

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

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Honorable Michael G. Nettles, Circuit Court Judge, C. SUPREME COURT

LADORREAN C. COLLINGTON,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO 2017-001413

APPENDIX

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1 STATE OF SOUTH CAROLINA )  
2 COUNTY OF HORRY ) COURT OF GENERAL SESSIONS

3

4 STATE OF SOUTH CAROLINA )  
5 ) No. 10 GS 26 01626; 01627  
6 versus ) 10 GS 26 1225  
7 ) 11 GS 26 1276

7 LADORREAN COLLINGTON )  
8 Defendant )

TRANSCRIPT

9 \_\_\_\_\_ OF

10 STATE OF SOUTH CAROLINA ) RECORD  
11 ) No. 08 GS 26 3133; 3135  
12 versus ) 11 GS 26 1274; 1275

13 QUENTIN GAUSE )  
14 Defendant )

15 \_\_\_\_\_  
16 Conway, South Carolina  
17 June 2, 2011

18 B E F O R E :

19 HONORABLE STEVEN H. JOHN, Judge

20

21 HARRIET P. BENNETT  
22 Reporter, S. C. Court Administration  
23 P. O. Box 86  
24 Ladson, S.C. 29456

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1 (The within matter came before the Court on June 2,  
2 2011, at approximately 9:15 A.M.)

3 THE COURT: All right, bring in Mr. Collington and  
4 Mr. Gause, and we will move forward on those issues.

5 We'll be at ease for a moment.

6 (Brief period of recess)

7 THE COURT: All right, we are reentering or recon-  
8 vening the motions that were filed in the matters of the  
9 State of South Carolina versus Ladorrean Collington and  
10 Quentin Lavont Gause.

11 We had suspended one of the motion hearings to re-  
12 ceive further evidence from the issuing magistrate due  
13 to the testimony received from the police officer that  
14 presented the matter to the issuing Summary Court Judge.

15 We will go ahead and go forward with that at this  
16 time. All right, Solicitor.

17 SOLICITOR: Your Honor, I do have a matter that is  
18 outstanding that I would like to address with the Court  
19 before we get to that.

20 I have filed the State's Response to the Defendants'  
21 Motion to Suppress the evidence, which I believe is about  
22 a twelve page response that has now been filed with some  
23 accompanying case law.

24 Again, I would reiterate the argument that I made  
25 previously which is this. Mr. McCollum has cited a case,

1 the McKnight case, and his position is that anyone has  
2 standing to challenge a search warrant for a codefendant  
3 or -- for a codefendant or anyone else's premises in a  
4 particular case in which they are a defendant.

5 I think, given the case law that I have cited to the  
6 Court, that that is just patently untrue.

7 What the case law says is that underneath the stat-  
8 ute are a set of rules which provide that you have to  
9 have certain things in hand in each and every search war-  
10 rant.

11 Those things include, among other things, an affi-  
12 davit and/or a -- or a return to that search warrant.  
13 Once those things -- once those requirements of form have  
14 been met, any question then of sub-  
15 stance; i.e., the probable cause, is a constitutional  
16 argument.

17 In order to make that constitutional argument, of  
18 course, one must have standing, and one must have an ex-  
19 pectation of privacy.

20 The search warrants that were served in these parti-  
21 cular cases -- in the search warrants that were served  
22 in these particular cases, neither of these two Defendants  
23 have any expectation of privacy in the residences that were  
24 searched.

25 They were not properties that were owned by these

1 Defendants. They were not properties that were owned by  
2 relatives of these Defendants, nor places where they had  
3 previously stayed or possibly had ever been.

4 And so the State's position under a number of these  
5 cases, and I would just for appellate purposes, if we  
6 need to do that, like to make my Response to the Motion  
7 a Court's Exhibit or a State's Exhibit at this time.

8 THE COURT: All right. Why don't you mark that as  
9 a State's Exhibit? You will have plenty of opportunity  
10 to argue those matters after we have heard the testimony.

11 The Court is not ready to rule in that regard at  
12 this time.

13 SOLICITOR: Yes, sir.

14 (State's Response to Motion marked for identifica-  
15 tion purposes as State's Exhibit 1)

16 THE COURT: All right. Are you ready to proceed  
17 with the testimony, Solicitor?

18 SOLICITOR: Yes, sir, Your Honor.

19 The State would call Magistrate Court Judge Erin  
20 Butler.

21 THE COURT: Judge, if you wouldn't mind, please,  
22 sir, come around and take the witness stand. Thank you,  
23 sir.

24 ERIN BUTLER, being duly sworn,  
25 testified as follows:

1 CLERK: Please have a seat and state your full name  
2 for the record.

3 WITNESS: Erin Butler. B U T L E R.

4 DIRECT EXAMINATION

5 BY SOLICITOR:

6 Q. Mr. Butler, how are you currently employed?

7 A. I'm currently employed as a Horry County Magistrate.

8 Q. And how long have you been employed in that posi-  
9 tion?

10 A. Ten years. About ten years.

11 Q. And were you employed there then in April of 2008?

12 A. Yes, I was.

13 Q. Do you recall an incident that took place about  
14 April 14th of 2008 where the victim in the case, Allen  
15 Smith, was killed?

16 A. From my recollection of the case, one of the offi-  
17 cers, Officer Collins, called me concerning a murder that  
18 was done at that time, and he told me there was a possi-  
19 bility he may have to seek certain warrants on that is-  
20 sue.

21 Q. And was Officer Collins known to you at that time?

22 A. Yes, he was.

23 Q. And who was he employed by at that time?

24 A. Horry County Police.

25 Q. And there have been a number of search warrants that

## MAGISTRATE BUTLER ON DIRECT

1 have already been addressed in this case, and I believe  
2 you signed a search warrant for Detective Collins to al-  
3 low a search on the incident location where the victim  
4 was found. Is that correct?

5 A. From my knowledge, I think that's correct. It's  
6 been a while.

7 Q. And he also brought you another search warrant which  
8 contained grounds for a search of the Defendant  
9 Collington's residence?

10 A. He did.

11 Q. And there also was a search warrant which he brought  
12 to you to provide for a search of an apartment in which  
13 a Codefendant resided. Is that correct?

14 A. Yes, he did.

15 Q. During the time that Detective Collins was there  
16 with you signing those warrants, did you all have an op-  
17 portunity to discuss the case?

18 A. What is usually asked in a search warrant is concern-  
19 ing probable cause for the warrant, and I ask them about  
20 the case. Then once I listen to the information that is  
21 on -- that is outlined on the affidavit I determine whe-  
22 ther I will give them the search warrant or not.

23 Q. And in addition to just the information for the  
24 probable cause, do you and the officers typically discuss  
25 the case and what they're doing in that case?

## MAGISTRATE BUTLER ON DIRECT

1 A. Well, yes, they do.. Again before I issue . .

2 MR. McCOLLUM: Objection, Your Honor.

3 THE COURT: I'm going to allow it. Thank you very  
4 much.

5 MR. McCOLLUM: She is asking . .

6 THE COURT: I understand the question. Maybe you  
7 would make it more clear what is standard practice and  
8 what was followed in this particular case.

9 Thank you.

10 BY SOLICITOR:

11 Q. Is it standard practice for you to discuss the cases  
12 with the officers when they bring these search warrants  
13 in?

14 A. Yes.

15 Q. And I'm going to show you . .

16 THE COURT: Just to follow up on it, do you believe,  
17 Judge, that you followed your standard practice in this  
18 particular matter?

19 BY SOLICITOR:

20 Q. Do you believe that you talked with Detective  
21 Collins about the case?

22 A. Yes. He comes in and provides information to me and  
23 I review it.

24 THE COURT: Thank you very much.

25 Q. And do you recall Detective Rusty Crocker also coming

## MAGISTRATE BUTLER ON DIRECT

1 in the following day with an additional search warrant?

2 A. I do.

3 Q. I hand you what's marked State's Exhibit 2 and ask  
4 if you can identify that for me, at least generally?

5 A. Yes, maam. Yes, I do.

6 Q. And is that a search warrant for 1519 Grainger Road,  
7 Apartment G 8?

8 A. Yes, it is.

9 Q. And did you have an opportunity to read the affida-  
10 vit portion of the search warrant?

11 A. Yes, I did.

12 Q. After reading the affidavit portion of the search  
13 warrant, did you have some discussion with Detective  
14 Crocker as well about how the case was proceeding along?

15 A. Yes. I ask questions any time that they come in on  
16 a matter. Yes, I did.

17 Q. And given the information provided to you, did you  
18 make a determination about whether there was probable  
19 cause to issue that search warrant?

20 A. Yes.

21 Q. I know that it's been a long time, but do you remem-  
22 ber specifically what that information was or just gener-  
23 ally?

24 A. It has been a long time, but basically just general  
25 information. It's been a long time. I can't really say

## MAGISTRATE BUTLER ON DIRECT

1 at this point.

2 Q. Do you know whether this particular warrant -- can  
3 you tell me whether this particular warrant was looking  
4 -- whether in this particular warrant they were looking  
5 for individuals or property or both?

6 A. They were looking for -- they had been informed that  
7 somebody -- informed of some other individual from what  
8 I remember on that, and they were looking for property  
9 items as well as the individual themselves.

10 Q. And so the two search warrants which have already  
11 been found to have probable cause, the prior search war-  
12 rants of Detective Collins -- would you characterize  
13 these as being additional information to that information  
14 you received from Detective Collins?

15 A. From my recollection, I do.

16 Q. And the search warrants for Detective Collins, those  
17 were also looking for people and property, is that cor-  
18 rect, sir?

19 A. They were. I remember that much.

20 Q. And this search warrant would be looking for addi-  
21 tion information?

22 A. For additional information.

23 SOLICITOR: I don't have any questions regarding  
24 those particular search warrants, Judge. I don't know  
25 if you would like me to go into them individually or not.

## MAGISTRATE BUTLER ON DIRECT

1 THE COURT: It probably would be easier if we would  
2 just stick with each search warrant and have the questions  
3 asked by the Defense as to that particular warrant and  
4 then go from that one if there is any question about the  
5 particular one addressed.

6 BY SOLICITOR:

7 Q. Let me ask you one more question about that one. Is  
8 that the return to that search warrant?

9 A. Yes, it is.

10 Q. And can you tell me whether you typically get a copy  
11 of that return? Is that something you typically would re-  
12 ceive?

13 A. We get a copy of it. It is a part of the process  
14 that it is returned with the information that was gotten  
15 from the warrant.

16 Q. Please answer any questions Mr. McCollum has for  
17 you.

18 THE COURT: All right, Mr. McCollum.

19 CROSS EXAMINATION

20 BY MR. MCCOLLUM:

21 Q. Good morning, Magistrate Butler.

22 A. Good morning, sir.

23 Q. Do you have a copy of the search warrant?

24 A. I have a copy of this one.

25 Q. And the address was 1519 Grainger Road?

## MAGISTRATE BUTLER ON DIRECT

1 A. Yes, sir.

2 Q. Now, this one was issued May 15, 2008, the same as  
3 the previous one, right?

4 A. Right.

5 Q. And you handle a number of cases in your normal dut-  
6 ies as a Judge, right?

7 A. Yes, sir, I do.

8 Q. And you issue a number of warrants beside arrest  
9 warrants, right?

10 A. Yes, sir.

11 Q. And you also work on a number of search warrants  
12 but not as many as arrest warrants, right?

13 A. Sometimes -- it varies. Sometimes it may be dimin-  
14 ished as compared to arrest warrants. Certainly not as  
15 many.

16 Q. And on this particular day, Detective Rusty Crocker  
17 I think came to your house to receive the search warrant,  
18 right?

19 A. At eight forty-five -- yes, sir, I believe I was at  
20 the house.

21 Q. For 1519 Grainger Road. Right?

22 A. Yes, sir.

23 Q. And do you remember -- if you can't, you can't, but  
24 besides the affidavit here which is the reason for the  
25 affiant's belief that the property sought was on the

## MAGISTRATE BUTLER ON CROSS

1 subject premises, do you remember any facts that Detec-  
2 tive Crocker told you at your house that day other than  
3 what is in the last paragraph here on this page?

4 A. All I can remember right off the top of my head was  
5 that they were looking for additional information. They  
6 had linked some individuals to this matter, or some per-  
7 son, and they were looking for additional information. I  
8 remember that part, but it's been a while.

9 Q. I understand. I understand, but do you remember --  
10 do you specifically remember that while Detective Crocker  
11 was under oath that you asked him any specific questions  
12 to add to or enlarge the facts that he was providing to  
13 you?

14 A. I can't hardly remember that. I asked him about the  
15 case but specific things I can't remember.

16 Q. In the last sentence here it talks about a witness,  
17 and this is information that Detective Crocker provided  
18 to you which says, in addition a witness has provided  
19 information about an address, that being 1519 Grainger  
20 road, I guess, . . .

21 A. Uh hm.

22 Q. . . and has physically showed officers the addresses  
23 where the suspects and their accomplices were residing.

24 A. Okay.

25 Q. Now, do you know from looking at the search warrant

## MAGISTRATE BUTLER ON CROSS

1 or from memory who that witness was?

2 A. No, sir, I don't.

3 Q. And Detective Crocker did not specifically give you  
4 or give the Court any information which would establish  
5 that witness' reliability. Right?

6 A. No.

7 Q. They just had a witness who said that these suspects  
8 could be found at this address, right?

9 A. Right.

10 Q. And there was nothing else, right, that you can  
11 recall?

12 A. Not that I can recall.

13 Q. All right.

14 A. Other than at that time from my reflection I felt  
15 there was enough probable cause to issue that.

16 Q. I understand, and at the time you knew that there  
17 had been a homicide?

18 A. Yes.

19 Q. And you knew that the officers wanted to conduct  
20 certain searches, right?

21 A. Yes.

22 Q. And that they were there to try to get permission  
23 to conduct those searches, right?

24 A. Yes, sir.

25 Q. In your position as a Judge, you certainly wanted

## MAGISTRATE ON CROSS

1 to assist the police in conducting the searches, right?

2 A. Yes, sir.

3 Q. But as far as the probable cause, there is really  
4 nothing else that you can add here today other than what  
5 is in that last paragraph, right?

6 A. Not other than that.

7 Q. Thank you. I appreciate it.

8 THE COURT: Mr. Hazzard.

9 MR. HAZZARD: Yes, sir. I'm sorry, but I want to  
10 make it clear to the Court Reporter . .

11 THE COURT: He is now questioning the witness on  
12 behalf of the Defendant, Quentin Gause.

13 MR. HAZZARD: Very good.

14 CROSS EXAMINATION

15 BY MR. HAZZARD:

16 Q. Judge, you've got a copy of the warrant that the  
17 . .

18 THE COURT: Also, Mr. McCollum was asking questions  
19 on behalf of Ms. Ladorrean Collington.

20 A. You've got a copy of the warrant that the Prosecu-  
21 tor handed you for 1519 Grainger Road, Building G and  
22 Unit 8. Is that correct?

23 A. Yes, sir.

24 Q. Okay. Now, I would direct your attention to the  
25 paragraph that Mr. McCollum just discussed with you. Do

## MAGISTRATE BUTLER ON CROSS

1 you see that paragraph, sir?

2 A. Yes, sir.

3 Q. Now, in reviewing that paragraph -- have you had a  
4 chance to review that paragraph in its entirety?

5 A. I have had a chance to kind of read over it a lit-  
6 tle bit.

7 Q. Now, this paragraph is one that is obviously conclu-  
8 sary in nature. Can we agree on that?

9 A. . .

10 SOLICITOR: I would object to that as calling for a  
11 legal opinion.

12 THE COURT: What the Solicitor means is that that  
13 is a decision I would need to make.

14 BY MR. HAZZARD:

15 Q. Judge Butler, there is no where in that paragraph  
16 where it indicates who this witness is that is providing  
17 this information regarding 1519 Grainger Road, Building  
18 G, Unit 8 to the police?

19 A. No, it's not.

20 Q. Okay. Now, this was eight forty-five A.M., and it  
21 says it was sworn to on the 15th day of April, is that  
22 correct?

23 A. That's right.

24 Q. The year being 2008?

25 A. Yes.

## MAGISTRATE BUTLER ON CROSS

1 Q. To your recollection, was this the first warrant  
2 that Rusty Crocker or any other police officer had  
3 brought to you in this particular case, that being the  
4 death of Allen Smith?

5 A. No, it wasn't. There were several others that were  
6 brought earlier by Officer Collins. He had brought those  
7 to the office.

8 Q. Okay. On the same day or the previous day?

9 A. I don't recollect, sir. I believe some were on the  
10 same day and some were on the previous day. I can't re-  
11 member just when it was, without looking at it.

12 Q. Now, with regards to the same paragraph, is it your  
13 practice when the paragraph does not give you information  
14 whereby you can make an independent determination of the  
15 reliability or credibility or believability of the wit-  
16 ness the paragraph refers to -- is it your practice to  
17 request or require the police to subsequently amend the  
18 paragraph?

19 A. . .

20 Q. In other words, like in this case here, a witness  
21 told them some information . .

22 A. Right.

23 Q. . . but it doesn't let you know who the witness is,  
24 so you don't get a chance to determine if that witness  
25 was believable or not?

## MAGISTRATE BUTLER ON CROSS

1 A. Right.

2 Q. Okay. Now, in those situations where you're brought  
3 this type of information like in the affidavit, what is  
4 your practice in instructing the police as to what you  
5 deem to be appropriate?

6 A. It's based on what -- on any information given to me  
7 earlier -- based on information provided to the Court  
8 earlier . . .

9 Q. Uh hm.

10 A. . . for the other search warrants which were ob-  
11 tained, the Court would consider that affidavit and the  
12 other information to determine if the warrant should be  
13 issued.

14 Q. Okay. You said Detective Collins had talked with  
15 you earlier?

16 A. Right.

17 Q. In getting other warrants?

18 A. Getting the other warrants.

19 Q. So exactly what information did Detective Collins  
20 provide you that supplements the affidavit?

21 A. He did not actually give me any information concern-  
22 ing this affidavit. It was in connection with other  
23 search warrants which had been done before this one, but  
24 I used information that was given prior to the issuing  
25 of this search warrant.

## MAGISTRATE BUTLER ON CROSS

1 Q. Okay.

2 A. The Court determined from that information that was  
3 given along with this affidavit that the search warrant  
4 should be given.

5 Q. So he did not give you any information regarding the  
6 witness mentioned in the affidavit?

7 A. No.

8 Q. Thank you. No further questions.

9 THE COURT: If I could, let me ask a couple of  
10 questions.

11 Understanding this was on April 15, 2008, and we're  
12 here on June 2nd of 2011, and I appreciate that.

13 There were hundreds if not thousands of search war-  
14 rants and arrest warrants that you have issued in the  
15 interim.

16 I am more interested in your standard practice when  
17 the police come to you. When in the body of the affida-  
18 vit they say a witness and they don't name the person --  
19 a witness provided this information and that is what we  
20 are using to give to the Court as a basis for this search  
21 warrant, what is the practice when they don't name the  
22 witness?

23 Do you ask some questions about that or how did that  
24 person come about that information? What do you normally  
25 do?

## MAGISTRATE BUTLER ON CROSS

1 Q. Yes, sir, that's what I do before I go into it fur-  
2 ther.

3 I ask them about the case, the purpose of it, what  
4 they are looking for. I ask them all of the information  
5 before -- as to the witness I don't necessarily ask them  
6 the name of the witness if they say they have a witness  
7 that saw something.

8 I ask what they are looking for in the matter and  
9 how it came together.

10 THE COURT: I understand when Detective Crocker came  
11 to you for this particular search warrant for Building  
12 G, Unit 8, at 1519 Grainger Road, you asked him some  
13 questions and took the information that was in the affi-  
14 davit and you used the information you had gained from  
15 other officers apparently before Officer Crocker -- from  
16 other officers who had come to you with information about  
17 the case.

18 You put all that information together and you made  
19 your decision. Is that correct?

20 A. Correct.

21 THE COURT: Further questions, Solicitor?

22 SOLICITOR: Just a couple.

23 CROSS EXAMINATION

24 BY SOLICITOR:

25 Q. Judge Butler, is this something that comes into play

## MAGISTRATE ON REDIRECT

1 from time to time, that you will have information that  
2 has been provided by an informant?

3 A. Right.

4 Q. And is it not true that you look not only at the  
5 reliability of the informant but the specificity of the  
6 information that has been given?

7 A. Yes, I do.

8 Q. And the information that you were given; i.e., the  
9 various addresses in this case was very specific, was  
10 it not?

11 A. Yes.

12 Q. In fact, in the affidavit it tells you that this wit-  
13 ness was able to go to a particular location and point  
14 out that location?

15 A. Yes.

16 Q. Not just a location but a very specific location, is  
17 that right?

18 A. Yes, he did. This witness pointed out certain as-  
19 pects in this case and certain locations.

20 Q. And so while you may not know the name of the wit-  
21 ness, you know that the witness did provide very specific  
22 information about the location?

23 A. That's true.

24 Q. The information that you got from Detective Crocker,  
25 that was information that you used in addition to the

## MAGISTRATE BUTLER ON REDIRECT

1 information that was provided to you by Officer Collins?

2 A. That's correct.

3 Q. So the body of information that you had was not just  
4 coming from Detective Crocker, correct?

5 A. Correct. That's right.

6 Q. And you had a base of information about how this case  
7 had been from the very beginning?

8 A. Yes. As I mentioned earlier, there again in the be-  
9 ginning -- from the beginning I was informed by the offi-  
10 cers when I was reviewing the search warrants that came  
11 in before I made any determination on any further search  
12 warrants.

13 Q. And in your job you may get a search warrant brought  
14 to you where perhaps another Judge has signed a separ-  
15 ate search warrant in that case. Is that correct?

16 A. Sometimes we do get that.

17 Q. But in this case you did all the search warrants?

18 A. I did every one of them.

19 Q. Thank you. I don't have any further questions.

20 THE COURT: Anything on those questions asked, Mr.  
21 McCollum?

22 MR. MCCOLLUM: Yes, sir, just briefly, Your Honor.

23 RE-CROSS EXAMINATION

24 BY MR. MCCOLLUM:

25 Q. But the witness in this particular case, do you know

## MAGISTRATE BUTLER ON RECROSS

1 if it was a man or woman?

2 A. I'm trying to remember did they tell me. I'm not  
3 sure if I was told if it was a man or woman.

4 Q. It could have been a man, could have been a woman.  
5 Right?

6 A. Could have been either one.

7 Q. All right, and you don't know the age of the person,  
8 right?

9 A. No, I don't.

10 Q. Do you know the race of the person?

11 A. I'm sorry, I don't.

12 Q. You don't know where the person is from, right?

13 A. No.

14 Q. You don't know if that person knew the people they  
15 were giving information about?

16 A. The information I got was that they knew the person.  
17 That's the only thing I remember.

18 Q. But you didn't know the sex or age or the race, or  
19 where the person was from, or the whereabouts of the per-  
20 son?

21 A. They may have mentioned it to me, but I don't remem-  
22 ber.

23 Q. Thank you, Your Honor.

24 THE COURT: Yes, sir, Mr. Hazzard.

25 RECROSS EXAMINATION

## MAGISTRATE BUTLER ON RECOSS

1 BY MR. HAZZARD:

2 Q. Judge Butler, Ms. Herrmann asked you about informa-  
3 tion you had received previously . .

4 A. Uh hm.

5 Q. . . in regard to this case. Let's go back to the  
6 first information you received.

7 A. Okay.

8 Q. What did the police tell you?

9 A. When I looked at the warrants I can't remember  
10 exactly what they told me, other than they were looking  
11 -- they had a murder and they were looking for some evi-  
12 dence or individuals to that.

13 Q. Uh hm.

14 A. Any details I cannot tell you.

15 Q. So basically they came to you and they said somebody  
16 is dead, and we have been talking to some folks, and that  
17 based on talking with some folks we want to get some war-  
18 rants. Is that a fair characterization of what you were  
19 told?

20 A. After going to the areas of information that are  
21 presented to me in order to issue any warrants, things I  
22 or the Court would take a look at, but I don't do it --  
23 it's more than just talking to get a warrant.

24 Q. Do you have any recollection of what information  
25 they would have provided to you?

## MAGISTRATE BUTLER ON RECROSS

1 A. Not without looking at the return at this time. It  
2 has been a while.

3 Q. Well, you are talking about the very first warrant,  
4 so you're talking about information provided but there  
5 is no return at this point, correct?

6 A. Right.

7 Q. So with regard to the very first warrant, what in-  
8 formation or what supplementary information were you pro-  
9 vided, starting with the first warrant, if you recall?

10 A. I can only tell you what we look for in those types  
11 of cases, not what was provided to me.

12 They are always looking for concerned items, any evi-  
13 dence of hair, or they may want to do DNA, but they have  
14 the first concern.

15 Q. Uh hm.

16 A. And also we are provided with the information that  
17 we take a look at before we issue a search warrant. That  
18 may be some additional information such as if they've got  
19 any leads to anyone else and they may come back to me  
20 again for that purpose.

21 Q. Okay, and I appreciate what the police may be look-  
22 ing for, but my question was more along the lines of what  
23 information were you provided by them?

24 A. I cannot remember that at this point. I was looking  
25 at information that was in front of me.

## MAGISTRATE BUTLER ON RECROSS

1 Q. Thank you, no further questions.

2 THE COURT: Anything further or may he be excused?

3 MR. McCOLLUM: The only thing, Your Honor, is that  
4 there were three warrants that . . .

5 THE COURT: He's exactly right, Solicitor.

6 Let's proceed on with that.

7 SOLICITOR: Your Honor, the warrant we just discussed  
8 was for Apartment G 8, 1519 Grainger Road, State's Exhi-  
9 bit 2.

10 We also would have Exhibit 3, for Apartment 5, 1519  
11 Grainger Road; Exhibit 4, a warrant for 1007 Palmetto  
12 Road, Exhibit 4; and State's Exhibit 5, a warrant for 907  
13 Whittemore Street.

14 The affidavit for each of those warrants is the same  
15 and I would be happy to go into each of those if Your  
16 Honor would think it necessary.

17 THE COURT: I would appreciate your marking those  
18 as State's Exhibits, starting with the one that was just  
19 talked about, for the G 8 unit at 1519 Grainger Road.

20 (Search warrant so marked as State's Exhibit 2)

21 SOLICITOR: I also have Exhibits 3, 4 and 5, the  
22 first of which is for Apartment 5, 1519 Grainger Road, and  
23 for 1007 Palmetto Road and 907 Whittemore Street, Your  
24 Honor.

25 THE COURT: All right, Solicitor. They are so marked.

1 I appreciate that, but since he didn't have those and you  
2 were asking Judge Butler specific questions about those  
3 warrants, I believe we needed to identify them in case  
4 of further review.

5 Hand those up, please. The one for G 8, 1519 Grainger  
6 Road, what's that?

7 SOLICITOR: State's Exhibit 2.

8 THE COURT: And then the warrant for Building G,  
9 Unit 5, 1519 Grainger Road, what's that?

10 SOLICITOR: State's 3.

11 THE COURT: Is there a State's 5?

12 SOLICITOR: State's 4 is for 1007 Palmetto Road.

13 THE COURT: I don't have a copy of that, Solicitor.  
14 Would you pass that up?

15 State's 1 is the State's Response to the Defendants'  
16 Motion to suppress.

17 For Building G, Unit 8, 1519 Grainger Road is  
18 State's 2. As I understand it, Building G, Unit 5, 1519  
19 Grainger Road is 3.

20 One thousand seven Palmetto Street is State's 4, and  
21 what is State's 5, Madam Court Reporter?

22 REPORTER: It's 907 Whittemore Street, Your Honor.

23 THE COURT: All right, 907 Whittemore Street, State's  
24 5..

25 All right, Solicitor.

1 REDIRECT EXAMINATION

2 BY SOLICITOR:

3 Q. Magistrate Butler, have you had an opportunity to  
4 see these search warrants which have been marked State's  
5 Exhibit 3, State's Exhibit 4 and State's Exhibit 5?

6 A. Just briefly.

7 Q. Would you take a look at those?

8 A. Okay.

9 (Brief pause in proceeding)

10 WITNESS: I'm ready.

11 Q. State's Exhibit 3 is for 1519 Grainger Road, Apart-  
12 ment G 5?

13 A. Yes, maam.

14 Q. And would you tell the Court, please, at what time  
15 that search warrant was signed?

16 A. At 8:45 A.M.

17 Q. And the information that is contained in the affi-  
18 davit portion of that search warrant, is that information  
19 that was provided to you with regard with State's Exhibit  
20 2, which is the 1519 Grainger Road, Apartment G 8, which  
21 we have just discussed?

22 A. Yes, it is.

23 Q. And so the information received from Detective Crocker,  
24 would that be the same information with regard to this  
25 particular apartment as well?

## MAGISTRATE BUTLER ON REDIRECT

1 A. Yes, it is. It looks so.

2 Q. And included in the affidavit is information about  
3 the various specific locations being pointed out to the  
4 police and provided to them, is that correct?

5 A. Yes.

6 Q. And also in that affidavit is information saying that  
7 numerous interviews have been conducted, is that correct?

8 A. Yes, it is.

9 Q. And would it be your practice to ask the officers  
10 about those particular interviews?

11 A. I usually do. I let them go on to discuss the inter-  
12 view in the information I gain in order to determine whe-  
13 ther I'm going to give them the warrant or not.

14 Q. And did you believe you did that in this case?

15 A. I certainly do.

16 Q. And did you conclude before you signed the search  
17 warrant that you believed there was probable cause for  
18 that search warrant?

19 A. Again, I do not sign warrants and particular search  
20 warrants until I am really convinced there is probable  
21 cause for it.

22 Q. Magistrate Butler, you take your job pretty seriously,  
23 don't you?

24 A. I certainly do.

25 Q. And is it important to you before you sign a search

## MAGISTRATE BUTLER ON REDIRECT

1 warrant to know that there is probable cause for the war-  
2 rant, is that correct?

3 A. Yes, I don't sign search warrants unless there is  
4 probable cause for that.

5 And once you read this affidavit, if you had questions  
6 about the reliability of that witness or questions about  
7 the reliability of that information that was provided in  
8 the affidavit, do you ask questions about that?

9 A. I certainly do.

10 Q. And so you satisfy yourself that that information  
11 rises to the level of probable cause?

12 A. Yes.

13 Q. And do you do that in your general practice?

14 A. Yes, I do.

15 Q. And did you do that in this particular case?

16 A. I certainly did.

17 Q. And calling your attention to State's Exhibit Number  
18 4, that search warrant for 1007 Palmetto Street, is  
19 the affidavit in that case the same as the affidavit in  
20 the previous search warrant?

21 A. Yes, it is.

22 Q. And so that information -- you were relying on the  
23 same information for that particular search warrant as  
24 well, is that right?

25 A. Yes, I was.

## MAGISTRATE BUTLER ON REDIRECT

1 Q. And I would ask you to take a look at State's Exhi-  
2 bit 5, which is the search warrant for 907 Whittemore  
3 Street. Is that information in that affidavit the same  
4 as in the others?

5 A. Yes, it is.

6 Q. And you have previously said that you do not recall  
7 the specifics of your conversation with Detective Crocker,  
8 is that correct?

9 A. Only for a few words, things that -- the basics just  
10 basically. I don't recall the specifics of the informa-  
11 tion that we discussed.

12 Q. But you do recall that there was information that  
13 was discussed in addition to what is contained here in  
14 the affidavit?

15 A. From my knowledge, we talked about some things but I  
16 just can't remember what they were at this point. We did  
17 discuss some things.

18 Q. And if you had some concerns about the information  
19 that was provided to you, that would be information you  
20 would ask him about?

21 A. Right.

22 Q. And if you are not satisfied with that information,  
23 what happens?

24 A. I do not sign the warrant.

25 Q. And in each one of these warrants, have you looked

## MAGISTRATE BUTLER ON REDIRECT

1 at the totality of the circumstances and the information  
2 you had been provided to determine whether or not there  
3 was probable cause for the warrant?

4 A. Yes, I did.

5 Q. And was there a return on each of these search war-  
6 rants?

7 A. Yes, I assume there was.

8 Q. How about check and see if there were returns on  
9 them?

10 A. Yes, there are returns for each one of them.

11 Q. And taking into consideration the totality of the  
12 circumstances, and the specificity of the information pro-  
13 vided, you feel that there was probable cause for the is-  
14 suance of these search warrants?

15 A. I do.

16 Q. And from the information you received, you were satis-  
17 fied as to that?

18 A. From the information and the discussions that we  
19 had, I do, yes.

20 Q. Thank you.

21 THE COURT: All right, Mr. McCollum. Any further  
22 Cross Examination?

23 MR. MCCOLLUM: Yes, sir. May it please the Court?

24 THE COURT: Yes, sir.

25 RE-CROSS EXAMINATION

## MAGISTRATE BUTLER ON RECROSS

1 BY MR. McCOLLUM:

2 Q. Judge Butler, you have been a sitting Judge for how  
3 many years now?

4 A. About ten.

5 Q. About ten? Okay, and you've seen a lot in ten years  
6 time, right?

7 A. Yes, sir, I have.

8 Q. No question about that, right?

9 A. No.

10 Q. And the police have come to you on a number of oc-  
11 casions to get search warrants?

12 A. Yes, they have.

13 Q. And they've come to you on a number of cases to get  
14 arrest warrants, right?

15 A. Right.

16 Q. About how many arrest warrants would you say you  
17 sign in a month?

18 A. I guess between twenty-five to thirty, thirty-five  
19 warrants a month.

20 Q. Okay, so that would be three hundred and something  
21 a year?

22 A. You said arrest warrants, right?

23 Q. Yes, three hundred and something arrest warrants,  
24 right?

25 A. Yes, sir.

## MAGISTRATE BUTLER ON RECROSS

1 Q. So over a ten year period, you've done over three  
2 thousand arrest warrants, right?

3 A. Somewhere close to that I guess, yes, sir.

4 Q. I understand you can't be exact, but has there been  
5 an occasion when this officer came to you to get an ar-  
6 rest warrant and you didn't sign the warrant?

7 A. Yes, there has, when there has not been enough evi-  
8 dence to determine probable cause I have not.

9 Q. And how many search warrants would you say that you  
10 sign in a month, in a normal month, and I know that it  
11 varies?

12 A. It does. We can go for a month without signing any  
13 and we can go for a month with ten or twelve a month.

14 Q. And so you sign fifty or sixty a year -- search war-  
15 rants?

16 A. Something like that.

17 Q. And are there lots of occasions when you have not  
18 signed search warrants for the police when they have re-  
19 quested them?

20 A. Maybe one or two over the years, particularly after  
21 they learn how I establish what they're looking for.

22 There may have been one or two over the years that  
23 I have not signed.

24 Q. So you have <sup>given</sup> many more than you have denied?

25 A. Yes, sir.

## MAGISTRATE BUTLER ON RECROSS

1 Q. Okay. Now, in terms of probable cause, if you could  
2 tell me your understanding -- when you say you look for  
3 probable cause, what are you looking for?

4 What are you looking for to establish probable cause?

5 A. I'm looking at the incident that occurred, what evi-  
6 dence they have as to that incident, and who they have  
7 linked to that.

8 I'm looking at what information they have in pursuit  
9 of this, and what information they are looking for, as  
10 well as any additional information for pursuing this.

11 They present the case to me fully. I listen to what  
12 they say fully before I decision.

13 Q. Besides a determination of what they are looking for,  
14 what are you specifically looking for in determining whe-  
15 ther or not the police can use the warrant to enter into  
16 somebody's house?

17 What are you looking for?

18 A. Any witnesses to the matter, any leads that lead up  
19 to that information, or any additional information. I  
20 look at all of that to determine it.

21 Q. And I want to go back a little bit and ask you a  
22 little more about these exhibits you have in front of you.

23 A. Yes, sir.

24 Q. These are State's Exhibits 2, 3, 4 and 5.

25 A. Yes, sir.

## MAGISTRATE BUTLER ON RECROSS

1 Q. And these are all search warrants you signed in the  
2 same case?

3 A. Yes, sir, right.

4 Q. So Exhibits 2, 3, 4 and 5 were all signed for Detec-  
5 tive Crocker?

6 A. Let me see. Yes, he's the affiant on all of them.

7 Q. And those affidavits are all identical, right?

8 A. Identical in nature, yes, sir.

9 Q. All right.

10 A. The description of what they're looking for.

11 Q. And you said that you had additional information or  
12 facts not included in the affidavit, right?

13 A. Right.

14 Q. As a basis for the search warrants?

15 A. Right.

16 Q. And you can't specifically point to any additional  
17 facts at this time?

18 A. . .

19 Q. Other than information that is written in the search  
20 warrant?

21 A. Right.

22 Q. Specifically what you were relying on in this case  
23 is what is written in the search warrants?

24 A. Yes, it is.

25 Q. No question about that?

## MAGISTRATE BUTLER ON RECROSS

1 A. No.

2 Q. Now, because of this particular search warrant --  
3 you know when you issue a search warrant they go to --  
4 not necessarily their house but to their friend's house  
5 or something like that? Their relative's house?

6 A. If the information is sufficient for probable cause  
7 to do so, yes, sir.

8 Q. Okay.

9 A. Again, that's what we're looking at, as far as prob-  
10 able cause, and whether it exists in the information that  
11 is provided. We listen to all that.

12 That's what we use to determine whether to allow  
13 them to do that or not.

14 Q. But you would not know in issuing search warrants  
15 if it's for somebody's friend, would you?

16 A. If the information is provided that they need to go  
17 there.

18 Q. So you would be looking at specific information as  
19 provided rather than, say, private information . .

20 A. Right.

21 Q. . . or personal information?

22 A. Right.

23 Q. And when you look at the affidavits on these parti-  
24 cular search warrants, that type of information just  
25 isn't there?

## MAGISTRATE BUTLER ON RECROSS

1 A. Well, there is information that's in there that was  
2 brought by the witness that they had on the individuals  
3 that were involved, from what I saw, which allowed me to  
4 do that.

5 Q. But you didn't have any idea who those witnesses  
6 were, right?

7 A. No, I didn't.

8 Q. You don't know if they were men or women, right?

9 A. Right.

10 Q. You didn't know what race they were, right?

11 A. Right.

12 Q. Didn't know how old they were, right?

13 A. Right.

14 Q. Didn't know if they had criminal records or not,  
15 right?

16 A. I can't remember whether a criminal record was men-  
17 tioned or not. At this point, I just can't remember.  
18 It could have been.

19 Q. And so I would think at that point really you were  
20 relying on the police officers?

21 A. On information that was given to me by the police,  
22 yes.

23 Q. So it's safe to say that really as far as the witness  
24 who provided the information, sitting there as you made  
25 your decision, you didn't know anything about the witness?

## MAGISTRATE BUTLER ON RECROSS

1 A. No, I knew nothing about the witness.

2 Q. Thank you, sir.

3 THE COURT: Previously I believe you indicated that  
4 the only thing that you knew about the witness was that  
5 the witness knew the victim.

6 A. Yes, sir, that was information that was given to me  
7 by the officer.

8 THE COURT: And that is not contained in the affi-  
9 davits?

10 A. No, sir, I don't see it in there.

11 THE COURT: That was information that you discussed  
12 with the officer about the particular case?

13 A. Yes, sir.

14 THE COURT: Outside of the information that is con-  
15 tained in the search warrants?

16 A. Yes, sir.

17 THE COURT: Thank you very much. Solicitor?

18 SOLICITOR: I believe that Your Honor asked the  
19 question I was going to ask, and I don't have anything  
20 further.

21 THE COURT: Mr. McCollum?

22 MR. MCCOLLUM: No further questions.

23 THE COURT: Is there anything the State wants to  
24 present as to any of these search warrants?

25 SOLICITOR: No, Your Honor.

1 THE COURT: Mr. McCollum?

2 MR. MCCOLLUM: No, sir.

3 THE COURT: Mr. Hazzard?

4 MR. HAZZARD: Beg your pardon?

5 THE COURT: I'm speaking of -- I'm occupying another  
6 Judge's time. Is there anything else that you need to ask  
7 Judge Butler regarding the search warrants?

8 MR. HAZZARD: Yes, sir.

9 THE COURT: The State has introduced State's 2, 3, 4  
10 and 5 into evidence. The State has already talked about  
11 all five of them -- all four of them, so what questions  
12 do you have?

13 MR. HAZZARD: No, sir, . . . (few words inaudible)

14 THE COURT: So we can let Judge Butler go back to  
15 his duties?

16 MR. HAZZARD: Just very briefly.

17 RE-CROSS EXAMINATION

18 BY MR. HAZZARD:

19 Q. Judge Butler, I would direct your attention to I be-  
20 lieve Exhibit Number 4, for 1007 Palmetto Street.

21 A. Okay.

22 Q. Looking at that, it has a time notation of five ten  
23 in the content of it. Do you have any idea whether that  
24 is five ten A.M. or P.M.?

25 A. If you look at the original search warrant it is on  
there as five ten A.M.

## JUDGE BUTLER ON RECROSS

1 Q. Okay. Now, was this the first one that was brought  
2 to you, to your knowledge, or was there one prior to this?

3 A. I'd have to look back and see. I can't remember off  
4 the top of my head.

5 Q. Okay.

6 A. I think that was the first one that -- it was the  
7 first one, Mr. Hazzard.

8 Q. Okay, and what it indicates in the reason portion  
9 of the affidavit is the investigating officers have pro-  
10 cessed the crime scene and conducted numerous interviews  
11 (reading from affidavit on State's Exhibit 4);

12 A. That's correct.

13 Q. So as of five ten A.M. what the police told you was  
14 that Mr. Floyd and Mr. Gause and a Mr. James Laport had  
15 entered the residence of the deceased and caused his death,  
16 right?

17 A. Right, uh hm.

18 Q. All right. Now, let me ask you something involving  
19 the returns. You looked at those very carefully, is  
20 that correct?

21 A. Uh hm.

22 Q. And in each of these cases the return was some sev-  
23 eral days later, correct?

24 A. Yes. That's not unusual.

25 Q. I understand. So when we are talking about them

## MAGISTRATE BUTLER ON RECROSS

1 coming to your home at five ten A.M. and then eight fif-  
2 teen A.M. and then at eight twenty-five A.M., for a ser-  
3 ies of warrants, you had not received a return on the  
4 first warrant when they come there asking for some more.  
5 Is that correct?

6 A. That's correct.

7 Q. Okay. No further questions. Well, one more ques-  
8 tion.

9 With regard to Number 4, for 1007 Palmetto Street,  
10 it says Rusty Crocker is the affiant. Did anyone other  
11 than Rusty Crocker provide you with any information re-  
12 garding Mr. James Laport as being an individual who en-  
13 gaged in this offense?

14 A. I can't remember anyone else at the time.

15 Q. Thank you very much.

16 SOLICITOR: Your Honor, I have nothing further of  
17 the witness.

18 THE COURT: Mr. McCollum?

19 MR. MCCOLLUM: Nothing further.

20 THE COURT: Judge Butler, I appreciate your coopera-  
21 tion with us in this matter, and I am sorry we had to take  
22 up so much of your time.

23 Thank you very much, sir.

24 (Witness excused by the Court)

25 THE COURT: All right. Anything further from the

1 State?

2 SOLICITOR: Yes, sir. Based on the information re-  
3 ceived at the previous hearing . .

4 THE COURT: Is this in regard to the warrants, and  
5 I am asking if there is any further testimony.

6 SOLICITOR: No, sir, Your Honor.

7 THE COURT: All right, Mr. McCollum, as to that is-  
8 sue, I will be glad for you to make your argument. It's  
9 your Motion. I'll start off with you.

10 MR. MCCOLLUM: Your Honor, just very briefly, we be-  
11 lieve under State versus McKnight that as to State's Ex-  
12 hibits 2, 3, 4 and 5, search warrants for 1519 Grainger  
13 Road, Apartments G 8, E 5, for 1007 Palmetto Road, and  
14 907 Whittemore Street, clearly there has been no showing  
15 of probable cause for issuance of those warrants.

16 Again, by the terms of the affidavit, the Detective  
17 Rusty Crocker did not add anything to what was in the affi-  
18 davits. Over and over, Judge Butler testified he could  
19 not recall anything other than what was in the affidavits.

20 Clearly, it is our position that there is no proba-  
21 ble cause for the issuance of those warrants, and it is  
22 further our position that Your Honor should suppress any  
23 evidence that was seized pursuant thereto.

24 Thank you.

25 THE COURT: Mr. Hazzard?

1           MR. HAZZARD: Very briefly, Your Honor, I would just  
2 point out that, as I understand it, Judge Butler testified  
3 about his normal course of business regarding search war-  
4 rants, and I appreciate that, but he has provided to us  
5 here today absolutely no information as to having been  
6 given by the police anything regarding their witness from  
7 which he could arrive at the decision he made.

8           He told us merely that the police told him they had  
9 a witness, and he made no further inquiry regarding why  
10 they relied on that witness, on any criminal history, or  
11 the veracity of that witness, much less any information  
12 about the witness such as identity, race or age.

13           There was no information from which he could make an  
14 independent determination of his own as to that witness.

15           THE COURT: I think what was said was that he told  
16 him the witness knew all these individuals, and on the  
17 basis of information given by the witness to the police  
18 -- detailed information about specifically identifying  
19 the suspects -- those things are in the record. Is that  
20 correct?

21           MR. HAZZARD: Yes, sir, Your Honor.

22           THE COURT: Very good.

23           MR. HAZZARD: On the basis of the information he was  
24 provided, anyone can go to a Magistrate and obtain a war-  
25 rant to search by just saying they were provided some

1 information by a witness, without providing means for the  
2 Magistrate to make his decision.

3 THE COURT: Thank you. Anything else?

4 (No audible response)

5 THE COURT: Solicitor?

6 SOLICITOR: Thank you, Your Honor. I have two or  
7 three separate arguments with regard to this issue.

8 First, as to the matter of Judge Butler and Rusty  
9 Crocker and probable cause for the search warrant to be  
10 issued, the affidavit contained in the search warrant pro-  
11 vides basic information. It tells the Court they inter-  
12 viewed a number of witnesses who had information about  
13 specific locations.

14 And so what we have here is an affidavit that may  
15 not be a perfect affidavit, and we have an officer who  
16 has come in to testify that he doesn't recall precisely  
17 what information he knew, but he does know that he did  
18 receive additional information.

19 Judge Butler testified today he does not recall spe-  
20 cifically what information he was given three years ago.  
21 He doesn't know specific information about that witness but  
22 from the totality of the information that he had he could  
23 make his determination that there was in fact probable  
24 cause. He said this was information that he had been pro-  
25 vided by Detective Collins as well as by Detective

1 Crocker.

2 The search warrants are in the record and contain  
3 the information thereon, the affidavit, and contains the  
4 return. It has the signature of the Judge on it.

5 As to the issue of reliability, as the Court knows,  
6 you cannot get a whole lot more specific than having a  
7 witness who knows the Defendants, know the particular lo-  
8 cations, and I think it's important to note that the wit-  
9 ness providing this information was not just providing  
10 information as to where the Codefendants but the witness  
11 is providing information about where their mothers lived,  
12 where their aunts lived.

13 This is clearly someone who was intimately involved  
14 in order to provide this kind of information on these peo-  
15 ple. That specifisity of information is very important.

16 The Judge testified there have been cases throughout  
17 the years where he has not found probable cause. That was  
18 not the case here. He felt that he sufficient informa-  
19 tion.

20 Now, regarding the issue of standing, let me save  
21 that actually for last.

22 If the Court should find that there was not probable  
23 cause for the warrants, the warrants were subsequently  
24 given to different detectives who were working on the  
25 case and the search warrants were executed.

1 Returns were provided as to each of the search war-  
2 rants. Certainly those officers who served those search  
3 warrants believed that they were acting properly in serv-  
4 ing the search warrants.

5 They served the search warrants, which had an affi-  
6 davit and had a Judge's signature, and they filed a return  
7 on each and every one of them.

8 There was nothing on the face of the search warrants  
9 themselves that would lead them to believe they were not  
10 acting in good faith when they went to serve the search  
11 warrants.

12 There was sufficient testimony presented in that re-  
13 gard, and I believe I submitted case law as well.

14 Finally, Your Honor, as to standing, I won't belabor  
15 the Court on this, but the statute is clear. It provides  
16 a check list. Here is what we regard as the requirements  
17 you have to meet. Here is what we require you to do.

18 It requires that you have a Judge's signature. It  
19 requires that you provide an affidavit, requires you to  
20 provide a return. There is a requirement as to form, as  
21 to input. If those are not met, there is no search war-  
22 rant.

23 If you comply with the form, then you are good to  
24 move on. If you don't comply with those, then you've got  
25 a problem.

1           Anyone can challenge a search warrant where any of  
2 those particular elements are missing. In the McKnight  
3 case, that is what happened. There is no affidavit, and  
4 in the cases that follow McKnight, no affidavit. There  
5 is no return, no signature on the search warrant.

6           So in none of those cases that follow McKnight do we  
7 find a situation dealing with probable cause, because the  
8 probable cause is a constitutional issue. Being a consti-  
9 tutional issue, it requires standing. It requires an ex-  
10 pectation of privacy in that particular location.

11           Neither of these Defendants had an expectation of  
12 privacy in the locations that have been the subject of  
13 these search warrants. These were not places where they  
14 lived. These locations were not even places where, you  
15 know, they resided on a continuous basis or on any basis  
16 at all.

17           For example, the building at Grainger Road, 1519  
18 Grainger Road, that was the home of Tiffany James who is  
19 now a (inaudible).

20           Neither one of these people had any expectation of  
21 privacy in her residence.

22           Judge, I think I have provided a number of cases on  
23 that particular issue.

24           THE COURT: If you would very briefly go through  
25 each of those returns, 2, 3, 4 and 5, and make your argument

1 as to each one of those returns as to what you say is the  
2 lack of expectation of privacy for that particular one.

3 SOLICITOR: Sure. As to 1519 Grainger Road, Apart-  
4 ment G Eight, that is the residence of Tiffany James, who  
5 is a cooperating Codefendant in this case, and there was  
6 evidence collected from that residence.

7 With regard to 1519 Grainger Road, E Five, I believe  
8 that is the residence of Gregory Floyd, who is also a co-  
9 operating Codefendant. That is State's Number 3.

10 With regard to 1007 Palmetto Street, which should be  
11 State's 4, that is the residence of Nile James, also a co-  
12 operating Codefendant, his mother, and, finally, 907  
13 Whittemore Street, that is the residence of Quentin Gause's  
14 friend or sister.

15 So these individuals have no standing to challenge  
16 a search on those particular residences.

17 THE COURT: All right, very good.

18 Anything else, Mr. McCollum?

19 MR. MCCOLLUM: No, Your Honor.

20 THE COURT: Mr. Hazzard?

21 MR. HAZZARD: No, sir.

22 THE COURT: Very good. We'll a short break.

23 (Whereupon, the Court stood in recess from 10:24 A.M.  
24 until 10:51 A.M., when the Court reconvened.)

25 THE COURT: In the matters of the Motions by the

1 Defendants Ladorrean Collington and Quentin Gause to sup-  
2 press the evidence that resulted from the search warrants  
3 we bifurcated this hearing.

4 There were some previous exhibits that were intro-  
5 duced in the prior matter, so to be specific I'm talking  
6 about State's 2, 3, 4 and 5. State's 2 is the search war-  
7 rant for Building G, Unit 8, at 1519 Grainger Road.  
8 State's 3 is the search warrant for Building E, Unit 5,  
9 1519 Grainger Road.

10 State's Exhibit 4 is one for 1007 Palmetto Street and  
11 State's 5 is 907 Whittemore Street.

12 Those are the four search warrants to which the De-  
13 fendants have objected, and regarding their motion to  
14 suppress the evidence found in the locations stated with  
15 regard to those four search warrants, the motions to sup-  
16 press is denied for the following grounds and reasons.

17 One, the Court finds that the Defendants have no  
18 right or standing to challenge these search warrants.  
19 They had no expectation of privacy at any of these res-  
20 idences.

21 Even if that were the case, if they did have stand-  
22 ing to challenge, you must look at the actions of the is-  
23 suing magistrate in this matter.

24 Certainly the search warrants may only be issued upon  
25 a finding of probable cause. Search warrants may be issued

1 -- the South Carolina General Assembly has enacted the  
2 requirement that a search warrant may be issued only upon  
3 affidavit sworn to before a magistrate establishing the  
4 grounds for the warrant.

5 In this we have a totality of circumstances test for  
6 the determination of probable cause. The task of the is-  
7 suing magistrate is simply to make a practical and com-  
8 mon sense decision given all the circumstances set forth  
9 in the affidavit, including the veracity of and the basis  
10 of the knowledge of the person supplying information and  
11 that there is a fair probability that evidence of a crime  
12 or a particular person may be found in a particular place.

13 I find, using the statement of the law that affidav-  
14 its are not meticulously drawn or are normally drafted by  
15 a non-lawyer in a case of criminal investigation, that it  
16 should therefore be viewed with common sense and in a  
17 realistic fashion.

18 I find that the Magistrate had a substantial basis  
19 for believing that probable cause existed. The term of  
20 probable cause does not import absolute certainty.

21 Rather, in determining whether a search warrant  
22 should be issued, magistrates are concerned with probabil-  
23 ities and not with certainties.

24 Searches based on warrants should be given some def-  
25 erence to the extent that the Court finds that it meets

1 a realistic standard of probable cause, and I do so find  
2 in this particular matter.

3 Testimony was viewed by the issuing Magistrate,  
4 Judge Butler, to supplement the written affidavits in  
5 this matter. He stated that it was his practice to do  
6 so and that he did so in this particular matter; that he  
7 did ask the officers for further information before issu-  
8 ing the warrants, even though he cannot recall specific  
9 information now, over three years later after the issu-  
10 ance of these particular warrants.

11 As the search warrants were issued, starting with the  
12 first one and continuing with the second one, the Judge  
13 had a continuing measure of information which was built  
14 upon by other information supplied to him.

15 In general, Judge Butler stated that some of the in-  
16 formation as to State's 2 and 3 were -- and those are the  
17 warrants that were at G8 and E5 of 1519 Grainger Road --  
18 based on some additional information gleaned from a wit-  
19 ness in addition to the previous information he had; that  
20 he would have asked questions about the witness and the  
21 facts of the case.

22 Regarding State's Exhibit 3, it is apparent from its  
23 face first and from the words of Judge Butler that the  
24 witness had intimate information about the Defendant and  
25 the location. Not only the specific locations the officers

1 were taken to but in addition that these would not --  
2 would not have been the normal locations of Defendants as  
3 they were not their residences.

4 The Judge specifically recalled he was told that the  
5 witness knew the Defendants so this is evidence that the  
6 Judge followed his standard practice of questioning the  
7 officers about witnesses who may supply information to  
8 get the warrants, although this information is not con-  
9 tained in the written affidavits or information contained  
10 in the search warrants.

11 Finally, I do find that the Magistrate had learned  
12 circumstances about the case and that he had probable  
13 cause for issuing these particular search warrants.

14 The Court relies on a number of cases, so many that  
15 I'm not going to read all of them. I will cite some of  
16 them into the record.

17 State versus (inaudible) found at 519 Southeast Sec-  
18 ond 347; State versus Freeman found at 503 Southeast Sec-  
19 ond 437; State versus Worthy, found at 624 Southeast Sec-  
20 ond 789; State versus Martin, found at 556 Southeast Sec-  
21 ond 706; State versus Davis, found at 580 Southeast Sec-  
22 ond 778; State versus Bogey, found at 600 Southeast Second  
23 112; and State versus Fletcher, found at 609 Southeast Sec-  
24 ond 162.

25 Finally, the Court would also add an additional stated

1 ground in these matters that the officers who executed  
2 the search warrants acted in good faith in the execution  
3 of these search warrants.

4 The motions to suppress the evidence seized as a re-  
5 sult of the search warrants is denied.

6 All right, Mr. McCollum, any further motions from  
7 the Defense?

8 MR. MCCOLLUM: Yes, Your Honor. Your Honor, at this  
9 time I would like to move to -- based on the written  
10 motion I filed earlier, the Motion to Quash -- I would  
11 ask Your Honor to hear that.

12 THE COURT: I'll be glad to hear your arguments.

13 MR. MCCOLLUM: Your Honor, the Indictments which Your  
14 Honor has state that -- the language of the statute. I  
15 don't think there is any specific allegation in any of  
16 the indictments regarding something that was factually done  
17 done.

18 In other words, to be specific here, we've got Indict-  
19 ments -- the Indictments against Ms. Collington are 2011  
20 GS 26 1276, accessory before the fact of murder; 2010 GS  
21 26 1225, accessory before the fact of a felony, that being  
22 kidnapping; 2010 GS 26 1627, accessory before the fact of  
23 a felony, that being armed robbery; 2010 GS 26 1626, acces-  
24 sory before the fact of a felony, that being burglary  
25 in the first degree.

1 THE COURT: All right, referring to those specific indict-  
2 ments, tell me what is wrong with those.

3 MR. McCOLLUM: Your Honor, just very briefly I will  
4 read these into the record so it is clear.

5 THE COURT: You have copies of them?

6 MR. McCOLLUM: I have copies.

7 THE COURT: That's good. I just wanted to make sure  
8 of that.

9 MR. McCOLLUM: Yes, sir, Your Honor. Indictment  
10 2011 1276 against Ladorrean Collington alleges that the  
11 Defendant -- Indictment 2011 1276, an indictment against  
12 Ladorrean Collington for accessory before the fact of  
13 murder, alleges that the Defendant Collington did in Horry  
14 County on or about April 14, 2008, advise or agree with,  
15 or urge or hire in some way, counsel or encourage, the  
16 principal felon or felons to commit the felony of murder,  
17 but was not present when the crime was committed.

18 There are the elements of accessory before the fact  
19 of murder but it doesn't specifically state that she did  
20 anything other than the language of the statute.

21 THE COURT: Okay.

22 MR. McCOLLUM: And with the Court's permission, I  
23 think all of these are the same. Do you want me to -- I  
24 would like to argue them all at the same time.

25 THE COURT: Very good.

1 MR. McCOLLUM: If that pleases the Court.

2 THE COURT: Go ahead.

3 MR. McCOLLUM: The second indictment, Your Honor,  
4 2010 1225, the State against Ladorrean Collington for ac-  
5 cessory before the fact of a felony, that being the kid-  
6 napping, and there again it specifies that Ladorrean  
7 Collington did in Horry County on or about April 14, ad-  
8 vise or agree with, urge or hire or in some way counsel  
9 or encourage the principal felon or felons to commit the  
10 felony of kidnapping, and was not present when the crime  
11 was committed.

12 The next indictment, Your Honor, is 2010 GS 26 1627,  
13 the State against Ladorrean Collington for accessory be-  
14 fore the fact of a felony, that being armed robbery --  
15 again, that Ladorrean Collington did in Horry County on  
16 or about April 14, 2008, advise or agree with, urge or  
17 hire or in some way counsel or encourage the principal  
18 felony to commit the felony of armed robbery, but was not  
19 present when the crime was committed.

20 Finally, Your Honor, 2010 GS 26 1626, the State ver-  
21 sus Ladorrean Collington for accessory before the fact  
22 of a felony, being burglary in the first degree, that  
23 Ladorrean Collington did in Horry County on or about April  
24 14r, 2008, advise or agree with, or urge or hire or in  
25 some way counsel or encourage the principal felon to commit

1 of burglary first, but was not present when the crime  
2 was committed, and in violation of the statute.

3 Your Honor, it is the Defendant's position and the  
4 basis of the motion that to break the law that one has to  
5 do something. In other words; there has to be a factual  
6 allegation. While I understand there is case law on in-  
7 dictments, but the cases that I've looked at, which are  
8 cited here, and I'm only looking at a few -- State versus  
9 Grampus, which is a South Carolina cite, 288 South Carolina  
10 395, a 1986 South Carolina Supreme Court case; State ver-  
11 sus McCloud, 354 South Carolina 40, a 2003 Court of Ap-  
12 peals decision -- that's M c capital C L O U D; and then  
13 Bailey versus State which I have an Opinion Number here.  
14 It is a recent case from May 9, 2011, and I've got Opinion  
15 Number 26 975, South Carolina Supreme Court.

16 Specifically, Your Honor, looking at Grampus, it was  
17 a felony DUI case where there was no allegation of what  
18 the defendant did<sup>or didn't do</sup> to violate the law which caused the in-  
19 jury of the alleged victim.

20 The Court raised the point to talk about it, to talk  
21 about the indictment, although the appellant did not argue  
22 the sufficiency of the indictment on its face which is  
23 what we're doing here today.

24 We know that an indictment must state with particu-  
25 larity the act permitted by law or duly imposed by the

1 law which will which will be relied on by the State to  
2 support in Grampus the theory for the felony DUI charge.

3 In the case of State versus McCloud, which is a South  
4 Carolina Court of Appeals case, if Your Honor looks at  
5 basically the first paragraph of the case, it talks about  
6 the indictment in the case of criminal domestic violence  
7 slash aggravated, and the body of the indictment says as  
8 follows; quote, that this individual, Douglas McCloud,  
9 did in Fairfield County on or about June 16, 2000, commit  
10 an act of violence against Karmisha (inaudible), but then  
11 it goes further to say, by striking her in the face with  
12 a closed fist, hitting her in the head, pulled her hair  
13 and scratched her neck, contrary to the statute.

14 Additionally, Your Honor, in Bailey versus State,  
15 in that particular case -- it is a little bit off point  
16 because there was a child abuse and the question was whe-  
17 ther the child was injured as a result of an affirmative  
18 act of abuse or neglect, and there were some questions by  
19 the jury as to the variance.

20 But in that case, it talks about Castillo or Castia,  
21 and in there they had the language of this case on the in-  
22 dictment, and this is down in the body of the case, Your  
23 Honor -- they talk about the child was struck with a  
24 deadly weapon, comma, to wit, colon, the defendant's hands  
25 while striking the child's head against a deadly weapon,

1 to wit, a wall.

2 That case is a little bit off there because the  
3 jury convicted based on what they thought was neglect as  
4 opposed to physically doing that.

5 Now, it says the defense believed that despite the  
6 fact that indictments are generally characterized as suf-  
7 ficient if they state the time and place and the elements  
8 of the offense, so that the defendant knows what to an-  
9 swer.

10 It is the defense position that to simply print out  
11 the statute with no type of factual allegations whatso-  
12 ever does not accuse the defendant on trial essentially  
13 of anything. That is not a sufficient indictment, and we  
14 would just submit that you have to say that she did some-  
15 thing; that she met with somebody, known or unknown, and  
16 did have some conversation somewhere, or her to affirma-  
17 tively do something, in order to be properly indicted.

18 That is as well as I could state it, Your Honor, in  
19 terms of what we are asking the Court to consider.

20 We think these indictments are deficient because in  
21 fact all they do is recite the statute or the elements,  
22 and it is the defense's position that for the State to  
23 try individuals for these types of crimes there has to be  
24 alleged somewhere, and in this case there has not been.

25 Thank you, sir.

1 THE COURT: Solicitor?

2 SOLICITOR: Thank you, Your Honor. I have provided  
3 to Defense Counsel and to the Court a copy of my Response  
4 to his Motion to Quash the Indictments.

5 I have cited a number of cases to the attorneys and  
6 to the Court.

7 I would just say to the Court that the purpose of an  
8 indictment obviously is to put the defendant on notice as  
9 to what he or she is being charged with and what the ele-  
10 ments of that crime are, so that they are not taken by  
11 surprise.

12 Mr. McCollum cited the McCloud case. I like that  
13 case. The McCloud case says the indictment is adequate  
14 if the offense is stated with a sufficiency to enable the  
15 Court to know what judgment to pronounce, the defendant  
16 to know what he is called upon to answer.

17 It goes on to say that you have to look at all of  
18 the surrounding circumstances and they have to be weighed  
19 for an accurate determination of whether a defendant was  
20 or was not prejudiced can be reached.

21 It goes on to state that you look at what existed  
22 pre-trial in order to determine whether a given defendant  
23 has been prejudiced or taken by surprise about the charges  
24 against him or her.

25 This is a three year old case. This Defendant

1 Collington was indicted originally for murder, kidnapping,  
2 armed robbery, and the indictments -- she was subsequently  
3 re-indicted for accessory after the fact, so I think she  
4 is well aware of what the substance of the indictments  
5 are, what the basis of the indictments are.

6 The Judson case that I have cited says that after  
7 the requirements are met, the statute only requires that  
8 there only be sufficiently alleged the jurisdiction of  
9 the Court and that the defendant is formally accused in  
10 the county in which he is charged with a violation of the  
11 law.

12 The Means case, which I handed up as well, says that  
13 it is required that the crime substantially track the  
14 language of the common law or the statute, which is pre-  
15 cisely what we have here.

16 We have an indictment that tracks the language of  
17 the statute and puts the Defendant on notice. I  
18 know that Mr. McCollum would like to have some language  
19 behind it as he said, and I'm sure he would. However,  
20 if we put a to-wit in our ethical, as the Court well knows,  
21 we are bound by the particular facts which are alleged.

22 To-wit is not required, and we don't generally put  
23 that in our indictments. We didn't put it in these.

24 I think the cases I have handed up support our posi-  
25 tion with regard to her being placed on notice and she

1 is well aware of what it is she is charged with.

2 Thank you.

3 THE COURT: Mr. Hazzard, on behalf of Quentin Gause,  
4 do you join in the Motion to quash the indictments?

5 MR. HAZZARD: I would join in this particular Motion,  
6 Your Honor, in behalf of Mr. Gause. I would like to make  
7 sure all of the indictments are included.

8 THE COURT: All right, it is 2011 1274 for armed rob-  
9 bery, 2011 1275 for kidnapping, 2008 3133 for murder. Is  
10 that correct?

11 MR. HAZZARD: There is also 2008 3135, Your Honor.

12 THE COURT: That is 2008 3135 for burglary first that  
13 was true billed on August 21, 2008.

14 MR. HAZZARD: I believe that on 08 3134 the State  
15 does not intend to go forward with that.

16 SOLICITOR: We are not going forward on that.

17 THE COURT: All right.

18 SOLICITOR: That's correct.

19 THE COURT: All right, go ahead, Mr. Hazzard.

20 MR. HAZZARD: Yes, sir. Looking at Indictments 2011  
21 1274 for armed robbery, 2011 1275 for kidnapping, . . .

22 THE COURT: I'm sorry. For kidnapping and armed  
23 robbery?  
24

25 MR. HAZZARD: Yes, sir.

1 THE COURT: All right, I've got action of the Grand  
2 Jury -- true billed on March 31, 2011, on both of them.

3 Looking at -- and it has the -- in the body of it,  
4 it says the Court of General Sessions, March 2011. Okay,  
5 I'm showing -- I'm sorry. Where is it that you're talking  
6 about? Where is 2008?

7 MR. HAZZARD: (Portion inaudible on tape) It says  
8 on there, in a Court of General Sessions in May of 2008.

9 SOLICITOR: Your Honor, there were four original in-  
10 dictments, for burglary first, armed robbery, kidnapping  
11 and murder.

12 THE COURT: I appreciate that. He's talking about the  
13 two that's 2011 1275 and 2011 1274 that have in the cap-  
14 tion where you have the action of the Grand Jury.

15 It has action of the Grand Jury, true billed, and  
16 signature of the Foreperson of the Grand Jury dated March  
17 31, 2011.

18 It has in the caption there, Court of General Sessions  
19 and the March 2011 term. I'm not -- what he is referring  
20 to is where it has State of South Carolina, County of  
21 Horry, and it says at a Court of General Sessions convened  
22 on, and on both of them it says August 21, 2008.

23 So I believe there is a discrepancy between what is  
24 contained where the actual decision of the Grand Jury to  
25 true bill the indictments and what is contained on the

1 other side.

2 That's what he's talking about.

3 SOLICITOR: Your Honor, I would argue that is a scribe-  
4 ner's error.

5 THE COURT: What is your position, Mr. Hazzard?

6 MR. HAZZARD: The indictments specifically say that  
7 the Grand Jury took this matter up on August 21, 2008,  
8 but it was not acted upon or returned as a true bill un-  
9 til 2011.

10 THE COURT: What information do you have that the  
11 -- that this was given to a Grand Jury in 2008 and wasn't  
12 acted upon by them until 2011?

13 I mean, there is no question but that the Grand Jury  
14 in 2011 -- on March 31, 2011 returned a true bill, so what  
15 information do you have other than what is apparently a  
16 typographical or scrivener's error to indicate that the  
17 matter was presented to the Grand Jury in 2008 and not in  
18 2011?

19 MR. HAZZARD: Your Honor, what I'm talking about is  
20 that we have another signature -- a signature of the Cir-  
21 cuit Solicitor on it and in fact a totally different date  
22 on there from the other indictments, specifically 2008 3133  
23 which was addressed by the Grand Jury on August 21st of  
24 2008.

25 Obviously this was . . .

1           THE COURT: And signed by a Foreperson who is obvi-  
2           ously different than the person who signed in 2011, and  
3           the back of the indictments on that, also where you have  
4           the signature of the Foreperson, it obviously was a dif-  
5           ferent Foreperson.

6           Based on the signatures and the dates it was August  
7           21, 2008, and it states, Court of General Sessions, Aug-  
8           ust 2008 term, which is not on the ones from 2011.

9           Again, that is leading to the fact that it is a topo-  
10          graphical or scrivener's error to have left the date of  
11          August 21, 2008, when these indictments were redrawn, and  
12          the ones that still stand as against Mr. Gause for murder  
13          and burglary first have that date, August 21, 2008.

14          So, again, I'm asking what specific information can  
15          you give me that indicate that these indictments that  
16          were true billed by the Horry County Grand Jury on March  
17          31, 2011, for armed robbery and kidnapping, were actually  
18          presented in 2008 and not in 2011? What facts can you pre-  
19          sent to me?

20          MR. HAZZARD: Well, other than the face of the . .

21          THE COURT: Certainly you could subpoena the records  
22          of the Clerk of Court. You can subpoena the information  
23          and hand to the Court some information that would indicate  
24          something other than supposition or mere speculation that  
25          this occurred.

1 MR. HAZZARD: Your Honor, it isn't speculation or sup-  
2 position when I am reading these documents that says . .

3 THE COURT: No, I'm asking you for evidence or facts  
4 that support your position.

5 MR. HAZZARD: (reading from indictment) That's what  
6 I'm reading on the face of the document.

7 THE COURT: Do you have any cases that would support  
8 your position? That would support your proposition that  
9 this is this type of -- that this is fatally defective?

10 Some case by our Supreme Court or Court of Appeals,  
11 or any jurisdiction of any State of the United States  
12 that says that it is fatally defective?

13 MR. HAZZARD: No, Your Honor. I don't have any case  
14 law. (Portion inaudible on tape)

15 THE COURT: You have given me no facts to support  
16 this. It is again your argument or your supposition  
17 but you give me no facts, no evidence, that this actually  
18 occurred.

19 Again, do you have any case law in any jurisdiction  
20 in any of these United States that would say that what  
21 you have presented to me is fatally defective?

22 MR. HAZZARD: Only the statements made in this re-  
23 cord concerning the documents that would establish that  
24 they did not act on the authority of the Grand Jury, and  
25 that it is fatally defective on its face.

1           If the Court finds that it was scrivener's error then  
2           that is the Court's choice, and I would object to it  
3           based on the documents as appear on the face. That in and  
4           of itself, what the document says on its face, we would  
5           submit is improper.

6           THE COURT: All right, Solicitor.

7           SOLICITOR: Well, my thought on that again would be  
8           that is certainly scrivener's error, Your Honor; that it  
9           is the purpose of the indictment to put the Defendant on  
10          notice of what he is being charged with and the elements  
11          of that, to make sure he is not surprised by the charges  
12          lodged against him at the time he goes to trial.

13          It is the State's position that is merely a scribe-  
14          ner's error.

15          THE COURT: All right. In examining the original  
16          Indictments issued against Mr. Gause back in 2008, or all  
17          of them, including the ones that were redone in 2011, it  
18          is clear they were presented to the Grand Jury on August  
19          21, 2008, and they were true billed by action of the Grand  
20          Jury pursuant to the Foreperson's original signature on  
21          these true-billed indictments in August of 2008.

