and give them a sense of what it was like to grow up
17 as his big brother?

18 A. I am the big brother. I was the first child in the
19 Welborn family. I was born in 1938. Almost 70 years old.
20 And as I said, I was the first. And my sister was the
21 second. A few years later along comes Bill.

22 And we lived on a farm in Mississippi. About a 15 acre
23 farm in Laurel, Mississippi, and we lived off that farm. It
24 was back in the depression days. Pearl Harbor, 1941, and we
25 worked on the farm and lived on the farm. My father drove a

1 bus. And -- normal childhood. Just rural farm folks.

2 Never had a whole lot, but what we had was ours.

3 Q. Monty, you were telling me about some chores that you
4 had?

5 A. Oh, yeah.

6 Q. Did Bill have any chores on the family farm?

7 A. Yes, Bill was the baby, but he still had to do his
8 part. I milked the cows twice a day and we kept the milk in
9 the well. And the milk overnight we drank the next morning.
10 And then I would milk the cows before I went to school.
11 We'd put that milk in the well and it would stay there all
12 day.

13 Bill, he helped feed the stock. We had a horse and --
14 I had one horse and two cows and calves. He had his chores.
15 We -- you know, we were working. He didn't slouch on his
16 work. He might have been the baby, but he still pulled his
17 fair share.

18 Q. Monty, you were good enough to tell me about a couple
19 of times when your daddy got hurt and you had to work and
20 everybody had to pitch in and live off credit from an uncle.
21 Tell the jury about that.

22 A. My daddy was a bus driver. He drove a city bus in the
23 Town of Laurel, Mississippi. That was his profession. And
24 he just made a bus stop one day and got ready to pull off
25 and a truck came through the intersection and crashed into

1 the bus on the left driver's side. He cracked his neck
2 on -- it was the chrome bars that wrap around the drivers.
3 It broke his neck. I was about 14 years old then. So they
4 put him in a real cast back then. They had these old
5 plaster casts. It didn't have the Velcro stuff they have
6 nowadays and he couldn't take it off. I seen him many times
7 scratch it with a coat hanger where his beard would itch
8 him, but he went a couple of years in that cast.

9 And then in that period of time I was more or less the
10 breadwinner, because in Mississippi you had a thing called
11 Mississippi compensation, but the checks wouldn't come
12 regular in the mail. So it would several weeks or a month
13 or two before the check would come, and it was always behind
14 on the money.

15 And my momma, she was a seamstress. She took in sewing
16 to the house. I still remember it was always a bunch of
17 folks coming to the house and my mother had a little corner
18 in the living room where the sewing machine was. She did a
19 lot of sewing. She was an extremely good seamstress. She
20 could make wedding dresses and all. Women would a lot of
21 times come in there trying on clothes and fitting.

22 She made my shirts when I was a kid going to school. I
23 wore shirts made from my feed sack. I'm serious. Purina
24 Chow and different colors and all. My momma would make my
25 shirts. Kind of customized, I guess. We didn't know what

1 customized was back then, but that -- that was my momma.
2 She was a seamstress.

3 Anyway, I was the breadwinner. I worked at my uncle's
4 store. After school -- his store was right across from the
5 schoolhouse, and I worked down there at a grist mill. He
6 ground corn up, sold flour, self-rising flour. And we
7 packaged it up in little one pound bags and sometimes five
8 pound bags and put a twist tie on it. Uncle Shorty would
9 sell in the town to some of his merchant friends or whatever
10 and -- they lived right down the road from us. I would ride
11 home with him after work. And on Saturdays I was over there
12 at the store working for him.

13 As I got older, got able to reach up underneath the
14 car -- he had a grease rack on the side, and I changed the
15 oil on the cars and grease them. Pump gas. And I took care
16 of the family for a few years there.

