

ORIGINAL

VOLUME 3 OF 7 VOLUMES

STATE OF SOUTH CAROLINA
In the Supreme Court

APPEAL FROM YORK COUNTY
Court of General Sessions

John C. Hayes, III, Circuit Court Judge

Case No.: 93-GS-46-4296
93-GS-46-4299
93-GS-46-4301
93-GS-46-4303

State of South Carolina, ... Respondent,

v.

Mar-Reece Aldean Hughes, ... Appellant.

RECORD ON APPEAL

Stephen D. Schusterman
Post Office Box 4211
Rock Hill, South Carolina 29731
(803) 325-7788

Christina Chadwick Brice
Post Office Drawer 300
York, South Carolina 29745
(803) 684-4462

ATTORNEYS FOR APPELLANT

Charles M. Condon
Attorney General

John W. McIntosh
Deputy Attorney General

Donald J. Zelenka
Assistant Deputy Attorney General

Robert F. Daley, Jr.
Post Office Box 11549
Columbia, South Carolina 29211
(803) 734-3727

Thomas E. Pope
Solicitor, Sixteenth Judicial Circuit
1675-1A York Highway
York, South Carolina 29745
(803) 628-3020

ATTORNEYS FOR RESPONDENT

INDEX

Transcript of Record of General Sessions Court, September 11 - September 22, 1995	1
Motion to Suppress, Filed August 14, 1995	2989
Indictments of December 13, 1993	2990
Notice of Intent to Seek the Death Penalty, dated December 13, 1993	2996
Notice of Evidence in Aggravation, dated January 20, 1993	2997
Jury Verdict, dated September 18, 1995	2998
Jury Sentence, ...	3000
Sentence of Appellant, Dated September 20, 1995	3001
SLED Report of February 3, 1994	3003
Sentence of Eric Dwayne Forney, Case Number 93-GS-46-4297, dated March 10, 1994	3038
Written Communication from Jury to Trial Judge indicating deadlock as to the sentence of Appellant	3039
Written communication from Trial Judge to Jury	3040
Brady Motion, filed August 29, 1995	3041
Motion for Continuance, filed August 14, 1995	3043
Motion for List of Prosecution's Witnesses, filed August 29, 1995	3045
Motion for Production, filed August 29, 1995	3048
Motion to Require SLED to Provide All Reports, Analysis of Evidence, etc., dated August 28, 1995	3050

Documentation regarding Attorneys relieved from case	3051
Defendant's Brief in Support of Motion to Suppress Indictments Nos. 93-3845 and 93-3846	3070
Brief of the State in Support of the Admission of Testimony/Evidence of the Defendant's Character During the Penalty Phase of Trial, dated September 8, 1995	3084
Motion to Suppress Statements Absent Presence of Counsel, dated August 28, 1995	3096
Motion to Exclude Evidence, Filed August 29, 1995	3097
Letter dated August 28, 1995, from Solicitor Pope to Attorney Schusterman, Re: notice of Evidence in aggravation	3098
Motion to Continue, or in the Alternative to Prohibit the Introduction of Evidence, dated August 14, 1995	3100
Report of Finding Mental Capacity dated December 9, 1992 (Pre-trial hearing Exhibit S-26 dated 9/8/95; State's Exhibit #76 (ID) dated 9/17/95)	3103
Motion to Restrict the State from Trying the Defendant as Principal Actor dated August 4, 1994	3108
Motion to Require the State to Withdraw the Intent to Seek the Death Penalty, dated August 3, 1994	3109
Motion to Suppress Statement for a Suppression Hearing, dated August 3, 1994	3111
South Carolina Department of Corrections, Gilliam Psychiatric Hospital, Discharge Summary (Exhibit S-28 dated (9/8/95)	3112
South Carolina Department of Corrections, Gilliam Psychiatric Hospital, Intake Assessment (Exhibit S-27 date 9/8/95)	3114
Report of Finding Mental Capacity dated April 4, 1995 (Pre-trial Hearing Exhibit D-2 dated 9/8/95; Trial Exhibit D-9 dated 9/21/95	3116

Report of Finding Mental Capacity dated August 3, 1994 (Pre-trial
Hearing Exhibit S-29 dated 9/8/95; State's Exhibit No. 78 (ID)
dated 9/17/95) 3122

Report of Finding Mental Capacity (Pre-trial Hearing State's
Exhibit S-25 dated 9/8/95; State's Exhibit No. 77 (ID) dated
9/17/95) 3125

INDEX

PRETRIAL MOTIONS and INCAMERA HEARINGS

September 7-8, 1995 Pgs. 2469-2985 VOL. X - XI
September 14, 1995 Pgs. 831, 863 VOL. IV

JURY SELECTION/AIKEN COUNTY

September 11-13, 1995 Pgs. 3-830 VOL. I - III

TRIAL - PHASE I

Pgs. 831-1853 VOL. IV - VII

TRIAL - PHASE II

Pgs. 1854-2468 VOL. VII - IX

PRETRIAL MOTIONS and INCAMERA HEARINGS:

SEPTEMBER 7-8, 1995 - YORK COUNTY

<u>WITNESS</u>	<u>DIRECT</u>	<u>CROSS</u>	<u>REDIRECT</u>	<u>RECROSS</u>

Roberta Tepper

Mr. Pope 2472

Mr. Schusterman 2474

Harold C. Duke

Mr. Pope 2580

Mr. Schusterman 2591 2603 2604

Leslie R. Herring

Mr. Pope 2605

Mr. Schusterman 2609

Timothy Sanders

Mr. Pope 2613

Ms. Brice 2631 2671

Broadus Lee Strain

Mr. Brackett 2673

Mr. Schusterman 2679 2685

Randy Clinton

Mr. Brackett 2687

Mr. Schusterman 2697

James Scott Rockholt

Mr. Brackett 2705

Ms. Brice 2708

PRETRIAL MOTIONS and INCAMERA HEARINGS
SEPTEMBER 7-8, 1995 - YORK COUNTY (CONTINUED)

	<u>WITNESS</u>	<u>DIRECT</u>	<u>CROSS</u>	<u>REDIRECT</u>	<u>RECROSS</u>
1	Mary Henry Kitts				
2	Mr. Brackett 2711				
3	Mr. Schusterman		2714		
4	Larry P. Devinney				
5	Mr. Brackett 2715				
6	Ms. Brice		2725		
7	Michelle Ayers				
8	Mr. Pope 2752				
9	Mr. Schusterman		2758		
10	Crystal Ayers				
11	Mr. Pope 2760				
12	Mr. Schusterman		2769		
13	Dafferlin Barnard Dupree				
14	Ms. Brice 2777			2785	
15	Mr. Pope		2781		2785
16	Charles Cabaniss				
17	Mr. Brackett 2789				
18	Mr. Schusterman		2807		
19	Bruce Bryant				
20	Mr. Brackett 2822				
21	Mr. Schusterman		2829		
22	Dafferlin Barnard Dupree				
23	Ms. Brice 2832			2854	
24	Mr. Pope		2838		2857
25	Donald William Morgan				
26	Ms. Brice 2858			2883	
27	Mr. Pope		2870		2884
28	Renee S. Kohanski				
29	Ms. Brice 2885			2921	
30	Mr. Pope		2903		2924
31	Dafferlin Barnard Dupree				
32	Ms. Brice 2926			2943	
33	Mr. Pope		2935		2945
34	Jerry Bailey				
35	Mr. Brackett 2968			2977	
36	Ms. Brice		2974		

 PRETRIAL MOTION AND INCAMERA HEARINGS
 SEPTEMBER 14, 1995

WITNESS	DIRECT	CROSS	REDIRECT	RECROSS
Beth Ann Jayne				
Mr. Pope	831		861	
Ms. Brice		844		
Sean McMillian				
Mr. Pope	863			
Ms. Brice		874		

 TRIAL - PHASE I

WITNESS	DIRECT	CROSS	REDIRECT	RECROSS
Beth Ann Jayne				
Mr. Pope	917		947	
Ms. Brice		937		948
Sean McMillan				
Mr. Pope	954		974	
Ms. Brice		969		
Crystal Ayers				
Mr. Pope	975		998	
Mr. Schusterman		988		1000
Michelle Ayers				
Mr. Pope	1001		1007	
Mr. Schusterman		1005		
Steven Gibson				
Mr. Pope	1008		1019	
Mr. Schusterman		1017		
Lisa Simmons				
Mr. Pope	1020			
Sherrie Grimmit				
Mr. Brackett	1035			
Mr. Schusterman		1044		
Mary Grant				
Mr. Pope	1047		1072	
Mr. Schusterman		1062		1073

1 TRIAL - PHASE I (CONTINUED)

2	<u>WITNESS</u>	<u>DIRECT</u>	<u>CROSS</u>	<u>REDIRECT</u>	<u>RECROSS</u>
3	Cathy Ann Pittman				
4	Mr. Pope 1074				
4	Mr. Schusterman		1084		
5	Marvin Bohon				
6	Mr. Brackett 1087			1109	
6	Mr. Schusterman		1101		
7	Jerry W. Waldrop				
8	Mr. Brackett 1110				
8	Mr. Schusterman		1116		
9	Timothy Sanders				
10	Mr. Pope 1118			1156	
10	Ms. Brice		1135		
11	Dan Ketchel				
12	Mr. Pope 1158			1164	
12	Mr. Schusterman		1161		1164
13	Gregory Scott Maggart				
14	Mr. Pope 1165				
14	Mr. Schusterman			1168	
15	James David Holcomb				
16	Mr. Pope 1171				
16	Craig Alexander				
17	Mr. Pope 1174			1195	
18	Mr. Schusterman		1184		1196
18	Randy Clinton				
19	Mr. Brackett 1196			1223	
20	Mr. Schusterman		1215		
20	Larry R. Devinney				
21	Mr. Bracektt 1224				
22	Mr. Schusterman			1236	
22	Gary Norman Streett				
23	Mr. Brackett 1246				
24	Mr. Schusterman		1249		
24	James Scott Rockholt				
25	Mr. Brackett 1250				
25	Mr. Schusterman		1252		

TRIAL - PHASE I (CONTINUED)

	<u>WITNESS</u>	<u>DIRECT</u>	<u>CROSS</u>	<u>REDIRECT</u>	<u>RECROSS</u>
2	Charles T. Cabaniss				
3	Mr. Brackett 1253			1294	
4	Mr. Schusterman		1275		1298
5	Leroy Perry				
6	Mr. Brackett 1304				
7	Ms. Brice		1312		
8	Kent Pruett				
9	Mr. Pope 1318			1328	
10	Mr. Schusterman		1324		1329
11	Michael Williams				
12	Mr. Pope 1330			1359	
13	Mr. Schusterman		1348		
14	Lawrence Eugene Gainey, Jr.				
15	Mr. Pope 1362				
16	Mr. Schusterman		1387		
17	David Black				
18	Mr. Pope 1398			1428	
19	Mr. Schusterman		1421		
20	Joseph D. Powell				
21	Mr. Pope 1431			1452	
22	Mr. Schusterman		1443		
23	David J. Collins				
24	Mr. Pope 1453			1473	
25	Mr. Schusterman		1469		1474
26	Chris Watts				
27	Mr. Brackett 1474;1485				
28	Mr. Schusterman		1480;1486		
29	Harry Jennings				
30	Mr. Brackett 1487;1492			1517	
31	Mr. Schusterman		1496;1512		1517
32	Broadus Strain				
33	Mr. Brackett 1518			1524	
34	Mr. Schusterman		1521		
35	Everett Earl Jenkins				
36	Mr. Pope 1526				
37	Mr. Schusterman		1535		

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

TRIAL - PHASE I (CONTINUED)

<u>WITNESS</u>	<u>DIRECT</u>	<u>CROSS</u>	<u>REDIRECT</u>	<u>RECROSS</u>
Felix Wimborn				
Ms. Brice	1557		1567	
Mr. Pope		1560		1569
Donald William Morgan				
Ms. Brice	1571		1594	
Mr. Pope		1579		1595
Mar-Reece Aldean Hughes				
Mr. Schusterman	1642			
Mr. Pope		1663		
Bob Ormseth (In camera)				
Mr. Pope	1713			
James Elbert Mann				
Mr. Brackett	1722			
Mr. Schusterman		1724		
Bob Ormseth				
Mr. Pope	1725			

TRIAL - PHASE I

CLOSING ARGUMENTS:

Mr. Brackett	Page 1740
Mr. Pope	Page 1747
Mr. Schusterman	Page 1768

CHARGE TO THE JURY	Page 1783

VERDICTS OF JURY	Page 1838

1	TRIAL - PHASE II				
2	OPENING STATEMENTS:				
3	Mr. Brackett			Page 1864	
3	Ms. Brice			Page 1867	
4	<u>WITNESS</u>	<u>DIRECT</u>	<u>CROSS</u>	<u>REDIRECT</u>	<u>RECROSS</u>
5	Donald Diamont				
6	Mr. Pope	1870		1875	
6	Ms. Brice		1873		
7	Randy Weavil				
8	Mr. Pope	1875			
8	Ms. Brice		1881		
9	Robert Reese				
10	Mr. Brackett	1887			
10	Ms. Brice		1901		
11	Broadus Strain				
12	Mr. Brackett	1903		1911	
12	Ms. Brice		1908		1912
13	Richard Douglas Waldrop				
14	Mr. Brackett	1914			
14	Mr. Schusterman		1940		
15	Christopher Gorth				
16	Mr. Brackett	1963			
16	Ms. Brice		1970		
17	Stella Lingerfeldt				
18	Mr. Brackett	1975			
19	David Black				
19	Mr. Brackett	1980			
20	Everett Earl Jenkins				
21	Mr. Pope	1998			
22	Craig Alexander				
22	Mr. Pope	2000			
23	Kelly Carroll				
24	Mr. Pope	2004			
25	William Douglas Taylor				
25	Mr. Pope	2007			

	TRIAL - PHASE II (CONTINUED)				
	<u>WITNESS</u>	<u>DIRECT</u>	<u>CROSS</u>	<u>REDIRECT</u>	<u>RECROSS</u>
1	Percy Jones				
2	Mr. Brackett	2015		2029	
3	Mr. Schusterman		2025		
4	Sheila Mazyck				
5	Mr. Brackett	2030			
6	Mr. Schusterman		2032		
7	Otis Speight				
8	Mr. Pope	2035			
9	Myra McCants				
10	Mr. Pope	2043			
11	Caroline Burry				
12	Ms. Brice	2057; 2062		2089	
13	Mr. Pope		2061; 2082		
14	Alice Norwood				
15	Ms. Brice	2091		2113	
16	Mr. Pope		2103		
17	Willie Cornelius Hughes				
18	Ms. Brice	2117			
19	Mr. Pope		2137		
20	Melinda Hughes Gentry				
21	Ms. Brice	2142			
22	Mr. Pope		2151		
23	Peter Skidmore (In camera)				
24	Ms. Brice	2158			
25	Mr. Pope		2161		
26	Renee Kohanski (In camera)				
27	Ms. Brice	2164			
28	Mr. Pope		2167		
29	Mary Hughes Wilson				
30	Ms. Brice	2174		2186	
31	Mr. Brackett		2183		
32	Renee S. Kohanski				
33	Ms. Brice	2188; 2191		2248	
34	Mr. Pope		2190; 2217		2248
35	Donald William Morgan				
36	Ms. Brice	2263		2291	
37	Mr. Pope		2278		2294

1 TRIAL - PHASE II (CONTINUED)

2 WITNESS DIRECT CROSS REDIRECT RECROSS

3 Dafferlin Barnard-Dupree

Ms. Brice 2296

2331

4 Mr. Pope

2314

2334

5 *****

6 TRIAL - PHASE II

7 CLOSING ARGUMENTS

8 Mr. Pope

Page 2403

Ms. Brice

Page 2418

9 CHARGE TO THE JURY

Page 2428

10 ADDITIONAL CHARGE TO THE JURY

Page 2455

11 VERDICT

Page 2458

12 SENTENCE

Page 2463

13 *****

EXHIBITS

MOTIONS and INCAMERA HEARINGS

(September 7-8, 1995)

(September 14, 1995)

STATE'S EXHIBITS:

<u>NO.</u>		<u>ID</u>	<u>EVD</u>
1	Certified Copy/Indictments		2475
2	Order		2476
3	Affidavit		2476
4	Copy/Order and Transcript		2487
5	Affidavit of Service/Discovery		
6	Photograph		2581
7	Photograph		2581
8	Gray scale printout		2581
9	Gray scale printout		2581
10	Gray scale printout		2588
11	Gray scale printout		2588
12	Photo lineup (small)		2607
13	Line-up/gray scale		2607
14	Line-up/gray scale		2609
15	Diagram/Holiday Inn		
16	Diagram/Galleria		
17	Diagram/Overview		
18	Photograph		2627
19	Photograph		2627
20	Photograph		2627
21	Photograph		2627
22	SWAT/Reciprocal Agreement		2790
23	Statement/Hughes		2822
24	Rights Card		2822
25	Report		2844
26	Report 12/9/92 - Doctor Morgan		2844
27	Report		2847
28	Report		2847
29	Report		2847
30	Report		2848
31	Reports (5)		2871
32	Letter from Mr. Pope to Schusterman		2981
33	Photograph		833
34	Photograph		833
35	Photograph		833

DEFENDANT'S EXHIBITS:

1	Letter 12/23/92	2822
2	Report of Finding/Metal Capacity	2867
3	Physicians Notes	2945
4	Report	2945

TRIAL EXHIBITS

STATE'S EXHIBITS:

NO.	DESCRIPTION	ID	EVD
1	Photograph		920
2	Photograph		920
3	Photograph		920
4	Photo line-up (color)		931
5	Photo line-up		931
6	Sketch		966
7	Photo line-up		966
8	Photo line-up		986
9	Photo line-up		986
10	Photo line-up		986
11	Transcript of 911	1026	
12	Sketch		977
13	Printout/photo		1003
14	Tape/911		1012
15	Photograph		1042
16	Photograph		1060
17	Photograph		1060
18	Photograph		1060
19	Sketch		1126
20	Photograph		1096
21	Photograph		1096
22	Photograph		1096
23	Photograph		1096
24	Photograph		1096
25	Photograph		1096
26	Photograph		1096
27	Photograph		1096
28	Clothing/Bag		1091
29	Vest		1091
30	Pistol and Bullets/McCants		1092
31	Belt/Sam Brown		1092
32	Radio/Walkie-Talkie		1210
33	Radio Pouch/Clipholder		1334
34	Photo line-up		1133
35	Photo		1133
36	Line-up gray scale		1133
37	Photo		1133
38	Photo		1133
39	Photo		1133
40	Radio Inventory		1173
41	Photo		1179
42	Clothes/Forney		1179
43	Weapon and bullets		1180
44	Photo		1182
45	Photo		1182
46	Photo		1182

TRIAL EXHIBITS (Continued)

	NO.	DESCRIPTION	ID	EVD
1				
2	47	Coat/Hughes		1208
	48	Photo		1318
3	49	Photo		1318
	50	Photo		1213
4	51	Photo		1213
	52	Hat/woods		1332
5	53	Articles/clothing/personal-Hughes		1233
	54	Photo		1236
6	55	Shoes/Socks		1248
	56	Rights Card		1268
7	57	Statement/Hughes/Redacted		1268
	58	Measurements		1340
8	59	Measurements		1340
	60	Measurements		1340
9	61	Measurements		1340
	62	Measurements		1340
10	63	Photo/Clip		1347
	64	Photo/Clip		1347
11	65	Plastic bag/Cartridge Casing		1371
	66	Gear shift knob		1382
12	67	Gunshot Residue Kit		1385
	68	Bullets (2)		1386
13	69	Cigarette butts		1404
	70	Photo		1410
14	71	Print Chart		1421
	72	Gunshot Residue Kit/Forney		1420
15	73	Projectiles		1461
	74	Sketch		1543
16	75	Head		1543
	76	Evaluation 11/92		
17	77	Evaluation 12/14/94		
	78	Evaluation 8/1/94		
18	79	Video Tape Player		1726
	80	North Carolina Sentence		1870
19	81	Judgment and Commitment		1870
	82	North Carolina Infractions/Board		1889
20	83	Board/Behavior/York County	1907	
	84	Photograph	1985	
21	85	Knife		1990
	86	Final Summary/Maynard	1996	
22	87	Envelope w/badge, insignia, FOP pin; name tag, badge		1014
23	88	Photograph		2042
	89	Photograph		2042
24	90	Photograph		2042
	91	Photograph		2042
25	92	Photograph		2042
	93	Photograph		2042
	94	Photograph		2042
	95	Photograph		2042

TRIAL EXHIBITS (Continued)

EXHIBITS

DEFENDANTS EXHIBITS

1	1	Photograph	1654
2	2	Photograph	
3	3	Genogram	2259
4	4	Clipping	2102
5	5	Photograph	2102
6	6	Photograph	2102
7	7	Photograph	2102
8	8	Photograph	2102
9	9	Report/Kohanski 4/4/95	2028

COURT'S EXHIBITS

1	1	Note from Jury
2	2	Stipulation
3	3	Charge Request
4	4	Charge Request
5	5	Charge Request
6	6	Charge Request
7	7	Charge Request
8	8	Charge Request
9	9	Charge Request
10	10	Charge Request
11	11	Note from Jury
12	12	Note from Jury
13	13	SLED Report
14	14	Photographs (8)
15	15	Indictment
16	16	Indictment
17	17	Indictment
18	18	Indictment
19	19	Daily Population Count/York County
20	20	Chart/Doctor Dupree
21	21	Mitigating Circumstances
22	22	Motion to Restrict Solicitor's Argument
23	23	Defense Request No. 8
24	24	Defense Request No. 3
25	25	Defense Request No. 4
26	26	State's Request No. 2
27	27	State's Request No. 1
28	28	State's Request No. 4
29	29	Defense Request No. 6
30	30	Defense Request No. 1
31	31	Note to Jury (Dinner)
32	32	Note from Jury
33	33	Note from Jury
34	34	Note to Jury

1 Q So the other individual you had lost focus or quit
2 focusing?

3 A Right, I stopped focusing on him.

4 Q Okay, what happened as Mr. Forney approached?

5 A Well, he came around the front of the car and when he
6 came around and started up the driver's side, two feet
7 from me, he had a zip-up type hooded sweat shirt and he
8 had it open and he kind of had this arm like this sort of
9 tucked around his weapon and that's when I took special
10 notice of that and he brought up the gun and put it in
11 sort of my abdomen and chest area.

12 Q How close was he when the gun came up?

13 A Probably, he never broke stride, so it was probably
14 starting about right there and he kind of just came up
15 like that all in sort of a smooth motion.

16 Q You said your eyes were focused on his face. Once you
17 saw the gun, where were your eyes focused?

18 A My eyes focused on the gun at that point.

19 Q To the best you could could you describe the gun to
20 the jury?

21 A I couldn't identify the specific type except that it
22 was not a revolver, it was black and it was boxy,
23 definitely a clip action type. My family has revolvers, so
24 I know the style. This wasn't that, you know, it was boxy,
25 squarish and a clip action type.

1 Q Did you have a sufficient opportunity to look at it
2 and be able to tell that?

3 A One glance was all it took to discern that.

4 Q And what occurred once the gun was pulled up as far as
5 what's going on on the other side of the car, do you have
6 any knowledge of what was occurring there at that time?

7 A No, I just noted the other gentleman was over there on
8 the other side of the car.

9 Q What took place as far as you and Mr. Forney at that
10 time?

11 A Well, in one motion he brought up the gun and that's
12 when he said, "I want your money, get on the ground." And
13 immediately I did a 180 and went down facing the rear of
14 the car on the ground and he came down on top of me with
15 his knee, my right arm was behind my back and he had me
16 restrained that way and used his left arm to pat me down
17 to find whatever I had in my pockets.

18 Q Did he also take a number of items from you?

19 A A watch, a wallet, several pairs of keys. I had Beth
20 Ann's keys with me.

21 Q Was there a time and, of course, now you are face down
22 pretty much, is that correct?

23 A Yes.

24 Q Was there a time when Beth Ann and the other
25 individual came to your side of the car?

1 A Right.

2 Q Tell the jury about that if you could.

3 A I'm not sure exactly at what point it was. I was on
4 the ground and I was face down, but I do recall she was
5 brought to my side of the car and once Mr. Forney had my
6 keys they were passed to her because I heard her fumbling
7 with the keys or some confusion over which key would open
8 the door and I think I was yelling one key and it's a two
9 key car, so one opens the door and one does the ignition
10 and I telling her wrong, but at any rate that initially
11 got sorted out and the door was open and that's when they
12 got in.

13 Q Where were you when you say they got in, were you
14 still on the ground?

15 A I was still on the ground, right.

16 Q What, if anything, was said to you during the course
17 of this evening?

18 A I don't recall except for when Mr. Forney got up off
19 of me and he no longer had me restrained he said, you
20 know, "If you move, I'll kill you" and then that's when
21 they proceeded to -- he got in the car at least; I don't
22 know what was happening as far as where Mr. Hughes was or
23 anything.

24 Q The time that he was saying this was Mr. Hughes and
25 Ms. Jayne on the other side of the car?

1 A No, they were on my side of the car. She had opened
2 the door.

3 Q Now once they got in the car, you were still down so
4 you didn't get to see up in the car, what took place with
5 the gun or anything.

6 A Right.

7 Q When they left the parking lot, were you able to
8 observe how many individuals were in the car?

9 A When they pulled out of the parking lot, I stood up
10 and as I saw them driving away I just saw two silhouettes.
11 For that reason I don't know who was driving, I assume it
12 was Mr. Forney, but I really don't know who. There were
13 two people in the car.

14 Q Were you able to see when Mr. Hughes got in the car?

15 A No, I was still down.

16 Q After that when you went into the restaurant, did you
17 all make a call to law enforcement?

18 A We did immediately after.

19 Q At some point later were you able to go back to the
20 campus and I believe the campus police contacted you?

21 A Right; I called my room mate and they came and picked
22 us up and took us back and we were in Beth Ann's room
23 trying to sort through what had happened and talking it
24 through and we got a call from the campus police that her
25 car had been used in a homicide and we had to go down to

1 Charlotte. That's all we knew at that point.

2 Q Okay, prior to going down to Charlotte, had anybody
3 told you anything about who these individuals were or if
4 you could pick them out of a photo, you know, tell you who
5 to pick out of a photo-lineup?

6 A No.

7 Q And when you went down to Charlotte, I think the
8 police from the campus took you down to Charlotte?

9 A That's right.

10 Q When you were down there, did you ultimately come on
11 down to Rock Hill?

12 A When we got down to Charlotte, another detective from
13 the Charlotte police took us down there to Rock Hill.

14 Q Did anybody in Charlotte tell you that we have caught
15 the guys who took your car, you need to come identify them
16 or anything like that?

17 A No, no, it was very secretive; we didn't know what was
18 going on. We didn't find out who had been killed even
19 until we were driving down. We didn't know much about what
20 had happened.

21 Q Once you got down to Rock Hill were you given the
22 opportunity to look at a photo-lineup?

23 A Yes, we started out in a conference room sort of just
24 gave a statement or something to that effect and then we
25 were split up and taken -- I went out first and went to a

1 room where they had a computer screen I think on and some
2 sheets, photographic sheets.

3 Q I'll show you State's Exhibit 7 and 8 for
4 identification, both for identification. I ask you to take
5 your time and look at those and see if you can identify
6 that.

7 A Yes, they are the people I was shown the photographic
8 type sheets and this is Mr. Forney in the top right and on
9 this copy I signed, dated, and put the time above it.

10 Q The copy that you signed and dated, State's Exhibit 8
11 for identification, did you indicate -- is that the
12 purpose of signing in this location?

13 A Right, that's the individual that I had seen on my
14 side of the vehicle.

15 MR. POPE: Your Honor, at this time I move State's
16 Exhibit 7 and 8 for identification both into evidence.

17 THE COURT: What says the defense?

18 MR. SCHUSTERMAN: Your Honor, at this time without
19 objection subject to all motions previously made and that
20 will go for the prior photo-lineup too.

21 THE COURT: Of course.

22 MR. SCHUSTERMAN: Thank you, sir.

23 THE COURT: State's Exhibit 7 and 8 admitted into
24 evidence without objection subject to the prior rulings of
25 the court.

1 (State's Exhibits 7 and 8 marked and filed.)

2 Q Mr. McMillan, I am going to ask if you could step down
3 and show the jury - it's my understanding you saw this
4 originally on a computer screen?

5 A I believe the computer screen was on, but I was shown
6 the sheets as far as identification purposes.

7 Q You ultimately actually signed the gray scale copy, is
8 that correct?

9 A Right.

10 Q Show the jury the individual you identified.

11 A (Witness complied.)

12 Q Mr. McMillan, as to State's Exhibit 7 and 8 did anyone
13 in law enforcement, Beth Ann Jayne, or anybody tell you
14 who to pick on that picture?

15 A No, like I said, I was alone with the officers at that
16 point when I did the identification.

17 Q And what was the basis of your identification of Mr.
18 Forney.

19 A That was the gentleman that I had seen that night that
20 had robbed us and was on my side of the vehicle.

21 Q Okay and at one point you said he was how close to
22 you?

23 A At one point he was right in front of me.

24 Q Is there any doubt in your mind that the man
25 identified in those pictures, Mr. Forney, was the man that

1 robbed you that night?

2 A No doubt at all.

3 Q Mr. McMillan, just a few more questions. As to the
4 defendant, Mr. Hughes, you had no dealings with him other
5 than as it reflected with Beth Ann Jayne?

6 A Right, just as they approached and as they split up in
7 front of the vehicle. After that he was on that side of
8 the vehicle and I focused on Mr. Forney.

9 Q For a large part of, well, basically, all of Ms.
10 Jayne's interaction with Mr. Hughes you were face down on
11 the ground?

12 A A good bit of it, yes.

13 Q Mr. McMillan, you were in Ms. Jayne's car, is that
14 correct?

15 A Correct.

16 Q Do you or Ms. Jayne smoke or any of your friends smoke
17 in that vehicle?

18 A No, I don't smoke at all.

19 Q Mr. McMillan, when Mr. Forney and Mr. Hughes left the
20 area did they both leave in Ms. Jayne's car?

21 A Yes.

22 Q As far as what became of the gun after they left you
23 were still down you had no knowledge?

24 A Correct.

25 Q I appreciate it. Answer any questions the defense may

1 have.

2 CROSS EXAMINATION

3 BY MS. BRICE

4 Q Just to go back a moment again. When they were
5 approaching, you got out of the car --

6 A Right.

7 Q Did you lock the doors?

8 A Yes, at least my door. I think Beth Ann's locked.

9 Q And as you were locking the door was that when you
10 first saw Mr. Forney and Mr. Hughes approaching?

11 A When I shut the door.

12 Q Okay.

13 A After I had shut the door.

14 Q And what was so intimidating about the way that they
15 were walking?

16 A Well, just the way they were walking, it's just that
17 situation when you are alone in a parking lot and no one
18 else is around and two people come out from a dark area,
19 not saying, not doing anything except walking in your
20 general direction.

21 Q Is it an accurate statement for me to say that you
22 were intimidated because two black males were walking up
23 from the dark?

24 A I would have been intimidated by two white males,
25 anybody who was approaching me at night in that situation.

1 Q So long as two people are walking together you are
2 intimidated?

3 A If it had been one person, I probably would have been
4 somewhat intimidated at least wherein I would take notice
5 of them.

6 Q And as they are approaching you, you say they
7 separated at one point?

8 A Right, at the passenger's front side of the vehicle.

9 Q And at that point Mr. Forney was the person that came
10 to your door, is that correct?

11 A Correct.

12 Q And I believe it is your testimony that at no time
13 during the entire incident that you had any contact with
14 Mr. Hughes.

15 A Other than seeing him approaching and seeing him
16 split, after that I was focused on Mr. Forney.

17 Q And if you don't mind, could you step down here for
18 just a moment. When Mr. Forney approached you, I will
19 change roles for just one moment and I was you, could you
20 demonstrate to me exactly how Mr. Forney pulled the gun
21 and how it was directed?

22 A Okay. This is the front of the vehicle. As he came
23 around in front of the vehicle he came like this and he
24 was sort of in this posture, I guess, and he got about to
25 here it was kind of like this (demonstrating).

1 Q Did he touch you actually with the gun?

2 A As far as I can remember he did; it was right in here
3 (indicating) and at that point he spoke to me with the
4 phrase "I want your money, get on the ground."

5 Q And he did that with his right hand to the best of
6 your recollection?

7 A The gun was in his right hand.

8 Q Okay and then with his left hand he guided you down on
9 the ground?

10 A Right, it's just sort of - it wasn't just get on the
11 ground from that posture, you know, he was, you know, on
12 my back.

13 Q Thank you very much. And after you were in that
14 position on the ground could you relate to me exactly
15 where he was positioned as far as his body over you?

16 A Right. He had his knee into my back with my arm. My
17 arm was behind my back and he was on arm pinning it down
18 and with his left hand he was patting me down, you know,
19 looking for whatever he could find.

20 Q And at no time during this entire incident did you
21 ever see Mr. Hughes with the gun?

22 A No.

23 Q And, in fact, you had no contact at all with Mr.
24 Hughes that evening?

25 A I had no personal contact, no, just visual.

1 Q Do you recall Mr. Hughes saying anything that evening?

2 A I don't recall him saying anything; I just mostly
3 recall things Mr. Forney was saying and doing.

4 Q And what type of statements was Mr. Forney making that
5 evening?

6 A The one I most recall was the command to get on the
7 ground and the money and as he got up off of me and I was
8 no longer restrained he said, "If you move, I'll kill you"
9 and then there was a comment made, I am not sure by who as
10 they pulled away.

11 Q And what was that comment?

12 A It was to the effect talking to me "If you move, I'll
13 kill your whore."

14 Q And later on that evening did you make any type of
15 identification of Mr. Hughes?

16 A No, I was uncertain and didn't even try to make an
17 identification.

18 Q Who was the clear aggressor during that evening
19 incident?

20 A That's a value statement I'm not sure - to me they
21 were both aggressive, they are both aggressors.

22 Q Who had the gun that evening?

23 A Mr. Forney had the gun.

24 Q Who made the threats that evening?

25 A To the best of my knowledge Mr. Forney made at least

1 the command to get down, that "I'll kill you." I don't
2 know who made the second one for sure.

3 Q Well, clearly that evening Mr. Hughes to the best of
4 your recollection was the aggressor?

5 A I wouldn't say either one was particularly the
6 aggressor, one had the gun for sure, but they were both
7 there.

8 Q But your testimony was that Mr. Hughes did not have
9 any contact with you, made no statements to you
10 whatsoever, but you are not going to give in to the fact
11 Mr. Forney was the clear aggressor that evening towards
12 you?

13 A He was there, Mr. Hughes was there, was involved
14 around Beth Ann, with me not knowing what he's doing, I
15 don't see how I could say that --

16 Q What statements did Mr. Hughes say that indicated to
17 you that he was the aggressor?

18 A What statements? I don't know if he had to say
19 anything; he was there.

20 Q No statements that Mr. Hughes made that evening would
21 indicate that he was the aggressor.

22 A No statements, no verbal statements.

23 Q And at no time that evening did you see Mr. Hughes
24 with the gun, is that correct?

25 A Correct.

1 MS. BRICE: I have no further questions.

2 THE COURT: Redirect?

3 REDIRECT EXAMINATION

4 BY MR. POPE

5 Q Mr. McMillan, and I think I asked you first the
6 situation about Mr. Hughes being in your presence, again,
7 in light of the fact that I realize you were face down on
8 the ground, I mean, were you able when Beth Ann came
9 around the car or was brought around the car, how did you
10 know she was there, by hearing her voice or were you able
11 to see her?

12 A Right, mostly when the keys were handed off, I could
13 her saying "This isn't the right key" or something to that
14 effect, so I knew that she was there.