22          The Indictments that are at issue, 2011 1274 and 1275  
23          -- the matters clearly indicate by the signature of the  
24          Foreperson of the Grand Jury in March of 2011, and he is  
25          the Foreperson based on the Court's own knowledge, that he

1 is the Foreperson for the Grand Jury, was so on March 31,  
2 2011, when the Grand Jury true-billed these Indictments  
3 as against the Defendant for armed robbery and kidnapp-  
4 ing.

5 It is apparent that it is clearly a scrivener's error  
6 in these matters. They are not fatally defective.

7 The Court, based upon its own research, has found no  
8 such case in any jurisdiction of the United States of  
9 America which would support that proposition.

10 Anything further as to these Indictments against Mr.  
11 Gause, Mr. Hazzard?

12 MR. HAZZARD: I won't repeat any of the arguments I  
13 have made, but I would simply point out for the record  
14 that with regard to these indictments they do not specify  
15 any particular action taken by the Defendant, and we would  
16 join in Mr. McCollum's Motion that they be suppressed.

17 THE COURT: Anything else, Solicitor?

18 SOLICITOR: Nothing on that, except for my Motion.

19 THE COURT: All right. Mr. McCollum?

20 MR. MCCOLLUM: No, Your Honor.

21 THE COURT: Very good. All right.

22 (Brief pause in the proceeding)

23 THE COURT: The Supreme Court and the Court of Ap-  
24 peals in South Carolina have said that indictments shall  
25 be deemed sufficient and good in law, in addition to the

1 allegations as to time and place as required by law, if  
2 they charge the crime substantially in the language of  
3 the common law or of the statute prohibiting the crime so  
4 that the nature of the offense charged may be easily under-  
5 stood; that if the offense be a statutory offense, the  
6 offense be alleged contrary to the statute and in such  
7 cases made and provided.

8 Thus to pass legal muster, it must charge the crime  
9 substantially in the language of the statute prohibiting  
10 the crime or such that the nature of the offense charged  
11 may be easily understood.

12 Whether the indictment could be made more definite  
13 or certain is irrelevant. The State is not required to  
14 prove its evidence in the indictment.

15 I find in this particular matter that neither Defen-  
16 dant was prejudiced by any lack of information as alleged.  
17 I find that the indictments are more than sufficient to  
18 place the Defendant or Defendants on notice of the crimes  
19 with which they are charged and for which they can defend,  
20 if they so choose.

21 The motions to quash the indictments are denied.

22 Mr. Hazzard, I would have the Clerk make you a copy  
23 of the burglary first indictment. Thank you, sir.

24 Further motions, Mr. McCollum?

25 MR. MCCOLLUM: I would have a motion to exclude

1 -- I would ask Your Honor to hear a motion to exclude evi-  
2 dence of prior difficulties between Ladorrean Collington  
3 and the alleged victim.

4 Before I do that, Your Honor, it's my understanding  
5 -- this may be a little bit premature, and it may not be  
6 necessary, but it is my belief that there is some evidence  
7 out there that Ms. Collington is alleged to have gone  
8 over to the Allen's house -- they live across from each  
9 other and they had a relationship as far as having a child  
10 together -- and she had taken up I think a little baton  
11 or bat or something and had hit his car, beat on the car or  
12 something to that effect. I may be wrong there.

13 I don't know if the State is planning to introduce  
14 this kind of prior difficulty or not and this motion may  
15 not be necessary, but if they are then we would move to  
16 suppress previous or prior difficulties between Defendant  
17 Collington and the victim.

18 At this point, we would object to that and would like  
19 to be heard on it.

20 THE COURT: I would say that -- correct me if I'm  
21 wrong, Solicitor, but is it your position that there were  
22 prior actions between the Defendant and the victim?

23 SOLICITOR: Yes, sir, Your Honor.

24 THE COURT: And do you intend to present any in the  
25 presentation of the case?

1           SOLICITOR: Yes, sir.

2           THE COURT: All right. I'll be glad to hear from  
3 you on that, Mr. McCollum.

4           MR. MCCOLLUM: Your Honor, we don't have that partic-  
5 ulate witness here. Is it possible the State could sum-  
6 marize we could anticipate being used against the Defen-  
7 dant? In other words, is what I have stated essentially  
8 correct?

9           THE COURT: Solicitor, is there some brief summary  
10 that you could give as to what may have occurred?

11          SOLICITOR: Yes, sir, Your Honor. There were a num-  
12 ber of threats made by the Defendant Collington directly  
13 to the victim, to the victim through a third party, and  
14 Anthony Grant, and by a note that was left at the victim's  
15 residence.

16          She did also break out a window at the victim's resi-  
17 dence and evidence would be introduced on all of those  
18 instances in my case in chief.

19          These incidents happened within a very short time, a  
20 couple of days, prior to the time the victim was killed.

21          It is my position that that information would come  
22 in under 404 B. Also 401 and 403, in conjunction with  
23 404 B, and also pursuant to a res gestae theory.

24          I have handed up to the Court a Response to the Mo-  
25 tion of the Defendant and cited a number of cases . . .

1 THE COURT: Well, let me hear Mr. McCollum's argu-  
2 ment. Yes, sir, Mr. McCollum.

3 MR. MCCOLLUM: Just very briefly, the Defendant,  
4 Ladorrean Collington, has filed an objection or a Motion  
5 to exclude evidence of prior difficulties or a Motion to  
6 exclude evidence of just what the Solicitor described.

7 That is, alleged difficulties or threats between her  
8 and the deceased. We also filed a Motion about threats  
9 either to Anthony Grant or made through him regarding the  
10 victim.

11 Your Honor, I would ask that -- I have a couple of  
12 cases cited here, and I would make the Court aware that  
13 until the testimony is presented that the Court reserve  
14 Ruling on this.

15 THE COURT: In general -- that's all I could give  
16 you right now is a general rule because I haven't heard  
17 any questions nor the answers.

18 I can't issue a ruling on that, and you would have  
19 to obviously object to it at that time, but again, gener-  
20 ally, certainly in this prior conflict between the parties  
21 it is proper to establish the context of a crime and to  
22 establish the presentation of the particular matter so  
23 that a full explanation of the situation is given to a  
24 jury. I can't take it in a vacuum that on certain days  
25 this thing happened and Lord only knows why it happened --

1 it just happened out of the blue. Who knows why?

2 If there is information that is reasonably tied to and  
3 would give context to that particular matter, in general  
4 that is allowed under the rules.

5 Whether or not any particular statements are improper  
6 I don't know. If you object to them I would make a rul-  
7 ing at that point in time.

8 Certainly in general it is a good principal of law  
9 that is relied on in the State of South Carolina. Do you  
10 disagree?

11 MR. McCOLLUM: Yes, sir, Your Honor.

12 THE COURT: You disagree that as a general rule of  
13 law in the State of South Carolina that to give context to  
14 a crime prior difficulties can be testified to? You don't  
15 think that is a general principal of law in this State?  
16 That this is proper evidence?

17 MR. McCOLLUM: Your Honor, I think you've narrowed  
18 it down. I would lean more toward agreement, but I do  
19 think that in general certainly prior difficulties are  
20 admissible by a defendant to show a basis for feeling  
21 threatened and to justify the action.

22 In other words, in a self-defense context certainly  
23 I think defendant has to . .

24 THE COURT: You're telling me that you client speci-  
25 fically threatened the well-being of the victim within a

1 few days of the victim being killed -- that's not allowed?  
2 Is that what you're telling me?

3 MR. McCOLLUM: It depends on the circumstances. It  
4 depends on the degree of prejudice, and it depends on, you  
5 know, whether it is related or relevant. If the Defendant  
6 has a physical relationship with someone and they have a  
7 child together and then they get mad at that person, I  
8 don't know that is automatically admissible.

9 If the State's theory is that somebody concocted a  
10 plan and recruited others to go and rob someone, I don't  
11 know that automatically ties in the Defendant or is tied  
12 together.

13 I don't think I need to belabor this at this point,  
14 and I have to file Motions . . .

15 THE COURT: I appreciate that, but I cannot rule on  
16 that Motion at this point in time. I appreciate your  
17 bringing it to my attention but when I heard the questions  
18 and answers you can make a proper objection.

19 I can't rule on it at this time, but just for your  
20 guidance it is certainly the Court's position that in  
21 general prior difficulties, prior threats, prior actions,  
22 are certainly -- is certainly evidence that could be rele-  
23 vant and admissible in the trial of a person charged with  
24 a crime such as your client is charged.

25 What those particular things are, I don't know, but

1 it is certainly a good principal of law. If you take a  
2 position that it is not a general principal of law in our  
3 State, then obviously we fundamentally disagree.

4 MR. McCOLLUM: With all respect, Your Honor, it  
5 would not be the first time that . . .

6 THE COURT: I understand. Just so we'll be clear,  
7 you are really telling me that if there is evidence of a  
8 prior difficulty that is related to the crime, and the  
9 Court goes through the analysis and finds it is related to  
10 the crime, is in context to the crime, gives a factual  
11 understanding of the crime to the jury, that that is just  
12 not proper in our State?

13 MR. McCOLLUM: Your Honor, I think you are -- there  
14 was mention of res gestae, and there is also an issue as  
15 to introducing evidence of the character of the accused.  
16 That is basically what this will all evolve into, is that  
17 the State cannot introduce evidence that the Defendant is  
18 a person of bad character absent proper evidence by Defen-  
19 dant that they are of good character.

20 In terms of res gestae, certainly the appellate  
21 courts of this State have ruled that a thing that would  
22 not be admissible can be admitted when it is part of the  
23 res gestae.

24 As I understand res gestae, res gestae is in the imme-  
25 diacy or in the relevance of the act, or whether it is so

1 interwoven with what the accused is charged with doing it  
2 does not make any sense to take that . .

3 THE COURT: Well, there has to be established a time  
4 line before -- I mean, there is no time limit, but it has  
5 to be interwoven.

6 MR. McCOLLUM: I'm just saying that any prior diffi-  
7 culty between Ms. Collington and the deceased is not auto-  
8 matically admissible.

9 THE COURT: I certainly agree with that. Just  
10 became something happened does not automatically mean it  
11 is admissible.

12 I will hear the testimony -- the questions and the  
13 answers and rule upon any objections.

14 SOLICITOR: Let me let the Court know this. The in-  
15 cidents we are talking about in this case happened within  
16 a one week period of when this homicide occurred.

17 It is so intertwined that I don't see how I can make an  
18 opening argument without mention of this, and I want the  
19 Court to be aware of that I will be referring to that.

20 THE COURT: I appreciate that and I understand. I  
21 am sure the Defense will understand as well. I will re-  
22 serve ruling on this particular matter.

23 (Portion of discussion not audible on tape. End  
24 of tape one.)

25 THE COURT: We will take that up at the time the

1 Medical Examiner testifies, but as to crime scene  
2 photos do you know which ones that you all have an objec-  
3 tions to?.

4 SOLICITOR: I would ask after the motion hearing to-  
5 day that they take a look at the photographs I intend to  
6 introduce to see which ones they might have objections  
7 to.

8 THE COURT: All right. That will be great.

9 If you would obviously identify to him whatever ones  
10 you might be using through the Medical Examiner.

11 All right. You can take time to do that and review  
12 the photos.

13 MR. McCOLLUM: We'll do that.

14 THE COURT: Mr. Hazzard?

15 MR. HAZZARD: Yes, sir.

16 THE COURT: Very good. Anything else that you are  
17 aware of? Anything, Mr. McCollum?

18 Are there further motions, Mr. Hazzard, on behalf of  
19 Mr. Gause? First, Mr. McCollum?

20 MR. McCOLLUM: I have none.

21 THE COURT: Mr. Hazzard?

22 MR. HAZZARD: I have a Motion to sever the trials,  
23 Your Honor.

24 THE COURT: I'll be glad to hear you on that.

25 (Statement of Mr. Hazzard not audible on tape)

1 THE COURT: Thank you, sir. All right, Mr.  
2 McCollum. Do you have a position?

3 MR. McCOLLUM: Your Honor, I would join that motion.  
4 I don't have anything to add.

5 THE COURT: Solicitor, I'll hear from you.

6 SOLICITOR: Yes, sir, Your Honor.

7 I would just say that the testimony of the individ-  
8 uals with the exception of two would be from the exact  
9 same witnesses. I think that the jury will have  
10 the ability to differentiate between the Defendants.

11 I certainly don't think it is necessary to have two  
12 separate juries impaneled, and it would be more judicious  
13 to try these together.

14 Thank you. The witnesses would be the same, the  
15 testimony would be the same.

16 THE COURT: Thank you. The Defendants before the  
17 Court are not due separate trials as a matter of right.  
18 What the Court needs to look at is whether I would speci-  
19 fically find reason, as the case law indicates, that there  
20 is a serious risk that a joint trial would compromise a  
21 specific right of a codefendant or prevent a jury from  
22 making a reliable judgment about a defendant's guilt.  
23 I do not find such a risk in this particular case.

24 I find that a single jury is proper. I find that  
25 the arguments presented by Mr. Gause do not impact his

1 ability to get a fair and just trial by a single jury.  
2 The State does not in its case in chief intend to present  
3 a statement of Ms. Collington.

4 The fact that there might be some mutually antago-  
5 nistic defenses that might be presented in itself is not  
6 a reason.

7 I do not find, based upon an examination of this case,  
8 that the rights of either Defendant are substantially im-  
9 paired or harmed in any way by being tried together before  
10 a jury, a single jury.

11 Therefore, that Motion to sever is denied.

12 THE COURT: Further motions, Mr. Hazzard?

13 MR. HAZZARD: No, sir, nothing further.

14 THE COURT: Very good.

15 MR. McCOLLUM: Your Honor, the Solicitor has asked  
16 that I bring up--Your Honor, there were a number of arrest  
17 warrants for the Defendant, Ms. Collington, and we have  
18 been told there were indictments and reindictments. We  
19 have discussed whether or not they would be served upon  
20 the Defendant, physically served upon her.

21 I would state that we have received copies of those  
22 indictments, and as far as the Defendant Collington is concerne  
23 there is no issue regarding the service of the indictments.  
24 We have the indictments provided to us.

25 There is not any kind of issue in terms of jurisdiction

1 based upon lack of service upon the Defendant.

2 THE COURT: Do you have any issue in that regard in  
3 behalf of Mr. Gause, Mr. Hazzard?

4 (Answer of Mr. Hazzard not audible on tape)

5 THE COURT: Anything further, Solicitor?

6 SOLICITOR: No, sir, Your Honor. I think that Mr.  
7 McCollum and Mr. Hazzard are going to work with me to  
8 see if we can agree to try to get some of the exhibits  
9 pre-marked and that sort of thing if we can do that, and  
10 perhaps reach some stipulations as well.

11 We will try to bring that to the Court's attention  
12 as soon as possible.

13 THE COURT: Thank you.

14 -----END OF REQUESTED TRANSCRIPT OF RECORD-----

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CERTIFICATE

I, HARRIET P. BENNETT, certified Court Reporter for South Carolina Court Administration, do hereby certify that the foregoing Transcript was prepared from the records of Linda McCall to the best of my ability, having been heard in the Court of General Sessions for Horry County, South Carolina, on June 2, 2011.

FURTHER, I certify that I am neither of kin nor of counsel to any party to this matter, nor do I have any interest in the same.

January 30, 2012

1 STATE OF SOUTH CAROLINA ) COURT OF GENERAL SESSIONS  
 2 COUNTY OF HORRY ) (10-GS-26-01626) (Collington)  
 3 ) (10-GS-26-01627) (Collington)  
 4 STATE ) (08-GS-26-03135) (Gause)  
 5 ) (08-GS-26-03133) (Gause)  
 6 ) (11-GS-26-01274) (Gause)  
 7 VERSUS )  
 8 ) TRANSCRIPT OF RECORD  
 9 )  
 10 )  
 11 LADORREAN CHUKELL ) May 13, 2011  
 12 COLLINGTON and QUENTIN ) June 6, 7, 8, 9, 10, 2011  
 13 LAVANT GAUSE )  
 14 ) Conway, South Carolina  
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B E F O R E :

HONORABLE STEVEN H. JOHN, Judge; AND A JURY.

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

HEATHER TOLAR von HERRMANN, ESQ.  
MARTIN D. SPRATLIN, ESQ.  
ASSISTANTS SOLICITOR FOR HORRY COUNTY  
ATTORNEY FOR STATE

H. GREGORY McCOLLUM, ESQ.  
ATTORNEY FOR DEFENDANT, COLLINGTON

RONALD HAZZARD, ESQ.  
ASSISTANT PUBLIC DEFENDER FOR HORRY COUNTY  
ATTORNEY FOR DEFENDANT, GAUSE

DIXIE COX EUBANK  
CIRCUIT COURT REPORTER  
FIFTEENTH JUDICIAL CIRCUIT

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16	June 10, 2011			
17	JURY OUT/MOTIONS			1124
18	JURY IN/ON RECORD			1126
19	STATE'S SUMMATION (von Herrmann)			1126
20	Objection			1136
21	DEFENDANT (Collington) SUMMATION (McCollum)			1149
22	Objection			1160
23	DEFENDANT (Gause) SUMMATION (Hazzard)			1163
24	Objections			1187/1190
25	BREAK			

I N D E X

	<u>WITNESSES</u>	<u>DIRECT</u>	<u>CROSS</u>	<u>RD</u>	<u>RC</u>
1					
2	<u>WITNESSES</u>				
3	JURY IN				
4	CHARGE BY COURT				1193
5	JURY OUT AT 12:10 P.M.				1207
6	ADDITIONS, EXCEPTIONS, OBJECTIONS TO CHARGE				
7	JURY DELIBERATING AT 12:30 P.M.				1209
8	JURY IN/COURT TO JURY				
9	JURY OUT AT 1:00 P.M./JURY CONTINUES DELIBERATION				1214
10	JURY OUT/ON RECORD				
11	JURY IN AT 9:25 P.M.				1215
12	VERDICT				1216
13	MOTIONS				1220
14	SENTENCING				1222
15	END DAY				
16					
17					
18					
19					
20					
21					
22					
23					
24					
25					

<u>EXHIBITS</u>			
<u>NO.</u>	<u>DESCRIPTION</u>	<u>ID.</u>	<u>EV.</u>
1			
2			
3	May 13, 2011		
4	S-1	Consent to Search	127
5	S-2	Search Warrant (3555 Highway 544 (█))	140
6	S-3	Search Warrant (Coastal Villas (█))	157
7			
8			
9	D-1 (Collington)	Search Warrant (█ Palmetto)	61
10	D-2 (Collington)	Search Warrant (█ Grainger █-5)	64
11	D-3 (Collington)	Search Warrant (█ Grainger █-8)	97
12	D-4 (Collington)	Search Warrant (█ Barberry Ct.)	116
13			
14			
15	June 6, 7, 8, 9, 10, 2011		
16	C-1	Note from Juror #43 (Misplaced)	209
17	C-2	Note from Jury (Misplaced)	266
18	C-3	Stipulation by Counsel. (Misplaced)	345
19	C-4	Note from Jury	1210
20	C-5	Note from Jury	1215
21			
22			
23			
24			
25			

EXHIBITS

	<u>NO.</u>	<u>DESCRIPTION</u>	<u>ID.</u>	<u>EV.</u>
1				
2				
3	S-1(A)	Large Chart		48
4	S-1(B)	Large Chart		48
5	S-2	Photo		48
6	S-3	Photo		48
7	S-4	Photo		48
8	S-5	Photo		48
9	S-6	Photo		48
10	S-7	Photo		48
11	S-8	Photo		48
12	S-9	Photo		48
13	S-10	Photo		48
14	S-11	Photo		48
15	S-12	Photo		48
16	S-13	Photo		48
17	S-14	Photo		48
18	S-15	Photo		48
19	S-16	Photo		48
20	S-17	Photo		48
21	S-18	Photo		48
22	S-19	Photo		48
23	S-20	Photo		48
24				
25				

	<u>EXHIBITS</u>			
	<u>NO.</u>	<u>DESCRIPTION</u>	<u>ID.</u>	<u>EV.</u>
1				
2				
3	S-21	Photo		48
4	S-22	Photo		48
5	S-23	Photo		48
6	S-24	Photo		48
7	S-25	Photo		48
8	S-26	Photo		48
9	S-27	Photo		48
10	S-28	Photo		48
11	S-29	Photo		48
12	S-30	Photo		48
13	S-31	Photo		48
14	S-32	Photo		48
15	S-33	Photo		48
16	S-34	Photo		48
17	S-35	Photo		48
18	S-36	Photo		48
19	S-37	Photo		48
20	S-38	Photo		48
21	S-39	Photo		48
22	S-40	Large Map		48
23				
24				
25				

<u>E X H I B I T S</u>				
	<u>NO.</u>	<u>DESCRIPTION</u>	<u>ID.</u>	<u>EV.</u>
1				
2				
3	S-41	Photo		48
4	S-42	Photo		48
5	S-43	Photo		48
6	S-44	Photo		48
7	S-45	Photo		48
8	S-46	Photo		48
9	S-47	Photo		48
10	S-48	Photo		48
11	S-49	Photo	191	295
12	S-50	Photo	191	
13	S-51	Photo	191	
14	S-52(A)	Sheetrock		324
15	S-52(B)	Sheetrock		324
16	S-53	Spent Shell Casing		319
17	S-54	Spent Shell Casing		320
18	S-55	12 Gauge Shotgun Shell		321
19	S-56	Spring		325
20	S-57	Shot Shell Component		322
21	S-58	Shot Shell Component		316
22	S-59	Shot Shell Component		323
23	S-60	Pillow		306
24				
25				

EXHIBITS

<u>NO.</u>	<u>DESCRIPTION</u>	<u>ID.</u>	<u>EV.</u>
3	S-61	12 Gauge Slug	652 308
4	S-62	Shot Shell Component	652 317
5	S-63	Shot Shell Component	652 317
6	S-64	Shot Shell Component	652 318
7	S-65	Shot Shell Component	652 318
8	S-66	Shot Shell Component (from Autopsy)	652 334
9	S-67	.22 Caliber Bullets	652 341
10	S-68	.357 Caliber Bullets	652 342
11	S-69	Shotgun (Serial # C884049)	652 331
12	S-70 (A)	.22 Ruger Pistol (Serial # 229873)	652 567
13	S-70 (B)	Magazine	652 568
14	S-70 (C)	Bullets	652 569
15	S-71	PowerPoint Booklet	652 287
16	S-72	Voice Mail Message DVD	652 442/1118
17	S-73	Letter (Grievance) Hearing	652 653
18	S-74	Photo	666
19	S-75 (ID ONLY)	Handwritten Notarized Note	
20	S-76	Calendar (April, 2008)	1031

21  
22  
23  
24  
25

	<u>E X H I B I T S</u>			
	<u>NO.</u>	<u>DESCRIPTION</u>	<u>ID.</u>	<u>EV.</u>
1				
2				
3	D-1	(Collington) (ID ONLY) Handwritten Note		
4	D-2	(Collington) (ID ONLY) Handwritten Note		
5	D-3	(Collington) (ID ONLY) Handwritten Note		
6	D-4	(Collington) (ID ONLY) Handwritten Note		
7	D-5	(Collington) (ID ONLY) Handwritten Note		
8	D-6	(Collington) (ID ONLY) Handwritten Note		
9	D-7	(Collington) (ID ONLY) Handwritten Note		
10	D-8	(Collington) (ID ONLY) Handwritten Note	918	
11	D-9	(Collington) (ID ONLY) Handwritten Note	927	
12				
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(10-GS-26-01626) St. vs. L. Collington  
Horry County Courthouse

RANDOM STRIKE SHEET

JUDGE NAME: (08-GS-26-03135) K. Q. Cause

Sorted by: Random Nb

TRIAL TYPE:

LEVEL ID: JOHNNNN3B

DESCRIPTION: JOHNNNN3B

Trial

COURTROOM IAR

NAME	JUROR NBR	RACE	SEX	STATE RESIDENT	DEFENDANT	COURT	REMARKS
24 Fungaroli, Beth M	120	W	F	( )	( )	( )	✓ (10)
25 Johnson, Jacquelyn S	172	W	F	( )	X (C)	( )	
26 Old, Betty H	235	W	F	( )	X (C)	( )	
27 Green, Percella A	136	B	F	X (S)	( )	( )	
28 Edge, Lisa R	100	W	F	( )	X (C)	( )	
29 McCall, Vivian A	207	W	F	( )	X (C)	( )	
30 Linen, Rachel R	197	B	F	( )	( )	( )	✓ (11)
31 Yale Ridgle, Tina S	346	W	F	( )	( )	( )	✓ (12)
32 Spivey Keels, Denise P	291	B	F	X (1)	( )	( )	
33 Carter, Roy C	43	B	M	( )	( )	( )	✓ (1) alt.
34 Richardson, Robert J	260	W	M	( )	( )	( )	✓ (2) alt.
35 Griffin, David L	137	W	M	( )	( )	( )	
36 Richardson, Teresa J	261	W	F	( )	( )	( )	
37 Polite, Martha A	247	B	F	( )	( )	( )	
38 Rupe, Tammie C	270	W	F	( )	( )	( )	
39 Bubeck, Linda L	29	W	F	( )	( )	( )	
40 Perez, Louis O	243	W	M	( )	( )	( )	
41 Kautz, Ronald P	181	W	M	( )	( )	( )	
42 Nicolosi, Michael V	229	W	M	( )	( )	( )	
43 Gustaitis, Margie A	139	W	F	( )	( )	( )	
44 Marino, Mary S	204	W	F	( )	( )	( )	
45 Lamia, Peter J	189	W	M	( )	( )	( )	
Young, John R	350	W	M	( )	( )	( )	

08-10226-03135)  
 (10-3-GS-26-03133)  
 (11-GS-26-01274)

State vs. Quentin Lavont Gause (Ronald Hazzard, APB)  
 (Heather Von Herrmann)  
**Horry County Courthouse**  
**RANDOM STRIKE SHEET**

JUDGE NAME: (10-GS-26-01626) St. vs. Ladornean Chukell Collington  
 TRIAL TYPE: (10-GS-26-01627) Sorted by: Random Nbr  
 CASE ID: JOHNNNN3B DESCRIPTION: JOHNNNN3B (Greg McCollum, Trial Attorney)  
 COURTROOM JAR June 6 thru June 10, 2011

NAME	JUROR NBR.	RACE	SEX	STATE	PLAINTIFF	DEFENDANT	REMARKS
1 Hunter, Tommy	163	W	M	( )	X <sup>(C)</sup>	( )	
2 Bolin, Michael A	22	W	M	( )	( )	( )	Foreman
3 Feagin, William G	106	W	M	( )	X <sup>(C)</sup>	( )	
4 Hartzell, Mary D	147	W	F	( )	( )	( )	2
5 Robowski, Thomas A	266	W	M	( )	( )	( )	3
6 Mishoe, Elizabeth	220	W	F	( )	X <sup>(C)</sup>	( )	
7 Strickland, Janette T	301	W	F	( )	X <sup>(G)</sup>	( )	
8 Mills, Steven M	218	W	M	X <sup>(1)</sup>	( )	( )	
9 Clemmer, Susan M	193	W	F	( )	( )	( )	4
10 Marlowe, Jeffrey S	205	W	M	( )	( )	( )	5
11 Thompson, Karen G	309	W	F	( )	X <sup>(C)</sup>	( )	
12 Hunter, Mary M	162	W	F	( )	X <sup>(G)</sup>	( )	
13 Simoni, Linda J	282	W	F	( )	X <sup>(C)</sup>	( )	
14 Harden, Robert L	146	W	M	( )	( )	( )	6
15 Hickman, Kathleen A	149	W	F	( )	X <sup>(G)</sup>	( )	
16 Montenery, Jason P	222	W	M	( )	( )	( )	7
17 Stewart, Shely L	299	B	F	X <sup>(2)</sup>	( )	( )	
18 Warne, Kenneth T	329	W	M	( )	( )	( )	8
19 Wiltrout, Ronald J	340	W	M	( )	X <sup>(C)</sup>	( )	
20 Hendrick, Steven M	148	W	M	X <sup>(3)</sup>	( )	( )	
21 Baskin, Ramona E	13	B	F	( )	X <sup>(G)</sup>	( )	
2 Castro, Sarah L	46	W	F	( )	( )	( )	9
Vereen, Frank J	321	B	M	X <sup>(7)</sup>	( )	( )	

## MOTIONS

1           **THE COURT:** This is the State of South Carolina versus  
2 Quintin Gause and I believe the middle name is Lavont,  
3 L-A-V-O-N-T, and Quintin is Q-U-I-N-T-I-N, and also the State  
4 of South Carolina versus Ladorrean Chukell Collington,  
5 L-A-D-O-R-R-E-A-N, Chukell, C-H-U-K-E-L-L, Collington,  
6 C-O-L-L-I-N-G-T-O-N.

7           If you would, Solicitor, if you could put forth on the  
8 record the indictments that the State is proceeding against  
9 both of these defendants, please, Ma'am.

10           **MS. von HERRMANN:** Your Honor, with regard to Ladorrean  
11 Collington, it's the State's intention to go forward on the  
12 accessory indictments, which are Indictment 2011-GS-26-1276,  
13 accessory before the fact of murder; Indictment Number 2010-  
14 GS-26-1225, accessory before the fact of a felony;  
15 specifically that felony is kidnapping; Indictment 2010-GS-  
16 26-1626, also accessory before the fact of a felony; that  
17 felony would be burglary first degree, and accessory -- I  
18 mean 2010-GS-26-1627, accessory before the fact of burglary  
19 -- I mean accessory before the fact of a felony, that felony  
20 being an armed robbery.

21           She was originally indicted as a principal. Those were  
22 indictments that were sent before the Grand Jury in 2008.  
23 The 2010 indictments are the ones in which we intend to go  
24 forward.

25           **THE COURT:** Okay, and I have -- I have three -- if I'm

## MOTIONS

1 not -- what I'm looking at here then are the true billed  
2 indictments. I've got three of them that are 2010-GS-26-  
3 1225, 1626, and 1627, and then I have a 2011 indictment,  
4 1276.

5 **MS. von HERRMANN:** That's correct.

6 **THE COURT:** That's the one, accessory before the fact  
7 of murder, so we have three from 2010 and one from 2011?

8 **MS. von HERRMANN:** That's correct.

9 **THE COURT:** All right, very good.

10 All right, then as to Mr. Gause.

11 **MS. von HERRMANN:** As to Mr. Gause, the indictments in  
12 this case are 2011-GS-26-1275; that's an indictment for  
13 kidnapping. Also 2011-GS-26-1274, an indictment for armed  
14 robbery. Indictment 2008-GS-26-3133, an indictment for  
15 murder, and Indictment 2008-GS-26-3135, an indictment for  
16 burglary first degree.

17 **THE COURT:** All right, how about go over those again  
18 because there are several over here and I want to make sure  
19 I've got the right ones.

20 **MS. von HERRMANN:** Yes sir. From 2008 we've got  
21 Indictment 3135 for burglary first.

22 **THE COURT:** Okay.

23 **MS. von HERRMANN:** Indictment 2008-3133 for murder.

24 **THE COURT:** Okay, great.

25 **MS. von HERRMANN:** Indictment 2011 -- Indictment 2011-

## MOTIONS

1 GS-26-1274, an indictment for armed robbery ---.

2 **THE COURT:** Hold on; hold on one second. That's the  
3 one I'm having a hard time locating. I do not -- Madam  
4 Clerk, I don't have the -- don't see the one from 2011 for  
5 Mr. Gause.

6 **MS. von HERRMANN:** Donna, actually there are two from  
7 2011.

8 **THE COURT:** Okay. I don't have any of them from 2011.  
9 What's the other one from 2011?

10 **MS. von HERRMANN:** 1274 and 1275.

11 **THE COURT:** 1274 and 1275. No Ma'am, I do not have the  
12 ones from 2011.

13 **MS. von HERRMANN:** Your Honor, I have copies if you'd  
14 like to have my copies just for right this minute.

15 **THE COURT:** Well, Madam Clerk, you can e-mail and get  
16 somebody to bring those up, right?

17 **THE CLERK:** Yes sir.

18 **THE COURT:** Okay, the Clerk will handle that.

19 All right, very good. Yes sir, Mr. Hazzard.

20 **MR. HAZZARD:** Your Honor, if I might, the defendant's  
21 first name is spelled Q-U-E-N-T-I-N; middle name,  
22 L-A-V-A-N-T; last name, Gause, G-A-U-S-E, and I think the  
23 Court had indicated it was spelled Q-U-I-N-T-I-N.

24 **THE COURT:** All right. Solicitor, do you wish to amend  
25 the indictments to reflect the correct spelling of the

## MOTIONS

1 defendant's name?

2 **MS. von HERRMANN:** Yes sir, Your Honor.

3 **THE COURT:** Is there any objection to that, Mr.  
4 Hazzard?

5 **MR. HAZZARD:** No, Your Honor.

6 **THE COURT:** All right, so it's Q-U-E-N-T-I-N?

7 **MR. HAZZARD:** That is correct, Your Honor.

8 **THE COURT:** All right, sir, and then the middle name,  
9 again, is spelled how?

10 **MR. HAZZARD:** L-A-V-A-N-T.

11 **THE COURT:** A-N-T, all right, very good. All right, so  
12 that -- we have that corrected and order that it be corrected  
13 on all of the indictments as against Mr. Gause.

14 Yes sir, Mr. McCollum.

15 **MR. McCOLLUM:** Your Honor, I'm not standing to speak to  
16 the Court. I was just going to get something from the  
17 Solicitor.

18 **THE COURT:** Okay. All right, very good.

19 **MR. HAZZARD:** Your Honor, I would say -- put on the  
20 record at this point I do not believe that -- okay, I've got  
21 two documents that are handwritten at the top indicating or  
22 purporting to be Indictments 2011-1275 and 2011-1274 ---

23 **THE COURT:** Okay.

24 **MR. HAZZARD:** --- for armed robbery and for kidnapping.  
25 I will go over those indictments with my client, Your Honor.

## MOTIONS

1           **THE COURT:** All right, very good.

2           Okay, and those are the two, Madam Clerk, that you are  
3 looking for, correct?

4           **THE CLERK:** Yes sir.

5           **THE COURT:** All right, very good.

6           **MR. McCOLLUM:** May it please the Court?

7           **THE COURT:** Yes sir.

8           **MR. McCOLLUM:** Your Honor, I know you called these out.  
9 If I could just go over them briefly. It's my understanding  
10 as to the defendant, Ladorrean Collington, that there are  
11 four indictments being called, and they are -- the first  
12 three are 2010-GS-26, and then one is Indictment Number  
13 01225, which is accessory before the fact of a felony,  
14 kidnapping.

15           **THE COURT:** Correct.

16           **MR. McCOLLUM:** And then 01627, which is accessory  
17 before the fact of a felony, armed robbery.

18           **THE COURT:** Correct.

19           **MR. McCOLLUM:** And then 01626, accessory before the  
20 fact of a felony, burglary in the first degree, and the other  
21 one, Your Honor, it's my understanding is 2011-26-GS-01276,  
22 and that's accessory before the fact of a felony, and the  
23 felony being murder.

24           **THE COURT:** That's correct.

25           **MR. McCOLLUM:** All right, thank you, and as to the

## MOTIONS

1 other indictments that the State is not going forward on, I  
2 guess at this point that is something I would ask the Court  
3 to address in some fashion, if they are not being called, or  
4 are they -- if they're -- are they being dismissed, are they  
5 being nolle prossed, or are they just being held?

6 **THE COURT:** I don't -- my understanding, and Solicitor,  
7 you correct me if I'm wrong, that your intention is to  
8 proceed on these four and the other ones will remain open  
9 pending the results of this trial?

10 **MS. von HERRMANN:** That's correct.

11 **THE COURT:** All right, very good.

12 **MR. McCOLLUM:** Thank you, Your Honor.

13 **THE COURT:** And the same would go for Mr. Gause as  
14 well?

15 **MS. von HERRMANN:** Yes sir, Your Honor.

16 **THE COURT:** All right, very good.

17 All right, now as I understand it, Mr. McCollum, and why  
18 don't we review this, you have filed a motion to sever  
19 indictments, is that correct?

20 **MR. McCOLLUM:** Yes sir, Your Honor.

21 **THE COURT:** All right, a motion to suppress statements?

22 **MR. McCOLLUM:** Yes sir.

23 **THE COURT:** Again, a motion -- well, not again, but a  
24 motion to sever defendants from being tried together at  
25 trial. You've also -- correct?

## MOTIONS

1           **MR. McCOLLUM:** Your Honor, I think that one was based  
2 on the statements given by the defendants, so it's a motion  
3 to sever the defendants from trial and/or suppress the  
4 statements that Ms. Collington or Mr. Gause may have made.

5           **THE COURT:** Okay, so those would be argued together  
6 then?

7           **MR. McCOLLUM:** Yes sir, and it -- yes sir.

8           **THE COURT:** Very good, and then you had a motion to  
9 exclude evidence of prior threats or difficulties between the  
10 defendant and the alleged victim, Allen Smith, is that right?

11           **MR. McCOLLUM:** That's correct.

12           **THE COURT:** And finally, you had a -- also a motion to  
13 exclude evidence of any threats allegedly made to Anthony  
14 Graham, a/k/a L-O-C or Loc?

15           **MR. McCOLLUM:** I think it's pronounced Loc, Your Honor.

16           **THE COURT:** Loc.

17           **MR. McCOLLUM:** I may have spelled it right -- or wrong;  
18 I'm not sure. That's a nickname in any event.

19           **THE COURT:** All right.

20           **MS. von HERRMANN:** Your Honor, I have not -- I have  
21 received the first, I believe, three of those motions, but  
22 any -- the motions with regard to threats between the  
23 defendant and the victim, I have not received that motion,  
24 and I have my police officers here for the motions that I  
25 received, but ---

## MOTIONS

1           **THE COURT:** All right. Well, let's talk for a second  
2 about motion to exclude evidence of prior threats or  
3 difficulties.

4           **MS. von HERRMANN:** That's the one I didn't receive.

5           **THE COURT:** Okay. This is -- well, there apparently is  
6 more than one. This is one, threats and difficulties between  
7 the defendant and the alleged victim, Allen Smith. They were  
8 e-mailed to my office, so what we'll do right now so that you  
9 will -- my clerk, will e-mail them to you, but it simply  
10 stated that the defendant, Ladorrean Collington, comes before  
11 the Court and moves before the honorable Court to exclude any  
12 evidence of any threats or difficulties allegedly made by the  
13 defendant to the alleged victim, Allen Smith.

14           I don't know how that testimony -- and this is -- it's  
15 probably akin to, you know, a motion in limine or obviously a  
16 motion to exclude evidence. My particular preference in  
17 those is for those types of motions to let the trial develop  
18 at least in some part hopefully before that issue comes up so  
19 I have a better understanding of the matters.

20           Just hearing that, Solicitor, just hearing the -- how  
21 the motion is captioned and your presentation of witnesses,  
22 do you anticipate, you know, just, you know, right out of the  
23 gate that these kinds of statements are going to be part of  
24 the record?

25           **MS. von HERRMANN:** Your Honor, I intend in my opening

## MOTIONS

1 argument to mention the prior difficulties between the  
2 parties, so I think, you know, I think that's a matter that  
3 will need to be addressed to the Court ---

4 **THE COURT:** Okay.

5 **MS. von HERRMANN:** --- prior, but it's -- I mean, ---

6 **THE COURT:** Is it something that you're telling me  
7 you're not prepared right now to argue?

8 **MS. von HERRMANN:** That's correct. Mr. McCollum has  
9 just handed me this motion. This is the first time I've seen  
10 it, ---

11 **THE COURT:** All right.

12 **MS. von HERRMANN:** --- so, no, I'm not prepared to  
13 argue that motion today.

14 **THE COURT:** That one at this point in time, okay, and  
15 then the other motion was notice of motion and motion to  
16 exclude any evidence of any threats allegedly made to Anthony  
17 Graham.

18 **MS. von HERRMANN:** Right, and that would be the same  
19 situation. I intend to use that evidence right out of the  
20 gate as well and, again, I -- this is ---

21 **THE COURT:** You're not prepared at this time to argue  
22 that, is that correct?

23 **MS. von HERRMANN:** That's correct.

24 **THE COURT:** All right. Well, with that, I'm not going  
25 to hear those motions at this point in time. I will look

## MOTIONS

1 now, maybe not right now, but -- and remembering why we're  
2 doing these motions today because next week there are  
3 problems back and forth and I can't remember who had the  
4 particular problems.

5 Mr. McCollum, what's your schedule for next week?

6 **MR. McCOLLUM:** Your Honor, I don't know, but my  
7 assistant will be in here shortly and she has that  
8 information, or I can text her and she can come in here and  
9 tell me.

10 **THE COURT:** All right. Well, before we leave today, we  
11 need to figure that out because, again, I would like to try  
12 and resolve all these motions so that everybody is on the  
13 same page however they go and everybody is ready come Tuesday  
14 of the -- not next week, but the following week, to start the  
15 trial and we don't have to go through motion hearings at that  
16 point in time since we are not going to ---

17 **MS. von HERRMANN:** Judge, I think we actually had this  
18 one scheduled for June the 6th.

19 **THE COURT:** Oh, that's right; it was June. It was  
20 going to be that second week. That's true, okay. Well,  
21 we're going to hear them before June 6th then. That gives us  
22 more time. Okay. We don't have to worry about maybe next  
23 week, but be that as it may, Mr. McCollum, if you'll make  
24 sure you get with my clerk as to your -- I still want to know  
25 what your schedule is next week. If we can, we'll work them

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1 in. If not, we'll find some time to go ahead and do these  
2 motions prior to trial because, again, I want to make sure  
3 that they are all done ahead of time.

4 All right, so with that, then the three that we had were  
5 the motion to sever the indictments or suppress the  
6 statements, and sever the defendants, so those were the  
7 three.

8 Now, Mr. Hazzard, on behalf of your client, Mr. Gause,  
9 you had filed certain motions, those motions being made, one  
10 pursuant to Jackson V. Denno as to custodial interrogation,  
11 motion to -- also a motion for a severance regarding the  
12 statements that may or may not exist, depending on what's  
13 presented, and then the motion to exclude photographs of the  
14 deceased victim in this matter, is that correct?

15 **MR. HAZZARD:** That's correct, Your Honor. The motion  
16 also subsumed within the Jackson V. Denno motion is a motion  
17 to at the very least address and redact the statement with  
18 regard to any mention made by the defendant or by the  
19 interrogating officers of the defendant's prior record  
20 because there is some mention in there with regard to  
21 that, ---

22 **THE COURT:** Okay.

23 **MR. HAZZARD:** --- and I mentioned that, I believe, in  
24 Paragraph 2 of that motion, ---

25 **THE COURT:** All right.

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1           **MR. HAZZARD:**    --- so there is a Jackson V. Denno, but  
2 also mentioned in there is a motion to redact, if necessary,  
3 if the Court finds it admissible.

4           **THE COURT:**    Okay, very good.

5           **MS. von HERRMANN:**    Your Honor, with regard to that  
6 particular motion, it is not the State's intention to use  
7 that statement, and so I don't -- I don't know that we have  
8 -- we will have any issues with regard to that statement.

9           **THE COURT:**    All right, and let's be clear what  
10 statement we're talking about and the one that is referenced  
11 in Mr. Hazzard's motion indicates, first, that he was taken  
12 into custody on or about April 24th and thereafter he was  
13 interrogated by detectives of Horry County in Georgia on or  
14 about April 26th, 2008, and that's the questioning that your  
15 motion is -- pertains to, is that correct, Mr. Hazzard?

16           **MR. HAZZARD:**    Yes sir, because at this time that's the  
17 only statement I'm aware of.

18           **THE COURT:**    Okay, very good, and, Solicitor, that's the  
19 statement you're indicating that it's not your intention in  
20 your direct presentation to use in this particular case, is  
21 that correct?

22           **MS. von HERRMANN:**    Correct.

23           **THE COURT:**    All right, and just so we're clear, are  
24 there any other statements that -- that you're aware of that  
25 the defendant, Quentin Gause, made? Number one, are you

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1 aware of any other statements?

2 **MS. von HERRMANN:** There are a number of statements  
3 that he gave to cooperating co-defendants, but there are no  
4 statements that he gave to law enforcement other than ---

5 **THE COURT:** To law enforcement that you intend to use?

6 **MS. von HERRMANN:** That's correct.

7 **THE COURT:** All right, very good, all right, so we can  
8 mark that particular motion resolved.

9 All right, let's proceed, then, how they were -- how  
10 they were filed. We'll start off with your motions, Mr.  
11 McCollum, that you filed. I'll be glad for you to argue them  
12 if the -- the ones that you feel ought to be argued in  
13 conjunction, let's go ahead and start with those first, okay,  
14 of the three, and the other two, we'll -- you know, the other  
15 two that we talked about, we'll get those at some point in  
16 time, all right?

17 **MR. McCOLLUM:** Your Honor, may it please the Court.

18 **THE COURT:** Yes sir.

19 **MR. McCOLLUM:** How many motions does the Court see that  
20 the defendant Collington filed?

21 **THE COURT:** I have that you filed a motion to sever  
22 indictments. I have a motion that you filed to suppress  
23 statements, and a motion that you filed to sever defendants  
24 from being joined at trial. Those are the three that I have  
25 that the Solicitor is aware of that you filed and that we

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1 will be arguing, and those other two are the ones that we  
2 will hear at a later date.

3 **MR. McCOLLUM:** Your Honor, I think that there were some  
4 other motions filed.

5 **THE COURT:** Okay. I don't have copies of them. I've  
6 got the other two that the Solicitor didn't have, but any  
7 other motions, I don't have, so what are they?

8 **MR. McCOLLUM:** Your Honor, the -- there's a motion -- a  
9 notice of motion and motion to suppress evidence seized  
10 pursuant to search warrants.

11 **THE COURT:** Okay.

12 **MR. McCOLLUM:** We had some issues, Your Honor, as I  
13 understand it, which we could only attach so many things to  
14 each e-mail, ---

15 **THE COURT:** Okay.

16 **MR. McCOLLUM:** --- so it's my understanding we had to  
17 send more than one e-mail, and I have clocked copies that I  
18 can hand out as well.

19 **THE COURT:** All right.

20 Madam Clerk, do you know where those -- the motions are  
21 that were filed by ---

22 **MR. McCOLLUM:** They were filed this morning, Your  
23 Honor.

24 **THE CLERK:** Then they are still in the office.

25 **MR. McCOLLUM:** I sent them by e-mail, and then we went

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1 ahead and filed written copies this morning.

2 **THE COURT:** Okay.

3 How about get somebody to go to your office, please  
4 Ma'am, and collect those if you would. Thank you.

5 **MR. McCOLLUM:** So just for -- Your Honor, do you want  
6 to hear the ---

7 **THE COURT:** Yes. Just state the motions that you  
8 intend to argue.

9 **MR. McCOLLUM:** Well, the motion to suppress evidence  
10 seized regarding any search warrant that pertains to the  
11 defendant, Collington, her property, her personal effects,  
12 her vehicles. We also filed a motion, the same exact motion,  
13 to suppress any evidence seized pursuant to search warrant  
14 for property not owned or occupied by the defendant,  
15 Collington or not registered to her or not her personal  
16 effects, in other words any evidence seized pursuant to any  
17 other search warrants.

18 I joined in the motion filed by Defendant Gause to  
19 exclude photographs, of the autopsy photographs, or else the  
20 alleged victim's body.

21 **THE COURT:** All right. Well, let's start with the  
22 suppression of evidence then.

23 **MR. McCOLLUM:** Okay. I'm sorry, Your Honor, the  
24 suppression ---

25 **THE COURT:** The suppression of evidence.

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1           **MR. McCOLLUM:**    On the search warrants?

2           **THE COURT:**    Yes.  Let's go ahead and start with that.  
3           If you would, just state -- state the grounds for your  
4           motion, if you would, from your motion again.  That's the one  
5           -- I don't have that, so I need for you to state those  
6           grounds out for me and then we'll proceed with the Solicitor  
7           on that one.

8           **MR. McCOLLUM:**    Your Honor, there were -- as I  
9           understand it, there were a number of search warrants issued  
10          by -- I guess by the Summary Court in the investigation of  
11          this case, and it looks like there were four -- seven search  
12          warrants that were issued.  They were -- I believe they were  
13          all issued on the next day after the event, I think April  
14          15th, and they were sought by the affiant detective, Rusty  
15          Crocker, and I think they were -- I notice most of them, if  
16          not all of them, were signed by Judge Aaron Butler, an Horry  
17          County magistrate.

18          But just as a beginning place, Your Honor, without  
19          going through the description of the premises sought or to be  
20          searched, the affiant's affidavit basically says that -- and  
21          I'll read it verbatim, Your Honor, that on April -- excuse  
22          me, that on Monday, April the 14th, 2008, officers with the  
23          Horry County Police Department responded to a shooting  
24          complaint at a residence that is located at [REDACTED] Barberry  
25          Court in Conway Section of Horry County.

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1           The responding officers found Mr. Smith lying deceased  
2 on the floor of the residence. The investigating officers  
3 have processed the crime scene and conducted numerous  
4 interviews, thereby acquiring evidence and statements that  
5 identify Mr. Floyd, Mr. Gause, and Mr. James IV, as being the  
6 individuals that on April 14th of 2008 forcibly gained entry  
7 to the victim's residence and shot and killed Mr. Smith.  
8 Information and evidence was collected in reference to this  
9 being the residence of Gregory -- or in this particular one,  
10 this is a search of the residence of Gregory Antonio Floyd,  
11 that it is my understanding, Your Honor, without going  
12 through every single affidavit, that they all -- I think they  
13 all say the same thing, and I would submit to the Court that  
14 that's simply a conclusion.

15           There's no reference whatsoever or any reason whatsoever  
16 for a neutral and detached magistrate to believe that there's  
17 probable cause to execute any of these search warrants. Now,  
18 it just simply says that there was a shooting, there was a  
19 dead person found, that the crime scene was processed, but I  
20 don't believe there was one thing processed from that crime  
21 scene that would have led to either -- either defendant,  
22 detective -- defendant Quentin Gause or Ladorrean Collington,  
23 or any of the others for that matter at that point, so the  
24 only other thing that could possibly even be considered in  
25 any fashion would be that the police had conducted

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1 interviews, but there's nothing in here to indicate who the  
2 interview was with, the quality of the interview, the  
3 reliability of the person being interviewed, any kind of  
4 corroboration of the interview, anything whatsoever, so we  
5 would submit just on the face of the warrant that all of the  
6 warrants are legally deficient and we would move to suppress  
7 any evidence, including any physical evidence that was found,  
8 pursuant to the service of these warrants and the searches  
9 conducted pursuant to those warrants.

10 **THE COURT:** All right, very good.

11 All right, Solicitor.

12 **MS. von HERRMANN:** Thank you, Your Honor. With regard  
13 to the majority of these warrants, and when I say the  
14 majority, all with the exception to the defendant  
15 Collington's apartment and cars. Let me just address those,  
16 the -- other than her car and her apartment.

17 Obviously the Fourth Amendment guarantees individuals to  
18 be free from search and seizure of their property, but they  
19 have to have standing in order to have evidence suppressed,  
20 and in this instance, neither one of these defendants has  
21 standing to assert right of privacy on property that they did  
22 not own, so with regard to the search warrants at [REDACTED] Old  
23 Bellamy Drive, [REDACTED] Old Bellamy Drive, [REDACTED] Palmetto Street,  
24 [REDACTED] Gilbert Road, [REDACTED] Whittemore, [REDACTED] Grainger [REDACTED]-5, [REDACTED]  
25 Grainger [REDACTED]-8, the incident location, and apartment [REDACTED] at

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1 Crossroads Apartments, neither of these defendants have  
2 standing to raise issues with regard to those particular  
3 search warrants, and so I would ask for the Court to rule on  
4 those search warrants just as a matter of course.

5 **THE COURT:** Well, let's -- let's talk about that, Mr.  
6 McCollum.

7 **MR. McCOLLUM:** Your Honor, in that particular motion,  
8 and I have copies of the cases here that are cited, the main  
9 one being State v. McKnight, 291 S.C. 110, and I'm quoting --  
10 Your Honor, do you have a copy of that case before you?

11 **THE COURT:** You haven't given me one.

12 **MR. McCOLLUM:** Hand that up to the Judge.

13 **THE COURT:** Thank you. All right, go ahead.

14 **MR. McCOLLUM:** Just very briefly in just response to  
15 that, Your Honor, the -- this issue was raised in State v.  
16 McKnight, which is a South Carolina Supreme Court case, and  
17 just quoting on the last page -- right above, it says Page  
18 474; On the other hand, the rights afforded by Section 17-13-  
19 140 are not dependent upon a showing of an expectation of  
20 privacy in the searched premises.

21 The primary purpose of the statute is to ensure the  
22 timely recording of testimony upon which the judicial officer  
23 relied, but then dropping down, it says the primary benefit  
24 of the statute, quote, and I'm quoting this, and they're  
25 quoting the statute, is to the person arrested or searched.

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1 Therefore, one contesting the legality of a search because of  
2 a defect under 17-13-140 need only show that the State is  
3 attempting to introduce the evidence against him, so this  
4 motion, Your Honor, would be against her, Ladorrean  
5 Collington.

6 This statute and this case, and the other cases  
7 referenced herein, Your Honor, clearly give the defendant the  
8 right to challenge any search warrant issued pursuant to 17-  
9 13-140.

10 **MR. HAZZARD:** The defendant, Gause, would join in with  
11 that motion, Your Honor.

12 **THE COURT:** All right, very good.  
13 Solicitor.

14 **MS. von HERRMANN:** Yes sir, Your Honor, and I think  
15 that what Mr. McCollum has just read to you supports the  
16 State's position. I mean, the case says one who seeks to  
17 have evidence suppressed on this basis must establish that  
18 his own Fourth Amendment rights were violated. It goes on to  
19 say that they are based upon that person's expectation of  
20 privacy.

21 Neither one of these defendants can possibly have an  
22 expectation of privacy in a residence owned by another  
23 individual. I don't have an expectation of privacy in your  
24 home. You don't have an expectation of privacy in my home,  
25 and the expectation of privacy is based on one's status

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1 within that particular premises. Neither of these defendants  
2 had a status in these premises and, therefore, no Fourth  
3 Amendment right to its protection, and also, of course, in  
4 this case there was no affidavit, which is not the situation  
5 here.

6 **THE COURT:** All right. The basis of your argument for  
7 the suppression of evidence is that the magistrate did not  
8 have sufficient information presented or evidence presented  
9 from which the magistrate could conclude there was probable  
10 cause, is that right?

11 **MR. McCOLLUM:** Yes, Your Honor.

12 **THE COURT:** Solicitor, I think it would have to be a  
13 different argument than whether or not they have standing  
14 regarding -- clearly they don't have any standing regarding  
15 the premises, that that can't be the basis for either  
16 defendant's arguments, they didn't have standing regarding  
17 the premises, but what I think the motion is that they are  
18 attacking and as indicated by this case and a couple of  
19 others, and the statute, is that the magistrate must have the  
20 requisite information in order to issue the search warrant,  
21 and I will allow them to argue that particular point, and so  
22 I will hear from your witnesses as to the information  
23 presented to the issuing magistrate.

24 **MS. von HERRMANN:** Okay. Your Honor, let me -- let me  
25 do this. I guess I'm confused because in order to even get

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1 to the point where you have to say that the magistrate didn't  
2 have enough information, you have to be -- you have to have  
3 standing to challenge that the magistrate didn't have enough  
4 information, and I believe that his client has standing to  
5 challenge whether the magistrate had enough information on  
6 the warrants with regard to her vehicles and her car, but  
7 according to the case law, unless you have a Fourth Amendment  
8 interest in a piece of property, you can't argue that the  
9 magistrate didn't have enough information, so I'll be happy  
10 to provide the testimony with regard to her residence and her  
11 vehicle, which was consented to actually, but at any rate  
12 with regard to other peoples' premises, those people are  
13 cooperating co-defendants. I can bring them in here and say,  
14 well, I consent to it. I don't challenge the search warrant,  
15 and it's my property, so I don't ---

16 **THE COURT:** And I appreciate that. They have made a  
17 challenge under 17-13-140, not under the Fourth Amendment.  
18 They're not making and cannot make a challenge under the  
19 Fourth Amendment. They don't have standing, but as  
20 indicated, there is a separate right that the Supreme Court  
21 finds in 17-13-140 as stated by Chief Justice Ness in that  
22 Opinion, and I don't see anything where this ruling was  
23 overturned or changed in subsequent decisions of the Supreme  
24 Court. If you have that, I'll be glad to look at it, but  
25 what they're saying is the rights afforded to the defendant

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1 under 17-13-140 are not dependent upon a showing of  
2 expectation of privacy.

3 **MS. von HERRMANN:** Your Honor, I've got my officers  
4 here. I'll be happy to put them up.

5 **THE COURT:** All right. It just says the purpose of the  
6 statute is to ensure a timely recording of the testimony.  
7 The primary benefit of the statute is to the person arrested  
8 or searched. One contesting the legality of a search because  
9 of a defect under the statute need only show that the State  
10 is attempting to introduce evidence against them, so that's  
11 -- that's ---

12 **MS. von HERRMANN:** All right. Well, we can go through  
13 some of these. With regard to the search warrant for [REDACTED]  
14 Old Bellamy Road, there was no evidence collected there.

15 **THE COURT:** All right.

16 **MS. von HERRMANN:** [REDACTED], no evidence collected.

17 **THE COURT:** All right, very good.

18 **MS. von HERRMANN:** [REDACTED] Gilbert Road, no evidence  
19 collected.

20 **THE COURT:** All right.

21 **MS. von HERRMANN:** [REDACTED] Whittemore Street, evidence  
22 collected the State doesn't intend to use.

23 **THE COURT:** Very good.

24 **MS. von HERRMANN:** [REDACTED] Grainger Road E [REDACTED], I may use  
25 some evidence that was collected there, so we'll do that one.

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1           **THE COURT:** All right.

2           **MR. McCOLLUM:** Your Honor, may I have the address  
3 again, please?

4           **MS. von HERRMANN:** [REDACTED] Grainger Road, [REDACTED]-5 and [REDACTED]-8.

5           **THE COURT:** All right, very good.

6           **MS. von HERRMANN:** The incident location, certainly  
7 intend to use the evidence collected there.

8           **MR. McCOLLUM:** What's the address of the incident  
9 location?

10          **MS. von HERRMANN:** Greg, come on.

11          **THE COURT:** Mr. McCollum, you don't know where the  
12 matter took place?

13          **MR. McCOLLUM:** I think it's on Barberrry Road, but I'm  
14 just -- we're on the record, just to be clear.

15          **MS. von HERRMANN:** [REDACTED] Barberrry Road.

16          **MR. McCOLLUM:** I was thinking it was 1742 -- [REDACTED]?

17          **MS. von HERRMANN:** With regard to her -- Ms.  
18 Collington's apartment, there was no evidence collected  
19 there.

20          **THE COURT:** All right, very good.

21          **MS. von HERRMANN:** I believe there was evidence  
22 collected on one of her vehicles, but not the other.

23          **THE COURT:** Okay.

24          **MS. von HERRMANN:** And then with regard to Apartment  
25 [REDACTED], that -- we did collect evidence there which the State

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1 intends to use.

2 **THE COURT:** All right, very good. All right, so -- yes  
3 Ma'am?

4 **MS. von HERRMANN:** The State calls Rusty Crocker.

5 **THE COURT:** All right, please come around to be sworn.

6 **DAVID RUSHTON CROCKER,** being first duly sworn,  
7 states as follows:

8 **DIRECT-EXAMINATION BY MS. von HERRMANN:**

9 Q. Detective Crocker, how were you employed on April the  
10 14th of 2008?

11 A. I was a detective in the Property Crimes Division of  
12 the Horry County Police Department.

13 Q. And as part of your job as a detective there, would  
14 you from time to time go and obtain search warrants in cases?

15 A. Yes.

16 Q. And did you have the opportunity to obtain a search  
17 warrant in this case on a residence located at 7 -- excuse  
18 me, [REDACTED] Palmetto Street in Conway?

19 A. Yes.

20 Q. All right, and is that the home of the co-defendant in  
21 this case, Donell James?

22 A. Yes.

23 Q. All right, and do you have a copy of the affidavits  
24 that you took to the Judge that night?

25 A. I do.

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1 Q. All right, and do you remember or can you take a look  
2 at your affidavit and see what time the Judge signed that  
3 affidavit?

4 A. It was about 5:10 in the morning.

5 Q. Okay, so you probably remember that late night?

6 A. Not very well, but I do remember being at the Judge's  
7 home.

8 Q. All right. Can you tell the Judge, please, what your  
9 probable cause was, what you told the magistrate that  
10 evening?

11 A. I was called late during the night to assist the  
12 Violent Crimes Division in a murder that had occurred the  
13 previous day or sometime during the day before. When I  
14 arrived at the Police Department, I was briefed by Detective  
15 Neil Livingston and Detective Darrell Williams that an  
16 interview had been conducted with a co-defendant and she  
17 provided information as to the identity of persons involved  
18 in the crime, specifically listed as Mr. Gregory Floyd,  
19 Quentin Gause, and Andrew James IV.

20 Detective Williams advised me that he had done research  
21 via D.M.V. and other records and he had obtained several  
22 addresses that the defendants may be located at. I then,  
23 with the assistance of Detective Livingston, typed up the  
24 search warrants. I went to the Judge's residence. I met him  
25 that morning, advised him of the probable cause section of

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1 the warrant, why we were attempting to obtain the warrants,  
2 and that the basis for the warrants was that these  
3 residences, specifically this residence listed in the  
4 warrant, was a location where one of the identified  
5 individuals may be staying.

6 **MS. von HERRMANN:** Thank you, Detective Crocker.  
7 Please answer any questions Mr. McCollum has.

8 **THE COURT:** All right, Mr. McCollum.

9 **MR. McCOLLUM:** May it please the Court.

10 **THE COURT:** Yes sir.

11 **CROSS-EXAMINATION BY MR. McCOLLUM:**

12 Q. How are you doing, Detective Crocker.

13 A. Fine, sir.

14 Q. In regard to the witnesses that provided the  
15 information for this particular search warrant and -- is  
16 there anything -- does the search warrant have any kind of  
17 police report number or anything on it, in other words to  
18 identify it other than the address at Palmetto Street?

19 A. Are you asking if it has a specific case number  
20 attached to it?

21 Q. Yeah, like in other words when we're referring to the  
22 search warrant, is there any -- is the best way to  
23 distinguish it that it's for [REDACTED] Palmetto Street?

24 A. Yes sir.

25 Q. So there's really nothing on it to indicate that it's

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- 1 separate from anything else other than the address?
- 2 A. No sir. They each have a different address on them.
- 3 Q. Okay, and all of these warrants were prepared the same
- 4 morning to your knowledge?
- 5 A. Yes sir.
- 6 Q. And someone in your department typed them?
- 7 A. Myself and Detective Livingston.
- 8 Q. Typed the warrants, and are all the warrants identical
- 9 except for the description of premises to be searched?
- 10 A. Yes sir.
- 11 Q. So every single affidavit is exactly the same?
- 12 A. Yes sir.
- 13 Q. And I think there were seven or -- seven or eight
- 14 search warrants?
- 15 A. There's seven, yes sir.
- 16 Q. There's seven search warrants?
- 17 A. Yes sir.
- 18 Q. And they were typed on a word processor or a computer
- 19 as we call it?
- 20 A. Yes sir.
- 21 Q. And so then was all the information that was gleaned
- 22 for each search warrant just simply copied and pasted into
- 23 the other documents?
- 24 A. Yes sir, because each residence, the same exact thing
- 25 was being looked for at each individual residence. We were

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1 looking for those particular individuals, and as the  
2 individuals were believed to be at those possible locations,  
3 there may be evidence of any type of crime there with them.

4 Q. So in terms of this particular one, this affidavit is  
5 exactly the same as the other six?

6 A. Yes sir.

7 Q. Yet each search warrant was for a different premises?

8 A. Yes sir.

9 Q. And you -- you believed or thought that you might find  
10 -- what is the defendant's name, Donell James?

11 A. Yes sir, one of the defendants.

12 Q. This particular search warrant was for a dwelling  
13 that you believed that he occupied?

14 A. Well, it was either his or one of his family members.

15 Q. Okay. Did you have any information that it was his  
16 residence?

17 A. I don't recall.

18 Q. Did you tell the magistrate anything that would  
19 indicate that it was his residence?

20 A. I indicated to the magistrate that the interviewing  
21 officers had obtained information that any of the three  
22 subjects may be located at these residences due to family  
23 members or friendly connections.

24 Q. So they may be located there or may not?

25 A. Yes.

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1 Q. Did you provide the issuing magistrate any information  
2 that you had a witness that saw the individual inside the  
3 residence?

4 A. No sir.

5 Q. Did you have a witness that indicated ---

6 **MS. von HERRMANN:** I'm going to object. This isn't a  
7 discovery hunt here. I mean, I think he's provided ---

8 **THE COURT:** I appreciate that, but I'll allow you to  
9 explore it a little bit further.

10 **MR. McCOLLUM:** Thank you, Your Honor.

11 Q. Did you have any information that the defendant  
12 actually lived there?

13 A. No sir, not that I recall.

14 Q. In terms of the interviews that you say were  
15 conducted, do you know what individuals were interviewed by  
16 Detective Livingston and Detective Williams?

17 A. To my understanding, I don't remember exactly which  
18 one interviewed. I know that Detective Williams was privy to  
19 the information or sat on the interview with Ms. Smith, and  
20 that was where the information was obtained in reference to  
21 these three individuals that they were looking for.

22 Q. Did you have any -- did you, yourself, have any  
23 information as to the reliability of the information provided  
24 by Ms. Smith?

25 A. No sir, only what was passed on to me.

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1 Q. Did Detective Livingston or Detective Williams  
2 indicate to you any information that you could then relay to  
3 the issuing magistrate that Ms. Smith had any reason to be  
4 considered reliable?

5 A. No sir.

6 Q. Did Detective Williams or Detective Livingston give  
7 you specific information saying that what Ms. Smith said was  
8 corroborated?

9 A. I don't recall, no sir.

10 Q. Did you have any specific information yourself that  
11 there was some reason, some inherent reason, that you would  
12 find evidence of this particular crime inside that residence?

13 A. The only reasoning that was passed on to me was what  
14 was instructed to me by the officers. I don't have any first  
15 infor- -- firsthand information about the interviews or how  
16 the information was obtained.

17 Q. Okay, and so it's safe to say that you had somewhat  
18 limited information, right?

19 A. Yes.

20 Q. And if you go -- you say you went to the Judge's  
21 house?

22 A. Yes, to the Judge's residence.

23 Q. And that was His Honor, Judge Aaron Butler?

24 A. Yes sir.

25 Q. And he's a magistrate here in Horry County, right?

## DAVID RUSHTON CROCKER - CROSS BY McCOLLUM

1 A. Yes sir.

2 Q. And normally presides at J. Reuben Long Detention  
3 Center, right?

4 A. Yes sir.

5 Q. Which is our county jail, right?

6 A. Yes sir.

7 Q. And as to this particular warrant issued at [REDACTED]  
8 Palmetto Street, did the Judge ask you any questions  
9 specifically on this warrant as to the information?

10 A. He just asked about the specific addresses on each  
11 one.

12 Q. So just talking about this particular warrant, the  
13 only question the Judge asked you was about the address for  
14 the search warrant?

15 A. That was the only question he asked, yes sir. I  
16 volunteered to him that the information had been obtained  
17 from the detectives, again that these subjects were possibly  
18 located at any of these residences.

19 Q. And then he signed that warrant and the other warrants  
20 as soon as you presented them?

21 A. Yes sir.

22 Q. About how long -- and I don't know -- there's some  
23 notations on the warrant in terms of the time and date. You  
24 have a copy of the warrant, right?

25 A. Yes sir, I do.

DAVID RUSHTON CROCKER - CROSS BY McCOLLUM

1 Q. If you look at the warrant itself, can you determine  
2 from these notes what time it was when you went to meet with  
3 Judge Butler?

4 A. Each of the -- this individual warrant says 5:10 A.M.

5 Q. 5:10 A.M.?

6 A. Yes sir.

7 Q. Okay, and then on this particular warrant, there was a  
8 return that was filed subsequent to the search, right?

9 A. Yes sir.

10 Q. And the return lists evidence that was seized or found  
11 at [REDACTED] Palmetto Street?

12 A. Yes sir.

13 Q. And the return indicates that -- I think it says  
14 Number 10, one zero, and then it has a small n and a small e,  
15 right?

16 A. Where are you referring to, sir?

17 Q. I'm sorry. Do you have the return for the search  
18 warrant?

19 A. Yes sir, I have the return.

20 Q. And does it indicate that -- is that 1 and then  
21 spelled out one, or is that a ten and an n.e.?

22 A. I didn't type that, but it's a Number 1 identifying  
23 the numeral, and then spelling out one. It's not ten.

24 Q. Thank you, so it's one shotgun shell, green plastic in  
25 color?

## DAVID RUSHTON CROCKER - CROSS BY McCOLLUM

- 1 A. Yes sir.
- 2 Q. One spent round casing?
- 3 A. Yes sir.
- 4 Q. One bullet?
- 5 A. Yes sir.
- 6 Q. And one plastic bag with many bullets in it?
- 7 A. Yes sir.
- 8 Q. And that was what was seized from the place on -
- 9 Palmetto Street, right?
- 10 A. Yes sir.
- 11 Q. Did you, yourself, go on the search warrant at
- 12 Palmetto Street?
- 13 A. Yes sir, I did.
- 14 Q. And was the defendant, I think Donell James, was he
- 15 present?
- 16 A. No sir.
- 17 Q. When you went to the residence, did someone open the
- 18 door and let you in?
- 19 A. I don't recall.
- 20 Q. Do you know if the door was forcibly opened?
- 21 A. I do not believe it was, no sir.
- 22 Q. Do you know if anyone in the residence consented to
- 23 the search?
- 24 A. I don't recall. It's been three years. I don't
- 25 recall.

DAVID RUSHTON CROCKER - CROSS BY McCOLLUM  
REDIRECT BY von HERRMANN

1 Q. All right, so you don't have any information that  
2 anyone consented to the search?

3 A. No sir, not to this residence.

4 Q. And as to the search warrant, what you've told us here  
5 today, this morning, is all the information that was  
6 available to Judge Butler at the time that you met with him  
7 at 5:15 A.M. on April 15th, ---

8 A. Yes.

9 Q. --- 2008?

10 A. Yes sir.

11 **MR. McCOLLUM:** Thank you, sir.

12 That's all I have at this time, Your Honor.

13 **THE COURT:** Mr. Hazzard.

14 **MR. HAZZARD:** No questions.

15 **THE COURT:** All right.

16 Any redirect, Solicitor?

17 **MS. von HERRMANN:** Just a couple of questions, Your  
18 Honor.

19 **REDIRECT-EXAMINATION BY MS. von HERRMANN:**

20 Q. With regard to that search warrant, you -- you talked  
21 with the other detectives involved in this case, is that  
22 correct?

23 **MR. McCOLLUM:** Objection; leading, Your Honor.

24 **THE COURT:** I'm going to allow it. Thank you very  
25 much.

DAVID RUSHTON CROCKER - REDIRECT BY von HERRMANN

1 A. Yes.

2 Q. And were you aware of the situation generally that was  
3 taking place?

4 A. Yes.

5 Q. And this was a murder case?

6 A. Yes.

7 Q. There were a lot of different detectives involved in  
8 this case, were there not?

9 A. Yes.

10 Q. And so before you typed these affidavits up and took  
11 them to the magistrate, you had general information about  
12 witnesses who had been interviewed, that there was a dead  
13 body at the scene, and those type -- that type of  
14 information, is that correct?

15 A. Yes.

16 Q. All right, and when you went to talk to Judge Butler  
17 about it, in addition to the information contained here in  
18 the affidavit, you told him specifically that you were  
19 looking for not only evidence, but particular individuals?