17 And then my dad went back to work finally. He didn't
18 work a full year. He was sitting at a red light with a bus
19 and a truck plowed into the rear end of it and this time it
20 hit in the back of the neck and broke his neck again. And
21 that was about the end of my dad's working days. From then
22 on he just -- he just wasn't worth anything. He couldn't
23 lift. He couldn't -- and he -- he smoked old Camel -- not
24 Camel, but Lucky Strike cigarettes and started coughing and
25 the emphysema. We didn't know it at that time. It took him

1 a couple of years to cough himself to death. He died at 74
2 years old of emphysema.

3 So by then I had already gone in the service. I left,
4 left home and I made a career out of the military. I spent
5 ten years in the Marines. And I got out, went through a
6 divorce and then I went back into the Air Force on a prior
7 service program. They took me at -- my MOS, I was in as
8 Military Occupational Specialty. MOS was the same in the
9 Marine Corps as the same job in the Air Force. I didn't go
10 to the Air Force boot camp. I went right on into the Air
11 Force and went to work. I stayed in the Air Force 11 years.

12 I had talk talked Bill into going in the Air Force.
13 When I was in the Marines, I said "don't come in here
14 because it's tough. You need to get in the Air Force
15 because them guys got it made." A lot of difference
16 carrying a rifle and sleeping in a tent, and in the Air
17 Force you sleep in a barracks and you don't have no weapons.
18 It's just like a civilian job in the Air Force. So he went
19 on in the Air Force, and he stayed. He made a career out of
20 it.

21 Q. Can you tell the jury some of the places that he was
22 stationed in the Air Force and some of the jobs that he had?

23 A. Yes, sir. He started out in the transportation field,
24 because all of our family is -- we got cars, because we was
25 always around wheels. Our daddy in the buses and we have

1 always been crazy about cars and tractors and stuff of that,
2 but he --

3 Like I say, he was in the transportation field. He was
4 a dispatcher, eventually. And then he was at Keesler Air
5 Force base in Mississippi. And I went in the air one time.
6 He had a part-time job at the NCO club to support his
7 family. And he was washing dishes and glasses and working
8 what they called a bar-back position, keeping the glasses
9 clean. And from there he progressed up into the front part
10 of the club, which is called the Master of Arms section. He
11 was kind of like a -- you know, keep the trouble down and
12 run the club. And from there he went in as night manager at
13 the club. He just kept working his way up and got really
14 interested in the club field. So then he went to Thailand
15 and Korea. He was Da Nang in Viet Nam for a little while.

16 And when he come back, the military a lot of times
17 gives you an opportunity to cross-train when you leave a
18 foreign country coming back to the Continental United
19 States, so Bill got into the club field. He loved it. I
20 mean, the cooking part. He just -- he excelled in it. To
21 tell you the truth, he really excelled in it. It was a job
22 made for him. Meeting people, being around people, having a
23 good time. Now, that was him.

24 So he kept getting promoted. I think he passed me. He
25 outranked me. He made it to a chief master sergeant in the

1 Air Force and that's E-9. That's as high as you can go in
2 the enlisted field. The field that he was in, I don't know
3 if he was officer material or not, but there's not a lot of
4 officers in the club field.

5 He was -- I seen a certificate one time. He had one of
6 them I love me walls with all that certificates and
7 diplomas. And I had seen he was the youngest E-9 in the Air
8 Force. He had made it in 18 years, so he had a real good
9 career.

10 Q. Monty, tell them about Naples, Italy and how developed
11 a love of both skydiving and scuba diving.

12 A. Before he went to Naples I didn't know anything about
13 no skydiving. I don't think that he was into it. He got
14 into it over there, and seen a lot of pictures and jumps and
15 stuff, and I guess he picked it up over there. He was there
16 for about six years. He had a great job over there. And
17 some scuba diving too. He just loved the excitement of it.

18 I never could figure it out myself. We used to kid
19 each other a lot. Never would -- I never parachuted. I
20 have been up in a lot of airplanes, trust me, I have never
21 jumped out of one. I don't think anybody should jump out of
22 a perfectly good airplane.