15 Q Were you aware that all four of you were on that side
16 of the car at that time?

17 A Uh-huh (affirmative).

18 Q Ms. Brice asked you about the aggressor and you said
19 pretty much you don't know what ---

20 A I wouldn't make a distinction, as far as I am
21 concerned they were both.

22 Q Mr. McMillan, how many people robbed you that night?

23 A Two people.

24 Q How many people took that car?

25 A Two people.

CRYSTAL AYERS

DIRECT

1 Q How many people left in that car?

2 A Two people.

3 Q Thank you.

4 MS. BRICE: I have nothing further, Your Honor.

5 THE COURT: You may step down. This witness can be
6 excused subject to the possibility of recall.

7 MR. POPE: The State would call Crystal Ayers.

8 CRYSTAL AYERS, being duly sworn, testified
9 as follows:

10 DIRECT EXAMINATION

11 BY MR. POPE

12 Q Ms. Ayers, if you would, state your name and spell
13 your last name for the court reporter, please, ma'am.

14 A Crystal Ayers A-y-e-r-s.

15 Q Are you a little nervous here today?

16 A A little bit.

17 Q Could you tell the jury where you are employed?

18 A Right now?

19 Q Yes, ma'am.

20 A The Cracker Barrel.

21 Q How old are you?

22 A I'm twenty.

23 Q And how long have you been at the Cracker Barrel?

24 A Two years.

25 Q Where did you work back in September of 1992?

1 A The Galleria Mall Cinema Movie Theatre.

2 Q Back in September of 1992 do you recall the incident
3 surrounding the death of Brent McCants when he was killed
4 that evening?

5 A Uh-huh.

6 Q The Galleria Mall Cinema would you tell the jury where
7 that is located in reference to I-77 and Dave Lyle, where
8 that would be located?

9 A Well, it's off Dave Lyle Boulevard.

10 Q I will show you State's Exhibit 6 for identification,
11 see if you can look and identify this. Find Dave Lyle and
12 I-77.

13 A This is I-77.

14 MS. BRICE: Your Honor, for the purposes of the jury,
15 it might be easier if she could hold it for the jury.

16 THE COURT: Well, she is going to identify it first
17 and then once it is identified --

18 MR. POPE: That is correct, Your Honor, I am having
19 her identify.

20 THE COURT: After she identified it, maybe we will do
21 that. Thank you.

22 Q Okay, and does this reflect the area of 77 and Rock
23 Hill area. Will this assist you in describing to the jury
24 where the Galleria is located?

25 A Yes.

1 THE COURT: Without objection?

2 MR. SCHUSTERMAN: Without objection.

3 (State's Exhibit 6 marked and filed.)

4 Q I will show you State's Exhibit 12 for identification.
5 It has been blown in, a closer picture there. Does that
6 help you also? Would that help you explain it to the jury
7 where it is located?

8 A Yes, sir.

9 THE COURT: Is the exhibit being offered at this time?

10 MR. POPE: Yes, sir, I would move State's Exhibit 6
11 and 12 for identification into evidence.

12 THE COURT: Six was the first one that you have shown
13 and 12 was the second one.

14 MR. SCHUSTERMAN: Both without objection.

15 THE COURT: Both without objection.

16 (States's Exhibit 12 marked and filed.)

17 Q Ms. Ayers, I am going to ask you, if you would, to
18 step down here. It may be that we need to bring it a
19 little closer to the jury. I would ask you, first, if you
20 could describe to the jury and I realize you are going to
21 have to step back, you might need to get close enough to
22 where you can see it.

23 THE COURT: I ask counsel to help monitor the jury to
24 make sure they can see. I can't see the jury, but that's
25 all right. I can't see the exhibit, but that's all right

1 too, but I want to make sure the jury can see it.

2 Q Ms. Ayers, I am going to ask you, if you would, if you
3 could orient yourself, you are aware where 77 and Dave
4 Lyle is?

5 A Right.

6 Q Step around here and if you could use this pointer to
7 indicate to them where 77 goes up toward Charlotte.

8 THE COURT: Jurors, if any of you need to stand to see
9 it, feel free to do it.

10 A And do what now?

11 Q Show them where 77 goes up toward Charlotte.

12 A (Witness indicated with pointer.)

13 Q And where does Dave Lyle cross?

14 A (Witness indicating) Here is Dave Lyle.

15 Q And could you indicate where the Galleria Mall is?

16 A Right here (indicating).

17 Q Okay, and I believe The Hampton Inn is it located on
18 there?

19 A (Witness pointing.)

20 Q And where is the Galleria?

21 A Right beside it (indicating).

22 Q Okay, now probably the picture that was brought up to
23 the jury in the first place, State's Exhibit 12, would
24 this help you in showing the jury the location? If you
25 could get oriented now.

1 A Okay.

2 Q Show them again where 77 comes up?

3 A To go to Charlotte, you go that way (indicating).

4 Q Okay. If you would show them where Dave Lyle comes
5 across?

6 A This way (indicating).

7 Q And if you would show them where the Galleria Cinema
8 is where you worked at that time.

9 A (Indicating with pointer).

10 Q Okay, if you would have a seat, please, ma'am.

11 Ms. Ayers, you were working at the Galleria the
12 evening of the 25th of September?

13 A Yes, sir.

14 Q And could you relate to the jury what, if anything,
15 unusual happened any time after 10:00 on that evening?

16 A After 10:00)?

17 Q Yes, ma'am.

18 A That's when we were about to close and we had two
19 black males walk in and wanted to know if we had a drink
20 machine. I told them, "No," and they walked back out.

21 Q I know you are a little nervous, but you have to slow
22 down a little bit for the jury. If you could start at the
23 beginning and tell us. You said you were about to close?

24 A We were about to close. We were to close about fifteen
25 minutes after the last movie starts --

1 Q Yes, ma'am.

2 A --- and it was about 10:10 or 10:15 in between there
3 and two black males walked in and they walked to the
4 concession and wanted to know if we had a drink machine in
5 the lobby and I told them "no," so they walked out.

6 Q Okay, so they had come into the theatre and walked up
7 to the concession?

8 A Walked up to the concession, yes.

9 Q And where were you working?

10 A I was behind the concession.

11 Q And what was the lighting like in that area?

12 A It was well lit.

13 Q And did one walk up to you or did both walk up to you?

14 A Well, they both walked up. One was right behind the
15 other.

16 Q Okay, and they asked about a drink machine?

17 A A drink machine.

18 Q And, of course, you were at the concession stand then?

19 A Right.

20 Q Okay, what did you tell them in regards to a drink
21 machine?

22 A We didn't have a drink machine in the movie theater.

23 Q What did they do then?

24 A They then left the movie theater. They walked out.

25 Q They walked back outside the door?

1 A Back outside.

2 Q Okay, when they were first in there and they came in
3 the first time, how close were they to you?

4 A I wouldn't say they came as close as you the first
5 time.

6 Q Tell me how close you were the first time about the
7 drink machine.

8 A I would say about right there.

9 Q Okay, so you were faced both of them at that time?

10 A Right.

11 Q And then after they left, what, if anything, happened?

12 A Then they came back in and asked if the box office was
13 closed and I told them yes, but go ahead and watch a
14 movie.

15 Q They asked you if -- now was the box office -- where
16 was that located? Is that up front?

17 A It is up front outside the building, it's where you
18 buy tickets.

19 Q You said go ahead and watch a movie. Why did you do
20 that?

21 A Just because I didn't want to start any trouble. When
22 people come in, especially men or whatever, you just don't
23 want to say, no, you have to leave or whatever, so we just
24 let them go on in.

25 Q So you let them go on in and when you say "Go on in,"

1 would you tell the jury kind of how the theater is set up?

2 A The concession is like this right here and the movie
3 theaters they are - you walk around this little space,
4 like an opened space, and the movie theaters are along the
5 back, it's like a hallway, and there are movie theaters on
6 each side.

7 Q Okay, how many theaters are there?

8 A Eight.

9 Q And how close were they to you the second time?

10 A They were a little closer.

11 Q Again it was under the lighting?

12 A Right.

13 Q Okay, and after allowing them to go down and see a
14 movie, what did they actually do as far as a movie, were
15 you able to observe them?

16 A Well, they were walking back and forth down the
17 hallway opening the movie theater doors, peeking in, and
18 looking at them; they didn't really go into one and watch
19 one, then they left.

20 Q Were they in your sight the whole time or would there
21 be times that ---

22 A Well, there were times when they walked all the way
23 down the hallway where you couldn't see them.

24 Q And you say at that point they left?

25 A They did.

1 Q Were you contacted or how did you gain knowledge about
2 the situation involving Brent McCants?

3 A We had already closed and another black gentleman came
4 in. I don't know how long it was, but he came in and said
5 "Call 911, a police officer has been shot" and that's all
6 it was that night.

7 Q So as far as any contact about these two guys having
8 anything to do with Brent McCants or anything that evening
9 you didn't have anything or any notice of anything, ---

10 A No.

11 Q --- is that correct. Okay and then I believe the
12 following morning would have been the 26th, that afternoon
13 you were called down to the police station, is that
14 correct?

15 A That morning.

16 Q They called you that morning ---

17 A They called me that morning and I went down that
18 afternoon.

19 Q And they were questioning you in regards to the two
20 individuals that you saw there at the theater?

21 A Right.

22 Q When they talked to you about that, did they in any
23 way indicate that they had pictures of the people, that
24 they had arrested them, or who you should pick or even if
25 they were in there?

1 A No.

2 Q They were just asking you as to two people you may
3 have seen the night before?

4 A Right.

5 Q Did you have an opportunity to go into a room and look
6 at a computer monitor with different pictures on it?

7 A Right.

8 Q And in looking at that did you, in fact, indicate some
9 individuals on that computer monitor?

10 A Yes, I did.

11 Q Okay, I first show you State's Exhibit 4 in evidence
12 and ask you to take a second look at that to see if you
13 recognize that.

14 A I do.

15 Q And after observing that did you pick somebody in that
16 picture?

17 A I did.

18 Q And after picking them did you have an opportunity to
19 take one of the black and white sheets and sign and
20 initial over the picture that you picked?

21 A Yes.

22 Q And I show you State's Exhibit 9 for identification
23 and ask if you would look at that and tell me if you
24 recognize that.

25 A Yes.

1 Q And what is that?

2 A The same lineup as I saw; it's a printout.

3 Q Okay, and did you pick somebody in that lineup?

4 A Yes.

5 Q Okay, could you tell me what is written across the top
6 there?

7 A My initials, the date and the time.

8 Q What time was that?

9 A One o'clock PM.

10 Q On what date?

11 A 9-26-92.

12 Q Okay. Ms. Ayers, as to State's Exhibit 9 you have
13 identified that by your signature, is that correct?

14 A Yes.

15 Q Also, State's Exhibit 10 I'll show you that in
16 conjunction with State's Exhibit 7 that is already in
17 evidence and ask if you will look at these two and tell me
18 if you can identify that.

19 A Yes.

20 Q And what is that?

21 A It is the one I did.

22 Q So you saw it on the screen and then made a selection?

23 A Right.

24 Q And what did you indicate on that?

25 A My initials, 9-26-92 and 1:04 PM.

1 Q So you identified this one secondly, is that correct?

2 A Yes.

3 MR. POPE: Your Honor, at this Pope I would move
4 State's Exhibits 9 and 10 for identification into
5 evidence.

6 MR. SCHUSTERMAN: Without objection subject to
7 previously made objections.

8 THE COURT: Admitted.

9 (State's Exhibits 9 and 10 marked and filed.)

10 Q Ms. Ayers, the two men that you identified did law
11 enforcement in any way tell you who to pick out or if to
12 pick out anybody or why to pick them out or anything?

13 A No.

14 Q And on what basis did you pick them out? Where had
15 you seen them before to be able to pick them out in this
16 lineup?

17 A At the movie theater the night before.

18 Q And that was on the night of the 25th?

19 A Right.

20 Q And these were the two gentlemen in relation to the
21 incident of coming in looking at the movies and asking
22 about the drink machine?

23 A Right.

24 Q Okay. I'll ask you if you could to step down, please,
25 ma'am, for a second. I will show you first State's

1 Exhibit 4 and State's Exhibit 9, which I believe according
2 to the time indicated you have one o'clock, is that
3 correct?

4 A Yes.

5 Q If you could show to the jury on this color picture
6 which individual you picked out as being the one of the
7 ones in the theater there at the Galleria Cinema. Be sure
8 everybody can see it.

9 A (Witness indicating.)

10 Q I'll ask you four minutes later you then looked at
11 another photo-lineup, is that correct?

12 A Right.

13 Q And this would be State's Exhibit 7 and State's
14 Exhibit 10. I would ask you to show them again on the
15 color photo which one you picked. My further question
16 would be this was the second lineup based on your times of
17 one o'clock and 1:04.

18 A Right.

19 Q Did you pick this man just because it was in the same
20 position as this other guy?

21 A No.

22 Q Why did you pick the second?

23 A Because he was the man I saw the night before.

24 Q Why did you pick the first one?

25 A The same reason.

1 Q Show the jury who you picked.

2 A (Witness indicated.)

3 Q Ms. Ayers, you said that this occurred between 10:00
4 and 10:15, is that correct?

5 A Yes, sir.

6 Q And about how long counting both trips at the time how
7 long were these two individuals in your presence?

8 A Well, off and on about fifteen or twenty minutes.

9 Q Fifteen or twenty minutes?

10 A Yes.

11 Q That would have been 10:30 or 10:35?

12 A Something like that, yes.

13 Q Ms. Ayers, answer any questions the defense may have.

14 CROSS EXAMINATION

15 BY MR. SCHUSTERMAN

16 Q Ms. Ayers, once the last movie of the night goes on,
17 usually is that about ten o'clock?

18 A Usually about 9:50 or 10:00, yes.

19 Q 9:50 or 10:00. There are a number of movie theaters
20 within that Galleria Cinema, is that right?

21 A Right.

22 Q Do you not lock the door so more people cannot come
23 in?

24 A They are supposed to lock the doors. They stop selling
25 tickets after the last movie starts and that's when they

1 are supposed to lock the doors.

2 Q Thank you. But they didn't lock the door that night?

3 A Obviously not.

4 Q When the two gentlemen came in, what were they
5 wearing?

6 A I can't remember what they were wearing.

7 Q You don't remember?

8 A No.

9 Q Was one of them wearing a red hooded sweat shirt?

10 A I remember that, yes.

11 Q So one was wearing a red sweat shirt?

12 A Yes.

13 Q Okay. How often do people come into the movie theater
14 after the movie starts? How often has this experience
15 happened to you?

16 A Not often.

17 Q Not often?

18 A No.

19 Q You had indicated in your direct examination that you
20 felt that it was easier to let them go watch the movie
21 because you were concerned about them, you thought they
22 could cause trouble.

23 A Right.

24 Q What specifically about them made you feel they could
25 cause trouble?

1 A Just being two males to walk in that late and you know
2 really - I don't know, it's just my opinion they could
3 cause trouble.

4 Q Did they say anything to you that made you feel that
5 way?

6 A No.

7 Q Were you personally afraid of them?

8 A No.

9 Q Did you feel threatened by them in any way?

10 A No.

11 Q So, basically, two black males walk in and that in and
12 of itself you had a gut instinct ---

13 A Yeah.

14 Q --- that they could cause trouble.

15 A Yes.

16 Q But they never did cause trouble, did they?

17 A They did not.

18 Q They didn't?

19 A No.

20 Q Did you have a conversation with either of them?

21 A One of them.

22 Q Which one did you have a conversation with?

23 A I can't remember which one.

24 Q Once again I reference you to the man with the red
25 hooded shirt. Would that be the man who did the speaking

1 for the two of them?

2 A If that's what I said, then that's what it was at the
3 time. I can't remember.

4 Q You don't remember today.

5 A I don't remember today, no.

6 Q Do you remember --

7 MR. SCHUSTERMAN: May I approach the witness, Your
8 Honor.

9 THE COURT: Certainly.

10 MR. SCHUSTERMAN: Thank you.

11 Q Do you recall testifying previously?

12 A Yes.

13 Q Last year?

14 A Yes.

15 Q I would ask you to read from page 200 of the
16 transcript, from line 4 to line 13.

17 A Line 4 to line 13?

18 Q Yes.

19 A Question and answer?

20 Q Yes.

21 A "Do you remember in general terms how they were
22 dressed?" "I remember one with a red jacket with a hood, a
23 red hood, that's all I remember." "Which one asked you
24 about the drink machine, do you remember?" "The red sweat
25 shirt." "And which one asked you if the box office was

1 still open?" "The same one." "How close did he get to
2 you?" "He was right behind the concession stand behind
3 the counter."

4 Q Thank you. Did that help to jog your memory?

5 A Yes, a little bit.

6 Q Okay, now let me ask you. In the identification
7 process if we go back in time, and I understand this was
8 approximately three years ago, which of these two men that
9 you picked out was the man who did the talking?

10 A I would say it was this one.

11 Q You say it was that one.

12 A Yes.

13 MR. SCHUSTERMAN: Please let the record reflect that
14 she has chosen Mr. Forney.

15 Q You believe that it was this gentleman?

16 A I believe it was.

17 Q Okay. I don't know if you were asked the last time
18 about this, but let me ask you now.

19 A Okay.

20 Q Did the other gentleman say anything? Did you have any
21 conversation with him?

22 A I don't remember.

23 Q You have no recollection?

24 A Right.

25 Q I think you indicated that you had no idea why you

1 were being taken down -- why you went down to the police
2 station the next day, is that correct?

3 A Right; I didn't know why until they called.

4 Q Who is they?

5 A I'm sorry?

6 Q Who is they?

7 A The police department.

8 Q Some representative from the police department, the
9 Rock Hill Police Department?

10 A Yes, Rock Hill.

11 Q And did they ask you to come down to the police
12 station?

13 A They did.

14 Q And what did they tell you the reason why?

15 A I don't remember exactly what was said, just that
16 someone had described me, when they called, they had asked
17 for me because they asked for whoever worked there because
18 of the description that I had and I was the only one there
19 with that description, so I don't know how.

20 Q Did you know at the time that you were going down to
21 help identify somebody who would later be charged in a
22 homicide?

23 A Did I know that?

24 Q Yes.

25 A No.

1 Q You did not know that?

2 A No.

3 Q So you didn't really have any feel why you were going
4 down to the police station?

5 A Well, over the phone I can't remember the phone
6 conversation what happened.

7 Q When you got down there, you gave a statement?

8 A Yes.

9 Q You were interviewed?

10 A Yes.

11 Q After you gave your statement, were you taken into a
12 room to look at these photo-lineups?

13 A I don't remember going into a room.

14 Q You were taken somewhere?

15 A Somewhere.

16 Q To a different location from where you were being
17 interviewed?

18 A Right.

19 Q And am I to understand the process that this is a
20 reproduction of what you saw on the computer screen?

21 A Yes.

22 Q You actually that day were not holding this
23 photo-lineup, you were actually viewing it on a monitor?

24 A A screen, right.

25 Q Okay. And I take it an officer helped you with that?

1 A Well, brought it up, yes.

2 Q He brought it up.

3 A Right.

4 Q You made the two identifications four minutes apart?

5 A Yes.

6 Q Did you between the two identifications, did you ever
7 leave the room?

8 A No.

9 Q Were you standing or sitting when you made the
10 identifications?

11 A Sitting.

12 Q You were sitting, staring at a video screen.

13 A At the screen.

14 Q And I take it that the first photo-lineup popped up
15 and they said do you recognize anybody, correct?

16 A Yes.

17 Q And you said you recognized the man in the top right
18 hand corner?

19 A Right.

20 Q Correct?

21 A Right.

22 Q That's at one o'clock.

23 A Uh-huh.

24 Q And did they then print this out? Did this come out
25 of a computer?

1 A I am sure it did.

2 Q You signed it I take it right after you made the
3 identification?

4 A Right after I did it.

5 Q And then you continued to sit there and did the screen
6 go blank and then another screen popped up?

7 A I saw another screen, but I don't know if it went
8 blank.

9 Q And four minutes later you identified the second
10 defendant?

11 A Right.

12 Q And that was at 1:04 when you signed it.

13 A Right.

14 Q And you are telling this court and this jury that
15 sitting there you make the first identification upper
16 right hand corner and then the second screen pops up, the
17 fact that the defendant, that you picked the person
18 sitting in the same position, that had no bearing, ---

19 A No.

20 Q --- that you didn't first go to that first position?

21 A No, no.

22 Q Okay. Could you come down here for a minute?

23 A (Witness complied.)

24 Q You indicate, Ms. Ayers, that you chose Mar-Reece
25 Hughes that night. This was the one and we have a

1 verification on that gray slide, but this is the picture
2 of what it looked like on the computer screen.

3 A Right.

4 Q Two questions. Number one, do you recall if Mr.
5 Hughes was wearing this same shirt?

6 A I don't remember that.

7 Q You don't have any recollection of that?

8 A No.

9 Q Okay, let me ask you a question. When you saw Mr.
10 Hughes that night and you said you got fairly close to the
11 two gentlemen, did he have bruises upon his forehead like
12 indicated here?

13 A I don't know.

14 Q You don't have any recollection?

15 A I just saw his face, that's all I remember.

16 Q Okay. Now that we have had an opportunity to review
17 some of your past testimony to refresh your memory. Do you
18 recall one of the two men, either the man in the red
19 hooded sweat shirt or the other gentleman, being the
20 leader of the two, being what would appear, it's your
21 impression, the spokesperson for the group or one being a
22 leader and one being a follower, did you get the
23 impression?

24 A Not really, no.

25 Q Okay. Thanks. I appreciate it, Ms. Ayers.

1 REDIRECT EXAMINATION

2 BY MR. POPE

3 Q Ms. Ayers, briefly, you talked about when they came in
4 it was after hours, who was working besides yourself that
5 night?

6 A I tried to remember that. My sister was working. I
7 don't who was managing. I don't know who else was there.

8 Q Who was there at the counter?

9 A My sister was.

10 Q Just you and your sister?

11 A Right.

12 Q Is that your younger sister or older sister?

13 A Younger sister.

14 Q Okay and so when they came in you said you let them -
15 I think you said when men like that come in, you let them
16 go ahead and see it to avoid trouble, is that correct?

17 A Correct.

18 Q Is that based on the time and the situation or is that
19 based on the color of their skin?

20 A I wouldn't say it was the color of their skin, it's
21 just with them walking in, two males coming in, just they
22 could cause trouble.

23 Q Okay, that's what I am saying. You are not doing it
24 just because there were two blacks?

25 A No.

1 Q Mr. Schusterman asked you about two black men, so
2 that's not the reason?

3 A No.

4 Q I'll show you - Mr. Schusterman had also given you the
5 photo that you identified of Mr. Hughes and asked you
6 about bruising and I think previously they asked about
7 swelling or something. Do you indicate or see any
8 particular bruising there that you make note of?

9 A I don't.

10 Q Ms. Ayers, I'll ask you that particular evening I
11 think previously you had identified Mr. Forney and you
12 identified him from the lineup as the man in the red sweat
13 shirt. The second man that you saw that evening, you
14 identified them both from the lineup, ---

15 A Right.

16 Q --- in the area of the concession stand of the
17 theater, do you see him in the courtroom here today?

18 A Yes.

19 Q Could you indicate him to us, please?

20 A He's over with the white shirt.

21 MR. POPE: Let the record reflect she has indicated
22 Mr. Hughes.

23 Q Thank you, ma'am.

24 MR. SCHUSTERMAN: Briefly, on recross.

25 RECROSS EXAMINATION

1 BY MR. SCHUSTERMAN

2 Q Ms. Ayers, is it your testimony that the fact that
3 these were two young black males didn't have any impact on
4 your decision that there might be trouble?

5 A Not being black, no.

6 Q Not being black.

7 A Not being black.

8 Q If Mr. Pope and I went to the movies together and we
9 walked in, you would be equally concerned?

10 A No, because you are dressed nice; I mean, it depends
11 on clothing; it's not just color.

12 Q It's not just color.

13 A No.

14 Q Does color play a factor?

15 A No.

16 Q Okay. Mr. Pope asked you if you see any bruises or
17 swelling in this picture. Is it your testimony that it
18 does not appear to be bruises?

19 A There's something light on his head.

20 Q It doesn't look like bruises?

21 A No.

22 Q It looks like light.

23 A It looks like light to me.

24 Q Thank you.

25 MR. SCHUSTERMAN: No further questions. Thank you

MICHELLE AYERS

DIRECT

1 very much, Your Honor.

2 THE COURT: You may step down.

3 MR. POPE: I ask that she be excused, Your Honor.

4 MR. SCHUSTERMAN: Without objection, Your Honor.

5 THE COURT: You may be excused.

6 MR. POPE: The State would call Michelle Ayers.

7 MICHELLE AYERS, being duly sworn,

8 testified as follows:

9 DIRECT EXAMINATION

10 BY MR. POPE

11 Q Ms. Ayers, if you would, state your name and spell
12 your last name for the court reporter, please.

13 A Michelle Ayers A-y-e-r-s.

14 Q Ms. Ayers, are you a little nervous today?

15 A Yes.

16 Q Okay, we will discuss just a few questions. Where do
17 you work, Ms. Ayers?

18 A Right now?

19 Q Yes, ma'am.

20 A TLC, it's a day care center.

21 Q And where did you work back on September 25, 1992?

22 A Cinema 8.

23 Q And was our sister, Crystal, working there also?

24 A Yes, sir.

25 Q And was there an opportunity that evening of something

1 unusual happening as far as some individuals coming in
2 after the movies had started?

3 A Yes, sir.

4 Q Could you relate that briefly to the jury, please,
5 ma'am?

6 A It was after closing time and two black males had come
7 in and then they walked around a little bit and then in
8 about twenty minutes they left.

9 Q And did you have an opportunity to observe them, to
10 get a look at them? You say they "walked around." What
11 did they do?

12 A Well, they walked in, they walked back to the theaters
13 and they came out and left.

14 Q You said about twenty minutes, is that what you said?

15 A Yes, sir.

16 Q And the next day did you have an opportunity to go
17 down to the police station to see if you could identify
18 either one of them?

19 A Yes, sir.

20 Q And did anybody tell you who to pick or there was
21 going to be somebody for you to identify?

22 A No, sir.

23 Q You had a chance to look I believe at a computer
24 screen, is that right?

25 A Yes, sir.

1 Q And after looking at the computer screen, were you
2 able to pick one of the two out?

3 A Yes, sir.

4 Q I'll show you State's Exhibit 7 and ask you to take
5 your time and take a look at that and tell me if you can
6 identify that.

7 A Yes, sir.

8 Q And what is that?

9 A This is the lineup I looked at the next morning when I
10 went in.

11 Q Were you able to pick somebody out of that lineup?

12 A Yes, sir.

13 Q And I'll show you State's Exhibit 13 for
14 identification and ask if you would look at that and tell
15 me what that is.

16 A It's a copy they printed up for me to sign.

17 Q Okay and did you sign over the one that you indicated?

18 A Yes, sir.

19 Q And what is this written across the top? What does
20 that say?

21 A MA, my initials, 1:16 PM, 9-26-92.

22 MR. SCHUSTERMAN: Without objection, Your Honor.

23 THE COURT: State's Exhibit 13 admitted.

24 (State's Exhibit 13 marked and filed.)

25 Q You were working cleaning up behind the concession

1 stand, is that right?

2 A Yes, sir.

3 Q When did you get the best look at the two men? Were
4 they going around -- you said they went around to the
5 theaters?

6 A Right.

7 Q Were they going together around the theaters or
8 separately?

9 A They were together.

10 Q Okay and when they came out, would you describe to the
11 jury the area when you come out from the theaters to go
12 out through the door, is that block off somehow or --

13 A Well, when you walk into the door, the concession
14 stand is like to your right when you walk into the doors
15 and then there is a hallway like longways, I guess, and
16 theaters are on that side.

17 Q When the people come back out of the theater, ---

18 A They come around the concession stand.

19 Q So they come right past where you are at?

20 A Right.

21 Q And when they came back out from looking in the movies
22 for about twenty minutes, how were they walking as far as
23 together or separately?

24 A Together.

25 Q Was one closer to you than the other for you to see

1 when they came back walking out?

2 A Yes, because they were side by side and the one closer
3 to me is the one I identified.

4 Q And so the man you identified in State's Exhibit 13 is
5 the one that you were able to identify because as he and
6 the other guy walked out, this one was closer to you?

7 A Right, that's right.

8 Q Did you later find out that the one you identified was
9 Mr. Forney?

10 A Right.

11 Q Answer any questions Mr. Schusterman may have.

12 CROSS EXAMINATION

13 BY MR. SCHUSTERMAN

14 Q What did the two gentlemen do wrong that night?

15 A Wrong?

16 Q Yes, in the Cinema. What did they do wrong?

17 A Nothing I guess.

18 Q Were they acting inappropriately?

19 A No.

20 Q They were not acting inappropriately?

21 A I mean, you know, they were acting ---

22 Q They came in late as I understand it --

23 A Yeah, ---

24 MR. POPE: Your Honor, I object. He is not giving her
25 time to explain.

1 THE COURT: Whoa, whoa, when you ask a question, let
2 her answer it before you ask another question. Go back ask
3 her a question, let her answer it, and then ask another
4 question.

5 Q Were they acting appropriately?

6 A I guess, yes.

7 Q Did they do anything there that you perceived from
8 Michelle Ayers' perspective to be wrong?

9 A No, no.

10 Q Were they belligerent, were they nasty to you?

11 A No.

12 Q Were they rude?

13 A No.

14 Q Did they go into the theater without -- did they not
15 pay without permission, did they try to skip paying?

16 A Well, I wouldn't know at the time because I was behind
17 the concession. All I know is they came in after the
18 movies had already started and what they did I don't know.

19 Q Did they attempt to take anything?

20 A No.

21 Q Were you scared of them?

22 A No.

23 Q Did they intimidate you in any way?

24 A No.

25 Q Other than being two young black males coming in after

1 the movies had started, what else happened that night
2 that had any significance to you?

3 A You mean attracted me to look at them?

4 Q Uh-huh.

5 A Well, they were giggling and laughing and everything,
6 you know, just people talking and stuff you look up and
7 see who they are.

8 Q Was that giggling and laughing any different than you
9 probably saw as an employee of the Cinemas every day with
10 people coming in giggling and laughing?

11 A No.

12 Q Thank you, Ms. Ayers. I appreciate that.

13 REDIRECT EXAMINATION

14 BY MR. POPE

15 Q Ms. Ayers, when this was taking place, you say it was
16 after the movies had started?

17 A Right.

18 Q And when they moved around to different movies and
19 looked in different ones and came out and you said they
20 were giggling and laughing?

21 A Right.

22 Q Between the two of them, is that right?

23 A Right.

24 Q Now was the lobby at that time, was there --

25 A It was empty, they were in the only two in there.

STEVEN GIBSON

DIRECT

1 That's why it drew my attention.

2 Q Okay, thank you.

3 A You are welcome.

4 THE COURT: Recross?

5 MR. SCHUSTERMAN: No, Your Honor.

6 THE COURT: You may step down. Thanks.

7 MS. AYERS: Thanks.

8 MR. POPE: I ask that she be excused.

9 MR. SCHUSTERMAN: Without objection, Your Honor.

10 MR. POPE: The State would call Steven Gibson to the
11 stand.

12 STEVEN GIBSON, being first duly sworn,
13 testified as follows:

14 DIRECT EXAMINATION

15 BY MR. POPE

16 Q Mr. Gibson, if you would, state your name and
17 occupation for the jury, please.

18 A My name is Steven Gibson G-i-b-s-o-n. I am the
19 Tele-communications Division supervisor for the City of
20 Rock Hill.

21 Q Describe to the jury in laymen's terms what that is
22 and what your job is.

23 A Yes, sir, I manage the Tele-communications Division.
24 The Division focuses the dispatch of police and fire
25 emergency services within the city limits.

1 Q How long have you been so employed in that capacity?

2 A Over five years.

3 Q Mr. Gibson, as a part of your duties, do you maintain
4 records of the police calls and 911 and various things
5 such as that?

6 A Yes, we do. The audio is recorded on a 40 channel
7 logging recorder that operates 24 hours a day as a matter
8 of routine business standard operating procedure. The
9 recorder records all of our radio frequencies and
10 telephone lines that we operate on in the Dispatch Center.

11 Q What type of medium does the recorder use? What does
12 it record on?

13 A It records on a reel to reel magnetic tape.

14 Q And what as far as the reel to reel is it somehow -
15 how do you tell one tape from the next? How do you keep
16 track of what day and what time and all of this that is on
17 a given tape?

18 A Well, there is a signal coded on the tape along with
19 the audio. It's similar to a clock that records on that
20 tape the time and date continuously.

21 Q And as a part of your Department's duties each and
22 every day to reel to reel tape record the police
23 transmissions of the frequencies that you are charged
24 with?

25 A That's correct.

1 Q And as they receive those recordings the time and the
2 date is, in fact, encoded on the tape?

3 A That's correct.

4 Q And, Mr. Gibson, calling your attention back to
5 September 25, 1992, were you acting in the same capacity
6 at that time?

7 A Yes, sir, I was.

8 Q Are you familiar with the incident surrounding Brent
9 McCants' death?

10 A Yes, sir.

11 Q As a part of your duties, did you require your
12 Department to secure the original tape and to retain that
13 as part of your records?

14 A Yes, I did. Specifically those tapes are required to
15 be held for sixty days by law. Of course, considering the
16 circumstances surrounding the day in question, the tape
17 was carried in my office and remains there.

18 Q Now as far as again going to the date that the tape
19 would reflect and the time, have you altered that in any
20 way or changed that in any way?

21 A No, sir.

22 Q And, also, for the jury's consideration did you
23 provide a tape specifically of the transmission concerning
24 Brent McCants that you made off of your original tape?

25 A That's correct.

1 Q I'll show you what's been marked as State's Exhibit 14
2 for identification and ask if you could look at the
3 markings on it and tell me if you have had a chance to
4 listen to that and if that is what that reflects.

5 A Yes, sir, I have; this would be the Sheriff's
6 Department frequency just one channel of the forty that
7 are recorded between the date and time noted on the
8 cassette.

9 Q And could you indicate to the court, I notice it is
10 military time, those times that are recorded on there?

11 A On the date of September 25, 1992, 2239 hours and 16
12 seconds, which would be 10:39 PM through 2242 hours and 42
13 seconds, which would be 10:42 PM.

14 Q And does this tape accurately reflect the contents of
15 your original?

16 A For that frequency, yes, sir.

17 Q For that time period also?

18 A Yes.

19 MR. SCHUSTERMAN: May we approach, Your Honor?

20 (Bench conference off the record in the presence of
21 the jury, but not within hearing by the jury.)

22 MR. POPE: Your Honor, I would move State's Exhibit 14
23 for identification in at this time.

24 THE COURT: In evidence?

25 MR. POPE: Yes, sir.

1 THE COURT: Subject to what we talked about at the
2 side bar.

3 MR. SCHUSTERMAN: That's not going to be done now, is
4 that right?

5 MR. POPE: I am not going to play it now.

6 Q Mr. Gibson, you prepared this copy for the purpose of
7 having in evidence a copy of that transmission, is that
8 correct?

9 A That's correct.

10 Q You likewise brought the original tape and are
11 prepared to demonstrate it and to play that tape also?

12 A That's also correct.

13 THE COURT: Subject to the defense having an
14 opportunity to hear the original.

15 MR. SCHUSTERMAN: That's correct.

16 THE COURT: Admitted subject to that ---

17 MR. SCHUSTERMAN: Subject to that.

18 THE COURT: it's really not an objection, but with
19 that caveat.

20 MR. SCHUSTERMAN: That's correct. Thank you, Your
21 Honor.

22 (State's Exhibit 14 marked and filed.)

23 Q Mr. Gibson, I believe you brought with you today what
24 is called a play back machine. Could you relate to the
25 jury what that is and how that is different from the forty

1. channel taping machine?

2 A It's very similar. The unit in the Dispatch Center is
3 really built for redundancy. It has two different
4 machines stacked on top of each other. In the event we had
5 to interrupt one tape, by law we need to maintain these
6 records, so we would only have to interrupt one and leave
7 one continuously running. The play back machine doesn't
8 have the record capabilities and it's just one unit that
9 will play back any number of the forty channels recorded.