20 A. Yes, the three individuals listed on the warrant.

21 Q. And those individuals would be individuals who were  
22 suspects in a murder case, ---

23 A. Yes.

24 Q. --- is that correct?

25 A. It is correct.

DAVID RUSHTON CROCKER - REDIRECT BY von HERRMANN  
CROSS BY HAZZARD

1 Q. And when you have a suspect in a murder case, it's  
2 pretty important that you catch those people pretty quickly,  
3 isn't it?

4 A. Yes.

5 Q. And so ---

6 **MR. McCOLLUM:** Your Honor, I know you ruled, but I  
7 would just like to object to the leading one more time.

8 **THE COURT:** Very good. I'm going to allow it. Thank  
9 you very much.

10 Q. And so you did provide him with the information that  
11 these were individuals who were wanted in that particular  
12 type of case, is that correct?

13 A. Yes, I did.

14 **MS. von HERRMANN:** I don't have anything further, Your  
15 Honor.

16 **MR. HAZZARD:** If I might with regard to that, Your  
17 Honor.

18 **THE COURT:** Yes sir.

19 **CROSS-EXAMINATION BY MR. HAZZARD:**

20 Q. Sir, you indicated that the information that you  
21 received from Detective Livingston and Detective Williams was  
22 with regard to their apparent interrogation or discussion  
23 with a Ms. Smith, is that correct?

24 A. Yes sir.

25 Q. Okay. Anywhere in the search warrant does it indicate

DAVID RUSHTON CROCKER - CROSS BY HAZZARD  
BY THE COURT

1 Ms. Smith by name on the affidavit?

2 A. No. She's not identified by name, no sir.

3 Q. Okay, and did you mention Ms. Smith by name to  
4 Magistrate Butler?

5 A. I don't recall mentioning her by name, no sir.

6 Q. And if you didn't recall mentioning her by name, then  
7 I'm pretty sure that you did not give Magistrate Butler any  
8 particular information about Ms. Smith that would indicate  
9 her credibility or reliability, did you, sir?

10 A. No sir.

11 MR. HAZZARD: All right, thank you. No further  
12 questions.

13 THE COURT: Could I ask you, sir, the crime is alleged  
14 to have occurred on April 14th of 2008, and that the victim  
15 in this matter, Mr. Allen Smith, did die by means of a  
16 shooting on or about April 14th, 2008. What was the -- you  
17 told me the time. What was the date that you appeared before  
18 Judge Butler?

19 A. It was the next morning, Your Honor, the morning of  
20 the 15th.

21 THE COURT: The morning of the 15th, so at five -- was  
22 it -- you said 5:10?

23 A. Yes sir.

24 THE COURT: 5:10 in the morning, basically the early  
25 morning following the murder ---

DAVID RUSHTON CROCKER - BY THE COURT

1 A. Yes sir.

2 **THE COURT:** --- of the -- of Mr. Allen Smith?

3 A. Yes sir.

4 **THE COURT:** And, again, as I understand it, the purpose  
5 of the searches was originally identified to seek individuals  
6 believed to -- who were at large who were believed to have  
7 committed this murder?

8 A. Yes sir.

9 **THE COURT:** And that is the primary reason that you  
10 were seeking to go into and go to these residences or places?

11 A. Yes sir.

12 **THE COURT:** All right, very good.  
13 Anything else from the State?

14 **MS. von HERRMANN:** No sir, Your Honor.

15 **THE COURT:** Anything else, Mr. McCollum?

16 **MR. McCOLLUM:** No questions for this witness, Your  
17 Honor.

18 **THE COURT:** All right.

19 Anything else, Mr. Hazzard?

20 **MR. HAZZARD:** No, Your Honor.

21 **THE COURT:** All right, you may step down, sir.

22 Further presentation by the State?

23 **MS. von HERRMANN:** Your Honor, not on that particular  
24 residence.

25 **THE COURT:** All right, very good. Well, let's -- and

## SUMMATION BY McCOLLUM

1 that residence, again, was the Grainger Road ---

2 MS. von HERRMANN: No sir. That's [REDACTED] Palmetto  
3 Street.

4 THE COURT: Oh, I'm sorry; [REDACTED] Palmetto.

5 Any further arguments you want to make, Mr. McCollum,  
6 any legal arguments you want to make at this point in time?

7 MR. McCOLLUM: Yes sir, Your Honor. I'd like to hand  
8 up State v. Johnson. State v. Johnson, Your Honor, 302 S.C.  
9 243, a 1990 South Carolina Supreme Court case. Also, State  
10 v. Smith, 301 S.C. 371 -- 301 S.C. 371, a 1990 South Carolina  
11 case which deals with affidavits, Your Honor.

12 THE COURT: All right, very good.

13 MR. McCOLLUM: Your Honor, one of the cases, the  
14 briefer case, the shorter case, which is State v. Smith, just  
15 deals with an affidavit that is defective on its face.  
16 Basically the case says an affidavit must contain sufficient  
17 underlying facts and information upon which a magistrate may  
18 make a determination of probable cause, and it cites  
19 State v. Viard. I think it's pronounced Viard or Viard, 276  
20 S.C. 147.

21 The case goes on, Your Honor, to say mere conclusory  
22 statements which give the magistrate no basis to make a  
23 judgment regarding probable cause are insufficient. His  
24 actions -- this is a quote from Illinois v. Gates, which is  
25 obviously a U.S. Supreme Court case dealing with search

## SUMMATION BY McCOLLUM

1 warrants. His actions cannot be a mere ratification of the  
2 bare conclusions of others, and then this case goes on to say  
3 here the affidavit sets forth no facts as to why the police  
4 believe that this particular defendant Smith robbed the  
5 Master Host Inn. Although the record reveals the police  
6 relied upon the information from an informant, there's no  
7 indication that this fact was made known to the magistrate or  
8 the magistrate made any determination of the informant's  
9 reliability.

10 As to, Your Honor, the other case, State v. Johnson, 302  
11 S.C. 243, on the third page of what I provided to the Court  
12 and to the Solicitor, there's in this particular case that --  
13 at the last paragraph there in the middle, it says without  
14 any information concerning the reliability of the informant,  
15 the inferences which led to the complaint would not be drawn  
16 by a neutral and detached magistrate as the Constitution  
17 requires. In other words, the police officer in this  
18 particular case -- they determined the police officer made  
19 the determination and the magistrate simply signed off on it.

20 Very briefly, Your Honor, I think that clearly as to  
21 this particular search warrant, based on the testimony from  
22 Detective Crocker, under the line of cases, Your Honor, and  
23 the law as it stands, I think that the search -- the evidence  
24 obtained as a result of the search should be -- clearly  
25 should be suppressed and that the affidavit and the search

SUMMATION BY McCOLLUM / SUMMATION BY HAZZARD  
SUMMATION BY von HERRMANN

1 warrant is deficient on its face, and also based on the  
2 testimony of the detective, Your Honor.

3 That would be the Defense's showing.

4 **THE COURT:** All right.

5 Mr. Hazzard?

6 **MR. HAZZARD:** Your Honor, we would simply join in with  
7 the argument made by Counsel so as not to belabor the point.

8 **THE COURT:** All right.

9 Solicitor?

10 **MS. von HERRMANN:** Thank you, Your Honor. I think  
11 those two cases are distinguished in a number of ways. One  
12 of those cases, the Johnson case, is that that's a  
13 trafficking in cocaine case where they are dealing with an  
14 informant who gave information about some drug use. Clearly  
15 it's not the situation that we have here, and with regard to  
16 the Smith case, in that case the affidavit, the Court says,  
17 contained no facts, no facts, as to why the police believed  
18 that Smith robbed the Master Host Inn, and I think if you  
19 look at the affidavit in that case, it's pretty clear.  
20 There's no mention of any reason why they would believe that  
21 that evidence could be found in that particular hotel room,  
22 but in the instant case, we have an affidavit which contains  
23 a number of items in here.

24 It contains the location of the residence. It contains  
25 the fact that there was a body found. It contains what the

## SUMMATION BY von HERRMANN

1 crime is. It contains the fact that the crime scene has been  
2 processed. It contains the fact that there have been a  
3 number of interviews conducted. The detective testified he  
4 was aware that these interviews were being conducted and that  
5 as a result of the interviews being conducted, there were  
6 specifically identified individuals in this case, Mr. Floyd,  
7 Mr. Gause, and Mr. James, who were being sought in connection  
8 with that case.

9 He testified that the officers ran information with  
10 regard to driver's license and those types of things, came up  
11 with some addresses where these people may potentially be,  
12 and that the -- for that reason they had probable cause to  
13 present to the Judge to obtain these search warrants, and  
14 clearly they went to the Judge and the Judge felt at that  
15 time based upon the affidavits given and the testimony  
16 provided by the detective that there was probable cause to  
17 get the warrant.

18 Just for the record, I know I'm not telling the Court  
19 anything that the Court doesn't already know, but probable  
20 cause doesn't mean absolute certainty, and there's no way  
21 that a Judge can know with absolute certainty whether someone  
22 will find or will not find an individual or evidence in a  
23 specific location, but when the -- when there is a level of  
24 specificity provided, which has been provided in these  
25 particular warrants, I don't think that there would be any

SUMMATION BY von HERRMANN  
COURT'S RULING

1 problem with that magistrate finding probable cause.

2 **THE COURT:** All right, very good. I don't know that  
3 it's specifically made a part of your motion -- do you have a  
4 copy of that affidavit, Mr. McCollum, that you are attacking?

5 **MR. McCOLLUM:** Yes sir, Your Honor.

6 **THE COURT:** All right. Do you want to hand that to the  
7 Court Reporter and have her mark that as an exhibit?

8 **MR. McCOLLUM:** Yes sir. Is this Court's Exhibit Number  
9 1, Your Honor?

10 **THE COURT:** It's your motion. It would be your exhibit  
11 for the purposes of this motion.

12 **MR. McCOLLUM:** So Defendant's Exhibit Number 1?

13 **THE COURT:** Defendant Collington's motion.

14 **MR. McCOLLUM:** I'm sorry, Your Honor. Defendant  
15 Ladorrean Collington's Exhibit 1.

16 **(SEARCH WARRANT (██████ PALMETTO STREET) MARKED AS**  
17 **DEFENDANT'S (COLLINGTON) EXHIBIT NUMBER 1.)**

18 **THE COURT:** All right, it is clear that a magistrate  
19 may issue a search warrant only upon a finding of probable  
20 cause. This is pursuant to Code sections, and state law, and  
21 the South Carolina Constitution.

22 The affidavit must contain sufficient underlying facts  
23 and information upon which the magistrate may make a  
24 determination of probable cause. For an affidavit in support  
25 of a search warrant to show probable cause, it must state

## COURT'S RULING

1 facts so closely related to the time of the issuance of the  
2 warrant to justify a finding of probable cause.

3 The magistrate should determine the probable cause based  
4 on all the information available to the magistrate at the  
5 time the -- at the time the warrant was issued, and again,  
6 the basic test in totality and circumstances, the test was  
7 originated by the U.S. Supreme Court in Illinois v. Case --  
8 Gates, I'm sorry, Illinois v. Gates, a 1983 decision of the  
9 U.S. Supreme Court.

10 The task of the issuing magistrate is simply to make a  
11 practical, common-sense decision whether given all the  
12 circumstances set forth in the affidavit before him,  
13 including veracity and basis of knowledge of persons  
14 supplying hearsay information, there is a fair probability  
15 that the contraband, or evidence, or persons will be found in  
16 a particular place.

17 Using those standards, and there is any number of cases  
18 -- I've picked one, State v. Bowie, 600 S.E.2d 112, and any  
19 number of other South Carolina Supreme Court decisions or  
20 Court of Appeals' decisions, including, but not limited to --  
21 and State v. Rutledge, a 2007 decision, and again, there's  
22 any number of others at the South Carolina Supreme Court and  
23 Court of Appeals, I do find that there was proper and  
24 sufficient evidence presented to the magistrate at the time  
25 so that he could make an independent decision and could

COURT'S RULING  
DAVID RUSHTON CROCKER - DIRECT BY von HERRMANN

1 properly find that there was probable cause to execute the  
2 search warrant based upon the information set forth in the  
3 affidavit, as well as the circumstances of the particular  
4 crime that were relayed, the closeness in time of the crime  
5 and the search warrant that the officers were seeking the  
6 persons alleged to have committed the murder who were not in  
7 their custody and were at large at that point in time.

8 With all of that, I would respectfully decline to grant  
9 the motion to suppress the evidence in this particular search  
10 warrant.

11 All right, let's go to the next one.

12 MS. von HERRMANN: Your Honor, that would be [REDACTED]  
13 Grainger Road, Apartment [REDACTED]-5, ---

14 THE COURT: All right.

15 MS. von HERRMANN: --- and the State would call  
16 Detective Rusty Crocker again.

17 THE COURT: All right.

18 Please come around and be sworn.

19 In the meantime, Mr. McCollum, if you can locate a copy  
20 of that affidavit that you're attacking.

21 DAVID RUSHTON CROCKER, being first duly sworn,  
22 states as follows:

23 DIRECT-EXAMINATION BY MS. von HERRMANN:

24 Q. Detective Crocker ---

25 THE COURT: Hold on one second, Solicitor, until the

DAVID RUSHTON CROCKER - DIRECT BY von HERRMANN

1 Court Reporter marks that document, please.

2 (SEARCH WARRANT ( [REDACTED] GRAINGER ROAD, APARTMENT [REDACTED]-5)  
3 MARKED AS DEFENDANT'S (COLLINGTON) EXHIBIT NUMBER 2.)

4 THE COURT: All right, go ahead, Solicitor.

5 MS. von HERRMANN: Thank you.

6 Q. Detective Crocker, I know I've just asked you these  
7 questions, but just for the record, let me do that again. On  
8 April the 14th of 2008, how were you employed?

9 A. I was employed as a Property Crimes detective in the  
10 Property Crimes Unit of the Horry County Police Department.

11 Q. And did you have occasion or do you have occasion  
12 during the course of your duties to take search warrants to  
13 magistrates to have them signed?

14 A. Yes.

15 Q. And did you have occasion on April the 15th of 2008 to  
16 take a search warrant to Judge Butler with regard to a  
17 location at [REDACTED] Grainger Road, Building [REDACTED], Unit 5?

18 A. Yes.

19 Q. And do you have a copy of that search warrant in front  
20 of you?

21 A. Yes, I do.

22 THE COURT: Why don't we use the one that was marked if  
23 we could. Let's use that one and make sure that we're all  
24 talking about the same -- the same document.

25 Does everybody have a copy or we don't have a copy?

DAVID RUSHTON CROCKER - DIRECT BY von HERRMANN

1           **MR. McCOLLUM:** I gave up my copy, Your Honor.

2           **MS. von HERRMANN:** I'm going to hand him a copy of  
3 what's been marked ---

4           **THE COURT:** Okay, do that, and if it's the same, then  
5 Mr. McCollum can retrieve the exhibit for now.

6 Q.       Defendant Collington's Number 2, I just ask you to  
7 take a look at that, if that is the same document you were  
8 just looking at?

9 A.       It is.

10 Q.       And with regard to [REDACTED] Grainger Road, that would be  
11 the residence of Gregory Floyd, is that correct?

12 A.       Yes.

13 Q.       All right, and you ---

14           **THE COURT:** I'm sorry. Mr. McCollum, do you -- you can  
15 go ahead and get that back for now, and just make sure the  
16 Court Reporter gets it.

17           And you have a copy of that, and it's an exact copy of  
18 what you have, correct?

19 A.       Yes sir.

20           **THE COURT:** All right, go ahead, Mr. McCollum.

21           **MR. McCOLLUM:** And he has a copy?

22 A.       Yes.

23           **THE COURT:** Yes, so you can use that one right now, but  
24 just make sure it gets back to the Court Reporter.

25           All right, go ahead.

DAVID RUSHTON CROCKER - DIRECT BY von HERRMANN  
CROSS BY McCOLLUM

1           **MS. von HERRMANN:** Thank you, and just by -- if I may,  
2 Judge, just incorporate by reference his testimony from the  
3 search warrant located at [REDACTED] Palmetto Street.

4           **Q.** Was the information that you provided Judge Butler in  
5 this case with regard to search warrant for Building [REDACTED]  
6 Unit 5, [REDACTED] Grainger Road, the same as in the other?

7           **A.** Yes.

8           **Q.** And specifically with regard to this particular search  
9 warrant, you gave him information that you were looking for  
10 Greg Floyd, Quentin Gause, and Andrew James?

11          **A.** Yes.

12          **Q.** All right, and do you know whether arrest warrants had  
13 actually been issued at this time for those individuals?

14          **A.** I don't recall. I don't recall.

15          **Q.** Would the facts and circumstances in this case be the  
16 same as the other?

17          **A.** They're identical.

18           **MS. von HERRMANN:** Thank you. I don't have anything  
19 further.

20           **THE COURT:** Mr. McCollum.

21           **MR. McCOLLUM:** May it please the Court.

22           **THE COURT:** Yes sir.

23           **CROSS-EXAMINATION BY MR. McCOLLUM:**

24           **Q.** Detective Crocker, this search warrant is for Building  
25 [REDACTED], Unit 5, at [REDACTED] Grainger Road?

## DAVID RUSHTON CROCKER - CROSS BY McCOLLUM

1 A. That is correct.

2 Q. And this warrant was signed by the Judge on April the  
3 15th, 2008?

4 A. Yes sir.

5 Q. And that was Judge Aaron Butler, who is the local  
6 Horry County magistrate judge?

7 A. Yes sir.

8 Q. And this one indicates, if you look at your copy --  
9 you have a copy, right?

10 A. Yes sir, I do.

11 Q. Or if I can show this, the actual exhibit, on the page  
12 that indicates where the affidavit is, it has a time down  
13 here?

14 A. 8:45.

15 Q. 8:45 A.M.?

16 A. Yes sir.

17 Q. And what's the significance of that 8:45 A.M.?

18 A. We went back to the Judge's residence again to obtain  
19 these other warrants, or this other warrant, excuse me.

20 Q. Okay, so the testimony earlier when you had gone to  
21 the Judge's house at 5:15 A.M., your testimony is that after  
22 5:15 A.M., at some point you left the Judge's residence?

23 A. Yes.

24 Q. And at some point later that same morning, you,  
25 yourself, returned to the Judge's residence?

## DAVID RUSHTON CROCKER - CROSS BY McCOLLUM

1 A. Yes sir.

2 Q. And the affidavit -- and you're the -- what, the  
3 affiant, right?

4 A. Yes sir.

5 Q. And it states that the police responded to a shooting,  
6 right?

7 A. Yes sir.

8 Q. And it states that the residence is located at [REDACTED]  
9 Barberry Court in Conway?

10 A. Yes sir.

11 Q. And that the police had processed the scene, right?

12 A. Yes sir.

13 Q. And they had conducted numerous interviews?

14 A. Yes sir.

15 Q. And your statement to the Judge is that they had  
16 acquired evidence that identified Mr. Floyd, Mr. Gause, and  
17 Mr. James as being individuals that on April 14th, 2008,  
18 forcibly gained entry to the victim's residence and shot and  
19 killed Mr. Smith?

20 A. Yes.

21 Q. Did you tell the Judge at that moment, sitting in his  
22 -- was he at his house or was he at the jail?

23 A. He was still at home.

24 Q. And did you tell the Judge at that time what evidence  
25 you had that identified Mr. Floyd, Mr. Gause, and Mr. James?

## DAVID RUSHTON CROCKER - CROSS BY McCOLLUM

1 A. Yes sir.

2 Q. And what was that evidence?

3 A. The statements that were provided by Ms. Smith during  
4 her interview with the officer.

5 Q. So you said Ms. Smith -- is it fair to say you said  
6 the exact same thing you said earlier that morning ---

7 A. Well, ---

8 Q. --- at 5:15 A.M.?

9 A. --- a defendant, that a defendant -- the same  
10 statement from before, that a defendant had identified these  
11 people and that we had obtained these addresses to go along  
12 with the one from Palmetto Street.

13 Q. And that's all you told the Judge?

14 A. Based upon the original statement that I had just left  
15 him from three hours earlier, yes sir.

16 Q. Did any of the other officers of the Horry County  
17 Police Department or any other law enforcement officers, did  
18 you call them while you were sitting with the Judge?

19 A. No sir.

20 Q. Did any of them come inside and talk to the Judge as  
21 well as you?

22 A. I don't recall.

23 Q. Did you -- did the Judge call anybody and ask any  
24 questions?

25 A. Not that I recall.

## DAVID RUSHTON CROCKER - CROSS BY McCOLLUM

1 Q. When you met with the Judge at his house, was anybody  
2 else in the room?

3 A. Not that I recall.

4 Q. Okay. The actual affidavit says sworn to and  
5 subscribed before me this 15th day of April, 2008, so this is  
6 a sworn affidavit, right?

7 A. Yes sir.

8 Q. Did you do anything in order to be sworn?

9 A. Was sworn in.

10 Q. Can you say how that happened or exactly what  
11 happened?

12 A. He asked me to raise my right hand and did I swear to  
13 the testimony in the -- contained in the affidavit, and the  
14 testimony I gave him was the truth and nothing but the truth.

15 Q. About how long do you think, if you can remember, were  
16 you at Judge Butler's residence on this particular warrant,  
17 and that being the one at [REDACTED] Grainger Road?

18 A. I don't recall.

19 Q. Could it have been five minutes?

20 A. I don't recall.

21 Q. At the time that you went in there -- would the  
22 warrant itself consist of -- not including the return, the  
23 warrant itself consists of three pages, right?

24 A. Not including the return, yes sir.

25 Q. And do you remember walking in the Judge's house and

## DAVID RUSHTON CROCKER - CROSS BY McCOLLUM

1 greeting him and talking to him?

2 A. Vaguely, yes sir.

3 Q. And do you remember if you had any other warrants with  
4 you at that time at 8:45 A.M.?

5 A. I don't recall.

6 Q. Do you remember where the Judge was when he actually  
7 signed the warrant?

8 A. I believe we were in his dining area if I remember  
9 correctly.

10 Q. And when you handed him the search warrant, and then  
11 you say you were sworn in by him?

12 A. Yes.

13 Q. And at that point he signed the warrant and you left,  
14 right?

15 A. Yes.

16 Q. Did he read the affidavit in your presence?

17 A. Yes.

18 Q. Did he ask any questions about it?

19 A. I don't recall. I seem to recall a question about  
20 these addresses being basically related to the same as the  
21 Palmetto Street address.

22 Q. And that's all that transpired while you were with the  
23 Judge?

24 A. To the best of my knowledge, yes sir.

25 Q. Now, you have a copy of the return?

DAVID RUSHTON CROCKER - CROSS BY McCOLLUM

1 A. Yes sir, I do.

2 Q. Which I believe was filed April 15th, 2008, at around  
3 -- it says around, I think, ten -- ten o'clock, 10:00 A.M.,  
4 right?

5 A. Yes sir.

6 Q. And in that return, it says they found twenty-five  
7 live, small ammunition rounds?

8 A. I read it to say twenty-three.

9 Q. I'm sorry; you're right, twenty-three live, small  
10 ammunition rounds?

11 A. Yes sir.

12 Q. One -- is it one P.R., in quotation marks, bape, bape?  
13 Do you know what that is?

14 A. I -- I don't recall, sir. I did not participate in  
15 that search.

16 Q. But it's a B-A-P-E SFA ---

17 **MS. von HERRMANN:** Your Honor, I'm just going to object  
18 to this. What they collected is not relevant to the validity  
19 of the search warrant.

20 **THE COURT:** I appreciate that, but ---

21 **MR. McCOLLUM:** The only thing I'm -- may I speak?

22 **THE COURT:** Yes sir.

23 **MR. McCOLLUM:** The only thing I'm trying to do, Your  
24 Honor, is just so when -- the record is clear what evidence  
25 we're talking about for a particular search. That's all I'm

DAVID RUSHTON CROCKER - CROSS BY McCOLLUM

1 trying to establish.

2 **THE COURT:** All right, very good.

3 Q. So it's the B-A-P-E, I think SFA brand shoes, which  
4 are green, blue, and yellow?

5 A. That's what's written there, yes sir.

6 Q. And then a Beretta -- I can't read -- it's  
7 something ---

8 **MS. von HERRMANN:** Greg, if you want to mark the  
9 return, I don't have any objection to that.

10 **MR. McCOLLUM:** That's a part of it. I just want to run  
11 through ---

12 Q. A Beretta pistol, silver ---

13 **THE COURT:** What page of the document is that?

14 **MR. McCOLLUM:** It's the fourth page, Your Honor.

15 **THE COURT:** All right, of what exhibit?

16 **MR. McCOLLUM:** It's Exhibit Number -- Defendant's  
17 Exhibit Number 2.

18 **THE COURT:** All right, so just ask him if that's the  
19 return, would you?

20 Q. Is this the return for that warrant?

21 **THE COURT:** Hand it -- well, he's got to look at it.  
22 Hand it to him. You've got the exhibit in your hand.

23 **MR. McCOLLUM:** I think he has a copy as well.

24 **THE COURT:** I know, but you have the exhibit.

25 Q. Please look at this.

DAVID RUSHTON CROCKER - CROSS BY McCOLLUM

1 A. Okay, sir. Yes sir, that appears to be the return. I  
2 did not take the returns back. I can't swear out the warrant  
3 and take the return.

4 Q. But just to indicate on the record what's on the  
5 return.

6 A. On the return, ---

7 **THE COURT:** Again, Mr. McCollum, I can read. It's not  
8 necessary. It's an exhibit. It's in the record. He said  
9 that's the return. Please move on. We'll be here three  
10 days. Do you have any other questions?

11 **MR. McCOLLUM:** The return ---

12 **THE COURT:** The return is in the record. I can read  
13 it. I don't need for you to read it to me. Continue on.

14 **MR. McCOLLUM:** With all due respect, Your Honor, I  
15 wasn't thinking of you.

16 **THE COURT:** Well, I appreciate that, but I have to make  
17 the original decision. I understand it's going to get  
18 appealed later on, but I have to make the original decision.  
19 It's in the record. It will be in the record for appeals,  
20 and I can read it. Please move on.

21 Q. In terms of this particular search warrant, this  
22 warrant is identical in every way as to the warrant that you  
23 testified earlier as to [REDACTED] Palmetto Street, correct, no  
24 difference whatsoever?

25 A. No sir.

DAVID RUSHTON CROCKER - CROSS BY McCOLLUM  
CROSS BY HAZZARD

1 Q. It was simply in a word processor and you transferred  
2 it to another search warrant and changed the address, right?  
3 That's the only difference, right?

4 A. Yes sir, ---

5 MR. McCOLLUM: Thank you, sir.

6 A. --- as far as the document goes, yes sir.

7 MR. McCOLLUM: Thank you, Your Honor.

8 THE COURT: Could I have the original document, please?

9 A. Yes sir.

10 THE COURT: Further questions?

11 MS. von HERRMANN: Nothing from the State, Your Honor.

12 THE COURT: Further questions, Mr. McCollum?

13 MR. McCOLLUM: Not -- not from this witness, Your  
14 Honor.

15 THE COURT: Mr. Hazzard?

16 MR. HAZZARD: Thank you, Your Honor.

17 CROSS-EXAMINATION BY MR. HAZZARD:

18 Q. All right, Detective, you are a detective, correct,  
19 Mr. Crocker?

20 A. Yes sir.

21 Q. Okay. All right, let me -- let me be clear here.  
22 When you went and talked to Magistrate Butler that morning,  
23 you went apparently sometime shortly after 5:00 A.M. and then  
24 apparently went back sometime after 8:00 A.M., ---

25 A. Yes sir.

## DAVID RUSHTON CROCKER - CROSS BY HAZZARD

1 Q. --- would that be correct?

2 A. Uh huh (indicating positive).

3 Q. Okay, and with regard to both of those instances of  
4 speaking with Magistrate Butler, correct me if I'm wrong.  
5 Basically from what I'm hearing, you provided him with an  
6 affidavit that said that a crime had occurred, is that  
7 correct?

8 A. Yes.

9 Q. That somebody was dead?

10 A. Yes sir.

11 Q. That the police had searched the residence where the  
12 crime had occurred or where the death had occurred?

13 A. Yes sir.

14 Q. That the police had subsequently talked to some folks?

15 A. Yes sir.

16 Q. Didn't name anybody that the police talked to?

17 A. Not that I recall, no sir. I don't recall referring  
18 to her by name.

19 Q. But that based upon talking to some folks, y'all felt  
20 you needed to search some places and look for Quentin Gause,  
21 Donell James, Gregory Floyd, is that correct?

22 A. Yes sir.

23 Q. And that was all the information the magistrate was  
24 given?

25 A. Yes sir.

DAVID RUSHTON CROCKER - CROSS BY HAZZARD  
BY THE COURT

1 Q. With regard to this particular residence, [REDACTED]  
2 Grainger Road, Number [REDACTED], any evidence given, information  
3 provided so that the magistrate could make his own practical,  
4 common-sense determination independently as to why there  
5 might be the possibility of finding any of these three  
6 individuals at that address?

7 A. That their family members or friendly -- you know,  
8 friends of these people, or that it may be their residence.

9 Q. Is there information in the affidavit that indicates  
10 that, sir?

11 A. No sir.

12 Q. Okay.

13 MR. HAZZARD: All right, thank you. No further  
14 questions.

15 THE COURT: I got confused on that. Is that what you  
16 told the magistrate in addition?

17 A. Well, yes sir, when we presented each one. Each  
18 address that was listed was either -- I either -- I told the  
19 Judge this is either their residence, the residence of a  
20 family member, or a residence of a friend where we feel like  
21 we may can locate these people that we're looking for.

22 THE COURT: All right, now, so that I can -- I can  
23 understand this, you've got reasons for looking at your  
24 affidavit?

25 A. Yes sir.

DAVID RUSHTON CROCKER - BY THE COURT

1           **THE COURT:** Looking at it, and it says reasons for  
2           affiant's belief that the property sought is on the subject  
3           premises, looking at that paragraph, all right?

4           A.       Yes sir.

5           **THE COURT:** It says that on Monday, April 14, 2008,  
6           officers with the Horry County Police Department responded to  
7           a shooting complaint at a residence that is located at [REDACTED]  
8           Barberry Court in Conway Section of Horry County. Now, that  
9           information did not come from the witness, correct?

10          A.       No sir. That ---

11          **THE COURT:** That came from the officers?

12          A.       Yes sir.

13          **THE COURT:** All right. The responding officers found  
14          Mr. Smith lying deceased on the floor of the residence. Now,  
15          that information didn't come from the witness? That came  
16          from the officers, correct?

17          A.       Yes sir.

18          **THE COURT:** All right. Investigating officers  
19          processed the crime scene, conducted numerous interviews,  
20          thereby acquiring evidence and statements that identified Mr.  
21          Floyd, Mr. Gause, and Mr. James IV?

22          A.       I -- that's supposed to be the fourth, Your Honor.

23          **THE COURT:** The fourth, okay -- Mr. James IV, as the  
24          individuals that on April 14, 2008, forcibly gained entry to  
25          the victim's residence and shot and killed Mr. Smith. Now,

DAVID RUSHTON CROCKER - BY THE COURT

1 did that information come from the officers or come from Ms.  
2 Smith?

3 A. That was passed on to me by the detectives who had  
4 interviewed Ms. Smith.

5 **THE COURT:** All right, so that information came from --  
6 through the detectives from Ms. Smith?

7 A. Yes sir.

8 **THE COURT:** All right, and didn't come from any other  
9 source?

10 A. No sir.

11 **THE COURT:** Just from Ms. Smith?

12 A. Yes sir.

13 **THE COURT:** So when it says that the investigating  
14 officers processed the crime scene and conducted numerous  
15 interviews, thereby acquiring evidence and statements, the  
16 only thing that you're talking about is not any other  
17 evidence, or any other statements, or anything else other  
18 than what Ms. Smith told the officers, is that what you're  
19 telling me?

20 A. Yes sir, none that I'm aware of.

21 **THE COURT:** All right, and that's what you told the  
22 magistrate?

23 A. Yes sir.

24 **THE COURT:** That it was a witness? You didn't identify  
25 who it was?

DAVID RUSHTON CROCKER - BY THE COURT

1 A. Right.

2 **THE COURT:** All right, and then it says in addition a  
3 witness has provided information about this address and then  
4 physically showed officers the address which is where the  
5 suspects and their accomplices are residing?

6 A. Yes sir

7 **THE COURT:** All right, and where did that come from?

8 A. That was from the same interview. We -- they were  
9 still interviewing her at the time that we obtained the  
10 initial warrant for Palmetto Street, ---

11 **THE COURT:** Okay.

12 A. --- and they were still in the process of their  
13 interview while we were at Judge Butler's residence obtaining  
14 the first warrants that had that 5:10 A.M. on them.

15 **THE COURT:** All right, so after the initial one for  
16 [REDACTED] -- was it [REDACTED] Palmetto?

17 A. Yes sir.

18 **THE COURT:** All right, after that initial one, did  
19 detectives develop more information from Ms. Smith, is that  
20 correct?

21 A. Yes sir.

22 **THE COURT:** All right, and that's what this is  
23 referring to, more information?

24 A. Yes sir. The ---

25 **THE COURT:** And obviously then physically showed them

DAVID RUSHTON CROCKER - BY THE COURT  
REDIRECT BY von HERRMANN

1 this particular address ---

2 A. Yes sir.

3 **THE COURT:** --- where the suspects and their  
4 accomplices are residing. Now, at the time that you were  
5 before the magistrate, did you give any information to the  
6 magistrate about the witness, who the witness was, how the  
7 witness would know Mr. Floyd, Mr. Gause, Mr. James IV, would  
8 know anything about this particular crime? Did you tell the  
9 magistrate anything about the witness?

10 A. I don't recall, Your Honor.

11 **THE COURT:** Okay, so that means you just don't know?  
12 You could have, but you don't know?

13 A. It is possible, Your Honor. I just don't remember at  
14 this point.

15 **THE COURT:** All right.

16 All right, Solicitor, any questions you have?

17 **MS. von HERRMANN:** Yes sir, Your Honor, just a couple.

18 **REDIRECT-EXAMINATION BY MS. von HERRMANN:**

19 Q. Let's just talk about, as a practical matter, since  
20 Mr. McCollum has gone into some detail about this, when you  
21 go to -- let's just say when you take a search warrant to  
22 Judge Butler and you go in and hand him that search warrant,  
23 tell me what -- what generally -- what is the general  
24 procedure when that happens?

25 A. Generally, you know, you walk in and after speaking to

DAVID RUSHTON CROCKER - REDIRECT BY von HERRMANN

1 the Judge, exchanging pleasantries for a moment, you explain  
2 to him why are -- you know, Judge, I have a search warrant in  
3 relation to a particular case, or I have a search warrant.

4 Q. And let me ask you this, because we're all human. If  
5 you came to me and said, hey, I'm working on this murder  
6 case, I'd probably ask you what the murder case was about.  
7 Does the Judge typically ask you ---

8 MR. McCOLLUM: Your Honor, I'd like to ---

9 Q. --- what the case is about?

10 MR. McCOLLUM: --- interpose an objection about what  
11 typically occurs. The officer has already testified that he  
12 doesn't remember any of this.

13 THE COURT: Well, I don't know that he said that. He  
14 said that he didn't remember certain things that you asked  
15 him about. I don't know if he remembers this or not.

16 Solicitor, let's confine ourself to what happened when  
17 he presented this search warrant to the magistrate, what he  
18 did on that date and time. Let's confine ourselves to that.

19 Q. A moment ago you said you ex- -- you exchanged  
20 pleasantries with the Judge?

21 A. Uh huh (indicating positive).

22 THE COURT: You need to answer yes or no, please.

23 A. I'm sorry. Yes.

24 Q. And what do you mean by that?

25 A. Just good morning, how are you, that kind of thing.

DAVID RUSHTON CROCKER - REDIRECT BY von HERRMANN

1 Q. And would you have talked to him about the case?

2 A. I'm certain that I would have said something to the  
3 effect of I'm back again. They've gotten some more  
4 information as a result of their interview, so I need another  
5 warrant. It's basically going to be identical other than the  
6 address.

7 Q. And if you then, according to what you said, were back  
8 again, you would be providing him with some additional  
9 information that you had not provided him with on the first  
10 go-round?

11 A. I would have to provide him with additional  
12 information why I was back with basically the same warrant  
13 for a different address.

14 Q. And again, the information contained here in the  
15 affidavit is information that you received from speaking with  
16 other detectives that are working on the case, is that  
17 correct?

18 A. Yes.

19 Q. And so while you -- you have a -- sort of a general  
20 knowledge about the case, correct?

21 A. That's correct.

22 Q. You're not in the room interviewing that defendant, so  
23 the information that you have is not first-hand knowledge?

24 A. This was my only contact with this case.

25 Q. All right, and it's coming to you from a detective,

DAVID RUSHTON CROCKER - REDIRECT BY von HERRMANN  
RE-CROSS BY McCOLLUM

1 correct?

2 A. Correct.

3 Q. And so you may not know every single detail?

4 A. Correct.

5 Q. And you provide the Judge with the information as best  
6 you can?

7 A. Correct.

8 Q. And then he would ask you questions if he had  
9 questions?

10 A. Yes.

11 Q. All right, and did he, if you recall, ask you any  
12 questions on this particular day?

13 A. I don't recall any specific questions.

14 **MS. von HERRMANN:** Thank you. I don't have any further  
15 questions.

16 **THE COURT:** Mr. McCollum.

17 **MR. McCOLLUM:** Just briefly, Your Honor.

18 **RE-CROSS-EXAMINATION BY MR. McCOLLUM:**

19 Q. So just so we're clear, Detective Crocker, you don't  
20 remember any specific conversation with Judge Butler on April  
21 the 15th at around 8:45 A.M.?

22 A. I don't remember the specific conversation at 8:45.  
23 To be honest with you, at this point it was a little more of  
24 a blur than waking him up in the middle of the night.

25 Q. In terms of the information, this is the same exact

## DAVID RUSHTON CROCKER - RE-CROSS BY McCOLLUM

1 information that you had presented to him at 5:15 A.M.?

2 A. With respect to the new location.

3 Q. All right, and you said just briefly -- you testified  
4 that you didn't know if -- if the -- who are we looking for  
5 on this one, Donell James?

6 A. No sir. I believe on this one we were looking for --  
7 I believe it was Mr. Floyd at this point.

8 Q. Gregory Floyd?

9 A. Yes sir.

10 Q. You didn't have any information that Gregory Floyd  
11 lived at that address, correct?

12 A. I had the information that was presented to me by the  
13 other detectives, that the witness had pointed this res- --  
14 taken this residence out -- and pointed out to them that this  
15 was a spot where they could more than likely find this  
16 individual, or individuals.

17 Q. And you did not -- you had information that you were  
18 looking for the defendant's residence, or the defendant's  
19 family residence, or possibly Gregory Floyd's friend's  
20 residence, right?

21 A. Yes.

22 Q. So if -- the residence could have been a friend or  
23 acquaintance of his, right?

24 A. It's possible.

25 Q. Could have been a family member, right?

## DAVID RUSHTON CROCKER - RE-CROSS BY McCOLLUM

1 A. It's possible.

2 Q. Any family member, right?

3 A. It's possible.

4 Q. Or could have possibly been his, right?

5 A. Possible, yes sir.

6 Q. Would you just as a general rule think that if you  
7 were looking for me or wanted to search something that  
8 belonged to me, that you could go search my friends' houses  
9 with a warrant?

10 A. Well, in the information -- based upon the information  
11 that we had and the nature of the crime, this was what I  
12 presented to the Judge.

13 Q. I understand, but I -- I understand that other  
14 officers have other roles, okay, correct?

15 A. Uh huh (**indicating positive**) -- yes.

16 Q. And I understand your role, somebody -- a supervisor  
17 or somebody asked you to do this, right?

18 A. Yes sir.

19 Q. And you had -- had you been up all night?

20 A. Pretty much, yes sir.

21 Q. And so you were -- you were following your  
22 instructions and your police duties as you were asked to do,  
23 right?

24 A. Yes sir.

25 Q. And please understand, I'm not. ---

DAVID RUSHTON CROCKER - RE-CROSS BY McCOLLUM  
RE-CROSS BY HAZZARD

1 A. I understand.

2 Q. I'm just -- we're just trying to establish what you,  
3 yourself, knew and what you could have told the Judge; that's  
4 all.

5 A. I understand.

6 Q. Okay, and whatever information that you said may have  
7 come forth, you can't specifically remember ever telling  
8 Judge Butler that stuff, right?

9 A. I can't remember everything specifically from three  
10 years ago about a case that I had limited involvement in, no,  
11 sir.

12 Q. Very well.

13 MR. McCOLLUM: Thank you, sir.

14 THE COURT: Mr. Hazzard.

15 RE-CROSS-EXAMINATION BY MR. HAZZARD:

16 Q. All right, so based on what Ms. von Herrmann asked  
17 you, basically what you told the magistrate under oath was  
18 that I talked to two detectives and they told me they talked  
19 to a nameless individual, and based on that we want a warrant  
20 to go search somebody's house?

21 A. I wouldn't exactly phrase it that way, but yes sir.

22 Q. Is that a fair characterization?

23 A. Not exactly. We had -- no sir. You have two  
24 detectives who are telling me they have interviewed a  
25 witness to this murder and that they have obtained this

DAVID RUSHTON CROCKER - RECROSS BY HAZZARD  
REDIRECT BY von HERRMANN / BY THE COURT

1 information and they have asked me to present this  
2 information to the Judge to obtain a search warrant.

3 Q. That they have interviewed an unnamed individual?

4 A. I don't recall if they named her to me at that point  
5 or not, sir.

6 Q. And you definitely didn't provide the name or any  
7 other information that would give credibility, veracity, or  
8 credence to any statement that she may or may not have made?

9 A. I don't recall mentioning a name to him, no.

10 Q. All right.

11 **MR. HAZZARD:** Thank you, sir.

12 **MS. von HERRMANN:** Just one more, Your Honor.

13 **REDIRECT-EXAMINATION BY MS. von HERRMANN:**

14 Q. You just testified a minute ago that you had  
15 information they had interviewed Ms. Smith and that Ms. Smith  
16 had provided this information, correct?

17 A. Yes.

18 Q. Okay, so when he's saying that there was some nameless  
19 individual, it wasn't a nameless individual. It was Ms.  
20 Smith, correct?

21 A. Yes.

22 **MS. von HERRMANN:** Thank you.

23 **THE COURT:** All right, and this is going to be it. We  
24 are not asking any more questions.

25 I need to ask you, we went over what you gave to the

DAVID RUSHTON CROCKER - BY THE COURT

1 magistrate in writing. In addition to what is here in this  
2 affidavit, do you specifically remember telling the  
3 magistrate anything else about this particular matter?

4 A. No sir, Your Honor. I can't specifically remember a  
5 specific conversation.

6 **THE COURT:** All right. Now, what you knew is  
7 detectives say we've interviewed a witness to the crime,  
8 correct?

9 A. Yes sir.

10 **THE COURT:** All right, and the witness to the crime has  
11 identified these individuals, ---

12 A. Yes sir.

13 **THE COURT:** --- Floyd, Gause, and James?

14 A. Yes sir.

15 **THE COURT:** Further, the witness has as the persons  
16 that shot and killed Mr. Smith?

17 A. Yes sir.

18 **THE COURT:** That's what the witness has told the  
19 detectives, ---

20 A. Yes sir.

21 **THE COURT:** --- his eye witness, and the witness has  
22 also pointed out regarding this particular warrant a physical  
23 address where the witness says these people could be  
24 located, ---

25 A. Yes sir.

DAVID RUSHTON CROCKER - BY THE COURT  
SUMMATION BY MR. McCOLLUM

1           **THE COURT:**   --- could potentially be located, or  
2 accomplices helping them could be located?

3           A.       Yes sir.

4           **THE COURT:**   All right, and that's what was told to the  
5 magistrate?

6           A.       Yes sir.

7           **THE COURT:**   All right. Again, and you correct me if  
8 I'm wrong, what you did not do is tell the magistrate who the  
9 witness was or anything about the witness other than the  
10 witness is an eye witness to the crime?

11          A.       I don't recall doing so, no sir, Your Honor.

12          **THE COURT:**   Anything else other than saying you've got  
13 a witness who is an eye witness to the crime identifying  
14 these people, says they did it, and they can be located here,  
15 but other than that, you didn't tell the mag- -- you don't  
16 recall telling the magistrate anything else about the  
17 witness, is that right?

18          A.       No sir, I do not.

19          **THE COURT:**   All right, very good. You may step down.

20          **DETECTIVE CROCKER:**   Thank you, sir.

21          **THE COURT:**   Arguments, Mr. McCollum.

22          **MR. McCOLLUM:**   Your Honor, the only thing I'm saying,  
23 in response to your questions, it sounds like that he told  
24 the Judge that he had a witness to the crime, and I would  
25 just submit that that's not the testimony, and I would ask

SUMMATION BY MR. McCOLLUM  
DAVID RUSHTON CROCKER - BY THE COURT

1 that from my perspective that's clear. Even if he knew  
2 something like that, I don't think there's been any evidence  
3 or testimony that he told the magistrate that, and I just ---

4 **THE COURT:** Detective, get back on the stand. I'm  
5 sorry. Get back on the stand.

6 (Detective Crocker returns to the witness stand.)

7 **THE COURT:** I'm sorry, but let's be clear about the  
8 question I'm asking, okay?

9 A. Yes sir.

10 **THE COURT:** You communicated with the detectives  
11 investigating this crime?

12 A. Yes sir.

13 **THE COURT:** Now, anything other than where the victim  
14 was located and the crime was committed, all the other  
15 information is coming from this eye witness to the crime,  
16 correct?

17 A. Yes sir, to my knowledge.

18 **THE COURT:** All right, and the detectives tell you we  
19 had an eye witness to the crime, this eye witness has  
20 identified Mr. Floyd, Mr. Gause, and Mr. James. Now, in the  
21 original warrant, that's -- in fact, those three guys are the  
22 guys who committed the crime and killed Mr. Smith, correct?

23 A. Yes.

24 **THE COURT:** Now, in the original warrant, that's all  
25 you knew, correct?

## DAVID RUSHTON CROCKER - BY THE COURT

1 A. Yes sir.

2 THE COURT: And is that what you told the  
3 magistrate, ---

4 A. Yes sir.

5 THE COURT: --- that information?

6 A. Yes sir.

7 THE COURT: All right. Now, in this next one, you're  
8 telling me you had additional conversations with the  
9 detectives, correct?

10 A. Yes sir.

11 THE COURT: And they say we have continued to talk to  
12 Ms. Smith -- I'm sorry -- yes, it was Ms. Smith, and she says  
13 -- and told them about an address and physically she has  
14 taken us to this address and said you can potentially find  
15 Mr. Floyd, Mr. Gause, and Mr. James, or the accomplices  
16 helping them, at that address?

17 A. Yes sir.

18 THE COURT: And that's what you told the magistrate?

19 A. Yes sir.

20 THE COURT: What you didn't tell the magistrate was who  
21 Ms. Smith was? You didn't say it's Ms. Smith, correct?

22 A. No.

23 THE COURT: And you didn't tell him anything about the  
24 witness, about how could this particular witness know the  
25 things other than being an eye witness, nothing that would

DAVID RUSHTON CROCKER - BY THE COURT  
SUMMATION BY MR. McCOLLUM

1 identify the person or, you know, give the magistrate any  
2 other information about the witness other than that's a  
3 person who's an eye witness?

4 A. No sir, not that I recall.

5 **THE COURT:** All right, very good. You may step down.  
6 All right, arguments, Mr. McCollum.

7 **MR. McCOLLUM:** Your Honor, with all due respect, I  
8 would submit that he never testified to that until Your Honor  
9 just went over that with him. He testified consistently that  
10 he didn't remember that he told the magistrate anything, and  
11 now it's characterized on the record as if he had an eye  
12 witness to a crime and he told the Judge that. The prior ---

13 **THE COURT:** I don't remember anybody, other than  
14 myself, asking him about the particular person, asking him  
15 were they an eye witness to the crime. Nobody asked that. I  
16 did, so it's -- you know, you're right; it probably didn't  
17 come up before. Continue on.

18 **MR. McCOLLUM:** But I specifically asked him what, if  
19 anything, he told the magistrate, and he said that -- he  
20 never said that he told the magistrate anything. He said  
21 over, and over, and over that he could not remember if he  
22 told the magistrate anything.

23 **THE COURT:** All right, thank you, sir. Anything else  
24 on this particular one?

25 **MR. McCOLLUM:** As to this search warrant, Unit ■, ■■■

SUMMATION BY MR. McCOLLUM / SUMMATION BY MR. HAZZARD  
COURT'S RULING

1 Grainger Road, based on the arguments made earlier and the  
2 showing, Your Honor, we would move to suppress any evidence  
3 obtained as a result of that.

4 **THE COURT:** All right.

5 Mr. Hazzard.

6 **MR. HAZZARD:** Your Honor, I am sure the Court will  
7 recall basically all I did ask the detective about was did  
8 you tell the magistrate who the individual was that the other  
9 detectives had spoken to. My understanding of his testimony  
10 is basically that he talked to two detectives, they told him  
11 they talked to someone, and someone told them this  
12 information, basically three times removed, and that he then  
13 put it in an affidavit and carried it to the magistrate and  
14 the magistrate signed the warrant. I do not even recall him  
15 testifying specifically that he even identified Ms. Smith,  
16 let alone identifying this person as being an eye witness,  
17 simply says we have talked to some folks, we have processed  
18 the crime scene, and based on that, we need a warrant.

19 **THE COURT:** All right, sir. Thank you, Mr. Hazzard.

20 I do not believe that to be a correct characterization  
21 of the detective's testimony, though.

22 Any argument, Solicitor?

23 **MS. von HERRMANN:** No, Your Honor.

24 **THE COURT:** All right. A search warrant may issue only  
25 upon a finding of probable cause. A search warrant may only

## COURT'S RULING

1 be issued only upon affidavit sworn before a magistrate  
2 establishing the grounds for the warrant. Oral testimony may  
3 be used to supplement search warrant affidavits. The  
4 magistrate's task in determining whether to issue a search  
5 warrant is to make a practical, common-sense decision whether  
6 given all the circumstances set forth in the affidavit before  
7 him, the information given to him, there is a fair  
8 probability that the evidence of the crime or of the person  
9 sought will be found in a particular place.

10 Basically the arguments of Counsel is insufficiency,  
11 that there is not sufficient information provided to the  
12 magistrate at the time that he issued the warrant so that he  
13 could make the proper finding as I just indicated.

14 The purpose of my questioning of the detective was,  
15 first, to identify what information didn't come from the  
16 witness and what information that's in the written affidavit  
17 did come from the witness, so it's clear from what he said  
18 that the information about the police responding to the scene  
19 of the crime and finding Mr. Smith dead on the floor of the  
20 residence didn't come from the witness, nor the fact that the  
21 officers processed the crime scene and conducted interviews.  
22 None of that obviously came from the witness.

23 What the detective says is that he, not being present,  
24 this is information given to him by the investigating  
25 detectives, that they have an eye witness to the crime whom

## COURT'S RULING

1 they identified, but the detective did not identify to the  
2 magistrate, but they -- I find from what he stated, they  
3 identified the person to him, got an eye witness. The eye  
4 witness says the crime was committed by these individuals,  
5 Floyd, Gause, and James, and that was what he told the  
6 magistrate originally. Thereafter in regards to this -- that  
7 was at 5:10 A.M., fairly shortly after the crime.

8 Later on at around 8:45 A.M., he comes back regarding  
9 this particular warrant and in addition, the detectives say  
10 this witness provided information to us about this particular  
11 address and then physically showed it to us identifying that  
12 is where these three individuals could be found or  
13 accomplices who are aiding them could be found.

14 What was never told to the magistrate was who the  
15 witness was and anything about the witness that would help  
16 the magistrate other than this person is an eye witness to  
17 the crime. Certainly a better practice by the officer, the  
18 detective, in giving the information to the police, when you  
19 are giving your information and it's based upon a witness,  
20 the best practice, and the better practice certainly is to  
21 give to the magistrate some kind of information about who the  
22 person is and why this information would be reliable.

23 In this particular circumstance, I find the magistrate,  
24 though, had sufficient probable cause based on the  
25 information provided by the affidavit and by the detective

## COURT'S RULING

1 simply -- well, I guess ultimately through that witness being  
2 an eye witness to the crime, seeing the individuals commit  
3 the crime apparently -- this is what's indicated, given by  
4 the affidavit or testimony, and then thereafter identifying  
5 where they could -- or accomplices helping them could be  
6 located. I find that to be a sufficient identification of  
7 the person and sufficient information regarding the  
8 reliability of that particular and credibility of that  
9 particular witness to allow the magistrate to base his  
10 decision, his independent decision, in finding probable cause  
11 in this matter and, therefore, the motion of both defendants  
12 -- this is a joint motion on the other one and this one, the  
13 motion is respectfully denied.

14 All right, we have two more, is that correct?

15 **MS. von HERRMANN:** The next one is [REDACTED] Grainger Road,  
16 Apartment [REDACTED]-8.

17 **THE COURT:** [REDACTED]-8. All right, hold on a second before we  
18 do that. Let's just take a very short five minute break and  
19 then we'll come back, all right, and in the meantime, could  
20 y'all get a copy of that search warrant and affidavit and all  
21 and get that marked by the Court Reporter, please. Thank  
22 you.

23 (SEARCH WARRANT ([REDACTED] GRAINGER ROAD, APARTMENT [REDACTED] 8)  
24 MARKED AS DEFENDANT'S (COLLINGTON) EXHIBIT NUMBER 3.)  
25 (THE FOLLOWING TAKES PLACE AFTER A BREAK.)

DAVID RUSHTON CROCKER - DIRECT BY von HERRMANN

1           **THE COURT:** All right, Solicitor, let's proceed on to  
2 the next one, please.

3           **MS. von HERRMANN:** Yes sir, Your Honor. The State  
4 calls Detective Rusty Crocker again.

5           **THE COURT:** Please come around to the stand to be  
6 sworn, sir.

7                           **DAVID RUSHTON CROCKER,** being first duly sworn,  
8 states as follows:

9 **DIRECT-EXAMINATION BY MS. von HERRMANN:**

10 Q. Detective Crocker, you had just testified, just gotten  
11 through testifying previously, on two separate search  
12 warrants, the last one of which was for [REDACTED] Grainger Road,  
13 Apartment [REDACTED]-5, is that correct?

14 A. Yes.

15 Q. And at the same time, which was approximately 8:45,  
16 did you also take over a search warrant for another unit in  
17 that same building, which would be [REDACTED] Grainger Road,  
18 Apartment [REDACTED]-8?

19 A. Yes.

20 Q. And would that be the residence of Andrew James and  
21 Tiffany James?

22 A. Yes.

23 Q. Okay, and did you provide that same information to  
24 Judge Butler that you provided in the other search warrant?

25 A. Yes.

DAVID RUSHTON CROCKER - DIRECT BY von HERRMANN

1 Q. Did you hand him the two search warrants at the same  
2 time?

3 A. Almost certainly.

4 Q. All right, and so your testimony with regard to this  
5 unit would be the same as with the other?

6 A. Yes Ma'am.

7 MS. von HERRMANN: I don't have any further questions  
8 unless Your Honor wants me to review all the specifics.

9 THE COURT: I've got a question. I just wanted to --  
10 if you could, ask the detective as far as ownership or  
11 residency, understanding that may or may not be an issue, but  
12 as to these two defendants that are here regarding this  
13 particular location or the other two locations, anything  
14 about the ownership of the location or residency, if there's  
15 any connection at all.

16 Q. Were you aware of whether this particular location had  
17 anything to do at all with Quentin Gause or Ladorrean  
18 Collington?

19 A. Only the fact that we were looking at that point for  
20 Mr. Gause, and he is one of the individuals that is listed on  
21 the individual search warrants as one of the three that we  
22 were looking for at that point in time.

23 Q. Okay, so as far as you know, at least with regard to  
24 Ms. Collington, this residence did not have anything to do  
25 with Ms. Collington?

DAVID RUSHTON CROCKER - DIRECT BY von HERRMANN

1 A. Not to my knowledge.

2 Q. And, in fact, I think -- I don't want to put words in  
3 your mouth, but I believe that they -- the detectives had  
4 told you that this was a residence for Andrew James or  
5 Tiffany James, ---

6 A. Yes.

7 Q. --- is that correct?

8 A. Yes.

9 Q. And so it would not have anything to do specifically  
10 with Mr. Gause either?

11 A. No.

12 Q. And with regard to the first search warrant that we  
13 talked about, I think we addressed the issue there for that  
14 [REDACTED], that was, I think you testified, Donell James'  
15 residence?

16 A. It was his or his mother's.

17 Q. His mother's residence; thank you, and with regard to  
18 [REDACTED], that would have been Greg Floyd's residence, correct?

19 A. Yes.

20 Q. And so none of these three that we've discussed have  
21 been residences involving Mr. Gause or Ms. Collington?

22 A. No.

23 MS. von HERRMANN: I don't have any further questions.

24 THE COURT: All right, Mr. McCollum.

25 MR. MCCOLLUM: May it please the Court, Your Honor.

DAVID RUSHTON CROCKER - CROSS BY McCOLLUM

1           **THE COURT:**    Yes sir.

2           **CROSS-EXAMINATION BY MR. McCOLLUM:**

3           Q.        After you -- you and your department completed the  
4           investigation, it's your understanding that a man by the name  
5           of Allen Smith or I think was also known as Big A, he was  
6           shot in his residence and killed, right?

7           A.        Yes.

8           Q.        And you also have information that a Frankie Davis,  
9           also known as Fa, was present in the house when he was shot  
10          and killed?

11          A.        I -- I don't have direct knowledge of what took place  
12          on Barberrry. I have direct knowledge -- I have  
13          circumstantial -- well, not circumstantial, but knowledge  
14          that I gained from standing around about the investigation.  
15          The only knowledge I have are of the interview of the witness  
16          and the search warrants that were obtained as a review of the  
17          interview of the witness.

18          Q.        Okay, so you don't know who was accused of going to  
19          the house and committing the burglary and the murder, right?

20          A.        Only from the search warrants that we're looking for  
21          these individuals.

22          Q.        All right, and earlier you testified that Ms. Smith  
23          had given information, and Ms. Smith, is that Tanheshia  
24          Smith?

25          A.        Yes.

DAVID RUSHTON CROCKER - CROSS BY McCOLLUM

1 Q. Okay. Now -- and you may not know this, but there's  
2 no evidence whatsoever that Tanheshia Smith was at Barberry  
3 Road when the shooting occurred, is there?

4 A. I -- I don't know, sir. All I know is that she was  
5 listed as a witness in -- that they had interviewed and that  
6 she had given them information. I don't know exactly what  
7 her status was.

8 Q. So you testified earlier under oath that you had Ms.  
9 Smith, who was an eye witness to a murder, identify the  
10 people that you were looking for?

11 A. I don't ever recall calling Ms. Smith an eye witness.  
12 I recall calling her a witness.

13 Q. Now, clearly if there's no evidence that Tanheshia  
14 Smith ever was present at the scene of the crime when the  
15 crime was committed -- well, you just stated that clearly she  
16 was not an eye witness to the murder, right?

17 A. I don't know.

18 Q. Well, I understand, and you had a lot of detectives  
19 working this case, right?

20 A. Yes.

21 Q. Do you know how many detectives worked it?

22 A. No sir, I don't. At this time I was in the Property  
23 Crimes Division, was called to assist.

24 Q. But it was several, right?

25 A. Yes.

## DAVID RUSHTON CROCKER - CROSS BY McCOLLUM

1 Q. And there were other officers working the case, right?

2 A. Yes.

3 Q. There may have been as many as, I don't know, twenty,  
4 maybe thirty officers working the case, right?

5 A. I don't have any idea on the number, sir.

6 Q. But it was a lot, right?

7 A. It was a good bit, yes sir.

8 Q. I understand, and so in all of the investigation and  
9 all of the things that -- discussions you had with the other  
10 officers that were giving you information to take to the  
11 magistrate, did anybody indicate to you that Tanheshia Smith  
12 was a witness to the crime?

13 A. I can't say if they said she was a witness to the  
14 crime. She was a witness involved in the crime. Now, if  
15 someone looked at me and said she was specifically in the  
16 instant location where the shooting took place or whether she  
17 was someone that they had interviewed that had secondary  
18 knowledge, I -- I -- I can't tell you. I don't have any  
19 idea.

20 Q. And at the time you spoke to Judge Butler, you were  
21 under oath?

22 A. Yes.

23 Q. As you are now, right?

24 A. Yes.

25 Q. And so -- and you take that oath seriously, don't you?

DAVID RUSHTON CROCKER - CROSS BY McCOLLUM  
CROSS BY HAZZARD

1 A. Absolutely.

2 Q. And so clearly if you were -- and whether you were  
3 under oath or not, if you were doing an investigation, you  
4 were not going to state facts beyond what you believed to be  
5 true?

6 A. I'm not going to state facts beyond which I know that  
7 were passed on to me that I have no reason to doubt, that I  
8 would have no reason not to swear to.

9 Q. All right, so you here today as a witness don't have  
10 any idea what participation Ms. Smith, Tanheshia Smith, may  
11 or may not have had?

12 A. No sir

13 **MR. McCOLLUM:** Thank you, sir.

14 **THE COURT:** Mr. Hazzard.

15 **CROSS-EXAMINATION BY MR. HAZZARD:**

16 Q. Okay, let me be clear. So you are saying you did not  
17 testify that you knew Tanheshia Smith to be an eye witness,  
18 is that correct?

19 A. I don't recall ever calling her an eye witness to the  
20 actual shooting or the crime. I simply referred when I was  
21 referring to her as a witness that was being interviewed by  
22 detectives.

23 Q. Okay, and if you may have made the statement under  
24 oath today that she was an eye witness, that statement would  
25 have been incorrect, is that correct?

DAVID RUSHTON CROCKER - CROSS BY HAZZARD  
BY THE COURT

1 A. If I made that statement, then it was incorrect. I  
2 don't know whether she was an eye witness to the crime or  
3 whether she was just a witness that was interviewed.

4 Q. So, therefore, your testimony here today, then, is  
5 obviously you never told Judge Butler that the witness was an  
6 eye witness, is that correct?

7 A. I don't recall ever referring to her in here as an eye  
8 witness or in front of Judge Butler as an eye witness.

9 Q. And you would have had no reason to refer to her as an  
10 eye witness to Judge Butler, correct?

11 A. No.

12 MR. HAZZARD: No further questions.

13 THE COURT: All right, detective, look at your --  
14 you've got your affidavit in this particular matter?

15 A. Yes sir.

16 THE COURT: Okay. Look at reasons for affiant's belief  
17 that property sought is on the subject premises.

18 A. Yes sir.

19 THE COURT: Okay. Look at -- let's see -- basically  
20 the second sentence and let's start with -- I'm not talking  
21 about investigating officer processed the crime scene and  
22 conducted interviews, okay? And then it goes, statements  
23 that identify Mr. Floyd, Mr. Gause, and Mr. James, IV, as  
24 being the individuals that on April 14th, 2008, forcibly  
25 gained entry to the victim's residence, shot and killed Mr.

DAVID RUSHTON CROCKER - BY THE COURT

1 Smith. In addition, the witness provided information about  
2 this address and physically showed officers the address which  
3 is where the suspects and their accomplices are residing.

4 All that information came solely from Ms. Smith?

5 A. That -- that is my understanding, Your Honor. That  
6 was the information that was passed on to me by one of the  
7 detectives that conducted the interview.

8 **THE COURT:** And he was saying we got this information  
9 from Ms. Smith? He's not saying we got it from elsewhere?  
10 We got this information, I just read to you, from Ms. Smith?

11 A. Yes. That was the individual they were interviewing  
12 at the time. That was what they said was obtained from the  
13 interview.

14 **THE COURT:** All right. Now, did the detective at any  
15 point in time indicate to you or tell you how Ms. Smith knew  
16 this information?

17 A. I do not recall, Your Honor.

18 **THE COURT:** Do you recall telling the magistrate how  
19 Ms. Smith knew this information?

20 A. No sir, other than what was passed on to me.

21 **THE COURT:** Okay. Well, okay. Did you tell the  
22 magistrate -- you never told the -- never told the magistrate  
23 the name?

24 A. No sir. I would have told the magistrate we have a  
25 witness ---

DAVID RUSHTON CROCKER - BY THE COURT

1           **THE COURT:**   Okay, it was a witness, and you never told  
2 the magistrate what participation this witness had in the  
3 crime, if any?

4           A.           No sir, not that I recall.

5           **THE COURT:**   And you didn't tell the magistrate how the  
6 witness could know Gregory Antonio Floyd, Quentin Lavant  
7 Gause, or Andrew James, IV?

8           A.           No sir, not that I recall.

9           **THE COURT:**   And clearly you didn't know this witness  
10 and hadn't spoken to the witness?

11          A.           No sir. The only thing that I can add, Your Honor, is  
12 that I would have had to -- in order to obtain the warrant  
13 from Judge Butler, I would have had to at least testify that  
14 we had a witness that had information in this case that had  
15 provided the information that these individuals were involved  
16 in the crime in some capacity and that these individuals  
17 could be located at these particular -- or possibly located  
18 at these particular residences.

19          **THE COURT:**   Okay, but nothing that would tell the  
20 magistrate how or why the witness knew this information?

21          A.           Not that I recall, Your Honor.

22          **THE COURT:**   All right. Thank you very much.  
23 Anything further, Solicitor?

24          **MS. von HERRMANN:**   Beg the Court's indulgence for a  
25 minute.

DAVID RUSHTON CROCKER - REDIRECT BY von HERRMANN

1           **THE COURT:**    Yes Ma'am.

2           **REDIRECT-EXAMINATION BY MS. von HERRMANN:**

3           Q.       All right, let's just be -- let's be clear about this.  
4           With regard to -- do you remember everything you told Judge  
5           Butler?

6           A.       No Ma'am.

7           Q.       All right. Did you have some conver- -- did you have  
8           a conversation with him while you were there?

9           A.       I'm -- I'm sure I had to have a conversation about why  
10          we were back with, you know, with these other two warrants.

11          Q.       Okay. Are you -- are you telling the Court that you  
12          did not give Judge Butler this person's name or that you  
13          don't remember?

14          A.       I don't remember exactly how it was put to him. The  
15          only thing that I can say three years later and not having  
16          any involvement in the case is I would have had to present  
17          enough information to Judge Butler having come back to him  
18          again in three or four hours expanding upon the first.  
19          warrants that we had at 5:10 A.M. and then obviously going  
20          back with information on these apartments here at what was  
21          Rulsease Terrace at the time, Crane Creek, to say we've got  
22          more information. I can't sit here and recall exactly how  
23          the conversation took place.

24          Q.       All right. Are you aware of whether other search  
25          warrants had been obtained prior to the search warrants that

DAVID RUSHTON CROCKER - REDIRECT BY von HERRMANN

1 you obtained?

2 A. There were search warrants obtained for the incident  
3 location where the shooting took place, the home invasion  
4 took place, and there were also -- I think a warrant was  
5 obtained for Ms. Collington's residence over on 544, but that  
6 was before I got there.

7 Q. Okay, and do you know what those -- as far as you  
8 know, those were obtained from Judge Butler as well?

9 A. Those were obtained from Judge Butler.

10 Q. So Judge Butler would have had a base of knowledge  
11 upon which you were adding onto, is that correct?

12 **MR. McCOLLUM:** Your Honor, I object to the leading.

13 **THE COURT:** Sustained.

14 Q. Would he have had information from prior search  
15 warrants that he signed in this case?

16 A. I would think so, yes Ma'am.

17 Q. All right, and so the information that you were giving  
18 him was additional information?

19 A. Yes Ma'am.

20 Q. And the affidavit says that there are -- were  
21 interviews, not an interview, but interviews taken by  
22 witnesses, is that ---

23 A. Yes, it does say interviews.

24 Q. --- what it says?

25 A. Yes.

DAVID RUSHTON CROCKER - REDIRECT BY von HERRMANN

1 Q. And so would that indicate to you that more than one  
2 person had been interviewed?

3 A. There -- there were -- had been other people  
4 interviewed, but the main information as far as to what I  
5 knew was the information coming from Ms. Smith, but there  
6 were other interviews that had been conducted.

7 Q. All right, and there was information, additional  
8 evidence, that had been taken from the house at the time that  
9 you got this search warrant, is that correct?

10 A. Now, are you referring to Ms. Collington's residence?

11 Q. No. I'm referring to the incident location.

12 A. Oh, certainly they had processed the scene and picked  
13 up whatever evidence that they could find there in relation  
14 to the crime.

15 Q. All right, and so that information -- you would have  
16 given Judge Butler information that the crime scene had been  
17 processed?

18 A. Yes.

19 Q. And you would have given him information that there  
20 was not just some vague location, but, in fact, a very  
21 specific location that had been pointed out by a witness?

22 A. Yes.

23 Q. And that witness, Ms. Smith, correct?

24 A. Yes.

25 Q. Had specific information according to those detectives

DAVID RUSHTON CROCKER - REDIRECT BY von HERRMANN

- 1 about the crime?
- 2 A. Yes.
- 3 Q. This was not some vague, anonymous tip?
- 4 A. No.
- 5 Q. This was an individual who had provided them with  
6 information -- with information that they were able to  
7 confirm, is that ---
- 8 A. That's correct.
- 9 Q. Is that your understanding?
- 10 A. (No response.)
- 11 Q. And do you know what Ms. Smith's relationship was to  
12 these individuals?
- 13 A. I -- I seem to remember that she was the girlfriend of  
14 someone involved. I don't recall.
- 15 Q. And if she was the girlfriend of someone involved, do  
16 you think that you relayed -- may have relayed that  
17 information to Judge Butler?
- 18 A. If I had knowledge at that time, certainly I would  
19 have, yes Ma'am.
- 20 Q. Because that would be something important for him to  
21 know?
- 22 A. Absolutely.
- 23 Q. And something that he probably would want to know?
- 24 A. Yes.
- 25 Q. All right, and so you think that you -- that you told

DAVID RUSHTON CROCKER - REDIRECT BY von HERRMANN  
BY THE COURT

1 him about that?

2 A. It -- in the normal course of me conducting my  
3 investigation ---

4 **MR. HAZZARD:** Object to speculation.

5 **THE COURT:** I'm going to allow it.

6 A. In the normal course of me conducting my  
7 investigations, this is something that I would have passed on  
8 to him to make sure that he had the information. I'm caught  
9 in a situation here where I obtained warrants for a case that  
10 once this was done, I -- my involvement, this was my  
11 involvement with this -- this homicide.

12 Q. Okay, but your understanding at the time was that she  
13 had a relationship with one of these named individuals?

14 A. Yes.

15 **MS. von HERRMANN:** I don't have anything further.

16 **THE COURT:** All right, did you tell that to the  
17 magistrate? Do you know if you told that to the magistrate?

18 A. I cannot sit here, Your Honor, and say that I  
19 specifically told him that, no.

20 **THE COURT:** All right, and the evidence secured at the  
21 crime scene, did you specifically tell the magistrate what  
22 that evidence was?

23 A. No sir, I can't specifically say I told him all the  
24 evidence that was secured.

25 **THE COURT:** All right, so -- all right, thank you. You

## COURT'S RULING

1 may step down.

2 All right, regarding these warrants, we'll suspend the  
3 motion and we'll have to have Judge Butler testify because if  
4 no information was given to Judge Butler about -- even if the  
5 name of the person wasn't given to Judge Butler who the  
6 person was as far as what their connection was to the crime,  
7 how they could have known this information, there's  
8 absolutely no basis for Judge Butler to have gauged the  
9 credibility or the reliability of the witness.