23 Q. Did he ever talk you into scuba diving?

24 A. Yes, sir, after he retired here in Charleston and moved
25 off base and bought a home out there in Charleston, I came

1 down one weekend and had a swimming pool in the backyard. I
2 put all that gear on and I went in the water with him. My
3 ears filled up with water. It didn't take me long to just
4 say this isn't my cup of tea. So, he was trying to share
5 it. That was the Bill. He was always trying to share stuff
6 like that. He was -- he wasn't pushy. Just get on you and
7 he wouldn't get off of you until you give him a, you know,
8 at least an effort.

9 Q. He had three sons?

10 A. Yes, sir. Two of them are sitting right there.

11 Q. Two of them are sitting right here?

12 A. Yes, sir. The other one is in the Gulf of Mexico on an
13 oil rig and couldn't get him here.

14 Q. Okay. You told me he was a prankster and a jokester
15 and half the time you couldn't believe him?

16 A. Oh, you couldn't believe nothing he would say. He
17 would con you out of your britches if you wasn't careful.
18 He just had that knack.

19 Q. I'm going to show you some pictures, Monty. You just
20 tell me whether or not that you recognize them and then we
21 will go show them to the jury, okay?

22 A. Yup. I have that picture at my home. It was taken
23 over Zephyrhills, Florida. Him and that purple jumpsuit.

24 Q. Do you recognize 101?

25 A. Oh, yeah, that's --

1 Q. Don't spoil it. Don't give it away yet.

2 A. Yes, I recognize it.

3 Q. Okay. 94?

4 A. Yes, sir.

5 Q. 93.

6 A. Oh, yes.

7 Q. And history, 102?

8 A. Historical photograph.

9 Q. Okay.

10 MR. GOWDY: Your Honor, we would move State's 100,
11 101, 94, 93, 102 into evidence and ask permission to
12 publish.

13 MR. STARNES: No objection.

14 THE COURT: Without objection, you may publish
15 them.

16 BY MR. GOWDY:

17 Q. What is that, Monty?

18 A. That's parachutist Bill Welborn, the clown.

19 Q. Let me show you State's 101. Who is that?

20 A. That's Bill Welborn in the purple jumpsuit.

21 And that lady holding him down -- the wind was blowing
22 that day and he kept bouncing along on the ground, and
23 that's that gray headed lady back there. She ran out there
24 to hold him down and I took a picture of it.

25 Q. Okay. That lady is your wife Shelby, right?

1 A. That's my wife, yes, sir.

2 Q. Let me show you State's 93.

3 Is that the last family picture?

4 A. That's the Welborn clan. That was the last picture
5 taken of the family.

6 Q. Monty, can you tell the jury how Bill got up to see
7 you, Bill and Billy?

8 A. Yeah, that was the time they flew up there that night.
9 Flew up the East Coast and come all the way to Moorehead
10 City and then turned left on Highway 70 down to New Bern to
11 Landon Airport, because Bill, he didn't have those, what you
12 call them, night vision, or night instrument or -- he
13 wasn't -- what do you call, instrument rating, whatever.
14 Anyway, he didn't have all that. The plane didn't even have
15 but one seat in it, but that's him and Billy. That's Bill
16 in the back and Billy to his left there.

17 Q. And that's your momma right there?

18 A. That's our momma. That's her.

19 Q. Monty, this was the holidays in 1995, right?

20 A. Yes, sir, that's Christmas holidays.

21 Q. Tell the jury who that is.

22 A. That's my momma on the right, Bill in the middle with
23 them bug-eyed froggy glasses he always wore. And that's one
24 of his parachute friends, Storm, on his right. That's in my
25 living room, New Bern, North Carolina.

1 Q. Monty, you told me, and you may have already told the
2 jury, that Bill was actually your mom's favorite?

3 A. Oh, he was the baby. It wasn't no doubt about that.
4 He -- he could get his way and make her do things. She
5 just -- he was like a pancake. She just -- the sun set and
6 rose on him. We could -- we could ask her to go out to eat
7 or something like that and she said "no, I don't want to
8 go." And Bill could come right behind me two minutes later
9 and we are suiting up ready to go eat. He just had that way
10 with her. He could manipulate her. He was always pulling
11 her leg, joking with her. He was just a clown.