10 Q Now the channel you select, in other words, if you
11 select the Sheriff's Department frequency as in this case,
12 it will play for the jury the date and time signature that
13 is on that particular reel to reel tape?

14 A That's correct.

15 MR. POPE: Your Honor, at this time we will be
16 bringing in the play back machine and it is rather
17 cumbersome.

18 THE COURT: We can take a short break. This won't be a
19 smoke break, but it will be long enough to get refreshed
20 so we can take care of this mechanical situation anyway.

21 (Jury retires to jury room.)

22 Mr. Schusterman?

23 MR. SCHUSTERMAN: Yes, sir, Your Honor. I assume that
24 the prosecutor has the transmission indicating Mayday
25 Mayday, that remark. That's hearsay if we allow that to be

1 played before we have that on the stand. If we are
2 admitting this into evidence, I think we are putting the
3 cart before the horse. I think that it would be
4 understandable from Brent McCants, obviously, he's not
5 available. I don't have a problem with that, but in terms
6 of the ability to cross examine on the statement, it would
7 seem to me that before the court would admit either the
8 tape or the original magnetic tape into evidence that it
9 would be a hearsay objection.

10 THE COURT: Does The State intend on calling the
11 person who made that call?

12 MR. POPE: Yes, ma'am, but independent of that,-- I
13 apologize to the court -- independent of that, Your
14 Honor, I would submit that it is not hearsay. If it is
15 hearsay, it is a hearsay exception, one, this is a
16 business record. It was recorded not for the anticipation
17 of trial, but was recorded in the common, every day
18 business of this particular department. Number two, if
19 anything other than a business record, the materials
20 contained on there would be res gestae as it is the actual
21 excited utterance, a direct present sense impression of
22 what was occurring at the time, but in answer to your
23 first question, Your Honor, yes, she will also be
24 testifying.

25 THE COURT: I am going to allow it in over the

1 objection on both grounds. I believe it constitutes res
2 gestae and also with the understanding that it will be
3 connected up by the person who actually made the statement
4 and that person will be at that time subject to cross
5 examination.

6 MR. SCHUSTERMAN: Thank you.

7 THE COURT: Are you ready for the jury?

8 MR. POPE: Yes, sir, The State is ready. Our intention
9 is to have Mr. Gibson describe the machine, how it
10 operates, the basic nomenclature as far as the times that
11 it would indicate how that occurs, then we will be calling
12 Ms. Simmons, the dispatcher that night, and ask that Mr.
13 Gibson be allowed to remain to ultimately operate the
14 machine.

15 THE COURT: Okay.

16 (Jury returns to courtroom.)

17 MR. POPE: May it please the court, Your Honor, we would
18 ask if need be if you could inquire of the jury if I
19 need to try to make room so the jurors can still see the
20 witness too.

21 THE COURT: I would think they can all see the witness.

22 MR. POPE: May it please the court, Your Honor?

23 Q Mr. Gibson, you were relating to the jury when we
24 stopped about the play back recorder?

25 A That's correct.

1 Q I'd ask if you could step down and come and indicate
2 what this is, how this differs from your normal machine,
3 your 40 channel machine.

4 A As I mentioned the recorder that is in our Dispatch
5 Center it looks very similar to this although there are
6 two stacked on top of each other as I mentioned for that
7 redundancy so that we have the records according to law.
8 The 40 channels that are taped on this tape can be
9 selected down here through these 40 buttons simply for the
10 reason to listen to everything on that tape at one time
11 would be rather confusing. We have thirty different phone
12 lines and ten radio frequencies. So we have the ability to
13 select a particular radio frequency or telephone line.
14 That's how we do this. It is the same make and brand
15 Dictaphone Machine that is used for recording purposes in
16 our Dispatch Center, therefore, you can take the tape that
17 was generated on that machine and play it back on this
18 machine.

19 Q Could you indicate, you were telling us before the
20 jury left, that encoded on the tape is the time?

21 A That's correct.

22 Q Could you indicate to them where that would be
23 located?

24 A You'll see the hours, minutes and seconds displayed
25 here. That would be in military time consistent with the

1 play back.

2 Q And again that's something that is on the tape, not
3 something you are pre-setting, is that correct? In other
4 words, if you move the tape, fast forward it, the time
5 goes fast forward?

6 A That's correct. The time is encoded along with the
7 date on the original machine, the recorder. You have no
8 way to change the time on this machine. It's just a
9 playback machine.

10 MR. POPE: Your Honor, at this time that would be all
11 the questions I would have on this aspect. We may recall
12 Mr. Gibson at the point where we ask -- or at least to
13 allow him to remain present to actually operate the
14 machine.

15 THE COURT: Cross?

16 MR. SCHUSTERMAN: Yes, Your Honor.

17 THE COURT: Have a seat and be subject to cross
18 examination.

19 CROSS EXAMINATION

20 BY MR. SCHUSTERMAN

21 MR. SCHUSTERMAN: Thank you, Your Honor.

22 Q Very briefly, Mr. Gibson, this is a magnetic tape
23 what's called the original, would that be a fair
24 statement? This reel in here now is the original?

25 A That's correct.

1 Q And the original has that been in your custody since
2 September 25th?

3 A Yes, sir, it has, September 25, 1992.

4 Q It has been continually in your custody?

5 A Yes, sir.

6 Q And you indicate that there are 40 channels?

7 A That's correct.

8 Q And you are able for the purposes of listening back to
9 pick a particular channel at a particular time?

10 A That's correct.

11 Q On this original are all 40 channels taped on this
12 original or did you make a special tape with only just one
13 channel on it?

14 A On that original all 40 channels are present on the
15 tape.

16 Q So on this particular tape that is in this machine
17 right now I could pick any one of 40 channels to listen
18 to?

19 A That's correct.

20 Q So in no way has it been altered or taken off some
21 other source and put on this tape?

22 A I'm sorry, I --

23 Q My concern is when the transmission was made, any
24 transmission that was made that night, is this the
25 original tape that was made or does it go through some

STEVEN GIBSON REDIRECT LISA SIMMONS DIRECT

1 other process? Was it made onto another tape and then you
2 put it on this tape?

3 A That is the original tape.

4 Q That is the original tape.

5 MR. SCHUSTERMAN: I have nothing else.

6 REDIRECT EXAMINATION

7 BY MR. POPE

8 Q Mr. Gibson, the copy that you prepared for the jury
9 that was a copy you made from the original, is that
10 correct?

11 A That's correct.

12 Q And that cassette that is now in evidence would only
13 reflect the one channel the Brent McCants/Sheriff's
14 Department Dispatch Channel, is that correct?

15 A That's correct.

16 Q That would be State's Exhibit 14.

17 MR. POPE: Your Honor, that would be all that we would
18 have of Mr. Gibson.

19 THE COURT: You may step down. You will be subject to
20 recall.

21 MR. POPE: The State calls Lisa Simmons.

22 THE COURT: The witness can stay during the next
23 testimony for technical assistance.

24 MR. SCHUSTERMAN: Without objection.

25 LISA SIMMONS, being duly sworn, testified

LISA SIMMONS

DIRECT

1 as follows:

2 DIRECT EXAMINATION

3 BY MR. POPE

4 Q Ms. Simmons, if you would, state your name and
5 occupation for the jury, please.

6 A Lisa Simmons. I am shift supervisor with
7 Communications.

8 Q Where is that?

9 A The York County Sheriff's Office.

10 Q Could you tell the jury what your duties are, what you
11 do day to day in your job?

12 A I take the in-coming emergency calls, dispatch my
13 officers, and just maintain their safety throughout the
14 shift, making sure they have back-up.

15 Q How long have you been employed in that capacity?

16 A Nearly five years.

17 Q Were you a dispatcher for the Sheriff's Department
18 back on September 25, 1992?

19 A Yes, sir.

20 Q On that particular evening, when you say "Dispatching
21 your officers," is that through radio communications?

22 A That's correct.

23 Q Were you on duty the night Brent McCants was killed?

24 A I was.

25 Q And that was at the Sheriff's Department at that time

1 in Rock Hill, is that correct?

2 A That's correct.

3 Q Were you the dispatcher -- how many dispatchers do you
4 have working there at a time?

5 A We have three working at one given time.

6 Q Is that how it was that night also?

7 A At that particular time we had two dispatchers working
8 because we had two consoles, we actually had three
9 dispatchers inside.

10 Q And so any transmissions regarding that night or for
11 that matter any time you are working you can hear the
12 radio traffic of the law enforcement officers on the
13 various channels and you can communicate back with them,
14 is that correct?

15 A That's correct.

16 Q And have you had an opportunity to review State's
17 Exhibit 14, which was the Sheriff's Department Dispatch
18 Channel on 9-25-92 from 2239 hours to 2242?

19 A I have.

20 Q And in listening to that, that is the tape of Brent
21 McCants' last transmission, is that correct?

22 A That's correct.

23 Q And after reviewing that were you able to help develop
24 a transcript to assist the jury in understanding the
25 transmission?

THE STATE VS HUGHES

1 A I was.

2 MR. SCHUSTERMAN: Your Honor, I would have an
3 objection at this time.

4 THE COURT: All right.

5 I am going to let you go to the jury room for a
6 minute.

7 (Jury retires to jury room.)

8 MR. SCHUSTERMAN: I believe we discussed this matter
9 procedurally possibly last week, but I think at this time
10 it is appropriate to make an objection to the giving of a
11 transcript entering into the evidence and to the jury.
12 While ---

13 THE COURT: Wait a minute, let's back up. I didn't
14 think you were going to enter it into evidence; I thought
15 we had crossed that hurdle.

16 MR. POPE: Your Honor, I was merely going to have it
17 marked for identification so we would have some number
18 with which to refer to. It would never go into evidence
19 and it would never go back to the jury room.

20 MR. SCHUSTERMAN: Let me rephrase my objection. I
21 understand we did cross that hurdle. That was not to be in
22 evidence. I would object to and I think I voiced this
23 objection to the court previously of the jurors having a
24 written document to corroborate or basically it's Ms.
25 Simmons' interpretation of what the tapes say. We have

THE STATE VS HUGHES

1 the tape. We have Mr. Gibson here. He has authenticated
2 the tape and the jurors are certainly all - they appear to
3 all have very good hearing. We don't need to have someone
4 interpret what's being said. I think it is improper.

5 THE COURT: This was called to my attention prior to
6 this date and I offered to the defense the opportunity to
7 review the tape along with the proposed transcript and
8 call the court's attention to anything in the proposed
9 transcript which was inconsistent or an elaboration of or
10 a deletion of the audio. Have you done that?

11 MR. SCHUSTERMAN: Yes, sir.

12 THE COURT: All right, ---

13 MR. SCHUSTERMAN: But I don't ---

14 THE COURT: --- Let me finish. Is this a transcript
15 reflective of the audio?

16 MR. SCHUSTERMAN: Yes, sir.

17 THE COURT: All right. And I understand the objection
18 is on a different ground, but I overrule your objection.

19 MR. SCHUSTERMAN: Thank you, sir.

20 THE COURT: And let me go back just one minute as to
21 the admission of the tape. Since we have new Rules I am
22 going to try as diligently as possible for record purposes
23 to refer to the Rule as we go along. I believe that the
24 admission of the tape will fall under Rule 803 (1) and (2)
25 a present sense impression and an excited utterance.

THE STATE VS HUGHES

1 Are you ready for the jury?

2 MR. POPE: Yes, Your Honor.

3 MR. SCHUSTERMAN: Your Honor, I guess before we bring
4 the jury in, so they don't have to leave again, is it
5 going to be -- is Ms. Simmons merely here to say that she
6 has heard the tape and she has created a transcript or is
7 she going to render an opinion or an interpretation as to
8 what the transmission is?

9 MR. POPE: Your Honor, it is my intention, of course,
10 not only did she review the trans -- or help prepare the
11 transcripts, she is the dispatcher that was working that
12 night, that heard these same transmissions. It is our
13 intention for her not to render any opinion, but it is
14 laced with 10 codes and police jargon that she will be
15 here to clarify what the various codes are.

16 THE COURT: If you can qualify her to do that, she
17 certainly can. That's not an opinion.

18 MR. SCHUSTERMAN: But it really is, Your Honor, she's
19 not merely here to testify to what a 10 code is, what she,
20 in effect, is testifying is what Officer McCants was
21 attempting to communicate to her.

22 THE COURT: Well, we might be drawing a fine line. If
23 someone says 10-4, I am going to let her tell what the
24 understanding in the law enforcement in the use of a radio
25 that a 10-4 means. I am not going to let her say by that

THE STATE VS HUGHES

1 Officer McCants meant X, Y, Z. I am going to her her say
2 just in Morse Code somebody can say a dit, dash, dot is --
3 I use to know it, I can't remember what letter that is,
4 but it's a certain letter, and it is a certain letter, it
5 is a certain letter, and it is a certain letter and if
6 somebody dit, dash, dot, then that means that letter. That
7 might not be what they intended to mean, but it is still
8 what they understand.

9 MR. SCHUSTERMAN: Without the jury being here, my
10 concern, Your Honor, is just that it not be too vague
11 either in the way the questions are asked that Officer
12 McCants had a what he was attempting to communicate.

13 THE COURT: The testimony will be restricted to what
14 are these accepted codes. What does a 10 dash so and so,
15 what does that code -- what does it mean. I mean it is all
16 actually written down somewhere. I'm not going to require,
17 you know, a written writing be produced, but I think these
18 recognized and used in the profession. So, I overrule
19 your objection. I am going to allow her to testify to that
20 extent.

21 Are we now ready for the jury?

22 MR. POPE: Yes, sir.

23 THE COURT: All right. Ask them to come in.

24 MR. POPE: Would this be the proper way for me to have
25 it marked for identification just one copy and then we

1 will take up all copies?

2 THE COURT: Yes.

3 (State's Exhibit 11 marked for identification purposes
4 only.)

5 MR. SCHUSTERMAN: As soon as that is completed or Ms.
6 Simmons is done will the transcripts be gathered?

7 THE COURT: That's correct.

8 MR. SCHUSTERMAN: Thank you, Your Honor.

9 (Jury returns to courtroom.)

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

11 DIRECT EXAMINATION OF LISA SIMMONS

12 (RESUMED) BY MR. POPE

13 Q Ms. Simmons, before the jury left, you were describing
14 you were one of the three dispatchers who was on duty the
15 night Brent McCants was killed, is that correct?

16 A That's correct.

17 Q And would you tell the jury briefly what type of
18 training you have that allows you to be a dispatcher or
19 what it is that allows you to know what to do?

20 A We go through training at the South Carolina Police
21 Academy for a week and most of it we are sitting there we
22 have to pay attention, take a lot of notes and studying. A
23 lot of it is hands on stuff that you have to do before you
24 can actually understand.

25 Q Do you end up with having to deal in a lot of codes

1 and police jargon and things such as that that the laymen
2 might not have to?

3 A Absolutely.

4 Q And have you dealt with that during the whole five
5 years that you have been there?

6 A Yes, sir.

7 Q Before the jury left I was asking - I refer you to
8 State's Exhibit 11 for identification and ask if you could
9 tell me what that is, please, ma'am.

10 A It's a tape transcript that we prepared.

11 Q Okay and that was based on both your listening to the
12 tape that was made of the original and from your
13 recollection of being the dispatcher that night?

14 A That's correct.

15 Q Do you feel that copies of that would assist the jury
16 in their understanding of your testimony?

17 A Absolutely.

18 MR. POPE: Your Honor, at this time I would move to
19 provide the jury with copies of - it'd be duplicates of
20 State's Exhibit 11 for identification to provide so they
21 can follow along with it.

22 THE COURT: Subject to -- over the objection of
23 counsel. Members of the jury panel, what you are going to
24 be handed is - is it one page?

25 MR. POPE: Yes, sir, Your Honor.

1 THE COURT: That has the transcription of what you
2 will hear. You cannot -- this is not an exhibit. This is
3 not something you will have back in the jury room. We will
4 take them back up as soon as this testimony is over, but
5 this will be so that you can follow along on that page as
6 you listen to this next bit of evidence.

7 If you have one for the court to follow, that would be
8 --

9 MR. POPE: Your Honor, I thought we had one for
10 everybody. Mr. Dunn, is that all?

11 MR. DUNN (BAILIFF): That's all there is.

12 THE COURT: Okay, that's all right.

13 Q Ms. Simmons, if you could, this transcription relates
14 to roughly the three minutes that will be reflected on the
15 tape, is that correct?

16 A That's correct.

17 Q What I would like to do as we go through and all I am
18 asking you to do is explain the various codes and what
19 they mean or what a statement indicates as far as your
20 vernacular in law enforcement, okay?

21 A Okay.

22 Q When the first language of Mr. McCants, "York County
23 66" what does that mean?

24 A Each unit or each officer has a specific number that
25 indicates who they are. So when it says "York County 66,"

1 York County is referring to Dispatch and that 66, which is
2 Deputy McCants number, he was calling in to Dispatch.

3 Q Okay and then Dispatch says "66". What does that
4 mean?

5 A That was Dispatch acknowledging Brent's traffic.

6 Q And I believe that was the other dispatcher with you?

7 A Right.

8 MR. SCHUSTERMAN: Your Honor, may we approach the
9 bench for a moment?

10 (Bench conference held among Messrs. Schusterman and
11 Pope and the court off the record in the presence of the
12 jury, but not within hearing by the jury.)

13 Q Ms. Simmons, you said York County referred to Dispatch
14 and 66 that's Mr. McCants' number?

15 A That's correct.

16 Q So, again, he calls in and Dispatch responds. Dispatch
17 doesn't say go ahead, Brent McCants, this is Dispatch.
18 They just say 66?

19 A Right, we refer to each other by numbers.

20 Q Okay, now going to the next line the first thing I see
21 is 10-48. What does that mean?

22 A 10-48 is saying that he is stopping a suspicious
23 vehicle.

24 THE COURT: Before there is any objection, the
25 question was what was 10-48. It doesn't have anything to

1 do with what's on that paper right there. He is just
2 asking you what 10-48 means. Don't say that "he" or "she"
3 or "here" or "I" meant something; just say what 10-48
4 means in the code.

5 Q You have 10-48. Tell the jury what the 10-48 code
6 means.

7 A 10-48 means to stop a suspicious vehicle.

8 Q And when you have 10-48 probably by location such as
9 Dave Lyle Boulevard, near Dave Lyle Boulevard, what does
10 10-48 coupled with a location mean?

11 A 10-48 means stopping a suspicious vehicle at Dave Lyle
12 Lumber near or Dave Lyle Boulevard near Dave Lyle Lumber.

13 Q So that tells you the stop and the location, is that
14 correct?

15 A Exactly.

16 Q Now next you have New York Tag Echo Mike Foxtrot. What
17 does that mean?

18 A That is a phonetic alphabet that we use in Dispatch to
19 symbolize a letter instead of having them confused.

20 Q So when you say "symbolize" that's so you can
21 understand it over the radio better?

22 A Yes, sir, and instead of getting a "B" and a "D" mixed
23 up, we use a word with each letter.

24 Q So what does Echo Mike Foxtrot mean?

25 A The letters E M F.

1 Q Okay. And again that is just a repeat of the same
2 thing?

3 A That's correct.

4 Q Okay and then 10-4 I think most people know, but what
5 does 10-4 means?

6 A Okay or all right.

7 Q Okay. And then next you have York County 79. Is that
8 the same as when McCants called, is that 79?

9 A 79 is another officer using his number.

10 Q And again when the 79 is a response, again the
11 Dispatcher is responding to 79?

12 A Exactly.

13 Q Okay then it says "66 advises he is in front of Dave
14 Lyle Lumber." What does that mean?

15 A That's Deputy Benfield asking if 66, which is Deputy
16 McCants, if he went 10-48 in front of Dave Lyle.

17 Q And then affirmative means what it says it means?

18 A It means the same as 10-4.

19 Q 10-4 we understand. Coming on down "York County," in
20 other words, any time somebody says "York County," they
21 are calling Dispatch, is that right?

22 A Yes, sir.

23 Q And at that point 66 you are advising 28 on this
24 vehicle. What does that mean?

25 A 10-28 or 28 means ownership or registration

1 information on the vehicle.

2 Q So you advising means you are requesting?

3 A You are requesting.

4 Q Okay, ownership that's like our registration of
5 vehicle?

6 A Yes, sir.

7 Q Then 29 stand by for 28, what does that mean?

8 A 10-29 is a stolen check on a vehicle or on property or
9 on persons.

10 Q Okay, when you say 29 stand by for 28, what does that
11 mean?

12 A Are speaking of when Brent says that?

13 Q Yes and again we don't want to talk specifically. If I
14 say 29 stand by for 28 what does that mean?

15 A That's telling me to run a stolen check first and to
16 hold out or hold off on the ownership registration
17 information.

18 Q Okay. Continuing down 2241, and, again, all of these
19 2239, 2241, is that military time?

20 A That is military time.

21 Q What would normal or regular time be for like the 22
22 hour? What hour would that be?

23 A That would be 10:00 PM.

24 Q So 2241 would be 10:41?

25 A That's correct.

1 Q Okay. And then you have a Dispatch involving R-11 and,
2 again, the same thing R-11 calling back, is that correct?

3 A That's correct.

4 Q Let me ask you, did Dispatch involving R-11 where it
5 goes on down and talks about Ogden Road and 901 does that
6 Dispatch have anything to do with Dave Lyle Boulevard?

7 A That was a completely separate call several miles away
8 from each other.

9 Q But it is on your same channel, is that correct?

10 A That's correct.

11 Q So the transmission at 2241 involving Ketchel and the
12 R-11 and the Pontiac Grand Prix and the four black males
13 is all somewhere else on another call?

14 A That's correct.

15 Q And at 2242 you have a statement from Cathy Pitman. Is
16 Cathy Pitman an officer with your department?

17 A No, sir, she's a civilian.

18 Q And that's self-explanatory. Finally, the last
19 question I would have as far as Mr. Benfield 79 copy is
20 that 66 York County, what does that mean?

21 A That was Deputy Benfield requesting to know if that
22 was 66 on Dave Lyle Boulevard.

23 MR. POPE: Your Honor, at this time we have Mr. Gibson
24 present. We would ask to play the tape.

25 Mr. Gibson, I would ask that you start the tape at

1 2239 and sixteen seconds, I believe is what the original
2 would be. This would be the 9-25-92. Before you begin it.
3 I would ask you to show the jury how they can know what
4 time frame military time you are talking about before you
5 play it.

6 MR. GIBSON: It will take me just a minute to cue it.
7 The military time displayed here again 2239 meaning 10:39
8 PM and 15 seconds. We have selected as the channel that
9 represents York County Sheriff's Department frequency.

10 MR. POPE: I now ask that you play 2239.16 through
11 2242.42 seconds.

12 (Tape played.)

13 Q Ms. Simmons, you said 29 standby for 28 means hold,
14 registration, give a stolen vehicle check, is that
15 correct?

16 A That's correct.

17 Q Is that the last transmission given by Brent McCants?

18 A (Witness nodded in the affirmative.)

19 Q Thank you. Answer any questions the defense may have.

20 MR. SCHUSTERMAN: No questions.

21 THE COURT: You may step down, thank you.

22 MR. POPE: Your Honor, I ask both witnesses to be
23 excused.

24 MR. SCHUSTERMAN: No objection.

25 THE COURT: Certainly, you may both be excused.

1 All of you pass those to the end of the row.

2 MR. POPE: Your Honor, if we could have the
3 opportunity to get this out of the way. I believe we have
4 one more witness that we can fit in today. The next
5 witness pass that may be long for today.

6 THE COURT: All right.

7 (Playback machine removed from courtroom.)

8 MR. BRACKETT: The State would call Sherrie Grimmit.

9 THE COURT: Come around and be sworn, please, ma'am.

10 SHERRIE GRIMMIT, being duly sworn,
11 testified as follows:

12 DIRECT EXAMINATION

13 BY MR. BRACKETT

14 Q Ms. Grimmit, would you please state your full name and
15 spell your last name for the court reporter?

16 A Sherrie Grimmit G-r-i-m-m-i-t.

17 Q Ms. Grimmit, where are you employed?

18 A The Herald here in Rock Hill.

19 Q The Herald Newspaper?

20 A Uh-huh.

21 Q Ma'am, I am going to show you what has been marked as
22 State's Exhibit 6 and ask if you can recognize the area
23 that is reflected on the map?

24 A Yes.

25 Q Do you recognize I-77?

1 THE COURT: You will have to speak up.

2 A I was just trying to get myself situated here. Is this
3 77, is that right? 77?

4 THE COURT: Even though you are getting acclimated to
5 it, I am going to ask you to please speak up because we
6 all need to hear what you are saying.

7 MS. GRIMMIT: I'm sorry.

8 A This is the Galleria. That's the Galleria.

9 Q That's right.

10 A Dave Lyle Boulevard is here.

11 Q Can you recognize where it is now?

12 A Yes.

13 Q Okay, then you can come down. Do you recognize where
14 Dave Lyle Boulevard is on this map?

15 A Dave Lyle Boulevard is right here (indicating.)

16 Q Did you have an occasion to drive on Dave Lyle
17 Boulevard on September 25, 1992 at about 10:30 in the
18 evening?

19 A Yes, I did.

20 Q Where were you coming from?

21 A I was coming from Anderson Road and I was coming onto
22 Dave Lyle Boulevard off the Anderson Road exit.

23 Q Okay, where would Anderson Road be on this?

24 A Here.

25 THE COURT: I can't do it for you; you all will have

1 to make sure the jury can see.

2 MS. GRIMMIT: I'm sorry.

3 THE COURT: I don't think the others ---

4 Q We will start here and move down and show it.

5 A Anderson Road is kind of in this area and then you
6 come on the on-ramp to Dave Lyle.

7 Q Okay, which direction were you heading when you got on
8 Dave Lyle Boulevard?

9 A I was heading toward the Mall.

10 Q Down here?

11 A Yes.

12 Q So you were coming from up in this area somewhere?

13 A Yes.

14 Q Go ahead and take your seat.

15 A Okay.

16 Q Did you notice anything unusual, Ms. Grimmit, when you
17 got on Dave Lyle Boulevard?

18 A Yes, as I was coming off of Anderson Road pulling onto
19 Dave Lyle Boulevard I noticed there was a car in front
20 with three girls in kind of an older blue car and as they
21 passed, one of the girls turned around and as she did I
22 looked and there was a car behind them with no lights on
23 and as they passed by I noticed the car had no lights.

24 Q As who passed by, the one with the girls in it or the
25 one with no lights?

1 A The one with no lights. Well, the one with the girls
2 in it I noticed the girls when my headlights hit the back
3 of the car and one of the girls was looking behind her and
4 that's when I turned and noticed the car with no lights
5 behind them.

6 Q Okay, what lane were you in? Was this a one lane or a
7 two lane road?

8 A Two lanes and I was in the right hand lane and they
9 were coming up in the left hand lane.

10 Q The girls were?

11 A The girls and the car behind them.

12 Q Okay, the car with no lights?

13 A The car with no lights.

14 Q At any time were you even with the girls at any time
15 or were they always ahead of you?

16 A As I was coming on they were approximately in front of
17 me and my headlights hit them, so they immediately as I
18 come up in this lane they got in front of me and the car
19 with no lights on came up beside of me at that point.

20 Q Did you have an opportunity to look in and see the
21 people in the car with no lights?

22 A Yes, I did; I wanted the fact they had no lights on I
23 wanted to see what was going on. I didn't know if
24 somebody was in trouble or whatever.

25 Q And what did you observe when you looked into the car?

1 A It was obvious to me it was two young black males.
2 They seemed to have some like some kind of caps/hats on.
3 The passenger was leaning forward kind of active, maybe a
4 little bit, he was leaning forward, the other driver was
5 straight up. He has his hands like this and he was doing
6 something. I noticed the passenger had kind of a coat or
7 maybe a sweat shirt on, something around his neck, the one
8 that was hunched over, he was kind of hunched.

9 Q How far was he from you as they passed? Tell me to
10 stop when I am as far from you as -- you were driving side
11 by side, tell me to stop when I am as far from you as you
12 were from that individual that night.

13 A Well, I was on the driver's side, so he was pretty
14 close, I mean, probably there. Yes, right there.

15 Q And he was in the passenger seat of his car?

16 A Yes.

17 Q In his lane and you were in the driver's seat.

18 A Yes.

19 Q So there was nothing in between you?

20 A No.

21 Q And you say they had ball caps on?

22 A Yes, it seemed to be, some kind of caps.

23 Q And the passenger was leaning forward?

24 A Yes, he was kind of hunched, hunched forward.

25 Q Anything the driver was doing?

1 A I just saw his silhouette, I didn't see what he was
2 doing.

3 Q Could you identify their faces at all?

4 A No, I could tell they were two young black males, but,
5 no, I couldn't identify their faces.

6 Q And the one in the passenger seat who was hunched
7 forward had like a sweat shirt?

8 A Yes, there was something around his neck like a hooded
9 sweat shirt or jacket or something around.

10 Q Bunched up?

11 A Bunched up, yes.

12 Q Were they going faster than you or slower?

13 A They were going faster than me. We were kind of side
14 by side for just a little bit, but they sped on past me.

15 Q What did you notice next?

16 A It wasn't too long after that that I saw the police
17 car coming up on the opposite in the opposite lane on Dave
18 Lyle and hit the blue lights.

19 Q The officer was heading back towards town?

20 A Headed back away from the mall. He was in the opposite
21 lane and he turned around - he turned his blue lights on
22 while he was on that part of the road and then he turned
23 around in the median and followed the car with no lights
24 on.

25 Q He turned in the median. Can you describe the median

1 that separates the two roads?

2 A It's just a grassy median.

3 Q A flat, grassy median?

4 A Yes.

5 Q Okay. Did the police car turn in front of you or
6 after you passed?

7 A No, he turned in front of me.

8 Q Okay, so some distance ahead of you?

9 A Yeah, they had already passed on.

10 Q Did you see the police car after it came to a stop
11 behind the other vehicle?

12 A Yes, I did.

13 Q Did you ever lose sight of the vehicle and the police
14 car?

15 A Yeah, there's a point and I went back there the other
16 night, there's a hill on Dave Lyle where you can't see
17 that car where they stopped, so I lost sight of them for
18 just a few seconds and as I topped that hill I noticed
19 they were easing into the median, he had stopped them
20 there, and as I drove by they were completely stopped.

21 Q Okay, did they pull off on the left side or the right
22 side of the road?

23 A The left side into the median between the two.

24 Q Okay.

25 MR. BRACKETT: I ask that this be marked for

1 identification.

2 (State's Exhibit 15 marked for identification purposes
3 only.)

4 Q Ms. Grimmit, I am showing you what's been marked as
5 State's Exhibit 15 for identification and I'll ask you if
6 you recognize what is depicted in that photograph.

7 A Yes.

8 Q Can you tell us what that is?

9 A That's Dave Lyle Boulevard going toward Rock Hill
10 Galleria.

11 Q Okay.

12 MR. BRACKETT: Your Honor, I ask this to be moved into
13 evidence.

14 MR. SCHUSTERMAN: Without objection.

15 THE COURT: Without objection, it will be received
16 into evidence.

17 (State's Exhibit 15 marked and filed.)

18 Q Do you recognize that specific portion of Dave Lyle
19 Boulevard?

20 A Yes, I do.

21 Q Okay, can you tell us where that is exactly on Dave
22 Lyle?

23 A The portion where he pulled him over?

24 Q Yes, is that what that is?

25 A Yes, it's right here (indicating).

1 Q Is that -- there's two turn arounds indicated in that
2 picture. Which one is it, the one in the foreground or
3 the one off in the distance?

4 A The one in the foreground.

5 Q And they pulled off on the left side you say?

6 A Yes.

7 Q Ms. Grimmit, did the police car pull up directly
8 behind the other vehicle or slightly off kilter to it?

9 A He pulled up behind them. The car with no lights on
10 were at a slight angle into the median, but a few feet
11 away straight. Is that what you are asking me?

12 Q Yes. As you passed by what did you notice? Did you
13 look to see?

14 A Yes, I looked to see if I recognized - I know quite a
15 few of the deputies and I wanted to see if I recognized -
16 and when I looked in the police car, the deputy had his
17 hand in front of his face and I assumed at that point he
18 must have been radioing in and I saw his silhouette, but I
19 did not look into the car because I knew it was the car
20 that had just passed me.

21 Q Ms. Grimmit, if you would step down for just one
22 second. If you would take State's Exhibit 15 and just
23 walk in front of the jury rail and show them exactly where
24 they were stopped at a place in that picture.

25 A (Witness complied.)

1 Q Ms. Grimmit, please answer any questions the defense
2 may have.

3 CROSS EXAMINATION

4 BY MR. SCHUSTERMAN

5 Q Ms. Grimmit, how are you?

6 A I'm fine, how are you?

7 Q Based on your taking a fairly quick look at these two
8 gentlemen in passing them, you didn't study them, is that
9 correct?

10 A I notice things. I am an artist and I can pick up
11 details real quickly.

12 Q Based on what you saw the person who was the passenger
13 in the car that night would have been closer to you.

14 A Uh-huh.

15 Q You would have had a better view of that person than
16 the driver, is that correct?

17 A Yes.

18 Q If you had to tell this court in your belief whether
19 or not the person in the passenger seat was wearing a
20 hooded sweat shirt or some hooded garment or not wearing
21 one, what would you say?

22 A If I had to tell whether the passenger was wearing
23 that or not?

24 Q Yes.

25 A Were they wearing that?

1 Q Were they wearing that. Do you believe that the
2 passenger that night from what you saw was or was not
3 wearing a hooded garment of some sort.

4 A He was.

5 Q He was wearing a hooded garment?

6 A He was wearing a hooded garment.

7 Q Do you feel fairly certain about that?

8 A Yes, I do.

9 Q Let me ask you. You say you take notice. Did you
10 happen to notice the color of that garment?

11 A No, I couldn't see colors.

12 Q Okay, but clearly he was wearing a hooded garment?

13 A Yes.

14 Q Thank you.

15 MR. SCHUSTERMAN: That's all I have, Your Honor.

16 MR. BRACKETT: I ask that this witness be excused.

17 THE COURT: You may step down. You may be excused.

18 MS. GRIMMIT: Thank you.

19 MR. POPE: Your Honor, with what we have I think the
20 next witness will take us further than we anticipated.

21 THE COURT: We have to line up witnesses and bring them
22 in and, apparently, it has gone quicker than we had
23 anticipated today, which is fine in the long run. But that
24 means that the next witness he is telling us he would have
25 would probably take us beyond our usual quitting time, so

THE STATE VS HUGHES

1 we will stop. We are going to come back at 9:30 in the
2 morning and I think as I have already told you I usually
3 start at 9:00, but I think with you all functioning as a
4 group, it's just going to work better if we start around
5 9:30. So have a pleasant evening. Keep in mind you don't
6 know enough yet to make up your mind about anything about
7 this case. You are not in position yet to discuss the
8 case. While we are going to do our best to make sure that
9 you aren't exposed to any media, the world is a very
10 active place and we can't tell what someone might say that
11 might be heard in your presence. So don't listen to
12 anything about this case from any source be it anyone,
13 television, radio and don't permit yourself to read
14 anything about it. Have a pleasant evening and we will
15 see you in the morning.

16 (Jurors exit courtroom.)