10 From what I've heard so far is all the magistrate knew  
11 was somebody told the police some information that might  
12 point to these people, didn't identify the person, didn't  
13 identify the person's connection to the crime, didn't  
14 identify to the magistrate any way that the magistrate could  
15 judge how the person knew the information and what they knew  
16 and if there's any credibility or believability to it.  
17 There's just nothing that's been testified so far to indicate  
18 that because as the detective stated, all the information  
19 except for where the residence of the deceased was, and they  
20 found the fellow lying deceased on the floor, all the rest of  
21 it came from Ms. Smith and the magistrate didn't even know  
22 the name of that particular person, so if the magistrate  
23 doesn't have anything, any information on which to judge  
24 credibility or believability, information, how did they come  
25 about, why did they know it, what connection they had to it,

## COURT'S RULING

1 the magistrate could not have issued these warrants, not  
2 possible.

3 **MS. von HERRMANN:** We'll get Judge Baker (sic).

4 **THE COURT:** All right, well, we're going to have to  
5 because otherwise there's no possibility he could have issued  
6 these warrants. I mean, it would be strictly and absolutely  
7 impossible, so we're going to suspend them and we'll hear  
8 from Judge Butler.

9 **MS. von HERRMANN:** Now, we've got other -- Detective  
10 Collins is here, and we have other search warrants that he  
11 did.

12 **THE COURT:** Well, let's -- let's move on to those.

13 **MR. McCOLLUM:** May it please the Court, Your Honor.

14 **THE COURT:** Yes sir.

15 **MR. McCOLLUM:** Can we see if we can get Judge Butler  
16 here today?

17 **MS. von HERRMANN:** Your Honor, if you don't mind --

18 **THE COURT:** At this -- at this point in time we're  
19 going to move on and we're going to hear all those other  
20 motions, and then we'll see about Judge Butler. Thank you  
21 very much. Let's move along.

22 **MS. von HERRMANN:** All right. This is the search  
23 warrant for the incident location, which was [REDACTED] Barberry  
24 Court, and the State calls Detective Tony Collins.

25 **THE COURT:** All right.

TONY COLLINS - DIRECT BY von HERRMANN

1 Please come around and be sworn.

2 TONY COLLINS, being first duly sworn, states  
3 as follows:

4 **DIRECT-EXAMINATION BY MS. von HERRMANN:**

5 Q. Detective Collins, how were you employed back in April  
6 14th of 2008?

7 A. I was associated with the Criminal Investigation  
8 Division working property crimes.

9 Q. And did you have an opportunity to obtain a search  
10 warrant for [REDACTED] Barberry Court?

11 A. Yes, I did.

12 Q. And tell the Court, please, what your probable cause  
13 was for getting that search warrant.

14 A. On that particular evening, I was contacted by  
15 Sergeant Chip Squires, who is the ---

16 **THE COURT:** Let me stop you for one second.

17 Have we made a copy of this warrant and affidavit and  
18 all an exhibit yet?

19 **MS. von HERRMANN:** No sir.

20 **THE COURT:** Let's do that, please. Do we have one?  
21 Do you have one?

22 A. Yes sir, I do have a copy.

23 **THE COURT:** You've got a copy of it, ---

24 A. Yes sir.

25 **THE COURT:** --- and that's a -- as you understand it a

TONY COLLINS - DIRECT BY von HERRMANN

1 true and correct copy of the warrant, the affidavit, the  
2 return, everything?

3 A. Yes sir.

4 THE COURT: All right. Hand that to the Court  
5 Reporter, please.

6 (SEARCH WARRANT ( [REDACTED] BARBERRY COURT) MARKED AS  
7 DEFENDANT'S (COLLINGTON) EXHIBIT NUMBER 4.)

8 THE COURT: All right, proceed on then. Thank you.

9 A. On this particular evening, I was contacted by  
10 Sergeant Chip Squires -- he is the lead over the Crimes  
11 Against Person Division of the Horry County Police Department  
12 -- to obtain a search warrant for a residence where there had  
13 been a death, an investigation.

14 Q. And are you -- did you happen to go actually to the  
15 scene of that ---

16 A. Not before I obtained a search warrant.

17 Q. So you obtained some other search warrants with regard  
18 to this case, is that correct?

19 A. That is correct.

20 Q. And those search warrants were obtained subsequent to  
21 this one, so this one was the first one that you obtained, is  
22 that correct?

23 A. Yes Ma'am.

24 Q. All right, and tell me what information is here in the  
25 affidavit, if you will. Let's just go through it and ---

TONY COLLINS - DIRECT BY von HERRMANN

1 A. Read it?

2 Q. If you will.

3 A. It states that on Monday, April 14th of 2008, officers  
4 with the Horry County Police Department responded to a  
5 residence that is located at [REDACTED] Barberry Court in the  
6 Conway Section of Horry County in reference to a shooting  
7 complaint. Upon the arrival of -- upon the arrival, a male  
8 that was standing at the front door of the residence pointed  
9 inside. The officers went inside the residence and located a  
10 female that had been assaulted. This victim pointed to a  
11 male that was lying in the hallway floor. The victim was  
12 deceased as a result of a gunshot wound by the  
13 intruders/assailants. At this time the police officers are  
14 actively investigating the death of the male and assault of  
15 the female that occurred at the residence described in this  
16 document.

17 Q. And so the information that you had from Sergeant  
18 Squires at that time was that there was a deceased victim in  
19 this residence?

20 A. That's correct.

21 Q. And that there were two witnesses that had been at the  
22 residence who were on scene?

23 A. That is correct.

24 Q. And do you recall what information other than what's  
25 in this written -- in the affidavit for the search warrant,

TONY COLLINS - DIRECT BY von HERRMANN  
CROSS BY McCOLLUM

1 what additional information you may have given to Judge  
2 Butler?

3 A. The -- as best my memory serves me, I was provided the  
4 details that there was more than one suspect had entered this  
5 residence in what we would refer to as a home invasion and  
6 that they had fled the scene, leaving a deceased person  
7 behind and that there was two witnesses to that.

8 MS. von HERRMANN: I don't have any more questions with  
9 regard to this witness on this search warrant.

10 MR. McCOLLUM: May it please the Court.

11 THE COURT: Yes sir.

12 MR. McCOLLUM: May I see the exhibit, please.

13 CROSS-EXAMINATION BY MR. McCOLLUM:

14 Q. Detective Collins, did you, yourself, go to [REDACTED]  
15 Barberry Court?

16 A. Eventually I did, yes sir.

17 Q. This warrant was obtained on April the -- April the  
18 14th. Well, let me, instead of putting words in your mouth,  
19 when did you go to -- was that warrant issued by Judge Butler  
20 as well?

21 A. Yes sir, it was.

22 Q. And do you know what time it was issued?

23 A. It indicates in Judge Butler's handwriting, I believe  
24 that's 5:05 P.M.

25 Q. And does it indicate the date that it was issued?

TONY COLLINS - CROSS BY McCOLLUM

- 1 A. April 14th of 2008.
- 2 Q. 5:00 P.M. or shortly thereafter on April 14th, 2008?
- 3 A. Yes sir.
- 4 Q. And the information you had was that the home invasion  
5 and shooting occurred that same day?
- 6 A. That is correct. They were on scene when they were  
7 communicating with me.
- 8 Q. Now, when the officers -- do you know which officers  
9 responded to the scene?
- 10 A. I was contacted by the Sergeant. No sir, I do not.
- 11 Q. Do you know how many officers entered the scene?
- 12 A. I do not.
- 13 Q. And by the scene, I mean [REDACTED] Barberry Court.
- 14 A. No sir.
- 15 Q. But you certainly had information that officers  
16 entered the scene and observed the deceased lying on the  
17 floor, right?
- 18 A. That was conveyed to me.
- 19 Q. And do you know how long the officers stayed inside  
20 the house or inside of the duplex at [REDACTED] Barberry Court --  
21 well, let me retract that. Do you know what time the  
22 officers arrived there?
- 23 A. No sir.
- 24 Q. Do you know what time the shooting allegedly occurred?
- 25 A. No sir.

TONY COLLINS - CROSS BY McCOLLUM

1 Q. Do you know if the shooting was reported almost  
2 immediately?

3 A. No sir.

4 Q. Okay, and all you know is that somebody called you and  
5 said go to Judge Butler and let's get a search warrant?

6 A. Sergeant Squires called me from the scene. They had  
7 just responded to this incident and requested I obtain a  
8 warrant from Judge -- he didn't say Judge Butler. He just  
9 said a search warrant.

10 Q. Okay, so he didn't direct you to Judge Butler?

11 A. No sir.

12 Q. And how did you come to arrive at going to Judge  
13 Butler then?

14 A. The time that it is, I can't tell you specifically, as  
15 we've heard today we went to his house or not on that  
16 particular warrant. I would call -- magistrates provide us  
17 their phone information and we contact whoever is available  
18 and after hours, basically you try to find whoever you can to  
19 go to. In this particular case, I would have tried to locate  
20 a Conway magistrate typically because we were in Conway for a  
21 crime scene, and Judge Butler was the one I found.

22 Q. And so evidence may or may not have been collected  
23 prior to the issuance of this warrant?

24 A. I can't testify to that either way, sir.

25 Q. It may have been, may not have been, right?

TONY COLLINS - CROSS BY McCOLLUM  
CROSS BY HAZZARD

1 A. I can't answer either way, sir, on that.

2 Q. Now, this particular return for this search warrant,  
3 where it has the return for property taken, it just says  
4 simply see evidence chain, right?

5 A. Yes sir.

6 Q. Okay, so did you participate in the return or the  
7 evidence chain of things that were collected from the  
8 residence?

9 A. In this location, I did not.

10 Q. So -- and you don't know what time those items were  
11 collected?

12 A. No sir, I do not.

13 Q. And you don't know if anyone at the residence that  
14 lived in the residence necessarily gave consent for the  
15 search?

16 A. That was not provided to me either way.

17 **MR. McCOLLUM:** All right, thank you, sir.

18 That's all I have of this witness, Your Honor.

19 **THE COURT:** Mr. Hazzard.

20 **MR. HAZZARD:** Thank you, Your Honor.

21 **CROSS-EXAMINATION BY MR. HAZZARD:**

22 Q. Detective Collins, let me be clear on this now. On  
23 the -- on the date of the incident, April 14th, 2008, around  
24 5:00 P.M., do you recall what time Chip Squires contacted  
25 you?

TONY COLLINS - CROSS BY HAZZARD

1 A. I was still at the Police Department, so it would have  
2 had to have been before 4:30.

3 Q. Okay, and Chip Squires contacts you, says we need you  
4 to find the magistrate because we need to get a warrant,  
5 search warrant?

6 A. Something similar to that probably, yes sir.

7 Q. Okay, something like -- I mean, that was the task that  
8 you were given?

9 A. That's correct.

10 Q. Were you given any other task at that time?

11 A. Not at that moment.

12 Q. Okay, so you then apparently get up with Judge Butler  
13 sometime around 5:00 P.M. because I believe that's when you  
14 indicated he actually signed the warrant, is that correct?

15 A. By his indication, 5:05 P.M.

16 Q. Okay, 5:05 P.M. on April 14th, okay, and the incident  
17 itself allegedly occurred sometime between 3:00 and 4:00 P.M.  
18 on April 14th, would that be correct?

19 A. I have no knowledge of that.

20 Q. Okay, so you have no knowledge of that?

21 A. No.

22 Q. All right, so now when you go and talk to Judge  
23 Butler, you indicated that information was still being  
24 relayed or conveyed to you. Who was relaying or conveying  
25 this information, sir?

## TONY COLLINS - CROSS BY HAZZARD

- 1 A. Sergeant Squires.
- 2 Q. Sergeant Squires, and was he on scene at [REDACTED] Barberry  
3 at that time to your knowledge?
- 4 A. He indicated that he was.
- 5 Q. He indicated he was, all right, and he indicated to  
6 you that there were two individuals located at the home at  
7 that time, is that correct?
- 8 A. Yes sir.
- 9 Q. Okay, and two individuals other than the deceased,  
10 correct?
- 11 A. Yes sir.
- 12 Q. Okay, and when he indicated that there were these two  
13 individuals, did he indicate who they were or what their  
14 relationship to the residence was?
- 15 A. Not to me.
- 16 Q. Okay. To your knowledge, were any warrants requested  
17 or issued prior to this particular warrant that you obtained  
18 from Judge Butler?
- 19 A. In reference to this case?
- 20 Q. In reference to this case, yes sir.
- 21 A. Not to my knowledge.
- 22 Q. Not to your knowledge, okay, and with regard to this  
23 case then, what were you able to tell Judge Butler about this  
24 case in order to obtain this particular warrant at 5:05 P.M.  
25 on April 14th?

TONY COLLINS - CROSS BY HAZZARD

1 A. Exactly what I just read aloud.

2 Q. Okay. You didn't tell him anything other than that?

3 A. I didn't have any other information to tell.

4 Q. Okay, so let's be clear. What you told him is what  
5 you read? There is no -- you didn't add anything verbally to  
6 it or add to it in any way with any oral statement?

7 A. The only thing I could tell him would be I didn't  
8 write Sergeant Squires' name in here. I possibly would have  
9 referred to that, ---

10 Q. Okay.

11 A. --- where the information came from, but that it was  
12 definitely from another source other than myself.

13 Q. Okay, so basically what we're talking about is what  
14 appears to be a home invasion, there is a victim to that home  
15 invasion that appears to be dead, there appear to be two  
16 people on scene at the time, evidence picked up, and we need  
17 a warrant actually for the residence where this scene is  
18 located so we can properly do our job, correct?

19 A. I wouldn't say evidence picked up.

20 Q. Okay, so evidence seen possibly, may be evidence on  
21 the premises, and we want to have that warrant so we can not  
22 have any issue regarding what we collect basically?

23 A. Correct.

24 Q. Okay.

25 MR. HAZZARD: Nothing further.

TONY COLLINS - REDIRECT BY von HERRMANN  
COURT'S RULING

1           **THE COURT:** Any redirect.

2           **REDIRECT-EXAMINATION BY MS. von HERRMANN:**

3           Q.       You told him there was a dead body in there, right?

4           A.       Yes Ma'am.

5           **MS. von HERRMANN:** Okay, thank you.

6           **THE COURT:** You may step down, sir.

7           Any arguments, Mr. McCollum?

8           **MR. MCCOLLUM:** No, Your Honor.

9           **THE COURT:** Any arguments, Mr. Hazzard?

10          **MR. HAZZARD:** No, Your Honor.

11          **THE COURT:** All right, in this particular matter, what  
12          was presented to the magistrate was that the Horry County  
13          Police Department responded to a call at a specific location  
14          in Horry County regarding a shooting complaint. When the  
15          officers arrived, a male individual standing at the front of  
16          the -- the front door of the residence pointed inside of the  
17          residence to the officers.

18          The officers as a result of that went inside the  
19          residence, found a female who had been assaulted. That  
20          victim pointed the officers to a male individual who was  
21          lying in the hallway floor. They found that victim to be  
22          deceased as a result of a gunshot wound, by information  
23          provided, by intruders and/or assailants and that the  
24          magistrate knew that the police -- this was obviously a very  
25          fresh crime and that at this point in time the police

COURT'S RULING  
TROY ALAN LARGE - DIRECT BY von HERRMANN

1 officers were investigating the death of the male and the  
2 assault of the female that occurred at that residence, this  
3 being a search warrant for that residence.

4 Clearly the magistrate had sufficient probable cause to  
5 issue this search warrant. Clearly there was more than  
6 sufficient information provided to the magistrate to make a  
7 independent decision on the facts of the matters related so  
8 that the search warrant could be issued for what appeared to  
9 be the scene of multiple crimes, and, therefore, the motion  
10 to suppress any evidence collected as a result of this search  
11 warrant is denied. Thank you very much.

12 Any further search warrants?

13 **MS. von HERRMANN:** Yes sir, Your Honor. There is a  
14 search warrant, actually a consent to search and a search  
15 warrant with regard -- Your Honor, there was a search warrant  
16 for Ms. Collington's house. There's also a consent to  
17 search, and I'd just like to elicit the testimony about the  
18 consent to search initially.

19 **THE COURT:** Very good.

20 **MS. von HERRMANN:** The State calls Detective Alan  
21 Large.

22 **TROY ALAN LARGE,** being first duly sworn,  
23 states as follows:

24 **DIRECT-EXAMINATION BY MS. von HERRMANN:**

25 Q. Detective Large, did you have the opportunity on April

TROY ALAN LARGE - DIRECT BY von HERRMANN

1 the 14th of 2008 to interview the defendant in this case,  
2 Ladorrean Collington?

3 A. Yes Ma'am, I did.

4 Q. Okay, and during the course of that interview, did you  
5 ask for her consent to search her premises?

6 A. Yes Ma'am.

7 Q. And did she give you consent to search?

8 A. Yes Ma'am.

9 Q. Do you have a copy of that there?

10 A. Yes Ma'am. This is our standard form for a consent  
11 that our department uses.

12 MS. von HERRMANN: I'm going to have this -- let me  
13 have that marked.

14 (CONSENT TO SEARCH MARKED AS STATE'S EXHIBIT NUMBER 1.)

15 Q. All right, let me hand you what's been -- now been  
16 marked as State's Exhibit 1 and if you will just identify  
17 that.

18 A. Again, what it is, is the Horry County Police  
19 Department has forms that we use for like Miranda, consent,  
20 DNA, anything. This is our standard form for a consent to  
21 search.

22 Q. And read, if you will, into the record, please, what  
23 that consent to search says.

24 A. It gives -- here it says, I, and then the person that  
25 you're interviewing or giving consent places their name. Ms.

TROY ALAN LARGE - DIRECT BY von HERRMANN

1 Collington's name is printed in here, have been informed by  
2 the police officer, Detective Troy Alan Large, of the Horry  
3 County Police Department of my constitutional right not to  
4 have a search of my premises and property owned by me and/or  
5 under my care, custody and control without a search warrant.

6 Knowing my lawful right to refuse, I am willing to give  
7 consent or permission for a complete search of all property  
8 located at 3555 Highway 544, Apartment [REDACTED], Conway, which is  
9 under my custody and/or control. This is a written  
10 permission to search my -- search, freely and voluntarily  
11 given at 6:03 P.M. on April 14, 2008, and then it has a place  
12 to print, and then the person's signature, and then my  
13 witness and the case number.

14 **MS. von HERRMANN:** Judge, I'd ask to make that part of  
15 the record.

16 **THE COURT:** Any objection, Mr. Hazzard, or Mr.  
17 McCollum, either one of y'all?

18 **MR. HAZZARD:** No, Your Honor.

19 **MR. MCCOLLUM:** No, Your Honor.

20 **THE COURT:** All right, Thank you very much.

21 Q. And did you have a conversation with Ms. Collington  
22 prior to her signing this consent form?

23 A. Yes Ma'am.

24 Q. And did you explain it to her?

25 A. Yes Ma'am.

TROY ALAN LARGE - DIRECT BY von HERRMANN

1 Q. All right, and did she consent to it?

2 A. Yes Ma'am.

3 Q. And is that her -- is it your testimony that is, in  
4 fact, her signature there on the bottom?

5 A. Yes Ma'am.

6 Q. All right. At the time that you interviewed her, did  
7 she appear to be under the influence of any drugs or alcohol  
8 or anything that would affect her ability to understand this  
9 particular document?

10 A. No.

11 Q. And had you been talking to her for -- for some period  
12 of time prior to obtaining this consent to search?

13 A. Yes Ma'am.

14 Q. And did she appear to be in a normal state of mind?

15 A. Yes Ma'am, other than she did -- she was related to  
16 the victim, I mean, a little distressed over learning his  
17 death, but normal other than that.

18 Q. All right, and so as far as you know, it was given  
19 freely and voluntarily? You didn't deprive her of anything?

20 A. No.

21 Q. Did she ask you to go to the bathroom or for a drink  
22 of water or anything that you refused to give her?

23 A. No, nothing, nothing refused.

24 **MR. HAZZARD:** Your Honor, for clarification, are we  
25 doing both the consent to search and the Jackson V. Denno or

TROY ALAN LARGE - DIRECT BY von HERRMANN

1 -- because it kind of seems like we're sliding into a Jackson  
2 V. Denno.

3 **MS. von HERRMANN:** If you just don't mind me asking  
4 whether she consented to that, Mr. Hazzard. I'll be happy to  
5 address the ---

6 **THE COURT:** Counsel. I don't -- we're not going to  
7 have this, okay. We're going to stop this right now and I'm  
8 not going to have it at all. Any objections, and I'm talking  
9 to all three, okay, just general directions here, anything  
10 that y'all want to say, you'll address it to the Court. You  
11 will not, not, have any bi-play, any communications between  
12 the three of you when you are addressing the Court. Are we  
13 clear about that, Solicitor?

14 **MS. von HERRMANN:** Yes sir.

15 **MR. McCOLLUM:** Your Honor, I just don't -- on a number  
16 of occasions I've spoken to the Solicitor.

17 **THE COURT:** I said when you are addressing the Court,  
18 you will not have any communications between the three of you  
19 unless I direct that. We're not going to have any arguments  
20 between the three, any comments between the three. When you  
21 are addressing the Court, you will address the Court. I will  
22 respond to it and we're not going to have any of this in the  
23 hearing now or in the future. That's what I'm saying. Do  
24 you understand that, Mr. McCollum?

25 **MR. McCOLLUM:** Yes sir, Your Honor. That's my

TROY ALAN LARGE - CROSS BY McCOLLUM

1 practice.

2 THE COURT: Very good.

3 Mr. Hazzard?

4 MR. HAZZARD: Yes sir, Your Honor.

5 THE COURT: Very good. All right, the purpose of this  
6 particular motion as I understand it is the search of the  
7 residence of the Defendant Collington, is that correct,  
8 Solicitor?

9 MS. von HERRMANN: Residence and vehicle.

10 THE COURT: Residence and vehicle. All right, that's  
11 what we're dealing with, Mr. Hazzard.

12 Very good. Continue on, now.

13 MS. von HERRMANN: That's all I have with regard to  
14 consent.

15 THE COURT: All right, very good.

16 All right, Mr. McCollum.

17 MR. McCOLLUM: May it please the Court.

18 THE COURT: Yes sir.

19 CROSS-EXAMINATION BY MR. McCOLLUM:

20 Q. Detective Large, how did you know where she lived?

21 A. We were given information in reference to one of the  
22 witnesses. The -- Ms. Collington, our victim, I believe she  
23 was expecting his baby. They were in a relationship.

24 Q. Was -- at the time of the -- in this early stage in  
25 the investigation, was she under investigation?

TROY ALAN LARGE - CROSS BY McCOLLUM

1 A. Just basically wanted to get a interview, interviewing  
2 the family and all, and she was -- like I said, she was  
3 expecting his child or had been a girlfriend of his, or they  
4 were dating.

5 Q. Did someone point her out to you?

6 A. Yeah. Her name was given as a family member or  
7 acquaintance or a girlfriend.

8 Q. And do you know who gave that information to you?

9 A. I believe it was developed through just history of  
10 finding family members, notification.

11 Q. So is it safe to say you don't know?

12 A. Exactly who gave it to me, no.

13 **MR. McCOLLUM:** May I approach, Your Honor?

14 **THE COURT:** Yes sir.

15 Q. Were you present at -- outside her residence when she  
16 signed this form?

17 A. I believe -- I believe so. I can't remember exactly  
18 where.

19 Q. Do you know if you were outside or inside her  
20 residence when you signed that form?

21 A. Probably outside. I didn't go in -- I never went in  
22 the residence.

23 Q. Do you know how many officers were present at --  
24 outside the residence at the time that the form was read to  
25 her?

TROY ALAN LARGE - CROSS BY McCOLLUM

- 1 A. It was just me.
- 2 Q. So you were the only one. Were there other consents  
3 that were given or signed off on at the same time?
- 4 A. In my presence?
- 5 Q. Yes sir.
- 6 A. No, this is the only one.
- 7 Q. All right, and then did you explain to her that --  
8 well, how extensive was the search of her residence at  
9 Apartment [REDACTED], 3555 Highway 544? Was a complete search of  
10 the residence done?
- 11 A. Yeah. I mean, they went through and did our standard  
12 protocol of the search when we are given permission.
- 13 Q. Do you know how many officers ---
- 14 A. No sir.
- 15 Q. --- conducted the search?
- 16 The complete protocol of the search is to search all  
17 drawers, all cabinets, bedding; is that a safe  
18 characterization?
- 19 A. Usually to make a thorough search, yes sir.
- 20 Q. Is it tossed, so to speak?
- 21 A. Not usually, sir. I mean, ---
- 22 Q. And do you know how long that search took place?
- 23 A. No sir.
- 24 Q. And in terms of the vehicles, vehicles that you  
25 believe belonged to her were searched as well?

TROY ALAN LARGE - CROSS BY McCOLLUM

1 A. I think at a later time.

2 Q. Okay, at a later time?

3 A. I believe so.

4 Q. Were they -- the vehicles searched at a later time, do  
5 you know if that was pursuant to this consent to search which  
6 was signed at 6:03 P.M. on April the 14th -- excuse me --  
7 yeah, on April the 14th?

8 A. I -- I can't recall. Like I said, I spent most of the  
9 time interviewing Ms. Collington, and like I said, other than  
10 getting the consent and doing a formal interview with her, I  
11 didn't go in the residence or search the vehicle.

12 Q. Is it possible that she was at the Police Station when  
13 the consent to search was signed?

14 A. Yes, it was.

15 Q. It was at the Police Station or it was possible?

16 A. It's possible. If it was at the Police Station, it  
17 was probably recorded.

18 Q. Okay, so to be fair to you, Detective Large, this  
19 thing happened over three years ago, right?

20 A. Yes.

21 Q. And you've got the consent to search that indicates  
22 that Ms. Collington signed it, right?

23 A. Right.

24 Q. And you've got a -- you witnessed it, I believe, on  
25 the bottom, right?

TROY ALAN LARGE - CROSS BY McCOLLUM

1 A. Yes sir.

2 Q. Is it safe to say that other than what's on the face  
3 of this consent to search, you really don't have any memory  
4 of it other than the document itself?

5 A. The memory is I made contact with Ms. Collington at  
6 her residence and initially spoke to her and told her what we  
7 were doing. I know we went from there -- we went down to the  
8 Horry County Police Department and, like I said, this form  
9 was signed and also, I believe, a Miranda form was signed,  
10 and we did a formal interview. That was my role with Ms.  
11 Collington that particular day.

12 Q. Do you recall if you explained to her the scope of the  
13 consent, in other words that this says premises and property  
14 owned by me or under my control? Would she know that that  
15 meant the vehicles?

16 A. It's possible, yes sir.

17 Q. It doesn't say vehicles, right?

18 A. No. Usually if we do the vehicle in particular, I'll  
19 list that, too.

20 Q. And that's not listed on here, right?

21 A. No, not on this particular one.

22 Q. So is it your testimony that her vehicle was not  
23 searched pursuant to this consent?

24 A. Like I said, I was with her and she was giving a  
25 statement, cooperating. She had signed the Miranda, waiving,

TROY ALAN LARGE - CROSS BY McCOLLUM  
CROSS BY HAZZARD

1 and also the consent form.

2 Q. Okay, and just briefly, is it your understanding that  
3 the residence that you believe she occupied was completely  
4 searched and no evidence incriminating her was found in that  
5 residence?

6 A. I guess. I didn't do the search. Like I said, I did  
7 -- mainly made initial contact with Ms. Collington and did a  
8 initial statement getting some background on the victim and  
9 her -- his acquaintances and stuff.

10 Q. Do you know if, according to this consent or according  
11 to something else, if any vehicles that allegedly belonged to  
12 or possessed by her, were any vehicles of hers searched?

13 A. On that particular day, I -- I don't know, sir. I  
14 wasn't there.

15 MR. McCOLLUM: That's all I have, Your Honor.

16 THE COURT: All right. Thank you very much.

17 MS. von HERRMANN: The State calls ---

18 THE COURT: I'm sorry. Mr. Hazzard, did you have any  
19 questions?

20 MR. HAZZARD: Thank you.

21 CROSS-EXAMINATION BY MR. HAZZARD:

22 Q. Now, did you report to [REDACTED] Barberry Court before or  
23 after speaking with Ms. Collington?

24 A. It would be -- I reported there beforehand. The  
25 initial call came out. I'm part of our Violent Crime

TROY ALAN LARGE - CROSS BY HAZZARD

1 Section. We responded to a shooting incident which turned  
2 into being a homicide, so met there and then started doing  
3 our -- our preliminary investigation about a victim and  
4 gathering information.

5 Q. And so I'm clear, there was some talk about that  
6 consent being signed at the Police Department. Did you ever  
7 talk with Ms. Collington at her residence that day?

8 A. Yeah. That's where I made the first contact. I found  
9 her and another person. They had been to Food Lion and had  
10 just returned back to the apartment complex, and from there  
11 we went back to the Police Department.

12 Q. Okay. Now, did you attempt to obtain or obtain any  
13 warrants from Magistrate Butler prior to searching Ms.  
14 Collington's residence?

15 A. No sir. Like I say, once I made contact with Ms.  
16 Collington, I was with her the whole time, like I said, to  
17 get a statement from her.

18 Q. Okay, and so the search of her residence and her  
19 vehicles was based solely on the consent form that she  
20 signed, is that correct?

21 A. I guess, like I said, standard procedure was because  
22 of the investigation, I read her her Miranda rights and  
23 offered the opportunity to search the residence, and she  
24 cooperated and consented.

25 Q. Okay, and so since you didn't attempt to obtain or

TROY ALAN LARGE - CROSS BY HAZZARD

1 obtain any warrants from Magistrate Butler, is it fair to  
2 state then that on April 14th, April 15th, from the time of  
3 the alleged incident to your involvement with the incident,  
4 through from that point on that you did not have any  
5 conversation or relay any information to Magistrate Butler,  
6 is that correct, or do you recall?

7 A. No, I didn't speak to -- to Mr. Butler or Judge Butler  
8 in reference to the case.

9 Q. Okay. Do you recall providing any information to  
10 anyone else who was seeking to obtain a warrant from Judge  
11 Butler?

12 A. I provided information to Detective Townsend. He was  
13 the lead investigator, and also we had briefings in reference  
14 to what we would determine, each detective, as we gather  
15 information, provide that documentation to the case agent.

16 Q. Do you have any idea or do you have any documentation  
17 with you that would indicate what time you got to [REDACTED]  
18 Barberry Court, sir?

19 A. No sir.

20 Q. Okay, but it would have been sometime before the  
21 consent was signed at 6:03 P.M. on April 14, 2008, by Ms.  
22 Collington?

23 A. Oh, yes sir.

24 Q. Okay, so between 6:03 P.M., the time that we can  
25 pinpoint, through the following morning when you've heard the

TROY ALAN LARGE - CROSS BY HAZZARD  
TONY COLLINS - DIRECT BY von HERRMANN

1 discussion of these warrants obtained, no interaction between  
2 you and Judge Butler, no information provided to him, is that  
3 correct, sir?

4 A. No sir, I did not speak with Judge Butler in reference  
5 to this case.

6 **MR. HAZZARD:** All right, nothing further.

7 Thank you, Your Honor.

8 **THE COURT:** All right, Solicitor.

9 **MS. von HERRMANN:** Thank you. The State calls  
10 Detective Tony Collins.

11 **THE COURT:** You may step down, sir.

12 **TONY COLLINS,** being first duly sworn, states  
13 as follows:

14 **DIRECT-EXAMINATION BY MS. von HERRMANN:**

15 Q. Detective Collins, you had indicated earlier that you  
16 were employed by the Horry County Police Department on April  
17 the 14th of 2008, is that correct?

18 A. That is correct.

19 Q. And I believe you testified earlier that you had gone  
20 and gotten a search warrant for [REDACTED] Barberry Drive from  
21 Detective -- I mean, excuse me, from Judge Butler that day,  
22 is that correct?

23 A. That is correct.

24 Q. And then did you have an opportunity to go back and  
25 get another search warrant from Judge Butler?

TONY COLLINS - DIRECT BY von HERRMANN

1 A. Actually several.

2 Q. Okay. How about for Apartment ■, Number ■ at Coastal  
3 Villas Condominiums, and for a 1997 Ford Expedition?

4 A. I did.

5 Q. And for a green in color Honda Accord?

6 A. I did, yes Ma'am.

7 Q. And are those, all three of those, locations included  
8 in this search warrant?

9 A. The residence and both vehicles, yes Ma'am.

10 MS. von HERRMANN: Let's go ahead and have this search  
11 warrant marked. It should be marked as yours, Greg, is  
12 that ---

13 THE COURT: It doesn't really matter, Solicitor. It's  
14 just for the purpose of the motion. Why don't you just go  
15 ahead and mark it.

16 (SEARCH WARRANT (■, 3555 HIGHWAY 544) MARKED AS  
17 STATE'S EXHIBIT NUMBER 2.)

18 Q. All right, take a look at that search warrant if you  
19 will.

20 A. Okay.

21 Q. What time did you go and have -- have that taken to  
22 the magistrate?

23 A. Well, when he signs it and dates it, that's actually  
24 at the end of the process when we're leaving, but it  
25 indicates eight o'clock on the night of April the 14th he

TONY COLLINS - DIRECT BY von HERRMANN

1 signed it.

2 Q. So between the time that you had gone and gotten the  
3 initial search warrant for the incident location at this  
4 time, had you been there at the incident location, Barberry  
5 Drive?

6 A. The previous search warrant I obtained from Judge  
7 Butler, I delivered to the crime scene location and did not  
8 leave again until I was instructed to obtain this warrant.

9 Q. And during the course of your time there at the crime  
10 scene, do you recall where there was some drug dogs or -- or  
11 crime scene canines that were brought out to the scene?

12 A. The Horry County Police Bloodhound Tracking Team was  
13 on location, and they were actually pursuing a track from the  
14 residence.

15 Q. And tell the Court, please, if you will, exactly how  
16 that works.

17 A. The Bloodhound Tracking Team arrives on the location  
18 and there is a sample provided to the animals at that  
19 location of a scent, a particular item that may have been  
20 left behind or some indicator that we would have based on the  
21 evidence of what we believe is where the person either stood  
22 or left behind and have the dogs actually look for that  
23 scent.

24 Q. Okay, and did that happen in this case?

25 A. It did.

TONY COLLINS - DIRECT BY von HERRMANN

1 Q. And did those dogs go from the incident location to  
2 some other location?

3 A. They did.

4 Q. And what was that location?

5 A. The inci- -- the incident they went to was Apartment

6 [REDACTED].

7 Q. Okay, and who owns that apartment?

8 A. Ladorrean Collington.

9 Q. All right, and did -- while you were there, was there  
10 additional information that was provided from the two  
11 individuals who lived in that home, who would be Frankie  
12 Davis and Anthony Graham?

13 A. They were conversing with the other investigators, not  
14 with me.

15 Q. Okay, and did you have knowledge of what that conver-  
16 -- the gist of those conversations?

17 A. That's where I learned that those were the survivors  
18 of the actual home invasion, and I referred to Detective Tim  
19 Troxell who was the person I was coordinating with, but at  
20 this particular time, I'm actually observing the Bloodhound  
21 Tracking Team. There were plenty of investigators on the  
22 scene at the actual incident location and I was assisting  
23 them. If there was a perpetrator to jump up and run, I would  
24 be available to help them.

25 Q. Okay, so in addition to the information that you had

TONY COLLINS - DIRECT BY von HERRMANN

1 about the dogs, the Bloodhound Tracking Team, was there  
2 additional information which made you or the other detectives  
3 interested in the defendant in this case, Ms. Collington?

4 A. Detective Townsend -- not Townsend -- Detective  
5 Troxell had indicated to me he was conducting multiple  
6 interviews with different individuals at the apartment  
7 complex. I actually witnessed the tracking team go to Ms.  
8 Collington's apartment, so I knew they had tracked there and  
9 that was where I concentrated my efforts to see if I could  
10 help. By that time he had already informed me there were  
11 several other individuals on that property indicating this  
12 was the ex-girlfriend's residence and that they had been seen  
13 together earlier that day.

14 Q. All right, so you had some information then that there  
15 was a relationship between this defendant and the deceased?

16 A. Yes, and that there had been some police involvement  
17 in prior incidents.

18 Q. When you say some police involvement, tell me what you  
19 mean by that.

20 A. He indicated one of the people at the complex referred  
21 to the Police Department responding to a -- I think she broke  
22 a window or the accusation that she had broke a window on the  
23 deceased ---

24 Q. All right, when you say she, who is she?

25 A. Ladorrean Collington.

TONY COLLINS - DIRECT BY von HERRMANN

1 Q. All right, so you had information of some prior  
2 difficulties between the parties?

3 A. Yes. That was relayed to me by the other  
4 investigator.

5 Q. All right, and were you in addition to that given some  
6 information by one of the detectives about an interview that  
7 he had conducted with the two individuals who -- who were  
8 alive there at the scene?

9 A. No. That came from Sergeant Squires. I didn't  
10 actually speak to the investigator doing that interview.

11 Q. Tell me what information you got from Sergeant Squires  
12 about that.

13 A. The main thing that I learned from that was that the  
14 individuals responsible for the crime had fled in the  
15 direction of -- and I'm -- the name of the apartments has  
16 changed, but it's -- they had fled in the direction of  
17 Apartment [REDACTED].

18 Q. And so when you went to Judge Butler's, did you -- did  
19 you meet him at his house or at his office, do you recall?

20 A. On this particular occasion at 8:00 P.M., I want to --  
21 I want to recall that I went to his home.

22 Q. And what information in addition to the affidavit did  
23 you provide him with? Did you provide him with more specific  
24 information about the bloodhound tracking since you were  
25 involved in that?

TONY COLLINS - DIRECT BY von HERRMANN

1 A. On every search warrant I've ever obtained from Judge  
2 Butler, he normally greets, as the other investigator had  
3 indicated. He'll ask me every single time, what do you have,  
4 and I'll typically give him an overview or synopsis of what  
5 is exactly written here to say that, you know, we're working  
6 -- because I've already been to him one time on this same  
7 day. Judge, I'm back again today. You know, this is what  
8 we've got. The Bloodhound Tracking Team is on location. I  
9 actually have been there when they went to this residence,  
10 which we believe to be where the perpetrators may be or have  
11 been based on the dogs' scent track and other information  
12 that was obtained from people at that location, that this is  
13 the ex-girlfriend and there's been prior, I don't want to say  
14 violence, but prior incidents between him and her.

15 Q. Okay, and would you have -- even though it didn't have  
16 to do with this particular search warrant, would you have  
17 given him information about other leads that you all had  
18 developed and maybe what you were trying to follow up on with  
19 those types of things?

20 A. I would if I had them. I can't recall exactly that  
21 exact wordage I would have used on this particular time, but  
22 Judge Butler and I have talked extensively about search  
23 warrants I get from him to see how the case is going,  
24 especially when you come back to him like I did on this one,  
25 a few hours later, you're back for more. He's interested to

TONY COLLINS - DIRECT BY von HERRMANN

1 know the progress of the case.

2 Q. All right, and so would you have given him an update  
3 on whatever information you had at -- available at that time?

4 A. Whether it was relevant to this search warrant or not,  
5 I would have provided him an update on anything we had just  
6 to keep him informed since he was the magistrate of choice  
7 that evening.

8 Q. So you may have told him, we interviewed another  
9 witness, somebody that didn't even have anything to do with  
10 this particular case -- with this particular individual, is  
11 that fair enough?

12 A. Yes. He would -- I would have told him anything I  
13 knew at the time just to -- just being polite and saying,  
14 Judge, this is where we're at. This is the point we're  
15 investigating now, and probably see you again later.

16 Q. Okay, and so let's go through here the affidavit that  
17 you have. It says on Monday, April the 14th, officers with  
18 the Horry County Police Department responded to a residence  
19 located at [REDACTED] Barberry Court in the Conway Section of Horry  
20 County in reference to a shooting complaint. You already  
21 told him about that since you had gotten the search warrant  
22 for the incident location, is that correct?

23 A. That is correct.

24 Q. All right, and then it says upon arrival, the officers  
25 discovered the body of a deceased man that appeared to have

TONY COLLINS - DIRECT BY von HERRMANN

1 died due to the result of an assault or unnatural causes.  
2 I'm assuming you had told him that as well since your prior  
3 search warrant indicated that he was -- that he was deceased  
4 and that they had found him there, is that correct?

5 A. That is correct.

6 Q. All right. There is an ongoing investigation,  
7 including the acquisition of a search warrant for that  
8 residence, which you obtained, and the use of a Bloodhound  
9 Tracking Team, correct?

10 A. That is correct.

11 Q. And then you said you expanded a little bit about your  
12 involvement in that tracking team, right?

13 A. I did.

14 Q. All right. Members from that team have made numerous  
15 attempts to track the suspects from the victim's residence,  
16 right? You told him about that?

17 A. That is correct.

18 Q. With three attempts leading them to the front door of  
19 the residence described in this document, which would be Ms.  
20 Collington's residence?

21 A. Apartment [REDACTED].

22 Q. Okay, so not just one time the bloodhounds had hit on  
23 that residence, but three separate times?

24 A. That's correct.

25 Q. All right. Upon checking records, it has been

TONY COLLINS - DIRECT BY von HERRMANN

1 determined that this residence is occupied by the ex-  
2 girlfriend of the deceased victim, so you let him know about  
3 that?

4 A. Yes Ma'am.

5 Q. And then you said that there were some additional  
6 people that you had talked to at the apartment complex who  
7 had given you information about the relationship between Ms.  
8 Collington and the deceased as well?

9 A. Well, not that I had talked to, but another  
10 investigator, ---

11 Q. Right, but you had information ---

12 A. --- but I was actually on location when those  
13 interviews were occurring. I wasn't doing the interview.

14 Q. Okay, so I don't want to mis-state, but did you give  
15 -- I mean, did you give Judge Butler that information?

16 A. Yes, I did.

17 Q. All right, and it says the ex-girlfriend has recently  
18 made threats against the victim's life. Did you provide him  
19 with that information as well?

20 A. I did.

21 Q. And in addition to that, you said that you had told  
22 him that she, being Ms. Collington, had had some prior  
23 dealings with the police regarding this victim, is that ---

24 A. That is correct.

25 MS. von HERRMANN: All right, I don't have any further

TONY COLLINS - CROSS BY McCOLLUM

1 questions.

2 MR. McCOLLUM: May it please the Court.

3 THE COURT: Yes sir, Mr. McCollum.

4 CROSS-EXAMINATION BY MR. McCOLLUM:

5 Q. When you use the bloodhound to do your tracking, what  
6 -- what did you give the bloodhound to track? In other  
7 words, you have to give it a scent, right?

8 A. I don't actually do that. I'm not part of the  
9 Bloodhound Tracking Team. Having worked with the Violent  
10 Crimes and Property Crimes, we've been on location and  
11 observed many times how they do what they do, but to tell you  
12 specifically what was provided to the animal, I can't do  
13 that. I don't know.

14 Q. Did your investigation -- well, your investigation  
15 indicated that the people that committed the crime drove to  
16 the scene, right?

17 A. Well, I don't have any knowledge if they drove or  
18 walked. I have no idea.

19 Q. So to this day, you don't know how they ---

20 A. To this day I do not know if they -- a helicopter, a  
21 plane, or car. I have no idea.

22 Q. And did you participate in the search of Apartment ■-  
23 ■, Coastal Villas?

24 A. I did not.

25 Q. Were you present while the search was conducted?

## TONY COLLINS - CROSS BY McCOLLUM

1 A. I don't recall.

2 Q. Do you know if anything found that was of value was  
3 found inside the apartment?

4 A. Just from the return indicating that -- that's the  
5 only knowledge I have is what the return indicates.

6 Q. And what does the return indicate, quickly?

7 A. It states that nothing was taken from the residence.  
8 The vehicles were searched, and to see the chain.

9 Q. Nothing taken from the residence. Now, the residence  
10 had already been searched at the time the search warrant was  
11 issued, right?

12 A. The search warrant is issued and then the residence;  
13 is that what you're indicating? Yes.

14 Q. Well, the consent to search was given at 6:03 P.M. and  
15 the Judge signed the search warrant at 8:00 P.M. Do you know  
16 if the officers waited until after they had a search warrant  
17 to search the residence?

18 A. I do not know.

19 Q. And do you know how many times the residence was  
20 searched?

21 A. No sir.

22 Q. Do you know how many times the vehicles were searched?

23 A. No sir.

24 Q. What information did you have to lead you to believe  
25 and to tell Judge Butler that you needed to search the Ford

TONY COLLINS - CROSS BY McCOLLUM  
CROSS BY HAZZARD

1 Expedition and a green Honda Accord?

2 A. As in every investigation that involves a heinous  
3 crime, we indicate to the Judge that we believe people either  
4 use vehicles or conveyances to come and go from scenes or to  
5 store items.

6 Q. I understand that part, but in terms of, you know, you  
7 didn't search every vehicle in the parking lot, did you?

8 A. No sir. These vehicles were attached to that actual  
9 residence by computer checks, so that would have been the  
10 purpose for those two vehicles.

11 Q. Your testimony is that the Ford Expedition and the  
12 green Honda Accord were both registered to an individual that  
13 lived at that address?

14 A. That is what was told to me. I didn't particularly  
15 run them, but I was on scene when those numbers were called  
16 out to Dispatch.

17 Q. And were those vehicles registered to Ladorrean  
18 Collington?

19 A. I don't recall the registration information, sir.

20 MR. McCOLLUM: Thank you. That's all I have, Your  
21 Honor.

22 THE COURT: All right.

23 Mr. Hazzard.

24 MR. HAZZARD: Okay. Thank you, Your Honor.

25 CROSS-EXAMINATION BY MR. HAZZARD:

TONY COLLINS - CROSS BY HAZZARD

1 Q. Very briefly, I think I heard you to say that you were  
2 told that the assailants went from [REDACTED] Barberry Court and on  
3 foot went to Ms. Collington's door. Did you say that or did  
4 I misunderstand you?

5 A. I did not say that. That's what I was told, they  
6 went.

7 Q. Okay.

8 A. It was indicated to me that the suspects from this  
9 crime fled in the direction of that apartment complex.

10 Q. But it was told -- who told you that, sir?

11 A. That would be Chip Squires.

12 Q. Okay, so Chip Squires told you that whoever these  
13 assailants were, it was his understanding that they fled on  
14 foot from [REDACTED] Barberry Court towards or to Ms. Collington's  
15 residence at 3555 Highway 544, Apartment Number [REDACTED], is that  
16 correct?

17 A. Yes sir. They're about five or six hundred feet  
18 apart, so ...

19 Q. Yes sir. Did Chip Squires indicate who gave -- who he  
20 obtained that information from, sir?

21 A. I didn't ask him and he didn't volunteer.

22 Q. Okay, and did Chip Squires tell you this before you  
23 sought the search warrant?

24 A. Which search warrant?

25 Q. The search warrant for 3555 Highway 544, Apartment

## TONY COLLINS - CROSS BY HAZZARD

1 [REDACTED].

2 A. This was told to me when I delivered the search  
3 warrant for the crime scene, so yes sir, that would have been  
4 told to me prior to the issuance of this search warrant.

5 Q. Okay. Now, what do you mean when you say you  
6 delivered the search warrant?

7 A. The first search warrant that I obtained at 5:05 from  
8 Judge Butler, I drove to the homicide location to deliver to  
9 the investigators.

10 Q. All right.

11 A. And at that point, that is when I became on-site of  
12 the incident scene. Crime scene tape is in place. I have no  
13 interest to go in because there's enough already, so I'm  
14 outside conversing with the Sergeant as to you asked me for  
15 this. Sir, here it is, and that's when he gave me a short  
16 brief of what was going on.

17 Q. Did he give you the brief for any particular reason  
18 for the purpose of obtaining the next search warrant or just  
19 out of basic conversation to keep you in the loop?

20 A. Keeping me up to speed is what's going on because now  
21 I'm part of the investigation if I need to be -- you're not  
22 getting sent home is my point. You're going to be part of  
23 the investigation now.

24 Q. Okay. All right, so Chip Squires tells you that his  
25 information is that the assailants, whoever they may be,

TONY COLLINS - CROSS BY HAZZARD  
SUMMATION BY McCOLLUM

1 allegedly run from [REDACTED] Barberry Court to Ms. Collington's  
2 residence, but my understanding is you have no indication of  
3 from whom this information was obtained at that time,  
4 correct?

5 A. If I had to speculate, I would say the two  
6 investigators on scene.

7 Q. Okay, and who were the two investigators on the scene  
8 at that time to your knowledge?

9 A. To my knowledge, that would have been Brad Townsend  
10 and I can't remember if Scott Bogart was there at that time  
11 or not, but he was certainly part of the beginning.

12 Q. Okay, so that was Brad Townsend and, I'm sorry, what's  
13 the other gentleman's name?

14 A. Scott Bogart. They were part of the beginning of the  
15 investigation, and that's -- that is an assumption on my part  
16 that's where he got it from.

17 **MR. HAZZARD:** Okay. All right, thank you.

18 No further questions.

19 **THE COURT:** Anything else, Solicitor?

20 **MS. von HERRMANN:** No sir, Your Honor.

21 **THE COURT:** You may step down, sir.

22 **DETECTIVE COLLINS:** Thank you.

23 **THE COURT:** All right, arguments, Mr. McCollum.

24 **MR. McCOLLUM:** Your Honor, as to the -- it's my

25 understanding that nothing was recovered from Apartment [REDACTED],

SUMMATION BY McCOLLUM  
COURT'S RULING

1 so I don't think I need to make any kind of motion on that.

2 As to the vehicle, it's my understanding that something  
3 may have been recovered from the vehicle, and I would just  
4 briefly submit that the -- Officer Large testified to the  
5 consent to search, but he wasn't clear where that occurred  
6 and wasn't really able to give any details other than the  
7 form itself.

8 As to the search warrant, Your Honor, this officer  
9 hasn't -- I don't think he's testified that the -- I'm not  
10 sure that the vehicles were searched pursuant to the warrant,  
11 so just very briefly, Your Honor, we would move to suppress  
12 anything that was found from the vehicles.

13 **THE COURT:** Mr. Hazzard.

14 **MR. HAZZARD:** No argument to the Court on this issue.

15 **THE COURT:** Solicitor.

16 **MS. von HERRMANN:** No sir, Your Honor. I think the  
17 testimony speaks for itself.

18 **THE COURT:** Very good.

19 Based upon the testimony regarding these or this  
20 particular search warrant, that being the residence in  
21 Building Number ■, Apartment Number ■ of the Coastal Villas  
22 Condominiums that's located at 3555 Highway 544 Overpass,  
23 Conway Section of Horry County, as well as the vehicles, a  
24 white in color 1997 Ford Expedition bearing South Carolina  
25 registration ■, and the second vehicle, a green in

## COURT'S RULING

1 color Honda Accord, with no license plate, and giving the  
2 vehicle identification number, I do find that the information  
3 provided to the magistrate was more than sufficient for the  
4 magistrate to have a finding of probable cause to allow the  
5 search of the premises and the vehicles, there being more  
6 than sufficient evidence to give the magistrate independent  
7 information to base his decision upon and, therefore, the  
8 motion to suppress the evidence by the defendants is denied.

9 All right, is that all of -- and -- I'm sorry -- and I  
10 do find that proper consent was given by the defendant,  
11 Collington, regarding the premises and the vehicles. The  
12 consent to search does not only indicate the premises, but  
13 all property owned by her or under her care, custody and  
14 control. Therefore, proper consent was given by the  
15 defendant, Collington. That was clearly given, voluntarily  
16 given, and with knowledge of her rights.

17 All right, anything as to -- anything further as to any  
18 search warrants other than what we've already gone over, any  
19 other search warrants?

20 **MR. McCOLLUM:** Well, Your Honor, we -- I don't know if  
21 -- I think there are some other warrants, but we -- the  
22 motion applied to everything that could pertain to the  
23 defendant. I don't know if there's other issues or the  
24 Solicitor has been over things ---

25 **THE COURT:** Is there any other evidence obtained from

TONY COLLINS - DIRECT BY von HERRMANN

1 any other search warrants that you intend to introduce  
2 against these defendants, Solicitor, that you know of?

3 MS. von HERRMANN: Yes, there's one. I have one more.

4 THE COURT: All right.

5 MS. von HERRMANN: And that is Apartment [REDACTED], Coastal  
6 Villas Condominiums.

7 THE COURT: All right. Let's proceed with that one  
8 then, please.

9 MS. von HERRMANN: We call Tony Collins.

10 (SEARCH WARRANT ([REDACTED] COASTAL VILLAS) MARKED AS STATE'S  
11 EXHIBIT NUMBER 3.)

12 TONY COLLINS, being first duly sworn, states  
13 as follows:

14 DIRECT-EXAMINATION BY MS. von HERRMANN:

15 Q. Detective Collins, did you also have the opportunity  
16 to go to Judge Butler with a search warrant for Apartment [REDACTED],  
17 Number [REDACTED], Coastal Villas Condominiums, which would have been  
18 the apartment where Donell James and Tanheshia Smith were  
19 living?

20 A. I did.

21 Q. All right, and have you got a copy of that there with  
22 you?

23 A. I do.

24 Q. Okay.

25 MS. von HERRMANN: Let's go ahead and have that marked.

TONY COLLINS - DIRECT BY von HERRMANN

1 Have you already got it marked? What is the reference number  
2 on that, please?

3 A. State's Exhibit 3.

4 **THE COURT:** Is there any objection to that, Mr.  
5 McCollum?

6 **MR. McCOLLUM:** No, Your Honor.

7 **THE COURT:** And Mr. Hazzard?

8 **MR. HAZZARD:** No objection.

9 **THE COURT:** All right, very good.

10 Q. All right, and so the affidavit on that one says that  
11 -- essentially says that they -- the police go to Barberry  
12 Court?

13 A. That's correct.

14 Q. And in reference to a shooting?

15 A. That's correct.

16 Q. That they find someone there who appears to have died  
17 of unnatural causes?

18 A. That's correct.

19 Q. That there's an ongoing investigation?

20 A. That's correct.

21 Q. Interviews regarding the deceased victim's ex-  
22 girlfriend, who would be Ms. Collington, right?

23 A. That's correct.

24 Q. And that she has been seen associating with the  
25 occupants of this particular residence, is that correct?

TONY COLLINS - DIRECT BY von HERRMANN

1 A. That is.

2 Q. In the past couple of hours prior -- I mean prior --  
3 excuse me, before and after the assault occurred?

4 A. That's correct.

5 Q. All right, and in addition, there were witnesses who  
6 provided information about suspects leaving the crime scene  
7 and going to the residence mentioned in this document, is  
8 that right? Do you see where I'm reading there?

9 A. Yes, okay, I'm following you.

10 Q. All right. In addition, there were -- about half-way  
11 down -- in addition, there were witnesses that provided  
12 information about the suspects leaving the crime scene and  
13 going to the residence mentioned in this document. Do you  
14 see that?

15 A. That's correct.

16 Q. Okay, so that information was provided to the  
17 magistrate as well, right?

18 A. That's right.

19 Q. All right, and that information included, but wasn't  
20 limited to, suspect physical and clothing description?

21 A. That is correct.

22 Q. All right, and this residence is within a short  
23 distance to the crime scene?

24 A. It is.

25 Q. And the Bloodhound Tracking Team has followed a scent

TONY COLLINS - DIRECT BY von HERRMANN

1 or lead to the same complex?

2 A. That is correct.

3 Q. All right, in this case, not specifically that  
4 apartment, right?

5 A. Right.

6 Q. Because it went to Ms. Collington's apartment?

7 A. It went to [REDACTED].

8 Q. All right, but they live in the same complex?

9 A. They do.

10 Q. All right, and the occupants are friends ---

11 A. That was what was told to us.

12 Q. --- with the victim's ex-girlfriend, who would be Ms.  
13 Collington?

14 A. That's correct.

15 Q. Who has been making threatening -- leaving threatening  
16 messages within the past week, right?

17 A. That's correct.

18 Q. Okay, and so, again, Mr. James, Donell James, is one  
19 of the individuals who was being sought in connection with  
20 this particular shooting, is that correct?

21 A. Yes.

22 Q. All right, and it appears from this affidavit that  
23 there were some clothing descriptions that were given perhaps  
24 about the individuals who were there at the incident  
25 location, is that correct?

TONY COLLINS - DIRECT BY von HERRMANN

1 A. That is correct.

2 Q. All right, and then this says that there were  
3 witnesses who provided information about the physical and  
4 clothing that -- well, about physical and clothing  
5 descriptions of those individuals?

6 A. That's correct.

7 Q. All right, so that would, I guess, lead us to believe  
8 there were witnesses who had given information which matched  
9 up, is that correct?

10 A. Witnesses had indicated they saw individuals in  
11 similar likeness to the descriptions of the suspect.

12 Q. All right, who were located there at this particular  
13 apartment?

14 A. That is correct.

15 Q. Which would have been, again, the home of Donell James  
16 and his girlfriend, Ms. Smith?

17 A. That's correct.

18 Q. All right, and was all that information provided to  
19 the magistrate?

20 A. I can't say in exactly those words, but as I said  
21 earlier, these search warrants, this one was obtained at  
22 exactly the same time as the previous one. I was actually on  
23 location for the first one. These interviews were being  
24 done. I'm en route to Judge Butler to get the previous  
25 search warrant. I'm called and advised this additional

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1 information. As memory serves me correct, it was something  
2 like a green tee shirt or green shirt. I can't recall the  
3 height and weight description, but I know that as I indicated  
4 to Judge Butler, the additional facts that we've obtained now  
5 is that there is a person who fits the description given to  
6 us by the survivors was seen at this residential complex  
7 associating with these other females.

8 Q. Okay. All right, and so again, the owner of this  
9 residence or the people who live in this residence are  
10 Tanheshia Smith ---

11 A. Correct.

12 Q. --- and Donell James?

13 All right, and you would have -- at the time that you  
14 went and got this search warrant done, you would have no  
15 reason to know this, but I'm asking you from right -- from  
16 this minute. Is this Tanheshia Smith or Tanheshia Smith the  
17 same Tanheshia Smith who Detective Crocker testified about  
18 earlier who had provided information for later search  
19 warrants?

20 A. I'm not familiar with his investigation about the  
21 Tanheshia. I'm not sure which one that is.

22 Q. Okay. You heard him testify that there was a Ms.  
23 Smith who had given some information, right?

24 A. Yes.

25 Q. To your knowledge, was there any other Ms. Smith

TONY COLLINS - DIRECT BY von HERRMANN  
CROSS BY McCOLLUM

1 involved in this case other than Tanheshia Smith?

2 A. She's the only Tanheshia Smith that I've been -- seen  
3 in this case at all.

4 **MS. von HERRMANN:** Thank you. I don't have any further  
5 questions.

6 **MR. McCOLLUM:** May it please the Court.

7 **THE COURT:** Yes sir.

8 **CROSS-EXAMINATION BY MR. McCOLLUM:**

9 Q. So Tanheshia Smith and Tanheshia Smith, that's, as far  
10 as we know, one and the same person?

11 A. To my knowledge.

12 Q. And are you familiar with where the apartment is  
13 located, in other words [REDACTED] Coastal Villas, which is on  
14 Highway 544?

15 A. Yes sir. I went to that location.

16 Q. Now, that Coastal Villas Apartments consists of two  
17 separate parking lots or driveways, doesn't it?

18 A. Yes, it does.

19 Q. And so, in other words, if you're coming down Highway  
20 544, there's the overpass right there. If you're going to go  
21 into the apartment that was referenced earlier, which I think  
22 is what, [REDACTED], right?

23 A. That's correct.

24 Q. You would go to one location, and if you were coming  
25 from Conway, you'd turn left into there, right?

TONY COLLINS - CROSS BY McCOLLUM

1 A. Coming from Conway headed towards Coastal Carolina,  
2 you would turn left into the complex.

3 Q. And if you were coming in that same direction and you  
4 were going to turn left to go to Apartment [REDACTED], you would  
5 actually turn in another parking lot prior to that, right?

6 A. I believe that's correct.

7 Q. And the buildings are lined up in rows, right?

8 A. Like a horseshoe.

9 Q. Like a horseshoe, exactly, and this Apartment [REDACTED] is  
10 in a different horseshoe than Apartment [REDACTED], right?

11 A. I can't recall if they're in the same -- there's a  
12 very short area between the two parking spac- -- parking  
13 areas.

14 Q. They're in the same complex, but they're on two  
15 different horseshoes, right?

16 A. I believe that would be right.

17 Q. And so is it your testimony or belief that the  
18 bloodhound tracked to [REDACTED], Building [REDACTED], and Apartment [REDACTED] where  
19 Donell James and Tanheshia or Tanheshia Smith were?

20 A. I don't know that they tracked to that location  
21 specifically. I know they tracked to that apartment complex.

22 Q. Okay, and your information was that witnesses, whoever  
23 they were, described people that fit the description of  
24 Donell James and possibly Tanheshia Smith, and that was your  
25 basis for going there?

TONY COLLINS - CROSS BY McCOLLUM  
CROSS BY HAZZARD

1 A. That was provided to me by Tim Troxell, detective.

2 Q. Okay, and then ultimately Donell James was arrested  
3 and charged with murder, among other offenses, right?

4 A. I didn't participate in that part, so I have ---

5 Q. All right, and -- could I see the search warrant,  
6 please, sir?

7 A. (Witness hands document to Mr. McCollum.)

8 Q. Now, in this particular affidavit, this affidavit has  
9 other information that was not included in the affidavits  
10 that we've been talking about earlier, right?

11 A. As the case developed, items were added to as needed  
12 to be to support whatever location we were going to.

13 Q. So there's a lot more information in this affidavit,  
14 in your affidavit, than there was in the ones that we were  
15 talking about earlier today, right?

16 A. I think this is one of the last ones I obtained which  
17 probably had the most information in it.

18 Q. Okay.

19 **MR. McCOLLUM:** That's all I have, Your Honor.

20 **THE COURT:** Mr. Hazzard.

21 **MR. HAZZARD:** Thank you, Your Honor.

22 **CROSS-EXAMINATION BY MR. HAZZARD:**

23 Q. What's the date and time of that affidavit, when that  
24 affidavit was -- or when that warrant was obtained, sir?

25 A. April 14th, 2008, at 8:00 P.M.

TONY COLLINS - CROSS BY HAZZARD

1 Q. And this one was also obtained from Judge Butler,  
2 correct?

3 A. That is correct.

4 Q. All right, and I believe you said in there that one of  
5 the bases or the bases for needing to search Apartment [REDACTED]  
6 is because Mr. James and Ms. Smith were friends of Ms.  
7 Collington?

8 A. That was one of the elements.

9 Q. Okay, and the other elements were that, I believe, Ms.  
10 Smith had been seen with Ms. Collington earlier that day?  
11 Was that one of the elements?

12 A. That is correct.

13 Q. Okay. Let me borrow that for a second.

14 A. (Witness hands document to Mr. Hazzard.)

15 Q. Okay, and Ms. Collington has associated with the  
16 occupants of the residence in the past couple of hours before  
17 and after the assault occurred. Now, from whom was that  
18 information obtained, sir?

19 A. That was provided to me by Detective Tim Troxell.

20 Q. Okay, so Tim Troxell told you that. Did he give you  
21 any indication of where he got that information?

22 A. I want to think it was from some employees of the  
23 property, and I think he mentioned a neighbor, but the  
24 specific names, I do not know.

25 Q. Okay. Were you able to provide the magistrate with

TONY COLLINS - CROSS BY HAZZARD  
COURT'S RULING

1 any specific names with regard to this information, sir?

2 A. I don't normally do that, sir.

3 Q. Okay, thank you.

4 MR. HAZZARD: No further questions.

5 THE COURT: Anything else, Solicitor?

6 MS. von HERRMANN: No sir, Your Honor.

7 THE COURT: You may step down, sir.

8 Arguments, Mr. McCollum?

9 MR. McCOLLUM: That's all I have, Your Honor.

10 THE COURT: Mr. Hazzard, any arguments?

11 MR. HAZZARD: None on behalf of Defendant Gause, Your  
12 Honor.

13 THE COURT: Anything, Solicitor?

14 MS. von HERRMANN: No sir.

15 THE COURT: All right, very good.

16 All right, regarding this particular search warrant for  
17 a residence in Building ■, Apartment ■ at Coastal Villas  
18 Condominiums that's located at 3555 Highway 544 Overpass,  
19 Conway Section of Horry County, regarding that particular  
20 search warrant, the affidavit, and the reasons for affiant's  
21 belief that the property sought is on the subject premises is  
22 detailed, it certainly supplies sufficient underlying facts  
23 and information upon which a magistrate could make a  
24 determination of probable cause and, therefore, the motion of  
25 the defendants to suppress the evidence obtained as a result

COURT'S RULING  
MOTIONS

1 of this search warrant is denied.

2 All right, any other -- any other evidence that you know  
3 of that you intend to introduce as a result of any other  
4 search warrants?

5 **MS. von HERRMANN:** Not that I'm aware of.

6 **THE COURT:** All right, why don't we take care of a  
7 motion that hopefully will not take much time at all and that  
8 being the motion to exclude photographs. I believe that both  
9 of y'all would join in that, is that correct?

10 **MR. McCOLLUM:** Defendant Collington joined in the  
11 motion filed by Defendant Quentin Gause.

12 **THE COURT:** All right. All right, Mr. Hazzard, let me  
13 hear from you.

14 **MR. HAZZARD:** Okay, Your Honor. I mean, my  
15 understanding is based on the documentation that I've  
16 received and the evidence that I've received in this case are  
17 that there are numerous photographs, and I will give Horry  
18 County credit, they pretty much had every detective they have  
19 working on this case, and they took pictures of everything  
20 that they can imagine, so there are a lot of pictures, and  
21 specifically what the Defense wants to exclude are pictures  
22 of the decedent, Allen Smith.

23 **THE COURT:** All right. You have gotten copies of all  
24 these photographs, correct?

25 **MR. HAZZARD:** Yes sir.

## MOTIONS

1           **THE COURT:** All right. Can you pull out the ones that  
2 you have an objection to?

3           **MR. HAZZARD:** Well, we have -- we received -- what we  
4 received was a disk with a -- that you can do a slide show  
5 on, Your Honor. In discovery what we received is  
6 photographic copies that you can't really tell anything on.

7           **THE COURT:** Okay, and I'm sorry, then. I don't  
8 understand what is it that you object to? Are you telling me  
9 that you want things produced to you so that you could make a  
10 decision or you've looked at it and you've made a decision?

11           **MR. HAZZARD:** I've looked at it and I've made a  
12 decision. I would -- I'm asking that the Court exclude any  
13 and all photographs of the decedent from being seen by the  
14 jury.

15           **THE COURT:** Any photograph whatsoever that shows the  
16 victim in this matter, that's what you want excluded?

17           **MR. HAZZARD:** Your Honor, the photographs come in two  
18 types. One is the autopsy photographs, which the Court knows  
19 are incredibly gruesome and horrific in and of themselves.  
20 The other type of photographs showing the decedent are  
21 pictures of him at the scene of the incident, some from a  
22 distance of his body in the hallway, from one end of the  
23 hallway to the other. Then there are pictures of him from  
24 closer up lying in that spot, and then there are pictures  
25 where they have actually turned his body over and taken

## MOTIONS

1 pictures of him, and we ask that these be excluded.

2 At the very least, we obviously want the Court to be in  
3 a position to make a determination of which ones would be  
4 admitted. Really, the purpose of the motion is to bring it  
5 to the Court's attention that these photos are out there so  
6 we could discuss the issue. The Prosecution may very well  
7 say she doesn't intend to use any of the photos. I don't  
8 know. We'd just ask that they be excluded.

9 **THE COURT:** Well, at this point in time, you've not  
10 provided to me sufficient information for the Court to rule  
11 on your motion. You haven't provided to me the photographs  
12 or the matters that you wish to object to, so I've got  
13 nothing to look at to make a decision upon. Therefore, based  
14 upon that, unless you're going to give that to me right now,  
15 your motion is denied. Do you have it to give to me right  
16 now?

17 **MR. HAZZARD:** Not right now, Your Honor.

18 **THE COURT:** All right, sir. Your motion right now is  
19 denied, and to which the Defendant Collington joined in, to  
20 that respect it is denied also.

21 Now, at some point in time in the future if the State  
22 seeks to introduce into evidence a photograph that -- to  
23 which you object, you can bring it to my attention at that  
24 point in time, or if you want to renew your motion and attach  
25 to the motion copies of all of the photographs that you

## MOTIONS

1 object to that you want the Court to exclude, I will  
2 reconsider your motion, but the motion as it currently stands  
3 is denied based upon the fact you just haven't given me  
4 anything to base my decision on, all right?

5 All right, very good. All right, so, now, what remains,  
6 we have, are the motions to sever indictments -- all right,  
7 motion to sever indictments, motion to suppress statements,  
8 motion to exclude -- well, these two were the evidence and  
9 prior difficulties and prior threats -- those are the two  
10 that we have to set up at a later date since the State just  
11 got those and wasn't prepared to argue those, so we've got  
12 motion to sever indictments, motion to sever defendants from  
13 being joined at trial, the motion to suppress statements, the  
14 motion for -- all those were filed by the Defendant  
15 Collington, which I assume, Mr. Hazzard, you are joining in,  
16 is that correct?

17 **MR. HAZZARD:** That's correct, Your Honor.

18 **THE COURT:** And then you had -- you had a motion for  
19 severance which probably will be included in, but if any  
20 parts of it are separate, then the matter is brought by the  
21 Defendant Collington, -- I mean the Defendant -- by the  
22 Defendant Collington, then we'll take that up.

23 All right, so what we'll do, we're going to take a lunch  
24 break. We'll come back at -- let's just come back at two  
25 o'clock. We'll proceed on with these motions that are

## MOTIONS

1 outstanding and see what it is that we can accomplish in the  
2 rest of the afternoon. Then we'll set up another time for  
3 the -- later for the motions, whatever they are, including  
4 the testimony of Judge Butler at a later date regarding the  
5 original warrants whenever we set up the motions on the --  
6 the motions on the threats and the difficulties, then we'll  
7 hear Judge Butler's testimony at that time because I'm  
8 probably going to do that next week.

9 **MR. HAZZARD:** Your Honor, if I might.

10 **THE COURT:** Yes sir.

11 **MR. HAZZARD:** With regard to my motion to sever, one of  
12 the named bases for the motion to sever is the evidence or  
13 allegation of the threats allegedly made by Ms. Collington  
14 that have nothing to do with Mr. Gause, so I wanted to make  
15 that aware to the Court if the Court wanted to not have to  
16 possibly hear that same evidence twice and then, therefore,  
17 take that severance motion together with the move to exclude  
18 motion with regard to the evidence of prior threats or  
19 alleged threats.

20 **THE COURT:** All right, very good. We'll do that. As  
21 I'm indicating to you, I'm going to find some time next week  
22 to do this.

23 **MR. McCOLLUM:** Along that line, Your Honor, may I give  
24 the benefit of my calendar to you?

25 **THE COURT:** You can, but I'll take it into

## MOTIONS

1 consideration as best I can, but we're going to find some  
2 time next week to hear these motions.

3 **MR. McCOLLUM:** Your Honor, apparently I'm completely  
4 open on Wednesday, May 18th, and Thursday, May 19th. I do  
5 have some summary court things on Tuesday, May 17th, and then  
6 Friday, I actually have an arraignment over here, so I'll be  
7 over here doing that.

8 **THE COURT:** All right, sir. Well, we'll see if we  
9 can't do them the 18th, the Wednesday or Thursday. We'll see  
10 if we can't -- but we will look at the -- I'll look at the  
11 schedule and then let you know, but we'll come back at two  
12 o'clock and continue on.

13 **MR. McCOLLUM:** Thank you, Judge.

14 **MR. HAZZARD:** Thank you.

15 **(THE FOLLOWING TAKES PLACE AFTER A LUNCH BREAK.)**

16 **THE COURT:** All right, Counsel, for your information,  
17 the motions that we did not hear today because of notice, and  
18 then the matter that I continued to get the testimony of  
19 Judge Butler, I've communicated with the Chief Magistrate,  
20 Gerald Whitley, and he informs me that the best time for  
21 their work that this matter can be done is Wednesday morning,  
22 so, therefore, we will conduct the hearing next Wednesday at  
23 9:00 A.M. for those continued motions, as well as the motions  
24 that we did not hear to allow the State to have time to  
25 examine the motions and respond to them.