12 Q. Finally, this is the one that you and I call history,
13 State's 102.

14 A. Yeah, historical photograph.

15 Q. Tell the jury why?

16 A. It goes back a long ways, because my momma didn't like
17 airplanes. She was always worried about him getting hurt in
18 an airplane. That was one of her main concerns. And he was
19 always telling her no danger.

20 And the ironic thing about it is my wife and I went to
21 Mississippi and got her, I don't know, '91, '92, somewhere
22 along in there and brought her up to North Carolina to live
23 with us so I could show her some happy days in her remaining
24 days. And I had promised her in Mississippi before we ever
25 left there, I promised her two or three times, I had to

1 emphasize it, said "momma, I will bring you back home." And
2 she didn't want to be flown in no airplane. She didn't
3 really want to come home in a hearse, but I promised her
4 that I would bring her back to Mississippi whenever she
5 passed on, and I did.

6 Q. Let's wait. I want the jury to hear that in just one
7 second.

8 Did your momma really go up in an airplane with him?

9 A. Yes, sir. Bill had convinced her -- we had started out
10 that morning. He was joking about it and all that, and she
11 except saying "no, no," and, you know, "I don't fly" and all
12 this. And I don't know how it come about, but we left them
13 in the living room a little while and Bill come in there all
14 excited "we are going flying." I said "you are kidding."
15 He said "nope, we are going flying."

16 So we took off and went over to the airport where they
17 parked the plane. And there was this plane with just one
18 seat in it and the cushions. We got her up in there. And I
19 sat on the floor. Momma had some cushions back in the back.
20 I'll never forget, she had her hands like that on the back
21 of the wall. She was trembling. And we took off and flew.
22 We wasn't gone about 15 minutes, but we went over my house
23 and showed her the roof top. And the sun was real bright
24 that day. She had implants in her eyes, so we didn't take
25 her shades. We didn't stay up but a few minutes, but he got

1 his wish. He finally got -- he finally took her flying.

2 He prevailed after all the arguing and persuading and
3 trying to convince her it was nothing wrong with it. He
4 even joked to her about parachuting, but that didn't go far.

5 Q. Monty, when Bill went missing, did some your family
6 come down to Lexington County to look for him?

7 A. Yes, they did. My sister and some family members came
8 here and spent a few days here looking, putting up posters
9 and asking questions.

10 Q. Were you ever able to tell your mother?

11 A. Not at first, no, sir.

12 After it all -- after it all happened and we found out
13 the news, I just couldn't tell her.

14 Now, we had gone through this period from January on,
15 several months, and she kept asking about him, because, you
16 see, he called her a lot and he would come up and spend a
17 day with her sometime. And he would drive his car up. He
18 would drive up and take her out to lunch, and sometimes he
19 would spend the night with us and go back the next morning,
20 but didn't -- the calls quit and then he didn't show up.

21 And naturally she keeps asking about him. And every time
22 she would ask, we would have to come up with some other
23 reason. And I used to tell, you know, he's busy, or he's
24 starting a business, or he's working, or -- we just went --
25 kept postponing it on and on. And -- I just couldn't tell

1 her. After we found it out, I still couldn't tell her then.

2 And it finally had to be told, especially Thanksgiving
3 time that year and he didn't show up. We finally had to
4 tell her. Actually that was the turning point in her life.
5 I think from the day we told her, she just give up on life.
6 I mean, her death certificate says coronary heart failure,
7 but I think it should have said broken heart. She -- she
8 just quit eating. She just would not eat.

9 And then my sister -- she got real bad and they called
10 and told us to call everybody, so my sister come from
11 Alabama with my niece. And they got there on a Saturday
12 afternoon and she just lay in there and just looking up at
13 the ceiling. Just nothing else matters. She wouldn't
14 answer, wouldn't speak. And Barbara and Andrea came and
15 spent some time with her Saturday night. And then they
16 called us Sunday morning and said she had passed. So we
17 immediately started making plans to go to Mississippi.