17 THE COURT: Anything we need to attend to before we
18 adjourn for today?

19 MR. POPE: No, sir, Your Honor.

20 THE COURT: The defense?

21 MR. SCHUSTERMAN: No, sir, Your Honor.

22 THE COURT: Let me see counsel just for a couple of
23 minutes.

24 SEPTEMBER 15, 1995

25 THE COURT: Is The State ready to proceed?

MARY GRANT

DIRECT

1 MR. POPE: The State is ready, Your Honor.

2 MR. SCHUSTERMAN: The defense is ready, Your Honor.

3 THE COURT: Bring in the jury.

4 Mr. Dunn, would you get Ms. Hartman's letter and
5 bring it up here to me?

6 JUROR HARTMAN: One thing I ask if I could have the
7 original back just in case they use that for my admission.

8 THE COURT: We will. We just need this to get some
9 numbers off of.

10 JUROR HARTMAN: Thank you.

11 THE COURT: All right, call your next witness.

12 MR. POPE: May it please the court, Your Honor. The
13 State would call Mary Grant.

14 THE COURT: Come around and be sworn, please, ma'am.

15 MARY GRANT, being duly sworn, testified
16 as follows:

17 DIRECT EXAMINATION

18 BY MR. POPE

19 Q Ms. Grant, if you would, state your name and
20 occupation for the jury, please.

21 A My name is Mary Grant and I am a steel salesman for
22 Tison Steel in Richburg, South Carolina.

23 Q Ms. Grant, where do you reside?

24 A I reside in Rock Hill.

25 Q Do you have any children?

MARY GRANT

DIRECT

1 A I have three grown daughters.

2 Q And, Ms. Grant, were you living in Rock Hill back on
3 September 25, 1992?

4 A Yes, I have lived in Rock Hill all of my life.

5 Q Back on that Friday evening were you out around Rock
6 Hill that Friday evening?

7 A On September 25th my sister and I had gone down to
8 Richburg to the Lewisville - Fort Mill football game.

9 Q Would you tell the jury - Richburg in proximity to
10 Rock Hill I believe I-77 runs north and south, is that
11 correct?

12 A Yes, it's 77 down to Richburg it's about eighteen
13 miles.

14 Q Okay. I'll show you on State's Exhibit 6 and ask if
15 you would take a look and get oriented.

16 A Okay.

17 Q This being Dave Lyle and this being 77. Do you
18 recognize this?

19 A Yes, sir.

20 Q And so would this direction up 77 would take you ---

21 A To Richburg, you would be going south.

22 Q South this way to take you toward Charlotte and this
23 way would take you toward Richburg, is that correct?

24 A Yes; I'm sorry.

25 Q It appears to be the other way around.

MARY GRANT

DIRECT

1 A I got you, yes, sir.

2 Q So for the jury then Richburg would be off to this
3 side of this diagram, is that correct?

4 A Uh-huh.

5 Q If you could relate to the jury - you say you and your
6 sister went to a ball game down in Richburg?

7 A Yes, that's correct.

8 Q Just relate what occurred after the ball game.

9 A My sister's daughter was a student at Fort Mill High
10 School at that time so we had gone to the ball game
11 because Fort Mill was playing Lewisville. After the game
12 we had talked for a few moments with her daughter and some
13 of her friends and they were leaving to go to a party and
14 just shortly after the game was over we headed back to
15 Rock Hill. We were going to go out to eat.

16 Q Okay and did you come back up 77 when you came back to
17 Rock Hill?

18 A Yes, sir.

19 Q Where did you get off at 77 at?

20 A We took the exit at Dave Lyle, right as you come off
21 where the Mall is there's the Galleria Mall and the
22 Cinema. I think there's a hotel there.

23 Q When you came off that exit, which direction did you
24 head?

25 A We went to the left, headed back toward town.

MARY GRANT

DIRECT

1 Q Would that have been toward or away from the Mall?

2 A Away from the Mall.

3 Q All right, so you headed back toward town and back up
4 under the interstate, is that correct?

5 A That's correct.

6 Q Tell the jury what, if anything, you saw.

7 A About the time that we got to the overpass there we
8 saw some blue lights flashing, a police car had stopped a
9 car. It looked like a traffic stop except that the car was
10 on the inside lane. He hadn't pulled over to the outside,
11 but he had stopped them on the inside lane of the road
12 there.

13 Q And when you say that the officer had the car stopped,
14 was the officer's car and the car that stopped was it
15 facing the same direction that you were traveling or
16 facing toward you?

17 A It was facing towards us. They were headed out toward
18 the Mall and we were going back the other way.

19 Q Okay, what, if anything, did you do then?

20 A As we came up, we noticed it looked as though
21 something were lying there beside the road and we slowed
22 down a little. As we approached we noticed that there were
23 two people standing there and as we had gotten closer we
24 could see that the thing that was lying there was a police
25 officer. There were two men that were standing over him.

1 Q Could you describe to the jury as you are coming
2 toward the police car and the other car, you saw something
3 lying there, what were the two men doing as best you could
4 tell?

5 A They were stooped over, one was crouched down fairly
6 low and the other was over him and they were pulling at
7 him, tugging, sort of a tugging type motion.

8 Q Okay, as you were pulling up when you first got there,
9 could you tell what they were pulling or tugging on when
10 you first pulled up?

11 A No, sir, it wasn't until we had gotten closer to see
12 that it was actually the policeman.

13 Q I'll show you State's Exhibit 12 and ask if you could
14 step down and take a look at this, please, ma'am.

15 A (Witness complied.)

16 Q Orient yourself and indicate to the jury exactly where
17 the Mall is and where 77 is and Dave Lyle.

18 A This would be I-77 here and this would be headed
19 toward Charlotte going north. The Galleria Mall is here
20 and this is Dave Lyle Boulevard.

21 Q When you and your sister pulled off the interstate,
22 which way would you have been traveling on Dave Lyle?

23 A We were headed north. We were coming back from
24 Richburg, so we were headed north.

25 Q Once you got off the interstate, which way would you

1 have been traveling?

2 A As we came off of the exit here and we turned back
3 this way toward down town.

4 Q And the location of where you saw the police car and
5 the stopped vehicle where would that have been?

6 A It was right in here. I'm sorry. This is the exit
7 here. Okay, it was right here at this turn around.

8 Q Okay and you and your sister would have been traveling
9 in this direction?

10 A Yes, sir.

11 Q Tell me while I have got you down here, this may be a
12 little bit easier for the jury, I show you State's Exhibit
13 15. Will you look at that and I'll ask you to indicate,
14 if you could for the jury, where the car was stopped and
15 the direction you and your sister were traveling on this
16 picture.

17 THE COURT: What you might want to do is do half and
18 half because that is small.

19 Q With the Mall in the background, the interstate being
20 here and this being Dave Lyle.

21 A This is Dave Lyle.

22 Q Yes, ma'am. First I would ask, if you could be sure
23 all the jurors can see it, and we will do it half and
24 half. This is the interstate. If you should show the
25 direction your sister and you were traveling, of course,

1 Rock Hill being here.

2 A We were coming back this way toward town and the car
3 was stopped, it was stopped right here at this little turn
4 through and the car was stopped here on the inside lane
5 right here.

6 Q If you could also indicate while you have the picture
7 at this half of the jury where you saw the two
8 individuals?

9 A The car was stopped here. The officer was lying right
10 here in this grass right here at the edge of the road and
11 the two men were over him.

12 Q Okay, if you could then show them.

13 A We were heading this way back toward town and the car
14 were stopped right here on the inside lane and the police
15 officer was lying on the grass and the two men were
16 standing over him.

17 Q Have a seat, please, ma'am. Were you driving or were
18 your sister driving?

19 A My sister was driving. We were in her car.

20 Q By the time you got to the little cut through there
21 where they were stopped, how fast was your car moving at
22 that time?

23 A We were going fairly slow because it looked a little
24 suspicious, so I would say probably no more than thirty
25 miles an hour.

MARY GRANT

DIRECT

1 Q Once you got adjacent to the patrol car and, of
2 course, you were in the other lane, is that correct?

3 A We were on the inside lane.

4 Q When did you actually see that it was an officer being
5 tugged on?

6 A We were almost adjacent to where he was lying before
7 we could tell exactly.

8 Q And once you saw that it was an officer what did you
9 and your sister do then?

10 A I had indicated to my sister that it was a policeman
11 and we needed to stop he needed help and she put on brakes
12 at that time.

13 Q And she stopped there in the road at Dave Lyle?

14 A Yes, sir.

15 Q At the time you had come to a stop there beside the
16 car and the policeman, I say the side, you were on the
17 other side, were you not?

18 A Yes.

19 Q Where were the two individuals at that time?

20 A By the time we had gotten there one had that was
21 standing over the other he had already gotten into the car
22 on the passenger side and the other got up and got in the
23 car on the driver's side at about that time.

24 Q You had indicated that -- were they both stooped or
25 bent over the same or was there a difference?

1 A No, one was crouched down fairly low and he was doing
2 most of the motion. The other was over him.

3 Q Now the one that was over him what side of the car did
4 he get in?

5 A He got in on the passenger side.

6 Q And the one that was down crouched lower, the closest
7 to the ground, what side did he get in?

8 A He got in on the driver's side.

9 Q You said one left the body first.

10 A Yes.

11 Q Which side did the one that left the body first, which
12 side did they get in?

13 A The one who left first was the one who got in on the
14 passenger side.

15 Q And the one that was crouched the lowest and remained
16 the longest got in on the driver's side?

17 A That's correct.

18 Q Once you began to back up were you able to observe the
19 other vehicle?

20 A Yes, we had said to ourselves as we were backing up
21 that we needed to get the license number of the car, so we
22 both turned around as Cathy was backing the car up to get
23 the license plate on the car.

24 Q Would you tell the jury what you recall about that
25 license plate?

1 A It was an out-of-state tag. We could not read the
2 numbers that well -- I mean the letters that well, but we
3 could read the numbers 313.

4 Q Once you had stopped and backed up what did you and
5 your sister do then?

6 A We backed back and the turn-in there we turned
7 straight in there into the turn through there.

8 Q When you backed up and turned in, where was the gray
9 vehicle? Where was it at?

10 A They had already gotten into the car at that time and
11 they were pulling away slowly.

12 Q And what did you and your sister do at that time?

13 A When the car pulled off, we got out of the car to see
14 if we could help the policeman.

15 Q When you got out of the car to help the policeman,
16 tell the jury what you did what you were able to do.

17 A As we got out we saw that the policeman was lying he
18 was lying face down. His head was toward the Mall. We
19 called to him before we got there because we did not know
20 if he were conscious or not and we wanted to make sure who
21 we were coming up. So we called out to him, but he didn't
22 respond. So then we went over to him and we tried to see
23 what kind of injuries he had. We tried to turn him over.
24 We could not turn him over totally by ourselves, but he
25 had a - it looked as though he had been shot in the head,

MARY GRANT

DIRECT

1 in the back of his head and I told my sister that I
2 thought he had been shot. We noticed the blood as we
3 turned him kind of, a big knot here on the front of his
4 forehead. His face was swollen.

5 Q Did you recognize -- do you know a number of officers?

6 A Yes, sir, I did. I did not recognize him. We tried to
7 turn him over to see his badge to see what his name was,
8 but I did not recognize the name.

9 Q At this point what were you able to do or what did you
10 try to do for the deputy that night?

11 A We tried to check to see if he had a pulse, but we
12 were not able to tell if he had a pulse or not, but we
13 talked to him and comforted him and told him that we would
14 be there with him until we would get help and we would
15 stay there until somebody came.

16 Q And did you do anything else to try to seek help you
17 and your sister at that time?

18 A Yes, the patrol car was still running and I told my
19 sister - she said we needed to get some help and I said,
20 "Use the car radio" and I told her how to use the radio
21 and just to call mayday and I went out to the road to flag
22 down some cars to try to get some help.

23 Q And ultimately did some help arrive?

24 A Yes, sir, just within a matter of moments.

25 Q And when law enforcement got there, did you give them

MARY GRANT

DIRECT

1 as best as you could a description of the individuals and
2 a description of the vehicle?

3 A Yes, sir.

4 Q And you gave them 313 that you had for the tag?

5 A Yes, sir.

6 Q The next day did you all have an opportunity to go
7 down to observe the vehicle or a vehicle?

8 A Yes, sir, we went to the police station in Rock Hill.
9 They called and asked us to come down. We did not go
10 together. We went separately.

11 Q I'll show you State's Exhibits 1, 2 and 3 and ask if
12 you would take your time and look at those and see if you
13 recognize that.

14 A Yes, sir.

15 Q How do you recognize that vehicle?

16 A This was the car that was stopped that night. It has
17 the out-of-state tag with the numbers on it and the
18 description fits the description that I had given to the
19 police department.

20 Q And you base that identification on what you had seen,
21 the vehicle stopped and the tag that you and your sister
22 had seen?

23 A Yes, sir.

24 Q Were you able to give law enforcement a description of
25 the individuals that you saw down there with the body?

MARY GRANT

DIRECT

1 A As best I could. There were two black males. They
2 seemed to be of average height to me. One in particular
3 was wearing a dark jacket. It looked like a nylon jacket
4 or something of that sort, dark clothing.

5 Q Was there one that you had the opportunity to see
6 longer than the other?

7 A The one who was crouched down pulling at the body we
8 had a longer look at him because he was the last one to
9 get in the car and he was the one with the dark jacket on.

10 Q And the one with the dark jacket got into ---

11 A On the driver's side.

12 Q Ms. Grant, I'll show you State's Exhibit 16, 17 and 18
13 and ask if you could look at those and tell me if you can
14 identify those.

15 A Yes, sir.

16 Q Ms. Grant, does these pictures depict the vehicle as
17 you saw it that night?

18 A When we stopped, of course, the blue lights were on it
19 at that time and the door was not open. Cathy opened the
20 door when she used the radio.

21 Q Cathy is your sister?

22 A Yes. But that is the car that was stopped.

23 MR. POPE: Your Honor, I move that 16, 17 and 18 be
24 admitted into evidence.

25 MR. SCHUSTERMAN: Without objection.

1 THE COURT: Received without objection.

2 (State's Exhibit 16, 17 and 18 marked and filed.)

3 MR. POPE: Your Honor, we also have been referring to
4 State's Exhibit 12 from yesterday. My understanding is
5 that it is also in evidence.

6 THE COURT: I think 6 and 12 were put in together.

7 Q Ms. Grant, when the gray car pulled off, what
8 direction did it leave in?

9 A It headed back toward the Mall back toward 77.

10 Q As far as it did or didn't get on the interstate or
11 anything were you focusing on that at that point?

12 A No, sir, after the car pulled off our efforts were
13 toward the policeman trying to help him.

14 Q I'd ask you if you could step down. If you could
15 indicate to the jury Officer McCants when you found him
16 what did you say he was face down, is that correct?

17 A Yes, sir.

18 Q What direction was his head facing?

19 A His body was lying his head was faced back toward the
20 Mall.

21 Q If you could show the jury State's Exhibit 15 and you
22 are going to have to take your time to make sure they see,
23 show them where you recall Mr. McCants being and show them
24 the direction and show them where the two individuals were
25 in relation to Mr. McCants.

MARY GRANT

DIRECT

1 A The patrol car was here and this is facing back toward
2 the Mall. Right here is where the body was under this
3 marker here. The body was here in the same direction as
4 the car.

5 This is Dave Lyle here. The car that was stopped was
6 right here. This is where the body was back in this
7 direction.

8 Q And, again, you said that your sister had to actually
9 open the door, is that correct, ---

10 A Yes, sir.

11 Q And the blue lights would have been on?

12 A Yes, sir.

13 Q If you could just show them 17 again. If you could
14 tell them how that relates to the picture, also show where
15 the body was and where the individuals were.

16 A This is a little bit better here. You can see the body
17 was right here. It was a little bit in front of where the
18 patrol car was. This is the marker right here where the
19 car was stopped and the other car was right directly in
20 front of him.

21 Right here is where the car was. The body was right
22 here in front of where the car was.

23 Q Ms. Grant, when you first saw the individuals before
24 you knew that it was Brent McCants when you first saw
25 them, you saw two individuals?

MARY GRANT

CROSS

1 A That's correct.

2 Q When they left the scene, did the individuals leave
3 the scene together?

4 A The two men left together.

5 Q Answer any questions the defense may have.

6 CROSS EXAMINATION

7 BY MR. SCHUSTERMAN

8 Q Good morning, Ms. Grant. My name is Steve Schusterman
9 and I represent Mr. Hughes. I just have a couple of
10 questions for you. As I understand it you were coming
11 back from a football game.

12 A That's correct.

13 Q And you were with your sister?

14 A Uh-huh.

15 Q In her car?

16 A That's correct.

17 Q And you were heading North on 77?

18 A Yes, sir.

19 Q I assume you exited at Dave Lyle Boulevard?

20 A That's correct.

21 Q And when you came off the exit ramp, you made a left
22 turn onto Dave Lyle, is that correct?

23 A Uh-huh.

24 Q How soon after you made the left turn did the blue
25 lights attract your attention?

1 A It was only a moment. It was dark that night and that
2 was the only cars on the road, so the blue lights flashing
3 it was very bright at that time. It was only a moment
4 after we turned that we could see the blue lights ahead.

5 Q How far would you estimate the distance is from the
6 time you made a left turn and I believe you go under I-77
7 once you made the left turn - how far a distance is it
8 would you estimate from the overpass to the scene where
9 the blue lights were?

10 A From the overpass to where the blue lights were it was
11 a few hundred feet I would imagine.

12 Q And did you as soon as you went under the overpass did
13 you immediately spot the blue lights?

14 A We saw the blue lights flashing before we got to the
15 overpass, but we could see them well as we went under the
16 overpass.

17 Q And this is about 10:40 in the evening approximately?

18 A Give or take, yes, sir.

19 Q Give or take. And it was dark?

20 A Yes, sir.

21 Q From a few hundred feet away the first time you saw
22 the blue lights did anything appear out of the ordinary to
23 you?

24 A Yes, we could see that something was lying there
25 beside the car, that was the main thing. We could not tell

MARY GRANT

CROSS

1 what it was.

2 Q Is Dave Lyle a lit highway? Does it have street lights
3 on it?

4 A Yes.

5 Q And you indicated from the time you saw the blue
6 lights at the overpass being several hundred feet away
7 that you could already tell that something was amiss?

8 A Yes, sir.

9 Q I believe you indicated -- did you drive up parallel
10 -- you were going in the opposite direction that the cars
11 were parked, is that correct?

12 A Uh-huh.

13 Q How far up Dave Lyle Boulevard did you go before your
14 sister stopped the car?

15 A We drove up to almost to parallel to where the patrol
16 car was.

17 Q Did she stop the car at that point when it was
18 parallel?

19 A Yes.

20 Q Did she stop it on the left hand side of the road or
21 the right hand side?

22 A We were on the left hand side.

23 Q So you were in the same median?

24 A Yes.

25 Q You were just on the other side of the median?

1 A That's correct.

2 Q At what point did you notice that there were what you
3 believed to be two black males over the body?

4 A It was before we had gotten that close. As we had
5 gotten closer I would say probably fifty feet or so.

6 Q You could see that they were over the body.

7 A Yes, sir.

8 Q Now you indicate in your direct examination that one
9 of the black male was crouched around the knee area.

10 A He was stooped down; I don't think he was on his
11 knees. I think he was stooped down.

12 Q When you say "stooped" and I am not going to ask you
13 to demonstrate, but when you say "stooped," do you mean
14 like this?

15 A Yes, sir.

16 Q Was the body beside him or was he almost for lack of a
17 better term straddle the body?

18 A The body was in front of him, just as your hands are
19 the body was in front of him.

20 Q And without being too morbid the head would be here?

21 A Yes, sir.

22 Q And the feet would be here?

23 A Uh-huh.

24 Q And you say that he was around directly in front of
25 you he was around his knees, is that correct?

1 A I didn't say he was around his knees, but he was
2 behind him there I would say probably - where they were
3 pulling, it looked like they were pulling him around his
4 jacket or somewhere in there. It wouldn't have been around
5 his knees.

6 Q He would not have been crouched around his knees, is
7 that what you are saying?

8 A Where they were pulling -- the officer or him? I'm
9 sorry.

10 Q The gentleman who was in a crouched position and he
11 has the body laying in front of him I believe you indicate
12 that he was stooped around his knees in the vicinity in
13 terms of the body in his knee area.

14 A No, he was stooped down in the position, his knees
15 were down, but they were pulling around the jacket area.
16 They wouldn't have been down that far. It would have been
17 a little bit closer around his waist I would say.

18 MR. SCHUSTERMAN: I beg the court's indulgence, Your
19 Honor.

20 THE COURT: Certainly.

21 Q While one of the gentlemen was crouched around his
22 waist area is it your testimony that that person who was
23 crouched in this position was tugging on something around
24 his jacket area?

25 A Yes, sir, I would say so.

1 Q I don't want to put words in your mouth, Ms. Grant, I
2 just --

3 A That's what it appeared to me.

4 Q It appeared.

5 A Yes.

6 Q Now you say there was a second gentleman.

7 A Yes, sir.

8 Q Where was the second gentleman?

9 A He was standing to the side, he was not crouched down,
10 he was bent over more.

11 Q More like this (indicating).

12 A More like that.

13 Q All right and in relation to the man who was in a
14 crouching position was he on the same side of the body or
15 on the other side?

16 A They were both on the same side.

17 Q Both on the same side.

18 A Yes, sir.

19 Q And if they were both on the same side, he would have
20 to be either to his left, his immediate left, or his
21 right, correct?

22 A Uh-huh.

23 Q Which?

24 A I would say he would be to his right.

25 Q So further towards the head, is that correct?

1 A Yes.

2 Q And he was bent over him?

3 A Uh-huh.

4 Q How long did you get to see these gentlemen? How much
5 of an opportunity did you have to view them?

6 A It was a very short period of time. I can't tell you.

7 Q Would you say a second?

8 A Probably.

9 Q Let me ask you. How long and again I understand no one
10 is timing, but approximately how long do you believe it
11 took you to get from the overpass until such time as you
12 were parallel to the situation where your sister said she
13 pulled off or you say you pulled off. How long?

14 A I would say only a moment or so.

15 Q A moment or so.

16 A Uh-huh.

17 Q During -- while you were getting off the highway
18 coming down the ramp making a left turn, do you remember
19 hearing any noises, any loud noises?

20 A Like a gun or something like that?

21 Q Right, like a gun, like a bang, like a pop, a shot?

22 A No.

23 Q You never heard any noises?

24 A No, we did not. Of course, we weren't really looking
25 for anything like that.

1 Q I'm not saying you were looking, but I thought maybe
2 you just --

3 A No, we would not have been aware of something like
4 that, nothing that caught our attention. We were talking
5 like sisters do.

6 Q Once you -- let me ask you. Removing the two men for
7 a moment, let's take them away, and now you are viewing
8 this officer laying on the ground, in relation - you say
9 his head is facing toward I-77 the same direction as the
10 patrol and this other gray vehicle you saw.

11 A Yes, sir.

12 Q In relation to the gray vehicle where is the body?
13 It's running parallel I understand.

14 A Yes, the body was a little bit in front of the patrol
15 car. It wasn't directly parallel to the patrol car. The
16 body was a little ahead of the patrol car, but behind the
17 gray car.

18 Q Was it almost in between? Would you say it was between
19 the two vehicles?

20 A The car looked, you know, he had the car stopped so he
21 was directly behind that, but the body was over toward in
22 front of the patrol car, so it would have been toward the
23 back of the gray car.

24 Q And both you and -- and your sister is Cathy Pittman,
25 is she not?

- 1 A Yes, sir.
- 2 Q You both got out of the vehicle?
- 3 A Yes.
- 4 Q And the voice that we hear saying "Mayday" I assume
- 5 that that's Ms. Pittman?
- 6 A That's my sister.
- 7 Q You instructed her to get on the police radio?
- 8 A Yes.
- 9 Q Is that correct?
- 10 A Uh-huh.
- 11 Q Now in terms of leaving the scene the gentleman who
- 12 was not crouched, but who was bent over, the man closer to
- 13 his head, I think your testimony was that he was the first
- 14 to withdraw?
- 15 A Yes.
- 16 Q Is that correct?
- 17 A Uh-huh.
- 18 Q And he walked around and got in the passenger side?
- 19 A Yes, he walked in between the two cars, in front of
- 20 the patrol car, and got in the passenger side.
- 21 Q The man who was crouched, the man who was crouched
- 22 down, he stayed I guess a little longer?
- 23 A Yes, sir.
- 24 Q Again we are talking seconds, we are not talking a
- 25 long duration of time.

1 A Uh-huh.

2 Q And then he got into the driver's side?

3 A Yes.

4 Q Now I assume you were probably shown photo-lineups of
5 people?

6 A No, sir.

7 Q You never were?

8 A No, sir.

9 Q Did you indicate to the police that you probably would
10 not be able to identify those two people?

11 A We gave them the best description that we could but we
12 were not asked to identify them from a photograph. We were
13 asked to identify the car.

14 Q The car.

15 A Uh-huh.

16 Q It appeared to you that the man crouched was tugging
17 on something, pulling on his belt, correct?

18 A Yes, sir.

19 Q You are not sure what he was doing, it just appeared
20 that he was pulling on the belt.

21 A That's true.

22 Q And am I to understand that the two men, one crouched,
23 one bent over, was standing between the cars and the body
24 so they were actually for lack of a better term they were
25 facing you?

1 A Yes.

2 Q And the man who was bent over to his right he was just
3 bent over he was not tugging, he was just bent over the
4 body in some way?

5 A From the best of my recollection that's true.

6 Q And that's all we would ask, and it was the man that
7 was bent over, just so I understand, the man who was bent
8 over at towards the head of the body he withdraws, goes
9 around between the patrol car and the gray car, gets in
10 the passenger seat. The man who is crouched down
11 continues to tug and then gets into the driver's seat?

12 A Yes.

13 Q And they pull away.

14 A (Nodded)

15 THE COURT: Is that a yes? I didn't hear an answer.

16 MR. SCHUSTERMAN: I think she said yes.

17 A Yes, sir.

18 Q Ms. Grant, thank you very much for your testimony. I
19 appreciate your being here.

20 REDIRECT EXAMINATION

21 BY MR. POPE

22 Q Ms. Grant, as I understood your testimony you come up
23 and first you see, and you don't know it's Brent McCants,
24 you just see the two people ---

25 A That's right.

1 Q --- and then as you get what ultimately ends up being
2 stopped beside him, that's when you can see that it's an
3 officer and as you have explained one went to the car, the
4 one that was bent over like this - if I understood your
5 testimony, when you first saw them, before you knew what
6 it was, you saw both of these individuals hands moving, is
7 that correct?

8 A They both looked like they were pulling on whatever,
9 but as we got closer, the first one got in the car and the
10 other one remained there and was pulling.

11 Q Okay and you had told Mr. Schusterman the time that
12 you had seen these individuals, both before you realized
13 this was Brent McCants and after you did, how close
14 proximity were these two individuals that you saw? How
15 close were they to each other?

16 A The two men?

17 Q Yes, ma'am.

18 A They were side by side.

19 Q Thank you, ma'am.

20 RECROSS EXAMINATION

21 BY MR. SCHUSTERMAN

22 Q Just one last question. From what you could see, was
23 either man in possession of a weapon of any sort?

24 A I did not personally see a weapon. I could not testify
25 to that. I don't know.

CATHY ANN PITTMAN DIRECT

1 Q I appreciate it.

2 THE COURT: You may step down.

3 MR. POPE: I ask that the witness be excused.

4 MR. SCHUSTERMAN: Without objection.

5 THE COURT: You are free to leave.

6 MR. POPE: The State would call Cathy Pittman.

7 THE COURT: Good morning, just come up here and the
8 Clerk will administer an oath.

9 CATHY ANN PITTMAN, being first duly sworn,
10 testified as follows:

11 DIRECT EXAMINATION

12 BY MR. POPE

13 Q Ms. Pittman, if you would, state your name and
14 occupation for the jury.

15 A Cathy Pittman and I am a customer self-service
16 representative for Harper Corporation.

17 Q Are you married, Ms. Pittman?

18 A I'm separated.

19 Q Do you have any children?

20 A I have one daughter.

21 Q Where do you live?

22 A I live in Fort Mill.

23 Q Back in 1992 did you also live in Fort Mill?

24 A I did.

25 Q Back on September 25, 1992, did you have the

1 opportunity to go down to a ball game with your sister to
2 Richburg?

3 A Yes, I did.

4 Q Coming back from that ball game did anything unusual
5 occur or did you notice anything unusual as far as you and
6 your sister were concerned?

7 A Yes, I did.

8 Q Would you relate what occurred for the jury, please,
9 ma'am?

10 A We were headed North on I-77 and we took the Dave Lyle
11 Boulevard Exit and as you come off the exit and turn to
12 the left, which is Dave Lyle Boulevard, went toward Rock
13 Hill and just as we were coming from under the underpass
14 at I-77 I noticed a patrol car had another car pulled
15 over. And what was so strange to me was that the car was
16 pulled over in the inside lane, the one closest to the
17 median, and the blue lights were on and the car that he
18 had stopped, the patrolman had stopped, was in front of
19 the patrol car. I thought that was odd so I began to slow
20 down to notice what was going on and as we got a little
21 closer to the scene we noticed there were two men there in
22 the median area and I couldn't really detect what they
23 were doing, but they were doing something - something was
24 going on. And so I slowed down even more and as we got
25 closer to where they were I noticed that there was a man

1 crouched down on the ground and one was standing over
2 something or somebody and he was kind of in a leaning
3 position and the one on the ground was doing some kind of
4 motion like a shaking type motion and I was going very
5 slowly at that point. So the one in the leaning position
6 jumped up or stood upright and begin to run and he ran in
7 front of the patrol car and got into the car on the
8 passenger side. The other man stayed in the same position
9 down on the ground. He was still doing something and for I
10 don't know exactly what length of time, but it seemed like
11 maybe a couple of minutes, maybe it wasn't that long, I'm
12 not sure, but he stayed there and he jumped up and he ran
13 and he ran and got in on the driver's side.

14 Q Ms. Pittman, when you were coming up first you saw the
15 blue lights and the cars, do you have an idea distance
16 wise how far away you were when you first saw the two
17 individuals in the median? Was that a pretty good
18 distance or close or how far?

19 A Distance wise I would say it's further than what you
20 are to me.

21 Q From here to the back of the courtroom or further?

22 A Yes, I think maybe that distance would be appropriate.

23 Q You say as you got closer you slowed down even more,
24 is that correct?

25 A That's correct.

1 Q When you first noticed they were over something, that
2 you started to see something in the median, how close do
3 you think you were to them?

4 A Probably maybe where you are.

5 Q And then as you came on up and were able to see that
6 it was a person and it was the officer how close do you
7 think you were?

8 A I think maybe a little further back than you are now
9 because it wasn't that close.

10 Q Okay. And now you are driving the vehicle, is that
11 correct?

12 A Yes, I was driving.

13 Q And so you pull up and the police car and the other
14 car would be to your left, is that right?

15 A That's right.

16 Q As you were pulling up you were continuing to slow
17 down, did you ultimately stop?

18 A I stopped at the point where we got - I drove a little
19 bit further and there was a turn across on Dave Lyle
20 Boulevard and when I got right there at the turn across,
21 we looked over to the left hand side and we weren't quite
22 parallel with the patrol car and we saw the patrolman
23 lying fast down in the grass and at that point Mary said,
24 "It's a policeman, he's been hurt, we need to stop and
25 help him," so at that point I hit the brakes on my car and

1 stopped immediately, which I wasn't going fast at all, but
2 I came to a complete stop and I turned and looked back as
3 I was putting the car in reverse because I was going to
4 back the car up and turn into the turn across. So I looked
5 back and I told Mary, I said, "We need to get the tag
6 number of the car," so we looked at the car tag and I
7 couldn't make out the letters real clearly because it was
8 dark, but I did see the numbers on the tag and it looked
9 like there was some letter and maybe a W and then 313 was
10 the numbers of the tag.

11 Q And the car at that point when you were looking at the
12 tag was it moving off at that time?

13 A As I recall when I turned this way, when I put the car
14 in reverse and started to back up, and I turned and looked
15 and made note of the tag number is when the car started to
16 leave, started to drive off.

17 Q When you and your sister, you say you got to a
18 stopping point where basically you could look out your
19 driver's side window and see Brent McCants, is that
20 correct?

21 A That's correct.

22 Q Where were the individuals the time you got parallel
23 with Brent McCants, where were they?

24 A At the time that I had gotten there they had already
25 gotten into the car, they were already in the car that had

1 of that's the second one, the one you saw for the longer
2 period of time?

3 A That's correct, the one that was crouched down.

4 Q Of course, that's the one that got into the driver's
5 side?

6 A That's right.

7 Q And once you slowed down and looked over and got the
8 tag and then you backed up, where were the defendants
9 then, where would the people in the gray car have been?

10 A Well, when I was looking back to get the tag, it was
11 the time they started leaving and driving off from the
12 scene and they didn't speed off, they were driving rather
13 slowly, which I didn't think too much at the time, but as
14 I thought about it later I thought that was kind of
15 strange, but they just drove off rather slowly and left
16 and I didn't pay a lot of attention to them after that
17 because I was concentrated on the patrolman who was lying
18 in the grass trying, you know, to get over to him to see
19 if there was anything we could do to help him.

20 Q When they were leaving, they were leaving back toward
21 the interstate or away from the interstate?

22 A Toward the interstate.

23 Q Okay. Once they were gone and you and your sister get
24 out, would you tell the jury what you saw and what you
25 did?

1 been stopped by the patrol car.

2 Q You discussed one that was more stooped area getting
3 up first and then the one that was squatted on down
4 lingered a little longer --

5 A Yes.

6 Q How close were you to them when the first one left and
7 the second one left? Do you have an idea roughly?

8 A When the first one left, I was a distance back because
9 I didn't see him as well as the second person and he was
10 running also. He ran and ran in front of the patrol car
11 and then behind the other car, which kind of shielded his
12 appearance from me and he got in on the passenger side.

13 Q How close were you driving up when the second
14 individual finally left the body?

15 A I would say maybe a little further back from where you
16 are now.

17 Q Okay so you had a longer opportunity to view him?

18 A Yes, I did.

19 Q Did you give a description of the individual as best
20 you could?

21 A I did as best as I could see, again, it was dark, but
22 I recall it was a black male, he was approximately 6 feet
23 tall, medium build, about 180 pounds and I estimated the
24 age somewhere between 25 to 35 years old.

25 Q Now the one that you were able to give a description

1 A When I backed the car up and got out and went over to
2 where he was laying and we started talking to him or
3 speaking to him before we got to him not knowing, you
4 know, so that he would recognize that we were there not to
5 harm him, but to help him, and so we called to him to let
6 him know that we were there to help and there was no
7 response and when we got over to where he was, he was
8 lying face down in the grass. And we were reluctant to
9 turn him over or move him very much because we didn't know
10 the extent of his injuries and so we were careful about
11 that and so we talked to him and we turned him over a bit
12 not completely over and saw his name tag, which I still
13 didn't recognize who that was, but we could not detect who
14 he was by his looks because he was covered in blood. We
15 got down beside him and Mary had felt - we were trying to
16 feel his body to see if we could tell how he was injured
17 and Mary felt his head and she said, "I feel a knot on his
18 head; I think he's been shot in the head" and at that
19 point I knew that we had to get some help and so I said,
20 "We have to get some help" because I knew we couldn't do
21 anything for him and so I ran to the patrol car to call on
22 the radio and at the time I was doing that she ran into
23 the road to flag down a car and I opened the car door to
24 the patrol car and got in and took the microphone -- well,
25 before that she went with me over to the car area and then

1 she ran to flag a car down actually because we talked
2 about, you know, what to say because there was so much
3 talking on this radio system and so I picked up the radio
4 and I said something to the effect "Mayday, mayday,
5 officer is down on Dave Lyle Boulevard, please send help"
6 and I waited and it seemed like an eternity for a response
7 and I'm sure it was just a few seconds, but it seemed like
8 awful longer than that, and so a female voice came on and
9 said, you know, -- I'm sorry, let me back up. As I didn't
10 get a reply, I said again, "Officer is down, please send
11 help, please help us" and then the response came back "The
12 help is on the way." So I just kind of I think just
13 tossed that microphone down and got out of the car and
14 went back over to where his body was and at that time Mary
15 had flagged a car down and a young man and his girlfriend
16 had gotten out and they came over and they had completely
17 turned him over at that point and he was trying to give
18 him mouth to mouth resuscitation.