## MOTIONS

1 All right, the three outstanding motions that you have,  
2 Mr. McCollum, to sever, to suppress the statements, and sever  
3 defendants and sever indictments. Is there anything you need  
4 to inform the Court of or we just need to go forward on all  
5 three of them at this time?

6 **MR. MCCOLLUM:** Your Honor, in terms of the motion to  
7 sever the defendant's statement to law enforcement -- or  
8 excuse me, to suppress her statement made to law enforcement,  
9 it's my understanding from talking to the Solicitor, Ms. von  
10 Herrmann, that -- and I'm not saying we'd hold her to this,  
11 but that she does not intend to introduce Defendant Ladorrean  
12 Collington's statement unless or if Ms. Collington testifies  
13 in her own defense as part of the defense case, so I don't  
14 know ---

15 **THE COURT:** All right. Well, let me -- let me find out  
16 from the Solicitor first, Mr. McCollum. Thank you.

17 Solicitor, I guess the question, number one, is do you  
18 intend in your direct presentation of the State's evidence,  
19 did you intend to use the statement of Ms. Collington?

20 **MS. von HERRMANN:** No, not in my direct.

21 **THE COURT:** All right, very good, so with that,  
22 obviously we're not going to know and would not ---

23 **MS. von HERRMANN:** But let me just say this. Let me  
24 give it this caveat. It is not my intention right now to  
25 introduce that statement.

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1           **THE COURT:**    In your presentation?

2           **MS. von HERRMANN:**    In my presentation.

3           **THE COURT:**    Well, I mean, and obviously if something  
4 happens during the course of the trial or something new comes  
5 up, then you'll let us know and, of course, we'll do that  
6 before the trial starts, but what I'll do now is just not  
7 hear the motion at this point in time. We would go through  
8 the State's direct presentation of evidence and see if we get  
9 obviously, you know, past the directed verdict stage, and if  
10 we go into the defense, we'll see where we are with that  
11 regarding the testimony of Ms. Collington, if she's going to  
12 take the stand or exercise her constitutional rights,  
13 whatever she chooses to do, and then if she intends to  
14 testify, then, of course, before she testified, outside the  
15 presence of the jury, we would take up the -- take up the  
16 motion at that point in time, but right now it just seems  
17 premature to do so until we actually know if Ms. Collington  
18 is going to testify.

19           Is there any problem with that, Solicitor?

20           **MS. von HERRMANN:**    No. That's good with me.

21           **THE COURT:**    All right, and, Mr. McCollum, any problem  
22 with that?

23           **MR. McCOLLUM:**    No, Your Honor.

24           **THE COURT:**    And, Mr. Hazzard, I'm sure -- I'm assuming  
25 you're fine with that?

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1           **MR. HAZZARD:** I'm fine with that, Your Honor.

2           **THE COURT:** All right, very good. All right, how about  
3 the other two motions then, Mr. McCollum?

4           **MR. McCOLLUM:** Your Honor, I think the other two  
5 motions you're referring to is first is the motion to sever  
6 the indictments as they relate to Ladorrean Collington.

7           **THE COURT:** Okay.

8           **MR. McCOLLUM:** Your Honor, at this time it's my  
9 understanding that the State has elected to go forward on  
10 four indictments. It's my understanding the indictments are  
11 all for accessory before the fact of a felony, and they are  
12 for the offenses of kidnapping, which has kidnapping, one  
13 count, against Allen Smith, as I understand it; burglary in  
14 the first degree for the unlawful entry into the residence to  
15 commit a crime; armed robbery for, I guess, the alleged armed  
16 robbery that occurred inside the residence; and for the  
17 offense of murder.

18           Now, prior to today, of course, you know, Your Honor, I  
19 knew that we were going to trial, but I didn't know  
20 specifically which indictments would be called, and I don't  
21 think it's the Solicitor's duty on a fact pattern to call  
22 those indictments until she's in Court. Prior to today, the  
23 defendant had been indicted as a principal, I believe, in all  
24 of those offenses, ---

25           **THE COURT:** Right.

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1           **MR. McCOLLUM:** --- so what I was faced with when I  
2 prepared the motion was that I wasn't sure what we were going  
3 to trial on. It's my understanding that an accessory before  
4 the fact of a felony, one of the elements is that the person  
5 cannot be present at the scene of the offense, and that so  
6 they are a principal, one of the elements is that to be an  
7 accessory before the fact, the State must prove or it must be  
8 shown that the person was not present.

9           Since we don't have that conflict based on the  
10 indictments that have been called for trial, that probably  
11 takes care of the motion as far as the severance, Your Honor.

12           **THE COURT:** All right, very good, and just to  
13 reiterate, as we did earlier, Solicitor, you indicated that  
14 what you are going to proceed on is 2011-1276, accessory  
15 before the fact of murder; 2010-1225, accessory before the  
16 fact of kidnapping; 2010-1627, accessory before the fact of  
17 armed robbery; and 2010-1626, accessory before the fact of  
18 burglary first degree, is that correct?

19           **MS. von HERRMANN:** That's correct.

20           **THE COURT:** Very good, all right, and as you stated  
21 earlier, the other indictments are not being at this point in  
22 time pursued by the State awaiting further action after the  
23 trial of these four indictments, correct?

24           **MS. von HERRMANN:** Correct.

25           **THE COURT:** Very good. All right, so we'll mark that

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1 motion, then, resolved.

2 All right, then, let's go then to the motion to sever  
3 defendants from being joined at trial, Mr. McCollum.

4 **MR. McCOLLUM:** Your Honor, that's just basically the  
5 character of the evidence that we expect, that it's --  
6 because I understand that the State in the final  
7 interpretation of their evidence allege that Ms. Collington  
8 somehow was involved as an accessory to try to cause, or  
9 encourage, or possibly in some sense conspire with others to  
10 go and commit one or more of these crimes.

11 The Defendant, Quentin Gause, is accused, as I  
12 understand it, as being the person who is alleged to have  
13 gone to the residence, entered the residence, and  
14 participated in the robbery, the kidnapping, and the  
15 shooting, if that's proved.

16 I would just in a very basic sense, Your Honor, submit  
17 that we are just asking the Court to consider severing the  
18 defendants because those are not, even though it's the same  
19 case in terms of the same victim and same allegations, that  
20 the defense -- the evidence against Mr. Smith (sic) and the  
21 evidence against Ms. Collington is different evidence, if you  
22 will, and that we're just asking the Court to consider  
23 separate trials on behalf of the defendant, Collington, and I  
24 don't know if Mr. Hazzard has joined in this motion or has an  
25 argument or not.

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1           **THE COURT:** All right, Mr. Hazzard, do you join or have  
2 any arguments?

3           **MR. HAZZARD:** Your Honor, I will join in this motion,  
4 but, of course, as the Court knows, the defendant, Gause, has  
5 filed a -- an additional motion for severance based on  
6 unrelated grounds, and I think that my understanding was that  
7 we were going to hold that particular motion for severance  
8 with regard to the alleged evidence of bad blood or history  
9 of bad blood between Ms. Collington and Mr. Smith, the  
10 victim, and alleged threats that may or may not have been  
11 made by Ms. Collington against the victim, Mr. Smith, until  
12 such time as Mr. McCollum's motions to exclude that evidence  
13 was heard this coming Wednesday, the 18th, I believe.

14           **THE COURT:** All right.  
15 All right, Solicitor, let me hear from you, please.

16           **MS. von HERRMANN:** Yes sir, Your Honor. Just in terms  
17 of judicial economy, I think these defendants need to be  
18 tried together. The evidence against them is essentially the  
19 same. The witnesses are the same. The facts and  
20 circumstances which give rise to the charges in each of these  
21 cases is the same set of facts and circumstances, and I think  
22 that that -- for that reason, it should be tried together.

23           **MR. MCCOLLUM:** Your Honor, ---

24           **THE COURT:** Yes sir.

25           **MR. MCCOLLUM:** --- based on what Mr. Hazzard said, if

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1 he's got this similar motion, I would ask Your Honor not to  
2 rule on that motion until his is argued and then because ---

3 **THE COURT:** Well, he's indicating that he wants the  
4 Court on his motions, and his motions were about those things  
5 about the threats or the bad blood between -- between those.

6 **MR. McCOLLUM:** Okay.

7 **MR. HAZZARD:** My motion also mentions the statements  
8 that Ms. Collington made. Now, that has been taken care of  
9 because ---

10 **THE COURT:** Right, but, I mean, she's not -- that  
11 statement is not coming in at this point in time ---

12 **MR. HAZZARD:** Not coming in at this point in time.

13 **THE COURT:** You know, obviously if she testifies, then  
14 that's a different story, but at this point in time, the  
15 State is not bringing it in, so that part of your motion  
16 certainly would be resolved, but, you know, it -- with  
17 yours ---

18 **MR. HAZZARD:** And this -- my motion would be resolved  
19 once Mr. McCollum's motion to exclude is heard. If the Court  
20 were to grant his motion to exclude, then my basis for --  
21 both of the bases for my motion for severance would be  
22 resolved and it would become moot at that point.

23 **THE COURT:** All right, thank you, sir.

24 At this point in time, the Court finds that due to the  
25 evidence that the Court understands will be presented in an

## MOTIONS

1 examination of the indictments against -- as against Mr.  
2 Gause and Ms. Collington, that there are common areas of  
3 evidence and fact. Further, I would find that the concerns  
4 of the Defense can be cured with proper limiting instructions  
5 to the jury as well as resolving any issues that might be  
6 brought to the Court's attention regarding testimony during  
7 the trial, I do not find that there is any prejudice to the  
8 defendant, Collington, that -- or the defendant, Gause, on  
9 this particular ground that would cause the Court to find  
10 that the trials should be separated and the defendants should  
11 be tried at separate times.

12 I do again find that proper instruction based upon what  
13 I know about the case at this point in time can be given to  
14 the jury so that they understand that there are two separate  
15 cases, different charges against each defendant, the State's  
16 burden of proof as to each defendant, what the State has to  
17 prove against each defendant, and at this point in time, I  
18 would respectfully decline to grant your motion to several  
19 defendants from being joined at trial at this point in time.

20 Certainly there remain open the issues raised by Mr.  
21 Hazzard in his motion, which we will resolve at the upcoming  
22 motion hearing. Those remain outstanding and this ruling  
23 does not impact the Court's decision on that. We will hear  
24 that and resolve that at that point in time.

25 All right, anything further, Mr. McCollum, at this point

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1 in time?

2 **MR. McCOLLUM:** Not as to that, Your Honor. I would  
3 just like to -- from looking at the indictments and going  
4 over that, I think that I probably will file a motion to  
5 quash the indictments as to Defendant Collington and ask the  
6 Court to hear that on Wednesday.

7 **THE COURT:** Okay, well, I'll be glad to and be glad to  
8 hear it on Wednesday. I would appreciate it if you can get  
9 those filed and sent to me as quickly as you can, and, of  
10 course, send, at the same time to the Solicitor so that I  
11 don't have to again postpone them because she hadn't --  
12 hadn't looked at them, so if you can get those filed and give  
13 the Court, if you don't mind, some time to look at them and  
14 to look at the issues before I get there on Wednesday morning  
15 so that I have a time to, you know, research and look -- you  
16 know, examine those issues before we get there on Wednesday.

17 **MR. McCOLLUM:** I will, Your Honor, and -- but other  
18 than stating what I just stated, it would just simply be  
19 based on the language in the indictment, the language recites  
20 the statute under State v. Grampus, and I think another line  
21 of cases, I believe, and I would move before the Court, and  
22 advise the Solicitor now, that what -- I believe that there  
23 has to be some description of some actual act, in other  
24 words, there has to be an allegation that the person  
25 committed the offense of armed robbery and to wit, had a gun

## MOTIONS

1 or a knife, or did something, robbed somebody, broke into  
2 somebody's house, kidnapped somebody, or murdered somebody,  
3 to just say what the statute says, and that -- just to give  
4 you some foreshadowing on it, that would be -- that would be  
5 the motion ---

6 **THE COURT:** Good deal. Thank you.

7 **MR. McCOLLUM:** --- and I will try to get that filed  
8 early Monday.

9 **THE COURT:** Very good, sir. Thank you very much.  
10 Mr. Hazzard, anything else at this point in time?

11 **MR. HAZZARD:** Nothing on behalf of Defendant Gause at  
12 this time.

13 **THE COURT:** All right, very good.

14 Solicitor, I did commit with Chief Magistrate Whitley as  
15 to -- as to his scheduling of what the magistrate's work was  
16 so that I could accommodate him as best I could. I'm going  
17 to leave it to you to notify Summary Judge Butler of the  
18 hearing Wednesday morning at nine o'clock, so that I'm going  
19 to leave it to you to send out that notification.

20 I don't know if Judge Whitley will talk to him or not,  
21 and I don't want to leave that to chance, so I'm ---

22 **MS. von HERRMANN:** No; I'll call him.

23 **THE COURT:** --- I want to make sure that you  
24 communicate with him even though Judge Whitley might take it  
25 upon himself to do that, all right?

## MOTIONS

1           **MS. von HERRMANN:** I'll be happy to do that.

2           The only other issue that I have, Your Honor, is that  
3 I've been told by Mr. Hazzard on a number of different  
4 occasions that he has a somewhat lengthy list of items that  
5 he needs from us. I just -- if he's got items that he needs  
6 from me, I'd like to have a list so that I can go ahead and  
7 get those things for him so that if there's something  
8 outstanding ---

9           **THE COURT:** Is that evidentiary matters or what -- what  
10 might that be, Mr. Hazzard?

11           **MR. HAZZARD:** Your Honor, when I received the  
12 approximately -- I think it's about three thousand pages of  
13 documents in this case, the vast majority of it is simply  
14 documents that are illegible, and I need a legible copy, and,  
15 in fact, I have been telling Ms. von Herrmann for quite some  
16 time, I would say at least the last two weeks, that I was  
17 going to get her that list, but as the Court knows, I've been  
18 otherwise involved in some other matters, and I will try -- I  
19 will get that done over the weekend and have it to her on  
20 Monday.

21           **THE COURT:** That will be great; that will be great, and  
22 I know that I failed to -- failed to do this. I meant to put  
23 in my reasoning to deny your motion, Mr. McCollum, of the  
24 case of State v. Avery, a 2007 decision of the South Carolina  
25 Court of Appeals.

JURY QUALIFICATION/VOIR DIRE/JURY SELECTION  
JURY IN/COURT TO JURY

1           **MR. McCOLLUM:** Thank you, Your Honor.

2           **THE COURT:** Thank you very much.

3           All right, Counsel, I appreciate it very much, and I  
4           guess we'll see y'all Wednesday morning, nine o'clock, and  
5           we'll hear all the remaining motions, including the testimony  
6           of Judge Butler at that point in time.

7           Thank y'all very much.

8           (End Day on May 13, 2011.)

9           **(THE FOLLOWING TAKES PLACE ON JUNE 6, 2011, AFTER**  
10          **QUALIFICATION OF THE JURY VENIRE, AFTER VOIR DIRE FOR THIS**  
11          **PARTICULAR CASE, AFTER A JURY WAS SELECTED FOR THE TRIAL OF**  
12          **THIS CASE, AND WITHIN THE PRESENCE OF THE JURY PANEL.)**

13          **(A JURY SELECTION FORM WAS PREPARED IN THIS CASE AND IS**  
14          **ATTACHED HERETO.)**

15          **THE COURT:** I find the jury has been properly empaneled  
16          pursuant to Batson v. Kentucky and J.E.B. v. Alabama.

17          All right, ladies and gentlemen, the jury in this  
18          particular case, what I'm going to ask that you do now is I'm  
19          going to ask that you go back to your jury room for a few  
20          moments and do one thing for me, and that is to select your  
21          foreperson for this particular jury. Rather than the Court  
22          doing it, I follow the practice of having the jury come  
23          together and selecting their foreperson.

24          Let me tell you very briefly what the foreperson's  
25          duties and responsibilities are. If we're here in the

## COURT TO JURY

1 courtroom during the trial of the case and the jury needs  
2 attention to something, the witness needs to speak up, the  
3 lawyers need to speak up, whatever it is, the foreperson will  
4 raise their hand, gets the Court's attention, we'll handle  
5 the matter, whatever it is.

6 If you're back in the jury room and some issue comes up,  
7 the jury needs attention to something, the foreperson will  
8 take out the note pad, write a note, sign it, give it to the  
9 bailiff, it will come to me, and again we'll handle the  
10 matter whatever it might be.

11 Now, when we have heard all the evidence in this case,  
12 we've received all the evidence, we've heard all the  
13 witnesses that are going to testify, testify, we've received  
14 whatever documents or physical evidence that might be  
15 introduced in the case, and we've heard the closing arguments  
16 of the attorneys, and I've given you the law that you are  
17 going to apply to the facts as you find to be true in this  
18 case, and I send the case to you for your deliberations and  
19 your unanimous decision in this particular matter, the  
20 foreperson's duties and responsibilities change in this  
21 regard.

22 The foreperson is going to act like the chairman at a  
23 meeting, and an important duty that the foreperson has is to  
24 make sure that everybody that wants to has an opportunity to  
25 speak, everybody's voice has an opportunity to be heard.

## COURT TO JURY

1           Now, the foreperson's voice and vote carries no more  
2 weight than any other member of the jury. Everybody is on an  
3 equal plane in that regard, but somebody does need to be in  
4 charge, if necessary, and again, if some issue comes up and  
5 the jury needs attention to it, again the foreperson will  
6 write out that note and sign it and give it to the bailiff,  
7 and we'll handle the matter, whatever it might be.

8           The final duty and responsibility of the foreperson is  
9 once the jury has well and truly deliberated in this case and  
10 you've reached your unanimous decision in this particular  
11 matter, the Court will have provided to you certain verdict  
12 forms. You will take the verdict form, the foreperson will,  
13 and check the appropriate block or write out the appropriate  
14 word, thereafter sign your name as the foreperson indicating  
15 that this recorded verdict is indeed the unanimous verdict of  
16 each and every member of the jury in this particular case.

17           So those being the basic duties and responsibilities of  
18 the foreperson, what I'm going to ask that you do is go back  
19 to the jury room, select your foreperson, knock on the door,  
20 let the bailiff know who that foreperson is.

21           Now, Mr. Carter and Mr. Richardson, y'all being  
22 designated as the alternates in this particular case, you can  
23 certainly vote on who the foreperson is, but being the  
24 alternates, y'all cannot be the foreperson.

25           All right, if y'all will go back to the jury room and

## JURY OUT/ON RECORD

1 select your foreperson, please.

2 (THE FOLLOWING TAKES PLACE OUTSIDE THE PRESENCE OF THE  
3 JURY.)

4 THE COURT: Is there anything from the State before I  
5 excuse the balance of the jury panel, as to the panel?

6 MS. von HERRMANN: No sir, Your Honor.

7 THE COURT: From the defendant, Collington?

8 MR. McCOLLUM: No, Your Honor.

9 THE COURT: From the defendant, Gause?

10 MR. HAZZARD: Nothing on behalf of the defendant,  
11 Gause.

12 THE COURT: All right, very good.

13 (The Jury Venire is excused for the balance of the day by the  
14 Court.)

15 THE COURT: All right, Counsel, we'll go into any  
16 motions that you have. The first thing I do want to tell  
17 you, though, is I am going to allow the jury in this  
18 particular case to take notes. I am having the Clerk of  
19 Court put out pads and pens for each and every member of the  
20 jury with the number of witnesses listed by the State and the  
21 Defense. I think it would be helpful to the jury if they  
22 could make whatever notes that they would like. I will  
23 instruct them, of course, that we're relying on their  
24 collective memory and just because somebody puts something  
25 down on a piece of paper does not make it any more valid than

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1 someone else's memory.

2 Anything as to that from the State?

3 **MS. von HERRMANN:** No sir, Your Honor.

4 **THE COURT:** From the defendant, Collington?

5 **MR. McCOLLUM:** Not on behalf of Ms. Collington, Your  
6 Honor.

7 **THE COURT:** From the defendant, Gause?

8 **MR. HAZZARD:** Nothing on behalf of the defendant,  
9 Gause.

10 **THE COURT:** All right, very good.

11 Motions, Solicitor, that you are aware of that need to  
12 be resolved?

13 **MS. von HERRMANN:** Your Honor, I know that there are a  
14 number of photographs that I had discussed with Mr. McCollum  
15 and Mr. Hazzard that they had some questions about or they  
16 had some objections to. Also, it is my intention to bring my  
17 crime scene investigator to use a power point presentation.  
18 I think that probably that is something that we should  
19 address before we actually get into the testimony. I think  
20 it will save time and prevent us from having to break up the  
21 testimony of -- of the investigator. They have some  
22 objection to that, although I'm not -- I don't know the  
23 details of it.

24 Also, Mr. Hazzard tells me that he wishes to use some  
25 information coming from a psychological report done by the

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1 Department of Mental Health on one of my witnesses, Donell  
2 James, and I have an objection to that and would like to be  
3 heard on that motion as well.

4 **THE COURT:** All right, very good. Well, let's start  
5 off with the issues about the photographs. Mr. McCollum and  
6 Mr. Hazzard, did y'all identify the photographs that y'all  
7 have an issue with that the State wants to present?

8 **MR. McCOLLUM:** Your Honor, I think this is Mr.  
9 Hazzard's motion to object to the photographs of the  
10 deceased. I think there are four photographs that the  
11 Solicitor had picked out.

12 **THE COURT:** All right, very good.  
13 Do we have those identified, which ones they might be?

14 **MS. von HERRMANN:** We have not yet marked those, Your  
15 Honor, but I will hand them up. There is, in addition to  
16 that one long hallway shot in the power point presentation,  
17 which I assume will be objected to as well.

18 **THE COURT:** All right, Mr. Hazzard, you have these  
19 photographs. Would you look at these three and make sure  
20 these are the three that you have objections to, please, and  
21 then I think it would probably be best if we had those marked  
22 for identification by the State then just for the purposes of  
23 the motion just so we are clear.

24 **MR. HAZZARD:** The State has in its possession more  
25 photographs than this. I'm assuming these are the only three

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1 you are going to put into evidence?

2 **MS. von HERRMANN:** That's correct.

3 **MR. HAZZARD:** Okay.

4 **THE COURT:** All right, so let's have these three.

5 Could you hand those to Ms. Dixie, please sir. If you could  
6 mark those for identification, please. Thank you.

7 (THREE PHOTOS MARKED AS STATE'S EXHIBIT NUMBER 49, 50,  
8 AND 51 FOR IDENTIFICATION ONLY.)

9 **THE COURT:** We'll just take them in the order that they  
10 are here in front of me.

11 State's 49 for identification, I'm assuming, Solicitor,  
12 that's a picture of the deceased in the hallway as the  
13 deceased was found?

14 **MS. von HERRMANN:** That is correct, Your Honor.

15 **THE COURT:** All right, and the purpose for the State's  
16 introduction of this particular photograph would be what,  
17 please Ma'am?

18 **MS. von HERRMANN:** That photograph will corroborate  
19 evidence by other witnesses. In addition to that, Your  
20 Honor, it does show the location of a shotgun shell and a  
21 casing there. I mean, I think it will be important to see  
22 those items relevant to the placement of the body.

23 **THE COURT:** All right, and where they are located in  
24 connection to where the body is located, is that what you're  
25 saying?

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1           **MS. von HERRMANN:**   That's correct.

2           **THE COURT:**    Very good.

3           All right, Mr. Hazzard, let's -- let's just talk about  
4 this one first, 49 for identification.

5           **MR. HAZZARD:**    I'm sorry; which one?

6           **THE COURT:**    That's the one where the deceased is in the  
7 hallway. Let me hear you on that.

8           **MR. HAZZARD:**    Okay. Your Honor, it is my understanding  
9 that at the very least the State is going to have the  
10 testimony of multiple co-defendants, specifically Donell  
11 James and Gregory Floyd, who of their own prior statements  
12 were present at the time of the incident, that they will  
13 testify as to the manner and mechanism by which the victim  
14 died. They can and will, to my understanding, testify to  
15 injuries that the victim sustained and the placement of his  
16 body at the scene.

17           Furthermore, I am sure there are a plethora of police  
18 officers who were at the scene who can testify to the exact  
19 same thing. Due to the photographs, I would submit,  
20 constitutes shock value and is cumulative in nature. It is  
21 as she says, on her own, it would corroborate other testimony  
22 that she would already have. She will have at least two  
23 defendants and probably fifteen or twenty police officers. I  
24 don't know how much more corroboration the State would need  
25 as to the fact that Mr. Smith was dead, and Mr. Smith was

## JURY OUT/ON RECORD

1 shot, and that his body ended up in the hallway.

2 We would submit to allow these photographs into evidence  
3 is cumulative, unduly prejudicial, tends to inflame the  
4 passion and prejudices of the jury. We would simply point  
5 out based on the motion previously filed in this case on May  
6 12th, the Supreme Court has ruled on this very same issue in  
7 State v. Torres, saying that ---

8 **THE COURT:** I'm familiar with the case.

9 **MR. HAZZARD:** Yes, and so we would object to it being  
10 brought into evidence.

11 **THE COURT:** All right, thank you.

12 Regarding State's Exhibit 49 for identification, the  
13 Court has indicated in a number of cases, not only State v.  
14 Torres that was found at 703 S.E.2d 226, a 2010 decision of  
15 the South Carolina Supreme Court, but over a number of years,  
16 State v. Johnson in 2000, at 525 S.E.2d 519, State v.  
17 Kornahrens found at 350 S.E.2d 180, a 1986 decision of the  
18 South Carolina Supreme Court where cert. was denied by U.S.  
19 Supreme Court in 1987 on other matters.

20 I find certainly the rule is that photographs calculated  
21 to arouse the sympathy or prejudice of the jury should be  
22 excluded if they are irrelevant or not necessary to  
23 substantiate material facts or conditions. Evidence can be  
24 excluded if its probative value is substantially outweighed  
25 by the danger of unfair prejudice, and to be classified as

## JURY OUT/ON RECORD

1 unfairly prejudicial, photographs must have a tendency to  
2 suggest a decision on an improper basis, commonly though not  
3 necessarily an emotional one.

4           Regarding State's Exhibit 49 for identification, I'm  
5 going to allow the State to use this particular photograph.  
6 I do find it to be material and relevant. I also find that  
7 its probative value outweighs any prejudice there might be to  
8 the defendant, Gause, that being the defendant that has  
9 raised the objection.

10           I do not find that it is calculated to arouse the  
11 sympathy or prejudice of the jury. I find it is proper to  
12 use to corroborate testimony and to establish certain items  
13 that are in close proximity to the body and their relevance  
14 in that matter, so I will allow the State to use 49 for  
15 identification.

16           **MS. von HERRMANN:** Your Honor, with regard to the other  
17 two photographs, the State would only intend to use one of  
18 those two photographs, so we would not try to get both of  
19 those in, if the Court finds one more or less objectionable  
20 than the other.

21           **THE COURT:** All right, very good.

22           **MS. von HERRMANN:** And those photographs obviously are  
23 used to show the trajectory of the bullet through the body  
24 that was taken during the autopsy and the relevance of that,  
25 of course, is to -- to be able to show the position of the

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1 victim while he was -- when he was shot.

2       **THE COURT:** In State v. Torres, the Court allowed  
3 certain autopsy photographs because they corroborated witness  
4 testimony and were introduced to illustrate circumstances of  
5 the crime, the character of the defendant. In that  
6 particular case, the doctor who performed the autopsy used  
7 the photographs to illustrate the number of injuries,  
8 location of the injuries, and the manner in which the  
9 injuries were committed.

10       The Court is also mindful of the Supreme Court's -- it's  
11 in the body of the case, so it must be a ruling. It seems to  
12 be more indicative than anything else, the statement of the  
13 South Carolina Supreme Court, that although we affirm the  
14 admission of the photographs, we take this opportunity to  
15 address an area of growing concern to this Court.

16       The photographs at issue in this case, while admissible,  
17 are at the outer limits of what our law permits a jury to  
18 consider. More over, the State also sought to introduce  
19 evidence in the form of an autopsy dissection photo at trial,  
20 which the trial judge wisely excluded.

21       Today we strongly encourage all Solicitors to refrain  
22 from pushing the envelope on admissibility in order to gain a  
23 victory, which in all likelihood was already assured --  
24 that's because of what happened in this case; it has nothing  
25 to do with this particular case, but even without that, the

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1 Court finds that the prejudicial value of these two  
2 photographs substantially outweighs any probative value.

3 The reason submitted by the State to explain the  
4 trajectory of the bullet can certainly be shown by the  
5 medical examiner who conducted the autopsy by use of a  
6 pointer and using -- showing the trajectory on some willing  
7 volunteer, including the Solicitor or someone else on their  
8 behalf, which would show the jury the trajectory without the  
9 necessity of using these particular photos. I find them to  
10 be inadmissible. Thank you very much.

11 **MS. von HERRMANN:** Your Honor, the State does have  
12 black and white photos of those same pic- ---

13 **THE COURT:** I appreciate that, but I think the  
14 circumstances, even with black and white, I find them to be  
15 -- the prejudicial value is -- far exceeds any probative  
16 value in this.

17 I'll be glad for you at the time that the medical  
18 examiner testifies if you want to take some testimony outside  
19 the presence of the jury regarding these photographs as to  
20 what he would say about the illustration of the injuries, the  
21 location, or the manner in which they were committed. I'll  
22 be glad for you to do so to put that in the record, but I am  
23 not going to allow these photographs. Thank you very much.

24 **MS. von HERRMANN:** Yes sir, Your Honor.

25 **THE COURT:** All right, and those were 51 for

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1 identification and 50 for identification.

2 **THE COURT:** All right, the -- we have then some issues  
3 about a power point. What -- Mr. McCollum or Mr. Hazzard,  
4 what issues did we have about the Solicitor's power point?

5 **MR. HAZZARD:** Your Honor, we have not -- I know I  
6 haven't seen the power point. I don't believe Mr. McCollum  
7 has in speaking with Ms. von Herrmann this morning.

8 I believe one of the images or one of the autopsy images  
9 might be in the power point.

10 **MS. von HERRMANN:** Those can eas- -- those can easily  
11 be removed.

12 **THE COURT:** All right, so, I mean, I'm assuming since I  
13 didn't allow them in the evidence, the Solicitor wouldn't be  
14 using them so that ---

15 **MS. von HERRMANN:** I'm going to hand up to Defense  
16 Counsel and to the Court as well a booklet which contains the  
17 slides used in the power point presentation.

18 **THE COURT:** All right.

19 **MS. von HERRMANN:** As I said, there is a black and  
20 white photograph that the Court has excluded and that --  
21 which I said could easily be removed.

22 **THE COURT:** All right, and so with that, is there any  
23 other issues, Mr. McCollum?

24 **MR. MCCOLLUM:** None on behalf of Collington, Your  
25 Honor.

## JURY OUT/ON RECORD

1           **THE COURT:**    Mr. Hazzard?

2           **MR. HAZZARD:**    If the Court would give me a second to  
3 flip through, I will be able to respond.

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

5           **MR. HAZZARD:**    Obviously, Your Honor, the documentation  
6 I've been provided with the power point photographs,  
7 obviously the autopsy photo with -- the last image and the  
8 slide that says autopsy, we would object to that on behalf of  
9 the defendant.

10          **MS. von HERRMANN:**    We'll be happy to remove that.

11          **THE COURT:**    All right, so the last two in the -- that  
12 were in the slide projection or the ---

13          **MR. HAZZARD:**    In the slides, yes, sir.

14          **THE COURT:**    So the last two, and the State is in  
15 agreement, so with that, is there any other objections on  
16 behalf of the defendant, Gause?

17          **MR. HAZZARD:**    On Page 10 of the slide array provided,  
18 the bottom photo is one of the victim in the hallway shown  
19 from a slight distance ---

20          **THE COURT:**    It appears to be -- Solicitor, correct me  
21 if I'm wrong. Is that the one I just allowed into evidence,  
22 being 49 for identification?

23          **MS. von HERRMANN:**    It should be, Your Honor. I  
24 will ---

25          **THE COURT:**    It appears to be the very same photo, but

## JURY OUT/ON RECORD

1 if you will compare them.

2 **MS. von HERRMANN:** Let me double-check, but I believe  
3 that it is. It is, Your Honor.

4 **THE COURT:** All right, so you maintain your objection  
5 to that with the understanding that the Court is going to  
6 allow 49 into evidence in this particular matter?

7 **MR. HAZZARD:** Yes sir, Your Honor. As the Court knows,  
8 I wouldn't be waiving ---

9 **THE COURT:** No, no sir, I appreciate that, so I'm glad  
10 you brought that to my attention and I understand that. Very  
11 good.

12 Anything else?

13 **MR. HAZZARD:** Nothing further on behalf of Defendant  
14 Gause.

15 **THE COURT:** All right.

16 Any other matters that the State is aware of, Solicitor?

17 **MS. von HERRMANN:** Just the issue with the Department  
18 of Mental Health information.

19 **THE COURT:** Okay. Can we tell -- or give me a copy of  
20 the report or tell me what the issue is.

21 **MS. von HERRMANN:** I have a copy of the report right  
22 here, Your Honor. It's my understanding that Mr. Hazzard  
23 wishes to use information contained in that confidential  
24 Department of Mental Health record for impeachment purposes  
25 with defendant -- cooperating co-defendant, Donell James.

## JURY OUT/ON RECORD

1 I'm going to also hand the Court up a copy of the  
2 statute, 44-22-90, and I don't believe that that -- that the  
3 information contained within that report is admissible in  
4 these type of proceedings.

5 **THE COURT:** What is it, Mr. Hazzard, that you wanted to  
6 ask Mr. James about?

7 **MR. HAZZARD:** Specifically with regard to the findings  
8 in the report, whether he has knowledge of those findings.  
9 If the State is going to use this individual and the South  
10 Carolina Department of Corrections -- or South Carolina  
11 Department of Mental Health has found that he exhibits, among  
12 other things, extreme anti-social behavior and things of that  
13 nature, as well as indicating he is someone who -- I think  
14 the wording is something along the lines of shows no remorse,  
15 as well as basically has a personality geared toward deceit.  
16 I would think that the trier of fact is entitled to have this  
17 information in considering the veracity of any statement he  
18 might make under oath.

19 I would also point out I haven't seen the statute the  
20 Prosecutor was talking about, and I will look that up over  
21 lunch, but I would point out that any time these evaluations  
22 are done, it says in the report itself that there is  
23 absolutely no form of confidentiality involved, that when the  
24 person who does the evaluation talks with the subject of the  
25 evaluation, that they are told the Prosecutor is going to get

## JURY OUT/ON RECORD

1 a copy, the Court is going to get a copy, the Defense  
2 attorney is going to get a copy, anything you tell me is fair  
3 game, so I'm not sure if the statute the Prosecutor is  
4 referring to has something to do with admissibility or  
5 confidentiality in that regard.

6 **THE COURT:** I'm going to need the Order or a copy of  
7 the Order that allowed this evaluation to take place on Mr.  
8 James, because I believe it's a copy -- there is language in  
9 the Order which might address the issue, so I will need a  
10 copy of the Order.

11 Thank you.

12 All right, the Order authorizing the evaluation states,  
13 and this was an Order executed by the Honorable Larry B.  
14 Hyman, Jr. on July 16th, 2009, and it was entered into by the  
15 attorney for the defendant, for Mr. James, and the State  
16 says, among other things, this evaluation report shall be  
17 admissible as evidence in subsequent hearings pursuant to  
18 South Carolina Code Annotated, Section 44-23-420(c). Thus,  
19 the report is a statutory exception to the rule against  
20 hearsay and shall be admissible without the need for  
21 foundational testimony. However, the report shall be  
22 inadmissible in any other proceedings except as expressly  
23 permitted by South Carolina law.

24 So that will be an additional Code section you will have  
25 to examine, Mr. Hazzard, besides the one set forth by the

JURY OUT/ON RECORD

1 State, which was 42-22-90 (sic).

2 **MR. HAZZARD:** 44-22-90?

3 **THE COURT:** Was the one submitted by the State, and 42-  
4 23-420 (sic), so you will need to look at those.

5 Where in the scheme of things do we anticipate Mr. James  
6 testifying?

7 **MS. von HERRMANN:** It certainly will not be today.

8 **THE COURT:** All right, very good, so over lunch, then,  
9 you will have an opportunity, Mr. Hazzard, to look up those  
10 sections and then make further arguments as you deem proper,  
11 all right?

12 **MS. von HERRMANN:** Your Honor, the only other matter  
13 that I'm aware of is during the time that we were downstairs  
14 selecting the jury, the physical evidence was brought over  
15 from the Police Department. There were a number of items  
16 that were sent off to S.L.E.D. to be analyzed, and I think  
17 they may be things that we can agree upon. I'd like to take  
18 a minute to see if there are things that we can agree upon.  
19 If not, then I think that would be a matter we would need to  
20 address with Your Honor prior to the jury coming.

21 **THE COURT:** Well, what we can do is send the -- send  
22 the jury to lunch, looking at the time. You will want some  
23 time obviously to have lunch yourself and to be able to look  
24 at those exhibits. Do we need to have the jury come back,  
25 say, at three o'clock? Is that going to give y'all

JURY IN  
COURT TO JURY

1 sufficient time to do this, gentlemen?

2 **MS. von HERRMANN:** I think so, Your Honor.

3 **THE COURT:** All right, very good.

4 Ask the jury to come in, please.

5 And for your information, ladies and gentlemen, the jury  
6 selected Juror Number 22, Mr. Michael Bolin, the very first  
7 person selected, as the Foreperson.

8 **(THE FOLLOWING TAKES PLACE WITHIN THE PRESENCE OF THE**  
9 **JURY.)**

10 **THE COURT:** Mr. Carter and Mr. Richardson, y'all need  
11 to occupy the last two seats on each row. Thank you. I'm  
12 sorry I hadn't gotten a chance to explain that to you yet,  
13 but we'll get to that right now.

14 All right, Mr. Bolin, I hear the jury has selected you  
15 to be the Foreperson for this particular jury?

16 **MR. BOLIN:** Yes sir.

17 **THE COURT:** All right, very good, sir, and as I  
18 indicated, Mr. Carter and Mr. Richardson, y'all are the  
19 alternates for this particular jury. What I'm going to ask  
20 is any time y'all come back from the jury room, the three  
21 seats that y'all are in, the two alternates and the  
22 foreperson, if y'all would occupy those particular seats to  
23 make sure that I always know where the foreperson and the  
24 alternates are. There really aren't any other assigned  
25 seats. There might end up being so because I'm going to

## COURT TO JURY

1 allow y'all to take some notes in this particular case. This  
2 is not something we normally do, but I think in this  
3 particular case it will aid you.

4 I will talk about that more when we get started in this  
5 matter, because I'm going to let y'all go to lunch here in  
6 just a moment, but I would like y'all if you would right now  
7 if you can take the pen and the pad and write your name at  
8 the top of the first page, please. Write your name at the  
9 top of the first piece of paper, and then when y'all leave --  
10 you have a pen that's not working.

11 Madam Clerk, we have a pen that's not working. Can you  
12 -- all right, you'll have to come up with some more pens,  
13 Ma'am. Go over there and substitute those out and toss those  
14 other ones away, please.

15 All right, very good. We'll talk about the note-taking  
16 and some other matters I want to talk to you about when you  
17 come back. I'm going to let y'all go to lunch. Now, when  
18 you do that, y'all don't know anything about this case. It's  
19 exactly the way it should be. Obviously if anybody should  
20 approach you to try to talk to you about this case, that's  
21 improper. You can't talk about this case, nor can anybody  
22 talk to y'all about it until -- you can't even talk about it  
23 among yourselves until I submit it to you and give it to you  
24 at the very end for your deliberations.

25 So if you would, if you're going to go to somewhere at

COURT TO JURY  
JURY OUT/ON RECORD

1 lunch that's right around the courthouse, there's a number of  
2 places here within walking distance or two or three blocks of  
3 the courthouse, wear your juror button so that if there is  
4 other people in attendance that see it, they won't be talking  
5 about the case in your presence, or if they do, you need to  
6 immediately tell them, don't talk about it. If they persist  
7 in it, you find out who they are and we'll deal with them  
8 later on.

9 So with that, just leave your pad and your pen where it  
10 is. Go to lunch. I have some matters I have to talk to the  
11 lawyers about, but I'm going to ask that y'all be back in  
12 your jury room at three o'clock. That should give us enough  
13 time to deal with those matters and then for them to get a  
14 little bit of lunch, too, so three o'clock, be back in your  
15 jury room, please. All right, thank you very much. Just  
16 leave the pads and the pens, please.

17 **(THE FOLLOWING TAKES PLACE OUTSIDE THE PRESENCE OF THE**  
18 **JURY.)**

19 **THE COURT:** All right, is there anything further from  
20 the State before we take a break, Solicitor?

21 **MS. von HERRMANN:** No sir, Your Honor.

22 **THE COURT:** From the defendant, Collington?

23 **MR. McCOLLUM:** Nothing from Collington.

24 **THE COURT:** And the defendant, Gause?

25 **MR. HAZZARD:** Nothing from the defendant, Gause, Your

## JURY OUT/ON RECORD

1 Honor.

2 **THE COURT:** All right, Counsel, if y'all don't mind, if  
3 y'all could make sure y'all get together before you go out  
4 for lunch and you can work as hard as you need to so you can  
5 give yourself some time to be back by three o'clock. All  
6 right, thank you very much.

7 **(THE FOLLOWING TAKES PLACE AFTER A LUNCH BREAK AND**  
8 **OUTSIDE THE PRESENCE OF THE JURY.)**

9 **THE COURT:** All right, Counsel, would you come up here  
10 for a second, please.

11 **(BENCH CONFERENCE TAKES PLACE OFF THE RECORD.)**

12 **THE COURT:** Deputy, could you call in one of the  
13 jurors, please. It's Juror Number 43, Juror Number 43,  
14 please.

15 **(JUROR NUMBER 43 ENTERS THE COURTROOM.)**

16 **THE COURT:** All right, sir, the record will reflect who  
17 Juror Number 43 is since we're in open court. I'm not going  
18 to call you by name. I don't intend any disrespect by that,  
19 but since we are in open court, I do not intend to use your  
20 name. I will just go by your juror number, 43.

21 You indicated to me, sir, in a note, some information  
22 that apparently you just now remembered or it's just come to  
23 you -- did you just remember this, the information you just  
24 put in this note, or what is the situation?

25 **JUROR NUMBER 43:** Like one of those things where --

## JURY OUT/ON RECORD

1 where you get -- in this, you know, like I wasn't expecting  
2 to be picked. I kind of just put it to the side.

3 **THE COURT:** Okay.

4 **JUROR NUMBER 43:** Then when I got here, I mean, I  
5 couldn't really like focus on the process. Then I got  
6 picked.

7 **THE COURT:** And now you've thought about it?

8 **JUROR NUMBER 43:** Yeah, like that ---

9 **THE COURT:** All right, so it came up -- it came up  
10 after that, after you got picked?

11 **JUROR NUMBER 43:** Right.

12 **THE COURT:** All right. Do you remember me asking  
13 whether or not you, yourself, or any member of your immediate  
14 family had been a victim of a crime? Do you remember me  
15 asking that question?

16 **JUROR NUMBER 43:** Well, it's my father and his father  
17 are cousins, and I grew up with him. His uncle, I know him,  
18 but, you know, ---

19 **THE COURT:** Okay. Now, when did this occur?

20 **JUROR NUMBER 43:** Saturday, this happened ---

21 **THE COURT:** This past Saturday?

22 **JUROR NUMBER 43:** Yeah, Saturday.

23 **THE COURT:** So it's your grandmother?

24 **JUROR NUMBER 43:** No. It's his grandmother.

25 **THE COURT:** His, meaning who?

## JURY OUT/ON RECORD

1           **JUROR NUMBER 43:** My cousin.

2           **THE COURT:** Okay, your cousin's grandmother?

3           **JUROR NUMBER 43:** Grandmother, on his mother's side.

4           **THE COURT:** Okay. You'll have to help me out. I'm  
5 struggling in the relationship.

6           **JUROR NUMBER 43:** It's like ---

7           **THE COURT:** What is she to you? She would be what?

8           **JUROR NUMBER 43:** She would -- she would be like my --  
9 my granddaddy cousin, you know what I mean, like when it come  
10 down to it, second cousins.

11           **THE COURT:** All right, but this is something that just  
12 happened this past Saturday?

13           **JUROR NUMBER 43:** Yes. That's why I couldn't process  
14 it.

15           **THE COURT:** Where she got shot?

16           **JUROR NUMBER 43:** Yeah, at Williamsburg County. It  
17 happened Saturday night. It was on the news this morning and  
18 Sunday.

19           **THE COURT:** Okay, and so you're just telling me you  
20 just sort of forgot about that and ---

21           **JUROR NUMBER 43:** I mean, it's like it happened -- I  
22 heard about it yesterday, so I couldn't really process it,  
23 like my mind wasn't really on it this morning. I had other  
24 things going on, that I had to come to court and, you know  
25 what I mean.

JURY OUT/ON RECORD  
MOTIONS Continued

1           **MR. HAZZARD:** Your Honor, not to interrupt, but may we  
2 approach?

3           **THE COURT:** Absolutely.

4           **(BENCH CONFERENCE TAKES PLACE OFF THE RECORD.)**

5           **THE COURT:** Mr. Carter, at this point in time, I'm  
6 going to leave you as one of the alternates. I'm going to  
7 take your matter that you have raised with me under  
8 advisement, under consideration, but at the present time, I  
9 am not removing you from this jury panel, all right?

10           **JUROR NUMBER 43:** All right.

11           **THE COURT:** Go back to the jury room, please sir.  
12 Thank you.

13           **(JUROR NUMBER 43 DEPARTS THE COURTROOM.)**

14           **THE COURT:** Let the record reflect that as I've  
15 indicated, I am not making a decision at this point in time.  
16 I am taking the matter under advisement. I might very well  
17 receive further information from this juror before the Court  
18 makes a decision, but at this point in time, I am not going  
19 to remove him, especially considering his status as one of  
20 the alternates.

21           Madam Court Reporter, could you mark that, please, as a  
22 Court's Exhibit.

23           **(NOTE FROM JUROR NUMBER 43 MARKED AS COURT'S EXHIBIT**  
24 **NUMBER 1.)**

25           **THE COURT:** All right, Solicitor, is there anything

## MOTIONS

1 from the State at this point in time before we call the jury  
2 in?

3 **MS. von HERRMANN:** Yes sir, Your Honor. There are two  
4 matters. The first deals with the numbered evidence. We  
5 have agreed -- we have pre-marked and agreed upon Items  
6 Number 1 through 48, and I would move to have all of those  
7 items admitted into evidence at this time.

8 **THE COURT:** Why don't we -- well, Mr. McCollum, what's  
9 your position?

10 **MR. MCCOLLUM:** Your Honor, that's -- the Defense does  
11 not object to the things she's referring to, which is what we  
12 had already agreed to.

13 **THE COURT:** All right.

14 **MS. von HERRMANN:** The Court Reporter had told me that  
15 it may make things easier on her, and that was sort of ---

16 **THE COURT:** All right, 1 through 48?

17 **MS. von HERRMANN:** 1 through 48 will be in evidence.

18 **THE COURT:** And, Mr. Hazzard, what's the position of  
19 your client?

20 **MR. HAZZARD:** No objection on behalf of Defendant  
21 Quentin Gause.

22 **THE COURT:** All right. We will have marked in the  
23 record without objection as part of the evidence in this  
24 case, State's Exhibit 1 through 48.

25 **(VARIOUS DOCUMENTS ADMITTED INTO EVIDENCE AS STATE'S**

## MOTIONS

1 **EXHIBIT NUMBER 1 THROUGH 48. (See Index for Description.)**

2 **THE COURT:** After we swear the jury, I will just make  
3 some statement to the jury that those documents are in  
4 evidence since that would officially start the case at that  
5 point in time when we swear the jury.

6 **MS. von HERRMANN:** That's the only other matter that I  
7 am aware of, is Mr. Hazzard's motion with regard to the  
8 Department of Mental Health record.

9 **THE COURT:** The report on Mr. James?

10 **MS. von HERRMANN:** Correct.

11 **THE COURT:** All right. All right, Mr. Hazzard, having  
12 an opportunity now over lunch, I think, to look at those  
13 couple of Code sections or anything else, what argument would  
14 you like to make to the Court?

15 **MR. HAZZARD:** Your Honor, I had the opportunity to look  
16 at those Code sections and, in fact, to look at the title in  
17 its entirety. Based on those Code sections, I do not see  
18 anything that would preclude the usage of that information  
19 specifically in light of the way Judge Hyman's Order reads  
20 indicating the admissibility thereof and the use in any  
21 subsequent court proceeding. Also, the way the Order reads  
22 basically makes it a self-authenticating document.

23 The statutes that apply in that title themselves also  
24 basically make it a self-authenticating document for use in  
25 any subsequent court proceeding, so the position of Defendant

## MOTIONS

1     Quentin Gause would be that he would be entitled to use that  
2     information for the purpose of impeachment or in any  
3     subsequent case in chief for Defendant Quentin Gause.

4             **THE COURT:**     All right, sir.  
5             Solicitor.

6             **MS. von HERRMANN:**     Thank you, Your Honor. I have read  
7     the statute as well and it is my opinion that this -- these  
8     items are not permissible for use in this type court hearing.  
9     It says the reports are admissible in subsequent hearings  
10    pursuant to Section 44-23-40 (sic). Clearly, 44-23-40 (sic)  
11    deals with hearings on fitness to stand trial. It is self-  
12    evident that these reports would come in when trying to  
13    determine whether a person has the ability or fitness to  
14    stand trial, and that's -- that's the reason that those  
15    documents are created. That's the reason for the  
16    confidentiality agreement, and that's the reason for the  
17    statute.

18            Our argument would be that they are not permissible in  
19    this type of court hearing.

20            **THE COURT:**     Thank you. The Order of Judge Hyman, as  
21    indicated, said the evaluation, of course, shall be  
22    admissible as evidence in subsequent hearings pursuant to 44-  
23    23-420. That is a hearing regarding fitness to stand trial,  
24    and 44-23-430 is the -- gives a more expanded definition of  
25    the hearing on fitness to stand trial.

## MOTIONS

1           The Order of Judge Hyman goes on to say, however the  
2 report shall be inadmissible in any other proceeding other  
3 than the hearing on fitness to stand trial except as  
4 expressly permitted by South Carolina law.

5           The information contained in the report as I understand  
6 it, Mr. Hazzard, so I understand it, what you want to cross-  
7 examine Mr. James about is the diagnosis, is that correct?

8           **MR. HAZZARD:** That is correct, Your Honor.

9           **THE COURT:** So the diagnosis of anti-social personality  
10 disorder, is that correct?

11           **MR. HAZZARD:** Yes sir, insofar as it deals with -- if  
12 the Court reads a little bit further, it deals with the issue  
13 of a pattern and obviously that he must have in order to be  
14 diagnosed as such, must have a history of deceitful ---

15           **THE COURT:** But we don't have -- we don't have the  
16 expert -- I'm sorry, and I know I'm interrupting you, but you  
17 don't have the expert here to explain what that means,  
18 correct? We don't have that person here. You're not  
19 expecting this lay witness to define what this medical  
20 diagnosis is, are you?

21           **MR. HAZZARD:** No sir. I'm simply going to ask him is  
22 he aware of the report and what the report says, I mean,  
23 because he's the one that provided the information that led  
24 to the report.

25           **THE COURT:** But what you're referring to here is a

## MOTIONS

1 general definition. The report says anti-personality (sic)  
2 disorder describes an individual with a pervasive pattern of,  
3 and it gives all of these things. It doesn't say he did it.  
4 It -- that's -- it defines what anti-social personality  
5 disorder is.

6 Does Mr. James have a criminal record?

7 **MS. von HERRMANN:** Your Honor, he does, and I cannot  
8 tell you at this very moment what it is. Let me -- let me  
9 take a look.

10 **THE COURT:** All right, very good.

11 **MR. HAZZARD:** The Court's indulgence, Your Honor.

12 **THE COURT:** Yes sir.

13 **MR. HAZZARD:** Based on the information previously  
14 provided to the Defense by the Prosecution, it would appear  
15 that he was convicted of assault and battery of a high and  
16 aggravated nature and received in the Department of  
17 Corrections on August 14th of 2002. The sentence was the  
18 Youthful Offender Act not to exceed six years.

19 It shows a conviction for possession, selling, or  
20 disposing of a stolen vehicle worth more than Five Thousand  
21 Dollars, court date July 11th of 2005, sentenced to eight  
22 months in jail.

23 **THE COURT:** Both of those, Solicitor, you would agree  
24 he could be examined about, correct?

25 **MS. von HERRMANN:** Yes sir, Your Honor.

## MOTIONS

1           **THE COURT:** Any other criminal record that we're aware  
2 of at this point in time?

3           **MS. von HERRMANN:** No sir. I'm looking at his N.C.I.C.  
4 right now. That's the only -- those are the only convictions  
5 that I see.

6           **THE COURT:** All right, and then he is currently charged  
7 by the State of South Carolina for what offenses?

8           **MS. von HERRMANN:** He is currently charged with the  
9 same offenses, murder, armed robbery, burglary, and  
10 kidnapping.

11           **THE COURT:** Very good.

12           Mr. Hazzard, I am going to respectfully decline to allow  
13 you to examine Mr. James about the contents of the report  
14 from the Department of Mental Health that was generated as a  
15 result of the evaluation order for competency to stand trial,  
16 an evaluation that was executed by Judge Hyman on January  
17 16th, 2009, using the contents of Judge Hyman's Order and the  
18 State statutes that it is not admissible in this trial for  
19 cross-examination purposes of Mr. James.

20           Obviously you will be able to examine him about his  
21 anti-social behavior, that is committing crimes, for which he  
22 has been convicted, and the crimes for which he is charged  
23 that are related to this particular matter. That, I believe,  
24 will sufficiently call into question for whatever the jury  
25 deems it proper his credibility and believability in this

## MOTIONS

1 particular matter, but I do not believe the contents of the  
2 evaluation done by the State of South Carolina pursuant to  
3 the order for competency to stand trial, Order of Judge  
4 Hyman, is proper to use as cross-examination of him in this  
5 particular criminal proceeding involving your client, Mr.  
6 Gause, and ---

7 **MR. HAZZARD:** Understood, Your Honor. I would point  
8 out to the Court that under Rule 608(b) specific instances of  
9 conduct other than a conviction. Mr. James has a panoply of  
10 pending charges, and I would want to be able to inquire into  
11 those with him on cross-examination. We can table this issue  
12 at this point just so long as the Court is aware I would want  
13 to address it prior to his testimony.

14 I am mindful that 608(b) says that I cannot prove it by  
15 extrinsic evidence, but it does have a provision that would  
16 allow me to inquire of the witness with the Court's approval,  
17 and I would like to address that at the appropriate time.

18 **THE COURT:** Well, we'll need to do that before he  
19 testifies and obviously outside the presence of the jury, and  
20 we'll hear the questions that you would pose of him and his  
21 answers, and then we'll make a decision at that point in  
22 time, but if y'all will please remind me and bring it up  
23 again when it is time for Mr. James to testify so we can take  
24 up that matter before he testifies before the jury.

25 **MR. HAZZARD:** Thank you, Your Honor.

## MOTIONS

1           **THE COURT:**    Thank you very much.

2           All right, anything else, Solicitor, that you're aware  
3           of?

4           **MS. von HERRMANN:**    No sir, Your Honor.

5           **THE COURT:**    All right, and any matters on behalf of the  
6           defendant, Collington?

7           **MR. McCOLLUM:**    No, Your Honor.

8           **THE COURT:**    And on behalf of the defendant, Gause?

9           **MR. HAZZARD:**    Your Honor, under Rule 615, the  
10          defendant, Gause, would move that the State's witnesses be  
11          sequestered with the exception of the case agent.

12          **THE COURT:**    All right.  Are there any -- is there  
13          anyone else besides the chief investigating officer that you  
14          would like to remain in the courtroom, Solicitor?

15          **MS. von HERRMANN:**    Yes sir, Your Honor.  I have two  
16          victims that I believe are ---

17          **THE COURT:**    All right, so just tell me who they are so  
18          that I'm aware.

19          **MS. von HERRMANN:**    Anthony Graham.

20          **THE COURT:**    I'm sorry, Anthony Graham?

21          **MS. von HERRMANN:**    Anthony Graham, ---

22          **THE COURT:**    All right.

23          **MS. von HERRMANN:**    --- and Frankie Davis.

24          **THE COURT:**    All right, and those are the Victims Bill  
25          of Rights?

## MOTIONS

1           **MS. von HERRMANN:** Yes sir, Your Honor.

2           **THE COURT:** Mr. Hazzard?

3           **MR. HAZZARD:** No objection with regard to Ms. Davis and  
4 Mr. Graham, Your Honor.

5           **THE COURT:** All right, very good.

6           All right, other than that, what we will do is there  
7 will be a order of sequestration as to all witnesses for the  
8 State and the Defense except for the chief investigating  
9 officers, the two victims, the defendants in this particular  
10 matter. Regarding any potential witnesses on behalf of the  
11 Defense, Mr. McCollum, is there anyone else that you want to  
12 have remain in the courtroom not subject to the sequestration  
13 order?

14           **MR. McCOLLUM:** Your Honor, I think that the defendant's  
15 mother is present. We would ask that she be able to remain.

16           **THE COURT:** She is a witness?

17           **MR. McCOLLUM:** She's a potential witness, not likely to  
18 be called.

19           **THE COURT:** I'm sorry, and her name is?

20           **MR. McCOLLUM:** Ms. Rhue, Carolyn Rhue.

21           **THE COURT:** Carolyn Rhue. All right.

22           **MR. McCOLLUM:** She's on there, right?

23           **THE COURT:** Yes, Carolyn Rhue, and that's the mother of  
24 the defendant?

25           **MR. McCOLLUM:** The mother -- mother of Ladorrean

## MOTIONS

1 Collington.

2 **THE COURT:** I'm sorry. I said the defendant; it's Ms.  
3 Collington.

4 What's the State's position, Solicitor?

5 **MS. von HERRMANN:** We would object if she is listed as  
6 a witness and intended to be called. There is absolutely no  
7 provision for family members. If she's going to be a  
8 witness, then she should not be privy to the testimony of  
9 prior witnesses.

10 **THE COURT:** All right.

11 Mr. McCollum, I'm going to hold that Ms. Rhue is subject  
12 to the order of sequestration and thereby be sequestered if  
13 you have the intention of calling her as a witness.

14 Anyone else, Mr. McCollum?

15 **MR. McCOLLUM:** I'm sorry, Your Honor.

16 **THE COURT:** Any other witnesses that you would like to  
17 offer to be exempt from the order of sequestration?

18 **MR. McCOLLUM:** No, Your Honor, but also at this time we  
19 would like to move to have Ms. Rhue removed from the Defense  
20 witness list.

21 **THE COURT:** All right, so you are telling me you do not  
22 intend to call her as a witness in this case?

23 **MR. McCOLLUM:** That's true, Your Honor.

24 **THE COURT:** All right, very good. If she is no longer  
25 a witness in the case, then she is free to remain in this

MOTIONS  
JURY IN/JURY SWORN

1 particular matter with the understanding that she has been  
2 removed as a potential or possible witness in this case.

3 All right, Mr. Hazzard, any witnesses that you have set  
4 forth that you would like exempt from the order of  
5 sequestration?

6 **MR. HAZZARD:** No sir, Your Honor, and as a point of  
7 housekeeping and clarification, the defendant, Quentin Gause,  
8 did place a proviso on his witness list, that he reserved the  
9 right to call any witness listed or called by the State or by  
10 Defendant Collington. With regard to Ms. Rhue, we would  
11 remove her as a possible witness for Quentin Gause as well so  
12 that there is no issue of her possible testimony.

13 **THE COURT:** All right, very good. Thank you very much.  
14 All right, and ask the jury to come in, please.

15 **MS. von HERRMANN:** Your Honor, may I have my first  
16 witness remain in the courtroom?

17 **THE COURT:** Absolutely.

18 **(THE FOLLOWING TAKES PLACE WITHIN THE PRESENCE OF THE**  
19 **JURY.)**

20 **THE COURT:** All right, the very first order of business  
21 in this particular matter is the swearing of the jury, so,  
22 Mr. Foreman, and members -- ladies and gentlemen of the jury,  
23 if you would please stand at this time.

24 Madam Clerk.

25 **(THE JURY IS PLACED UNDER OATH BY THE CLERK OF COURT.)**

## COURT TO JURY

1           **THE COURT:**   Is there any member of the jury panel that  
2 did not affirmatively take the oath as just given by the  
3 Clerk of Court?  If so, please stand at this time.

4           Let the record reflect that no member of the jury stood.

5           All right, ladies and gentlemen, I appreciate your  
6 patience that you have exhibited so far.  We have tried to do  
7 some things outside of your presence to make sure the trial  
8 goes as smoothly as is possible.  Obviously there will be  
9 things that -- probably interruptions that I will need to  
10 take -- take things up out of your presence, but I will tell  
11 you -- and I commend the lawyers, that they have tried to  
12 work hard and diligently to get the matter prepared such that  
13 it will go as smoothly as possible.

14           In that regard, the Court now allows into evidence  
15 without objection State's Exhibits 1 through 48.

16           I have allowed you in this particular case to take  
17 notes.  Now, in doing so, I want to tell you a couple of  
18 things.  One of them is that's something that we don't  
19 normally do, that we rely upon the collective wisdom of the  
20 jury in what has been brought to your attention through the  
21 witnesses and the exhibits and/or documents introduced into  
22 evidence in a particular case.

23           Since I have allowed you to do so to try and aid you and  
24 assist you in reaching your unanimous decision in this  
25 matter, I want to tell you that just because somebody writes

## COURT TO JURY

1 something down does not make it more valid or relevant than  
2 someone else's memory of a particular witness' testimony or  
3 of matters that happened during the course of the trial.  
4 They both have equal ability to be examined by the jury as a  
5 whole to come up with your collective decision in this  
6 particular matter.

7 I would also caution you that when you are taking notes  
8 to please remember and understand that the case is continuing  
9 along while you are taking notes, so other questions and  
10 answers are being asked and given while you are writing your  
11 notes. Please take that into consideration and make sure  
12 that along with writing notes you keep your ears open and you  
13 are listening to what is going on.

14 You don't focus solely on what you have written down  
15 because the case continues on while you are doing so, and so  
16 your decision obviously needs to be made as a result of all  
17 of the testimony and evidence presented in this particular  
18 matter.

19 I told you at the very beginning and I read to you as a  
20 jury as a whole certain information contained in the  
21 indictments, the charges brought against these defendants.  
22 In this particular matter the State has charged the  
23 defendant, Ladorrean Collington. Ms. Collington has been  
24 accused of the crime scene of accessory before the fact of  
25 burglary in the first degree and armed robbery. The State

## COURT TO JURY

1 has also brought charges as against the defenc  
2 Gause, for the crimes of murder, armed robbery  
3 in the first degree.

4 First, I want to remind you again, the things I read to  
5 you in the indictment, they're not evidence, can't be  
6 considered by you as evidence. That will come from the  
7 witness stand. In essence in this particular case, you are  
8 judging two different cases. You are judging each crime  
9 charged against each defendant secondly. Your decision can  
10 be the same, different.

11 Just because the defendants are being tried together  
12 does not link them in any way as to a verdict that you would  
13 render in this particular matter or any other respect. These  
14 are two separate cases. Separate decisions must be made on  
15 each defendant in each distinct charge.

16 A unanimous verdict will be required on each defendant  
17 and each specific charge against each defendant, as  
18 indicated, separate decisions.

19 Collectively you are the judges of the facts of this  
20 particular case. The Court will not indicate to you in any  
21 way what I believe the facts of this case are because that's  
22 not my job. That is not my responsibility. That is your  
23 job. That is your responsibility, to find the facts and  
24 evidence presented that are properly presented to you in  
25 evidence, find that which convinces you of its truth and then

## COURT TO JURY

1 weigh that burden against the State's burden to prove the  
2 defendant guilty of each crime charged beyond a reasonable  
3 doubt.

4 To these indictments that the State has presented and  
5 brought against the defendant, each defendant has pled not  
6 guilty to each charge. That puts the burden of proof  
7 squarely on now and throughout the entirety of this trial  
8 until you reach a unanimous decision the burden of proof to  
9 prove the defendant guilty of the respective crimes charged  
10 beyond a reasonable doubt.

11 The defendants have nothing to prove to you. The  
12 defendants have nothing to show to you. They have no  
13 responsibility to prove anything to you. They need not even  
14 be present because the State must bring to you all the  
15 evidence for you to consider to decide whether or not the  
16 State meets its burden to prove each defendant guilty of the  
17 respective crime charged beyond a reasonable doubt.

18 It will be your job to evaluate all the evidence. It  
19 will be your job to find that evidence which convinces you of  
20 its truth and then weigh that evidence you find to be  
21 truthful against the State's burden to prove the defendants  
22 guilty beyond a reasonable doubt.

23 You will be called upon to judge the credibility, that  
24 is the believability, of witnesses that come before you and  
25 testify under oath. Now, I will remind you about this at the

COURT TO JURY

1 very -- at the very end, but it's something you do every  
 2 single day of your life.

3 When somebody tells you something, you are automatically  
 4 judging whether or not you believe them, and how do you do  
 5 that? You use your good common sense. You use your good  
 6 judgment that you use in conducting your own affairs. That's  
 7 what we're asking you to do here today, use your good common  
 8 sense, use your good judgment, listen and pay attention to  
 9 what's been told you from the witnesses, what other evidence  
 10 of a documentary or physical nature that might be presented  
 11 to you, find the evidence that convinces you of its truth.  
 12 Then you can make your decision, your unanimous decision, as  
 13 to whether or not the State has proved to you the guilt of  
 14 the defendants beyond a reasonable doubt.

15 Sometimes during the course of the trial and how the  
 16 trial will be conducted is we'll have the opening statements  
 17 of the lawyers. Opening statements are not evidence, can't  
 18 be considered by you as evidence. They're important.  
 19 They're each side's introduction to you of what they believe  
 20 will come, but they're not evidence in this particular case.  
 21 That will come next through the witnesses and through any  
 22 physical evidence that might be properly introduced.

23 After that we'll have the closing arguments of the  
 24 attorneys. Again, the closing arguments are not evidence,  
 25 can't be considered by you as evidence. They're important

## COURT TO JURY

1 because they're each side's summation as to what they believe  
2 and what they want you to look at in arriving at your  
3 decision, understanding again, you are the judges of the  
4 facts.

5 Then I will give you the law that you will apply to the  
6 facts that you find to be true in this case, and then you  
7 will retire to deliberate and come up with your unanimous  
8 decision as to all of the charges levied against both  
9 defendants.

10 During the trial, there may be certain matters raised to  
11 me by the lawyers. Again, anything I say is not making a  
12 comment on the facts of the case. If I give them any  
13 directions, if I tell them anything during the trial with you  
14 being present, I am merely telling them how the trial will be  
15 conducted, not making any comments on the evidence. Again,  
16 that's your job. If necessary, I will send you out of the  
17 courtroom and I will discuss it more fully and openly with  
18 the lawyers and make a decision outside your presence.

19 I will instruct you again, but I just start off with  
20 telling you, you have to make your decision based solely and  
21 completely on what you hear in this courtroom and from no  
22 other source. You will not be allowed when you leave the  
23 courthouse to go home for the evening or whenever to look up  
24 anything on your own, do any research on your own, go to the  
25 Internet and look up anything. You can't go to -- if you

COURT TO JURY  
STATE'S OPENING - von HERRMANN

1 knew where the scene was, you can't go there, because you  
2 have to make your decision solely and completely on what you  
3 hear in this courtroom.

4 I'm going to ask you do not discuss this case among  
5 yourselves. Obviously you don't allow anybody else to  
6 discuss it with you, but among yourselves until I send it to  
7 you at the very end for your deliberations and your unanimous  
8 decisions, do not discuss the case among yourselves. The  
9 basic reason for that is you might express an opinion on what  
10 you just heard somebody say. The very next witness might  
11 change your mind, and then you've publicly stated a position  
12 and you might find it hard to retract or go back from that  
13 particular position. You wait until you've heard all of the  
14 evidence in the case. You wait until you know the law that  
15 you have to apply to those facts before you discuss the case.

16 So with that, I'm going to turn it over to the lawyers  
17 for their opening statements.

18 All right, Solicitor.

19 **MS. von HERRMANN:** Thank you very much.

20 Good morning, ladies and gentlemen, or afternoon I  
21 should say. It feels -- feels to you, I'm sure, like  
22 afternoon. To me, it still feels like morning.

23 As I told you before, my name is Heather von Herrmann,  
24 and I'm assigned by your elected official, Greg Hembree, to  
25 prosecute criminal cases, and I have found over the years

## STATE'S OPENING - von HERRMANN

1 when I deal with murder cases that there are three reasons  
2 why people are killed, love, jealousy, and money, and in this  
3 case, we've got all three, love and jealousy, and money.

4 Ladorrean Collington has been charged in this case with  
5 accessory before the fact of armed robbery and accessory  
6 before the fact of murder. What does that mean? Does it  
7 mean that she actually went in there and arm-robbed somebody,  
8 that she went in there and burglarized somebody? No, it  
9 doesn't. It means that what she did is that she urged  
10 someone, encouraged them to go in and to burglarize someone,  
11 that she urged someone, encouraged them to arm-rob another  
12 person.

13 The defendant, Gause, is charged with murder, and the  
14 State's position is that we'll be able to prove to you that  
15 he killed the victim in this case, Allen Smith, also that he  
16 arm-robbed him, and that he committed a burglary, so there  
17 are a lot of different people, names that you are going to  
18 hear throughout the course of this trial, and that, to me, is  
19 one of the most confusing things when I get a report in from  
20 the police and I start studying it and preparing for trial.

21 The first thing I do is go through and look at  
22 everything, and I try to make myself a list about who the  
23 different people are and how they're related to one another,  
24 so I'm going to try to do that for you a little bit here as  
25 we begin, if my easel will cooperate with me.

## STATE'S OPENING - von HERRMANN

1 I'm going to start with Allen Smith. Allen Smith was a  
2 young man who lived here in Conway on Barberry Drive, which  
3 is close to the campus of C.C.U. He lived in a house with  
4 his girlfriend, Frankie Davis. When this incident took  
5 place, the two of them had a house guest who was there with  
6 them, and his name was Anthony Graham. Now, Allen Smith had  
7 a nickname; his nickname was Big A. He's a big, tall guy,  
8 played football for Aynor, played basketball for Aynor. I  
9 believe that he even played baseball for Aynor as well, and  
10 they called him Big A, so I'm going to put Big A here in  
11 parentheses by his name.

12 His girlfriend, Frankie Davis, had a nickname, too. Her  
13 nickname was Fa, F-A, Fa, so let me put this under her name,  
14 and the friend, Anthony Graham, also had a nickname. His  
15 nickname was Loc.

16 So when you hear people testify over the course of the  
17 next couple of days, you may hear one person refer to Allen  
18 Smith as Allen Smith. You may hear another person refer to  
19 him as Big A. The same thing with Anthony Graham. You may  
20 hear him referred to as Loc, and so it does get confusing, so  
21 as best as you can, I want you to try to put the -- put the  
22 nicknames together with the actual names so that you can  
23 follow what's going on.

24 This group of people lived in a house on Barberry Drive,  
25 and if that were the end of the story, they'd still be in the

## STATE'S OPENING - von HERRMANN

1 house on Barberry Drive, but that's not the end of the story.  
2 Allen Smith unfortunately had a relationship with Ladorrean  
3 Collington, a relationship which he was trying to break off.

4 Ladorrean Collington also has some nicknames, Dora,  
5 Dorrea, Dory, and Ladorrean claimed that she was pregnant  
6 with Allen Smith's baby. She asked Allen Smith to leave his  
7 girlfriend, but he wasn't going to do that, and when he  
8 wasn't going to do that, she got mad, and when she got mad,  
9 she was going to do something about it.