18 The funeral home came and got her. I had contacted the
19 funeral home. They built a wooden box and put her in a
20 sealed plastic vacuum bag and I got a transport permit all
21 legal, nothing illegal, and we -- my wife and I was packing,
22 and Barbara and Andrea, they just got in from Alabama and
23 now we are turning around and going back. So we all struck
24 out after lunch and headed for Mississippi. I had her in
25 the back of a Chevy Suburban. I had folded the seats down

1 in the back. I backed up to the funeral home and we slid
2 her in the back. I kept might promise. I took her home,
3 and I don't regret it to this day.

4 And we got there the next morning. I had drove all
5 night and got there about seven the next morning at the
6 funeral home and they met us and took her body and prepared
7 it for viewing the next day. We had the funeral on
8 Wednesday at our own church, and the graveyard is right
9 there altogether.

10 We had a double funeral. I had Bill's ashes that I had
11 been given by South Carolina. And after momma's funeral, we
12 had Bill's funeral. A few words for him and they let me go
13 up front and I took his urn, that wooden thing about this
14 color right here. Before they closed the casket, I put
15 him -- put his ashes under momma's arm and the funeral home
16 closed the lid on him. So I buried him in the casket with
17 her.

18 Q. Please answer any questions that the defendant has for
19 you.

20 MR. STARNES: No questions, Your Honor.

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

23 It's probably good time to take a break.

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

25 THE COURT: Okay. Mr. Foreman, ladies and

1 gentlemen of the jury, we have been at it awhile. Let's go
2 ahead and we will take about a ten minute break. You may
3 refresh yourself during the break. Those of you who would
4 like to smoke during the break, I'll allow you to do that.
5 Do it as quickly as you can. Thank you.

6 (The following takes place outside the presence of
7 the jury panel)

8 THE COURT: All right. We will take about ten
9 minutes.

10 (Whereupon, proceedings were recessed)

11 (Whereupon, proceedings were reconvened)

12 THE COURT: All right, bring the jury in.

13 Solicitor, if you will rest on the record.

14 MR. GOWDY: Yes, sir.

15 THE COURT: Okay.

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

18 MR. GOWDY: May it please the court, the State of
19 South Carolina rests.

20 THE COURT: Mr. Foreman, ladies and gentlemen of
21 the jury, I didn't realize the State was going to be ready
22 to rest, because I hadn't asked, but they are resting. It's
23 going to be in the morning before we are going to be able to
24 get started with the defense. So I'm going to go ahead and
25 release you at this time.

1 I would ask you to be back in the jury room ready
2 to go at nine o'clock in the morning.

3 The good news is I believe, that if everything
4 goes well, and -- I never make any promises, but if
5 everything goes well, we probably will conclude the defense
6 and get to arguments and charge and get this to you tomorrow
7 afternoon and begin deliberating. And so it may not be
8 necessary to go another day after tomorrow. We might be
9 able to finish it. Several things to do.

10 But, in any event, with that I'm going to go ahead
11 and release you at this time. Again, I ask you not to
12 discuss the case or read any kind of media account of this
13 trial -- read, listen to, or watch any media account of the
14 trial until after the trial is over.

15 Please have a pleasant night tonight. Be back in
16 the jury room ready to go at nine o'clock in the morning.
17 Thank you.

18 (The following takes place outside the presence of
19 the jury panel)

20 THE COURT: We might be able to do what we need to
21 do in a bench conference with regard to the charge. Let's
22 see if we can't -- y'all come up and let's run through them
23 right quick. Mr. Starnes. If you will bring your
24 attorneys, that's fine too.

25 (Whereupon, the lawyers and the defendant

1 approached the bench for an off-the-record discussion)

2 THE COURT: All right. We will be adjourned then
3 and we will try to get started promptly at nine in the
4 morning. Thank you.