19 Q So law enforcement and citizens stopped and law
20 enforcement came and people other than you and Ms. Grant
21 tried to help resuscitate him too, is that correct?

22 A That's correct.

23 Q Okay. At that point - did you relate to law
24 enforcement everything that you had observed and
25 everything as far as the tag and any description you had?

1 Did you relate that to them?

2 A Yes, as best as I could.

3 Q The next day did you have an opportunity to go down
4 and look at the vehicle at the police station?

5 A I did.

6 Q I will show you State's Exhibits 2 and 3 and ask if
7 you can look at that and tell me if you can identify it.

8 A This is the car that we saw that night that was
9 stopped by the patrolman.

10 Q Is that the same car that the two individuals got in
11 that you have described?

12 A Yes, it is.

13 Q Ms. Pittman, as far as the patrol car you said the
14 lights and the blue light and the take down lights, all of
15 these lights, were on when you all approached, is that
16 correct?

17 A Yes, sir.

18 Q As far as the door to the patrol car, was it open or
19 shut?

20 A It was shut because I had to open it to get in to the
21 radio.

22 Q Okay.

23 A Ms. Pittman, that evening when you approached the car
24 how many individuals did you see over the body?

25 A Two.

1 Q Okay and how close in proximity were they?

2 A To each other?

3 Q Yes, ma'am.

4 A Well, they were, well, I wouldn't say head to head,
5 but one was in a stooping position and one was in a
6 leaning position. I would say probably this distance
7 (indicating).

8 Q And both at the body?

9 A Yes.

10 Q And when they left the scene as you approached how
11 many people got into the gray car that you have
12 identified?

13 A Two.

14 Q Answer any questions Mr. Schusterman may have.

15 CROSS EXAMINATION

16 BY MR. SCHUSTERMAN

17 Q Good morning, Ms. Pittman. My name is Steve
18 Schusterman. I represent Mr. Hughes. I have just a couple
19 of questions for you. As I understand it you were heading
20 back from a foot ball game?

21 A That's correct.

22 Q Coming North on 77.

23 A Yes, sir.

24 Q In your vehicle with your sister in the car.

25 A Yes.

1 Q You got off at Dave Lyle Boulevard.

2 A That's right.

3 Q And made a left turn. Am I correct from your direct
4 testimony you did not notice anything laying on the ground
5 or any type motion until you had gotten to within I
6 believe you said the length of the courtroom from the
7 incident?

8 A Uh-huh.

9 Q And how far distance is it would you say from the
10 overpass where you go under I-77 to the actual location
11 were you stopped? How far a distance?

12 A I'm not real good with distances, but I would say
13 probably five car lengths maybe.

14 Q Five car lengths, all right. Did you when you were
15 getting off I-77 ever hear any noises?

16 A No.

17 Q Shots, pops, any kind of sound?

18 A No, I did not.

19 Q Am I correct that in your direct examination you
20 indicated that by the time you had come to a stop, when
21 you stopped at the median, correct -- you were in effect
22 parallel to this incident on the other side of the median?

23 A Yes, I was parallel to the body.

24 Q Parallel to the body. The body that was parallel to
25 the two vehicles just headed in the other direction, is

1 that correct?

2 A No, not exactly. The body was a little bit up in
3 front of the patrol car. The patrol car was sitting like
4 this and the body was ahead of the patrol car, but behind
5 the other car that had stopped.

6 Q And is it correct that by the time you came to a stop,
7 do I understand your direct testimony would be that both
8 gentlemen had already gotten into the car?

9 A That's correct.

10 Q So before you came to a full stop both men had
11 retreated into the vehicle?

12 A Yes.

13 Q Your view of the men and what they were doing over the
14 body would be as you were approaching while the car was
15 moving, correct?

16 A Yes, sir.

17 Q And how fast approximately would you say you were
18 going?

19 A I probably when I first started slowing down was maybe
20 doing no more than 25 to 30 when I first started slowing
21 down and then I slowed down more and more and more the
22 closer I got because when we actually saw the body lying
23 there I was just creeping along at that point, wasn't
24 really moving that fast at all.

25 Q By that point the men had retreated into the car?

1 A That's correct.

2 MR. SCHUSTERMAN: With the court's indulgence.

3 Q Thank you, I appreciate your being here.

4 MR. POPE: I ask that this witness be excused.

5 MR. SCHUSTERMAN: No objection.

6 THE COURT: You may step down. Thank you.

7 Members of the jury panel, we will take our morning
8 break. For those of you who wish to smoke, this will be
9 the time. So if you will follow Mr. Dunn to the jury room,
10 this will be our morning break.

11 (Jury retires to jury room.)

12 (Recess)

13 We have had a request from the jury for the attorneys
14 to keep their voice level up and help make sure that the
15 witnesses keep their voices up.

16 Bring in the jury.

17 (Jury returns to courtroom.)

18 MR. BRACKETT: The State would call Marvin Bohon.

19 THE COURT: Please come around and be sworn, please,
20 sir.

21 MARVIN BOHON, being duly sworn, testified
22 as follows:

23 DIRECT EXAMINATION

24 BY MR. BRACKETT

25 Q Sir, would you please state your full name and spell

1 your last name for the court reporter?

2 A Marvin Bohon B-o-h-o-n.

3 Q And where are you employed, sir?

4 A The Rock Hill Police Department.

5 Q How long have you been with the Rock Hill Police
6 Department?

7 A Approximately three months.

8 Q Where were you employed before then?

9 A From July of '89 until '95 I was with the York County
10 Sheriff's Department.

11 Q And what capacity were you employed with them?

12 A I was a lieutenant with the York County Sheriff's
13 Department.

14 Q Were you a lieutenant with them back in September of
15 1992?

16 A Yes, I was.

17 Q Did you have an occasion to respond to a call on Dave
18 Lyle Boulevard on September 25, 1992?

19 A Yes, I did.

20 Q And what was that in reference to, sir?

21 A Over the police radio someone was calling out "Mayday,
22 Mayday, there's an officer down on Dave Lyle Boulevard."
23 At that time I proceeded to that location.

24 Q Where were you at when you heard the Mayday call?

25 A I was on Number 5 at Cherry Road, York Electric - York

1 Gas would be on my right. I was on Main headed toward
2 Dave Lyle. When that call came in, I was at 5 and Cherry
3 Road.

4 Q About how far is that from the incident location on
5 Dave Lyle?

6 A A couple of miles.

7 Q Did you get there pretty quickly?

8 A As fast as I could.

9 Q What did you see when you got there?

10 A I seen a patrol car that was driven by Officer
11 McCants. It was on the inside lane. I believe one of the
12 tires were in the median, but it was facing towards the
13 Mall.

14 Q The patrol car was?

15 A That's correct. I seen Officer McCants lying on the
16 ground and a couple of people were working on him at the
17 time.

18 Q All right, approximately how many people were there
19 when you arrived?

20 A There were a couple of Sheriff's deputies. I don't
21 believe the ambulance had arrived yet, but I think someone
22 working with EMS was there. I don't know, probably three
23 or four, something like that.

24 Q What did you do when you got there?

25 A Tried to secure the scene so nobody would be coming

1 through the scene, blocked traffic, whatever needed in the
2 surrounding area to secure the scene so nothing could be
3 taken out of the scene area or nothing could be brought
4 into the scene area.

5 Q Which would prevent it from being contaminated?

6 A That's correct.

7 Q Did you have an occasion to see EMS working on Brent
8 McCants that evening?

9 A Yes, I did.

10 Q And did you assist in any way or what responsibilities
11 did you assume?

12 A Assisted working on the road, but when they were
13 taking Brent's uniform and stuff off of himself, I was
14 gathering it.

15 Q Sir, I would ask you if you would look in the bag here
16 and tell me if you can identify the contents of the bag.

17 A Yes, I can. It's a uniform, shirt, pants,
18 underclothing.

19 Q Do you recognize those?

20 A Yes, I do.

21 Q What are those?

22 A That is Brent McCants' uniform.

23 Q That you retrieved that evening?

24 A I did.

25 MR. BRACKETT: I ask that it be marked for

1 identification purposes.

2 (State's Exhibits 28, 29, 30 and 31 marked for
3 identification purposes only.)

4 Your Honor, I move this into evidence at this time.

5 MR. SCHUSTERMAN: No objection.

6 THE COURT: It will be received.

7 (State's Exhibits 28 marked and filed.)

8 Q I am showing you an item and ask if you can identify
9 this.

10 A Yes, I can. This came off Officer McCants. It is a
11 bullet proof vest.

12 Q And you recovered that?

13 A I did.

14 Q That evening at the scene?

15 A I did.

16 Q What did you do with this item and that item?

17 A All items together I took a pillow case off the EMS
18 pillow and I stuck everything in there. I secured
19 everything in the trunk of my vehicle until it was turned
20 over to Officer Waldrop of the Rock Hill Police
21 Department.

22 MR. BRACKETT: Your Honor, I would move this into
23 evidence at this time.

24 MR. SCHUSTERMAN: Without objection.

25 MR. POPE: Be received without objection.

1 (State's Exhibit 29 marked and filed.)

2 Q I am showing you two separate items and ask if you can
3 identify these.

4 A This is the 40 caliber Glock that was issued to Brent
5 McCants and it came off his person at the scene.

6 Q Okay and where was that weapon located?

7 A In the holster.

8 Q Take a look at this second item and see if you can
9 identify that.

10 A This is the Sam Brown belt, holster, PR-22 holder,
11 bullets, handcuffs and ammo clip and this came off of
12 Brent McCants also at the scene.

13 Q Did you recover those and dispose of those in the same
14 manner that you did the other items?

15 A Yes, I did.

16 Q Did you retain them and give them to Jerry Waldrop?

17 A I did.

18 Q All right.

19 MR. BRACKETT: Your Honor, I ask that these be marked
20 into evidence.

21 MR. SCHUSTERMAN: Without objection.

22 THE COURT: Without objection.

23 (State's Exhibits 30 and 31 marked and filed.)

24 That's two separate exhibits, right?

25 Mr. BRACKETT: Yes, sir, the pistol would be State's

1 Exhibit 30. The Sam Brown Belt would be State's Exhibit
2 31.

3 Q Sir, I call your attention to State's Exhibit 31, the
4 Sam Brown Belt. Can you identify the items attached to the
5 Sam Brown Belt, the rectangular items, black leather?

6 A This is the ammunition clip holder and pouch. This
7 wasn't secured on the belt when I received it.

8 Q Where did you locate that item?

9 A This was in the median probably ten or twelve feet
10 from where Brent was lying and I did retrieve it.

11 Q It's now attached to the belt?

12 A It's now attached, but it wasn't at the time.

13 Q Would you please open the bag, State's Exhibit 31 and
14 pull the Sam Brown Belt out of there? If you could step
15 down and show the jury exactly what you were talking about
16 with the magazine clip.

17 A Sure. When I received the items, the belt was still on
18 the pants itself, there's a small belt underneath like I'm
19 wearing and there's keepers like I am wearing also. The
20 ammo clip and the pouch was not on the belt at all. That
21 was some ten feet or so away from where Brent McCants was
22 lying at the time. When I received this, the cuffs were
23 still in the cuff holder and the weapon was still in the
24 patch inside of the holster. The top snap was unsnapped
25 when I retrieved it. On this holster, this is a security

1 three holster, there are two snaps on it. Where this one
2 is just a one snap right here, no snaps in the back, this
3 is a security holster, you have a snap here, level three
4 security holster, you have a top snap. So the top one was
5 unsnapped. You still can't get the weapon out unless you
6 unsnap this one. This was still snapped at the time I
7 received it, but the top one was unsnapped.

8 Q What's the purpose of the second snap?

9 A It's a high security holster. If it was unsnapped
10 during some type of a fight or something like that, the
11 weapon couldn't be jerked out without this additional snap
12 and if nobody didn't know what they were doing, they
13 wouldn't know there's another snap back here. So the
14 weapon would not come out unless the second snap is
15 unsnapped.

16 Q Now the magazine holder I believe you indicated was
17 not on the belt?

18 A No, it wasn't.

19 Q This right here?

20 A That's correct. This is a snap on. This was not on
21 the belt when I received it.

22 Q Can it be worn in different ways? Can it be attached
23 to the belt in another fashion?

24 A It can be attached. It would have to be turned the
25 other way where there are two more slots to get through,

1 but as far as no, it can't.

2 Q And the handcuffs were as they are now?

3 A That's correct.

4 Q If you could place that back in the bag. That night
5 did you observe Officer McCants' patrol car?

6 A Yes, I did. When I arrived at the scene, the vehicle
7 was faced catercornered on the inside lane closest to the
8 grassy area of the median. I believe the left front tire
9 was slightly off the roadway. The blue lights were
10 activated. There's clear take down lights that's mounted
11 inside the blue light. They were on and also the driver's
12 side spot light was on also.

13 Q I am showing you some photographs that have been
14 marked State's Exhibit 20 through 27 for identification.
15 Can you identify the scene that is depicted in those
16 photos?

17 A Yes, sir, it's the vehicle that Brent McCants - the
18 patrol vehicle that Brent McCants was driving. It's facing
19 towards the Mall on Dave Lyle.

20 Q Maybe you could just take a moment to look through
21 those and see if you can identify the scenes depicted in
22 each one of those photographs.

23 THE COURT: Have they been introduced?

24 MR. BRACKETT: No, sir.

25 THE COURT: Are they numbered so at least we will know

1 later what --

2 MR. BRACKETT: 20 through 27, State's Exhibits.

3 THE COURT: Tell us which they are. Tell us what
4 number.

5 MR. BRACKETT: I will show them to counsel and --

6 THE COURT: Well, I want the record to show the one he
7 is talking about.

8 MR. BRACKETT: Yes, sir.

9 A The vehicle I was talking about at first ---

10 Q Well, do you recognize each of the --

11 A Yes, I do in regards to Dave Lyle.

12 Q You can identify the scene depicted in each of those
13 photographs?

14 A Oh, yes, I can.

15 Q Okay.

16 MR. BRACKETT: I move these into evidence at this time.

17 MR. SCHUSTERMAN: Without objection.

18 THE COURT: All right, be received.

19 (State's Exhibits 20 - 27 marked and filed.)

20 Q I'll show you what has been marked State's Exhibit 20
21 and 21. If you could step down off the stand and show the
22 jury the lighting system on the patrol car. You are
23 probably going to have to go half the jury and show them.
24 It's small photographs.

25 A This is the patrol vehicle. Of course, the headlights

1 were on, the spot light was on at the time.

2 On this one the take-downs are on. I believe this
3 being a picture it's not going to pick up the strobe
4 itself. When I arrived, this is exactly how the vehicle -
5 the driver's vehicle door was still open and like I said
6 the spot light here, the blue lights were on, and then
7 right in the middle of the two blue lights that are on
8 each side there are two take-down lights and they are just
9 clear lights.

10 Q What's the purpose of the take-down lights?

11 A So you have better vision. When you stop a vehicle,
12 you can see more of what's going on. It illuminates like
13 you can see two people in a car, three, as long as you can
14 see a head it illuminates the back of it so you can see
15 what's going on, a better description of the vehicle. On
16 your spot light you can move that any way you want to.
17 That's just for better vision for the officer himself.

18 This is another picture of the patrol vehicle. It's
19 just a closer a closer view of it.

20 Q Bringing your attention back to State's Exhibit 28.

21 THE COURT: Can the jury hear?

22 JUROR: If you speak up a little bit.

23 Q I am referring your attention back to State's Exhibit
24 28, the uniform of Deputy McCants. It appears to be torn,
25 sir, can you explain why that is?

MARVIN BOHON

DIRECT

1 A Yes. This is Brent's patrol shirt. The reason that it
2 is torn up is because they were cutting it off of him to
3 try to work on Brent himself, so they had to take the
4 shirt off, the vest and the pants and the underclothing
5 came off. That's why it is cut up like it is.

6 Q And the pants?

7 A The same way. They were intact, but they had to cut
8 the pants off of him. As I was saying earlier about the
9 Sam Brown belt, this is the belt that the snap was
10 connected to, like I said on mine, to hold the belt in
11 place.

12 Q You indicate, Officer Bohon, that the Sam Belt the
13 magazine clip was off and located some distance away.
14 Where in relation to the body was the clip found?

15 A Approximately ten or so feet to the right of where
16 Brent was lying on his right side. If he was faced up, it
17 would be to his right in the median.

18 Q If he was face up and which direction was his head
19 going?

20 A His head would be pointed towards the Mall, his feet
21 towards his patrol vehicle. The clip pouch and the clips
22 were found in the median. I found them to the right where
23 the medians join together, the grassy parts join together,
24 I found it up to the right of his body.

25 Q Almost in the opposite lane, but not in the lane, but

MARVIN BOHON

DIRECT

1 the grassy --

2 A No, they were still in the grass, that's correct.

3 Q Did you notice that evening any equipment missing?

4 A The only thing that's not here would be the patrol
5 radio, hand held radio, and also the radio holder and
6 this was not with Brent at the time.

7 Q I show you two items and ask if you can identify
8 those.

9 A Yes, this is the issued radio with the county property
10 on the back of it and this would be the clip that holds
11 the radio pouch.

12 MR. BRACKETT: I ask that these be marked at this
13 time, Your Honor.

14 (State's Exhibits 32 and 33 marked for identification
15 purposes only.)

16 MR. SCHUSTERMAN: For identification purposes only, if
17 I understand it.

18 MR. BRACKETT: That's correct, Your Honor.

19 Q You indicated you were a lieutenant with the Sheriff's
20 Department at that time.

21 A That's correct.

22 Q Did this happen in the county or the city?

23 A It happened in the City.

24 Q Of Rock Hill?

25 A Dave Lyle Boulevard, yes, sir.

MARVIN BOHON

DIRECT

1 Q And what county is that in?

2 A York County.

3 Q All right now, who was the officer in charge from the
4 City Police Department?

5 A Captain Cabiness.

6 Q You were the ranking officer from the Sheriff's
7 Department?

8 A That's correct.

9 Q Are you aware of any agreements between the City and
10 the County in regards to cooperation and joint use of
11 resources?

12 A Anytime anything like this happens there is always a
13 joint effort, there's no problem with either one of us
14 working together on this matter.

15 Q Was there ever any kind of formalized agreement to
16 your knowledge between the Sheriff's Department and the
17 City of Rock Hill Police Department?

18 A There probably was some years ago something written
19 somewhere, but it's always been known and we have always
20 stood by it that anytime there is a problem in the county
21 or city whatever there is a joint effort - if they need
22 us, we'll come; if we need them, they will come. It has
23 always been a joint effort.

24 Q Did you and Captain Cabiness from the City Police
25 Department agree to --

1 A Correct, there was no problem at all.

2 Q Thank you very much, Officer Bohon. Please answer any
3 questions Mr. Schusterman may have for you.

4 CROSS EXAMINATION

5 BY MR. SCHUSTERMAN

6 Q Good morning, Mr. Bohon.

7 A Good morning.

8 Q As I understand it the way that you personally became
9 aware of the situation was that Mayday call on the radio.

10 A That's correct.

11 Q Do you recall the transmission prior to that where
12 Officer McCants was stopping a vehicle, I believe it was a
13 10-48. What does code 10-48 mean?

14 A He was stopping a suspicious vehicle. It means a
15 suspicious vehicle or a traffic stop.

16 Q Do you recall that transmission that Officer McCants
17 made?

18 A Yeah, but you -- not to take it lightly, but you hear
19 that all the time. It's natural to hear 10-48 all the
20 time. You hear it and unless there are circumstances
21 behind it you really don't think too much about it.

22 Q So 10-48 is just somewhat for lack of a better term
23 routine. Your ears wouldn't perk up at a 10-48.

24 A That lets the Dispatch know, hey, I'm stopping a
25 vehicle and this is what vehicle I am stopping.

1 Q The first thing that really drew your attention to
2 this incident was the Mayday call.

3 A Mayday, Mayday, that's correct.

4 Q You then immediately took off for the location?

5 A Yes, I was coming back from York meeting with some
6 other officers and I was on my way back to Rock Hill.

7 Q How far away would you say from the time that you
8 heard the message and decided I'm on my way to the scene,
9 how far away were you in miles?

10 A How far it is from Cherry and 5 to Dave Lyle Boulevard
11 where it happened a couple of miles.

12 Q Given the fact that the jury may not be familiar with
13 that, how far would you say it is?

14 A Three or four miles, to estimate approximately.

15 Q Approximately how long did it take you to get there
16 that night?

17 A Approximately maybe five minutes, you know, as fast as
18 I could get there I was there.

19 Q When you arrived there, how many people were there?

20 A There were a couple Rod Benfield and Kelly Carroll was
21 there.

22 Q And what law enforcement agency are they with?

23 A York County Sheriff's Department.

24 Q Were Ms. Grant and Ms. Pittman still there?

25 A I never seen them. I'm not saying they wasn't there.

1 but to me they wasn't out in plain view where I could see
2 them.

3 Q Was Captain Cabiness there?

4 A I believe I arrived there shortly before he was there.
5 I went straight to where Brent was lying.

6 Q Were there EMS people there?

7 A I don't believe the ambulance was there yet.

8 Q You don't believe they were there.

9 A No, but they was -- I'm thinking somebody was working
10 on him I'm thinking they were EMS people -- but then EMS
11 was there shortly after. Like probably behind me I
12 believe.

13 Q So there were a good number of people on the scene
14 already?

15 A There were several.

16 Q And as I understand your testimony you secured the
17 area.

18 A As far as I could, yes, sir.

19 Q So that you could retrieve evidence and nothing would
20 be contaminated.

21 A That's right.

22 Q And whatever happened prior to your arriving in those
23 five minutes was people being introduced onto the scene,
24 you would have no way of controlling.

25 A I can't testify to what I didn't see.

1 Q Right, but I am saying you had no way of controlling
2 it.

3 A Oh, no, no.

4 Q Right. From the time Officer Bohon got there he
5 secured the scene.

6 A That's correct.

7 Q One of the things that you testified to was that this
8 clip ---

9 A Clip pouch.

10 Q Clip pouch. That's where he holds extra -- that's
11 where Brent holds extra ---

12 A Magazines.

13 Q Extra magazines.

14 A That's correct.

15 Q Am I to understand that the holder was still there,
16 but the clip itself was not?

17 A The clips and holder all were gone.

18 Q Everything was gone.

19 A The clips, the pouch. The pouch and the clips were
20 off of the belt. Of course, the belt buckle was off.

21 Q Am I correct that the only way that this would come
22 off would be by sliding it off the belt?

23 A That's the only way it's going to come off unless it
24 was cut off, but it wasn't.

25 Q It wasn't cut off.

1 A No. You can see it is still secure, but it was off the
2 belt.

3 Q Was this off the belt too?

4 A This was on the belt, but it was on a different side.

5 Q There was nothing obstructing it from sliding all the
6 way off?

7 A No.

8 Q What I am trying to get at whoever took it off did
9 they have to take off the holder and put something else
10 back on the belt?

11 A If the radio was there, they - but the radio wasn't
12 attached on it.

13 Q So the radio wasn't there either?

14 A No, the radio was gone.

15 Q So both the radio and clips were gone?

16 A Yes ---

17 Q And the holder.

18 A Yes, the radio wasn't at the scene at all.

19 Q How about -- isn't there, and I believe it was marked
20 for identification, but the holder of the radio, the
21 Walkie-Talkie ---

22 A That wasn't at the scene; it was gone.

23 Q Just out of curiosity that holder does that affix to
24 the belt the same way as those magazine clips?

25 A No, it's like imagine a big clothes pin.

1 Q This is the item that was marked State's Exhibit for
2 identification number 33.

3 A Sure, on the back of the holder -- like I say it's
4 like a big clothes pin it can open up. You squeeze it and
5 it opens up.

6 Q Almost like a pager?

7 A Yes, exactly, but a big one, easily jerked off. You
8 wouldn't have a problem jerking this off. Like I say it's
9 just as strong as the spring will let it be and you can
10 snatch it off.

11 Q Okay. Now you indicated that you did retrieve --
12 while the radio or walkie-talkie and the clip and the
13 holder for it were not at the scene after you looked all
14 over you never found it there at the scene, they were
15 discovered later.

16 A Sure.

17 Q But the magazine and the holder for it were discovered
18 at the scene.

19 A Yes, it wasn't long after I started gathering
20 everything up.

21 Q Let me show you State's Exhibit number 18 and I
22 believe you said that was a picture that was
23 representative of the scene?

24 A That's correct.

25 Q Within that picture can you indicate to me where

1 the ---

2 A The magazines were?

3 Q Yes. Is it in this picture?

4 A I can approximately show you where they were at.

5 Q Approximately.

6 A About right here (indicating).

7 Q Okay.

8 A Right -- well, this really doesn't show a good view of
9 where the body was and where --

10 Q Would State's Exhibit 16 be better?

11 A Yeah. Okay. I would say it's about right in here if
12 this picture would go on a little bit further. It would be
13 right in here (indicating). Like I say, it's
14 approximately about ten or twelve feet away from the body,
15 Brent's body.

16 Q You indicated I thought when you were talking that you
17 said that it was found where the concrete and the grass
18 come together, did you not say that?

19 A The road on each side and then you have your little
20 grassy median in the middle and then directly through the
21 middle then there's a cement portion, so the clips were
22 found -- when I say "cement," some type of asphalt or
23 cement or something, it's like a drainage through there,
24 but right in through there it's grassy and like I said it
25 was found on the grassy part. But if you go on back behind

1 the vehicle and stuff, you will see a little cement in the
2 middle also for the drainage.

3 Q That's what you meant by this place where the grass
4 and the concrete meet?

5 A Yes, right in there in the grassy area.

6 Q Did it appear to you when you arrived that Officer
7 McCants' body had been moved in any way?

8 A I can't answer that; I don't know if it was moved or
9 not.

10 Q Was it on any kind of treatment table?

11 A Oh, no, no, he was still laying in the grass.

12 Q At that point was he still face down?

13 A No, he was face up.

14 Q So he had been moved if, in fact, ---

15 A Maybe turned over. You're asking me something I can't
16 answer.

17 Q I understand that, sir, I understand that. Once you
18 retrieved these items I understand that you put them in
19 the trunk of your car to secure them.

20 A That's correct. I'm the only one that had a key to my
21 vehicle.

22 Q I assume at some point you passed it to somebody else?

23 A Yes, sir, Jerry Waldrop with the City.

24 Q Was he at the time the evidence custodian?

25 A I believe that's right, I mean, I know he's a

1 detective or an investigator. I handed him everything.

2 MR. SCHUSTERMAN: With the court's indulgence.

3 Q Officer Bohon, thank you for being here.

4 MR. BRACKETT: Just a couple quick follow-up
5 questions.

6 REDIRECT EXAMINATION

7 BY MR. BRACKETT

8 Q Officer Bohon, did you alter or change the evidence
9 that you retrieved that day in any way before giving it to
10 Jerry Waldrop?

11 A No, I did not. I secured everything. When I picked it
12 up and put it in a bag, I secured it in the trunk of my
13 vehicle and then I gave Jerry Waldrop everything that I
14 had, so nothing had been altered or tampered with while it
15 was in my possession.

16 Q You turned it over in the same condition in which you
17 retrieved it?

18 A That's correct.

19 Q And when you turned it over, the magazine holder was
20 not on that belt?

21 A No, it was not.

22 Q Thank you very much, sir.

23 MR. SCHUSTERMAN: Nothing further.

24 MR. BRACKETT: I ask that this witness be excused,
25 Your Honor.

JERRY WALDROP

DIRECT

1 MR. SCHUSTERMAN: No objection.

2 THE COURT: Witness excused.

3 MR. BRACKETT: We call Jerry Waldrop.

4 JERRY W. WALDROP, being duly sworn,
5 testified as follows:

6 DIRECT EXAMINATION

7 BY MR. BRACKETT

8 Q Would you state your full name and spell your last for
9 the court reporter?

10 A Jerry W. Waldrop W-a-l-d-r-o-p.

11 Q Where are you employed, sir?

12 A City of Rock Hill Police Department.

13 Q How long have you been there?

14 A Twenty-one years.

15 Q So you were working for them back in September of
16 1992?

17 A That's correct.

18 Q Were you working the evening of September 25, 1992?

19 A I was.

20 Q Did you have an occasion to respond to a call out on
21 Dave Lyle Boulevard that evening?

22 A That's correct.

23 Q And what was that in reference to?

24 A It was as a result of a Mayday on the police radio. A
25 female's voice came over the radio saying "Mayday, mayday,

1 officer down." I was with Officer Harry Williams of the
2 Rock Hill Police Department. At that time we left the rear
3 of the law center and headed out Dave Lyle Boulevard.

4 Q And approximately how long did it take you to get out
5 to the scene?

6 A Time distance is hard to say, it's about three miles,
7 just a matter of minutes. It didn't take me long to get
8 there at all.

9 Q You moved quickly?

10 A Yes, sir.

11 Q How many people were out there when you arrived?

12 A When I arrived on the scene, there was two other
13 deputies, Deputy Karen Carroll and Rod Benfield. There was
14 reserve officer Joe Vahle. There was another young man
15 that at the time I didn't know, but later determined to be
16 Tim -- I mean Mike Smith and two young ladies or ladies
17 that were standing over to the side and there were other
18 people arriving shortly after I arrived.

19 Q When you arrived there, what did you do?

20 A Being the first City officer on the scene I
21 immediately called dispatch and told them to advise the
22 supervisors what we had. I arrived on the scene, got out
23 of the car and noticed the officer laying on the ground. I
24 started calling for additional help. Officer Chuck Guyton
25 and myself started roping off or using crime scene tape to

1 rope off the area. Emergency personnel began to arrive.
2 They were allowed in and other officers were allowed in.
3 The scene was secured and I stayed on the scene until I
4 was released later to go to the station.

5 Q And about what time was that?

6 A I'm not real sure, sometime around 1:00 AM I think,
7 12:30 or 1:00 AM.

8 Q Did you go back to the scene at all that evening?

9 A It was later, much later in the night, on up in the
10 morning say four or five o'clock I was back out there,
11 that's correct.

12 Q During you were on probably six or eight hours
13 investigating and involved in investigating the incident?

14 A It was late Saturday afternoon before we got off
15 probably twelve or fourteen hours later before we got off.

16 Q Did you have an occasion to -- do you know Officer
17 Bohon?

18 A That's correct.

19 Q Then Lt. Bohon?

20 A He was Lt. Bohon then with the Sheriff's Department,
21 that's correct.

22 Q And throughout the course of the evening did you have
23 an occasion to see Lt. Bohon?

24 A That's correct.

25 Q Did you retrieve any evidence from him?

1 A At the scene after Deputy McCants was taken away in
2 the ambulance Lt. Bohon came to me and turned over Deputy
3 McCants' uniform material such as the shirt, pants, belt,
4 gun, that type of stuff at what time I secured it in the
5 trunk of my vehicle until later that morning at the law
6 center I turned it over to an agent with SLED.

7 Q And what was his name?

8 A I think it was Agent Black.

9 Q Did you retain custody and control of that evidence
10 until you turned it over to him?

11 A That's correct.

12 Q Did anyone have access to it or alter or tamper with
13 it in any way?

14 A No, sir.

15 Q I show you what has been marked as State's Exhibit 29
16 and ask if you can identify that item.

17 A This is the bullet proof vest that was turned over to
18 me by Lt. Bohon.

19 Q And is that one of the items that you turned over to
20 Agent Black later that evening?

21 A That's correct.

22 Q I show you what has been marked State's Exhibit 31 and
23 ask if you can identify that, the items contained in that
24 bag.

25 A Everything appears to be intact, the gun belt, all the

1 items on the belt being the clip, PR-24 ring, holster,
2 handcuffs, buckle, and ammo clips. That's correct.

3 Q Did you also retain custody of this and turn it over
4 to --

5 A They were secured by myself until they were turned
6 over to Agent Black. That's correct.

7 Q What were they in when you received them?

8 A I think they were in a pillow case. I think Bohon put
9 them all in a pillow case at the scene or most of it, but
10 I put it all in the trunk of my car and secured it until
11 we got to the law center.

12 Q Okay, when you got there, did you immediately turn it
13 over to Agent Black?

14 A It was sometime later. It stayed in the trunk of my
15 car until I brought it inside of the law center and turned
16 it over to him, that's correct.

17 Q I show you what's been marked as State's Exhibit 28
18 and ask if you can look at the contents of that bag and
19 identify the items in there.

20 A Uniform, shirt, pants and underwear items would have
21 been turned over to Agent Black at the law center also.

22 Q Same batch of items that --

23 A Yes, sir.

24 Q Finally, what has been marked as State's Exhibit 20 --
25 I'm sorry -- State's Exhibit 30. I ask if you can identify

1 that item?

2 A Glock 40 caliber handgun, that's correct.

3 Q Was this item separated or --

4 A It was separated per se that I took it out of the
5 holster.

6 Q You took it out of the holster?

7 A I took it out of the holster and turned it over to
8 Agent Black.

9 Q And all of these items ---

10 A Everything was turned over to him at one time.

11 Q Okay. He retained custody of everything after ---

12 A That's correct.

13 Q --- you didn't come in contact with any of this stuff
14 after that?

15 A No, sir, I did not.

16 Q And the pistol you say was in the holster at the time?

17 A It was in the holster -- let me rephrase that. I'm not
18 sure if I took it out of the holster or turned it over to
19 him in the holster, but I think I -- everything was handed
20 to him at one time and I don't remember if I took it out
21 of the holster or not.

22 Q Do you remember if you took the items out of the bag
23 or the pillow case when you turned it over?

24 A Yes, sir, everything was taken out of the pillow case
25 and put into these bags, evidence bags, to be turned over

1 to him.

2 Q Okay did you replace this magazine clip over onto the
3 Sam Brown belt?

4 A No, sir, ---

5 Q Or did he do that? It was off when you got it?

6 A That's correct.

7 Q Thank you, Detective Waldrop. Please answer any
8 questions Mr. Schusterman may have for you.

9 CROSS EXAMINATION

10 BY MR. SCHUSTERMAN

11 Q Detective Waldrop, as I understand it, when you
12 received these items they were just gathered in what you
13 believe to be a pillow case?

14 A Some of the items were in a pillow case. The bullet
15 proof vest was not in a pillow case. Some of the items
16 such as the clothes and everything were in a pillow case,
17 if I remember correctly.

18 Q But they were not segregated like they are today, they
19 were not put in separate bags; they were just everything
20 was just piled into it, is that correct?

21 A That's correct.

22 Q Along with this evidence he handed to you was there an
23 inventory of it taken?

24 A At the time there was not, no, sir.

25 Q It was just handed to you?

1 A It was handed to me at the scene out there on Dave
2 Lyle.

3 Q And I assume that you were the person that
4 individually bagged these items?

5 A That's correct.

6 Q You inventoried them?

7 A That's correct.

8 Q You received them from Officer Bohon, you took them
9 and gave them to Agent Black?

10 A That's correct.

11 Q Agent Black is with SLED?

12 A That's correct.

13 Q Have you ever seen them until today when you are in
14 court? Did you ever see these items again?

15 A At the last trial, that's correct.

16 Q But other than that they weren't returned to you, they
17 have not been in your custody since then.

18 A No.

19 Q All right, now as it relates to the belt. When you
20 received the belt, the magazine holder was it on the belt
21 or was it off the belt?

22 A It was off the belt.

23 Q And you put it ---

24 A No, I didn't put it on the belt. I don't know how it
25 got back on the belt. When it was turned over to him, it

TIM SANDERS

DIRECT

1 was separate. The clip was turned in separately - it was
2 recovered separate of the belt.

3 Q So am I correct that at one point this holder for the
4 magazine, this item, did you have that bagged separately
5 too? When you bagged it up, did you put it in a separate
6 bag?