10 So on April the 8th, he comes over to her house and they  
11 get into a fight. She rips the chain off his neck, calls him  
12 some names; he leaves. He wants to get away, and when he  
13 leaves, she gets in her car and follows him. He and his  
14 friend are running back of yards, jumping over fences, trying  
15 to get away from this girl, but she is unrelentless. She  
16 gets in her car; she drives around. When she can't find him,  
17 she goes to his house, she takes an object, and she busts out  
18 the window, and she leaves a note, and then she drives away.

19 Later she continues to call. He's not answering her  
20 telephone call. She decides that the breaking out of the  
21 window is not good enough, so she get ahold of some friends  
22 of hers, Andrew James, who is also known as Drew, Donell  
23 James, who goes by J.B. for John Boy, and Greg Floyd, who  
24 remarkably goes by Greg Floyd, and Tiffany James, who goes by  
25 Tiffany.

## STATE'S OPENING - von HERRMANN

1 She gets ahold of these people and she says to them,  
2 hey, you guys want to make some money, make some quick money?  
3 I got a lick for you. I got a plan for you how you can make  
4 some money. All you need to do is you go over to Big A's  
5 house, and you're going to go in there and you're going to  
6 rob him and take his money, and that's how she's going to get  
7 her revenge. She doesn't like it that he doesn't want to be  
8 with her.

9 So this group goes on the 10th of April over at his  
10 house, and when the three of them get there -- Tiffany drove  
11 them over there. When they get there, they knock on the  
12 door. Nobody comes to the door. They start looking around  
13 at each other and they say, I don't know, I don't know, I  
14 don't know about this, and they get a little panicky, and  
15 they leave. They're like -- they chicken out. They are like  
16 we can't do it; we can't do it.

17 They leave there and they go back to Ladorrean's, plan  
18 out the window. That just makes her madder, and so after  
19 that, she starts planning again. She plans, and she calls  
20 Donell James in. She gets Greg Floyd again. She gets  
21 Tiffany in again, but this time, there's somebody else  
22 involved, Quentin Gause, whose nickname is Bait, and the  
23 difference between this time and the time before is that he's  
24 got a shotgun, and it's loaded, and he's going to use it, and  
25 they go in, they walk into that house.

STATE'S OPENING - von HERRMANN  
DEFENDANT (COLLINGTON) OPENING - McCOLLUM

1           Anthony Graham is in the front bedroom. You're going to  
2 hear from him. They hold him at gunpoint, Greg Floyd does.  
3 Donell James and Quentin Gause go to the side bedroom. Allen  
4 Smith and his girlfriend are asleep in the bed. They hear a  
5 commotion out there, start to wake up. She slides in between  
6 the wall and the bed in the bedroom, slips down, crawls  
7 underneath the mattress and is looking at them.

8           She sees feet going over to a dresser. She hears Allen  
9 move. Bam. Shots are fired. He tries to get up, but it's  
10 too late, because Quentin Gause had shot him and killed him,  
11 and Ladorrean Collington had made it happen.

12           I'm going to put some evidence up here on the witness  
13 stand for you all, and at the end of hearing this evidence,  
14 you're going to have no problem finding both of these  
15 defendants guilty on all counts. Thank you for your  
16 attention.

17           **THE COURT:** All right, Mr. McCollum, on behalf of  
18 Defendant Collington.

19           **MR. McCOLLUM:** May it please the Court.

20           **THE COURT:** Yes sir.

21           **MR. McCOLLUM:** Ladies and gentlemen, I believe the  
22 Judge thanked you for your patience, and I, too, thank you  
23 for your patience. It's just beginning. I expect this trial  
24 will take some time, so please bear with us. I know that you  
25 didn't ask for this duty, but we very much appreciate you

## DEFENDANT (COLLINGTON) OPENING - McCOLLUM

1 being here.

2 As I said earlier, my name is Greg McCollum and I'm a  
3 lawyer, and I practice law in Myrtle Beach and have for some,  
4 I guess, twenty something years now, and today I have the  
5 privilege and responsibility of defending Ladorrean  
6 Collington.

7 Now, we don't contest the fact that on April the 14th of  
8 2008 that a man who went by the name of Allen Smith was shot  
9 to death at his house where he was staying, but the evidence  
10 that the State is now choosing to follow is that Ms.  
11 Collington was not present, okay, that she wasn't there. She  
12 wasn't in the house, she wasn't on the porch, she wasn't in  
13 the driveway, she wasn't in the car. She wasn't involved.

14 An element of accessory before the fact of any type of  
15 felony is that you're not present at the scene because if  
16 you're present at the scene when a felony is committed and  
17 you're both present and both aiding and abetting, in other  
18 words helping, with helping in a very serious way, assisting  
19 in every possible way, then you're the what's called a  
20 principal.

21 Now, I submit to you that there are several principals  
22 in this case, and the State alleges that Quentin Gause is a  
23 principal. I don't know. We'll see if that's true or not,  
24 and ultimately that will be your decision, but I submit to  
25 you that there were several principals involved, an

## DEFENDANT (COLLINGTON) OPENING - McCOLLUM

1 individual, a woman who drove these individuals to Mr.  
2 Smith's house, individuals who for reasons satisfactory to  
3 themselves got out of the car with weapons, wearing these,  
4 kicked the door in, held at least one person at gunpoint, and  
5 then fatally shot to death Mr. Smith, while his girlfriend  
6 was cowering under the bed as Ms. von Herrmann said, and you  
7 ask yourself, well, where are these people? They are the  
8 State's witnesses.

9 Those people are the State's witnesses. They're not on  
10 trial. They signed what's called proffer agreements so that  
11 they can cooperate with the State of South Carolina, and one  
12 would think if we knew, the State knew, the police knew that  
13 those people did those things, that they would be on trial  
14 and certainly would not be in here saying somebody else did  
15 it, but that's the case.

16 Now, Ms. von Herrmann, who is a skillful prosecutor,  
17 standing before you has told you a story or a version of  
18 events, and she told it in a somewhat dramatic fashion, and  
19 it has a certain effect on you, but as you listen to this  
20 case, as you hear these witnesses, as you hear one  
21 contradiction after another, as you hear them testify again,  
22 say it again under oath, only a different way, you will find,  
23 I believe, that even the State's own witnesses who were  
24 involved in this don't even tell it like Ms. von Herrmann.

25 In fact, I would submit they -- you will find that they

## DEFENDANT (COLLINGTON) OPENING - McCOLLUM

1 all tell a different story. You will also find that they  
2 came up with these stories much later with, for reasons  
3 satisfactory to themselves, operating under whatever belief  
4 they had, they believed it was in their best interest to say  
5 somehow that Ms. Collington caused this, that she would take  
6 elaborate steps to have the father of her child killed, or as  
7 they say, robbed at his house, burglarized, because even  
8 though Ms. von Herrmann said that she was charged with  
9 accessory before the fact of murder, and I just say that as  
10 well she isn't.

11 She's charged with accessory before the fact of armed  
12 robbery, accessory before the fact of burglary, and armed  
13 robbery is taking something from another by force or threat  
14 of force, personally in front of them, in their presence.  
15 You can't do it over the phone, okay? You've got to be in  
16 their presence. They have to feel that threat or  
17 intimidation, and then armed with a deadly weapon.

18 Burglary is to enter without permission with the intent  
19 to commit a crime inside, and there are people who did that,  
20 but not Ms. Collington.

21 Now, one of the things that you are going to look at,  
22 and hear, and consider is that what is an accessory before  
23 the fact; what does that mean? We know the person isn't  
24 present, not even involved, but that that person aids in the  
25 commission of a felony or is an accessory before the fact in

## DEFENDANT (COLLINGTON) OPENING - McCOLLUM

1 the commission of a felony by counseling, hiring, or  
2 otherwise procuring a felony to be committed, and then it's  
3 the same crime or penalty as if they were a principal.

4 Procure, I submit to you, is to obtain something  
5 especially with care or effort, to obtain by particular care  
6 and effort. Counsel is to give advice especially as  
7 solicited from a knowledgeable person. Now, that doesn't  
8 mean somebody says something. That means that somebody went  
9 to somewhat of great lengths to be involved, as an attorney  
10 or counselor.

11 If I counsel somebody, it's not something I said to  
12 somebody in line at the grocery store. To counsel somebody  
13 would mean to meet them, to listen to their particular facts,  
14 get the idea and the evidence of what happened, and then for  
15 me to give them some legal advice or counsel them.

16 If you go to a counselor because you're having a  
17 difficulty with a child or you're having a personal problem,  
18 it's involved, okay? Counseling someone is not simply  
19 suggesting something on the sidewalk. To procure means to  
20 obtain with particular care or effort, the same thing.

21 Now, there's not going to be any evidence that Ladorrean  
22 Collington did any of those things, and to say that she got  
23 mad at somebody that she had a baby with and got mad at him,  
24 and that that means she's guilty of accessory before the fact  
25 of armed robbery and burglary, I submit it's just -- just

## DEFENDANT (COLLINGTON) OPENING - McCOLLUM

1     ludicrous. Anybody that's ever been in any relationship has  
2     gotten mad at the person they're in the relationship with.  
3     It doesn't mean that then we then go and counsel or procure  
4     to do something that's a felony. I think that -- well,  
5     you'll see.

6             Now, in this particular case, what I believe most of  
7     this is going to come down to is the witnesses who are going  
8     to be telling it for the second, third, or fourth time, and  
9     they're not going to be telling it the way they told it the  
10    first time, but they're going to be telling it today and this  
11    week the way they think they're supposed to be telling it so  
12    they get the most benefit. I think the evidence will clearly  
13    show that.

14            I submit that Ms. Collington should not be on trial for  
15    these charges, that whatever she did or didn't do, that she's  
16    by no means perfect. She certainly made mistakes. She  
17    certainly lost her temper. She certainly probably said  
18    things maybe she shouldn't have said, okay, but that doesn't  
19    make her guilty, and she's not guilty of these charges, and  
20    when we come back later this week after you've heard all the  
21    evidence, you've been through the evidence, then I think you  
22    will see then clearly that she's not guilty.

23            Now, she doesn't have to prove anything, and His Honor,  
24    Judge John, will tell you that. The State has the burden of  
25    proof. The State must prove all elements beyond a reasonable

DEFENDANT (COLLINGTON) OPENING - McCOLLUM  
DEFENDANT (GAUSE) OPENING - HAZZARD

1 doubt. Mere suspicion doesn't even come close, and we'll  
2 talk about that some more later in the trial. They have the  
3 burden of proving that she's guilty, and they cannot prove  
4 she's guilty of these offenses, and they will not prove it,  
5 and when you see what they present, I think you will see with  
6 some wonderment how this case is put together.

7 Thank you again. I appreciate your patience. I  
8 appreciate your ability to serve here, and look forward to  
9 spending several days with you, and thank you for your time  
10 and attention.

11 **THE COURT:** All right, Mr. Hazzard, on behalf of the  
12 defendant, Gause.

13 **MR. HAZZARD:** Thank you, Your Honor. May it please the  
14 Court.

15 **THE COURT:** Yes sir.

16 **MR. HAZZARD:** This is Quentin Lavant Gause. He is  
17 thirty years old as he sits here today. Back in April of  
18 2008, he was a twenty-seven year old man. That's the first  
19 distinction between him and all these other people who were  
20 involved with this foolishness here.

21 The Prosecutor has given you some names, Donell James,  
22 Gregory Floyd, Tiffany James, Tanheshia Smith, and Ladorrean  
23 Collington. The problem that we have, and when I say we, I  
24 mean I and Quentin over there, is that other than Gregory  
25 Floyd, we don't know any of these people. Let me repeat

## DEFENDANT (GAUSE) OPENING - HAZZARD

1 that. We don't know any of these people, because you see,  
2 Quentin was older. Back in April, as I say, of '08, he was  
3 twenty-seven. Well, Donell was twenty-three. Gregory Floyd  
4 was twenty-one. Tiffany James at that time was eighteen.  
5 Tanheshia Smith at that time was eighteen, and even Ladorrean  
6 Collington, whom we don't know, was apparently twenty-one  
7 based on her date of birth.

8 Now, when you get older in life, age different doesn't  
9 make that big a difference, but as we know when you're  
10 younger, when you're in your teens, when you're in your early  
11 twenties, even when you're in your later twenties, you're  
12 less likely to hang out with people who are in their early  
13 twenties or teens, you know, because they are still reaching  
14 a maturation process that you've already gone through, okay?  
15 That's the first distinction.

16 Another thing that's interesting is the Prosecutor did  
17 try to take a somewhat complex situation and make it more  
18 simple and manageable. I'll make it even simpler than that.  
19 There's no question, no question, that Donell James and  
20 Gregory Floyd are going to get on the witness stand, assuming  
21 the State does call them as they have planned to, and say  
22 that yes, they were involved, in what ultimately turned out  
23 to be the death of Mr. Allen Smith on April 14th, 2008.

24 What they are also going to say now, and let me stress  
25 that, what they are going to say now is that Quentin Gause

## DEFENDANT (GAUSE) OPENING - HAZZARD

1 was there, that Quentin Gause was there, Quentin Gause did  
2 everything, Quentin Gause pulled the trigger, it was all  
3 Quentin Gause. Quentin Gause even provided the car.  
4 Anything having to do with this crime is now all on Quentin  
5 Gause.

6 Now, evidence and testimony is going to show that this  
7 occurred around 3:40 in afternoon on April 14th of 2008, and  
8 evidence and testimony will further show that when this  
9 occurred, this was a very, very big deal, and I don't mean a  
10 very big deal in the media days later, I mean a very big deal  
11 right then. Why? Because it happened in a cul-de-sac  
12 housing complex that is basically right on Highway 544. If  
13 you're coming from the beach, you reach it just before you  
14 cross over the 501 bridge. What's right near there? Coastal  
15 Carolina. What's right near there? Horry-Georgetown Tech.

16 Evidence and testimony will show that both of those  
17 places of education were shut down for several hours that day  
18 because of the events that happened around 3:40 in the  
19 afternoon of April 14th , 2008.

20 Evidence and testimony will show that it was pretty much  
21 an all hands on deck situation for the Horry County Police  
22 Department, that virtually every detective that they had  
23 worked on this case, and evidence and testimony will show  
24 that at 1:00 A.M. on April 15th, so that's what, nine hours  
25 later, nine hours after the event, -- I mean, these guys were

## DEFENDANT (GAUSE) OPENING - HAZZARD

1 humping it. They were working. They were talking to every  
2 lead they could imagine. They were turning over ever rock  
3 they needed to turn over.

4 The evidence and testimony will show that at 1:00 A.M.,  
5 they've got Donell James in the box. They've got Donell  
6 James in the box, and the evidence and testimony will show  
7 that when they talked to him for well over an hour and a half  
8 -- if I'm not mistaken, it was close to two hours, that he  
9 said I don't know nothing about nothing. I ain't got nothing  
10 to do with nothing.

11 The evidence and testimony will show that around at  
12 least 3:05 A.M., they've now got Donell's girlfriend,  
13 Tanheshia Smith, in the box, 3:05 A.M., okay, because these  
14 guys were working around the clock. That's how big a deal  
15 this is, and that at that time, she was not aware that Donell  
16 had been arrested for murder.

17 So the police bring her in and they talk with her, ask  
18 her about her day, what did she do. She says I don't know  
19 nothing about nothing. They then tell her, well, you realize  
20 John Boy, -- that was Donell James, John Boy, even though he  
21 denies that, he said nobody calls me John Boy, but eventually  
22 he owns up to it.

23 They tell her, you know John Boy is in jail. He's in  
24 jail for murder, and at that point it becomes very, very,  
25 very real for her because the father of her child, the man

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1 she loves, the man she slept with the night before, is in  
2 jail for murder, and at that time she immediately starts  
3 saying, no, what had happened was this man here, he's the  
4 one. He's the one, not my baby daddy. He's the one.  
5 Because why? Because that's what John Boy told them, because  
6 remember, there's like a nine hour time period, between eight  
7 to nine hours, between the time that Mr. Smith is brutally  
8 slain and the time that the first of what turns out to be  
9 these many defendants is in custody.

10 And evidence and testimony will show that over the  
11 course of time, they -- over the course of that eight hour  
12 period, all of them had a lot of opportunity to sit and talk  
13 and plot and plan as to what to say if things went bad.

14 Evidence and testimony in this case will show that it's  
15 not until literally over a year later that, you know, certain  
16 people get on the train. Gregory Floyd gets on the train,  
17 because when they talked to Gregory Floyd, and they talked to  
18 him on the 16th of April, the evidence and testimony will  
19 show when they talked to Mr. Floyd, that Mr. Floyd spends  
20 well over an hour saying I don't know nothing about nothing.  
21 I wasn't there. It wasn't me, but Gregory Floyd takes it to  
22 a whole new level.

23 Not only once the police get it in his head about an  
24 hour and a half in that he's in really, really bad trouble  
25 and he's not going anywhere, then all of a sudden, well,

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1 you've got to pull out. You've got to pull out a Quentin  
2 Gause. It's Quentin Gause, but he goes even a step further.

3 Evidence and testimony will show that he throws a guy by  
4 the name of Greg Hemingway under the bus. Evidence and  
5 testimony will show their co-defendant, the alleged driver,  
6 and we'll get into the issue of the whole alleged part of the  
7 driver, Tiffany James, she also throws Mr. Hemingway under  
8 the bus and says he did it, he did it, he did it, so they  
9 have absolutely no compunction, no problem with throwing  
10 anybody they can and saying anyone did -- anyone is  
11 responsible but them, okay?

12 So you've got Donell James; you've got Gregory Floyd.  
13 No question those two guys were in the house, so what's your  
14 last question, because your evidence and testimony is going  
15 to be three black males went into the house. We know one was  
16 Donell. We know one was Gregory. The question is who was  
17 the third one?

18 Well, what did Ms. von Herrmann tell you also? Oddly  
19 enough, a couple of days before, it may have even been the  
20 day before, none of them are really clear on dates, but  
21 sometime within the preceding forty-eight to seventy-two  
22 hours before Mr. Smith was killed, Donell James and Gregory  
23 Floyd do go to the house, and who did they take with them?

24 They take with them Andrew James, IV. Andrew James, IV,  
25 whom evidence and testimony will show, was in the process of

## DEFENDANT (GAUSE) OPENING - HAZZARD

1 being evicted from his home, Andrew James, IV, who has three  
2 kids to take care of, Andrew James, IV, whose lights have  
3 been turned out. He needs money worse than anybody in this  
4 whole scenario, and there's no question he went the first  
5 time. The question is did he go the second time.

6 Andrew James, IV, whom evidence and testimony will show  
7 when the police talked with him, he's not answering. If we  
8 run one of those gunshot residue tests on your hands, what's  
9 it going to show? Is it going to show you've done fired a  
10 weapon? And evidence and testimony will show that Andrew  
11 James, IV, said, well, you know, I did have a little accident  
12 today. I was messing around and had a .22 in my pocket and  
13 it just kind of went off when I was trying to pull it out.

14 Now, who are these people? Let's be clear. The easiest  
15 way for me to do it is to start with Donell James, because  
16 basically everybody is connected to him. Tanheshia Smith is  
17 his girlfriend/baby mom. Andrew James, IV and Tiffany James  
18 are his first cousins, okay?

19 Gregory Floyd's brother is the boyfriend/baby daddy of  
20 Tiffany James, okay, so all of these folks are either  
21 connected by love, by blood. Now, who is the one person that  
22 ain't in that circle? Quentin Gause. He ain't nobody's baby  
23 daddy. He ain't nobody's boyfriend. He ain't nobody's  
24 friend. He's nobody's confidante. He's got nothing to do  
25 with these people, which brings us back to where we started.

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FREDERICK ARTHUR RASH - DIRECT BY von HERRMANN

1           The evidence and testimony will show when it's all said  
2 and done in this case that they can try to blame this man all  
3 they want, but there is no evidence, there will be no  
4 evidence, and the reason there will be no evidence is because  
5 he didn't do it.

6           We look forward to working with you. Thank you for your  
7 time and your attention.

8           **THE COURT:** All right, Solicitor, your first witness,  
9 please Ma'am.

10           **MS. von HERRMANN:** Thank you, Your Honor. The State  
11 calls Officer Fred Rash.

12           **THE COURT:** All right. Please come around to be sworn,  
13 sir.

14                           **FREDERICK ARTHUR RASH,** being first duly sworn,  
15 states as follows:

16           **DIRECT-EXAMINATION BY MS. von HERRMANN:**

17           Q.       Officer Rash, by whom are you currently employed?

18           A.       With the Horry County Police Department.

19           Q.       And how long have you been with the Horry County  
20 Police Department?

21           A.       About five years, just over five years at this time.

22           Q.       Were you on duty on April 14th of 2008?

23           A.       Yes, I was.

24           Q.       And were you dispatched to Barberry Court in reference  
25 to this particular case?

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1 A. Yes Ma'am.

2 Q. And did you respond there?

3 A. Yes, I did.

4 Q. Were you one of the first responding officers?

5 A. I was the second officer on scene that I'm aware of.

6 Q. And who was the first responding officer?

7 A. Corporal Oswago Santiago.

8 Q. He's not -- he's at -- and he's retired? He's not  
9 working at the Police Department anymore, is that correct?

10 A. Correct, Ma'am.

11 Q. All right, and is Barberrry -- Barberrry Lane --  
12 Barberrry Court, is that in Horry County?

13 A. Yes Ma'am, it is.

14 Q. Once you responded to that particular location, tell  
15 -- tell the jury, if you will, what your duty is as the first  
16 responding officer.

17 A. Well, each -- each call you respond to is going to  
18 have a different play-out on what the responding officer's  
19 duties are going to be. In a case like this where it's  
20 outside the realm of a one or two person team to handle it,  
21 the immediate supervisor, which was Corporal Santiago, would  
22 make the decision as to call in more units as needed.

23 Due to the severity of this incident and what we were  
24 receiving from our dispatch, he had already made adjustments  
25 through radio dispatch and communications to have more units

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1 respond, but the primary goal at that time is to secure the  
2 scene for the safety of any fire and rescue personnel that  
3 may be needed and get any kind of vehicle description,  
4 suspect description that they may have left him at the time.  
5 The main concern is securing the scene for process and  
6 securing it for the safety of any E.M.S. workers.

7 Q. Did you all put up some crime scene tape? Is that  
8 part of what you do?

9 A. Yes Ma'am.

10 Q. And, again, why do -- why do you do that?

11 A. We do that to secure the crime scene to give any  
12 civilians the idea that this is not a good area to be in, as  
13 well as the uniformed officers. It helps to keep people out  
14 because it's clearly marked crime scene, do not cross.

15 Q. In this particular incident, were there a number of  
16 people milling around, or was it relatively quiet that day?

17 A. Yes Ma'am. Because of all the commotion and the  
18 sirens and the location of the incident, there were numerous  
19 college students trying to see what was going on. They were  
20 all advised to go back into their residences until we could  
21 get a description or location on suspects.

22 Q. Did you have a problem getting those people to go back  
23 into their residences?

24 A. At first, yes. Once they saw all the other personnel  
25 that was called out for this case, they did not have a

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1 problem going inside and just staying indoors. I think they  
2 understood the severity of what was going on at that point.

3 Q. And did you have a visual on the location while you  
4 were there, the whole time you were there?

5 A. Yes Ma'am.

6 Q. And to the best of your knowledge, did anyone other  
7 than law enforcement personnel enter into that ---

8 A. Nobody aside from the Coroner was obviously there, and  
9 I believe there was one E.M.S. worker at 16:03 hours, at 4:03  
10 in the afternoon, that was on scene and pronounced at that  
11 time, which they are allowed to do in severe cases like this,  
12 waiting for the arrival of the Coroner.

13 Q. All right, so to the best of your knowledge, can you  
14 say that that crime scene was not altered or tampered with in  
15 any way?

16 A. Correct, Ma'am.

17 Q. And were you involved in the investigation of the case  
18 at all?

19 A. No Ma'am.

20 Q. All right. Your duties were limited to that securing  
21 of the area?

22 A. My -- my duties were limited to securing the area,  
23 relaying any pertinent information that I could, or suspect  
24 information, any utterances that would be heard or observed  
25 from any of the local witnesses, to pass that on to the other

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CROSS BY McCOLLUM

1 officers.

2 Q. Do you recall what time you were dispatched?

3 A. I have it in the initial incident report. I want to  
4 say it was around 15:52 in the evening. I believe I  
5 responded at 15:57 was my arrival time. The Corporal was  
6 slightly earlier, but his radio was not working at the time.

7 Q. Okay, so for those of us who are non-military people,  
8 that would be ---

9 A. I'm sorry, 3:52 and 3:57 P.M. I'm sorry.

10 **MS. von HERRMANN:** Thank you. I don't have any further  
11 questions for you, Officer Rash. Please answer any questions  
12 Mr. McCollum or Mr. Hazzard may have.

13 **THE COURT:** Mr. McCollum, cross-examination.

14 **MR. McCOLLUM:** May it please the Court, Your Honor.

15 **THE COURT:** Yes sir.

16 **CROSS-EXAMINATION BY MR. McCOLLUM:**

17 Q. Officer Rash, you're with the Horry County Police  
18 Department?

19 A. Yes sir.

20 Q. And how long have you been a police officer?

21 A. It's been a little bit over five years now, sir.

22 Q. And so this is -- you've been a police officer in law  
23 enforcement for a total of five years?

24 A. Yes sir.

25 Q. And when you went to the scene that day, was there

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1 anybody in your department that supervised you, your shift  
2 commander or somebody like that? Did they give you any  
3 specific instructions?

4 A. Yes sir.

5 Q. What were the instructions?

6 A. To secure the area and to BOLO all the information,  
7 which is a be on the lookout for any information that was  
8 obtained by Corporal Santiago, my immediate supervisor.

9 Q. All right, and did you have several radio  
10 communications with your supervisor that day?

11 A. Most of our communication was verbal because we were  
12 within shouting distance of each other.

13 Q. And the location is -- do you know the exact location?  
14 Is it Barberry Court or Barberry Drive?

15 A. I believe it was put out as Barberry Drive. On the --  
16 if the 911 tapes are reviewed, it's going to be Barberry  
17 Drive. It may have been Barberry Court or called Barberry  
18 Court by the locals.

19 Q. Is that location -- and you're very familiar with the  
20 location, right?

21 A. I don't remember the numerics, but if I had to drive  
22 to the house again, I probably could.

23 Q. Had you been to that location before, and by that  
24 location, I mean that street or that ---

25 A. Oh, I've been to the street numerous times in the

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1 past, sir.

2 Q. And would you describe that as being on the campus of  
3 Coastal Carolina University?

4 A. No sir.

5 Q. You wouldn't?

6 A. No. It's adjacent to it. It's within -- from a  
7 lawful perspective, if we were going to charge a narcotics  
8 violation, it would be within the jurisdiction of charges  
9 within distribution to a school.

10 Q. Is it within walking distance to the campus?

11 A. Yes sir.

12 Q. And did anybody convey to you any special significance  
13 because of the proximity to the school?

14 A. Convey to me ---

15 Q. Any significance about trying to resolve this case,  
16 let's get it wrapped up, let's -- well, let me rephrase that.  
17 Were there a lot of officers assigned to this case?

18 A. Initially myself and Corporal Santiago from that  
19 point. My immediate supervisors and command staff took over  
20 on the assignment. I could only testify to what I saw at the  
21 time, which was a large number of officers, what I consider  
22 large, more than I'd say maybe fourteen altogether, and what  
23 I consider their area of operations, looking for the  
24 suspects.

25 Q. While you were at the scene, and you stayed there --

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1 did you stay there for just a few minutes or for several  
2 hours?

3 A. I was there probably the end of my tour of duty, which  
4 is at 6:00 P.M., so it's well over two hours, and I may have  
5 stayed longer just to get my car out of the crime scene.

6 Q. And how many officers visited the area while you were  
7 there?

8 A. I'd have to look at the crime scene log. I don't  
9 recall how many exactly.

10 Q. I'm not specifically asking you how many people signed  
11 in at the crime scene. I'm just saying as a general number.  
12 Were there three police officers, were there ten, were there  
13 twenty-five?

14 A. I would estimate somewhere around fourteen or fifteen  
15 that I saw.

16 Q. Okay, and then did you work on this case any time  
17 after that date?

18 A. No sir.

19 Q. So your only involvement was called to the scene, ---

20 A. Secure ---

21 Q. --- perform your duties, and then after you were  
22 released from the scene by your supervisors, you didn't have  
23 any other involvement with the case?

24 A. Correct, sir.

25 Q. And you don't have any personal information whatsoever

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CROSS BY HAZZARD

1 that Ms. Ladorrean Collington, who is on trial, was involved  
2 in this in any way, right?

3 A. No sir.

4 Q. Okay.

5 MR. McCOLLUM: Thank you, sir.

6 THE COURT: Mr. Hazzard, cross-examination.

7 MR. HAZZARD: Thank you, sir.

8 CROSS-EXAMINATION BY MR. HAZZARD:

9 Q. I apologize, sir. What is -- what is your rank?

10 A. Right now it's Lance Corporal.

11 Q. Lance Corporal?

12 A. As it is right now, sir.

13 Q. Okay, Lance Corporal Rash, thank you very much for  
14 your time. Very briefly, you indicated that there were a lot  
15 of kids out there, a lot of college kids out there?

16 A. They -- they had come out for the commotion, yes sir.

17 Q. Yes sir, and you and other officers were telling them  
18 they needed to go back into their residences?

19 A. Correct, sir.

20 Q. Okay, so it's not like they were just stopping by.  
21 These were people who actually lived in that community?

22 A. Yes sir.

23 Q. Okay, and they were all there? They were all on the  
24 scene?

25 A. No, not on the scene, no. They were on the street.

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1 Q. Yes sir, that's what I mean. I don't mean in the  
2 house, or on the porch, no, nothing like that. I just mean  
3 that they were in the neighborhood and on that street?

4 A. They all came out to see the blue lights, yes sir.

5 Q. Is that -- is that street a cul-de-sac or not?

6 A. Yes sir. At the time it was not blocked off at the  
7 end for foot traffic. It has been blocked off since then,  
8 but destroyed numerous times.

9 Q. Okay, so basically then you had a lot of folks who  
10 lived there, who were there at the time who would have been  
11 potential witnesses to what occurred, is that correct?

12 A. If they had been at the house, I would go along with  
13 that.

14 Q. Okay.

15 A. I don't know of any of the others.

16 Q. Okay. Were these kids out there in the street or in  
17 the immediate area when you arrived at 3:57 P.M.?

18 A. No. They seemed to mill out of the house when they  
19 saw the blue lights and the police cars, and they started  
20 coming out to see what was going on.

21 Q. But it's not like they drove up from somewhere else?  
22 They just came outside and wanted to see what happened?

23 A. No. Obviously we had some people tried to get back to  
24 their residence because they had been in class earlier that  
25 day and they were trying to get in, which they were not

## FREDERICK ARTHUR RASH - CROSS BY HAZZARD

1 allowed to come in with vehicles.

2 Q. Okay, but a good number of them were just coming out  
3 of their homes adjacent and seeing what was going on with the  
4 blue lights?

5 A. Mainly across the street where nobody could go  
6 anywhere and why they were going to be late for class.

7 Q. Got'cha.

8 MR. HAZZARD: Thank you, Officer, Lance Corporal Rash.

9 THE COURT: All right, any redirect?

10 MS. von HERRMANN: No sir, Your Honor, and I would ask  
11 that he be released from his subpoena at this time.

12 THE COURT: Any objection to excusing the witness, Mr.  
13 McCollum?

14 MR. McCOLLUM: No, Your Honor.

15 THE COURT: Mr. Hazzard?

16 MR. HAZZARD: No objection.

17 THE COURT: All right, Officer, you are released from  
18 your subpoena and may go back to your regular duties, sir.

19 OFFICER RASH: Thank you, Your Honor.

20 THE COURT: Very good.

21 All right, next witness, Solicitor.

22 MS. von HERRMANN: The State calls crime scene  
23 investigator, Robert Deal.

24 THE COURT: All right.

25 MS. von HERRMANN: Judge, may we approach for one

## COURT TO JURY

1 moment.

2 **THE COURT:** Certainly.

3 **(BENCH CONFERENCE TAKES PLACE OFF THE RECORD.)**

4 **THE COURT:** All right, ladies and gentlemen of the  
5 jury, let me -- I'm just going to pose a question to you. I  
6 know I didn't cover this earlier about the times of court and  
7 when you could expect to go home for the evening.

8 I will ask you a question in just a second, but please  
9 don't expect to be leaving the courthouse any time before  
10 5:30. It may be later than that depending upon a witness  
11 that is on the stand. I do not like to break up direct and  
12 cross-examination.

13 I think there may be one or two of you that indicated  
14 that for today that might be a problem. Is there anyone in  
15 that particular circumstance? Please raise your hand.

16 All right, the next witness, Solicitor, the direct-  
17 examination you believe will take an hour?

18 **MS. von HERRMANN:** Yes sir, Your Honor.

19 **THE COURT:** All right, and obviously would be about  
20 5:30.

21 I know I didn't tell you this, so I'm going to break  
22 Court down for today at this point in time. Please make  
23 arrangements and understand we will not be doing this again.  
24 We will be here at least until 5:30, maybe later. If I do  
25 not do this, you will be here a lot longer, the number of

## COURT TO JURY

1 days, than otherwise, so we need to make sure we go forward  
2 as expeditiously as possible, obviously understanding that  
3 justice needs to be done, so I will excuse you.

4 There are some matters that I have only tomorrow  
5 morning. Other than that, we'll be starting earlier, but  
6 tomorrow morning we'll start at 9:30. It may very well be the  
7 next day or so we start at 9:00 or 8:00, so please be  
8 expecting that.

9 When you go home for the evening, don't talk about the  
10 case with anybody. Don't allow anybody to talk to you. If  
11 you see your husband, wife, boyfriend, girlfriend, neighbor,  
12 friend down the street, if they happen to know you're on the  
13 jury, that's great. Other than that, you can't talk to them  
14 about it because unintentionally they'll give you their  
15 opinion about the case. They don't have one. You should not  
16 have one until I give it to you at the very end for your  
17 deliberations and your unanimous decision in this matter.

18 Please remember what I told you before. You can't look  
19 up anything on the Internet. You can't do any research on  
20 your own. You have to decide this case solely and completely  
21 on the facts and evidence you hear in this courtroom and from  
22 no other source, so with that, I'll see you back tomorrow  
23 morning at 9:30. Thank you very much.

24 Everyone else remain seated.

25 As to your pads and pens, if you want to -- we're going

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JURY OUT/ON RECORD

1 to secure the jury room. Why don't y'all take them back to  
2 the jury room and the bailiff will secure them in the jury  
3 room, please. Thank you.

4 (THE FOLLOWING TAKES PLACE OUTSIDE THE PRESENCE OF THE  
5 JURY.)

6 THE COURT: Any matters you need to bring to the  
7 Court's attention at this time, Solicitor?

8 MS. von HERRMANN: No sir.

9 THE COURT: Mr. McCollum?

10 MR. McCOLLUM: No, Your Honor.

11 THE COURT: Mr. Hazzard?

12 MR. HAZZARD: None on behalf of Defendant Gause, Your  
13 Honor.

14 THE COURT: All right.

15 Mr. McCollum, I need to address an issue.

16 Mr. Hazzard, your client is in custody with the Horry  
17 County Sheriff's Office, is that correct?

18 MR. HAZZARD: Yes sir.

19 THE COURT: All right, very good.

20 All right, Mr. McCollum, I understand your client has  
21 been free on bond during the pendency of this case. The jury  
22 has now been sworn and she is facing obviously extremely  
23 serious charges. Would you like to argue why I should not  
24 have her remanded into the custody of the Horry County  
25 Sheriff's Office during the pendency of this trial?

## JURY OUT/ON RECORD

1           **MR. HAZZARD:** Your Honor, she is from this area  
2 originally. She has family here. She has children that  
3 lives here. Her mother, her extended family are here. Her  
4 mother is present in the courtroom, as are other family  
5 members. She is presently -- while she is out on bond, she  
6 is on home detention. Her whereabouts have been monitored  
7 since the time that she's been released.

8           She's wearing and is presently in the custody of the  
9 State pursuant to electronic monitoring. The State knows  
10 where she is and what she's doing at all times. If you check  
11 the -- her status, as I understand it, at the jail, at J.  
12 Reuben Long, persons in her status are considered in custody.  
13 We would submit that given those circumstances, that it would  
14 really serve no purpose to have her removed from home  
15 detention and GPS monitoring and actually incarcerated in the  
16 jail during this time.

17           **THE COURT:** Please help me with this. You indicated  
18 that the GPS indicates where she is. Has that changed?  
19 Usually you can use the system to find out where somebody has  
20 been, not where they are currently?

21           **MR. McCOLLUM:** Well, that ---

22           **THE COURT:** What type of ---

23           **MR. McCOLLUM:** That may be true, Your Honor.

24           **THE COURT:** Okay.

25           **MR. McCOLLUM:** I just know from demonstrations that

JURY OUT/ON RECORD

1 have shown us ---

2 **THE COURT:** Okay. I just -- I don't know. I just  
3 wanted to be clear about that.

4 What's the position of the State, Solicitor?

5 **MS. von HERRMANN:** Well, the State's position is that  
6 she should be incarcerated during the course of the trial.  
7 The bond has now expired. The bondsman has produced her,  
8 made sure that she was produced here for trial, and that is  
9 the end of his obligation, so at this point she does not have  
10 a bond, and so we would ask that she be incarcerated.

11 As Your Honor mentioned, that GPS is not -- is not a  
12 monitor where we can flip a switch and go, well, you know,  
13 there she is. It's not a GPS monitor. It's simply something  
14 that can tell us if she goes out of a particular area.

15 **THE COURT:** All right.

16 Mr. McCollum, I don't suppose any representative of the  
17 bonding company is here at this point in time so that we  
18 could ask them whether or not they want to stay on the bond  
19 or not?

20 **MR. McCOLLUM:** It's my understanding they're not  
21 present in the courtroom right now, Your Honor.

22 **THE COURT:** All right. What I'm going to do, Mr.  
23 McCollum, is I am going to have Ms. Collington remanded to  
24 the custody of the Horry County Sheriff's Office at least for  
25 this evening. I will allow you to communicate with the

## JURY OUT/ON RECORD

1 bonding company whenever it is that you can and you can  
2 present it to the Court tomorrow if they are willing to stay  
3 on the terms and conditions of the bond and to remain with  
4 the bond in full force and effect, and I may then reconsider  
5 having her remanded to the custody of the Horry County  
6 Sheriff's Office, but since I have no such assurance at this  
7 point in time, I am going to remand her to the custody of the  
8 Horry County Sheriff's Office and to be at the J. Reuben Long  
9 Detention Center tonight.

10 What I'm going to ask is to make sure, Mr. Hazzard and  
11 Mr. McCollum, you would like your clients here by what time  
12 in the morning?

13 **MR. HAZZARD:** Your Honor, if you want the jury here at  
14 9:30, it's my practice I try to be here about thirty minutes  
15 beforehand ---

16 **THE COURT:** So -- but -- by nine o'clock, would that be  
17 sufficient for both your purposes, then, gentlemen?

18 **MR. HAZZARD:** Nine o'clock would be more than  
19 sufficient, Your Honor.

20 **THE COURT:** All right, so we will just need to make  
21 arrangements to make sure, Solicitor, that both defendants  
22 are here at the courthouse by 9:00 A.M., please Ma'am, and  
23 then, Mr. McCollum, obviously you will have to arrange with  
24 the family to make sure she has some change of clothes for  
25 tomorrow morning, and again, I'll be glad to hear from you as

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1 to the remainder of the trial.

2 **MR. McCOLLUM:** All right.

3 **THE COURT:** All right. With that, I will see y'all  
4 back tomorrow morning. Obviously if y'all have any issues,  
5 I'll be here certainly by nine o'clock. Thank you very much.

6 **MS. von HERRMANN:** Thank you, Judge.

7 **(THE FOLLOWING TAKES PLACES ON JUNE 7, 2011, OUTSIDE THE**  
8 **PRESENCE OF THE JURY.)**

9 **THE COURT:** The defendants are where?

10 **MR. HAZZARD:** Your Honor, if you could give us a  
11 moment. As the Court knows, you have allowed the defendant,  
12 Gause, to make some transcripts of certain interviews, and I  
13 was going over them with Mr. McCollum and Ms. Von Herrmann to  
14 see which ones they do and do not have. I have tried to e-  
15 mail them to them as the process of recording them or  
16 transcribing them has gone on, but if you give us a couple of  
17 moments, we can finish that process and ---

18 **THE COURT:** You can, but I've got to deal with an issue  
19 with a juror first, so we'll do that first.

20 This stipulation, Counsel, that y'all entered into, that  
21 we stipulate that all blood and/or DNA evidence collected  
22 from the crime scene belong to the deceased, Allen Smith, and  
23 do not belong to Ladorrean Collington, Quentin Gause, or  
24 anyone else, is that some statement that you just want the  
25 document marked as an exhibit, or how do y'all want to handle

## JURY OUT/ON RECORD

1 that?

2 **MS. von HERRMANN:** Your Honor, I would -- however the  
3 Court wants to mark it suits me. I mean, my intention is  
4 when Investigator Deal gets to his portion of the testimony  
5 about the DNA is to have the Court read that stipulation to  
6 the members of the jury.

7 **THE COURT:** That's fine, and I guess you will cover  
8 that with the witness also?

9 **MS. von HERRMANN:** Yes sir.

10 **THE COURT:** All right, very good. All right, thank  
11 you.

12 **MR. HAZZARD:** Also, Your Honor, before the jury is  
13 brought out, as the Court knows it is normally my practice to  
14 place any plea offer on the record before the trial begins.  
15 I was remiss and failed to do that yesterday, but I would  
16 like the Court to have a colloquy with the defendant.

17 **THE COURT:** All right, very good.

18 **MR. HAZZARD:** Thank you.

19 **THE COURT:** I don't know what the issue is about the  
20 defendant's -- I've got a note from a juror that says she may  
21 recognize the mother of Ms. Collington. Can I bring that  
22 juror out and talk to her, or do y'all want me to wait for  
23 Ms. Collington and Mr. Gause to get in here?

24 **MR. HAZZARD:** I have no objection to the Court  
25 interviewing the juror.

JURY OUT/ON RECORD

1           **THE COURT:**   Mr. McCollum?

2           **MR. McCOLLUM:**   Your Honor, I don't have an objection.  
3           That's something that's often done in chambers.

4           **THE COURT:**   All right, very good.

5           Ask, if you would, Deputy, ask Juror Number 205 to come  
6           in, Juror Number 205, please.

7           (JUROR NUMBER 205 ENTERS THE COURTROOM.)

8           **THE COURT:**   All right, Mr. Marlowe, just stand right  
9           there. That will be good. All right, sir, you are Juror  
10          Number 205, sir?

11          **JUROR NUMBER 205:**   Yes sir.

12          **THE COURT:**   All right, sir, and you wrote a note to me  
13          indicating that you believe you saw in the courtroom  
14          yesterday the mother of the defendant, Ladorrean Collington,  
15          is that correct?

16          **JUROR NUMBER 205:**   That's correct.

17          **THE COURT:**   And you believe that in the past she was a  
18          customer of your business, and the name of your business  
19          again is?

20          **JUROR NUMBER 205:**   Marcat Supplies.

21          **THE COURT:**   All right, and that supplies certain  
22          materials to hotels and restaurants, that type of thing?

23          **JUROR NUMBER 205:**   Correct.

24          **THE COURT:**   And from the note, it indicates she was a  
25          customer approximately about eight to ten years ago, is that

## JURY OUT/ON RECORD

1 correct?

2 **JUROR NUMBER 205:** Correct.

3 **THE COURT:** All right, sir. Let me talk to you just a  
4 second about that. Obviously if you had remembered that  
5 earlier, that was information that should have been shared at  
6 an earlier time, and I understand you don't -- you know, a  
7 name may not ring a bell, but when you see a face, that rings  
8 a bell, and I understand that and I appreciate you bringing  
9 it to the Court's attention.

10 I need to ask you a couple of questions now then. Do  
11 you understand your job as a juror? As I've repeated now a  
12 couple of times, you make your decision solely and completely  
13 on the evidence that is presented in this courtroom and from  
14 no other source, you understand that?

15 **JUROR NUMBER 205:** Yes sir.

16 **THE COURT:** And you understand that it should be that  
17 whether or not you recognize this particular person should  
18 have no impact in any way in your decision, you understand  
19 that?

20 **JUROR NUMBER 205:** Yes sir.

21 **THE COURT:** All right. Understanding that to be the  
22 duties and responsibilities of a juror, after having relayed  
23 this information to me, can you be a fair and impartial  
24 juror, both to the State and both defendants, that is give  
25 everyone a fair and impartial trial in this matter?

JURY OUT/ON RECORD

1           **JUROR NUMBER 205:**   Yes sir.

2           **THE COURT:**   Very good, sir.  Thank you very much.  
3 Thank you.  Just go back to the jury room.  Thank you.

4           (JUROR NUMBER 205 DEPARTS THE COURTROOM.)

5           **(NOTE FROM JUROR NUMBER 205 MARKED AS COURT'S EXHIBIT**  
6 **NUMBER 2.)**

7           **THE COURT:**   All right, the Court finds no reason or  
8 cause to remove Juror Number 205 from the jury pool.  Is  
9 there any objection to that from the State?

10          **MS. von HERRMANN:**  There's no objection, Your Honor,  
11 but I guess my question would be how he knows that the  
12 individual that he saw is one of the defendant's mother.  I  
13 mean, that causes me some concern that he's aware of a  
14 relationship exists between someone who is in -- who has  
15 never been named, who has never been brought up and said this  
16 is the defendant's mother.  I mean, that -- that causes me  
17 some concern.

18          **THE COURT:**   All right, Mr. McCollum?

19          **MR. McCOLLUM:**   I don't have any issue, Your Honor.

20          **THE COURT:**   All right, and what about the Solicitor's  
21 objections?

22          **MR. McCOLLUM:**   Your Honor, I think you ---

23          **MS. von HERRMANN:**  I'm not -- I'm not asking that he be  
24 removed.  I just ---

25          **THE COURT:**   I appreciate that, but you've raised an

## JURY OUT/ON RECORD

1 issue and I'm asking Mr. McCollum to respond to it.

2 **MR. McCOLLUM:** Your Honor, I believe you just asked the  
3 juror the typical questions about could he be fair and he  
4 answered in the affirmative, so ...

5 **THE COURT:** I appreciate that. Is there any reason  
6 that he would know who the defendant's mother is, the  
7 relationship? I mean, has there been anything stated in  
8 Court that would so indicate? I don't remember. I mean, did  
9 you say anything in your opening statement? Did you indicate  
10 in any way that her mother was present? I don't remember. I  
11 know at some point in time it was said, but I don't know if  
12 it was in front of the jury or out of the presence of the  
13 jury.

14 **MR. McCOLLUM:** I don't recall, Your Honor. We talked  
15 about it during the sequestration motion, but I don't think  
16 the jury was present then.

17 **MS. von HERRMANN:** The jury was not present.

18 **THE COURT:** All right, very good.

19 And Mr. Hazzard, any issue on behalf of your defendant,  
20 Mr. Gause?

21 **MR. HAZZARD:** No sir.

22 **THE COURT:** All right. I appreciate the -- that fact,  
23 Solicitor, but the note as indicated by the juror said at the  
24 end of business, and it might have been, you know, when they  
25 were leaving, and I don't know what the juror saw as far as

## JURY OUT/ON RECORD

1 any eye contact, or communication, or, you know, ver- -- not  
2 verbal, but body language contact between the defendant and  
3 her mother who was sitting at that point in time yesterday  
4 very close to her that that might have triggered in his mind  
5 and that indicated that he knew that then that there was a  
6 connection and that this lady in his note apparently was an  
7 executive housekeeper at some hotel. He didn't say what  
8 hotel, but said that the lady was an executive housekeeper  
9 and because of that did business with his hotel and  
10 restaurant supply company eight to ten years ago. That's  
11 what he put in his note.

12 I appreciate your concern, but I don't find anything out  
13 of the ordinary and I think just because of the normal way  
14 things transpire in a courtroom that it might be easy to  
15 infer someone's connection to a particular party, so I'm not  
16 going to -- I don't see any reason -- I still reiterate even  
17 with you bringing it up, I don't see any reason to remove the  
18 juror in this particular matter.

19 All right, you mentioned the thing about the  
20 transcripts. Is there -- is there any necessity that we need  
21 to do that right now? I mean, is that something we could  
22 take up or y'all could take up maybe at lunch or sometime?  
23 Is that ---

24 **MR. HAZZARD:** The Prosecutor would have to speak to  
25 that because I don't know the order of her witnesses.

## JURY OUT/ON RECORD

1           **THE COURT:** All right, so they were -- all right,  
2 Solicitor, let me know. Is it something you need to ---

3           **MS. von HERRMANN:** I think we can -- I think we can  
4 wait until lunch.

5           **THE COURT:** All right, very good.  
6 All right, ask the jury to come in then.

7           **MS. von HERRMANN:** Your Honor, there was one ---

8           **THE COURT:** Oh, I'm sorry.

9           **MS. von HERRMANN:** --- more matter that the Court  
10 Reporter had brought to my attention. There were a number of  
11 items and I believe we put this on the record yesterday, a  
12 number of items that are in evidence at this point, ---

13           **THE COURT:** 1 through 48.

14           **MS. von HERRMANN:** Essentially 1 through 49, I believe.

15           **THE COURT:** Well, I just have 1 through 48.

16           **MS. von HERRMANN:** Okay. 49 was the photograph ---

17           **THE COURT:** 49 was the photograph that I allowed into  
18 evidence over the objection of the defendant, Gause. That  
19 was -- that was as a result of the motion that came before  
20 the Court and Mr. Hazzard objected to it, so it's in  
21 evidence, but it's not without objection. 1 through 48 were  
22 without objection, and honestly, what I did was deny his  
23 motion to remove the photograph. I don't really know that 49  
24 is actually in evidence because it's not been identified by a  
25 particular State's witness and I think that is necessary.

JURY OUT/ON RECORD

1 What I did was deny Mr. Hazzard's motion, so in reality, 49  
2 is not in evidence.

3 **MS. von HERRMANN:** Okay. We can clear that up with the  
4 witness. What Dixie had told me was that it would be helpful  
5 to her if I could actually run through the numbers and  
6 identify what it is on the record.

7 **THE COURT:** All right, very good. Go ahead.

8 **MS. von HERRMANN:** Item Number 1 is a diagram; Number  
9 2, photo of the scene; Number 3, photo of the scene; Number  
10 4, photo of the scene with fence; Number 5, photo of the  
11 doorway and window; Number 6, photo of the markers 1, 2, and  
12 3 from distance; Number 7, photos of 1, 2, and 3 closer;  
13 Number 8, photo of a door jamb; Number 9, photo of a broken  
14 lock on door; Number 10, photo of Frankie Davis driver's  
15 license.

16 Number 11, photo of a do-rag; Number 12, photo of a  
17 sweatshirt; Number 13, photo of bedroom; Number 14, photo of  
18 Items Number 5 and 6 from a distance; Number 15, photo of  
19 Number 5 close; Number 16, photo of Number 6 close; Item 17,  
20 photo of Number 8; Number 18, photo of Number 9; Number 19,  
21 photo of Number 10 distance; Number 20, photo of Number 10  
22 close.

23 Number 21, photo of Number 11; 22, photo of Number 11;  
24 23, photo of Number 12; 24, photos of Number -- photo of  
25 Number 13 and 14 together; Number 25, photo of Number 14; 26,

## JURY OUT/ON RECORD

1 photo of Number 15; 27, photo of Number 16 distance; 28,  
2 photo of Number 16 close; Number 29, photo of a projectile.

3 Number 30, photo of Number 17; 31, photo of Number 18;  
4 32, photo of Number 19; 33, photo of Number 20; 34, photo of  
5 wall distance; 35, photo of wall close; Number 36, photo of  
6 wall with numbers; Number 37, photo of shotgun; Number 38,  
7 photo of shotgun location; Number 39, photo of shotgun.

8 Number 40 is a map; 41, photo of a suitcase; Number 42,  
9 photo of a suitcase with bullets; Number 43, photo of closet  
10 with gun; Number 44, photo of closet with gun and Number 2  
11 beside it; Number 45, photo of a Ruger .22; Number 46, photo  
12 from victim's house down road; Number 47, photo from victim's  
13 house towards apartments; Number 5 (sic), photo of a path --  
14 excuse me, 48, a photo of a path.

15 **THE COURT:** All right, thank you, Ma'am.

16 All right, with that, is the State ready for the jury to  
17 come in?

18 **MS. von HERRMANN:** Yes sir, Your Honor.

19 **THE COURT:** All right, and the defendant, Collington?

20 **MR. McCOLLUM:** The defendant, Collington, is ready,  
21 Your Honor.

22 **THE COURT:** And the defendant, Gause?

23 **MR. HAZZARD:** I did want to place the matter of the  
24 rejection of the plea offer on the record, Your Honor.

25 **THE COURT:** Very good. Go ahead, sir.

## JURY OUT/ON RECORD

1           **MR. HAZZARD:** Your Honor, in this case, the State of  
2 South Carolina versus Quentin Lavant Gause, Mr. Gause  
3 received a plea offer to enter a plea of guilty to voluntary  
4 manslaughter with a recommendation by the State of a twenty-  
5 five year sentence. This came from Assistant Solicitor  
6 Heather von Herrmann. The document was dated March 28th of  
7 2011.

8           I've spoken with Mr. Gause about that plea offer on  
9 several occasions. It is my understanding and has always  
10 been my understanding that he has rejected it. In fact, the  
11 plea offer document itself, he signed it and marked that he  
12 wishes to have a trial, and the date of that was March 29th,  
13 the day after it was received.

14           I would ask that the Court have a colloquy with the  
15 defendant and confirm his rejection of the plea offer and the  
16 decision to go to trial.

17           **THE COURT:** All right.

18           All right, Mr. Gause, give me your attention for just a  
19 moment. You understand what has been stated in the record by  
20 your attorney, is that correct?

21           **MR. GAUSE:** Yes sir.

22           **THE COURT:** All right, and you understand that should  
23 the jury, and obviously have no idea how this trial is going  
24 to turn out, what charges are going to be submitted to the  
25 jury, if any, and their decisions on any of the charges, but

JURY OUT/ON RECORD

1 if the jury -- if they are submitted to the jury and the jury  
2 so considers them and finds you guilty of the crime of  
3 murder, you understand that the minimum sentence is thirty  
4 years with a maximum sentence of life in prison without the  
5 possibility of parole, you understand that?

6 **MR. GAUSE:** Yes sir.

7 **THE COURT:** All right, sir, and whatever sentence the  
8 Court would issue in that regard from thirty years up to life  
9 in prison without the possibility of parole, that -- except  
10 for obviously the life in prison without the possibility of  
11 parole, if there's any number of years, you have to serve at  
12 least eighty-five percent of that sentence before you would  
13 even be eligible for parole, the possibility of parole, you  
14 understand that?

15 **MR. GAUSE:** Yes sir.

16 **THE COURT:** All right, sir. You understand that  
17 regarding armed robbery, if that charge should be presented  
18 to the jury and the jury finds you guilty of that particular  
19 crime, the potential sentence there goes from a minimum of  
20 ten up to a maximum of thirty years, you understand that?

21 **MR. GAUSE:** Yes sir.

22 **THE COURT:** And, again, that is an eighty-five percent  
23 crime, you understand that?

24 **MR. GAUSE:** Yes sir.

25 **THE COURT:** Regarding burglary in the first degree, you

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1 understand that if that charge should be submitted to the  
2 jury and the jury finds you guilty of that particular crime,  
3 the minimum sentence is fifteen years, again up to life in  
4 prison without the possibility of parole, you understand  
5 that?

6 **MR. GAUSE:** Yes sir.

7 **THE COURT:** And again, that is an eighty-five percent  
8 crime, you understand that?

9 **MR. GAUSE:** Yes sir.

10 **THE COURT:** You understand that it is within the  
11 Court's discretion to whatever sentence that -- on any charge  
12 that you might be convicted of, that the sentences can either  
13 run in concurrence, that is at the same time, or I could have  
14 those sentences run consecutive, meaning you would have to  
15 serve the entirety or the eighty-five percent of one crime  
16 before you would start the sentence on the next crime, in  
17 effect a sentence of life in prison without the possibility  
18 of parole with these particular types of crimes and potential  
19 sentences, you understand that?

20 **MR. GAUSE:** Yes sir.

21 **THE COURT:** All right, sir. Understanding all that and  
22 understanding the State had offered you a plea bargain to  
23 plead to the lesser crime of voluntary manslaughter with the  
24 -- was that a recommended or negotiated, I'm sorry?

25 **MR. HAZZARD:** Recommended.

## JURY OUT/ON RECORD

1           **THE COURT:** Recommended sentence of twenty-five years,  
2 and obviously you understand a recommendation, I can accept  
3 the recommendation or not accept the recommendation. It  
4 could be any potential sentence of voluntary manslaughter,  
5 you understand that?

6           **MR. GAUSE:** Yes sir.

7           **THE COURT:** Understanding that, do you wish to reject  
8 the State's plea offer to you and continue on with your jury  
9 trial in this matter?

10          **MR. GAUSE:** Yes sir.

11          **THE COURT:** Very good. Thank you very much.  
12 All right, ask the jury to come in, please.

13          **MS. von HERRMANN:** I'm sorry, Judge.

14          **THE COURT:** Yes Ma'am.

15          **MS. von HERRMANN:** There's just one more matter. Let  
16 me -- let me give this caveat. I appreciate everyone's  
17 individual religions. However, it has come to my attention  
18 that Defendant Collington has a very large Bible on the table  
19 in front of her with the portion of it facing towards the  
20 jury. I just don't think that's appropriate. I think it's  
21 designed to send some sort of message to the jury, and I  
22 would ask that that be removed from that table.

23          **THE COURT:** All right, Mr. McCollum, what's your  
24 position, please sir?

25          **MR. McCOLLUM:** Your Honor, I have discussed it with Ms.

JURY OUT/ON RECORD/JURY IN  
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1 Collington. It showed up today. I assume she brought it out  
2 of lock-up with her. I don't think it's a big deal one way  
3 or the other.

4 MS. von HERRMANN: You can see the ---

5 THE COURT: I can see. How about turn it over and face  
6 it such that the binding is to the far wall.

7 MS. von HERRMANN: Thank you, Your Honor.

8 THE COURT: Thank you very much.

9 All right, ask the jury to come in, please.

10 (THE FOLLOWING TAKES PLACE WITHIN THE PRESENCE OF THE  
11 JURY.)

12 THE COURT: All right, good morning, ladies and  
13 gentlemen.

14 All right, Solicitor, your next witness, please Ma'am.

15 MS. von HERRMANN: Thank you, Your Honor. The State  
16 calls Investigator Robert Deal.

17 ROBERT DAVID DEAL, JR., being first duly  
18 sworn, states as follows:

19 DIRECT-EXAMINATION BY MS. von HERRMANN:

20 Q. Investigator Deal, will you tell the jury, please,  
21 what your occupation is.

22 A. I'm currently employed with the Folly Beach Public  
23 Safety Office in Folly Beach, South Carolina.

24 THE COURT: You're going to have to have that  
25 microphone directly in front of you and speak directly into

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1 it, sir. Thank you.

2 Q. And can you give the jury, please, the benefit of your  
3 educational background.

4 A. I have an undergraduate degree from the University of  
5 South Carolina in Criminal Justice. I also have a Master's  
6 Degree in Business Administration.

7 Q. And how about your employment background?

8 A. I was employed by the Horry County Police Department  
9 back in 2002, where I patrolled on the Uniform Patrol  
10 Division for several years before I was promoted to  
11 detective. During that time I served multiple years as a  
12 criminal investigator before I went over to the forensic side  
13 of the house where I did five years as a crime scene  
14 investigator.

15 During that time, I went to numerous schools ranging  
16 from basic crime scene analysis through private sector  
17 agencies, along with the Federal Bureau of Investigation. In  
18 addition, I obtained recertifications from the Department of  
19 Justice and the Department of Defense in crime scene analysis  
20 and processing and reconstruction with regards to general  
21 crime scenes all the way up to nuclear, biological, and  
22 chemical crime scenes.

23 Q. And have you served as an instructor in that field as  
24 well?

25 A. In addition, in 2007 I obtained a South Carolina

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1 instructor certification in basic law enforcement which  
2 allowed me to then teach and instruct law enforcement  
3 officers both in local jurisdictions and in federal  
4 jurisdictions on crime scene analysis and processing.

5 Q. And have you been previously qualified as an expert in  
6 the field of criminal investigation and crime scene analysis?

7 A. I have been qualified as an expert in crime scene  
8 processing analysis both in General Sessions Court and also  
9 in Federal Court.

10 Q. Okay, and how many times in State court?

11 A. In State court, twice.

12 Q. And in Federal court?

13 A. Once.

14 **MS. von HERRMANN:** And I would tender at this time  
15 Investigator Deal as an expert in the field of crime scene  
16 analysis and investigation.

17 **THE COURT:** All right.

18 Mr. McCollum, on behalf of your client, do you wish to  
19 voir dire the witness as to his qualifications?

20 **MR. McCOLLUM:** No, Your Honor.

21 **THE COURT:** Mr. Hazzard, on behalf of your client, do  
22 you wish to voir dire the witness as to his  
23 qualifications?

24 **MR. HAZZARD:** Very briefly, Your Honor.

25 **THE COURT:** Yes sir..

## ROBERT DAVID DEAL, JR.-VOIR DIRE EXAMINATION BY HAZZARD

## 1 VOIR DIRE EXAMINATION BY MR. HAZZARD:

2 Q. Good morning, Detective Deal, how are you?

3 A. Doing good.

4 Q. How many years have you been a police officer?

5 A. Roughly over nine years.

6 Q. About nine years?

7 A. Yes sir.

8 Q. In that time as a crime scene analyst or what would be  
9 the proper term?

10 A. Crime scene investigator.

11 Q. Crime scene investigator, C.S.I.?

12 A. Correct.

13 Q. How much of that nine years have you been a C.S.I.?

14 A. I served five years in active law enforcement and  
15 roughly a half a year in the private sector.16 Q. Okay, so about five and a half years. And in that  
17 time, about how many crime scenes have you worked, sir?18 A. I've worked roughly probably about five hundred and  
19 thirty crime scenes as a investigator in general, as a  
20 primary crime scene investigator, probably about four  
21 hundred, give or take.22 Q. Okay, and how many of those crime scenes roughly were  
23 homicides?24 A. I would say probably twenty-five percent of them. In  
25 addition to that, I was attached with the South Carolina

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CONTINUING DIRECT BY von HERRMANN

1 Law Enforcement Division for a little while assisting them in  
2 processing scenes at their discretion.

3 Q. Okay, so if you did about four hundred primary crime  
4 scenes or four hundred crime scenes where you were the  
5 primary and approximately twenty-five percent of those were  
6 homicides, then you would have been the primary on  
7 approximately a hundred homicides in five years?

8 A. That's correct.

9 MR. HAZZARD: All right, thank you. No further  
10 questions.

11 THE COURT: All right, I'm going to qualify the witness  
12 to give his opinion.

13 You may proceed.

14 MS. von HERRMANN: Thank you, Your Honor.

15 CONTINUING DIRECT-EXAMINATION BY MS. VON HERRMANN:

16 Q. By whom were you employed on April the 14th of 2008?

17 A. I was employed by the Horry County Police Department.

18 Q. All right, and what were your duties with the Horry  
19 County Police Department?

20 A. My duties at that time were as a crime scene  
21 investigator, which I was responsible for responding out at  
22 the needs in the discretion of the department in reference to  
23 homicides, sexual crimes, suicides, assault and batteries of  
24 different levels, along with property crimes.

25 Q. And did you have an opportunity to participate in the

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1 investigation of this particular case?

2 A. Yes, I was.

3 Q. And where was the incident location?

4 A. The incident location was located at [REDACTED] Barberry  
5 Court, which is located in Conway, which is within the Horry  
6 County Section, with the zip code 29526.

7 Q. Tell the jury, please, when it was that you first  
8 arrived on the scene.

9 A. I first got notification by Captain Sandra Rhodes, who  
10 at the time was the captain of the criminal investigation  
11 divisions. She notified me roughly about 4:15 that afternoon  
12 and advised me that there had been a burglary where the  
13 homeowner had been shot, and I proceeded to respond. I  
14 arrived on scene roughly 4:47, 4:48, to find that the scene  
15 had been taped off with crime scene tape and was being  
16 secured by Horry County police officers, along with Coastal  
17 Carolina police officers.

18 Q. And tell me -- or tell the jury, actually, what your  
19 initial impressions were when you arrived at that scene.

20 A. Initially when I arrived on scene, I took notice of  
21 (a) the weather conditions, because you have to be particular  
22 if you have any outside evidence. At that time it was kind  
23 of overcast. We'd had some rain off and on with some light  
24 showers. Fire and E.M.S. were still on scene, which was  
25 typical, because they always liked to wait around to see if

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1 there was anything that we would need prior to processing the  
2 scene.

3 The scene was taped off with yellow crime scene tape,  
4 which is a standard practice and taught by the department to  
5 patrol officers. There was a perimeter set by Horry County  
6 Police Department with the assistance of Coastal Carolina  
7 University Police Department, and we were at the time waiting  
8 on the Bloodhound Tracking Team to respond to the location to  
9 assist us if necessary. The scene from the outside was very  
10 empty except for law enforcement personnel vehicles and fire  
11 apparatus.

12 Q. And so in your opinion had it been properly cleared?

13 A. Yes, it had.

14 Q. And did you prepare a diagram? Is that one of the  
15 things that you -- that you do? Do you do an initial walk-  
16 around? How does that work?

17 A. It's standard practice within our department to do  
18 what we call an initial walk-through of the scene and  
19 basically what we are doing is we're taking myself and the  
20 lead case agent and we're going to do a quick walk-through.  
21 Basically what we're doing is we're taking visual images and  
22 notice of items inside the scene of (a) that are sensitive,  
23 hazardous to other people as we get to process the scene, but  
24 just to get a general sense of what we're going to be facing.

25 We initially brief the patrol officer when we arrive on

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1 the scene, but first-hand information actually going through  
2 the scene is critical prior to us creating like a game plan  
3 on how we're going to process the scene and proceed from  
4 there.

5 Q. So after you get back to your office then, do you  
6 create a diagram or do you begin to sketch that diagram out  
7 there at the scene?

8 A. We do a rough sketch at the scene, but when we get  
9 back to the office during the course of the investigation, we  
10 do a final draft of the scene and it is sketched using either  
11 a means of paper and pencil or we can also use a computer  
12 program. I elect to use a computer program. To me it's a  
13 little bit more easier to read and follow and for a court  
14 presentation and also documentation.

15 Q. I'm going to show you what's been marked as State's  
16 Exhibit 1(A) and (B) in evidence. Do you recognize those?

17 A. Yes. Those are two diagrams that I -- I created using  
18 a computer software program.

19 MS. von HERRMANN: And, Your Honor, with the Court's  
20 permission, I'd like to have him come down and explain these  
21 diagrams to the jury.

22 THE COURT: That's fine. Just y'all make sure that you  
23 set up that easel right in front of the microphone on the  
24 jury box, please, so you'll need to stand right next to that  
25 box so that your voice can be heard, all right?

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1 A. Not a problem.

2 **THE COURT:** And, Mr. McCollum, Mr. Hazzard, if y'all  
3 want to move, you're certainly welcome to do so.

4 Q. Tell the jury, if you will, first, how these -- how  
5 these two diagrams are divided.

6 A. The two diagrams are divided -- initially with this  
7 type of scene, I always start with an exterior diagram  
8 because we did have some evidential items that were collected  
9 on the exterior of the scene, and this is what this diagram  
10 is depicting. It's also giving measurements that we  
11 collected from the exterior, along with identifying the items  
12 of evidence that we collected on the outside.

13 Now, because of the fact of human error and everything,  
14 we do these not to scale. We do it in proximity. By using  
15 measurements and laser devices, we are able to get as close  
16 as we can to the exact measurements that we were having out  
17 there.

18 Q. And I'm now going to hand to you State's Exhibit 1(B),  
19 and will you describe to the jury this diagram and how -- how  
20 this assists you.

21 A. When computing the diagrams and using the computer  
22 software, in this case we have what we call a evidence  
23 collection diagram, and basically what it is, it's a internal  
24 image of what we had inside the scene where items of evidence  
25 that I collected from the scene are placed on the diagram,

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1 trying to give you a sense of location within the scene.

2 In addition, we would also do a sketch without the items  
3 of evidence in there with just measurements of the rooms.  
4 That way if we ever had to go back to reconstruct the scene,  
5 we could generally within a degree of error create and design  
6 the scene back to the way it originally was.

7 Q. And if you will, please, point out just the different  
8 rooms that are located within that residence, and first  
9 before you do that, what type of residence was this?

10 A. This was -- it's a combined living, like a duplex-type  
11 system, single level. You would have two residences actually  
12 connected. This was one unit, and then there was a secondary  
13 unit right next to it. That unit was empty at the time of  
14 incident. These are single story. Some people, I guess,  
15 would say single story family living.

16 The entrance to it was off of Barberry Court to the  
17 east. You would enter and you'd have a general living room  
18 with a split dining and a kitchen area. In addition, you had  
19 two bathrooms and three bedrooms, with the master bedroom  
20 having access to one of the master -- the master bath.

21 Q. And have you also -- let me ask you about the numbers  
22 here. What do these numbers that we see on the side  
23 coordinate to on your diagram?

24 A. In this sketch, the numbers here are listing the items  
25 of evidence that we collected at the scene, and they

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1 correspond to their position and location within the  
2 residence.

3 Q. And did you prepare a power point presentation for  
4 court today?

5 A. Yes, I did.

6 Q. And do you believe that that power point presentation  
7 would aid the jury and help them, assist them in  
8 understanding what it was that you saw there, were  
9 experiencing when you walked into that crime scene?

10 A. I feel that it would give the jury more of a  
11 understanding and a visual versus them listening to me talk.

12 Q. And in addition to that power point or actually a  
13 summary of that power point you prepared as well, is that  
14 correct?

15 A. That's correct.

16 Q. All right, and let me have you look at State's Exhibit  
17 71 and identify that for me.

18 A. It is the power point I put together for this case.

19 **MS. von HERRMANN:** Your Honor, I would move State's 71  
20 into evidence at this time?

21 **THE COURT:** Any objection, Mr. McCollum?

22 **MR. McCOLLUM:** Only as to the one matter we talked  
23 about earlier.

24 **THE COURT:** The ---

25 **MS. von HERRMANN:** Yes sir.

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1           **THE COURT:**    At the end, that's been taken care of?

2           **MS. von HERRMANN:**   Your Honor, I would move this in  
3 with that exception.

4           **THE COURT:**    With those -- that matter being redacted  
5 then?

6           **MS. von HERRMANN:**   That's correct.

7           **THE COURT:**    All right. With that, is there any  
8 objection, Mr. McCollum?

9           **MR. McCOLLUM:**    Not beyond that, Your Honor.

10          **THE COURT:**    And Mr. Hazzard?

11          **MR. HAZZARD:**    If I could take a look at it one second,  
12 Your Honor, I would appreciate it.

13          No objection, Your Honor.

14          **THE COURT:**    All right, so State's 71 with the redaction  
15 is allowed in evidence without objection.

16                   **(POWER POINT BOOKLET ADMITTED INTO EVIDENCE AS STATE'S**  
17 **EXHIBIT NUMBER 71.)**

18          **MS. von HERRMANN:**   Thank you. I'm going to take this  
19 down and with the Court's indulgence, Investigator Deal is a  
20 little more adept at working this power point presentation  
21 than I am, so I'm going to ask him to set that up.

22          **THE COURT:**    All right. All right, is it neces- -- can,  
23 for this, can the investigator return back to the witness  
24 stand?

25          **MS. von HERRMANN:**   I think we can certainly try it that

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1 way and see how that mouse works for that.

2 **THE COURT:** Okay, thank you. Go ahead.