5 (Whereupon, proceedings were adjourned to November
6 17, 2007)

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

3
4 THE STATE)
5 -vs-) TRANSCRIPT OF RECORD
6 NORMAN EDWIN STARNES,) 1996-GS-32-3339
7 Defendant.) NOVEMBER 17, 2007
Lexington, South Carolina

8 (VOLUME XI)
9

10 B E F O R E:

11 THE HONORABLE LEE S. ALFORD, JUDGE. ; and a jury.
12

13
14 A P P E A R A N C E S:

15 HAROLD "TREY" GOWDY, III, SOLICITOR
16 ROBERT P. COLER, ASSISTANT SOLICITOR
ATTORNEYS FOR THE STATE

17 MR. NORMAN EDWIN STARNES
18 DEFENDANT APPEARING PRO SE

19 JOHN DELGADO, ESQUIRE
APPEARING WITH THE DEFENDANT

20 WILLIAM NETTLES, ESQUIRE
21 APPEARING WITH THE DEFENDANT

22
23 Michael R. Watts
Circuit Court Reporter
24
25

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2				
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1 (PROCEEDINGS, November 17, 2007)

2 THE COURT: Gentlemen, are we ready to proceed
3 this morning?

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

5 THE COURT: Defense ready?

6 MR. STARNES: The defense is ready, Your Honor.

7 THE COURT: Let me ask Mr. Starnes whether you
8 made a decision as to whether you want to testify in this
9 phase of the trial or not?

10 MR. STARNES: I will not testify in this phase,
11 Your Honor.

12 THE COURT: All right.

13 Let me -- Madam Clerk, please place him under
14 oath. Let me question him under oath about his rights.

15 NORMAN E. STARNES, having been first duly sworn,
16 testified as follows:

17 THE COURT: All right. Mr. Starnes, you can
18 respond from where you are, if you will.

19 We have reached the stage of your penalty phase of
20 your trial where you may present testimony on your own
21 behalf. No one can make you testify during this phase of
22 the trial.

23 If you elect not to take the stand and testify in
24 this phase of the trial, I will charge the jury that they
25 are not to give the fact that you did not testify any

1 consideration whatsoever. There is to be absolutely no
2 prejudice to you because you did not testify. It's left
3 entirely up to you whether or not that you testify. You may
4 talk with your attorney, your family, and friends, or anyone
5 else, but the ultimate decision is left entirely up.

6 Do you do you understand that it's your decision
7 as to whether you will or will not testify during this phase
8 of the trial?

9 MR. STARNES: I do, Your Honor.

10 THE COURT: All right. And have you discussed the
11 advantages and disadvantages of testifying with your
12 stand-by counsel?

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

14 THE COURT: All right. And do you wish to testify
15 in this phase of your trial, sir?

16 MR. STARNES: No, sir, I do not.

17 THE COURT: And is that your decision, sir?

18 MR. STARNES: That's my independent decision.

19 THE COURT: Thank you.

20 All right. We otherwise ready to proceed?

21 MR. GOWDY: Yes, sir.

22 THE COURT: Please bring the jury in.

23 (The following takes place in the presence of the
24 jury panel)

25 THE COURT: All right. Defense, we are ready to

1 proceed.

2 MR. STARNES: Your Honor, the defense calls
3 Sergeant Clawson to the stand.

4 OFFICER JAMES CLAWSON, having been first duly
5 sworn, testified as follows:

6 THE CLERK: Please have a seat and state your name
7 for the record and spell your last name.

8 THE WITNESS: My name is James Clawson, spelled
9 the last name C-L-A-W-S-O-N.

10 DIRECT EXAMINATION BY MR. STARNES:

11 Q. Sergeant Clawson, you have no idea what I'm going to
12 ask you today, do you?

13 A. That's correct.

14 Q. Could you explain to the jury where you are currently
15 employed at?

16 A. I work at the Lexington County sheriff's department. I
17 am a shift sergeant in the detention center.

18 Q. How long have you been employed at the Lexington County
19 detention center?

20 A. I have been with the Lexington County detention center
21 for seven and a half years.

22 Q. Before you were a sergeant, what duties did you have in
23 the detention center?

24 A. I was a field training officer and also a detention
25 officer.