7 A I'm not sure whether it was bagged separately or not.

8 Q I have no other questions. Thank you, Officer Waldrop.

9 MR. BRACKETT: Nothing further. I ask that this
10 witness be excused.

11 MR. SCHUSTERMAN: Without objection.

12 THE COURT: You may be excused.

13 MR. POPE: May it please the court, Your Honor? The
14 State would call Tim Sanders.

15 TIMOTHY SANDERS, being duly sworn,
16 testified as follows:

17 DIRECT EXAMINATION

18 BY MR. POPE

19 Q Mr. Sanders, if you would, state your name and
20 occupation for the jury, please.

21 A Timothy Sanders.

22 Q What do you do for a living?

23 A I am a salesman.

24 Q Mr. Sanders, are you a little nervous up here today?

25 A I'm fine.

TIM SANDERS

DIRECT

1 Q Okay, Mr. Sanders, do you live here in Rock Hill?

2 A Yes.

3 Q Were you living and working in Rock Hill back on
4 September 25, 1992?

5 A That's correct.

6 Q And in addition to working as a salesman back then
7 were you also a volunteer fireman?

8 A Yes, sir.

9 Q Part of your job as a volunteer fireman did you have
10 some type of scanner in your truck or your vehicle that
11 you could hear police and emergency frequencies on?

12 A Absolutely.

13 Q Back on September 25, 1992, I am going to take you
14 back to that time, did you have an opportunity that Friday
15 night to be listening to your scanner in your truck?

16 A Yes, I did.

17 Q Would you tell the jury where you were and did you
18 have the opportunity to hear the transmission from Brent
19 McCants?

20 A Yes, sir, I was parked at the Holiday Inn and right
21 beside the Holiday Inn there was a night club named
22 Celebrations.

23 Q Okay, you were parked in the parking lot there?

24 A Yes, sir.

25 Q I am going to ask you if you could step down one

TIM SANDERS

DIRECT

1 second, please. And if you could get your bearings a
2 little bit and be sure the jurors can see. 77 is here,
3 would you show the jury where the Holiday Inn would be on
4 here?

5 A The Holiday Inn is right here.

6 Q And could you show them where 77 goes down toward Dave
7 Lyle at the Galleria?

8 A (Indicating.)

9 Q Okay, and could you show them where the Galleria is
10 down there?

11 A The Galleria Shopping Center is right in this area
12 (indicating.)

13 Q Okay, and if you would show them where Dave Lyle would
14 be.

15 A This is Dave Lyle (indicating.)

16 Q Okay, so the Holiday Inn is that the next exit that
17 you could actually get off; you can't get off of this
18 exit.

19 A Yes, it would be.

20 Q So it would be the next exit up from Dave Lyle, is
21 that right?

22 A Exit 79.

23 Q Okay. Have a seat, Mr. Sanders. Mr. Sanders, you
24 were there at the Holiday Inn listening to your scanner
25 and you heard a call from Mr. McCants, is that correct?

TIM SANDERS

DIRECT

1 A Yes, sir, I heard the call.

2 Q Would you tell the jury did you know Mr. McCants or
3 did you know his voice?

4 A I know Mr. McCants.

5 Q How did you know Mr. McCants?

6 A He was coming to a business that I worked in and he
7 would come as a customer and he was shopping and there
8 were times he would see me and we would speak and talk.

9 Q Okay, so did you recognize his voice when you heard
10 him make a call?

11 A Yes, sir.

12 Q Okay, and that particular evening in listening to his
13 call did you hear anything unusual on the scanner?

14 A Yes, I did.

15 Q Would you tell the jury what that was?

16 A I heard Brent McCants stopping a vehicle on Dave Lyle.

17 Q Okay, after the stop did you hear any other unusual
18 transmissions?

19 A Yes, sir, as I was sitting in the parking lot of the
20 Celebrations I heard a female voice come over the airways.

21 Q And what did she say?

22 A She was saying "Mayday, mayday."

23 Q Okay, did she say anything else?

24 A There was an officer down.

25 Q And you heard that transmission from where you were

TIM SANDERS

DIRECT

1 parked at the Holiday Inn, the next exit up, is that
2 correct?

3 A Absolutely, on the fire scanner.

4 Q And once you heard that, what did you decide to do
5 then?

6 A I decided to take the initiative and go to the scene.

7 Q Okay, now in going to the scene what was your purpose
8 in going to the scene? Why did you leave the Holiday Inn?
9 What were you going to try to do?

10 A I wanted to help.

11 Q Okay, when you left the Holiday Inn, if you could show
12 the jury. Mr. Sanders, you are going to have to keep your
13 voice up, but I am going to ask you to step down again. If
14 you could show the jury when you left the Holiday Inn
15 where you went.

16 A Here is the Holiday Inn. I left out of the parking lot
17 the moment that I heard the call come over the airway by
18 the female and I went down the back entrance where -- the
19 back roads I may say, Springdale, headed towards the
20 scene.

21 Q So you didn't go directly down the interstate to the
22 first exit?

23 A No, I wanted to take the back way and I felt that was
24 necessary.

25 Q What were you hoping to do by going the back way?

1 A To look for the suspect vehicle.

2 Q At that time you heard the transmission as far as the
3 description of the car and the tag number?

4 A That's right. The tag number was given out by Brent
5 McCants and I had knowledge of that by listening to the
6 radio and so I wanted to take the back entrance to the
7 scene.

8 Q Were you looking for that vehicle and that tag as you
9 were riding the back entrance too?

10 A As I was on this road right here midway members of the
11 York County Sheriff's Department patrol cars passed me. I
12 continued on Springdale on Dave Lyle.

13 Q Okay, Springdale to Dave Lyle would actually have gone
14 on off the picture and come back in at the Mall, is that
15 correct?

16 A Yes, in this particular area.

17 Q Okay, if you could, you need to speak up so the court
18 reporter can hear too. Once you came to Springdale and at
19 the Mall what did you do then? What could you see then?

20 A There was a traffic light and I stopped and I saw
21 numerous emergency personnel, the ambulance, red lights,
22 law enforcement.

23 Q So you stopped near the Mall area. Could you indicate
24 --?

25 A (Indicating.)

TIM SANDERS

DIRECT

1 Q You were stopped on which side of the interstate?

2 Were you on the Mall side of the interstate?

3 A I was on the Mall side right here.

4 Q That's where Galleria Boulevard comes out from the
5 Cinema right there?

6 A Yes, sir.

7 Q Once you were stopped at that light right before you
8 get to the interstate where was it that you could see all
9 of the lights and the blue lights and everything?

10 A There's a restaurant and a traffic and about five
11 tenths of a mile you could see all of the emergency
12 vehicles.

13 Q So you were seeing up under the bridge then, is that
14 correct?

15 A That spot right in there.

16 Q That's where you would be looking?

17 A Straight ahead.

18 Q And so at that point did you proceed on down to where
19 Officer McCants was located?

20 A At one time I wanted to go down there, but I said it
21 wouldn't be efficient for me to go down there because of
22 the enormous traffic that was in that area, so I wanted to
23 go back up the interstate, which is I-77.

24 Q So instead of going towards where Mr. McCants was, you
25 went back up the interstate?

1 A I went back up the interstate because I felt that my
2 assistance was not necessary.

3 Q You felt that your assistance was not necessary as far
4 as on the scene with Mr. McCants?

5 A Absolutely, yes.

6 Q But what was your purpose when you went back up the
7 interstate? Why were you doing that? You need to speak
8 up.

9 A To look for the suspect vehicle.

10 Q Okay and when you went back up the interstate, where
11 did you go?

12 A Northbound I-77 and I wanted to check all the nearby
13 motels.

14 Q Mr. Sanders, would you have a seat. Mr. Sanders, when
15 you went up, you said you wanted to check the nearby
16 motels. What was your purpose in doing that? I mean, did
17 somebody tell you, Mr. Sanders, Tim Sanders, you go look
18 at the hotels. Did anybody instruct you to do that?

19 A No, sir.

20 Q All right, tell the jury why you decided to go look at
21 the hotels. What made you decide to do that?

22 A I wanted to help and I felt that would have been the
23 best thing for me to do is to check all the motels in that
24 particular area and because of knowing that all the law
25 enforcement would be in that area, so I wanted to continue

1 to search so that's why I went up I-77 and started looking
2 at the hotels.

3 Q Okay and then when you got there, what was the first
4 hotel you went to?

5 A The first hotel I went to was the Holiday Inn.

6 Q And is that the same hotel where you earlier told the
7 jury that you were parked in the parking lot listening to
8 the scanner?

9 A Yes, sir.

10 Q I'll show you State's Exhibit 19 for identification
11 and right now before we get any further do you recognize
12 that?

13 A Yes, sir.

14 Q And would this help you in explaining to the jury the
15 layout as far as the Holiday Inn? Is that it?

16 A Absolutely.

17 MR. POPE: Your Honor, at this time I would 19 for
18 identification into evidence.

19 MR. SCHUSTERMAN: Without objection.

20 THE COURT: It will be received.

21 (State's Exhibit 19 marked and filed.)

22 Q Mr. Sanders, I am going to ask you if you could step
23 down again with the light. If you could explain - I
24 realize that the interstate is off - the ramp is on here,
25 but the interstate would be off the picture, is that

1 correct?

2 A Yes.

3 Q Okay, could you show the jury how you came down the
4 ramp and where you went as far as the hotel?

5 A I went down north I-77, I took the first exit, that
6 would be the Fort Mill exit and I came into the parking
7 lot of the Holiday Inn. This is the entrance.

8 Q Once you turned into the parking lot of the Holiday
9 Inn again you say you were going there to look for the
10 vehicle?

11 A Yes.

12 Q What were your intentions at that point? Were you
13 searching at that time?

14 A Yes, sir.

15 Q And how were your headlights at that time? Were they
16 high or low or do you recall?

17 A The moment that I turned into the parking lot of the
18 Holiday Inn I turned on my high beam headlights.

19 Q And as you turned into the parking lot was there some
20 shrubbery or something there?

21 A Yes, there was a large group of shrubbery.

22 Q As you turned in there, tell the jury what you saw in
23 relation to that shrubbery.

24 A I entered the parking lot right in here. I saw two
25 black males.

1 Q As your headlights were on them what did you do then?
2 Did you stop when you saw them or did you continue to go
3 search for the vehicle?

4 A I continued to search for the vehicle. I looked at the
5 two black males as I entered the parking lot very slowly
6 at that time.

7 Q Okay, as you saw them first were they in front of you
8 as you turned in? Where did you first see them?

9 A When I first came into the parking lot, it was like
10 the one on my left was facing me.

11 Q So your headlights were facing them?

12 A Yes, I kept my vehicle rolling; I looked back and saw
13 the other subject.

14 Q Mr. Sanders, and then I am going to have you sit down,
15 show the jury where you went on down to look for the
16 vehicle once you turned into the parking lot. If you could
17 indicate.

18 A (Indicating) I came into the parking lot very slowly
19 and I looked back at the two black males and as I was
20 looking back I saw they were headed towards the Texaco,
21 but I kept my vehicle rolling until I stopped right here.

22 Q Okay and did you have the tag number that Brent
23 McCants had called out?

24 A Yes, sir.

25 Q And at this time as you continued to listen to the

1 scanner there was a lot of law enforcement ---

2 A There was a lot of traffic over the airway.

3 Q Do you recall the tag number that you were looking
4 for?

5 A Yes, sir.

6 Q And could you tell the jury what that was?

7 A The tag number that I heard EMF313 New York.

8 Q And did you locate that vehicle in that parking lot?

9 A Yes, I did.

10 Q Would you show the jury where you located the vehicle?

11 A (Indicating) Stopped right there and I just stopped
12 suddenly and just looked at the vehicle.

13 Q Did you get out to make sure that was the tag?

14 A Yes, I did.

15 Q Did you have the opportunity to go call law
16 enforcement and tell them you had found the car?

17 A Yes, I did.

18 Q Where did you go when you did that?

19 A There's a pay phone at the Texaco Station right in
20 this area.

21 Q And you called and told them that you had located the
22 vehicle they were looking for?

23 A Yes, I did.

24 Q Would you have a seat, please, Mr. Sanders. Mr.

25 Sanders, when you went into the parking lot, you say you

TIM SANDERS

DIRECT

1 saw two individuals together, is that correct?

2 A Yes, sir.

3 Q Would you tell the jury how they were moving or if you
4 noticed anything unusual about their walking or anything
5 of that nature?

6 A Yes, sir, they were two black males and I was looking
7 at them and they were taking big steps.

8 Q Would you tell the jury what you mean when you say
9 "taking big steps." Were they walking or running?

10 A They was in a hurry.

11 Q Okay. When you say "big steps," is that what you mean
12 by in a hurry?

13 A Yes.

14 Q You said as you turned in and your lights hit them
15 that one of the two you were able to see?

16 A Yes, sir.

17 Q You saw both of them, but one of them was looking in
18 your direction, is that correct?

19 A Yes, sir.

20 Q Even though you saw them at that time you continued to
21 go look for the vehicle, is that correct?

22 A Yes, sir, I continued to search.

23 Q At that point you didn't know if they were connected
24 with the vehicle or not?

25 A No, sir.

TIM SANDERS

DIRECT

1 Q And once you turned to go down the road and start
2 looking for the vehicle, did you see them again?

3 A Yes, sir.

4 Q Could you tell the jury about that where you saw them
5 next?

6 A I came upon the vehicle and I looked back and they
7 were headed toward the Texaco Station.

8 Q The Texaco Lube and the Quick C Mart all of that
9 that's like the gas station and the lube?

10 A Yes.

11 Q Where were they heading the last time you saw them?

12 A Towards the Quick C Convenience Store like beside the
13 Texaco Lube.

14 Q And you called law enforcement and did some officers
15 arrive?

16 A Yes, sir.

17 Q Did you take them to show them where the car that you
18 had found the tag was located?

19 A Yes, sir, you know, I waited and got directly in my
20 vehicle and drove fast to where the car was parked.

21 Q From the time that -- how far a distance -- do you
22 have an idea of where you were using the phone to where
23 the suspect vehicle was do you know in this courtroom how
24 far it is? Could you see the car from where you were
25 standing at the pay phone?

1 A No.

2 Q From the position you were at you could not?

3 A The position where I was on the pay phone I couldn't
4 see the car.

5 Q But if you moved out from behind the pay phone ---

6 A Yes, I could see the car if I moved away from the pay
7 phone.

8 Q Mr. Sanders, I show you what's been marked State's
9 Exhibit 35, 37, 38, 39 and ask if you could look at that a
10 minute and tell me if you can identify that.

11 A Yes, sir.

12 Q And what do they represent? What do they indicate?

13 A They represent a blue -- a gray Buick, tag number
14 EMF313.

15 Q Is this the one you located in the parking lot that
16 night?

17 A Yes, sir.

18 Q Is this the way it was sitting that night?

19 A Yes, that's the way it was parked that night.

20 Q I notice that there is some yellow evidence tape in
21 two of the pictures, police evidence tape. That wasn't
22 there when you first saw the car?

23 A No, sir.

24 Q Do you know how that got there?

25 A Yes, sir.

TIM SANDERS

DIRECT

1 Q And how was that?

2 A By one of the York County Sheriff's deputies.

3 MR. POPE: Your Honor, I move State's Exhibits 35, 37,
4 38, 39 into evidence.

5 MR. SCHUSTERMAN: Without objection, Your Honor.

6 THE COURT: Be received without objection.

7 (State's Exhibits 35, 37, 38, 39 marked and filed.)

8 Q After you showed law enforcement where the vehicle
9 was, did you have an opportunity later on that evening to
10 go down to the City to see if you could identify either
11 one of the two individuals that you had seen?

12 A Yes, sir.

13 Q Okay. And you were given an opportunity to look in a
14 photo-lineup, is that correct?

15 A Yes, sir, that's correct.

16 Q This is State's Exhibit 34 for identification, is that
17 the photo-lineup that you looked at?

18 A Yes, sir.

19 Q I show you 36 for identification. Is this the one
20 where you designated your pick and put your signature on?

21 A Yes, sir.

22 MR. POPE: Your Honor, I move State's Exhibit 34 and
23 36 into evidence.

24 MS. BRICE: Without objection, Your Honor.

25 THE COURT: It will be received.

1 (State's Exhibit 34 and 36 marked and filed.)

2 Q Mr. Sanders, the individual that you identified in
3 this particular picture is that the one that faced you
4 that you got the better look at or was that the other one?

5 A The one that faced me.

6 Q And over-all you had said two black males. Do you
7 recall anything else about the clothing of either one of
8 the two?

9 A They had dark colored clothing.

10 Q Do you recall anything about any hats or anything of
11 that nature?

12 A There was a hat that I described that night.

13 Q Okay, Mr. Sanders, after you made this identification,
14 you weren't able to pick out -- you were able to pick out
15 Mr. Forney, but you were not able to pick out Mr. Hughes,
16 is that correct? You did not have a photo-lineup of Mr.
17 Hughes that you signed and identified, is that correct?

18 A I remember looking at -- I as called the next day to
19 come down to Rock Hill PD and I don't recall picking Mr.
20 Hughes out.

21 Q Mr. Sanders, the vehicle once you spotted it you went
22 directly and contacted law enforcement after you checked
23 and confirmed that was the vehicle, is that correct?

24 A That's correct. I acted expeditiously and went to the
25 nearest pay phone and called law enforcement.

TIM SANDERS

CROSS

1 Q And you directed them back to it as soon as possible?

2 A I was asked to stay present until someone arrived.

3 Q Did you see anybody tamper with the vehicle after you
4 had arrived or before you turned it over to law
5 enforcement or indicate to law enforcement?

6 A No, sir.

7 Q When you saw the two individuals leaving the area from
8 the car going up toward the store -- I'm sorry. When you
9 saw them, how many were there? How many men did you see?

10 A Two.

11 Q Okay and every time you saw them were they together?

12 A Yes, sir.

13 Q Thank you. Answer any questions the defense may have.

14 CROSS EXAMINATION

15 BY MS. BRICE

16 Q Hi, Mr. Sanders, how are you doing?

17 A Good morning.

18 Q Let's just go back step back a little bit, okay?

19 A Yes, ma'am.

20 Q Approximately what time did you arrive at the Holiday
21 Inn the first time when you were sitting in your vehicle,
22 I believe? What time did you arrive at the Holiday Inn?

23 A I arrived at eleven o'clock.

24 Q When you were sitting in the vehicle listening to the
25 transmissions you were listening to it at eleven o'clock?

TIM SANDERS

CROSS

1 A Oh, when I left my residence, it was 9:30 and from
2 9:30 on then.

3 Q And when you left your residence at 9:30, where did
4 you go?

5 A North Cherry Road.

6 Q And did you make any stops on Cherry Road?

7 A Yes, I did.

8 Q Where did you stop?

9 A The Winthrop University area, which is the south part
10 of Cherry Road, and continued north to the K-Mart Parking
11 lot to Bud's Warehouse.

12 Q Was anyone in the vehicle with you?

13 A I was by myself.

14 Q So you were just traveling around that evening with
15 your radio on? What would you call it, I don't know if
16 it's a radio or --

17 A It's a fire scanner.

18 Q A fire scanner?

19 A Yes, ma'am.

20 Q And so you were driving around that evening with your
21 scanner on ---

22 A Yes, ma'am.

23 Q --- from about 9:30 on?

24 A Yes, I turned it on when I got in the City of Rock
25 Hill.

1 Q Okay. And how many channels are on that scanner?

2 A There were two.

3 Q Two?

4 A Yes, ma'am.

5 Q And were you listening to both channels
6 simultaneously?

7 A Yes, ma'am.

8 Q I believe it was your testimony that you knew Brent
9 McCants, is that correct?

10 A Yes, ma'am.

11 Q What other law enforcement officers do you know other
12 than Mr. McCants?

13 A I know several others.

14 Q Were any of those other officers on duty that same
15 evening?

16 A No, ma'am.

17 Q Can you when you listen to the radio identify their
18 voices?

19 A No, ma'am.

20 Q You can't? Why is it that you cannot identify their
21 voices, but you could identify Mr. McCants' voice?

22 A I had talked to Brent before that day and I knew his
23 voice.

24 Q But you know other law enforcement officers as well,
25 is that correct?

TIM SANDERS

CROSS

1 A That's correct and I assume they weren't working that
2 night.

3 Q But if you listen to them on the radio, can you
4 identify their voices?

5 A Oh, yes.

6 Q And that evening you heard the transmission come over
7 the radio, is that correct?

8 A His transmission, yes, ma'am.

9 Q And when you heard the transmission, what did you do?

10 A I was acknowledging what Brent was doing.

11 Q Did you write it down or did you make a mental note of
12 it?

13 A Just a mental note.

14 Q And what do you recall about what came over the
15 scanner?

16 A That he called the dispatcher that he was pulling a
17 vehicle over and he gave the tag number.

18 Q Do you remember any of the numbers that he used in
19 pulling that vehicle over?

20 A Yes, ma'am.

21 Q What was that, do you recall? If you don't recall,
22 that's okay. Only if you do recall it.

23 A (No response.)

24 Q You don't recall the numbers that he used over the
25 scanner?

1 A Just his number.

2 Q His patrol car number?

3 A I guess that's his number. It was a number that he had
4 used and if I can recollect, it is 66.

5 Q And do you remember him using any other numbers when
6 he pulled the vehicle over?

7 A No more than a tag number.

8 Q Okay and tell me what happened after he gave the
9 transmission over the scanner as to the tag number of the
10 vehicle.

11 A I was just sitting and waiting and waiting for Brent
12 to say something, everything is okay or something of that
13 nature.

14 Q Did you hear any of Mr. McCants' previous
15 transmissions?

16 A I was waiting that night to be honest with you and I
17 didn't until I was at the Holiday Inn and he was pulling
18 that vehicle over.

19 Q Your testimony was that you had your scanner on from
20 9:30 forward.

21 A Yes, I didn't turn it on until I got into the City of
22 Rock Hill.

23 Q Which was I believe approximately 9:30, is that right?

24 A Well, I left my residence at 9:30 and I would say
25 leaving from my residence in Rock Hill it would be a

1 twenty minute drive.

2 Q Okay, so ten 'til ten approximately?

3 A Yes, ma'am.

4 Q So from ten 'til ten until the time you heard that
5 call did you hear any other of Mr. McCants' previous
6 broadcasts?

7 A No, ma'am.

8 Q You did not identify his voice over that frequency
9 prior to that?

10 A No, ma'am.

11 Q You heard the transmission come over the scanner and
12 pick up the numbers and then what did you do next?

13 A I was just sitting and listening and listening for
14 Brent because I loved to hear him on the radio.

15 Q Okay. And what was the next thing you heard?

16 A A female's voice over the radio.

17 Q What did you do then?

18 A The moment that I heard the voice as I was meditating
19 on Brent McCants, a York County Sheriff's deputy, I knew
20 exactly what it was.

21 Q And I believe it was your previous testimony that --
22 if you want to step down, you can. I believe it was your
23 previous testimony --

24 A I was parked at the Holiday Inn.

25 Q Right and you came around this way, that way? Maybe

1 down this way, is that correct? You came down this way?

2 A Yes, ma'am, Celriver Road, which is right here.

3 Q And you left here and you came down and then that
4 eventually met a road where you came out at Springdale or
5 Springmaid --

6 A Springdale. It put me right in this area.

7 Q And then you came to the traffic light there by the
8 Galleria?

9 A Traffic light and the Galleria and also there are a
10 few restaurants.

11 Q Okay. And, again, what was -- you can take your seat,
12 I'm sorry. And tell me again what the purpose was once
13 you left the Holiday Inn what your purpose was?

14 A Again when I heard the tag number that was called out
15 by Brent McCants, I left that parking lot because of that
16 female's voice. So that's when I took the initiative to
17 go that route.

18 Q Were you aware of any other officers on Dave Lyle
19 Boulevard at that time?

20 A Again there were numerous officers at the scene.

21 Q I guess my question would be would it not have been a
22 quicker route to get on 77 to get right to the scene?

23 A Absolutely and again I went the back way because of
24 the suspect vehicle and without me taking the interstate.
25 I didn't want to be in the midst of a traffic stop.

1 Q Okay. Correct me if I am wrong, but I thought you
2 testified you initially left the Holiday Inn to render
3 assistance.

4 A To help.

5 Q In your mind at that time what type of assistance were
6 you going to render? You know, was it to help, you know,
7 with Brent or were you looking for the vehicle at that
8 time?

9 A Yes.

10 Q Yes, what?

11 A Looking for the vehicle the moment that I left out of
12 the parking lot.

13 Q So you weren't necessarily going to Dave Lyle to
14 assist with Mr. McCants.

15 A At the red light -- oh, excuse me, at the traffic
16 light I could see from five tenths of a distance the
17 emergency personnel. That's why I made up my mind what
18 shall I do.

19 Q When you left the Holiday Inn, I don't mean to get you
20 confused, Mr. Sanders, ---

21 A Yes, ma'am.

22 Q --- when you left the Holiday Inn, was your main
23 purpose to locate the vehicle or was it to render
24 assistance to Mr. McCants?

25 A To go down to the crime scene itself.

1 Q So you left for the scene to help render assistance to
2 Mr. McCants, is that correct?

3 A Yes, ma'am and the vehicle.

4 Q So basically your purpose was to do both?

5 A Yes, ma'am.

6 Q All right, so when you left the Holiday Inn, your main
7 purpose was to render assistance to Mr. McCants and to
8 locate the vehicle?

9 A As I was enroute to that location.

10 Q Again, going back, why did you not take the quicker
11 route getting down 77? You could have gotten there and
12 rendered assistance a lot quicker if you had gotten onto
13 77.

14 A I agree and like I testified if I was going southbound
15 on I-77 I would have probably been in the midst of a
16 traffic stop just getting off of the exit and that would
17 put me right at close to the crime scene itself.

18 Q On your scanner were you aware of there being a
19 traffic stop on 77?

20 A Well, what I mean the cars on both sides of the road
21 before me taking the northbound on I-77, so I just didn't
22 want to get, you know, close enough at that time.

23 Q On the scanner you would have known if there was a
24 traffic stop, is that not right?

25 A Not necessarily.

1 Q That's okay, I'm just asking questions. I'm just
2 trying to figure out what were your thoughts.

3 A I just only had two options is to get off at the Dave
4 Lyle exit, I'm going southbound, ---

5 Q Okay.

6 A --- and looking at the officers itself there would be
7 a lot of traffic in the roadway. I would not be able to
8 get around it.

9 Q Well, I guess you pose another question for me. If you
10 thought there were going to be so many vehicles there and
11 somebody had already assisted with Mr. McCants, why didn't
12 you just start cruising looking for the vehicle?

13 A When I left the Holiday Inn and again I am hearing
14 numerous, you know, traffic over the airway because it is
15 a normal route that would be the best thing for me to do
16 as I was going to start looking immediately again for that
17 particular vehicle.

18 Q How long did it take you -- it looks like a long way
19 --

20 A It is.

21 Q Can you tell me how long it did take you?

22 A I don't have the mileage at this time.

23 Q That's okay. Can you give me a rough idea? Did it
24 take ten or fifteen minutes to get there? Or was it
25 shorter than that?

1 A It's more longer than going just on the interstate. If
2 I had the mileage, I would like to give it to you.

3 Q That's okay. I'm just trying to get a rough idea of
4 the time. Okay, so you get down here and you come to the
5 stop light near the Galleria and off in a distance you see
6 all of the emergency vehicles.

7 A That's correct.

8 Q Are you trained in any type of EMS -- I know that you
9 are a volunteer fireman, that's why you have a scanner, is
10 that correct?

11 A Yes, I am.

12 Q Do you have any type of medic or EMS training?

13 A I was in the process of going through it. I don't have
14 that training.

15 Q You don't have it now, but at that time you were going
16 through the process of it?

17 A Uh-huh, well, yes.

18 Q Did you have training?

19 A As far as using that, I don't have that kind of
20 training, so maybe I should say just no.

21 Q So when you saw everybody basically at the scene you
22 decided to get back on the interstate, right? You tell me
23 what happened next.

24 A There was a traffic light and I stopped because I
25 wanted to see what was going on and as I said before I

1 wanted to help Brent McCants and looking at all of the
2 emergency personnel that was present on the scene I felt
3 that my assistance was not necessary so the best thing for
4 me to do is get out of Dodge.

5 Q When you got out of Dodge, where did you go?

6 A Northbound on I-77. I quickly got out on the
7 interstate as fast as I could and I started looking even
8 more. I said to myself this must be serious. In my mind I
9 was hoping that Brent was okay.

10 Q And when you get out on the interstate, at that time
11 you were looking for an out-of-state tag?

12 A Yes, out-of-state tag.

13 Q And I'm just real curious why you got off of the same
14 exit where you had originally started, I mean, you were
15 looking for an out-of-state tag. I guess my problem is I
16 would have kept driving. What possessed you to get off on
17 that exit?

18 A Like I said, I wanted to check all the nearby motels
19 and hoping that --

20 Q Why a motel? Did you think they were going to check
21 into a motel, I mean, why did you think they were at a
22 motel?

23 A Like I said, that's one of the things that came in my
24 mind is to check on all of them.

25 Q You were of the opinion that they were probably going

1 to check into a motel somewhere?

2 A Just for again I mainly concentrated on the suspect
3 vehicle because I didn't know anything else at that time
4 no more than what Brent McCants had put over the airway.

5 Q So you get off the interstate and you go back to the
6 Holiday Inn -- if it is more convenient for you, you can
7 come back. You were on 77 right here and you came off. Is
8 that the interstate?

9 A Yes, ma'am.

10 Q And I believe that's when you came in here? Was it
11 this one that you came out?

12 A There are two drives, but this is the drive I took.

13 THE COURT: Keep your voice up, Mr. Sanders.

14 A There are two drives. I'm going into the Holiday Inn
15 itself and I took the drive that was well lit.

16 Q And I know that you were sitting in the Holiday Inn
17 parking lot. This is your starting point and your
18 finishing point so to speak. Why were you there already?
19 Was there a reason why you were sitting there in the
20 parking lot, why you decided to choose the Holiday Inn
21 parking lot?

22 A Again, there's a night club right beside the place and
23 I was just out lingering around and cruising up and down
24 North Cherry Road.

25 Q Did you know anybody at the Holiday Inn? Is that why

1 you came back to tell anybody about what had happened or
2 was your main thought I have got to find that car?

3 A I've got to find that car. I wasn't concerned about
4 talking to anybody else.

5 Q So you weren't concerned with meeting or seeing
6 anybody at that point in time?

7 A No.

8 Q I believe your testimony was you come in this way here
9 and you decided to go down this way, is that correct?

10 A Yes, ma'am.

11 Q And I believe it was your testimony that approximately
12 in this area here was where you saw the two men?

13 A Yes, ma'am, where there's large shrubbery.

14 Q Okay, if you want to sit down. And I believe it was
15 your testimony that you saw two men walking, is that
16 correct?

17 A Yes, ma'am.

18 Q And they were taking large strides, is that correct? I
19 don't know, you tell me. I don't mean to put words in your
20 mouth. How were they walking?

21 A They were taking big steps.

22 Q Like that?

23 A Yes, ma'am.

24 Q Were they side by side?

25 A Yes, ma'am.

1 Q They were side by side the whole time they were
2 walking?

3 A No, ma'am.

4 Q What were they doing?

5 A When I entered the parking lot, there was one that was
6 slightly away from the other one. I kept my vehicle
7 rolling and that's when I said there are two black males
8 and then I recall them being side by side.

9 Q Okay, so at one point one was ahead of the other and
10 then at one point one of them either caught up with the
11 other or something.

12 A Caught up with the other one.

13 Q Were they communicating back and forth with one
14 another?

15 A I don't know; I didn't hear that part.

16 Q And it's my understanding that you made no
17 identification of the defendant, is that correct?

18 A No, ma'am.

19 Q You made no identification of the defendant, is that
20 correct?

21 A That's correct.

22 Q But you did identify Mr. Forney, is that correct?

23 A Yes, ma'am.

24 Q This is a photograph of Mr. Forney, is that right?

25 A They were both wearing dark clothes.

1 Q Is this the man that you identified as being the one
2 that you saw?

3 A Yes, ma'am.

4 Q Okay. Do you want some water?

5 A (Water given to witness.)

6 Q So you made an identification of Mr. Forney, is that
7 correct?

8 A Yes, ma'am.

9 Q And you made no identification of Mr. Hughes, is that
10 correct?

11 A Dark colored clothing.

12 Q Did you pick Mr. Hughes out of the lineup?

13 A No, ma'am.

14 Q Were you shown photographs of the lineup?

15 A Again, I recall going to Rock Hill PD the next day
16 later looking at a lineup. I don't recall picking Mr.
17 Hughes out of the lineup.

18 Q And do you recall what Mr. Forney was wearing?

19 A Yes, ma'am.

20 Q Could you describe that for me, please?

21 A A sweat suit type clothing, a dark sweat suit.

22 Q And do you remember if he was wearing a cap or do you
23 remember anything that he was wearing on his head?

24 A There was a ball cap; yes.

25 Q And do you recall who was wearing that ball cap?

1 A I can't remember.

2 Q That's fine; I don't want you to say anything that you
3 don't remember. I just want you to tell us what you do
4 remember. I believe it's your -- I'm sorry, go ahead. Are
5 you okay?

6 A (Witness coughing.)

7 Q Do you want a minute?

8 A Would that be okay?

9 THE COURT: Do you need a break?

10 WITNESS SANDERS: Yes, sir.

11 THE COURT: We will take a short break. This will be
12 about two or three minutes.

13 (Recess.)

14 THE COURT: Bring in the jury.

15 (Jury returns to courtroom.)

16 CROSS EXAMINATION

17 BY MS. BRICE (RESUMED)

18 THE COURT: You may proceed.

19 Q When you saw the gentlemen walking, I believe your
20 testimony was one was walking in front of the other, and
21 the other at one point in time they got back together
22 again, is that correct?

23 A Yes, ma'am.

24 Q Do your recall which person it was that was in front?

25 A Yes, ma'am.

1 Q And who was that?

2 A The one that appeared to be on the exhibit.

3 Q Mr. Forney?

4 THE COURT: Keep your voice level up, Mr. Sanders. You
5 have got a soft voice. We need to all hear it.

6 A Yes, ma'am, the one that appeared in the exhibit.

7 Q Okay, Mr. Forney was the one who was in front?

8 A Yes, ma'am.

9 Q And after you saw the gentlemen you came down and saw
10 the Buick is that correct?

11 A That's correct.

12 Q And when you saw the Buick, what did you do?

13 A I stared at it.

14 Q And then what did you do?

15 A I got out of my vehicle.

16 Q When you got out of your vehicle, what did you do?

17 A I looked at the description of the vehicle.

18 Q And what did you do next?

19 A I went to the side of the vehicle, looked inside, saw
20 that the glove box was open.

21 Q Did you see anything else?

22 A No, ma'am.

23 Q When you looked at the vehicle, to me I would have
24 looked right at the tag first.

25 A Yes, that's what I looked at.

1 Q But you did look at the tag first?

2 A Yes.

3 Q And what did you do when you saw the tag?

4 A Me hearing it repeatedly over the airways I got inside
5 my vehicle and I wrote it down for verification purposes.
6 That was it.

7 Q I just wanted to get this right. You say you were in
8 your vehicle and you are looking down the row of cars, ---

9 A Uh-huh.

10 Q --- boom, you see what?

11 A The tag number of the vehicle first.

12 Q And what did you do immediately after you saw that?

13 A I stared at it. After that I waited and got out.

14 Q So you parked the car and you get out of your vehicle.
15 Did you park your vehicle?

16 A Yes, ma'am.

17 Q You see the car, you see the tags, you see everything
18 about it, did you get out of your car and you looked at
19 the vehicle?

20 A That's correct.

21 Q Why come you didn't just call it in like that?

22 A Good question. Again, I wanted to make sure that I
23 know what I'm doing, you know, once I looked at the
24 vehicle very carefully, I'm looking at all of the
25 emergency officials on Dave Lyle, I said this must be

1 serious, so, again, looking at that vehicle, like I said,
2 I stared at it, saw the tag, saw the color of the vehicle.
3 I glanced inside the vehicle, the glove compartment was
4 discovered to be open, and I went back inside of my
5 vehicle and I wrote down the tag number. That was it.