3 Q. Investigator Deal, if you will, tell us what  
4 information you have provided here on the front page.

5 A. The enter-slide was actually giving information and  
6 referenced the case number, the case agent, that was the  
7 previous slide, along with the date. This is the enter-slide  
8 into the actual primary crime scene that I processed on the  
9 14th of April at [REDACTED] Barberry Court.

10 This slide is depicting and facing [REDACTED] Barberry Court  
11 in Conway, which was the unit next to the actual scene.

12 Q. Let me get you to back up there for that last slide,  
13 if you will. Can you do that?

14 A. (Witness complies.)

15 Q. The scene would be the unit there on the left, is that  
16 correct?

17 A. It would actually be to the right looking where the  
18 crime scene tape is. This is the residence next to it.

19 Q. Okay, I see what you're saying. All right.

20 A. This is depicting the residence to the -- also to the  
21 right, also depicting the patrol officers' cars in the crime  
22 scene tape at the location.

23 This is the mailbox facing [REDACTED] Barberry Court and the  
24 incident location.

25 Q. And that's actually [REDACTED] Barberry Court, is it not

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1 A. Yes, it is. I'm sorry.

2 This is a general view facing the southeast corner of  
3 the incident location.

4 Q. And is that a fence there to the left?

5 A. That's correct. It's a wooden privacy fence that runs  
6 between the units.

7 Q. All right.

8 A. A general view facing the south side showing the  
9 privacy fence looking back.

10 This is a view facing the northeast corner and looking  
11 into the incident location's front.

12 This is looking directly at the front door of the  
13 incident location. When we arrived on scene, the front door  
14 was open, but like I -- like I said, it was secured by the  
15 Horry County police officers and Coastal Carolina University  
16 officers.

17 Q. All right.

18 A. It's a general view facing the front entranceway  
19 showing the storage closet. With this design of the  
20 residences, there were storage closets on each front porch of  
21 the units.

22 What we are looking at here as we enter into the  
23 scene, we had some debris at the front entranceway, which was  
24 later identified by some evidence markers. What we did here,  
25 we had some red in color substances that were at the front

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1 entranceway. Initial was to collect DNA samples using  
2 sterile cotton swabs to take a sample of each of Item 1 and  
3 2. While on scene, we did a presumptive test to see if it  
4 was indeed blood or a foreign substance. It did not test  
5 positive for blood.

6 Q. Okay. So Item -- let me back up a little bit. You're  
7 photographing the outside of the residence?

8 A. That's correct. This is the exterior.

9 Q. And so you are moving into -- into the house?

10 A. That's correct.

11 Q. Why do you -- why do you do it that way?

12 A. We try to eliminate the outside scene. Basically when  
13 you're doing a crime scene, you want to start -- it's like if  
14 you have like a dart board and you have the center of the  
15 bull's eye, you have different rings, and as you close into  
16 the center of the crime scene, you want to eliminate any type  
17 of evidence or any type of items that were out in those outer  
18 rings. That way, you don't take a chance of destroying it,  
19 messing it up, or having it moved from its original state  
20 when you arrive on scene.

21 Q. So Items 1, 2, and 3 here would be items that you  
22 think may have some sort of evidentiary value?

23 A. That's correct.

24 Q. All right, and as to Items 1 and 2, what were those  
25 particular items?

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1 A. They were a red-colored substance. You know, initial  
2 response or reaction would be possibly blood. That's the  
3 reason why we use a presumptive phatylpheline  
4 (phenolphthalein) which basically what it does is it reacts  
5 with the proteins within blood, and during the testing of  
6 this, it came back negative.

7 Q. You ruled out the blood from 1 and 2?

8 A. Exactly. Number 3 was a deadbolt plunger or a door  
9 lock plunger that was found on the exterior of the residence,  
10 which would give indication to myself as to some type of  
11 forced entry that was made through the door to cause the  
12 plunger to come on the exterior.

13 Q. Thank you. Please proceed to the next slide.

14 A. This is a close-up of Evidence Number 3 that was  
15 collected. It's that plunger cylinder from the door lock.

16 What we're looking at here is we're looking at the  
17 inside door jamb, which would be on the inside frame of a  
18 doorway. Whenever we work a scene, especially where we have  
19 signs of forced entry, we take attention to this because it  
20 helps articulate if someone had either consent to come in or  
21 if they were using force against normal entrance practices.

22 Here we did have some damage to the interior door  
23 jamb, along with the actual door itself. We could take note  
24 here that the cylinder that we found on the exterior did  
25 belong in the deadbolt in the upper position.

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1 Q. And so based on your years of experience, do you have  
2 an opinion about whether or not this was a forced entry into  
3 this residence?

4 A. With my history and experience, I would say that there  
5 was forced entry made on this door.

6 Q. And that would be based upon Item Number 3, which was  
7 the bolt?

8 A. That's correct.

9 Q. Examining the frame of this door?

10 A. Correct.

11 Q. And examining this side portion of the door as well?

12 A. Correct, and the damage consisted upon forced entry.

13 Q. Thank you. Please proceed.

14 A. Once we had cleared the items on the front porch  
15 there, we then entered into the scene, and basically what  
16 we'll start doing is a general photograph of -- you know,  
17 documentary of the residence as we proceed through. This is  
18 a general view looking inward toward the living room from the  
19 front door entranceway.

20 Item Number 4 was found -- if we go back to the  
21 previous picture, this red chair here, Item Number 4 was  
22 found underneath it, underneath the cushion. It was a New  
23 Jersey identification card belonging to a Frankie Davis. At  
24 the time we didn't know what type of participants or who was  
25 related to this incident, so we felt and deemed it necessary

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1 to collect.

2 Q. Thank you.

3 A. This is a general view looking back toward the front  
4 doorway from the entrance to the hallway and the dining room  
5 area.

6 This is a view looking into the dining area from the  
7 living room. There were some clothing items in the kitchen  
8 and in the dining area, which was later found out to be  
9 belonging to one of the victims in the residence.

10 Q. So did you -- did you have a conversation then with  
11 someone who was living in the residence at that time?

12 A. I had during -- during the crime scene processing, you  
13 have many participants from the law enforcement side. You  
14 have the forensic crime scene investigators and you also have  
15 the case agent and his people assisting him, and during the  
16 processing it's critical that you speak with one another  
17 because as we're going through the scene, we're finding, I  
18 guess, like tidbits to lead to, you know, the answer, and  
19 then the detective is also getting information.

20 And we like to corroborate and talk because he may have  
21 some new information that will save me from having to maybe  
22 collect everything in the house all the way down to a kitchen  
23 spoon if it's not necessary, and during this investigation we  
24 met many times at the scene to discuss what I was finding and  
25 what he was finding out during his investigation.

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1 Q. So this looks to me like someone's laundry, and so  
2 that's something that you wanted to confirm with a person who  
3 lived there?

4 A. Yeah. It's a common -- it looks like it's common,  
5 normal, everyday type items laying around, so yeah, I  
6 conferred with Detective Townsend and several of the other  
7 detectives that were getting information.

8 Q. Thank you.

9 A. This is a view of the kitchen looking from the dining  
10 area.

11 This was a do-rag that was found in the kitchen, which  
12 was later found to belong to one of the victims that was  
13 residing in the residence.

14 Again, a sweatshirt that was on the dining room floor  
15 that was later identified as belonging to one of the victims.

16 This is a general view looking down the hallway toward  
17 the back bedrooms and so forth from the living ---

18 **MS. von HERRMANN:** Your Honor, this is a photograph  
19 that I would at this time ask to have moved into evidence. I  
20 believe the Court had previously made a ruling on this  
21 photograph.

22 **THE COURT:** All right. That was 49?

23 **MS. von HERRMANN:** Yes sir.

24 **THE COURT:** All right. State's 49 is in evidence over  
25 the objection of the defendant, Gause.

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1 (PHOTO ADMITTED INTO EVIDENCE AS STATE'S EXHIBIT NUMBER  
2 49.)

3 Q. And tell the jury, please, what you see here in this  
4 view.

5 A. When -- when looking down the hallway, initial  
6 appearance, it was the first sighting and viewing of the  
7 victim of this incident. In addition, there was some  
8 evidential items in the hallway that we found as we proceeded  
9 inward to his location.

10 Q. And let me just ask you about this, which we're seeing  
11 a doorway here on the left. What would that doorway on the  
12 left be?

13 A. The doorway leading to the left was a -- if we could  
14 refer back to the diagram, it was the front bedroom. It  
15 would be this front bedroom here in the residence.

16 Q. All right, and then we see a doorway there to the  
17 right as well. What would that be?

18 A. That would be the front bathroom.

19 Q. And the doorway on the far left?

20 A. On the far left, which is going to be one of the back  
21 bedrooms where you did have the victim partially in the  
22 doorway, that was the back left bedroom.

23 Q. And then on the right, the back right, and would you  
24 describe that as the master bedroom?

25 A. That would be deemed as the master suite.

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1 Q. And we can certainly see the position of the body in  
2 here, but describe to me -- or maybe if you go to the next  
3 slide, I think there's some other things of evidentiary value  
4 that you were looking at before you actually get to the body.

5 A. One of the key things as we were actually pursuing,  
6 you know, and going further into the scene, we're always  
7 being aware of any type of evidence because you're always  
8 looking down, you're looking up, and side to side, because  
9 you don't want to step on anything that might be of  
10 evidential value as we're proceeding ---

11 MR. McCOLLUM: Your Honor, may I approach?

12 THE COURT: Yes sir.

13 (BENCH CONFERENCE TAKES PLACE OFF THE RECORD.)

14 Q. And you were just mentioning that, I think, in the  
15 next slide that there was some other items that you get to.  
16 Have we gone past them?

17 A. Basically what we have done is we -- we're just still  
18 doing a general viewing of the room because basically at this  
19 point we've already obtained the search warrant to actually  
20 go in and start processing the residence, so before we  
21 physically start collecting anything on the inside, we're  
22 still doing our documen- -- documenting of the rooms and what  
23 we're going to have to collect.

24 This is a view roughly from where the victim was lying  
25 looking into the master bedroom, a view looking toward the

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1 master bed in the room, some miscellaneous items, personal  
2 items that were found on the floor in the master bedroom, a  
3 chest of drawers that was located in the master suite.

4 Q. All right, and so -- in those views, are you  
5 essentially sweeping from left to right around that room?

6 A. Right. Basically we are just trying to do a general  
7 survey. That way before we start doing a search of the -- of  
8 the incident location for evidential items that we get the  
9 initial the way it was before we start messing with it and  
10 possibly altering the scene.

11 Q. This is how you found it?

12 A. That's correct.

13 Q. And it had not been touched by -- by anyone? I mean,  
14 you're -- you're going in there ---

15 A. I can only articulate that it hasn't been touched by  
16 any law enforcement people and personnel, and fire personnel,  
17 from their statements.

18 Q. All right, thank you.

19 A. A view of the nightstand that was next to the bed and  
20 in between the chest of drawers. Now, like we were talking  
21 about earlier as we were approaching down the hallway, we  
22 noticed as I was photographing that we had some fine debris  
23 located in the hallway.

24 The first item I came across was a spent cartridge  
25 casing, that of a .22 caliber. In addition, we also found a

ROBERT DAVID DEAL, JR. - DIRECT BY von HERRMANN

1 spent shot shell that was a 12 gauge and the manufacturer was  
2 Remington, that was located within the hallway leading toward  
3 the master suite.

4 Q. And if you will, tell the jury what a shell -- I'm  
5 referring to the item here on the left. You said it was a  
6 .22 shell casing. What is a shell casing?

7 A. A shell casing is part of a -- one of the components  
8 of a bullet. When you shoot a gun or a firearm, you have to  
9 have what they call ammunition which is used in the firearm.  
10 Well, that ammunition has different components. You have a  
11 actual projectile. You have powdering. You have what they  
12 call a cartridge casing.

13 Some people refer to it as just a bullet, but in the  
14 forensic side of the house, there's actually different  
15 components, and this is a cartridge casing that was spent,  
16 which means that it had been fired through a weapon.

17 Q. So in other words, if this was the shell casing, a  
18 bullet would have come out of the shell casing, correct?

19 A. Correct. The projectile would have come out of the --  
20 out of the neck of the cartridge casing.

21 Q. So this is not the bullet itself?

22 A. No. This is the cas- -- the cartridge casing.

23 Q. All'right, and then we're looking at the second item  
24 here, which I believe you described as a Remington 12 gauge  
25 shotgun shell?

ROBERT DAVID DEAL, JR. - DIRECT BY von HERRMANN

- 1 A. Right. It's a -- it's the same thing with the pis- --  
2 the pistol cartridge or rifle cartridge. Shotgun shells have  
3 similar components. You have the shot shell itself, which is  
4 identified here in the photograph, and then you have other  
5 components inside of it consisting of either the actual  
6 projectiles, wadding. Some shot shells have other components  
7 like washers or rubber pieces to help with the trajectory of  
8 a shot.
- 9 Q. Thank you.
- 10 A. This view here looking in the hallway is of general  
11 evidence that was collected from the hallway of Items Number  
12 6 and 5.
- 13 Q. Let's move on to the next one.
- 14 A. Number 6 was ob- -- it was identified as a .22  
15 caliber. It was also a Remington in manufacture, and Item  
16 Number 5 was the 12 gauge shot shell.
- 17 Q. All right, and you've got numbers beside these?
- 18 A. That's correct.
- 19 Q. So once you photograph them in their initial state,  
20 then you're going to go and identify them with particular  
21 numbers?
- 22 A. That's correct.
- 23 Q. And do those numbers here on your diagram then  
24 coordinate with the location of where that evidence was  
25 found?

ROBERT DAVID DEAL, JR. - DIRECT BY von HERRMANN

1 A. That's correct, and you see here in the diagram you  
2 have Item 6 and Number 5 in the hallway.

3 Q. And then again here you have the Number 5, spent 12  
4 gauge Remington shot shell, and Number 6, spent .22 caliber  
5 Remington cartridge casing?

6 A. That's correct.

7 Q. And we're going to see some other numbered items as  
8 well as you go through this power point presentation, so  
9 those items also -- they would all be included within that  
10 diagram?

11 A. That's correct.

12 Q. Thank you.

13 A. And these are just close up. When you are  
14 photographing in the scene, we take numerous photographs. I  
15 always try to take photographs of evidential items from a  
16 distance, mid-range, and close-range to show their placement  
17 within the scene. This would be considered a close-up of  
18 items of Number 5 and items of Number 6.

19 With those items collected, we then proceeded into the  
20 master bedroom where we started doing a survey of items  
21 within the room. During more of a hands-on search, we came  
22 across a firearm component that was inside the blanket on the  
23 floor in the master bedroom.

24 Q. All right. When you say firearm component, what do  
25 you mean by that?

1 STATE OF SOUTH CAROLINA ) COURT OF GENERAL SESSIONS  
 )  
 2 COUNTY OF HORRY ) (10-GS-26-01626) (Collington)  
 ) (10-GS-26-01627) (Collington)  
 3 ) (08-GS-26-03135) (Gause)  
 STATE ) (08-GS-26-03133) (Gause)  
 4 ) (11-GS-26-01274) (Gause)  
 )  
 5 VERSUS ) TRANSCRIPT OF RECORD  
 )  
 6 )  
 LADORREAN CHUKELL ) May 13, 2011  
 7 COLLINGTON and QUENTIN ) June 6, 7, 8, 9, 10, 2011  
 LAVANT GAUSE )  
 8 ) Conway, South Carolina  
 )  
 9 )

10 B E F O R E:

11 HONORABLE STEVEN H. JOHN, Judge; AND A JURY.  
12

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

14 HEATHER TOLAR von HERRMANN, ESQ.  
 MARTIN D. SPRATLIN, ESQ.  
 15 ASSISTANTS SOLICITOR FOR HORRY COUNTY  
 ATTORNEY FOR STATE  
 16

H. GREGORY McCOLLUM, ESQ.  
 17 ATTORNEY FOR DEFENDANT, COLLINGTON

18 RONALD HAZZARD, ESQ.  
 ASSISTANT PUBLIC DEFENDER FOR HORRY COUNTY  
 19 ATTORNEY FOR DEFENDANT, GAUSE  
 20  
 21  
 22  
 23

24 DIXIE COX EUBANK  
 CIRCUIT COURT REPORTER  
 25 FIFTEENTH JUDICIAL CIRCUIT

	<u>I N D E X</u>				
	<u>WITNESSES</u>	<u>DIRECT</u>	<u>CROSS</u>	<u>RD</u>	<u>RC</u>
1					
2	<u>WITNESSES</u>				
3	May 13, 2011				
4	MOTIONS				18
5	DAVID RUSHTON CROCKER				
6	Ms. von Herrmann	42		52	
7	Mr. McCollum		44		
8	Mr. Hazzard		54		
9	Mr. McCollum's Summation				57
10	Ms. von Herrmann's Summation				59
11	COURT'S RULING				61
12	DAVID RUSHTON CROCKER				
13	Ms. von Herrmann		63	81/88	
14	Mr. McCollum		66		84
15	Mr. Hazzard		75		87
16	Court				88/91
17	Mr. McCollum's Summation				90
18	Mr. Hazzard's Summation				94
19	COURT'S RULING				94
20	BREAK				
21					
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25					

	<u>I N D E X</u>				
	<u>WITNESSES</u>	<u>DIRECT</u>	<u>CROSS</u>	<u>RD</u>	<u>RC</u>
1					
2	<u>WITNESSES</u>				
3	DAVID RUSHTON CROCKER				
4	Ms. von Herrmann	98		108	
5	Mr. McCollum		101		
6	Mr. Hazzard		104		
7	COURT'S RULING				113
8	TONY COLLINS				
9	Ms. von Herrmann	115		125	
10	Mr. McCollum		118		
11	Mr. Hazzard		121		
12	COURT'S RULING				125
13	TROY ALAN LARGE				
14	Ms. von Herrmann	126			
15	Mr. McCollum		131		
16	Mr. Hazzard		136		
17	TONY COLLINS				
18	Ms. von Herrmann	139			
19	Mr. McCollum		149		
20	Mr. Hazzard		151		
21	Mr. McCollum's Summation				154
22	Mr. Hazzard's Summation				(NONE)
23	COURT'S RULING				155
24					
25					

	<u>I N D E X</u>				
	<u>WITNESSES</u>	<u>DIRECT</u>	<u>CROSS</u>	<u>RD</u>	<u>RC</u>
1					
2	<u>WITNESSES</u>				
3	TONY COLLINS				
4	Ms. von Herrmann	157			
5	Mr. McCollum		163		
6	Mr. Hazzard		165		
7	COURT'S RULING				167
8	MOTIONS Continued				168
9	LUNCH				173
10	MOTIONS continued				173
11	END DAY				185
12					
13	June 6, 2011				
14	JURY SELECTION/JURY QUALIFIED				185
15	JURY OUT/ON RECORD				188
16	JURY IN/COURT TO JURY				203
17	JURY OUT/ON RECORD				205
18	LUNCH				206
19	JURY OUT/ON RECORD				206
20	(As to Juror Number 43)				206
21	JUROR # 43 OUT/ON RECORD				209
22	MOTIONS continued				209
23					
24					
25					

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3	JURY IN/SWORN			220
4	STATE'S OPENING (von Herrmann)			227
5	DEFENDANT (Collington) OPENING (McCollum)			232
6	DEFENDANT (Gause) OPENING (Hazzard)			238
7				
8	<u>WITNESSES</u>	<u>DIRECT</u>	<u>CROSS</u>	<u>RD</u> <u>RC</u>
9	FREDERICK ARTHUR RASH			
10	Ms von Herrmann	245		
11	Mr. McCollum		249	
12	Mr. Hazzard		253	
13	JURY OUT/ON RECORD			258
14	END DAY			262
15				
16	June 7, 2011			
17	JURY OUT/ON RECORD (Stipulation)			262
18	(As to Juror Number 205)			264
19	JUROR #205 OUT			266
20	JURY PANEL IN			276
21	ROBERT DAVID DEAL, JR.			
22	Ms. von Herrmann	276/280		
23	Mr. Hazzard		279	
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I N D E X

WITNESSES

DIRECT

CROSS

RD

RC

JURY OUT/ON RECORD/JURY IN

345/348

Mr. McCollum

348

Mr. Hazzard

371

JURY OUT

375

LUNCH

379

JURY IN

380

EDWARD LEROY PROCTOR, JR.

Mr. Spratlin

380

392

Mr. McCollum

389

Mr. Hazzard

(NONE)

JURY OUT

394

ANTHONY BERNARD GRAHAM

394

ON RECORD

394

COURT'S RULING

401

JURY IN

402

Ms. von Herrmann

402

504

PUBLISHED S-72, DVD, TO JURY

442

Mr. McCollum

442

509

Mr. Hazzard

470

JURY OUT/ON RECORD/JURY IN

471/480

Mr. Hazzard

480

JURY OUT/ON RECORD/JURY IN

499/500

END DAY

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1				
2				
3	June 8, 2011			
4	JURY OUT/ON RECORD/JURY IN			511/525
5	FRANKIE YVONNIE DAVIS			
6	Ms. von Herrmann	525		
7	Mr. McCollum		547	
8	Mr. Hazzard		560	
9	JURY OUT/BREAK/JURY IN			563/564
10	PETER CESTARE			
11	Ms. von Herrmann	564		
12	Mr. McCollum		(NONE)	
13	Mr. Hazzard		570	
14	ANDREW JAMES			
15	Ms. von Herrmann	573		646
16	Mr. McCollum		607	655
17	Mr. Hazzard		630	658
18	JURY OUT/ON RECORD/JURY IN			601/604
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1					
2					
3	IRA BYRD PARNELL, JR.				
4	Ms. von Herrmann	662			
5	Mr. McCollum		677		
6	Mr. Hazzard		(NONE)		
7	JURY OUT/LUNCH				682
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9	(As to Juror # 205)/Juror Out				
10	ON RECORD/JURY IN				694
11	DONELL LAMONT DEWAN JAMES				
12	Ms. von Herrmann	694		812/824	
13	Mr. McCollum		740		813/821
14	Mr. Hazzard		773		
15	JURY OUT/ON RECORD/JURY IN				804/806/814
16	JURY OUT/ON RECORD				825
17	END DAY				
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19	June 9, 2011				
20	JURY OUT/ON RECORD/JURY IN				826
21	GREGORY FLOYD				
22	Ms. von Herrmann	827			
23	Mr. McCollum		868		
24	Mr. Hazzard		888		
25					

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I N D E X

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JURY IN/COURT TO JURY/JURY OUT/ON RECORD				927
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Ms. von Herrmann	929		1021	
Mr. McCollum		963		1028
Mr. Hazzard		1006		1029
JURY OUT/BREAK/JURY OUT/ON RECORD/JURY IN				1030/1035
SOLOMON K. JONES				
Ms. von Herrmann	1035		1038	
Mr. McCollum		1037		
Mr. Hazzard		(NONE)		
JURY OUT/ON RECORD				1039/1045
CECILY NICOLE HILLARD				
Ms. von Herrmann	1040			
Mr. McCollum	1042			
Mr. Hazzard	1043			
COURT'S RULING	1044			
JURY IN	1045			
CECILY NICOLE HILLARD				
Ms. von Herrmann	1045			
Mr. McCollum		1050		
Mr. Hazzard		1057		

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1					
2	<u>WITNESSES</u>	<u>DIRECT</u>	<u>CROSS</u>	<u>RD</u>	<u>RC</u>
3	DANIEL CRADIC				
4	Mr. Spratlin	1065			
5	Mr. McCollum		1071		
6	Mr. Hazzard		(NONE)		
7	JURY OUT/MOTIONS				1077
8	COURT'S RULING				
9	LADORREAN CHUKELL COLLINGTON				
10	COURT				1086
11	QUENTIN LAVANT GAUSE				
12	COURT				1091
13	JURY OUT/ON RECORD				1096
14	END DAY				
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16	June 10, 2011				
17	JURY OUT/MOTIONS				1124
18	JURY IN/ON RECORD				1126
19	STATE'S SUMMATION (von Herrmann)				1126
20	Objection				1136
21	DEFENDANT (Collington) SUMMATION (McCollum)				1149
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1					
2	<u>WITNESSES</u>				
3	JURY IN				
4	CHARGE BY COURT				1193
5	JURY OUT AT 12:10 P.M.				1207
6	ADDITIONS, EXCEPTIONS, OBJECTIONS TO CHARGE				
7	JURY DELIBERATING AT 12:30 P.M.				1209
8	JURY IN/COURT TO JURY				
9	JURY OUT AT 1:00 P.M./JURY CONTINUES DELIBERATION				1214
10	JURY OUT/ON RECORD				
11	JURY IN AT 9:25 P.M.				1215
12	VERDICT				1216
13	MOTIONS				1220
14	SENTENCING				1222
15	END DAY				
16					
17					
18					
19					
20					
21					
22					
23					
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<u>E X H I B I T S</u>			
<u>NO.</u>	<u>DESCRIPTION</u>	<u>ID.</u>	<u>EV.</u>
1			
2			
3	May 13, 2011		
4	S-1 Consent to Search		127
5	S-2 Search Warrant (3555 Highway 544 (█))		140
6	S-3 Search Warrant (Coastal Villas (█))		157
7			
8			
9	D-1 (Collington) Search Warrant (█ Palmetto)		61
10	D-2 (Collington) Search Warrant (█ Grainger █-5)		64
11	D-3 (Collington) Search Warrant (█ Grainger █-8)		97
12	D-4 (Collington) Search Warrant (█ Barberry Ct.)		116
13			
14			
15	June 6, 7, 8, 9, 10, 2011		
16	C-1 Note from Juror #43 (Misplaced)		209
17	C-2 Note from Jury (Misplaced)		266
18	C-3 Stipulation by Counsel (Misplaced)		345
19	C-4 Note from Jury		1210
20	C-5 Note from Jury		1215
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	<u>EXHIBITS</u>			
	<u>NO.</u>	<u>DESCRIPTION</u>	<u>ID.</u>	<u>EV.</u>
1				
2				
3	S-1 (A)	Large Chart		48
4	S-1 (B)	Large Chart		48
5	S-2	Photo		48
6	S-3	Photo		48
7	S-4	Photo		48
8	S-5	Photo		48
9	S-6	Photo		48
10	S-7	Photo		48
11	S-8	Photo		48
12	S-9	Photo		48
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14	S-11	Photo		48
15	S-12	Photo		48
16	S-13	Photo		48
17	S-14	Photo		48
18	S-15	Photo		48
19	S-16	Photo		48
20	S-17	Photo		48
21	S-18	Photo		48
22	S-19	Photo		48
23	S-20	Photo		48
24				
25				

	<u>EXHIBITS</u>			
	<u>NO.</u>	<u>DESCRIPTION</u>	<u>ID.</u>	<u>EV.</u>
1				
2				
3	S-21	Photo		48
4	S-22	Photo		48
5	S-23	Photo		48
6	S-24	Photo		48
7	S-25	Photo		48
8	S-26	Photo		48
9	S-27	Photo		48
10	S-28	Photo		48
11	S-29	Photo		48
12	S-30	Photo		48
13	S-31	Photo		48
14	S-32	Photo		48
15	S-33	Photo		48
16	S-34	Photo		48
17	S-35	Photo		48
18	S-36	Photo		48
19	S-37	Photo		48
20	S-38	Photo		48
21	S-39	Photo		48
22	S-40	Large Map		48
23				
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	<u>EXHIBITS</u>			
	<u>NO.</u>	<u>DESCRIPTION</u>	<u>ID.</u>	<u>EV.</u>
1				
2				
3	S-41	Photo		48
4	S-42	Photo		48
5	S-43	Photo		48
6	S-44	Photo		48
7	S-45	Photo		48
8	S-46	Photo		48
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10	S-48	Photo		48
11	S-49	Photo	191	295
12	S-50	Photo	191	
13	S-51	Photo	191	
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17	S-54	Spent Shell Casing		320
18	S-55	12 Gauge Shotgun Shell		321
19	S-56	Spring		325
20	S-57	Shot Shell Component		322
21	S-58	Shot Shell Component		316
22	S-59	Shot Shell Component		323
23	S-60	Pillow		306
24				
25				

	<u>E X H I B I T S</u>			
	<u>NO.</u>	<u>DESCRIPTION</u>	<u>ID.</u>	<u>EV.</u>
1				
2				
3	S-61	12 Gauge Slug	652	308
4	S-62	Shot Shell Component	652	317
5	S-63	Shot Shell Component	652	317
6	S-64	Shot Shell Component	652	318
7	S-65	Shot Shell Component	652	318
8	S-66	Shot Shell Component (from Autopsy)	652	334
9	S-67	.22 Caliber Bullets	652	341
10	S-68	.357 Caliber Bullets	652	342
11	S-69	Shotgun (Serial # C884049)	652	331
12	S-70(A)	.22 Ruger Pistol (Serial # 229873)	652	567
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20	S-76	Calendar (April, 2008)	1031	
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24				
25				

EXHIBITS

<u>NO.</u>	<u>DESCRIPTION</u>	<u>ID.</u>	<u>EV.</u>
1			
2			
3	D-1 (Collington) (ID ONLY) Handwritten Note		
4	D-2 (Collington) (ID ONLY) Handwritten Note		
5	D-3 (Collington) (ID ONLY) Handwritten Note		
6	D-4 (Collington) (ID ONLY) Handwritten Note		
7	D-5 (Collington) (ID ONLY) Handwritten Note		
8	D-6 (Collington) (ID ONLY) Handwritten Note		
9	D-7 (Collington) (ID ONLY) Handwritten Note		
10	D-8 (Collington) (ID ONLY) Handwritten Note	918	
11	D-9 (Collington) (ID ONLY) Handwritten Note	927	
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ROBERT DAVID DEAL, JR. - DIRECT BY von HERRMANN

1 A. In the manufacturing of any type of firearm, be it a  
2 pistol or rifle or shotgun, you have different pieces that  
3 allow it to function and work, and basically in this scene we  
4 had a component that belonged to a shotgun that we were able  
5 to identify as a tube spring.

6 The tube spring is the spring that's inside of a --  
7 per se on a shotgun that holds the shells underneath the  
8 barrel. It allows you to be able to chamber extra rounds up  
9 into the receiver of the shotgun to fire, and that's what we  
10 identified here that was found on the quilt.

11 Q. Would this be something that you would normally see  
12 with a fired shotgun?

13 A. Not typically. Typically that component would be  
14 still in the shotgun.

15 Q. That's a -- that's a component that enables the  
16 shotgun to work, is it not?

17 A. That's correct.

18 Q. All right. Let's see the next one.

19 A. We deemed it as a item of evidence and we collected it  
20 as part of this investigation.

21 As we continued to search, we found some other items.  
22 We found what appeared to be a shot shell component along  
23 with a cell phone that was underneath a chest of drawers that  
24 was in the master bedroom.

25 We then took the cell phone in as evidence which is

ROBERT DAVID DEAL, JR. - DIRECT BY von HERRMANN

1 depicted as Item Number 9, and then we also took into  
2 evidence a shot shell component which is depicted as Item  
3 Number 11.

4 Q. We'll talk about those items a little bit later on.

5 A. As we continued to still look around underneath the  
6 dresser -- the chest of drawers, we also found another  
7 component that belonged to a shotgun, which is the red  
8 plunger, which would be one of the items that would hold the  
9 spring inside the shell. We collected it also as evidence,  
10 and it's depicted as Number 12.

11 Q. Just so that I can make sure that we are clear, Item  
12 Number 11 there, which I believe was a green -- looks like a  
13 green piece of plastic?

14 A. Correct.

15 Q. And what -- what do you call that?

16 A. It's -- it's -- we -- we -- we refer to it as a shot  
17 shell component. It's basically part of manufacturing of the  
18 shot shell that would probably hold the shot into the shell,  
19 the hole of the shell. That way when you -- when they crimp  
20 it, it's not all leaking -- leaking out. It's basically  
21 going to hold the shot together within the shot shell.

22 Q. And so that is a -- that is a part of the ammunition?

23 A. That's correct.

24 Q. And Item Number 12 here, tell the jury, please, what  
25 that is.

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1 A. Item Number 12, if you -- if you mirror back at the  
2 spring, and when you're looking inside of a shotgun and if  
3 the tube where the ammunition is held, this is what they call  
4 a plunger and basically what it does is it holds the spring  
5 inside the shot shell tube so as you load the shotgun, the  
6 plunger will hold -- push the spring back to cause retention  
7 on the shot shells.

8 This is typically not an item you would find in a  
9 scene of a shooting unless you had some type of malfunction  
10 or a weapon came apart.

11 Q. So this item, like the spring, is an item that comes  
12 not from the ammunition, but from the weapon itself?

13 A. That's correct.

14 Q. Thank you.

15 A. As we worked our way around in the room, we had a  
16 dresser that was at the foot of the bed, and we found another  
17 component from a shot shell underneath it. This is a distant  
18 shot shell in relation to the bed. The arrow is showing you  
19 the location of that shot shell component. This is a mid-  
20 range shot with Evidence Marker Number 10 for its collection,  
21 and then a close-up of collecting that shot shell component.

22 Q. Just so we can be clear about that, point out to the  
23 jury, please, ---

24 MS. von HERRMANN: If you will step down for one  
25 moment.

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1           **THE COURT:**   Remember to stand next to the microphone.

2           Q.       Point out to the jury, please, where Items Number 11  
3           and 12 were located.

4           A.       Items Number 11 and 12 were located in this --  
5           underneath this chest of drawers that was to -- if you are  
6           standing at the foot of the bed, to the right in the room,  
7           whereas Item Number 10 was over here at the dresser, which  
8           would be to the left of the bed.

9           Q.       Okay, because those photographs all sort of show  
10          something with a leg, a piece of furniture there with it, but  
11          those were in two completely different locations?

12          A.       That's correct.

13          Q.       Thank you. All right, let's take a look at this next  
14          slide.

15          A.       The next slide is looking at the chest of drawers  
16          again. During our initial survey, I noticed some green leafy  
17          substance that was located on top of the chest of drawers,  
18          and during the search of the chest of drawers and looking  
19          through there, looking for any items of evidence, we came  
20          across some other items that contained a green leafy  
21          substance, and this is just showing a depiction of Items 13  
22          and 14 in their collection.

23          Q.       That green leafy substance was marijuana?

24          A.       It was later identified as marijuana, correct.

25          Q.       Okay.

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1 A. This is a close-up of Item Number 13, which was the  
2 loose green leafy substance on top of the chest of drawers,  
3 and then Item 14 was the collection of a clear baggie with a  
4 green leafy substance inside of it.

5 Q. Okay.

6 A. After we had collected those items, I then proceeded  
7 to look at the master bed, and I noticed that on the bed  
8 itself you had some blood and also some -- looked like  
9 stuffing coming out of the pillow, which then caused me to  
10 take a more thorough look at the pillow itself.

11 Q. I'm going to ask you to take a look at State's Exhibit  
12 60. Have you had an opportunity to examine that?

13 A. Not since I collected it and processed it at the  
14 scene.

15 Q. Could you open that and see if you can identify that  
16 for the jury and tell them what that is.

17 A. It's the pillow that I collected as Item 16 that has  
18 the hair in it that I noticed at the time at the scene.

19 Q. Do we have a -- do we have a close-up shot next?

20 A. Yes, we do. This is what I was -- when I had found  
21 that there was an item of evidential value in the pillow,  
22 which was later a shot shell component of the lead  
23 projectile. That's depicting as I found it at the time, and  
24 then that was the lead shot shell component that I removed  
25 from the pillow.

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1           **MS. von HERRMANN:** I would ask that he be allowed to  
2 step down for just a moment.

3           **THE COURT:** You may do so.

4           **MS. von HERRMANN:** And I would move to have this  
5 entered as well, Your Honor.

6           **THE COURT:** What is the exhibit number?

7           **MS. von HERRMANN:** Exhibit Number 60, I believe.

8           **THE COURT:** 60?

9           **MS. von HERRMANN:** Yes sir.

10          **THE COURT:** Any objection to State's 60 coming into  
11 evidence, Mr. McCollum?

12          **MR. McCOLLUM:** Is that the pillow, Your Honor?

13          **THE COURT:** Well, the pillow inside the bag, yes, sir.  
14 It will be inside the bag.

15          **MR. McCOLLUM:** No, Your Honor, no objection.

16          **THE COURT:** Mr. Hazzard?

17          **MR. HAZZARD:** No objection.

18          **THE COURT:** All right. State's 60 is in evidence  
19 without objection.

20          **MS. von HERRMANN:** Okay.

21                   **(PILLOW ADMITTED INTO EVIDENCE AS STATE'S EXHIBIT NUMBER**  
22 **60.)**

23          **Q.** And so here we have this pillow. It was depicted  
24 there -- that there appeared to be some sort of like poly-  
25 fill or something coming out of the pillow, is that correct?

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1 A. That is correct.

2 Q. All right, and could you point that out to the jury.

3 A. In the picture, when it first drew my attention to it,  
4 it had some poly-fill coming out of the edge here from the  
5 scene, but in addition, you do have a tear here in the poly-  
6 fill and the covering of the pillow.

7 Q. All right, and was there an item that you -- I believe  
8 you just showed it -- that you actually extracted from this  
9 pillow?

10 A. Right. During my examination of the pillow due to  
11 numerous practices and, you know, processing of scenes, I  
12 basically do a squeeze technique of the pillow because you  
13 don't want to take it apart and start tearing for the  
14 possible losing of evidence, and when I was squeezing it, I  
15 did find that there was a hard object in it, which once that  
16 it was extracted was the lead projectile.

17 Q. I want to show you what's been marked as State's  
18 Exhibit 61 and ask you if you could open that up and identify  
19 that for me.

20 A. It is the box that I labeled at the scene on 4/14/08  
21 with the case number, my name, and a description of spent  
22 lead projectile, and it is the lead projectile that I  
23 collected at the scene on that day.

24 **MS. von HERRMANN:** I would ask that this be moved into  
25 evidence at this time, Your Honor.

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1           **THE COURT:** Any objection, Mr. McCollum?

2           **MR. McCOLLUM:** Your Honor, is he testifying that he  
3 collected it at the scene and he placed it in the evidence  
4 box?

5           A. That is correct.

6           **MR. McCOLLUM:** No objection, Your Honor.

7           **THE COURT:** Mr. Hazzard?

8           **MR. HAZZARD:** No objection.

9           **THE COURT:** All right, State's 61 is in evidence  
10 without objection.

11           **(12 GAUGE SLUG ADMITTED INTO EVIDENCE AS STATE'S EXHIBIT**  
12 **NUMBER 61.)**

13           **MS. von HERRMANN:** And I would like to be able to  
14 publish this to the jury if I may.

15           **THE COURT:** You may do so.

16           Q. And let's go back a little bit because there are  
17 different kinds of ammunition that can be found and different  
18 kinds of shotgun shells, is that correct?

19           A. That is correct.

20           Q. Tell the jury if you will about the different kinds of  
21 ammunition that could be in those shotgun shells.

22           A. There is a vast variety depending on what application  
23 you're going to apply. You have what they call buckshot,  
24 which is just round balls, and there are different weights  
25 and sizes depending on the application. You also have what

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1 they call bird shot, which in -- which is a very small pellet  
2 which you will have a lot more of them inside the shot shell  
3 for different applications.

4 This -- this projectile is what they would consider a  
5 slug, which is a solid piece of lead that is formed into an  
6 over-sized, say, bullet and they put it inside of the shot  
7 shell, which is, you know, is one projectile versus having  
8 multiple projectiles, say, in your buckshot or your bird  
9 shot.

10 Q. Buckshot, is that used specifically in deer hunting?

11 A. Different applications. A lot of people use it for  
12 target practice, hunting, you know, skeet. There's a lot of  
13 different applications for it. Basically the main thing is  
14 the size of your pellets and your quantity of pellets.

15 Q. A slug, like this one, that's the only thing coming  
16 out of that shotgun shell, is that correct?

17 A. That's the only projectile inside a shotgun shell.  
18 You do have other components that do come out with a projec-  
19 -- with that projectile, which would be wadding, hull, and  
20 stuff like that, so you do have other things coming, but it  
21 is the -- it is a single projectile in the shot shell.

22 Q. On the scale of size from a bullet, would that be on  
23 the large end or on the small end?

24 A. It would be considered on the large end.

25 Q. How much does that weigh, do you know that?

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1 A. I don't know the exact weight, you know, with --  
2 because we did not weigh it because we knew we were sending  
3 it off to S.I.E.D. for forensic evaluation.

4 Q. All right. Let's -- let's go to the next slide.

5 A. The next slide is we moved into the master bedroom  
6 closet. 15 is depicting a soft gun case. Through  
7 examination of that gun case we were able to recover a .22  
8 caliber rifle. It was a Remington. It was a model Viper,  
9 and then we also found a Stevens .410 shotgun that was also  
10 found in the gun case. It did not contain a serial number  
11 because it was old enough to be manufactured prior to the  
12 regulation requiring serial numbers.

13 Q. So those two weapons were located where on this  
14 diagram?

15 A. If you look here on the sketch, you'll see Number 15  
16 that was in the master bedroom closet.

17 Q. Did it appear to be partially in or partially covered?

18 A. In its location, as you can see in the picture, we've  
19 kind of brought it out of its initial location because it was  
20 behind some clothing. We photographed it and we processed  
21 the firearms by identification. In addition, any time we  
22 find a firearm in the scene, we will also have E-911  
23 communications do what they call a N.C.I.C. check of the  
24 firearm to see if it's been reported stolen or anything like  
25 that.

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1 As I said, the .410 shotgun, the Stevens, did not have  
2 a serial number so you could not verify if it had been stolen  
3 or not, but the Remington was checked and it was clear per  
4 E-911 communications.

5 Q. And those were contained, if you will, in a -- in a  
6 bag hidden in the closet?

7 A. That's correct.

8 Q. All right, so let's go on to the next one. Did you  
9 find any other guns in the house?

10 A. We did not find any other firearms in the residence.

11 Number 17 was a blood smear that we found in the  
12 hallway that we swabbed for eval- -- for DNA evaluation.

13 Number 18 was a blood pool that we found after we had  
14 moved the victim from the scene, and we collected two DNA  
15 swabs from the pool for evaluation.

16 Number 19 is depicting some blood spatter or cast off  
17 that was located on the master bedroom clos- -- master  
18 bedroom door that we swabbed for evaluation.

19 Q. Would this blood here have been located directly over  
20 where the victim was lying?

21 A. It was in the pathway of where the victim was lying.

22 Q. I'm sorry. You were saying that that was located  
23 where?

24 A. It's -- remembering back to the diagram where the  
25 victim was lying, it was on the bedroom doorway above where

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1 he was lying.

2 Q. Okay. Let's go to the next one.

3 A. Number 20 is some more of the blood cast off from the  
4 master bedroom door.

5 Q. This corner that we see here, would that be the corner  
6 between that back bedroom and the master bedroom?

7 A. That is correct.

8 MS. von HERRMANN: Your Honor, at this time, I believe  
9 that the State and the defendants have a stipulation that  
10 we've entered into, and I would ask ---

11 THE COURT: All right.

12 MS. von HERRMANN: --- the Court to make the jury aware  
13 of that.

14 THE COURT: Is that correct, Mr. McCollum, on behalf of  
15 the defendant, Collington?

16 MR. McCOLLUM: That's correct, Your Honor, on behalf of  
17 Collington.

18 THE COURT: And, Mr. Hazzard, on behalf of the  
19 defendant, Gause?

20 MR. HAZZARD: That is correct, Your Honor.

21 THE COURT: All right, very good.

22 Ladies and gentlemen, the State and Defense has entered  
23 into a stipulation, a statement, basically of agreement, and  
24 I will read this to you at this point in time.

25 We stipulate that all blood and/or DNA evidence

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1 collected from the crime scene belong to the deceased, Allen  
2 Smith, and did not belong to Ladorrean Collington, Quentin  
3 Gause, or anyone else.

4 You may proceed, Solicitor.

5 **MS. von HERRMANN:** Thank you, Your Honor.

6 Q. So, Investigator Deal, this blood that we -- that we  
7 saw the swabs that you took, those all came back as positive  
8 DNA to the victim in the case, ---

9 A. That's correct.

10 Q. --- is that correct?

11 All right, thank you, and what are we looking at here?

12 A. What we're looking at here is we're taking a look at  
13 the bedroom wall that was behind the master bedroom bed, and  
14 it's with scale, and what we're doing here is we're  
15 photographing what looks to be like a blast pattern and we do  
16 it with scale because we are also taking this photograph in a  
17 different mode on the camera that allows us to blow it up if  
18 necessary without distortion. You're taking that at a ninety  
19 degree angle, that way that when you do blow it up, if you  
20 have to, in the lab, there is no distortion.

21 Q. I'm going to show you what's been marked here as  
22 State's 52(A) and -- no, excuse me -- it's 2(A) and (B). Let  
23 me get you to step down, if you will. Could you show the  
24 jury, please, how these two items -- first if you could  
25 identify them and show them how they fit together.

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1 A. When -- in this photograph here is the actual wall  
2 section still intact. It actually has not been cut out yet.  
3 As you see, we did remove the wall sections. The section  
4 that the Solicitor actually had is supposed to be the top  
5 portion of this, and the reason why I know is because of the  
6 scaling, but also due to practice, my initials and date are  
7 on both corners.

8 The reason being is when we document this on a search  
9 warrant, you know, when damage is caused in processing a  
10 scene, we have to document where we -- we get it at. Inside  
11 the residence I also have my initials from the wall, along  
12 with the piece of evidence where I took it from. This  
13 happened that this piece was on the scene of the sheetrock.

14 Q. Okay, and again, let's go now to the diagram and look  
15 at where exactly in the bedroom this would -- this piece of  
16 sheetrock would have been located.

17 A. It would have been located right here. It was between  
18 the bed and the nightstand.

19 Q. All right, and I see that you have some numbers that  
20 you've placed there on that piece of sheetrock.

21 A. During the course of the processing the scene and  
22 speaking with the case officer and some of the other  
23 detectives that were assisting him, one of our -- one of the  
24 things we like to try to do is even though it's an estimate,  
25 we wanted to check to see with the components that we were

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1 finding if it was relevant to this blast pattern when we  
2 found it, and what the numbers are adding up to are items of  
3 evidence that we collected in the scene and what we felt was  
4 their proper positioning in the blast.

5 These items were sent off to S.L.E.D. to a firearms  
6 examiner for further review. This was just our documentation  
7 on the wall of where we found -- of where we thought the  
8 components were going into.

9 Q. I'm going to hand you what's been marked as State's 58  
10 and ask you to take a look at that.

11 A. This is indeed the box that I placed the item -- Item  
12 Number -- Number 11. It's a shot shell component with the  
13 case number and date and my name, sealed, and also as  
14 indicated on the back, Item Number 3, and what I did this for  
15 was for what I deemed the placement of a shot pattern.

16 MS. von HERRMANN: And I would move that into evidence  
17 as well, Your Honor, and that would be State's 58.

18 THE COURT: 58, all right. Mr. McCollum?

19 MR. McCOLLUM: Your Honor, it's my understanding he  
20 collected that at the scene ---

21 MS. von HERRMANN: That is correct.

22 MR. McCOLLUM: --- and placed it in the evidence box  
23 and it was sealed. No objection based on that.

24 THE COURT: All right. Mr. Hazzard?

25 MR. HAZZARD: No objection.

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1           **THE COURT:** All right. State's 58 is in evidence  
2 without objection.

3           **(SHOT SHELL COMPONENT ADMITTED INTO EVIDENCE AS STATE'S**  
4 **EXHIBIT NUMBER 58.)**

5 Q. All right, and is this also the item that was  
6 collected that we saw earlier that's Number 11?

7 A. That's correct.

8 Q. All right, and that was located there by the -- by the  
9 dresser drawers, correct?

10 A. The chest of drawers, that's correct. This is indeed  
11 an item that I collected with the exception of the S.L.E.D.  
12 examiner's initials that are imprinted on it.

13 Q. And let's look at what's been marked as State's  
14 Exhibit 62 and see if you can identify that for me as well.

15 A. It is identified also as Number 1, which was right  
16 here, the original section where it struck the wall, and it  
17 is indeed the piece I collected at the scene with exception  
18 of the S.L.E.D. examiner's marking.

19           **MS. von HERRMANN:** I would move that into evidence as  
20 well, State's 62.

21           **THE COURT:** Any objection, Mr. McCollum?

22           **MR. McCOLLUM:** No objection, Your Honor.

23           **THE COURT:** Mr. Hazzard?

24           **MR. HAZZARD:** Sir, is that something that came from the  
25 house?

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1 A. Yes.

2 MR. HAZZARD: No objection.

3 THE COURT: In evidence without objection.

4 (SHOT SHELL COMPONENT ADMITTED INTO EVIDENCE AS STATE'S  
5 EXHIBIT NUMBER 62.)

6 Q. And I also show you what's been marked as State's 63  
7 and see if you can identify that as well.

8 A. It is an item of evidence I collected at the scene  
9 with my initials, description. It is a shot shell component  
10 with the exception of the S.L.E.D. investigator's processing.

11 MS. von HERRMANN: I would move this in as well,  
12 State's 63.

13 THE COURT: Any objection, Mr. McCollum?

14 MR. McCOLLUM: No objection, Your Honor.

15 THE COURT: Mr. Hazzard?

16 MR. HAZZARD: No objection, Your Honor.

17 THE COURT: It's in evidence without objection.

18 (SHOT SHELL COMPONENT ADMITTED INTO EVIDENCE AS STATE'S  
19 EXHIBIT NUMBER 63.)

20 Q. Let me ask you to take a look as what's been marked as  
21 State's 64 and see if you can identify that as well.

22 A. It's an item of evidence that was found that I  
23 collected, the case number, date, and my initials, and  
24 description. It's a shot shell component, original from the  
25 scene except for the S.L.E.D. examiner's initials and date.

1 MS. von HERRMANN: I would move this in as well,  
2 State's 64.

3 THE COURT: Any objection, Mr. McCollum?

4 MR. McCOLLUM: No objection, Your Honor.

5 THE COURT: Mr. Hazzard?

6 MR. HAZZARD: No objection.

7 THE COURT: It's in evidence without objection.

8 (SHOT SHELL COMPONENT ADMITTED INTO EVIDENCE AS STATE'S  
9 EXHIBIT NUMBER 64.)

10 Q. All right, let me show you what's been marked as  
11 State's 65.

12 A. It's another shot shell component with the same case  
13 number, date, and my initials from collection at the scene,  
14 and it's one of the components with the addition of the  
15 S.L.E.D. examiner's initials.

16 MS. von HERRMANN: Your Honor, I would move State's 65  
17 in as well.

18 THE COURT: Any objection, Mr. McCollum?

19 MR. McCOLLUM: No, no objection, Your Honor.

20 THE COURT: Mr. Hazzard?

21 MR. HAZZARD: No objection.

22 THE COURT: In evidence without objection.

23 (SHOT SHELL COMPONENT ADMITTED INTO EVIDENCE AS STATE'S  
24 EXHIBIT NUMBER 65.)

25 Q. All right. I'm going to go back a little bit and ask

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1 you to look at what's been marked as State's Exhibit --  
2 State's Exhibit 6- -- 53 and -- look at 53 first and see if  
3 you can tell me what that is.

4 A. It's Evidence Item Number 5 I collected at the scene  
5 with my date, and initials, and description, a spent 12 gauge  
6 Remington shot shell.

7 Q. Would that be the ---

8 A. This was the shot shell that I collected from the  
9 hallway with the addition of the S.L.E.D. examiner's initials  
10 and lab number.

11 **MS. von HERRMANN:** And I would move State's 53 in as  
12 well.

13 **THE COURT:** Any objection, Mr. McCollum?

14 **MR. MCCOLLUM:** No objection, Your Honor.

15 **THE COURT:** Mr. Hazzard?

16 **MR. HAZZARD:** No objection.

17 **THE COURT:** It's in evidence without objection.

18 **(SPENT SHELL CASING ADMITTED INTO EVIDENCE AS STATE'S**  
19 **EXHIBIT NUMBER 53.)**

20 Q. And State's 54?

21 A. It is Item Number 6 I collected from the hallway with  
22 the case number, date of the incident, and my initials, with  
23 the description of spent .22 caliber Remington cartridge. It  
24 is the item that I collected at the scene with the exception  
25 -- with the addition of the S.L.E.D. examiner's initials.

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1 MS. von HERRMANN: I would move State's 54 in as well.

2 THE COURT: Mr. McCollum?

3 MR. McCOLLUM: No objection.

4 THE COURT: Mr. Hazzard?

5 MR. HAZZARD: No objection.

6 THE COURT: It's in evidence without objection.

7 (SPENT SHELL CASING ADMITTED INTO EVIDENCE AS STATE'S  
8 EXHIBIT NUMBER 54.)

9 Q. And let me show you what's been marked as State's 55.

10 A. This is Item Number 7. It's a spent 12 gauge  
11 Remington shot shell that I collected with the case number,  
12 date, and my initials.

13 Q. I don't know that we talked about that particular item  
14 yet.

15 MS. von HERRMANN: First of all, I would move that into  
16 evidence.

17 THE COURT: What's the State's number again?

18 MS. von HERRMANN: That's Number 7 -- I mean State's  
19 55.

20 THE COURT: All right. Mr. McCollum, any objection?

21 A. It's a 12 gauge shotgun ---

22 THE COURT: I'm sorry.

23 Mr. McCollum, is there any objection?

24 MR. McCOLLUM: I'd just like to take a look at it.

25 THE COURT: All right, very good.

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1           **MR. McCOLLUM:**    No objection, Your Honor.

2           **THE COURT:**    Mr. Hazzard?

3           **MR. HAZZARD:**    That's something that was collected at  
4 the scene of the crime?

5           **MS. von HERRMANN:**    It is.

6           **MR. HAZZARD:**    No objection..

7           **THE COURT:**    In evidence without objection.

8           **(12 GAUGE SHOTGUN SHELL ADMITTED INTO EVIDENCE AS**  
9 **STATE'S EXHIBIT NUMBER 55.)**

10          **THE COURT:**    You may proceed.

11          **Q.**        Okay, let's talk about that one for just a second.  
12 That was your Item Number 7, is that correct?

13          **A.**        That is correct.

14          **Q.**        Okay, and where is your Item Number 7 located?

15          **A.**        Item Number 7 was found in very close proximity of  
16 where the victim was found when we were processing the scene.  
17 It was in the foot of the master bedroom doorway.

18          **Q.**        So with regard to the shotgun shells themselves, we  
19 have two of those, is that correct?

20          **A.**        That is correct. We found two spent 12 gauge  
21 Remington shot shells on the scene.

22          **Q.**        And if you would point to the jury again where those  
23 two shot shells were located.

24          **A.**        The first shot shell that I found was in the hallway  
25 leading to the master bedroom, and the second was found

1 within the foot of the master bedroom doorway.

2 Q. Let me show you what's been marked as State's 57 and  
3 ask if you can take a look at that.

4 A. It's Item Number 10 with the case number, the date,  
5 and my initials for collection, and the description of spent  
6 shot shell component, and it is indeed a shot shell component  
7 collected with the addition of the S.L.E.D. examiner's  
8 initials and lab number.

9 MS. von HERRMANN: I would move State's 57 in as well.

10 THE COURT: Any objection, Mr. McCollum?

11 MR. McCOLLUM: No objection, Your Honor.

12 THE COURT: Mr. Hazzard?

13 MR. HAZZARD: No objection, Your Honor.

14 THE COURT: In evidence without objection.

15 (SHOT SHELL COMPONENT ADMITTED INTO EVIDENCE AS STATE'S  
16 EXHIBIT NUMBER 57.)

17 Q. Now I'm going to show you State's 59, if you can  
18 identify that for me as well.

19 A. It's Item Number 12 that I collected with the case  
20 number, date, and my initials, with the description of red  
21 cap, which was part of the firearm component that was found  
22 in the master bedroom. It is indeed the item that was  
23 collected with the addition of the S.L.E.D. examiner's  
24 initials and case.

25 MS. von HERRMANN: I would move that in as well.

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1           **THE COURT:** Any objection, Mr. McCollum?

2           **MR. McCOLLUM:** What was the -- besides the State's  
3 exhibit number, what's the item number?

4           A. That was Item Number 10 -- oh, I'm sorry. That would  
5 have been 11.

6           **MR. McCOLLUM:** 12?

7           **MS. von HERRMANN:** Your Honor, I believe it's Item  
8 Number 12.

9           A. Oh, I'm sorry, 12.

10          **THE COURT:** And Mr. Hazzard?

11          **MR. HAZZARD:** No objection, Your Honor.

12          **THE COURT:** In evidence without objection.

13          **MR. McCOLLUM:** No objection, Your Honor.

14          **THE COURT:** Thank you.

15                   **(SHOT SHELL COMPONENT ADMITTED INTO EVIDENCE AS STATE'S**  
16 **EXHIBIT NUMBER 59.)**

17          Q. Let's go back to the sheetrock.

18           **MS. von HERRMANN:** And again, Your Honor, that would be  
19 5- -- that would be State's -- State's 52(A) and (B), and I  
20 would move those in as well.

21          **THE COURT:** All right. Any objection to that, Mr.  
22 McCollum?

23          **MR. McCOLLUM:** Is that the sheetrock?

24          **THE COURT:** Yes sir.

25          **MR. McCOLLUM:** No objection, Your Honor.

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1           **THE COURT:**    Mr. Hazzard?

2           **MR. HAZZARD:**   No objection.

3           **THE COURT:**    In evidence without objection.

4                   **(SHEETROCK ADMITTED INTO EVIDENCE AS STATE'S EXHIBIT**  
5           **NUMBER 52 (A) AND 52 (B) .**

6           **MS. von HERRMANN:**   And, Your Honor, I would ask just to  
7           be able to publish these items that we've just put in to the  
8           jury all at once. I think that will help the investigator to  
9           explain ---

10          **THE COURT:**    You may do so.

11          **MS. von HERRMANN:**   Thank you.

12          Beg the Court's indulgence for one moment.

13          **THE COURT:**    Yes Ma'am.

14          Q.        And State's 56, can you identify that?

15          A.        It's item of evidence Number 8 with seal, with my  
16          initials and date. It is a shot shell tube spring that was  
17          collected at the scene, with the addition of the S.L.E.D.  
18          examiner's initials and case number.

19          Q.        Thank you.

20          **MS. von HERRMANN:**   I would move that in as well,  
21          State's 56.

22          **THE COURT:**    Any objection, Mr. McCollum?

23          **MR. McCOLLUM:**    No, Your Honor.

24          **THE COURT:**    Mr. Hazzard?

25          **MR. HAZZARD:**    No objection.

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1           **THE COURT:** In evidence without objection.

2           **(SPRING ADMITTED INTO EVIDENCE AS STATE'S EXHIBIT NUMBER**  
3           **56.)**

4           Q. All right, so let's talk about the items that you have  
5 here in front of the jury. Could you explain to them how  
6 each of these individual pieces may fit together.

7           A. Within the shot shell you have four components. You  
8 actually have the shot shell itself. Then you have a piece  
9 of wadding. In this particular instance because it was a  
10 slug, you will have a rubber insert, and then you also have a  
11 cap that's inside this shot shell before they crimp it, so  
12 you have four components for each shot shell.

13           In this incident, we only accounted for two shot shells  
14 being found in the scene and what we have dictated up on the  
15 screen is my estimation of how the components struck the wall  
16 behind the master bed.

17           Q. Before we get to that, let's just talk about what we  
18 have here. It looks like we have -- what would this be?

19           A. That is your shot shell.

20           Q. All right, and this?

21           A. That's the rubber insert component that goes with the  
22 slug.

23           Q. All right, and these here?

24           A. Would be considered a cap before they crimp it, and  
25 you have a piece of wadding, which is like a cardboard-type

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1 material. That is the slug that would have been put inside  
2 the shot shell.

3 Q. Okay, and this is -- this is the slug that was  
4 located ---

5 A. Right. That was the one that was found inside the  
6 pillow.

7 Q. And so would this -- would this account for one full  
8 shotgun shell then?

9 A. That is correct.

10 Q. All right, and then we also have over here another  
11 shotgun shell?

12 A. You have another shot shell and then you have the  
13 rubber insert, a piece of wadding, and then the cap. We are  
14 missing the slug.

15 Q. Okay, and we'll get to that in a few moments, but  
16 these were the items that were collected there in the house,  
17 correct?

18 A. That is correct.

19 Q. And tell the jury, please, what these markings are on  
20 the sheetrock.

21 A. Basically what we are trying to do at the time as we  
22 are processing the scene, myself along with the case agent  
23 and a couple of other investigators, we are trying to account  
24 for components and looking at the blast pattern on the wall,  
25 and we are trying to do a estimate of (a) to see if we were

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1 missing any components from the scene and if we could figure  
2 out the actual pattern of shots that were fired within the  
3 room.

4 The numbers on the sheetrock are the numbers that I  
5 showed that were on the back of the evidence boxes that were  
6 my estimations to correspond with the shot blast.

7 Q. All right, and so these particular components account  
8 for all of these various ---

9 A. During the course of the investigation we were able to  
10 find all the components except for one. We did not find one  
11 other slug, but we were able to account for that. During the  
12 course of the investigation we found that several -- that the  
13 missing slug had exited the residence and traveled through  
14 the next residence next door and then exited through another  
15 wall into the open environment.

16 After a thorough investigation and search of the  
17 residence next door and surrounding property, we were unable  
18 to find that slug.

19 Q. Go ahead and have a seat. So based on your  
20 experience, is it fair to say that there were two shotgun  
21 shells shot in that residence?

22 A. From the course of my investigation and the evidence  
23 that I was able to find and collect, I identified that there  
24 were two shot shells shot in that scene.

25 Q. Okay, and were you also able to form any opinion by

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1 the fact that you located that .22 shell?

2 A. We were able -- we were able to determine that there  
3 was a second weapon present and a second weapon that was  
4 fired, and in the course of investigation and examination of  
5 the victim, we were able to see that there were different  
6 size entrance wounds that would depict two different weapons.

7 Q. And so did it appear that he was shot once with a  
8 shotgun?

9 A. It would be underneath my professional opinion that he  
10 was shot at least once with a shotgun and at least once with  
11 a small caliber handgun.

12 Q. And let's go to the next slide here.

13 A. This slide is depicting the shot blast, as you saw  
14 this morning, after I had removed it and cut it from the wall  
15 section.

16 Q. All right.

17 A. With the wall section removed, we were able to  
18 identify that we did have a projectile that exited the scene  
19 location, and this is looking inside the wall with all the  
20 electrical wires and insulation removed.

21 This is looking to that back bedroom of the residence  
22 next door. If you notice here with the arrows, there is a  
23 projectile hole there. It was an entrance and exit inside  
24 the room. We did find another entrance and exit on the other  
25 side of the room where the projectile continued to travel,

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1 finally ending in the back storage closet where it entered  
2 into the closet from that location and exited out that  
3 location into the open environment.

4 Q. The door that you see there actually leads to the back  
5 yard, is that correct?

6 A. That's correct. That's a back storage closet.

7 Q. Okay, and so what you're telling the jury is that  
8 there was one shot that was fired where a slug landed in the  
9 pillow?

10 A. That's correct.

11 Q. And there was another shotgun shot that was fired  
12 where the slug went through that bedroom and through the  
13 duplex next door?

14 A. That's correct.

15 Q. And that slug was not recovered?

16 A. That's correct.

17 Q. Let's go to your next slide. All right, let's talk  
18 about this next slide that you have. Tell us -- tell us what  
19 we have here.

20 A. Later during the course of the investigation I was  
21 approached by Detective Alan Large. During his investigation  
22 in speaking with witnesses and his investigation, he was able  
23 to find a location where a possible shotgun that may have  
24 been used in this incident may be located. Myself and  
25 Detective Alan Large went out to [REDACTED] Bayside Avenue, Conway,

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1 South Carolina 29526, which is still within the Horry County  
2 limits and found a 12 gauge shotgun. The shotgun was  
3 identified as a Stevens Model 67, and it was in a wood line  
4 along the roadway behind this complex.

5 Q. All right. Let's see the next slide.

6 A. While we were processing the scene, I was looking for  
7 other debris around the shotgun in case someone had left  
8 something behind. In addition, we shot a GPS location of  
9 this item of evidence. That way we could show its -- the  
10 location in comparison to where the actual scene took place.

11 This is what we consider a distant shot of Evidence  
12 Number 1, which is the Stevens Model 67, and mid-range  
13 showing Item Number 1, and then a close-up of the shotgun  
14 that was collected.

15 In addition, the shotgun was checked, an N.C.I.C. by  
16 E-911 Communications, and it was not reported stolen.

17 **MS. von HERRMANN:** May I approach, Your Honor?

18 **THE COURT:** Yes Ma'am.

19 Mr. McCollum and Mr. Hazzard, come up.

20 **(BENCH CONFERENCE TAKES PLACE OFF THE RECORD.)**

21 **THE COURT:** All right, ladies and gentlemen, there is  
22 an item of evidence that's going to be introduced into  
23 evidence in this matter, apparently to be the shotgun. I  
24 will assure you that it has been thoroughly checked and  
25 secured with a lock, and it is not operable.

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1 You may proceed, Solicitor.

2 **MS. von HERRMANN:** Thank you.

3 Q. I'm going to show you State's 69 and ask if you can  
4 take a look at that and identify it for us.

5 A. It's a firearm box with my writing and identification  
6 on it depicting a Stevens Model 12 gauge shotgun with the  
7 addition of the S.L.E.D. examiner's initials and their lab  
8 number.

9 **MS. von HERRMANN:** I would move -- if you want to take  
10 a look at it, and you can come up here and we'll ---

11 **THE COURT:** All right, so that's State's 69. Any  
12 objection to that, Mr. McCollum?

13 **MR. McCOLLUM:** No, Your Honor.

14 **THE COURT:** Mr. Hazzard?

15 **MR. HAZZARD:** No objection.

16 **THE COURT:** It's in evidence without objection.

17 **(SHOTGUN, SERIAL # C884049, ADMITTED INTO EVIDENCE AS**  
18 **STATE'S EXHIBIT NUMBER 69.)**

19 Q. If you will, ---

20 **MS. von HERRMANN:** I would ask that he be allowed to  
21 publish that to the jury.

22 **THE COURT:** You may show it to the jury, sir.

23 Q. Give me the serial number off of that particular  
24 weapon.

25 A. The serial number is C, as in Charlie, 884049.

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1 Q. Why is it important that you know the serial number on  
2 that firearm?

3 A. Having a serial number on the firearm or any firearm  
4 allows to (a) check it to see if it has been reported stolen.  
5 In addition, we do a A.T.F. E-Trace, which allows us to put  
6 the information from the shotgun into a database, and what  
7 happens is it's sent to A.T.F. in Virginia where they process  
8 the firearm serial number, and basically what they're looking  
9 to do is try to find out who the original purchaser was and  
10 what the history is on the firearm.

11 A lot of states have registration of firearms where they  
12 can better track firearms, which is different from this  
13 state. We were actually able to go back to the original  
14 purchaser, which was not, I believe, in this incident, but it  
15 was not reported stolen and was clear N.C.I.C.

16 Q. And do you use that serial number for identification  
17 purposes as well when you send it up to S.L.E.D.?

18 A. That is correct.

19 Q. Was that particular item sent up to S.L.E.D. to their  
20 firearms division?

21 A. Yes, it is. On the firearm itself, a S.L.E.D.  
22 examiner typically engraves on a surface of metal along with  
23 writing his initials and their lab number.

24 Q. Does that particular weapon -- is that a weapon that  
25 should have a spring in it?

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1 A. This weapon is missing several components that would  
2 allow it to function properly. It is missing the magazine  
3 tube, which the spring that we saw earlier would have been  
4 inside of, along with the red cap that would have held the  
5 spring in. Like I said, this shotgun is missing several  
6 components.

7 Q. Thank you. Investigator Deal, did you also have the  
8 opportunity to attend the autopsy of the -- the victim in  
9 this case?

10 A. Yes, I did.

11 Q. And did you collect any items of evidence there at the  
12 autopsy?

13 A. I collected several items of evidence in addition to  
14 photographs. I also collected blood tubes for DNA testing  
15 purposes, along with a spent projectile that was found and  
16 located inside the victim during the course of the autopsy.

17 Q. And let me show you State's Exhibit 66 and see if you  
18 can identify that for me.

19 A. It's labeled as A-3, which would in my documentation  
20 be autopsy, Item Number 3. It's got the case number and the  
21 date, along with my initials, and a description, a spent  
22 projectile from autopsy. It is the projectile collected,  
23 along with the examiner's initials and lab number.

24 MS. von HERRMANN: I would move this into evidence as  
25 well.

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1 THE COURT: And what is the State's number?

2 MS. von HERRMANN: State's 66.

3 THE COURT: Any objection, Mr. McCollum?

4 MR. McCOLLUM: No objection, Your Honor.

5 THE COURT: Mr. Hazzard?

6 MR. HAZZARD: No objection.

7 (SHOT SHELL COMPONENT FROM AUTOPSY ADMITTED INTO  
8 EVIDENCE AS STATE'S EXHIBIT NUMBER 66.)

9 Q. All right, let's go back then for just one moment to  
10 the actual scene. I think this is the end of our slides, is  
11 that correct?

12 A. That is correct.

13 Q. When you arrived there on the scene, you say that  
14 there were two shotgun shells that were located?

15 A. That's correct.

16 Q. One .22 casing that was located?

17 A. That's correct.

18 Q. And the position of the body was what?

19 A. The position of the body was lying face down in a  
20 semi-fetal position on the floor between the master suite  
21 into the second back bedroom in the hallway.

22 Q. And did you have an opportunity then to go and examine  
23 the body as it sat when you walked in?

24 A. Yes. It's typical practice that myself, along with  
25 the Coroner or the Deputy Coroner, who at that time was

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1 assisting us, was Deputy Coroner Tony Hendrick. He and I,  
2 prior to the removal of the victim from the scene, did a  
3 thorough inspection of the body, and we also collected  
4 measurements of the body within the scene location.

5 During the course of our processing of the body, we do  
6 numerous things. One of the first things we do is we look  
7 for wounds to the body, defensive or offensive. We did find  
8 -- we did find several entrance wounds to the body, one being  
9 of small caliber, and large caliber wounds to his body also.

10 Q. Let's talk -- let's just talk about the -- about the  
11 small caliber wound. Where was that located?

12 A. It was located in the left back portion of the  
13 victim's torso.

14 Q. I'm going to have Detective Townsend come up here, if  
15 the Court doesn't mind, and ask you to point out on Detective  
16 Townsend, where that ---

17 **THE COURT:** If you want to step down in front of that  
18 microphone, you may do so.

19 Q. --- would have been located.

20 A. It would have been located in this line of the torso.

21 Q. Okay, and then at some point, did you ---

22 **MS. von HERRMANN:** You can step back, Detective  
23 Townsend.

24 Q. And then at some point did you all turn the body over?

25 A. Yes. After -- after we had completed our initial

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1 survey of the back, we did roll the victim over to begin the  
2 processing of the front side, and that would have consisted  
3 of photographing wounds, defensive, offensive, along with  
4 also performing a gunshot residue kit on the victim.

5 Q. And when you rolled the body over, tell the jury,  
6 please, what your observations were.

7 A. When we rolled the victim over, we observed a very  
8 large entrance wound to his chest, along with inspecting his  
9 hands. We found numerous wounds to his hand, particularly  
10 the right hand. It looked like it had some type of wound  
11 traveling across it, and the body contained lots of powder  
12 residue type particulate.

13 Q. And if you will, stand up one more time, Detective  
14 Townsend, and if you could come down and show the jury.

15 A. Well, on the victim's chest torso, we had a large  
16 wound here. In addition, we had a wound on his right hand.

17 Q. Are you sure that wound was on his right hand? Let me  
18 ask you this. If I showed you a picture that you took at the  
19 autopsy, just for your review, would that help you refresh  
20 your recollection?

21 A. I could either look at a photograph or refer back to  
22 my notes.

23 MS. von HERRMANN: Your Honor, I would ask to be able  
24 to show him -- just him a picture ---

25 THE COURT: That's fine.

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1           **MS. von HERRMANN:**   --- and ask him to refresh his  
2           recollection.