6 Q Did you expect to find something in the vehicle? Is
7 that why you looked in it?

8 A I just wanted to see what it looked like inside.

9 Q Okay, that's fine. And then I believe you left, you
10 got back in your vehicle?

11 A Yes, ma'am.

12 Q And then you came around and you went and made a phone
13 call, is that right?

14 A That's correct.

15 Q And then after you made the phone call you went back
16 to the vehicle, is that correct basically to secure it I
17 would assume?

18 A No, ma'am. I dialed law enforcement.

19 Q Right, you came out, used the telephone.

20 A I waited at the Chevron Station until the deputies
21 arrived.

22 Q The deputies met you at the station?

23 A That's correct.

24 Q And then you took the deputies to the car?

25 A Yes, ma'am.

1 Q While you were waiting for the deputies, did you watch
2 the vehicle?

3 A I was watching around it.

4 Q So you were just hanging around the telephone, you
5 didn't try to park your vehicle behind it to keep it
6 locked in there so no one could move it?

7 A No, ma'am.

8 Q That's fine. How much time elapsed, how much time
9 went by between the time that you got off of 77, found the
10 vehicle, looked at it, and got back to make a telephone
11 call. Do you know approximately how much time went by?

12 A I don't have the exact calculation.

13 Q Do you think it was a matter of seconds or do you
14 think it was like fifteen minutes, thirty minutes, or was
15 it less than that?

16 A It was less than fifteen minutes.

17 Q And how much time, if you can, if you can't, that's
18 okay, how much time elapsed from the time that you got off
19 of I-77 and the time that law enforcement got to the
20 vehicle to secure it?

21 A Like I said that night everything was expeditiously
22 and I just, you know, don't have the calculation as far as
23 time is concerned.

24 Q Just one more question if you would. When you were at
25 the Holiday Inn, this is the first time that you went to

1 the Holiday Inn and you were at - I think your testimony
2 was that you were just kind of driving around that night,
3 I think you had been out on Cherry Road and a couple of
4 places that night, is that correct?

5 A Yes, ma'am.

6 Q This was the only hotel that you had been to, is that
7 correct?

8 A That's correct.

9 Q And how many places had you been prior to the Holiday
10 Inn?

11 A I turned around at Winthrop University and I went
12 north on Cherry Road, stopped here and stopped there, and
13 that was it.

14 Q Did you know anybody who worked at the Holiday Inn?

15 A Yes.

16 Q Is that the reason why you went to the Holiday Inn?

17 A Not to visit.

18 Q Not to visit?

19 A No.

20 Q I believe that's all the questions I have. Thank you.
21 I appreciate your time.

22 REDIRECT EXAMINATION

23 BY MR. POPE

24 Q Mr. Sanders, the bottom line you found EMF 313 that
25 car in the parking lot that night after Brent was shot?

1 A Absolutely.

2 Q And you saw two black males?

3 A Two black males.

4 Q And where was the last place you saw them?

5 A The last place was where the Chevron Station is
6 located.

7 Q Up in the corner of Celriver and Cherry Road?

8 A Celriver and Cherry Road.

9 Q Okay, and Mr. Sanders, why did you get involved in all
10 of this searching and looking and checking tags and all of
11 this? Why did you do that?

12 A Brent McCants and also I wanted to help.

13 Q Thank you, sir.

14 THE COURT: Anything further?

15 MS. BRICE: Nothing further, Your Honor.

16 MR. POPE: Your Honor, I ask that this witness be
17 excused and I have a ---

18 THE COURT: We are going to break for lunch now.

19 MR. POPE: --- I have a group of witnesses, a citizen,
20 that is the chain witness for this --

21 THE COURT: All right, lunch won't be for another ten
22 minutes. So if you will move that and Mr. Sanders, you
23 may step down and be excused.

24 Come up and be sworn, please, sir. Stand right there
25 with the Bible.

DAN KETCHEL

DIRECT

DAN KETCHEL, being duly sworn, testified

as follows:

DIRECT EXAMINATION

BY MR. POPE

Q Mr. Ketchel, if you would, state your name and occupation for the jurors.

A My name is Dan Ketchel. I am a systems manager for First Union Bank and I am also a reserve officer with the City of Rock Hill.

Q What is a reserve officer? Is that the same as a uniformed officer only you don't get paid?

A Exactly. Basically the same as a full time officer other than you don't get paid.

Q Were you a reserve officer for the county back in 1992 when Brent McCants was killed?

A Yes, I was.

Q Were you working that evening when Brent was shot?

A Yes, sir.

Q And what was your call number on the radio?

A Okay, it was R-11.

Q Okay and during the time Brent McCants was making his stop were you also making a stop you and another officer?

A Yes, between 10:45 and 11:00 I made a stop on 901 and Ogden Road of a vehicle.

Q When the jury hears about the stop at 901 and Ogden

1 Road on the tape of Mr. McCants you are that officer?

2 A That's correct.

3 Q And that stop involved four black males in a Pontiac
4 Grand Prix or something like that?

5 A Yes, sir.

6 Q That does not have anything to do with the McCants'
7 case?

8 A That's correct; it had nothing to do with that.

9 Q Once the call came out, did you hear the transmission,
10 the Mayday transmission that came out?

11 A Correct. At that time I heard the Mayday transmission,
12 I released the car that I stopped and I went to the scene
13 on Dave Lyle to check on what was going on. At that point
14 in time I couldn't do anything so I decided to leave the
15 scene and did a search of the Red River area and Cherry
16 Road.

17 Q When you said you couldn't do anything, what do you
18 mean?

19 A There were already enough officers on the scene
20 physically helping out, so at that point in time I just
21 wanted to do a search.

22 Q Okay, when you said Red River and Cherry Road, is Red
23 River and Celriver is that the same?

24 A That's the same road.

25 Q And at some point during that search did you have an

1 opportunity to receive a call from dispatch regarding the
2 vehicle being located?

3 A Yeah, at that time when the dispatcher gave out a
4 dispatch that they had somebody on a pay phone at I
5 believe it was the Exxon on Cherry Road, I was about
6 thirty seconds to a minute away from that location, so at
7 that point in time I notified the dispatcher I was 10-23,
8 which meant I was there.

9 Q You said you believed it was the Exxon. Is it the gas
10 station that is there at the corner of Cherry at the
11 Holiday Inn?

12 A Exactly.

13 Q And did you, in fact, go to the gas station and meet
14 with Mr. Sanders?

15 A Yes, I met with Tim Sanders.

16 Q And did he related the information to you in regards
17 to the location of the vehicle?

18 A That's correct. I had an investigation with Mr.
19 Sanders and at that time he did relay the vehicle that he
20 thought was the vehicle sitting down at the Holiday Inn.

21 Q Did you go down with him - I think he was in his own
22 vehicle, is that correct?

23 A Well, during the investigation we also found out that
24 there were two black males that they thought was running
25 down the road, so prior to going down I did give that

1 information out on the radio to the dispatcher.

2 Q And after giving the information about the two black
3 males leaving the area, you went down to the car?

4 A Then I went down to the vehicle and walked up to the
5 vehicle, identified that it was the vehicle, went back and
6 told the dispatcher it was the vehicle.

7 Q And I show you State's Exhibit 35, 37, 38 and 39 and
8 ask you to look and see if that was the same vehicle Mr.
9 Sanders pointed out to you that night.

10 A That's correct, that is the vehicle.

11 Q And I believe at that point Officer Greg Maggart was
12 called in to come to that location for the purpose of
13 securing and putting evidence tape up?

14 A That is correct. At that point in time I did leave the
15 vehicle and I did go and search for the suspects.

16 Q And while you were there with the vehicle, did you
17 tamper with the vehicle in any way?

18 A No, I did not.

19 Q Thank you. Answer any questions the defense may have.

20 CROSS EXAMINATION

21 BY MR. SCHUSTERMAN

22 Q Mr. Ketchel, on that particular evening when you
23 arrived at the Holiday Inn, did you inspect the car?

24 A Yes, I did.

25 Q Were the doors locked or were they open?

1 A I did not physically touch the vehicle. I walked
2 around the vehicle, found that it was the vehicle, it was
3 a crime scene and I didn't want to touch it until somebody
4 got out there and secured it.

5 Q Don't you have the ability to secure as an officer?

6 A Well, due to that somebody physically spotted the
7 suspects surrounding it, I didn't stay there and secure
8 it. I thought I had a better chance of actually catching
9 them to leave at that point in time to go look for them.

10 Q Did you look in the vehicle?

11 A Yes, I did.

12 Q Was the glove compartment opened or closed?

13 A I don't recall. All I was doing was looking to see if
14 there was anybody physically in the vehicle.

15 Q From that evening did you because you were the first
16 officer on the scene did you take any notes that night on
17 what you saw?

18 A No, I didn't. There was one incident report written
19 for the whole night and I didn't take any notes.

20 Q Several of the officers involved gave statements. Did
21 you give a statement at any time?

22 A No, I did not.

23 Q Before you left the car, the car that you were called
24 to at the Holiday Inn, --

25 A The suspect vehicle.

1 Q --- the suspect vehicle. Before you left the suspect
2 vehicle, was there another officer who came?

3 A No, not prior to me leaving. I did leave before
4 another officer got on the scene.

5 Q So am I to understand the reason that you didn't go
6 into the vehicle or even check it was because you didn't
7 want the vehicle to be tampered with, is that correct?

8 A Yes.

9 Q You felt that it was okay to leave the vehicle without
10 law enforcement being present so that the evidence
11 couldn't be tampered with?

12 A That's correct. I knew there was another officer real
13 close to the area and due to the suspects were seen just
14 leaving I thought it was better to try to go get them at
15 the time.

16 Q I want to just ask you. You were not ordered or
17 directed in any way to go to find the suspects? That was
18 just a decision you made as a law enforcement officer?

19 A Correct.

20 Q Just out of curiosity how would you know that the next
21 officer that came to secure the car didn't have the same
22 perspective you did? Why did you deem it that the next
23 law enforcement officer would be the one to secure the
24 vehicle to make sure it wasn't tampered with and that
25 wasn't your responsibility?

DAN KETCHEL REDIRECT and RECROSS

1 A I didn't; I just deemed that due to the period of time
2 that the two black males were spotted that I needed to go
3 after them at the time.

4 Q Was that the extent of your involvement in the case?

5 A Yes, sir.

6 Q You never discovered the two black males?

7 A No, sir.

8 Q Thank you, Mr. Ketchel. I appreciate your being here.

9 REDIRECT EXAMINATION

10 BY MR. POPE

11 Q Mr. Ketchel, Mr. Sanders remained there with the car
12 when you left to look for the vehicle?

13 A That's correct. I did ask Mr. Sanders to stay with the
14 vehicle until the next officer got there.

15 MR. SCHUSTERMAN: Just briefly on recross.

16 RECROSS EXAMINATION

17 BY MR. SCHUSTERMAN

18 Q As I understand it, even though you are a reserve
19 officer and I understand you volunteer your time, you are
20 actually a sworn officer, are you not?

21 A That's true. I am sworn by the State of South
22 Carolina.

23 Q Basically, this is a benevolent act by you for the
24 community; you don't get paid for this.

25 A That's correct; I don't get paid at all.

1 Q Mr. Sanders is not a reserve officer?

2 A That's correct.

3 Q So you were leaving this piece of evidence with a
4 civilian?

5 A That's correct.

6 Q Thank you.

7 MR. POPE: Nothing further. I ask this witness be
8 excused.

9 MR. SCHUSTERMAN: No objection.

10 THE COURT: You may step down. You may be excused.

11 All right, we will go and have lunch now. Your lunch
12 is being brought in. We will try to start back around two
13 o'clock. Follow the bailiff. I understand some of you are
14 a little cool in here. We will see about doing something
15 about it.

16 (Recess)

17 MR. POPE: The State is ready.

18 MR. SCHUSTERMAN: The defense is ready.

19 THE COURT: Bring in the jury.

20 Call your next witness.

21 MR. POPE: The State would call Greg Maggart.

22 GREGORY MAGGART, being duly sworn,

23 testified as follows:

24 DIRECT EXAMINATION

25 BY MR. POPE

1 Q Mr. Maggart, state your name and occupation for the
2 jury.

3 A My name is Gregory Scott Maggart. I am a deputy
4 sheriff with the York County Sheriff's Department.

5 Q How long have you been with the Sheriff's Department?

6 A I have been with the Sheriff's Department for five
7 years.

8 Q Were you with the Sheriff's Department back on
9 September 25, 1992, the night Brent McCants was killed?

10 A Yes, sir, I was.

11 Q Were you involved or aided in the search of the
12 individuals that killed Mr. McCants?

13 A Yes, I was.

14 Q As part of your duties did you have an opportunity to
15 come and take custody of the suspect vehicle, the New York
16 tag vehicle EMF 313?

17 A Yes, I did.

18 Q Could you relate to the jury how that took place and
19 what you were doing?

20 A Yes, an announcement came over the radio that the car
21 had been spotted at the parking lot of the Holiday Inn on
22 North Cherry Road. I drove to that area and was directed
23 to the car where I identified it and at that time I took
24 the evidence tape and marked the car off.

25 Q What was your purpose in taking the evidence tape and

1 marking the car off?

2 A To secure it for any processing that might be done.

3 Q And when you got there, there was a citizen there that
4 you talked to?

5 A Yes.

6 Q And who was that?

7 A That was Tim Sanders.

8 Q I show you State's Exhibit 35, 37, 38 and 39 and ask
9 you to take a second look at those and see if you can
10 identify them.

11 A Yes, sir.

12 Q And what do they depict?

13 A Those are the pictures of the vehicle and in the
14 pictures you can also see the evidence tape where I had
15 secured it.

16 Q And did you remain with that vehicle until it was
17 turned over to SLED?

18 A Yes, I did.

19 Q Did you allow anyone to tamper with the vehicle or add
20 to it or take away from it or anything of that nature?

21 A No, sir.

22 Q Did you yourself do any of those things tamper or
23 change the vehicle?

24 A No, sir.

25 Q And you say you turned it over to SLED?

1 A Yes, sir, the SLED agent.

2 Q Answer any questions Mr. Schusterman may have.

3 CROSS EXAMINATION

4 BY MR. SCHUSTERMAN

5 Q Officer Maggart, as I understand it when you arrived
6 at the Holiday Inn parking lot there was only one person
7 there around the car and that was the civilian Mr.
8 Sanders?

9 A Actually Tim was out on Cherry Road. He was not in the
10 parking lot. He flagged me down and directed me to where
11 the car was.

12 Q So then the two of you approached the vehicle
13 together?

14 A Well, he pointed at it and I approached the vehicle.
15 He stood back at my car.

16 Q All right. When you approached the vehicle, was there
17 anybody else around it?

18 A No, sir, not at that time.

19 Q And the purpose of you being there and putting the
20 yellow tape, the police tape, around the area was to
21 secure the area?

22 A That's correct.

23 Q And the purpose of that as I understand it is to make
24 sure that no one tampers with the car.

25 A That's correct.

1 Q From the time that you secured the area did you leave
2 that area at all?

3 A No, I never did.

4 Q You stayed with the vehicle?

5 A Yes, I did.

6 Q And the purpose of your staying with the vehicle --

7 A To make sure that no one did tamper with the vehicle.

8 Q And how long did you stay with the vehicle?

9 A I don't know exactly. I would estimate approximately
10 three hours.

11 Q And never leaving the vehicle?

12 A Never left it.

13 Q And when did the vehicle finally - when was it finally
14 moved?

15 A Approximately three hours after I secured it a SLED
16 agent came. He through the window looked into the
17 vehicle, looked at it, and then he made a decision to have
18 it towed to the Rock Hill Police Department and a wrecker
19 came and hooked up and took the vehicle away.

20 Q That entire time that three hour period and did you
21 actually see the wrecker come? Did you stay with the
22 vehicle?

23 A Yes, I did.

24 Q You saw them put the car onto that wrecker?

25 A That's correct.

1 Q And drive away?

2 A Right.

3 Q Did you follow the vehicle to the Rock Hill Police
4 Department?

5 A No, I did not.

6 Q Did anybody?

7 A Not that I know of. I think the SLED agent did, but I
8 don't know that.

9 Q Now during this three hour period were you aware that
10 this car may have been involved in a homicide?

11 A Yes, I was.

12 Q Were you aware that there was a search on during those
13 three hours for suspects?

14 A Yes, I was.

15 Q Did you -- would you have if you were not staying with
16 the vehicle would you have helped in that search?

17 A I'm not sure; I don't understand what you mean.

18 Q Was ever available man out looking for the suspects?

19 A As far as I know, yes, sir.

20 Q So can you assume that had you not had the
21 responsibility of securing the vehicle you would be out
22 looking for suspects?

23 A That's a possibility, yes, it is.

24 Q Were you listening to the radio during this period?

25 A Off and on, I was out of the car some. I would get in

JAMES DAVID HOLCOMB DIRECT

1 my car some where I could see the vehicle. I didn't
2 continuously listen to the radio.

3 Q Were you aware that the search was going on within the
4 general area that you were in?

5 A Oh, yes, I was. There were helicopters above head, I
6 mean, it was pretty obvious the search was close by.

7 Q But yet you didn't leave the sight of the car?

8 A No, sir, I did not.

9 Q Because evidence could be tampered with?

10 A Exactly.

11 Q Thank you, I have no other questions. Thank you,
12 Officer.

13 MR. POPE: I ask that this witness be excused.

14 MR. SCHUSTERMAN: No objection.

15 THE COURT: You may step down. Thank you.

16 Call your next witness.

17 MR. POPE: Your Honor, we are going to take a witness
18 out of order if we could. The State would call David
19 Holcomb.

20 JAMES DAVID HOLCOMB, being duly sworn,
21 testified as follows:

22 DIRECT EXAMINATION

23 BY MR. POPE

24 Q Mr. Holcomb, if you would, state your name and
25 occupation for the jury, please.

1 A David Holcomb - James David Holcomb, Sr., retired from
2 the Sheriff's Department.

3 Q Mr. Holcomb, do you currently have a job elsewhere?

4 A Yes, I do.

5 Q You are here from that job today?

6 A Yes, sir, I am.

7 Q Mr. Holcomb, were you with the Sheriff's Department
8 back in 1992 when Brent McCants was killed?

9 A Yes, sir, I was.

10 Q As part of your duties did you sign out the various
11 equipment such as radios and things of that nature?

12 A Yes, sir, it was my job to assign equipment to the new
13 officers.

14 Q I'll ask you to look at State's Exhibit 40 for
15 identification, a two page document, and ask if you could
16 take a look at that and tell me if you can identify that.

17 A Yes, I can.

18 Q What is that document?

19 A This is a sheet where I inventoried and I assigned
20 radios to different officers and when I say "radios," I am
21 talking about the hand held walkie-talkies.

22 Q Did you, in fact, you made the indications on there
23 and you kept that log?

24 A Yes, sir.

25 MS. BRICE: Without objection, Your Honor.

1 THE COURT: It will be received.

2 (State's Exhibit 40 marked and filed.)

3 Q I show you State's Exhibit 40. I see the first page of
4 the log and the second one appears to be a Zerox copy of
5 the numbered stickers, is that correct?

6 A Yes, sir, that's a Zerox copy of property stickers
7 that are affixed to a walkie-talkie.

8 Q Okay. And do you have an indication on those two
9 sheets of what number walkie-talkie would have been
10 assigned to Brent McCants?

11 A Yes, sir, I do.

12 Q Could you relate that to the jury, please, what number
13 it would be?

14 A The number assigned to Brent McCants was serial number
15 651 A-Adam S-Sam Q-Queen 1540.

16 Q Is there also a county number that is assigned to it
17 that you affix a sticker to?

18 A Yes, sir, the sticker number that shows county
19 property was affixed to the walkie-talkie was 09637.

20 Q I show you State's Exhibit 32 for identification and
21 ask you to take a look at that both as to the number and
22 as to the walkie-talkie itself and see if you recognize
23 it.

24 A Yes, sir.

25 Q Who would that walkie-talkie have been assigned to?

CRAIG ALEXANDER

DIRECT

1 A This was the walkie-talkie assigned to Brent McCants.

2 Q Mr. Holcomb, answer any questions Mr. Schusterman may
3 have.

4 MR. SCHUSTERMAN: No questions, Your Honor.

5 THE COURT: You may step down.

6 You may be excused. Appreciate your testimony.

7 Call your next witness.

8 MR. POPE: I call Craig Alexander.

9 CRAIG ALEXANDER, being duly sworn,

10 testified as follows:

11 DIRECT EXAMINATION

12 BY MR. POPE

13 Q Mr. Alexander, I am going to ask you to state your
14 name and occupation for the jury, please, sir.

15 A Craig Alexander, Rock Hill police officer.

16 Q How long have you been with the Rock Hill Police
17 Department?

18 A Four and a half years.

19 Q Mr. Alexander, were you employed with the Rock Hill
20 Police Department on September 25th of 1992?

21 A Yes, sir.

22 Q Did you have an opportunity to assist in the search
23 for the perpetrators of the crime against Brent McCants?

24 A Yes, I did.

25 Q Would you relate to the jury where you were that

1 evening and how you became involved?

2 A I was working over time at the Northwestern Football
3 game and I was on my way home when I got the page in
4 reference to the incident.

5 Q Okay, when you got a page in reference to the
6 incident, who did you receive the page from?

7 A From my fellow officer who was also working that had
8 heard what had happened on the radio that night.

9 Q So at this point you were leaving the ball game and
10 you were headed home going off duty?

11 A Yes, sir.

12 Q And you came back out, is that correct?

13 A Yes, I did.

14 Q And what was your purpose in coming back out that
15 evening?

16 A You know, go out to assist in the effort to locate the
17 subjects.

18 Q Would you tell the jury how you were dressed as far as
19 any law enforcement markings?

20 A That night I was dressed in camouflage pants with a
21 black t-shirt with Rock Hill Police on the front and large
22 insignia Police on the back, badge on the front belt,
23 handgun on the side.

24 Q Okay and where did you and the other officer, I think
25 that was Officer Long, is that correct?

1 A Yes, sir.

2 Q Whose car were you in?

3 A It was my vehicle.

4 Q And this was your personal vehicle?

5 A Yes, sir.

6 Q And what type vehicle was that?

7 A It's a '92 Dodge Stealth.

8 Q Where did you go to when you went out?

9 A We were heading towards Cherry Road coming down Eden
10 Terrace onto Celriver Road heading up toward Cherry.

11 Q Okay, if you could step down, please, sir, and
12 indicate for the jury, use this, get yourself oriented,
13 77, Dave Lyle, Holiday Inn area - be sure don't stand in
14 front of it, move around on the side, and indicate to them
15 where Eden Terrace comes across.

16 A Here (indicating).

17 Q Does this bridge allow you to go down on the
18 interstate?

19 A No, sir, it does not.

20 Q So when you came through, did you go all the way to
21 the end of Eden Terrace?

22 A Yes, sir, to this point here.

23 Q And that would have intersected - what road was that?

24 A Celriver Road.

25 Q Celriver and Red River is that the same ---

1 A That's the same road, yes, sir.

2 Q So then you would have gone in which direction?

3 A I took a left here (indicating) headed up towards
4 Cherry Road.

5 Q Okay and in coming up to that area I now show you on
6 State's Exhibit 19 - again, if you could show the jury the
7 direction you would be coming up. You would be coming up
8 Celriver Road and --

9 A (Indicating on Exhibit 19)

10 Q Okay and coming up Celriver Road what, if anything,
11 unusual did you and Officer Long observe?

12 A At this point right here I noticed a black male
13 walking down towards Eden Terrace this way on this side of
14 the road on our right.

15 Q He was on the road?

16 A He was on the edge of the road on our right.

17 Q Do you recall how he was dressed?

18 A He was dressed in a dark colored sweat shirt and sweat
19 pants with a hood over his head.

20 Q Okay and what did you and Officer Long do when you saw
21 him?

22 A At that time I turned around in this little area here
23 and headed back down towards this entrance to the plant to
24 the BASF Plant.

25 Q Could you relate to the jury what happened at that

1 point?

2 A At that point we got out of the vehicle identified
3 myself and Officer Long also identified himself as Rock
4 Hill Police Officers and asked the subject to take his
5 hands from in front of his jacket, you know, his hands
6 were down here. We could not see his hands. At that time
7 the subject turned and ran across the road into the woods.

8 Q Did you pursue him?

9 A Yes, sir, I did.

10 Q And did you ultimately catch him and arrest him?

11 A Yes, sir, I did.

12 Q Okay, you can have a seat. When you caught the
13 individual in the woods who was later identified as Mr.
14 Forney, is that correct?

15 A Yes, sir.

16 Q I show you State's Exhibit 41 for identification and
17 ask you if that is how he appeared when you apprehended
18 him that evening?

19 A Yes, sir, it is.

20 MR. POPE: Your Honor, I move State's Exhibit 41 for
21 identification into evidence.

22 MR. SCHUSTERMAN: Without objection.

23 THE COURT: It will be received without objection.

24 (State's Exhibit 41 marked and filed.)

25 Q Okay, if you could show the jury this picture of Mr.

1 Forney. I notice he has a jacket on. You said the hood was
2 up over his head at the time you saw him?

3 A Yes, sir, it was.

4 Q Show the jury, please. Be sure each juror has an
5 opportunity to see it.

6 A (Witness shows exhibit to jury.)

7 Q I show you what's been marked State's Exhibit 42 for
8 identification and ask if you would look at that to see if
9 that appears to be the same clothes he was wearing that
10 evening.

11 A Yes, sir.

12 MR. POPE: Your Honor, I move State's Exhibit 42 into
13 evidence.

14 MR. SCHUSTERMAN: Without objection.

15 THE COURT: All right, it will be received.

16 (State's Exhibit 42 marked and filed.)

17 Q Mr. Alexander, at the point when you arrested him you
18 said he went into the woods, but when you saw him he was
19 along the far edge of Celriver or Red River Road?

20 A That's correct.

21 Q Okay, once you apprehended him and brought him back
22 out to the road, did another officer come to assist you
23 and Officer Long?

24 A Yes, sir, Officer Pruett and myself after I picked the
25 suspect up searched him down and around his ankle area we

1 found a handgun.

2 Q Mr. Alexander, I show you State's Exhibit 43 for
3 identification and ask you to take a look at it, please,
4 sir.

5 A (Witness complied.)

6 Q Do you recognize that?

7 A Yes, sir, I do. It is the weapon we took off the
8 subject.

9 MR. POPE: I move State's Exhibit 42 for identification
10 subject to the chain before any testimony would be
11 introduced.

12 MR. SCHUSTERMAN: Subject to chain ---

13 THE COURT: It will be received with that caveat.

14 MR. POPE: I apologize, Your Honor, I quoted that as
15 42; it is actually 43.

16 (State's Exhibit 43 marked and filed.)

17 Q Officer Alexander, with your experience and training,
18 I am going to ask you if you could remove that weapon and
19 make sure that it is unloaded.

20 A (Witness complied) Yes, sir.

21 Q Leave it in that position, that will be fine. Officer
22 Alexander, is there anything unusual about the handle on
23 this particular weapon that you noted?

24 A The handle is not on the gun, it's just the frame
25 itself. There is no handle.

1 Q What would go into this area -- if you can step down,
2 please. Show the jury what you are talking about about it
3 not being a handle on it.

4 A Grips would be here so a person could hold the weapon
5 in their hand properly - this is the frame of the gun.

6 Q Officer, I realize this -- what part of the gun is
7 this?

8 A That is a magazine for ammo.

9 Q And how would it go in the weapon? Would you show the
10 jury?

11 A (Demonstrating)

12 Q And was that the way it was when you recovered it?

13 A Yes, sir.

14 Q Okay, and were there bullets also in the weapon?

15 A Yes, sir.

16 Q Officer Alexander, approximately what time of the
17 evening did you and Officer Long make the arrest?

18 A Approximate twelve o'clock.

19 Q And did you have an opportunity to go back and assist
20 Officer Williams in making some overhead photographs and
21 determining where the exact location was of the arrest?

22 A Yes, sir, I did, the next day.

23 Q I show you State's Exhibits 44, 45 and 46 for
24 identification and ask if you would look at those.

25 A These are pictures of the Holiday Inn, the Celriver

1 area, and some parts of Eden Terrace.

2 Q And is that the location where the arrest was
3 effected?

4 A Yes, sir.

5 MR. POPE: Your Honor, Exhibits 44, 45 and 46 for
6 identification are moved into evidence at this time.

7 MR. SCHUSTERMAN: Without objection.

8 THE COURT: It will be received.

9 (State's Exhibits 44, 45 and 46 marked and filed.)

10 Q Mr. Alexander, I am going to ask you if you could to
11 step down and if you could help the jurors get oriented
12 with the pictures that you provided with the area that is
13 designated as the Holiday Inn. If you could look first at
14 State's Exhibit 31. I believe you had placed a vehicle so
15 you could designate where he was arrested. If you could
16 show the jury the vehicle, indicate Celriver Road/Red
17 River Road area and show them the Holiday Inn and then
18 explain how it relates to this picture.

19 A This is the Holiday Inn here, Celriver Road, this
20 vehicle, this small vehicle here, this is where we went
21 into the woods and located the subject.

22 This is the Holiday Inn here, Celriver Road. At that
23 point where the small vehicle is on the side of the road
24 is where we located him.

25 This the Holiday Inn, Celriver Road, the vehicle here,

1 this is where we located him.

2 Q Officer Alexander, you now indicate the picture and
3 the jury has seen it, but the vehicle that was shown was
4 marked would have been what area, the place where the
5 arrest was effected?

6 A Yes.

7 Q So this picture you have shown would have been taken
8 from over in this area with the Holiday Inn being in the
9 background?

10 A That's correct.

11 Q And that's State's Exhibit 45. Next, I'd ask you to
12 show them State's exhibit 44 The Holiday Inn. It is my
13 understanding that at that time you placed the vehicle to
14 mark where the suspect was-- if you could show them and
15 show them roughly the relation of where the arrest took
16 place.

17 A This is the Holiday Inn here, this marks the location
18 of where we found the vehicle and this is where the arrest
19 was.

20 Q Officer Alexander, before you move down, I want to
21 show you 46 and that way you can describe both at one
22 time.

23 A This is the suspect vehicle here, the Holiday Inn
24 here.

25 The Holiday Inn, the suspect vehicle, this is the

1 location.

2 Q Have a seat. You assisted Officer Williams I believe
3 with the measurements as far as showing the different
4 areas where you had done different things, is that
5 correct?

6 A Yes.

7 Q Once you had Mr. Forney under arrest, the weapon that
8 was recovered Mr. Pruett took that with him to give to
9 SLED is that correct?

10 A Yes, sir, he placed it in his belt at the time to
11 secure the weapon while we were still doing the pat down
12 search. When we had the subject secured, we passed it on
13 to a SLED agent, which was then taken into evidence.

14 Q And the clothing that was secured, that was the
15 clothing he was wearing, but you didn't take it off of him
16 at the scene?

17 A No, sir, I did not.

18 Q And this is the only individual that you assisted in
19 locating?

20 A That is correct.

21 Q Answer any questions the defense may have.

22 CROSS EXAMINATION

23 BY MR. SCHUSTERMAN

24 Q Good afternoon, Officer Alexander, how are you, sir?

25 A Fine.

1 Q Just to bring you to the scene. As I understand it you
2 were working a football game that night?

3 A That is correct.

4 Q Got home that night and did you say you received a
5 phone call or you were following a police scanner? How
6 did you hear about that?

7 A I received a page from a fellow officer who had been
8 following the scanner.

9 Q May I assume that based on the way you are telling the
10 story that the fellow officer was Officer Pruett?

11 A No, sir, that's Officer Long.

12 Q Oh, okay. And you and Officer Long went out to the
13 scene?

14 A That's correct.

15 Q And I believe you testified while you were dressed in
16 camouflage and a black t-shirt you were not in a marked
17 vehicle?

18 A That is correct.

19 Q What kind of vehicle were you in?

20 A I was in my personal vehicle, a '92 Dodge Stealth.

21 Q What color?

22 A White.

23 Q And did you pick up Officer Long on the way over to
24 the scene?

25 A I went to his house, yes, sir.

1 Q Was he dressed the same way you were?

2 A Yes, sir.

3 Q Come down a minute I want to talk to you about the
4 location. When you arrived in the vicinity, where were
5 you coming from?

6 A We were coming from here.

7 Q Okay, and then on the Eden Terrace Extension you made
8 a left turn?

9 A That's right.

10 Q And you were heading up what we call Celriver Road,
11 you were heading towards Cherry Road on Celriver Road?

12 A Yes, sir.

13 Q Was it at that point on your drive to Eden Terrace
14 Extension and you make a left turn, was it at that point
15 that you saw Mr. Forney for the first time?

16 A That's right.

17 Q Tell me what happened.

18 A Down to Eden Terrace to Celriver, made my left turn
19 onto Celriver heading towards Cherry somewhere in here.

20 Q You were on your way towards ---

21 A Yes, sir, I was on my way towards Cherry.

22 Q I'm sorry, if I misspoke, I apologize, that's why I
23 said you made a left turn heading towards Cherry. So you
24 began heading up towards Cherry Road ---
25

1 A That's right.

2 Q --- and it was right in here (indicating) that you
3 spotted Mr. Forney?

4 A That's right.

5 Q You didn't go stop immediately, is that correct? Did
6 you pass him first?

7 A Yes, I did.

8 Q What did you do?

9 A I passed him. I spotted him approximately here, right
10 here I did a U-turn at this entrance, came back down right
11 here. By the time he had gotten to right here.

12 Q So he was actually walking from Cherry Road back
13 towards Eden Terrace Extension?

14 A Walking this way.

15 Q Is there a grassy shoulder there?

16 A Grassy shoulder.

17 Q Is that what he was walking on?

18 A Yes, sir.

19 Q Why did you not stop him immediately the first time
20 you passed him?

21 A When we got right up on him is when we noticed him. I
22 had my lights on low beam, passed him, made the U-turn,
23 thought he looked suspicious at that time. After we
24 identified the clothing at that time we made a U-turn and
25 came back to speak with him.

1 Q Did you have a description?

2 A Yes, sir, I did.

3 Q Tell me the description that you had.

4 A A dark sweat suit jacket and possibly darker sweat
5 pants.

6 Q Was there any talk about a hooded sweat shirt?

7 A Yes, sir, a hooded sweat shirt.

8 Q And did the man who you stopped there have a hooded
9 sweat shirt?

10 A Yes, he did.

11 Q And was he wearing sweat pants that night?

12 A Yes, he was.

13 Q What happened once you stopped him, when you turned
14 around and came back?

15 A Myself and Officer Long identified ourselves as police
16 officers. I was on the driver's side, was a little closer.
17 At that time he started to back up and all the time he had
18 his hands in the front of his jacket pocket area. I asked
19 him to take his hands out of his pocket. He did not do so
20 and attempted to run at that time.