3           **A.**       After reviewing the photo, the correction is the wound  
4           was on the left inner crease of the thumb and forefinger.

5           **Q.**       And was there -- were there other marks on the body?

6           **A.**       During the course of the autopsy we did find other  
7           markings from either, you know, possible abrasions or  
8           firearms.

9           **Q.**       Okay. Well, show the jury then, please, where you  
10          believe the trajectory of that bullet was.

11          **A.**       In my opinion, the trajectory would have been right to  
12          left, so if Detective Townsend was laying in the bed and he  
13          was laying on his left side, it would have come across from  
14          right to left, striking his left hand and in the chest area.

15          **Q.**       Where would the entrance wound have been?

16          **A.**       In this investigation, you had a kind of -- several  
17          entrance wounds, and again, this is just my personal opinion.  
18          The wounds would have -- you had an entrance wound on the  
19          left hand following through to the chest.

20          **MR. McCOLLUM:**   Your Honor, ---

21          **THE COURT:**    Yes sir.

22          **MR. McCOLLUM:**   --- he's been previously qualified as an  
23          expert, but now he's state- -- prefacing it with his personal  
24          opinion. I'm not sure what we're doing.

25          **MS. von HERRMANN:**   I'm not going to ask him any more

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1 questions about that.

2 **THE COURT:** Let's just move along, Solicitor.

3 **MS. von HERRMANN:** Thank you.

4 **THE COURT:** Thank you.

5 Q. Taking into consideration your observations there at  
6 the scene and the wounds that were on the body, and don't --  
7 we have another witness coming in to testify about that  
8 autopsy, so I don't want any information about that, but  
9 based upon the wounds as you saw them and the scene that you  
10 had there, did you have -- do you have an opinion about where  
11 the victim was when he was shot initially?

12 A. Through the course of the investigation with the  
13 evidence items present and where we found the main  
14 projectile, at least one of the shots was when the victim was  
15 lying in his bed.

16 Q. And that would account for the slug being found there  
17 in the pillow?

18 A. That is correct.

19 Q. All right, and did you also have an opportunity to  
20 examine some vehicles that were impounded?

21 A. That is correct.

22 Q. All right, and was one of those vehicles a green Honda  
23 Accord?

24 A. That's correct.

25 Q. Who was the owner of that vehicle?

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1 A. I'd have to refer back to my notes.

2 Q. Do you have your notes there?

3 A. Yes, I do.

4 **MR. McCOLLUM:** Your Honor, I'm not sure how he derived  
5 this information, so I would object at this point.

6 **THE COURT:** Why don't you cover that, Solicitor.

7 **MS. von HERRMANN:** Thank you.

8 Let me -- let me get him to get to the ve- -- the  
9 particular vehicles, and I'll ask him about the details of  
10 that.

11 **THE COURT:** Thank you, Ma'am.

12 Q. All right, are you there?

13 A. Yes Ma'am.

14 Q. Was that -- who was that vehicle owned by?

15 A. From the D.M.V. report, whenever we do a vehicle  
16 processing, if the vehicle has a VIN number attached to it or  
17 a license plate, it is practice to run those to make sure  
18 that we are getting the proper owner's consent to process the  
19 vehicle, along with the information for a search warrant.

20 This ve- ---

21 Q. Was a search warrant obtained in this matter?

22 A. Yes, it was.

23 **MS. von HERRMANN:** Okay, and I believe the Court has  
24 previously ruled on that search warrant.

25 **MR. McCOLLUM:** The objection is not to the search

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1 warrant, Your Honor. The objection is the business record  
2 exception. I don't know that they've complied and laid a  
3 proper foundation.

4 **THE COURT:** At this point in time, why don't you  
5 continue your answer, how you -- how you ---

6 A. From the D.M.V. report ---

7 **THE COURT:** --- how you secured the ---

8 A. The VIN number was secured from the front dash of the  
9 vehicle on the driver's side and through the processing of  
10 that from the D.M.- -- the South Carolina Department of  
11 Vehicle Record, it came back to ---

12 **THE COURT:** I'm going to allow it. Thank you very  
13 much. Over the objection of the defendant, Collington, I'm  
14 going to allow it into evidence.

15 **MR. McCOLLUM:** Thank you, Your Honor.

16 A. It came back, the 1996 Honda Accord, belonging to  
17 Collington, Ladorrean Chukell, at [REDACTED] Sherman Place,  
18 Bucksport, South Carolina 29527, ---

19 Q. All right.

20 A. --- in Horry County.

21 Q. And did you seize some items from that vehicle?

22 A. Yes. During the processing of the vehicle, we do a  
23 photograph collage of the vehicle and then we begin to search  
24 the interior. During the search of that vehicle I came  
25 across several .22 caliber bullets that were live in the

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1 sense they had not been fired, along with some .357 magnum  
2 bullets that had not been fired.

3 Q. I'm going to show you what's been marked State's  
4 Exhibit 67. See if you can identify that for me.

5 A. Yes. This is a evidence envelope marked as V-1 for  
6 vehicle processing, Evidence 1, and with my initials on the  
7 back and the date, and inside is several .22 caliber  
8 Remington bullets.

9 MS. von HERRMANN: I would move State's 67 into  
10 evidence.

11 THE COURT: Any objection, Mr. McCollum?

12 MR. McCOLLUM: Just to matters taken up earlier, Your  
13 Honor.

14 THE COURT: All right, sir. State's 67 is -- I'm  
15 sorry, Mr. Hazzard?

16 MR. HAZZARD: No objection.

17 THE COURT: All right. State's 67 is in evidence over  
18 the objection of the defendant, Collington.

19 (.22 BULLETS ADMITTED INTO EVIDENCE AS STATE'S EXHIBIT  
20 NUMBER 67.)

21 Q. All right, and I'm also going to show you State's  
22 Exhibit 68.

23 A. That's a evidence envelope with my numbering, V-2,  
24 vehicle search, Item Number 2, with my initials and date.  
25 There's several .357 caliber bullets inside.

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1 MS. von HERRMANN: I'm going to move in -- ask to move  
2 in State's 68 as well.

3 THE COURT: Mr. McCollum?

4 MR. McCOLLUM: These are .357s. Your Honor, we object  
5 on the grounds of relevancy.

6 THE COURT: All right. I am going to allow it into  
7 evidence over the objection of the defendant, Collington.

8 Mr. Hazzard?

9 MR. HAZZARD: No objection.

10 MR. McCOLLUM: And also the other objections made  
11 earlier, Your Honor, that you ruled on.

12 THE COURT: Very good.

13 MS. von HERRMANN: Thank you.

14 THE COURT: It's over the objection of the defendant,  
15 Collington.

16 (.357 BULLETS ADMITTED INTO EVIDENCE AS STATE'S EXHIBIT  
17 NUMBER 68.)

18 Q. Was there another vehicle, a white Ford, that was  
19 brought to your -- brought to the impoundment there at the  
20 Horry County Police Department as a result of a search  
21 warrant?

22 A. That's correct. We processed a 1997 Ford Explorer,  
23 white in color.

24 Q. Did you have an opportunity to check the VIN number on  
25 that as well?

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1 A. Yes. We went through the same process to verify the  
2 vehicle's information and from the South Carolina Department  
3 of Motor Vehicles, the license came back to -- the vehicle  
4 came back to Ms. Collington, Ladorrean Chukell, at [REDACTED]  
5 Sherman Place, Bucksport, South Carolina 29527.

6 Q. Thank you.

7 MS. von HERRMANN: The Court's indulgence for one  
8 moment.

9 A. There was a -- the owner of the vehicle was  
10 Collington, Ladorrean Chukell, at [REDACTED] Sherman Place,  
11 Bucksport, South Carolina 29527.

12 Q. Investigator Deal, I know in your power point  
13 presentation there were a number of your photographs that you  
14 had includeD in those, in that power point, and I'm going to  
15 show you first -- if you will just review these, State's 2  
16 through 9, and tell me if those are already in evidence.

17 A. They are. These are copies of the photographs that I  
18 took.

19 Q. These are just enlarged versions ---

20 A. Correct.

21 Q. --- of the same photographs, and let me have you look  
22 at State's 10 through 19.

23 A. Again, these are pho- -- copies, enlargements, of the  
24 photographs I took.

25 Q. 22 through 29.

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1 A. Yes, again copies, enlargements of the photographs I  
2 took.

3 Q. 30 through 39.

4 A. Copies and enlargements of photographs that I took.

5 Q. And finally, if you would step down one last time for  
6 me, Investigator Deal. I'm going to show you what's been  
7 marked as State's Exhibit 40 in evidence and ask you just to  
8 tell the jury what this is a photograph of.

9 A. This is a photograph of a G.I.S. Global -- I don't  
10 know the exact terminology, but it's a G.I.S. mapping that  
11 the county provides when they do flyovers from satellites and  
12 aircraft, and basically what it is, it's an up-to-date yearly  
13 photograph of Horry County, and this is documenting the scene  
14 location, along to some other crime -- other scenes in  
15 reference to this incident.

16 Q. Okay, so point, if you will, for the jury, to the  
17 incident location.

18 A. The incident location was right here.

19 Q. Thank you.

20 **MS. von HERRMANN:** Investigator Deal, I don't have any  
21 further questions. Please answer any questions Mr. McCollum  
22 or Mr. Hazzard may have.

23 **THE COURT:** Before we do that, ladies and gentlemen,  
24 we'll take a short break for about five or ten minutes and  
25 then we'll come back in and finish the cross-examination. If

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1 you will go to your jury room, please. You can just leave  
2 your pads and pens in your chair if you want to.

3 Everyone else remain seated, please.

4 All right, we'll take a short break for about five or  
5 ten minutes. Thank you.

6 (STIPULATION BY COUNSEL (MARKED OFF RECORD) AS COURT'S  
7 EXHIBIT NUMBER 3.)

8 (THE FOLLOWING TAKES PLACE AFTER A BREAK AND OUTSIDE THE  
9 PRESENCE OF THE JURY.)

10 THE COURT: All right, Solicitor, I understand there's  
11 an issue that you want to address before the jury comes in.

12 MS. von HERRMANN: Your Honor, it is my understanding  
13 that Mr. McCollum intends to ask or attempt to introduce the  
14 victim's N.C.I.C. through this witness, and I don't think  
15 that that -- this would be appropriate. First of all, I  
16 don't think it's relevant, and I don't know -- I mean,  
17 this ---

18 THE COURT: All right. Well, let me hear from you, Mr.  
19 McCollum.

20 MR. McCOLLUM: Your Honor, I'm not really trying to  
21 introduce anything, but I've seen the N.C.I.C. of the -- or  
22 three N.C.I.C.s of the three people that were living in the  
23 residence on Barberry Court, Allen Smith, the deceased,  
24 Anthony Graham, also known as Loc, and Frankie Davis.

25 There's been evidence presented to the jury indicating

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1 that there were two firearms that were found inside the  
2 residence in a closet, apparently not related to the crimes  
3 charged here. I think one was a .410 shotgun, and the other  
4 one was a -- I believe it was a rifle. Yeah, it was a .22  
5 caliber rifle, a Remington .22 caliber rifle, and a .410  
6 shotgun with no serial number.

7 Based upon what is indicated on the N.C.I.C. for Allen  
8 Smith, he would be prohibited from owning a firearm under  
9 South Carolina law because he has a conviction for  
10 trafficking in crack cocaine. He would also be prohibited  
11 from owning a firearm based under the 1968 Federal Firearms  
12 Act. For the Court's information, it's my understanding from  
13 looking at the N.C.I.C. that Mr. Smith has a 1994 South  
14 Carolina gun conviction for which he had his probation  
15 revoked a few years later and did sixteen months, has a ---

16 **THE COURT:** Okay, and you have evidence you want to  
17 introduce that shows these are his weapons?

18 **MR. McCOLLUM:** I want to ask the officer about it  
19 because they were found in the closet of his bedroom.

20 **THE COURT:** If he found out who owned these weapons, is  
21 that the question you're going to ask?

22 **MR. McCOLLUM:** I'm going to ask him if he found the  
23 weapons in the -- in the bedroom closet where the incident  
24 occurred and that if that was -- appeared to be the residence  
25 or it's his understanding it's the residence of Mr. Smith,

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1 and also Mr. Graham and Ms. Davis, because Mr. Graham also is  
2 prohibited under State and Federal law from owning a firearm.

3 **THE COURT:** I understand that, but then you're going to  
4 ask him if he identified who owned those weapons?

5 **MR. McCOLLUM:** Not necessarily.

6 **THE COURT:** Then what's the purpose of asking the  
7 questions?

8 **MR. McCOLLUM:** Your Honor, the purpose of asking the  
9 questions is that they found these firearms in the house and  
10 these three individuals would be prohibited from owning a  
11 firearm. Additionally, all three of these individuals, you  
12 know, have criminal convictions that would prohibit them from  
13 having those firearms.

14 **THE COURT:** Well, certainly you can ask them what they  
15 found and who they might have been registered to, or who the  
16 owners were, if they so found that out. The criminal record  
17 of the other residents, I am sure, will come up during their  
18 cross-examinations, so you can ask them about that at that  
19 point in time.

20 I don't see the relevance of the victim's criminal  
21 record at this point in time. I will give you the right to  
22 recall the witness at a later time if you can establish some  
23 relevance, but I don't see any relevance at this point in  
24 time to the facts of this case and the defendant's criminal  
25 record or lack thereof, but if you can establish that later,

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1 I'll be glad for you to recall the witness.

2 Ask the jury to come in, please.

3 (THE FOLLOWING TAKES PLACE AFTER A BREAK AND WITHIN THE  
4 PRESENCE OF THE JURY.)

5 THE COURT: All right, Mr. McCollum, you may proceed  
6 with your cross-examination.

7 MR. McCOLLUM: Thank you, Your Honor.

8 CROSS-EXAMINATION BY MR. McCOLLUM:

9 Q. In terms of ---

10 MR. McCOLLUM: We're going to take a look at the slide  
11 here. Do I push this button?

12 A. Would you like me to get it ---

13 MR. McCOLLUM: Yeah.

14 I'd rather not touch it, Your Honor.

15 THE COURT: All right.

16 Q. While that's coming up, in terms of the green Honda,  
17 did you, yourself, look at the green Honda?

18 A. Yes. I processed the green Honda.

19 Q. Did you take any photographs of it?

20 A. Yes, I did.

21 Q. Did the Honda appear to be in an operable condition --  
22 let me rephrase that. Is it true that the green Honda didn't  
23 have a valid license plate?

24 A. If I could refer back to my notes, I could better ---

25 Q. Do you have those with you?

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1 A. Yes, I do.

2 Q. Before we do that, I just want to ask you one question  
3 about the bed. You were in the -- and this was a bed that  
4 was located and processed as a result of it being in the  
5 deceased's bedroom, right?

6 A. That's correct.

7 Q. And did you look at the bed and did you look under the  
8 bed?

9 A. During our search after we -- after we had completed  
10 collecting the pillow and the shot shell, the slug component,  
11 we did flip the mattress and search underneath it for other  
12 evidence or items, and we found none.

13 Q. Did you visually look under the space between the box  
14 springs and the floor?

15 A. Yes, I did.

16 Q. All right, and how -- how big was the space under the  
17 bed in terms of inches?

18 A. I think -- you know, it would be an estimate. I would  
19 say anywhere between four to six inches.

20 Q. So as we look at this picture here, looking at the  
21 post on the bed, in other words, the post there next to the  
22 wall that holds the bed up and holds the metal frame up, you  
23 think that that space between the floor and the bottom of  
24 that bed rail is maybe four to six inches?

25 A. Yes, because that's a standard bed rail for a queen or

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1 a king size bed, and the headboard there is attached to it,  
2 so ...

3 Q. Would you expect a person to be able to fit underneath  
4 that bed?

5 A. Any possibility that someone could fit underneath that  
6 bed, I mean, depending on the size and stature of that  
7 person.

8 Q. All right. In terms of the bed being against the wall  
9 there where we see the window, was there space between the  
10 bed and that wall when you went in the bedroom? In other  
11 words, was the bed pushed up against the wall, or was there a  
12 space there?

13 A. I think if my memory is correct, there was a little  
14 bit of a space at the foot of the bed, and it was more of an  
15 -- angled as it goes toward the headboard.

16 Q. Okay. In terms of the space at the foot of the bed,  
17 about how wide would that be in terms of feet or inches?

18 A. Between the foot of the bed and the ---

19 Q. And the wall.

20 A. And the wall?

21 Q. Yeah.

22 A. I would have to estimate between four to ten inches.  
23 I mean, it wasn't a huge space. It was like a wedge.

24 Q. And one of the shotgun shells was found at the foot of  
25 the bed, right?

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1 A. Yeah, one of the shot shells that was located in the  
2 doorway of the master suite was in very close proximity to  
3 the victim and the chest of drawers. That was Item Number 7.

4 Q. The chest of drawers was located at the foot of the  
5 bed?

6 A. It was to the right of the bed at the foot, correct.

7 Q. Which would be the space that the foot of the bed was  
8 pushed away from the wall a few inches, that would be near  
9 where the shotgun shell was found?

10 A. No. The bed was off the wall on the left side. If  
11 you're standing at the foot of the bed and you're staring --  
12 you're staring toward the headboard, the bed was off the wall  
13 on the left side. The right side was what would be going  
14 toward the entranceway to the master suite, so the bed would  
15 be kind of canted a little bit, but the space between the  
16 wall and the left side of the bed, I would say it was between  
17 four and ten inches.

18 Q. So there's nothing at the foot of the bed?

19 A. There's an open space at the foot of the bed, and then  
20 next you have a walk area, and then you'd have the dresser.

21 **MR. McCOLLUM:** All right. You can take the stand.

22 Thank you, sir.

23 Q. And one question, then, about the shotgun shell. We  
24 called it a shell, or what I'm calling a shell, we're talking  
25 about the green shotgun casing, right?

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1 A. Right. A lot of people could also refer to it as the  
2 hull. It's like it holds everything.

3 Q. And how would the hull come to be on the floor?

4 A. There are several styles of shotguns. Some shotguns  
5 eject in the bottom, so when that -- when that happens is  
6 when you fire the shotgun, when you go to rack or cause  
7 another shell to go into the chamber to be fired, it will  
8 either eject in the bottom or could eject out the right side,  
9 and also depending on if it was a model for a left-hand  
10 person eject to the left. The most standard typical shotguns  
11 either eject in the bottom or they eject to the right.

12 Q. Now, the shotgun, the short-handle shotgun, which I  
13 think has been marked ---

14 A. In the long box?

15 Q. Is there a State's number on that? I don't see a  
16 sticker on it.

17 A. It's actually on the shotgun.

18 Q. Where is the gun?

19 A. In the box.

20 **THE COURT:** What are you looking for, Mr. McCollum?

21 **MR. McCOLLUM:** The shotgun.

22 **THE COURT:** It's in the large box.

23 A. It's in the very large box.

24 Q. Right here on the floor?

25 A. Yes.

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1 Q. And what's the exhibit number on that, State's 69, and  
2 how does that shotgun expel the ---

3 A. That -- that shotgun is designed to eject to the  
4 right. It has an ejection port on the right side of the  
5 receiver.

6 Q. So if an individual were operating that shotgun from  
7 near the doorway of the master bedroom, the shell would eject  
8 toward the chest of drawers?

9 A. If you were standing at the foot of the bed, if I'm  
10 following you correctly and you're pointing the shotgun and  
11 he was to fire it, if he was at the foot of the bed it would  
12 eject toward the open doorway chest of drawers.

13 Q. And that's where you found it?

14 A. Yes sir.

15 Q. So would that place -- the person that's firing that  
16 shotgun be at the foot of the bed?

17 A. It would put you -- it would put that person in  
18 proximity to the foot of the bed. In this situation,  
19 depending on the load of a shot shell and, you know, how far  
20 the, you know, the shotgun would extract it, eject it, you  
21 are putting the person at the foot of the bed. In this  
22 situation where its location -- you also have a degree of --  
23 with obstacles in the room. I was -- my opinion would be  
24 that the person was further toward the left at the foot of  
25 the bed, closer toward the interior or exterior wall in that

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1 bedroom.

2 Q. And that's where the bed was against the wall?

3 A. That's where the bed was kind of canted off the wall a  
4 little bit.

5 Q. So when we look at the picture of the bed and it's  
6 against the wall, that's against the exterior?

7 A. Right; the back was. You're look- -- as you're  
8 walking into the bedroom from the doorway, if you look  
9 straight ahead, that is the exterior wall of the residence.

10 Q. All right, and so you believe that the person that  
11 fired the shotgun that expelled that hull, that green hull  
12 and that casing, were standing in the proximity of the foot  
13 of the bed?

14 A. He was at the foot of the bed, in my opinion, closer  
15 to that exterior wall.

16 Q. And then another hull or casing was found in the  
17 hallway ---

18 A. That's correct.

19 Q. --- next to the deceased's body, right?

20 A. That's correct.

21 Q. And was that shotgun ejected, that shell or hull,  
22 would that have been ejected to the right as well?

23 A. If it's the same shotgun in question that you  
24 presented, this one, it would have ejected to the right also.

25 Q. So where -- if it were the same shotgun, where would

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1 that person that fired that shotgun be standing?

2 A. In my opinion and with the trajectory blast that I  
3 have on the wall, I would put that shot being fired closer to  
4 the door, ---

5 Q. All right.

6 A. --- the master bedroom door. That way it would eject  
7 out into the hallway.

8 Q. And that shotgun, was that shotgun firing buckshot or  
9 a slug?

10 A. That shotgun, you know, I didn't examine it. It was  
11 sent to S.L.E.D., the South Carolina Law Enforcement  
12 Division, for examination.

13 Q. When we look at the picture, or the actual -- not  
14 just the picture, but actual drywall, or the sheetrock I  
15 think it's referred to, which is State's Exhibit Number --  
16 Number 25 -- excuse me, 52(B), State's 52(B), there were  
17 several items that were placed into evidence that were  
18 extracted or taken out of those holes in the drywall, right?

19 A. Well, in the -- in the photograph that I used in the  
20 slide show, I put for examination purposes at the crime  
21 scene, because we were trying to account for all the  
22 different components in the shot shell, we were estimating  
23 which components were making marks. We did extract a couple  
24 of components from the actual sheetrock. The majority of the  
25 components we found were actually inside the master bedroom.

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1 Q. What made those holes?

2 A. In my professional opinion, what made these holes or  
3 components of the shot shell as it was being fired. You have  
4 components with the wadding, the actual cap, and the actual  
5 projectile.

6 Q. Now, when you -- when you fire a shotgun with a slug,  
7 does it still have the same thing? Does it still have the  
8 wadding and then the -- what's the -- what's the other  
9 component called?

10 A. You're still going to have wadding. With a slug,  
11 you're also going to have a rubber washer. When we were  
12 introducing the other exhibits, you have a black -- looks  
13 like a rubber washer. That's inside of the shot shell, too,  
14 for the slug to be seated on, and then you have the cap, and  
15 then it's crimped shut.

16 Q. So the -- if you're firing a slug, which is a single  
17 projectile, it also has the -- behind it or between it and  
18 the gun powder the thing that looks like a washer or is a  
19 washer with a little hole in it?

20 A. Right. You have other components being expelled out  
21 of the shot shell along with the slug, so in -- with that as  
22 it's firing, those different components may not go as far.  
23 You know, it's all depending upon what that component is as  
24 to how far it's going to go, you know.

25 Q. Now, but those things -- those things that come out of

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1 the barrel of the shotgun the same -- they all -- it all  
2 comes out the barrel of the shotgun? The projectile comes  
3 out, the wadding if there's wadding, the washer if there's a  
4 washer, it all comes out the end of the barrel, right?

5 A. That's correct.

6 Q. So it all goes in the same direction as the  
7 projectile, right?

8 A. That's correct.

9 Q. So were projectiles in the wall?

10 A. We were unable to recover the second projectile that  
11 we were looking for because it went through the wall, exited  
12 into the next unit's wall, and then proceeded to travel  
13 through several more walls before it exited out into the  
14 general environment.

15 Q. Outside the house?

16 A. Exactly.

17 Q. So in regular terms, it's out in the yard somewhere?

18 A. Exactly.

19 Q. And you don't know how far; you just can't find it?

20 A. We did an extensive search with several detectives and  
21 metal detectors and were unable to locate it.

22 Q. So it's your opinion then that this wall with these, I  
23 think, six holes in it, was that -- what that one shot with a  
24 slug or was that more than one shot with a shotgun?

25 A. I think that blast pattern in my opinion is part of

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1 two shots. You have obviously one shot that was fired that  
2 entered into the victim, and you have a second shot that we  
3 can document that exited the residence. I believe the blast  
4 pattern is a combination of those two shots between the  
5 different components.

6 Q. And both of those shots fired, were both of those  
7 shots fired in what we're referring to as a slug, a single  
8 projectile?

9 A. Yes sir.

10 Q. So when you look at that drywall, even though it looks  
11 like perhaps part of a shotgun pattern, what we would expect  
12 from buckshot or some other type of shot, what that really is  
13 is the washers and things that are coming out the end of the  
14 barrel, in your opinion, firing two slugs?

15 A. That's correct. You're going to have the other  
16 components striking that hard surface, and if it doesn't have  
17 the velocity to go through it, like the second slug, it's  
18 going to ricochet off.

19 Q. And so -- and it's your opinion that two shots went  
20 into that wall?

21 A. It's my opinion that two shots -- you have two shot  
22 shell component -- two shots going into that wall from in --  
23 the multitude of two -- of those components, correct.

24 Q. Okay, and those -- those particular shots did not  
25 strike the deceased?

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1 A. You have at least one of those shots striking the  
2 decedent because we were able to put the projectile in the  
3 pillow where we deemed the decedent to be. The second shot,  
4 we were unable to locate that projectile.

5 Q. But this wall was not -- it's not -- correct me if I'm  
6 wrong -- it's not on the -- this wall is not taken from  
7 across the bed? It's not the wall with the window on it,  
8 right? It's the part of the wall that the bed -- the  
9 headboard was put against?

10 A. That's correct. It was at the head of the bed..

11 Q. But the shot that you recovered from the pillow would  
12 have been shot in a different direction, right?

13 A. That's correct. It would have been fired from the  
14 foot of the bed toward that wall.

15 Q. And sitting here today, you don't know who fired that  
16 shot?

17 A. No, I don't.

18 Q. And you don't know, or do you, which gun that shot was  
19 fired from?

20 A. All I know is that it was shot from a 12 gauge.

21 Q. And you base that on the hull of the shotgun shell?

22 A. That's correct.

23 Q. And that's because it's laying on the floor, right?

24 A. That's correct.

25 Q. If somebody had fired a shot from, say, a different

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1 caliber shotgun and picked up the hull or shell, then is it  
2 possible that that shot could have come from a different  
3 shotgun?

4 A. If you had another caliber shotgun in the scene and  
5 they were to police, you would still have other components  
6 that they would have also had to police, but all the  
7 components that we found in the room were all related to a 12  
8 gauge.

9 Q. Everything you found?

10 A. Correct.

11 Q. But it's true that if somebody fired a separate  
12 shotgun, but actually picked up the components and took them  
13 with them, then you wouldn't be able to draw the same  
14 conclusion?

15 A. That's correct. Anything is plausible.

16 Q. So you -- when you -- what you're doing is you're  
17 putting -- what you're trying to do is, so to speak, put the  
18 puzzle back together, but that's based on what you find in  
19 the room?

20 A. That's right. I can only articulate what the physical  
21 evidence that I find in the room tells me.

22 Q. And you found a .22 casing at the scene as well,  
23 right?

24 A. That's correct.

25 Q. You found a .22 projectile that you actually received

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1 at the autopsy which -- which was taken from the body of the  
2 deceased, right?

3 A. That's correct.

4 Q. All right, and did you find only one .22 casing?

5 A. That's correct.

6 Q. Now, you also found -- you found a shotgun in the  
7 closet of the room where the deceased was killed, right?

8 A. That's correct.

9 Q. And you also found a .22 rifle in that closet?

10 A. That's correct.

11 Q. Were those guns seized?

12 A. Yes, they were.

13 Q. And were they, to your knowledge, -- you may not know  
14 -- were those guns examined to see if they fired any of these  
15 projectiles?

16 A. While on scene I examined the shotgun. It was a .410  
17 caliber or a 410 gauge shotgun, which we would know from  
18 being there that it could not fire the 12 gauge shotgun  
19 shells. The .22 rifle that we found, we examined and we  
20 found it not to have been recently fired due to looking at  
21 powder residue and stuff like that that was located on the  
22 rifle.

23 Q. So in your opinion looking at it, it didn't have  
24 residue on it?

25 A. No. We -- from -- from our opinion from the

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1 assessment of evaluating these two guns, it looked like they  
2 had been stored in the closet and were not part of this  
3 incident.

4 Q. They looked like they were not part of the incident?

5 A. That's correct.

6 Q. Were any tests run on them to determine that with some  
7 degree of finality?

8 A. Not to my knowledge.

9 Q. Okay, and is it possible to fire a slug or -- is that  
10 the right term, slug?

11 A. Yes sir.

12 Q. Out of a .410?

13 A. It would be a .410 caliber slug, which is going to be  
14 a small diameter, smaller shot shell. A 12 gauge will not  
15 fit into a .410.

16 Q. Did the slug that you recovered, were you able to  
17 determine that was a 12 gauge slug?

18 A. I'd have to review the S.L.E.D. forensic anal- --  
19 forensic report to articulate what he deemed it to be.

20 Q. So that may have been determined or may not?

21 A. Exactly.

22 Q. And the one that's missing in the back yard, that may  
23 be determined or not?

24 A. Correct.

25 Q. Because really you couldn't determine in any fashion

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1 what it was if you couldn't locate it, right?

2 A. Correct.

3 Q. Okay. Let's go back to the green Honda.

4 A. Okay.

5 Q. Take a moment and look at your notes. To your  
6 knowledge, did the green Honda -- did it have a flat tire and  
7 a cracked windshield?

8 A. Looking at my investigative report, vehicle processing  
9 work-up sheet, I have documentation that the vehicle had  
10 damage to the hood, to the windshield, to the left driver's  
11 quarter panel, front, to the rear quarter panel, and also to  
12 the passenger front tire.

13 Q. So the passenger front tire was flat?

14 A. Yes.

15 Q. And did it look like it had been flat for a while?

16 A. From my notes, it appeared to not have been recent, I  
17 mean.

18 Q. All right, so it didn't look like the vehicle was even  
19 really being used, right?

20 A. You could only presume.

21 Q. Now, let me -- you've been -- is that -- is that part  
22 of the crime scene?

23 A. The vehicle was brought to me at the impound lot, so  
24 it had left the original scene where it was picked up and  
25 brought to me.

## ROBERT DAVID DEAL, JR. - CROSS BY McCOLLUM

1 Q. Now, you testified you'd processed over five hundred  
2 scenes, right?

3 A. Correct.

4 Q. You've been qualified as an expert in giving testimony  
5 about crime scenes, right?

6 A. Correct.

7 Q. The vehicle, the green Honda, is part of the -- one of  
8 the crime scenes. You've got a suspect, right?

9 A. I -- I -- when the vehicles are sent to me, you know,  
10 a detective informs me if they have a search warrant or  
11 consent. On this vehicle we had a search warrant, and he  
12 informs me roughly what we're looking for, who it belongs to,  
13 and so forth. When we go into the vehicle, we do a general  
14 analysis. We do a general search. You know, the vehicle did  
15 have extensive damage. It did have a flat tire.

16 Is it -- was it operational? Yes, it was. Was there a  
17 key in the ignition? No. Because we go through and we  
18 actually document each component of the vehicle to see if  
19 it's operational. Do you know if it was driven recently or,  
20 you know, the night before or week before? No, I do not.

21 Q. So with all of your training and crime scene  
22 expertise, you can't look at a car and tell it hasn't been  
23 driven for a while?

24 A. In all my training and expertise, I cannot articulate  
25 that that vehicle had been driven the night before or a month

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1 before.

2 Q. So it comes to is that some kind of crime scene  
3 exception that if you look at vehicles as suspects, you can't  
4 determine their status? Is there something unique about  
5 that?

6 A. Basically what we look for is to see if the vehicle is  
7 operational, if it has the components to allow it to move,  
8 you know. When we -- and that's what we did with this  
9 vehicle. It, you know, was operational in the sense of the  
10 vehicle could move underneath its own extreme.

11 Q. Did it have a tag on it?

12 A. No, it did not.

13 Q. Okay, so if somebody wanted to crank it up with a  
14 busted windshield, and a crushed-in front end, and a front  
15 flat tire, and no tag, they could drive it down the road if  
16 they wanted to?

17 A. If the person was so motivated.

18 Q. And you didn't see anybody driving it, did you?

19 A. We would not allow it to go out of the impound lot  
20 like that.

21 Q. You wouldn't drive it like that, would you?

22 A. That would be my personal opinion, no.

23 Q. And nobody else was driving it like that, right?

24 A. Not that I saw.

25 Q. And nobody has driven it like that for a period of

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1 time, right?

2 A. I cannot testify to that.

3 Q. Okay. In terms of the bullets, you found some .22  
4 caliber bullets, right?

5 A. That's correct.

6 Q. And that's a common caliber of bullet, right?

7 A. A .22 is a very common round found.

8 Q. And when you have bullets, like if I've got bullets at  
9 my house in the dresser drawer or in the cabinet, what do you  
10 do with them if you're not going to shoot them? In other  
11 words, if you don't even have a gun, can you just throw them  
12 away?

13 A. Some people elect to throw them away. Some people  
14 elect to give them to neighbors that they know that have  
15 those firearms. Some people elect to do multiple things with  
16 them.

17 Q. But you -- a lot of people, you and me included, are  
18 reluctant to throw them away because if they go into a  
19 compactor or something like that, they could fire, right?

20 A. There's always a possibility of accidental discharge.

21 Q. And if they go into the recycling center or the  
22 landfill, the county dump, or whatever you call it, and  
23 people are out there driving around with those big bulldozers  
24 pushing things together, that could cause it to fire, right?

25 A. There's always a possibility, yes.

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1 Q. So it's a little bit -- in terms of just something of  
2 a problem if one has bullets as to what to do with them,  
3 right?

4 A. Yes.

5 Q. And anybody that has a gun or has more than one gun,  
6 or has had a gun in the past, lots of times you find that  
7 they have bullets laying around, right?

8 A. Correct.

9 Q. So if you went to my house, it wouldn't be uncommon  
10 for you to find just these kind of .22 bullets? Even though  
11 I don't have a .22, that wouldn't surprise you, would it?

12 A. No sir.

13 Q. And in terms of a .22 -- these are .22 Remingtons,  
14 right?

15 A. That's correct.

16 Q. And is there anything -- there's nothing in particular  
17 about these bullets other than any other .22 Remingtons,  
18 right?

19 A. No. These are a standard .22 caliber Remington lead  
20 bullets.

21 Q. And they are all basically the same, right?

22 A. That's correct. When they -- when ammunition is  
23 manufactured, there's a bulk number, you know, and obviously  
24 there are mass quantities of ammunition produced at one time.

25 Q. So you're not saying that these .22 bullets that were

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1 found in this green Honda had anything to do with this  
2 homicide, are you?

3 A. I can't -- I can't articulate that because the .22  
4 rounds did not have any serrations or any type of ejection  
5 marks on the casings. These were brand new unfired cartridge  
6 casings.

7 Q. So there's no connection whatsoever between the .22  
8 found -- the .22 bullets found in the green Honda and the  
9 homicide you were investigating, right?

10 A. There's only semblance.

11 Q. They are .22 bullets?

12 A. They are .22 Remingtons, and ...

13 Q. And that's -- the .22s are State's Exhibit Number 67.  
14 Now, there also was a State's Exhibit Number 68. I these are  
15 a -- those are .357 bullets, right?

16 A. Yes, they are head-stamped .357 magnum with R&P.

17 Q. And not being facetious here, those bullets will not  
18 fit in a .22 caliber weapon, will they?

19 A. No, they won't.

20 Q. And they won't fit in a 12 gauge shotgun, right?

21 A. Well, they would fit in it, but they would fall out.

22 Q. They wouldn't fire in it is the proper question,  
23 right?

24 A. Correct.

25 Q. And there's no evidence that you or anyone else

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1 collected that there was any kind of .357 used in this crime  
2 or this homicide, right?

3 A. That's correct.

4 Q. There's no evidence whatsoever linking State's 68 to  
5 anything of any significance, is there?

6 A. There was only the items collected out of the vehicle  
7 that were assigned to this investigation.

8 Q. They're bullets?

9 A. Correct.

10 Q. Not related in any way to this crime, right?

11 A. Only semblance.

12 Q. And were other things found in the car?

13 A. There was personal items. I mean, I can read through  
14 there if you would like.

15 Q. So -- I don't need for you to read through it, but  
16 there were other items that were taken from the vehicle?

17 A. No. There were only two items -- there was only two  
18 items seized from the vehicle. That was the Remington .22  
19 caliber bullets and the .357 Federal bullets taken from the  
20 vehicle.

21 Q. So if somebody has like a Bible or a church bulletin  
22 or something like that in there, that's not taken, right?

23 A. It obviously doesn't have any -- unless it has  
24 evidential value to the case.

25 Q. Okay, evidentiary value, right?

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- 1 A. Correct.
- 2 Q. But really, the .357 bullets clearly have -- have --  
3 at this point have no evidentiary value to anything, right?
- 4 A. When we -- when we process the vehicle, any -- any  
5 firearm related evidence, be it .22, be it .357, or .40 cal.,  
6 anything in that value that's deemed by the search warrant as  
7 being necessary is collected.
- 8 Q. And I don't want to, you know, beat this to death. We  
9 can just go over and over it, but again, to having bullets,  
10 it just kind of -- would you say it makes you look bad?
- 11 A. As a personal opinion, no.
- 12 Q. Okay. Thank you. So really, even having the bullets  
13 in the car, in your opinion, doesn't even make an individual  
14 even look bad or even suspicious?
- 15 A. Because you don't -- you can't perceive what was going  
16 on prior or after, you know, you looking at them.
- 17 Q. And you've been in law enforcement a number of years,  
18 right?
- 19 A. Correct.
- 20 Q. And you own guns, right?
- 21 A. Correct.
- 22 Q. Do you own a .22?
- 23 A. No, I do not.
- 24 Q. Have you owned one in the past?
- 25 A. No, I have not.

ROBERT DAVID DEAL, JR. - CROSS BY McCOLLUM  
CROSS BY HAZZARD

1 Q. Okay, but you own other weapons, right?

2 A. Correct.

3 Q. And do you have bullets at your house?

4 A. Correct.

5 Q. And you haven't committed any homicides, right?

6 A. No sir.

7 Q. All right.

8 MR. McCOLLUM: I think that's all. If I can just have  
9 one minute, Your Honor.

10 THE COURT: Yes sir.

11 MR. McCOLLUM: Your Honor, thank you. That's all the  
12 questions I have for Detective Deal.

13 THE COURT: All right.

14 Mr. Hazzard.

15 MR. HAZZARD: Thank you, Your Honor.

16 CROSS-EXAMINATION BY MR. HAZZARD:

17 Q. Investigator Deal, you and the Prosecutor talked about  
18 this shotgun and the State put it into evidence, is that  
19 correct?

20 A. The shotgun that we found at -- in the wood line?

21 Q. Yes sir.

22 A. Yes.

23 Q. And that was a 12 gauge shotgun, correct?

24 A. That is correct.

25 Q. So when you were saying to Mr. McCollum, I believe,

ROBERT DAVID DEAL, JR. - CROSS BY HAZZARD

1 you indicated that the one thing you knew for sure is that  
2 the victim's injuries were made by a 12 gauge shotgun? Did I  
3 understand you to say that?

4 A. From what I had physical evidence in the scene was  
5 that there was this 12 gauge used from the actual physical  
6 evidence that I had in the scene that I collected.

7 Q. Okay, so we're talking about what you collected?

8 A. Right. I go in and articulate physical evidence.

9 Q. Okay, and we'll let the Coroner worry about the body,  
10 so we're talking about what you collected?

11 A. That is correct.

12 Q. 12 gauge shotgun stuff?

13 A. That's correct.

14 Q. And that's what you collected from the wood line?

15 A. That's correct.

16 Q. 12 gauge shotgun stuff?

17 A. That's correct.

18 Q. When was that shotgun collected, sir?

19 A. If I could refer back to my notes, I think it was a  
20 couple of days after the incident.

21 Q. Okay, and obviously the shotgun had been discarded,  
22 correct?

23 A. That's correct.

24 Q. All right. Do you have any idea, or any evidence or  
25 knowledge based on your experience whether the shotgun had

ROBERT DAVID DEAL, JR. - CROSS BY HAZZARD

1 been partially dismantled before being discarded?

2 A. I would not be able to articulate if it was dismantled  
3 purposely or whatever prior to it being dumped or tossed  
4 aside.

5 Q. Okay, and when you were talking with Ms. Von Herrmann,  
6 I believe you said that there was a spring or a coil, and  
7 that's in evidence now, right?

8 A. That's correct.

9 Q. Okay. It's a fairly long coil?

10 A. It's a -- it's what we -- it's called a shot tube  
11 spring, and basically it's inside the shot shell holder that  
12 fits up underneath the barrel, and that spring has that red  
13 cap that we discussed also that holds it in there, inside the  
14 tube, so as you load shot shells inside the tube, it  
15 compresses the spring. As you fire the shotgun, as the  
16 shells are chambered into the chamber, that spring is  
17 retracted.

18 Q. The coil that was found, I think this is it, Exhibit  
19 -- State's Exhibit Number -- I guess that's 56. Okay, this  
20 coil is consistent with and would fit in that little shotgun  
21 thing that was found on the wood line, correct?

22 A. That spring, yes, it could fit in that shotgun, along  
23 with other shotguns.

24 Q. Okay. Now, you talked with Mr. McCollum and, I  
25 believe, with Ms. von Herrmann about searching some cars, is

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1 that correct?

2 A. That's correct.

3 Q. Did you search any car belonging to Quentin Gause?

4 A. Without referring back to my notes, I -- I wouldn't --  
5 I'd have to refresh.

6 Q. Okay. Take your time.

7 A. Not that I see.

8 Q. Does that mean no?

9 A. No, that's correct.

10 Q. Did you find anything in any car that you searched  
11 that belonged to Quentin Gause?

12 A. Not from my course of my investigation was I able to  
13 identify anything belonging to Quentin Gause.

14 Q. Okay, so throughout the entire course of your  
15 investigation, that includes the crime scene at [REDACTED]  
16 Barberry, that includes the search of the wood line, that  
17 includes every single car you searched or had processing of  
18 those areas, nothing relating to Quentin Gause, is that  
19 correct?

20 A. When I collected the items -- I'm only going by the  
21 information given to me by the detectives and the case  
22 agent, ---

23 Q. Yes sir.

24 A. --- therein I -- explained to me who is the owner of  
25 such items. They were just explaining to me they searched

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JURY OUT

1 this area, searched this vehicle. You know, once I seize  
2 these items and explain -- and show them what I have  
3 collected, they then, through their course of investigation,  
4 can finalize who the actual particular owners of these such  
5 items are, but during my course of investigation, no, I did  
6 not physically collect.

7 MR. HAZZARD: Thank you. Nothing further.

8 THE COURT: Redirect?

9 MS. von HERRMANN: No, Your Honor.

10 THE COURT: All right.

11 You may step down, sir.

12 All right, ladies and gentlemen, at this point in time  
13 we're going to break for lunch. I'm going to have you come  
14 back at two o'clock, please. If you would, please remember  
15 do not discuss the case. Do not allow anybody to talk to you  
16 about the case. If you go to lunch somewhere in the close  
17 vicinity of the Courthouse, please remember to continue to  
18 wear your juror button so that the people in the restaurant  
19 will know not to speak about the case in front of you.

20 If you want to leave your pads and pens in your chair,  
21 the courtroom will be secured with that. You are excused for  
22 lunch. See you back at two o'clock.

23 Everyone else remain seated.

24 (THE FOLLOWING TAKES PLACE OUTSIDE THE PRESENCE OF THE  
25 JURY.)

## JURY OUT/ON RECORD

1           **THE COURT:** Is Mary Davis present?

2           (Ms. Davis stands.)

3           **THE COURT:** Come forward, please Ma'am. Right there  
4 will be fine, Ma'am.

5           You are the owner of the cell phone that went off  
6 earlier?

7           **MS. DAVIS:** Yes.

8           **THE COURT:** All right, Ma'am, and did you notice the  
9 signs on the courtroom door when you entered the courtroom  
10 about cell phones?

11          **MS. DAVIS:** Yes. I thought it was off.

12          **THE COURT:** All right, I appreciate that Ma'am.  
13 There's an Order of the Chief Justice, State of South  
14 Carolina, about the use of cell phones. There's an  
15 Administrative Order in this circuit about the use of them.  
16 The signs are posted. It's well-noted.

17          I find you in contempt of court and I fine you a Hundred  
18 Dollars. You will pay it to the Clerk of Court by Friday,  
19 June 12, 2011, at twelve noon. Thank you very much.

20          You can return her cell phone to her.

21          You can have a seat, Ma'am.

22          All right, Mr. Graham, you are the owner of the cell  
23 phone that just rang just a little bit ago?

24          **MR. GRAHAM:** Yes sir.

25          **THE COURT:** And again, you have seen the signs posted

## JURY OUT/ON RECORD

1 on the -- right outside the door of the Courthouse?

2 **MR. GRAHAM:** Yes sir.

3 **THE COURT:** And downstairs. Again, I understand the  
4 situation, but I find you in contempt of court, and I fine  
5 you a Hundred Dollars. You will pay that to the Horry County  
6 Clerk of Court by Friday at twelve noon. Thank you very  
7 much.

8 We'll be at ease until two o'clock. Thank you.

9 **MR. McCOLLUM:** Your Honor, may I ask you a question  
10 regarding her detention?

11 **THE COURT:** Yes sir.

12 **MR. McCOLLUM:** I can do it at the bench.

13 **THE COURT:** No. You can -- go ahead. What would you  
14 like to do?

15 **MR. McCOLLUM:** It's my understanding from my client  
16 that Tom -- Tom and Jennifer are in charge of home detention,  
17 and we were under the impression that perhaps he was going to  
18 contact the Court and just needed to inquire about that. We  
19 were trying ---

20 **THE COURT:** Nobody has communicated to me about the  
21 status of your client in any way.

22 **MR. McCOLLUM:** Okay, so I guess what we will do is ask  
23 him to come down here so we can have some -- bring that up  
24 before ---

25 **THE COURT:** All right. Well, the main thing is we need

## JURY OUT/ON RECORD

1 to know that the bonding company is going to stay on the bond  
2 during the pendency of the trial. If the bonding company is  
3 not going to stay on the bond during the pendency of the  
4 trial, then I'm not releasing her.

5 **MS. von HERRMANN:** Your Honor, the bondsman contacted  
6 my office and told me that he did not intend to stay on the  
7 bond. I don't know whether they have had some other  
8 discussion with him, but as of yesterday, my understanding  
9 was that he did not intend to remain on the bond.

10 **THE COURT:** Well, so Mr. McCollum, you will need to  
11 communicate with that bonding agency or some other bonding  
12 agency that will -- I don't know, what was the -- what were  
13 the terms -- we'll have to find out what the terms of the  
14 bond were. I don't intend to increase it or have it in  
15 anything different than the previous bond. If another  
16 bonding company wants to go on the bond during the pendency  
17 of the trial, I'll be glad for that to happen, but without  
18 the security of a bonding company, I'm not releasing her.  
19 Thank you very much.

20 **MR. McCOLLUM:** Your Honor, may I ask a question?

21 **THE COURT:** Yes sir.

22 **MR. McCOLLUM:** I'm sorry. So I don't need to worry  
23 about the home detention people? If the bonding company  
24 stays on the bond ---

25 **THE COURT:** Well, then she's on home detention also.

## JURY OUT/ON RECORD

1 All the terms and conditions of the bond remain the same.

2 **MR. McCOLLUM:** I understand, but there was some  
3 questions the Court had, and I don't need to ask ---

4 **THE COURT:** No. I mean, those aren't necessary to add  
5 until we have figured out the issue about the bonding  
6 company. Once the bonding company -- once you have figured  
7 out that, that you have a bonding company that will stay on  
8 the bond, then we can go into the other issues. That's the  
9 -- that's the threshold question.

10 **MR. McCOLLUM:** All right, very good. Thank you, Judge.

11 **THE COURT:** Thank you very much.

12 **(THE FOLLOWING TAKES PLACE AFTER A LUNCH BREAK AND**  
13 **OUTSIDE THE PRESENCE OF THE JURY.)**

14 **THE COURT:** All right, Counsel, I apologize for the  
15 delay, but one of the jurors didn't show up until right now.

16 All right, Solicitor, is the State ready for the jury?

17 **MS. von HERRMANN:** Yes sir, Your Honor.

18 **THE COURT:** Mr. McCollum?

19 **MR. McCOLLUM:** Yes, Your Honor.

20 **THE COURT:** And Mr. Hazzard?

21 **MR. HAZZARD:** Yes sir.

22 **THE COURT:** Very good. Ask the jury to come in,  
23 please.

24 I again remind everybody, as the deputies do, I don't  
25 take any pleasure in holding anybody in contempt of court,

JURY IN  
EDWARD LEROY PROCTOR, JR. - DIRECT BY SPRATLIN

1 but if you've got any cell phones, make sure they are turned  
2 off. Thank you.

3 (THE FOLLOWING TAKES PLACE WITHIN THE PRESENCE OF THE  
4 JURY.)

5 THE COURT: All right, your next witness, please  
6 Ma'am.

7 MR. SPRATLIN: Your Honor, the State would next call  
8 Dr. Edward L. Proctor, Jr. to the stand.

9 THE COURT: Please come around and be sworn, sir.

10 EDWARD LEROY PROCTOR, JR., being first duly  
11 sworn, states as follows:

12 DIRECT-EXAMINATION BY MR. SPRATLIN:

13 Q. Dr. Proctor, how are you currently employed?

14 A. I'm self-employed.

15 Q. As what?

16 A. I am a medical doctor engaged in the practice of  
17 pathology.

18 Q. Are you a duly licensed physician and surgeon?

19 A. I carry a South Carolina medical license which  
20 entitles me to practice medicine. I don't know the exact  
21 words on it, but I do have a ---

22 Q. How long have you been licensed to practice medicine?

23 A. I have been licensed to practice medicine since 1981  
24 or '82.

25 Q. If you would, please give the jury the benefit of your

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1 education and special experience, training.

2 A. I received my undergraduate degree at Clemson  
3 University, my medical degree at the Medical University of  
4 South Carolina in Charleston. I did a pathology residency in  
5 anatomic and clinical pathology at Walter Reed Army Medical  
6 Center in Washington, D.C. This was followed by being in the  
7 Department of Pathology at Womack Army Hospital in Fort  
8 Bragg, during which time I completed my studies and took the  
9 board examination for forensic pathology and became sub-  
10 specialty certified in forensic pathology.

11 Q. What are the duties of a pathologist?

12 A. Specific duties in regards to forensic pathology is  
13 the medical legal investigation of death. In a forensic  
14 case, I am asked to perform an autopsy by the Coroner, and  
15 the Coroner will give me what information he has regarding  
16 the history of the case, often supplemented by law  
17 enforcement officers. We take this information. We perform  
18 a complete examination on the victim, which includes an  
19 external exam, an internal exam, microscopic exam, and  
20 evaluation of toxicology.

21 Q. And, Dr. Proctor, you've been practicing for almost  
22 thirty years, correct?

23 A. That's correct.

24 Q. How many autopsies have you performed in your career,  
25 a rough estimate if you don't know?

EDWARD LEROY PROCTOR, JR. - DIRECT BY SPRATLIN

1 A. A rough estimate, around five thousand.

2 Q. In regard to forensic pathology, are you a member of  
3 any special medical groups or organizations specifically  
4 dealing with forensic pathology?

5 A. I am a diplomate of the American Board of Pathology,  
6 sub-specialty board, in forensic pathology.

7 Q. Have you ever had a chance to testify in Court before?

8 A. Yes sir, I have.

9 Q. If you would, just estimate how many times you've  
10 testified in Court before over the course of your thirty  
11 years.

12 A. Geez, I would say fifteen hundred, two thousand.

13 Q. Have you previously been qualified as an expert during  
14 those times that you testified?

15 A. Yes sir, I have.

16 Q. And what were you qualified as an expert in?

17 A. Forensic pathology.

18 MR. SPRATLIN: Your Honor, at this time I would move to  
19 have Dr. Proctor qualified as an expert in the area of  
20 forensic pathology.

21 THE COURT: All right, Mr. McCollum, do you wish to  
22 voir dire the witness as to his qualifications?

23 MR. McCOLLUM: No, Your Honor.

24 THE COURT: Mr. Hazzard?

25 MR. HAZZARD: Without objection.

EDWARD LEROY PROCTOR, JR. - DIRECT BY SPRATLIN

1           **THE COURT:** All right. I'm going to qualify Dr.  
2 Proctor to give his opinion. You may proceed, sir.

3           Q. Dr. Proctor, did you have an occasion to perform an  
4 autopsy on the victim in this case, Mr. Allen Smith?

5           A. Yes sir, I did.

6           Q. How did you come to perform that autopsy?

7           A. I was contacted by the Horry County Deputy Coroner,  
8 Mr. Tony Hendrick, regarding this death and was asked to  
9 perform an autopsy.

10          Q. On what day did you perform that autopsy?

11          A. This case was performed on April 15th, 2008.

12          Q. Would you please tell the jury what, if anything, did  
13 you do during your examination of Mr. Smith.

14          A. Okay. My examination of Mr. Smith included a complete  
15 external examination during which time we noted two distinct  
16 gunshot wounds. We had a wound that penetrated the chest  
17 area basically as a grazing wound from the right side  
18 entering the anterior chest, piercing the heart and the left  
19 lower lung lobe and exiting the left upper chest.

20                 There was a second gunshot wound that came in the  
21 posterior axillary line on the left side that penetrated the  
22 lower lung lobe, the spleen, and there was a projectile  
23 within the lumen of the stomach. Other than that, we noted  
24 just the extent of damage from the wounds, a tremendous  
25 amount of hemorrhage, and we retained blood for toxicologic

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1 evaluation.

2 Q. Okay. Besides the two gunshots you describe, did Mr.  
3 Smith appear to be in fairly good health?

4 A. Yes sir.

5 Q. Dr. Proctor, let me ask you what is the difference  
6 between manner of death and cause of death?

7 A. Cause of death is the actual event that caused this  
8 man's death. The manner of death is either natural, suicide,  
9 death at one's own hands, homicide, death at the hands of  
10 another, accidental, or undetermined.

11 Q. And to a reasonable degree of medical certainty were  
12 you able to determine a cause of death in this case?

13 A. Yes sir, I was.

14 Q. What was that?

15 A. This gentlemen died as a result of multiple gunshot  
16 wounds with associated massive hemorrhage.

17 Q. And to a reasonable degree of medical certainty were  
18 you able to determine a manner of death?

19 A. Yes sir.

20 Q. And what was that?

21 A. Manner of death is homicide.

22 Q. Let me get back to the specifics about the two  
23 gunshots you testified about, Dr. Proctor. How many  
24 projectiles were you able to recover from the body?

25 A. I recovered one projectile.

EDWARD LEROY PROCTOR, JR. - DIRECT BY SPRATLIN

1 Q. Okay, and just so we're clear, why were you only able  
2 to recover one projectile?

3 A. The wound that grazed the right chest penetrated the  
4 chest in the area of the sternum right in the mid-line,  
5 pierced the apex or the anterior portion of the heart, the  
6 left lower lung lobe, and there was an exit wound in the left  
7 upper chest where that projectile passed out of the body.

8 Q. Did those wounds appear to be of the same size?

9 A. The wound to the chest was a much larger wound.

10 Q. And if you know, what size of projectile did you  
11 recover from the other wound?

12 A. The projectile that penetrated from the left side and  
13 was found in the stomach was of a smaller caliber weapon. It  
14 was pretty much flattened, but it was fairly small caliber.

15 Q. So the one in the chest was substantially larger?

16 A. That's correct.

17 Q. Dr. Proctor, would you say that the one in the chest  
18 was consistent with the slug being fired from a shotgun?

19 A. The wound to the chest, it's certainly possible that  
20 it could have been. It was a -- a large caliber or round  
21 versus a slug, which would have caused the large entry site.

22 Q. Okay. Dr. Proctor, what is stippling?

23 A. Stippling is actual burning of the skin from powder,  
24 burning powder that comes out of the end of the weapon used  
25 to fire the bullet or whatever, and the powder, burning

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1 powder, actually hits the skin and burns it. Also associated  
2 with that is what we call residue, which is the actual smoky,  
3 soot particles that come out with the burning powder.

4 Q. And what can you tell from the presence of stippling  
5 or residue?

6 A. If stippling or residue was present, that indicates  
7 that the weapon in the case of a handgun was fired from a  
8 distance less than about eighteen to twenty-four inches, and  
9 in the event, say, of a large bore rifle or shotgun, probably  
10 six or eight inches further than that.

11 Q. And were you able to determine whether there was  
12 stippling or residue present on either of these gunshot  
13 wounds?

14 A. There was not.

15 Q. Let me ask you, Dr. Proctor, regarding the wound to  
16 the chest, would that have been a fatal wound?

17 A. Yes sir.

18 Q. Dr. Proctor, during your examination of gunshot  
19 wounds, do you attempt to determine at what angle a bullet  
20 would enter the body?

21 A. Yes sir, we do.

22 Q. And how exactly do you do that?

23 A. What we do is we find the wound sites and as part of  
24 our dissection where we can see the projectile path, we  
25 usually put what we call a trajectory rod through the wounds

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1 to show the trajectory so that crime scene investigators can  
2 get photographs and document that.

3 Q. And did you perform one of these trajectory analyses  
4 on the victim in this case, Mr. Allen Smith?

5 A. Yes sir, we did.

6 Q. And what were you able to determine about the  
7 trajectory of the wound?

8 A. The trajectory of this wound was from the victim's  
9 right side, grazing what we call the costal margin, is where  
10 the ribs are just under the skin, entering the chest in the  
11 anterior mid portion of the chest passing below the bone,  
12 passing through the apex of the heart, the left lower lung  
13 lobe, and to exit in the left chest.

14 MR. SPRATLIN: Your Honor, at this time I would ask the  
15 assistance of Detective Brad Townsend to demonstrate the  
16 trajectory to the jury.

17 THE COURT: You may do so.

18 MR. SPRATLIN: Detective Townsend, would you please  
19 remove your jacket.

20 Your Honor, permission for the witness to approach.

21 THE COURT: You may step down, sir.

22 Y'all make sure you go next to the microphone on the  
23 jury box, please.

24 MR. SPRATLIN: Yes sir.

25 Detective Townsend, if you would, just please stand here

1 and face the jury.

2 Q. Dr. Proctor, would you please demonstrate on Detective  
3 Townsend where the entry wound to that bullet was.

4 A. There was a grazing wound right where his ribs are  
5 here, passing in a -- his right to left direction and sort of  
6 posterior, superior, penetrating the bone just on the  
7 anterior portion of the chest and exiting in the upper chest,  
8 so sort of a right to left posterior, superior direction.

9 Q. Was that wound in the chest the only area that showed  
10 that type of impact?

11 A. Well, we had another wound, a smaller wound, from the  
12 left side which came in the left -- yes, came in on the left  
13 side in the axillary line passing between the ribs, hitting  
14 the lower left lung, spleen, and into the stomach.

15 Q. And that was the smaller caliber bullet?

16 A. That's correct.

17 Q. What, if any, injuries were on the victim's hands?

18 A. The victim had what appeared to be an entry at the  
19 base of his fingers and thumb area which may have been an  
20 effort throwing a hand up, seeing a weapon or something, as a  
21 matter of defense.

22 Q. You can go and sit down.

23 And you said that the wound to the chest would have  
24 been a fatal wound?

25 A. Yes sir.

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1           **MR. SPRATLIN:**   Beg the Court's indulgence for one  
2 second.

3           **THE COURT:**    Yes sir.

4           **MR. SPRATLIN:**   Your Honor, that's all the questions I  
5 have for this witness.

6           **THE COURT:**    All right.

7                        Cross-examination, Mr. McCollum.

8           **CROSS-EXAMINATION BY MR. McCOLLUM:**

9           Q.        Dr. Proctor, how are you today?

10          A.        I'm good. Good to see you.

11          Q.        So the cause of death on this individual was gunshot  
12 wounds and then hemorrhaging?

13          A.        That's correct.

14          Q.        And there were -- were there a total of two gunshot  
15 wounds in the body you examined?

16          A.        That is correct.

17          Q.        And I think we described it as the first wound that  
18 grazed the right chest, I think you said penetrated the apex  
19 of the heart and exited the body?

20          A.        Yes sir.

21          Q.        And you said that that wound would be fatal?

22          A.        Yes sir. That -- that wound actually caused extensive  
23 damage to the heart itself.

24          Q.        Now, the second wound that was a smaller caliber  
25 bullet or projectile, was that wound fatal as well?

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1 A. That wound would not have been as immediately fatal as  
2 the initial wound, but it's the type wound that without  
3 rather rapid intervention, the individual would bleed to  
4 death because it did penetrate the lung and the spleen.

5 Q. So would -- so the second wound would have been fatal  
6 or could have been fatal?

7 A. Could have been fatal, yes, sir.

8 Q. And those are the only wounds that had any effect on  
9 the -- in terms of the cause of death?

10 A. Yes sir.

11 Q. Do you know -- well, I don't know if you do or you  
12 don't, but do you know the position of the decedent's body at  
13 the time that the gunshot wounds entered his body?

14 A. No sir, I don't.

15 Q. So you don't know if he was standing or seated?

16 A. No sir.

17 Q. Or you can't tell if he was lying down?

18 A. The direction of the wounds are from, you know, are  
19 from right to left and superior, and other than to tell you  
20 the angle that could be achieved to that -- projected to  
21 occur, whether standing or lying, I cannot sit here with --  
22 and tell you unequivocally whether he was standing or lying.  
23 I don't know.

24 Q. Did both of the -- did both of the gunshot wounds --  
25 they both entered his body on the same side of his body?

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1 A. No sir. One entered on the left side and one grazed  
2 the right side and then went superior and out on the left  
3 superior chest area.

4 Q. So from each side?

5 A. That is correct.

6 Q. And just refresh it for me, please sir, which one was  
7 the large projectile? Was that into the right?

8 A. That's correct.

9 Q. And that -- that went from the top down?

10 A. No sir. That went from the area of the ribs on the  
11 right, costal margin on the right, right to left superior and  
12 posterior to pass through the sternal plate, which is the  
13 breastbone here, the heart which is right behind it, the left  
14 lower lung lobe, which is just left of the heart, and then  
15 out the superior part of the chest.

16 Q. And then the other gunshot wound came from the other  
17 side?

18 A. That is correct.

19 Q. And also from down low or ---

20 A. Actually it was between the ribs in the axillary line,  
21 which is the line that runs anterior, axillary line in front  
22 of the chest, posterior in the back, so sort of in the mid-  
23 axillary area between the ribs, trajectory sort of right to  
24 left, slightly inferior, penetrating the left lower lung  
25 lobe, the spleen, which sits under the diaphragm, and the

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1 stomach, which sits right adjacent to the spleen.

2 Q. And that shot -- do you know which shot entered the  
3 body first?

4 A. No sir, I do not.

5 MR. McCOLLUM: Thank you, sir.

6 THE COURT: Cross-examination, Mr. Hazzard.

7 MR. HAZZARD: No questions, Your Honor.

8 THE COURT: Any redirect?

9 MR. SPRATLIN: Real briefly, Your Honor.

10 REDIRECT-EXAMINATION BY MR. SPRATLIN:

11 Q. Dr. Proctor, the smaller bullet wound, is it possible  
12 that that could have occurred postmortem?

13 A. There was a significant degree of hemorrhage around  
14 the sites of both wounds. With seeing hemorrhage in that  
15 area, it could be perimortem, i.e. maybe second to the first  
16 one with the victim dying, or possibly in rapid succession,  
17 that one first, and the major one second, but there was blood  
18 around that site, so in technical terms, I would think the  
19 victim was still alive when that wound occurred.

20 MR. SPRATLIN: That's all the questions I have. Thank  
21 you, Doctor.

22 THE COURT: Anything on those questions, Mr. McCollum?

23 MR. McCOLLUM: No, Your Honor.

24 THE COURT: Mr. Hazzard?

25 MR. HAZZARD: No sir.

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1           **THE COURT:** Is there any reason the -- I'm sorry,  
2 Solicitor. Do you wish the witness to be excused?

3           **MR. SPRATLIN:** I would ask that the witness be excused  
4 from the subpoena, Your Honor.

5           **THE COURT:** All right, and any objection to that, Mr.  
6 McCollum?

7           **MR. MCCOLLUM:** Without objection.

8           **THE COURT:** And Mr. Hazzard?

9           **MR. HAZZARD:** No objection, Your Honor.

10          **THE COURT:** All right, Dr. Proctor, you are released  
11 from your subpoena and may go back to your regular  
12 activities, sir.

13          **DR. PROCTOR:** Thank you, Your Honor.

14          **THE COURT:** Yes sir.

15          All right, Solicitor, your next witness, please.

16          **MS. von HERRMANN:** Thank you. The State calls Anthony  
17 Graham.

18          **THE COURT:** Come on up here to be sworn, sir.

19          **MS. von HERRMANN:** Your Honor, I believe we have a  
20 matter that we could probably take up here at the bench ---

21          **THE COURT:** Do you need to -- do we need to excuse the  
22 jury?

23          **MS. von HERRMANN:** I don't think we need to excuse the  
24 jury.

25          **THE COURT:** All right. Y'all come on over here to the

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1 side then.

2 (BENCH CONFERENCE TAKES PLACE OFF THE RECORD.)

3 THE COURT: Ladies and gentlemen of the jury, if you  
4 would go to your jury room for a few moments, please. Thank  
5 you very much.

6 (THE FOLLOWING TAKES PLACE OUTSIDE THE PRESENCE OF THE  
7 JURY.)

8 THE COURT: Why don't you administer the oath to the  
9 witness, please.

10 ANTHONY BERNARD GRAHAM, being first duly  
11 sworn, states as follows:

12 THE COURT: When it comes time for you to testify, Mr.  
13 Graham, you are going to have to be right up close to that  
14 microphone because the jury is going to be raising their hand  
15 saying they can't hear you, so you're going to have to speak  
16 up, okay?

17 MR. GRAHAM: Yes sir.

18 THE COURT: All right, Solicitor, you pointed out to  
19 the Court, I understand under Rule 609 that the defendant  
20 (sic) had some prior record of some kind, is that correct?

21 MS. von HERRMANN: And, Your Honor, he's -- he's a  
22 victim, not a defendant.

23 THE COURT: I'm sorry. I appreciate that, but  
24 anyway ---

25 MS. von HERRMANN: Yes, but he does have a -- he has a

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1 1996 conviction for possession with intent to distribute  
2 marijuana. It's a safe position that that is over, of  
3 course, the ten years and that it is more prejudicial than  
4 probative and should not be allowed to be used in this case.

5 **THE COURT:** All right, and Mr. McCollum, what's your  
6 position?

7 **MR. McCOLLUM:** Your Honor, I would like to examine him  
8 about it. It's my understanding -- let me -- maybe I'm wrong  
9 here. I don't know if this necessarily changes the Court's  
10 position, but I think the charge, the court charge, was for  
11 distribution of either crack or distribution of cocaine, and  
12 the reason I say that is that's what he was charged with, and  
13 in addition, the sentence was fifteen years suspended to five  
14 years probation and five hundred hours of public service.  
15 His conviction date was January of 1996.

16 **MS. von HERRMANN:** It may be a cocaine charge. It is  
17 not listed. It's listed as a Schedule 1, 2, 3, ---

18 **THE COURT:** All right. What date was he convicted on?

19 **MS. von HERRMANN:** The court date was 1/23/96.

20 **THE COURT:** 1/23/96, so if you add five years to that,  
21 then that would be 1/23/2001, so ten years would have  
22 expired, today being June 7th, 2011.

23 Now, as I understand the rule, it says evidence of a  
24 conviction under the rule is not admissible if a period of  
25 more than ten years has elapsed since the date of the

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1 conviction or of the date of the release of the witness from  
2 the confinement imposed for that conviction, whichever is the  
3 later date, unless the Court determines in the interest of  
4 justice that the probative value of the conviction supported  
5 by specific fact and circumstances substantially outweighs  
6 its prejudicial effect, and then it goes on. There's another  
7 part to that, but we'll get to that if necessary.

8 What specific facts and circumstances would you point to  
9 to have the Court rule that the -- allowing you to ask it  
10 substantially outweighs its prejudicial effect?

11 **MR. McCOLLUM:** Your Honor, the -- you know, one of the  
12 things that the Solicitor said in opening statements and as  
13 part of this case is that part of the motive, she says, for  
14 the robbery was to, I guess, steal drugs or money from  
15 someone who was dealing or selling drugs or possibly storing  
16 drugs at the house. There's also the issue of that firearms  
17 were found in the house.

18 Regardless of whether the conviction -- if the time  
19 period has run on Rule 609, he still, by being in the house,  
20 could and still could be charged with violating State and  
21 Federal law in regard to possessing firearms in the house.

22 If a person is a prohibited person, which he is, they  
23 are not allowed to possess, and that could be constructive  
24 possession, firearms, and I would submit in addition to the  
25 fact that it has to do with a motive, and this is something

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1 that I think is also part of the res gestae, the crime,  
2 something that's often used to admit evidence, you've got the  
3 res gestae, the crime, it's what was going on, it's a crime  
4 of -- which is considered a crime of dishonesty and can be  
5 considered a crime of deceit or moral turpitude.

6 **THE COURT:** Well, what facts do you have that this  
7 individual was engaged in any criminal activity of any kind,  
8 the possession of a weapon, the distribution of drugs? What  
9 facts do you have to support your stated position? All I'm  
10 hearing is pure conjecture and speculation.

11 **MR. McCOLLUM:** Those facts haven't come out yet, Your  
12 Honor. I think they will as the trial progresses.

13 **THE COURT:** Well, they are not before the Court in any  
14 fashion. All I'm hearing from you is complete and pure  
15 speculation and conjecture. You're not presenting to me any  
16 kind of facts or evidence of any kind.

17 **MR. McCOLLUM:** Your Honor, with all due respect, in  
18 evidence is -- in testimony that there was marijuana found in  
19 the house in the open in the master bedroom. In evidence ---

20 **THE COURT:** Not the bedroom of this individual?

21 **MR. McCOLLUM:** No sir. Your Honor, the people are  
22 commenting behind me.

23 **THE COURT:** All right. I'll caution anyone in the  
24 courtroom, and this goes from now to the end of the trial, I  
25 will not tolerate any kind of outburst, any kind of spoken

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1 word. When you are in this courtroom, you will be completely  
2 silent unless the Court directs you to be otherwise. You are  
3 not part of the proceedings. You are certainly allowed to be  
4 here. You may not have any voice in the proceedings. If you  
5 cannot follow these instructions, leave the courtroom now.

6 Proceed, Mr. McCollum.

7 **MR. McCOLLUM:** With all due respect, Your Honor, I  
8 think there is -- and I don't mean to belabor the point.  
9 Obviously Your Honor has heard the same evidence we have.

10 I would just point out there were drugs in the house.  
11 There's going to be testimony that that was the motive for  
12 the robbery. This witness is in the house. He's prohibited  
13 from having a firearm. There are firearms in the house. I  
14 would just submit there is evidence of that and ask Your  
15 Honor to rule accordingly.

16 **THE COURT:** And again, what I'm asking you to do is tie  
17 that evidence to this particular person, that he had  
18 possession in any way of the drugs or the weapons. Do you  
19 have anything that tells me that?

20 **MR. McCOLLUM:** Your Honor, with all due respect, I  
21 don't want to concede anything, and so I'm saying that there  
22 is ---

23 **THE COURT:** Well, I'm asking you to present it to me if  
24 you have it.

25 **MR. McCOLLUM:** I'm saying with all due respect, Your