21 Q When you say hands in his pockets, sweat pants
22 generally don't have pockets.

23 A In the front of the sweat jacket.

24 Q Did it have one of those pouches almost it appeared

25 ---

1 A Yes, it appeared to be. I didn't know if he had it
2 tucked up under or not; it appeared to be.

3 Q Did there appear to be a bulge in it? Were you
4 concerned that he was concealing something?

5 A That was a concern, yes, sir, that we had.

6 Q When you did identify yourself as a police officer,
7 what was his reaction?

8 A Startled. He started to back up saying something. I
9 couldn't make out what he was saying and turn and ran.

10 Q He turned around and he was then facing back towards
11 Cherry Road?

12 A That's correct; he ran across the street at a
13 diagonal.

14 Q So he ran across into the woods?

15 A Yes, sir.

16 Q Those are all woods, are they not?

17 A Yes, there's a grassy area and then woods.

18 Q Did you have your guns drawn?

19 A Yes, sir, I did.

20 Q So he immediately crossed the street, went into the
21 grassy area and into the woods?

22 A Yes.

23 Q Obviously -- not obviously -- my understanding is
24 there were supposed to be two black males.

25 A That is correct.

1 Q I assume once you saw one you were concerned that
2 somewhere in the vicinity would be another black male?

3 A Yes, sir.

4 Q Was there one in your vicinity?

5 A Not that I knew of.

6 Q Not that you knew of, I mean, obviously ---

7 A No, sir.

8 Q There was not?

9 A No, sir.

10 Q Okay, then you went into the woods chasing him?

11 A Yes.

12 Q And I assume you were at that same time you had your
13 gun drawn and you were yelling.

14 A Yes, sir.

15 Q What were you yelling?

16 A I don't recall.

17 Q You can have a seat.

18 A Okay. I don't recall, but I was identifying myself as
19 a police officer and I asked him to stop. I do know that.

20 Q At some point though he fell down, did he not?

21 A Yes, sir, we both fell.

22 Q And why did you fall?

23 A There was a ditch right there.

24 Q I think it was very dark.

25 A Yes.

1 Q When you fell down, were you able to reach and grab
2 the suspect?

3 A Yes, sir.

4 Q All right. I assume that since you were behind him and
5 if you both fall forward -- did you both fall forward?

6 A Yes, sir.

7 Q So then you were at his feet?

8 A About mid-way up, half way his body.

9 Q And at that time were you attempting to secure him?

10 A I was attempting to secure his hands. They were
11 fumbling toward the lower part of his body.

12 Q Where were his hands right before. When he fell I
13 assume he fell with his hands out.

14 A I couldn't tell you.

15 Q Okay, as you were trying to secure him, he was
16 reaching back for the middle area again?

17 A Yes, sir -- actually, he was reaching down lower than
18 the middle area.

19 Q He was reaching down lower?

20 A Trying to get down even lower.

21 Q Okay, was there a struggle? Was he struggling with you
22 was he attempting to thwart you, to stop you from
23 arresting him?

24 A Yes, sir.

25 Q And did it appear fairly obvious to you that he was

1 going for something, that he was trying to get to a
2 particular area of the body?

3 A All I knew he was trying to get his hands down and I
4 wasn't going to let his hands get out of my sight.

5 Q Were you eventually able to secure his hands?

6 A Yes, I did.

7 Q How did you secure them?

8 A I finally tossed my gun back to Officer Long who was
9 standing behind me. I finally got his hands up over his
10 head and was holding his hands up under his head.

11 Q Did you handcuff him then?

12 A No, sir, I did not.

13 Q What did you do?

14 A I turned the suspect over and I carried him out of the
15 woods, layed him down on the hill there where wee fell. At
16 that time I covered him with myself to secure him. We
17 didn't have any handcuffs at the time.

18 Q So you were just basically pinning him down?

19 A That's right.

20 Q And are you still in the woods at this time?

21 A No, we were back out on the hill.

22 Q You were out in that grassy area?

23 A That's right.

24 Q How long have you been a police officer?

25 A Four and a half years.

1 Q When you are trying to arrest a suspect and the
2 suspect doesn't cooperate, keeps reaching for the lower
3 part of his body, what is your concern?

4 A That he might have a weapon that I don't know about.

5 Q Did he as he was reaching did he keep reaching for the
6 same area, did it appear that he was just trying to get
7 away from you or did it appear that he had a target that
8 he was going to the same area of his body?

9 A His hands were going down.

10 Q Every time they got loose they were going down?

11 A That's correct.

12 Q When you took him out of the woods and you had him
13 pinned down, was it Officer Pruett who ended up patting
14 him down?

15 A Yes, sir.

16 Q Did the pat down occur right after you got him out of
17 the woods, after you pinned him down?

18 A Yes, sir, Officer Pruett pulled up and when he did, we
19 asked him for handcuffs. He said he had some. At that time
20 we did stand him up to make sure he was secure.

21 Q Did you do the pat down or did Officer Pruett?

22 A Officer Pruett.

23 Q Did he find a weapon on him?

24 A Yes, he did.

25 Q Where was the weapon?

1 A In his ankle, inside the sweat pants.

2 Q On his ankle, an ankle holster?

3 A No, sir, the sweat pants cling around the bottom of
4 the leg with some kind of elastic. It had slid down and
5 stopped right there.

6 Q So am I correct in understanding that you don't
7 believe -- from your opinion you don't believe that he was
8 holding the gun ---

9 MR. POPE: Your Honor, I object I think ---

10 THE COURT: I sustain the objection. Don't go into
11 what someone's opinion is.

12 Q Was it a holster down at the bottom of his sweat
13 pants?

14 A No, sir.

15 Q Was it his right leg or his left leg?

16 A I don't recall.

17 Q Was the gun loaded?

18 A Yes, sir.

19 Q Would it have taken any preparation to shoot? Was the
20 gun in a position - I'm not expert in weapons -- was the
21 gun able to -- if someone had taken the gun in the
22 condition it was in, could it have just been fired or
23 would some preparation would have had to occur?

24 A I can't answer that; I can't answer that.

25 Q Did you hold the weapon that night?

1 A No, sir, I did not.

2 Q So you don't know the condition of the weapon when it
3 was taken from him?

4 A No, sir, I didn't know if it was loaded or not loaded.
5 The clip was intact, the gun was intact, excuse me, except
6 for the grips on the side.

7 Q Ultimately the gun was found you say at his ankle
8 around where the sweat pants come together?

9 A Yes.

10 Q And you could detect that he was reaching down towards
11 the lower part of his body. Was he reaching in the
12 vicinity of the gun?

13 A I can't tell you. He never got his hands below his
14 belt. I never let him get his hands down below his belt. I
15 don't know where he was going; I don't know what he was
16 doing.

17 Q Was he attempting to get his hands below his belt?

18 A Like I said, he didn't get them below his belt, so I
19 can't tell you if he was going to his belt or not.

20 Q Thank you, Officer. I have no further questions.

21 REDIRECT EXAMINATION

22 BY MR. POPE

23 Q Officer Alexander, to make sure I understand it, the
24 man was walking down the far side of the road from where
25 you ultimately chased him into the woods, is that correct?

CRAIG ALEXANDER RECROSS RANDY CLINTON DIRECT

1 A That's correct.

2 Q He was walking from the Cherry Road area down Celriver
3 Road, is that correct?

4 A That's correct, towards Eden Terrace, yes, sir.

5 Q Thank you, sir.

6 MR. SCHUSTERMAN: Two or three questions on recross.

7 RECROSS EXAMINATION

8 BY MR. SCHUSTERMAN

9 Q I am showing you State's Exhibit Number 41. Was this
10 the gentleman that you pulled out of the woods?

11 A Yes, sir.

12 Q And that was later identified as Mr. Forney?

13 A Yes, sir.

14 Q And that is the only person, that is the only suspect,
15 that you apprehended that night?

16 A That is correct.

17 Q Thank you, Officer.

18 THE COURT: You may step down. You may be excused.

19 Thank you. Call your next witness.

20 RANDY CLINTON, being duly sworn, testified

21 as follows:

22 DIRECT EXAMINATION

23 BY MR. BRACKETT

24 Q What is your name and occupation?

25 A Randy Clinton, Sheriff's Department deputy.

RANDY CLINTON

DIRECT

1 Q How long have you been with the Sheriff's Department,
2 Mr. Clinton?

3 A Approximately thirteen years.

4 Q What do you do for the Sheriff's Department?

5 A I am a dog handler, a canine officer.

6 Q What kind of dogs do you handle?

7 A I have got tracking dogs and drug dogs.

8 Q Okay. Were you doing that back in September, 1992?

9 A Yes, sir.

10 Q Did you respond to the incident on Dave Lyle Boulevard
11 back in September, 1992?

12 A Yes, sir.

13 Q Were you working that night or were you called in?

14 A Called in.

15 Q Where were you told to report?

16 A We were called to come out to -- it's the Furniture
17 World now, it's beside the old Holiday Inn.

18 Q About what time did you get there?

19 A I do not know.

20 Q Did you have your dog with you?

21 A Yes, sir.

22 Q Which dog did you have with you?

23 A A blood hound named Hoss.

24 Q Did you use Hoss that night?

25 A No, sir.

1 Q Were there any other dogs out there?

2 A Yes, sir, there was a black blood hound from SLED
3 named Missy.

4 Q Missy?

5 A Yes, sir.

6 Q And who was Missy's handler?

7 A Freddie Powell, Lt. Freddie Powell.

8 Q And who is he with?

9 A SLED, South Carolina Law Enforcement Division.

10 Q What was your mission as it were that night?

11 A I received a call in reference to an officer being
12 shot, there were two suspects. We got to the scene at the
13 Holiday Inn or there beside the Holiday Inn, that's where
14 a man post was set up at Carolina Furniture World, look
15 for two black male suspects.

16 Q And you were to use the dogs to do this?

17 A Yes, sir.

18 Q Were you working with Freddie Powell that night?

19 A Yes, sir, I was.

20 Q All right, Officer Clinton, if you would step down for
21 just a minute and take a look at this diagram right here,
22 State's Exhibit 19. Familiarize yourself if you would
23 with State's Exhibit 19, sir.

24 A Okay, here is where the man post was set up at. That's
25 the old Holiday Inn.

RANDY CLINTON

DIRECT

1 Q Okay, what do you start doing when you have got
2 somebody you are trying to track and you know they have
3 been in the area, how do you go about using the dog to try
4 to find that person?

5 A What we do - we had received information there were
6 two black males seen leaving the area, so what we done is
7 start cutting the area. Well, before we start cutting the
8 area, ---

9 Q Back up for just a second so everybody can see.

10 A Before we started cutting the area down through here,
11 the radio transmission came up and stated that one subject
12 was in custody. At that point he was in custody at here at
13 this point right here. So at that point we started cutting
14 both sides of the road going down so we could pick up the
15 tracks.

16 Q You say "cutting." Now what do you mean by "cutting"?

17 A Criss-crossing back and forth, making the dog work
18 trying to pick up a track.

19 Q And where do you start at? Where did you start
20 cutting?

21 A We started right here going toward, the corner of
22 Wilkerson Road down this way. The first suspect was caught
23 right in here in front of a business.

24 Q So you were cutting in that area where the suspect had
25 been in custody?

RANDY CLINTON

DIRECT

1 A Yes, sir, nine times out of ten if there are two
2 suspects, they are going to stay together.

3 Q How long have you been tracking?

4 A Eight years.

5 Q Eight years? Have you tracked a lot of people in that
6 eight years?

7 A Yes, sir.

8 Q Have you tracked singles and doubles?

9 A Yes, sir, and four people.

10 Q Did you have any luck? Did you hit anything cutting
11 over in that area?

12 A No, sir, we never got any tracks in here cutting. We
13 kept working it and we were searching every storage
14 building we came to to make sure the subject wasn't in the
15 storage buildings. We kept cutting it. There's a row of
16 houses through here. We were searching the underpinning of
17 the houses, all garages, any outbuildings, everything.

18 Q Okay. Did you ever hit a scent anywhere along in
19 there?

20 A No, sir.

21 Q What did you do next?

22 A At that point we received a radio transmission again
23 there was a black male seen running across a yard on
24 Wilkerson Road.

25 Q Okay, what did you do when you got that?

1 A When we got the information a black male was seen on
2 Wilkerson Road, we came with the dog and started cutting -
3 there's a woodline here, we cut here across this yard
4 right here and we go into a building and we go back up and
5 come out on the road, the edge of the road. Once we came
6 out on the edge of the road, SLED Agent Powell said the
7 dog was hot.

8 Q What does that mean?

9 A That means that the dog had picked up a track at that
10 point.

11 Q What does the dog do when it hits a scent?

12 A It starts to barking.

13 Q It has got a certain bark?

14 A Yes, sir.

15 Q What happened next?

16 A At that point we entered into ten or fifteen feet into
17 the woods off the road. SLED Agent Powell said "I have got
18 a pair of socks." As SLED Agent Powell said "I have got a
19 pair of socks," I shined my light to the left and found a
20 second suspect hiding behind a log.

21 Q Okay, let's back up for just a second. The dog hit a
22 scent.

23 A Yes, sir.

24 Q Could you show what area that was in approximately?

25 A Okay, this little section. This section right here is

1 on Wilkerson and this side right here is Celriver. This
2 side right here is Wilkerson.

3 Q Maybe you can back up just a step and that will reach
4 it.

5 A Okay, there's woods and stuff right in here and you
6 have got a straight line down, a straight line here, and
7 then you have got a yard. So we started cutting it right
8 in here at the yard.

9 Q And you hit the scent about where?

10 A We come across behind a building and come back up
11 towards the road and the dog hit it right there beside the
12 road.

13 Q Okay and you started following the dog in?

14 A Yes, sir, the dog led us in and at that point SLED
15 Agent Powell advised that he had a pair of socks. At that
16 point I shined my light to the left and saw the second
17 suspect hiding behind a log.

18 Q How far was he when you first saw him?

19 A When I first saw the suspect?

20 Q Yes, sir.

21 A No farther than from here to your desk right there.

22 Q Okay. From there to there?

23 A Yes, sir.

24 Q What was his position relative to you? What was he
25 doing?

1 A He was laying down, see, the log was slightly slanted,
2 he was lying flat down on his belly, looking back at me
3 when I shined the light in his face.

4 Q Okay, he was flat, prone on the ground?

5 A Yes, sir.

6 Q All right, what did you do?

7 A At that point?

8 Q You found the suspect laying on the ground right here.
9 Was the log on this side of him?

10 A Yes, on this side of him.

11 Q And he's like peeking up over the log?

12 A Yes, sir, he's looking straight at me at that point.

13 Q All right, now if I'm the suspect, what did you do?

14 A The first thing I did I advised him to get his hands
15 up to where I could see his hands.

16 Q Did he do that?

17 A Yes, sir.

18 Q Like this?

19 A Yes, sir, he came up like this laying down in a flat
20 position.

21 Q He held his hands up over the log?

22 A Yes, sir.

23 Q What did you do then?

24 A At that point I reached and grabbed his left hand.

25 Q You moved over towards him?

RANDY CLINTON

DIRECT

1 A Yes, sir, I moved up to him and I grabbed his left
2 hand. At that point he snatched a loose from me after I
3 done got one handcuff on him and he snatched a loose from
4 me and at that point he ---

5 Q You got his hand and put a handcuff on him.

6 A I got one handcuff on him.

7 Q Okay.

8 A He snatched a loose from me and got his right hand and
9 stuck it back underneath his chest.

10 Q So he jerked away from you with his left hand ---

11 A Yes, sir.

12 Q --- and then his right hand went underneath him?

13 A Yes, sir.

14 Q Is he still pretty much down on the ground?

15 A Yes, sir.

16 Q Okay, what happened next?

17 A At that point I stood on him until two other officers
18 come in and Officer Bud Devinney come in and at that point
19 Officer Devinney and several other officers got there and
20 at that point I got up and walked up and praised the dog
21 for a good job that the dog had did.

22 Q Wait a minute. Other officers -- who was with you? Was
23 Freddie Powell with you when you went in there?

24 A It was Freddie Powell and Lt. Brent Maples.

25 Q Okay and when you first saw this man laying behind a

1 log -- let me back up even further. Did you have a
2 description of the man you were looking for?

3 A Yes, sir, a black male with a dark coat on. That's all
4 I can remember.

5 Q And did the man you saw match that description?

6 A Yes, sir, a black male with a dark coat on.

7 Q When you first saw him, Freddie Powell had just said
8 "I've got a pair of socks."

9 A Yes, sir.

10 Q All right and then you turned to the left with your
11 flashlight ---

12 A Yes, sir.

13 Q --- and you got him in the beam there and he was
14 looking up at you, what did you do? Did you just ---

15 A I said "Get your hands up. Let me see your hands. Let
16 me see your hands."

17 Q You had your gun out?

18 A Yes, sir.

19 Q Did you alert anybody around you?

20 A Yes, sir, when I said, "Let me see your hands," the
21 second subject was not more than from here from this point
22 from the wall from a patrol car where everybody was
23 sitting out on the perimeter. At that point when I said,
24 "Get your hands up," the officers heard it and the
25 officers were running into the woods.

RANDY CLINTON

DIRECT

1 Q Okay, now you said he was about from there to the wall

2 ---

3 A Yes, sir.

4 Q --- away from a patrol car?

5 A Yes, sir.

6 Q Was that on Wilkerson Road?

7 A The patrol car was parked right here.

8 Q Okay, so you are not very far into the woods.

9 A No, sir.

10 Q Were there a lot of other policemen around?

11 A Yes, sir, it was about I would say approximately three
12 hundred.

13 Q Oh, not -- in what area?

14 A This whole area here because we had everything was
15 parameter.

16 Q You kind of had it saturated?

17 A Yes, sir. And down this way a car would have been
18 every five or ten feet apart.

19 Q And there was a police car right about here?

20 A Yes, sir, a police car right there.

21 Q All right, and the distance from there to the wall is
22 the distance into the woods?

23 A Yes, sir.

24 Q And so he jerked his hand away and other police
25 officers were coming in at that time?

RANDY CLINTON

DIRECT

1 A Yes, sir.

2 Q While you were moving towards him and everything, you
3 had already alerted everyone around ---

4 A Yes, sir.

5 Q --- and they were moving in.

6 A Yes, sir.

7 Q Okay, so he jerked his hand away, puts his hand under
8 him like that --

9 A Yes, sir, underneath his chest.

10 Q Underneath his chest and you got one hand cuff on him?

11 A Yes, sir.

12 Q And then somebody else comes in?

13 A Yes, Buddy Devinney was the man -- Larry Devinney came
14 in and he got on top of the subject.

15 Q Now what were the lighting conditions out there?

16 A It was dark.

17 Q And you had your flashlight to see by?

18 A Yes.

19 Q Okay. What happened after Buddy Devinney got on?

20 A After Buddy got to him and Buddy come out with both
21 arms and the handcuff come up, Buddy and some other
22 officers finished handcuffing him and at that point I
23 walked back, the blood hound was sitting here barking and
24 I walked over to the blood hound and patted the blood
25 hound up for a good job that the dog had did.

RANDY CLINTON

DIRECT

1 Q Okay and then he was taken out of the woods?

2 A Yes, sir, I never seen him from that point once I got
3 the one handcuff on him and Buddy and them got to him.

4 Q And that was your only involvement in the arrest?

5 A Yes, sir.

6 Q All right. Have a seat if you would, sir.

7 MR. BRACKETT: I ask that this be marked for
8 identification purposes.

9 (State's Exhibit 47 marked for identification purposes
10 only.)

11 Q Officer Clinton, I am showing you what has been marked
12 as State's Exhibit 47 for identification. I ask if you
13 could look in that bag and take a look to see if you
14 recognize that.

15 A Yes, sir.

16 Q What's that?

17 A That's the coat the subject had on that night.

18 Q Okay, stick it back in the bag if you would, sir.

19 MR. BRACKETT: Your Honor, I would at this time move
20 State's Exhibit 47 for identification into evidence.

21 MR. SCHUSTERMAN: Without objection.

22 THE COURT: It will be received without objection.

23 (State's Exhibit 47 marked and filed.)

24 Q Have you looked at this jacket?

25 A Yes, sir.

RANDY CLINTON

DIRECT

1 Q And can you tell us who was wearing that jacket?

2 A The suspect over there, Mar-Reece Hughes.

3 Q Okay, do you see Mr. Hughes in the courtroom today?

4 A Yes, sir.

5 Q Can you point him out for us?

6 A Yes, (indicating.)

7 Q What kind off clothes is he wearing?

8 A A stripped shirt.

9 Q All right.

10 MR. BRACKETT: Your Honor, let the record reflect that
11 the witness has identified the defendant Mar-Reece Hughes.

12 Q That was your involvement with the arrest that
13 evening, is that correct?

14 A Yes, sir.

15 Q Did you have an occasion later the next day or the day
16 after to go back out in that area?

17 A Yes, I did.

18 Q Okay, what was the purpose of your returning?

19 A As all of this occurred, the walkie-talkie and the
20 walkie-talkie holder and stuff was missing off of the
21 officer. At that point we went back to the area searching
22 the area looking for the walkie-talkie and the
23 walkie-talkie holder or any other evidence to be found.

24 Q Okay. I am showing you what has been marked State's
25 Exhibit 32 for identification and ask if you can identify

1 that.

2 A Yes, sir.

3 Q What is that?

4 A That's a walkie-talkie HT 600.

5 Q Do you recognize that?

6 A Yes, sir, that's the one I found laying in the woods.

7 Q And what did you do when you found that?

8 A At the point the walkie-talkie was laying face down.

9 At that point once I found it I called for Detective Mike
10 Williams from the Rock Hill Police Department to come to
11 where I had found the walkie-talkie and to take pictures
12 of it and take possession of it at that time.

13 Q Okay. Did you have an -- oh, I'm sorry. I will show
14 you what has been marked State's Exhibit 51 and ask you to
15 take a look at that photograph.

16 A Yes, sir, that's a picture of the walkie-talkie I
17 found in the woods.

18 Q And is that how it was when you found it?

19 A Yes, sir, laying face down.

20 MR. BRACKETT: Your Honor, at this time I move State's
21 Exhibit 51, a photograph, and State's 32, walkie-talkie,
22 into evidence.

23 THE COURT: Without objection?

24 MR. SCHUSTERMAN: Without objection.

25 (State's Exhibits 51 and 32 marked and filed.)

RANDY CLINTON

DIRECT

1 Q Officer Clinton, can you describe the knob on the top
2 of that walkie-talkie? What does that do?

3 A This knob right here, right here where the little red
4 dot is, that is what turns up the volume, turns the radio
5 on.

6 Q Okay.

7 A This knob here is the knob that you can turn it to say
8 one, that is York County, two is Clover, three is Rock
9 Hill. It tells you what channel you are going to be on.

10 Q Did you examine that walkie-talkie when it was found?

11 A Yes, sir.

12 Q What channel was it set to?

13 A Six.

14 Q What frequency is that?

15 A Clover Police Department.

16 Q That was Clover Police Department?

17 A Back at that time, yes, sir.

18 Q And at that time what was the frequency for the York
19 County Sheriff's Department?

20 A One.

21 Q Can you reach Clover from Rock Hill on a hand held
22 walkie-talkie?

23 A You can hear them talking, but you probably wouldn't
24 be able to talk to the station.

25 Q Officer Clinton, I am showing you what's been marked

RANDY CLINTON

DIRECT

1 State's Exhibit 52 for identification and ask if you could
2 look inside that bag and recognize that.

3 A Yes, sir, it was a hat found in the woods.

4 Q Who found that hat?

5 A It was Bobby Rhea the other dog handler.

6 Q Okay, were you with him when it was found?

7 A Yes, sir.

8 Q I show you State's Exhibit 50 for identification and
9 ask if you can recognize what's depicted in that
10 photograph.

11 A Yes, sir, that's a hat laying on the ground the way
12 Officer Rhea found it and notified Detective Mike Williams
13 to come and take a photograph of it.

14 Q Is that the condition it was in when it was found?

15 A Yes, sir.

16 Q And is that the hat that was found?

17 A Yes, sir.

18 MR. SCHUSTERMAN: Your Honor, may we approach?

19 (Bench conference off the record in the presence of
20 the jury, but not within hearing by the jury.)

21 THE COURT: Ms. Hartman, I can't see you. They tell me
22 you are trying to get my attention.

23 JUROR HARTMAN: I'm sorry. The second solicitor, I
24 don't know, but anyway you keep standing directly in front
25 of who you are talking to, so when you do this if you

1 could just go to the left. Thank you.

2 THE COURT: Good lesson.

3 MR. BRACKETT: Okay.

4 I would 50 and 51 into evidence, Your Honor.

5 THE COURT: Any objection?

6 MR. SCHUSTERMAN: No objection.

7 THE COURT: It will be received without objection.

8 (State's Exhibits 50 and 51 marked and filed.)

9 Q Finally, Officer Clinton, I show you what has been
10 marked as State's Exhibits 48 and 49 for identification
11 and ask you if you can recognize what is depicted in these
12 photographs.

13 A Yes, that's an aerial photo of the area that we were
14 in that night.

15 Q The area that you were in that night?

16 A Yes, sir.

17 Q Specifically, what particular area? Maybe you could
18 step down and show us on the map what particular area on
19 the map that represents.

20 A This point right here is the yard and there's a house
21 and trailer and stuff and the set of woods is going to be
22 right in here where the subject was located at.

23 Q Okay. Stand right there just a second. What is that
24 truck in the picture?

25 A I don't know.

RANDY CLINTON

DIRECT

1 Q Can you identify that patch of woods depicted there?

2 A Yes, sir, that is where the subject was located at.

3 Q Okay, would you show the jury and they will need to
4 see it, you will need to take it slowly down.

5 A (Witness complied.)

6 Q And one more thing if you could, sir. Can you show us
7 on the map approximately where the walkie-talkie was
8 recovered?

9 A The walkie-talkie was recovered right here.

10 Q And could you show us approximately where the --

11 JUROR: I can't see.

12 Q You will have to back up now.

13 A (Witness complied.)

14 Q And approximately where was the hat recovered?

15 A The hat was approximately two or three feet
16 (indicating).

17 Q Go ahead and take a seat. Did you have an opportunity
18 to go back with Mike Williams of the Rock Hill Police
19 Department and show him the areas where you found the
20 walkie-talkie and the hat?

21 A Yes, sir. Mike Williams was there as we were doing
22 the search for the items. Mike was on the edge of the road
23 and at that point he was in dress clothes so we were doing
24 the searching. At that point once we found it Mike walked
25 into the woods to us and took pictures of it and then took

1 possession of it.

2 Q Okay. Thank you very much. Please answer any questions
3 counsel may have.

4 CROSS EXAMINATION

5 BY MR. SCHUSTERMAN

6 Q Mr. Clinton, what time did you begin your search that
7 night?

8 A Sir, I do not know. I don't remember.

9 Q Were you called out specifically for this or were you
10 on routine patrol?

11 A Yes, sir, I was called out. I had just gotten back. I
12 hadn't been at my residence twenty or thirty minutes from
13 the armed robbery previous.

14 Q An armed robbery that was unrelated to this.

15 A Yes, sir, that was unrelated to this.

16 Q And was that armed robbery involving the dog where you
17 were doing a search?

18 A Yes, sir.

19 Q And you went back to --

20 A I went back to check back off at my residence and
21 about twenty or thirty minutes later I received a call to
22 my residence to come back out in reference to this.

23 Q And you began at what you call Carolina Furniture
24 World?

25 A Yes, sir.

1 Q That's where you started.

2 A Yes, sir.

3 Q Was there a reason why you started there? Were you
4 instructed to go there?

5 A Yes, sir, a command post was set up there.

6 Q Did you meet up with anybody there?

7 A Yes.

8 Q As it relates to using a canine?

9 A Yes, sir.

10 Q Who did you work with that night?

11 A SLED Powell -- Freddie Powell with SLED.

12 Q What was your first course of action, to pick up a
13 scent?

14 A Yes, sir, as we started out that night within a
15 distance of I would say thirty or forty yards we received
16 by radio transmission that one subject was in custody.
17 From --

18 Q Please continue.

19 A --- from that point we started cutting the road.

20 Q From the first suspect being in custody did you
21 receive any additional information?

22 A Later on that night.

23 Q After you -- well, you say later on that night. How
24 long a period of time was there between the time you
25 received word that the suspect the first suspect was in

1 custody and the time you ultimately found Mr. Hughes?

2 A From the time the first suspect was in custody to Mr.
3 Hughes I could not give you a proper time. I don't know. I
4 could say it could be an hour, it could have been an hour
5 and a half. I do not know.

6 Q It wasn't five or ten minutes.

7 A No, sir.

8 Q That's what I was asking you. It was a longer period
9 of time.

10 A Yes, sir.

11 Q It was not right afterwards.

12 A No, sir.

13 Q Would you come down here, please?

14 A (Witness complied.)

15 Q Am I correct in the statement that Mr. Hughes was
16 found just several feet in the woods in this area, is that
17 correct?

18 A Yes, sir, right in this area here (indicating.)

19 Q Right there?

20 A Right where the pointer is. It would have been a
21 distance from here to the wall, yes, sir.

22 Q Is it not true that on Wilkerson Road actually where
23 the road ends there is a grassy area and then the woodline
24 begins? Isn't there a ten or fifteen foot grassy shoulder
25 before the woodline begins?

1 A It would be a short distance I would say from here to
2 the podium here and then you have got the woodline. You
3 have just a right of way to pull over and still have two
4 tires on the road because it's narrow.

5 Q Okay, so there is an area just less than ten or
6 fifteen feet. You are saying maybe just five or six feet.

7 A Yes, sir, where you can pull off a vehicle, yes, sir.

8 Q How many feet into the woods would you say you caught
9 --

10 A I would say the distance from here to the wall; I
11 would say ten or fifteen feet.

12 Q You indicated that once you found out that Mr. Forney
13 was caught in this area near the entrance to BASF - isn't
14 that what this is right here?

15 A Yes, sir.

16 Q --- that you began cutting this area?

17 A Yes, sir.

18 Q And it was only when you got down where the pointer is
19 right now that you picked up a smell, is that correct?

20 A That's right. You go back to this side. As we was
21 here -- the first suspect was caught here, so we was here,
22 we come here, we cut the road. Okay, we got to the point
23 right here and as I said earlier we started checking the
24 storage building, the houses, anything a subject could
25 hide under. At this point right here we kept cutting it,

1 we cut it on both sides of the road, we cut it short and
2 we cut it deep. The reason we done that just in case - a
3 officer has parked up here and stopped and stepped out at
4 the edge of his car, so we went above that where there
5 would be no contamination.

6 Q Just so the jury understands. Would you estimate the
7 distance from where Celriver Road and Wilkerson Road
8 divided to let's say the bottom where this line is would
9 approximately be eight or nine hundred feet?

10 A I'm not good on feet.

11 Q How far would you say?

12 A I would say the length of a football field. From the
13 corner of Wilkerson Road and Celriver to this point where
14 the second suspect was caught I would say the length of a
15 football field.

16 Q And how wide is this area?

17 A I would say the area would be forty or fifty yards
18 because it starts off right here narrow and it goes down
19 and when it starts going down it widens out. At this point
20 right here after you pass the woodline down to where he
21 was caught, down below it, it gets wider. Up here it is
22 narrower, narrower, and narrower to the point.

23 Q The walkie-talkie was found up here in this area?

24 A Yes, sir.

25 Q And two to three feet away from the walkie-talkie was

1 the hat?

2 A Yes.

3 Q How did you find the walkie-talkie and the hat?

4 A We went back, searching, looking for the walkie-talkie
5 and when we got to that point, we had done walked this
6 area here, we knew it wasn't in here, so at this point we
7 know from this point right here where Carolina Furniture
8 World was, they were last seen leaving the Holiday Inn and
9 the vehicle, at this point we started cutting in here.
10 When we got to this point right here, so we had to
11 eliminate this area here, so that's the reason we started
12 cutting in here and searching in here. Once we started
13 searching, I found the walkie-talkie laying face down and
14 also Officer Rhea found the hat about two or three feet
15 from the walkie-talkie.

16 Q I notice that a picture of the hat was taken. Was the
17 hat buried at all?

18 A The way it was in the picture is just like it was
19 knocked off the head. If you are running through the woods
20 and a limb knocks it off and that was the way it was
21 originally laying.

22 Q How about the walkie-talkie, did it appear that it was
23 just dropped?

24 A It was dropped faceward down and the way I found it
25 that's the way he took the picture.

1 Q So it wasn't touched?

2 A No, sir, I did not touch it. I never had possession of
3 it. What I done I had Detective Williams to come in,
4 photograph it, and take custody of it from that point. I
5 did not ever touch it.

6 Q When you found Mr. Hughes down here, ---

7 A Yes, sir.

8 Q --- were you present? I understand all you did was to
9 try to cuff him --

10 A Yes, sir, one hand.

11 Q --- got his hand cuffed, he snatched it away, and then
12 I believe you said you had his foot on him, you were just
13 securing him?

14 A Yes, sir. The reason I stuck my foot on his back was
15 just in case he was going for a gun, I had pressure on him
16 where he could not get his arm back from underneath his
17 chest to get a gun and shoot me.

18 Q Were you present when he was secured and brought out
19 of the woods?

20 A At that point I stated earlier once Mr. Hughes was --
21 when Officer Devinney got to me and got him handcuffed and
22 the other officer go there and they had him detained, and
23 at that time I walked out from approximately from here to
24 that thing, had my back turned, praising the dog for the
25 good job the dog had did.

1 Q To your knowledge was a weapon found on Mr. Hughes
2 that night?

3 A I do not know, sir; I did not take him out. I do not
4 know. The only thing I kept focused on was his hands. That
5 was the main thing to me.

6 Q Thank you, Mr. Clinton, you may have a seat.

7 MR. SCHUSTERMAN: The court's indulgence?

8 THE COURT: Yes, sir.

9 Q One last question, Mr. Clinton, ---

10 A Yes, sir.

11 Q --- I don't know if you need to see this or not, but
12 would it surprise you if I told you that the distance from
13 the corner to the entrance where Mr. Hughes was found
14 or I should say perpendicular to where he was found the
15 point on the street where he walks straight in you would
16 find him -- this distance ---

17 A From the beginning of Celriver right here at Wilkerson
18 ---

19 Q That's correct.

20 A --- at the stop sign ---

21 Q At the stop sign.

22 A At this point where he was captured at?

23 Q That's right or it would be equivalent on the road,
24 obviously, he wasn't caught in the road, if you went from
25 the point in the road where he just turned straight

1 looking at the woodline, you would follow Mr. Hughes
2 straight into the woods whatever you say ten or twelve
3 feet, would you be surprised if that distance -- if I told
4 you that distance was eight hundred feet?

5 A I told you before I could not guess on the distance
6 from here to here I would say the length of a football
7 field from the point that the road on this side right here
8 where the dog went in to Mr. Hughes was no more than ten
9 feet.

10 Q Right, I am talking about this distance from the stop
11 sign down there.

12 A Yes, I did not measure it.

13 Q I tell you that because eight hundred feet would be
14 approximately three football fields.

15 A Yes, sir.

16 Q Thank you, Mr. Clinton, I appreciate it.

17 THE COURT: Redirect?

18 REDIRECT EXAMINATION

19 BY MR. BRACKETT

20 Q Officer Clinton, did you go out there with Mike
21 Williams and assist him with making some measurements of
22 that?

23 A Yes, sir.

24 Q And showing him where the walkie-talkie was found?

25 A Yes, sir. The only thing I did with Mike was at the

LARRY T. DEVINNEY

DIRECT

1 point where the end of the tape Mike knows the numbers of
2 distance. I was never aware of what distance it was.

3 Q So everything you have testified to is a
4 guesstimation?

5 A Yes, sir.

6 Q Thank you very much.

7 A On the distance.

8 Q Yes, sir. Thank you.

9 MR. SCHUSTERMAN: Thank you.

10 THE COURT: You may step down. You want this witness
11 to be excused?

12 MR. BRACKETT: Yes, sir, I would ask that he be
13 excused.

14 MR. SCHUSTERMAN: Without opposition.

15 THE COURT: We will probably take a break after the
16 next witness.

17 Come up and be sworn.

18 LARRY T. DEVINNEY, being duly sworn,
19 testified as follows:

20 DIRECT EXAMINATION

21 BY MR. BRACKETT

22 Q Would you state your full name and spell your last?

23 A Larry T. DeVinney D-e-v-i-n-n-e-y.

24 Q Where are you employed, sir?

25 A York County Sheriff's Department.

1 Q And in what capacity are you employed there?

2 A A deputy.

3 Q How long have you been with the Sheriff's Department?

4 A I have been with the Sheriff's Department about ten
5 months.

6 Q And where were you employed before that?

7 A Before that I was with the Rock Hill Police Department
8 for a little over sixteen years.

9 Q Okay, were you employed with them in September of
10 1992?

11 A Yes, sir.

12 Q Now did you have an occasion to get called out on
13 September 25, 1992?

14 A Yes, sir, I did.

15 Q And what was the occasion for that?

16 A I had just completed working overtime at a high school
17 football game and at the time I was a member of the Rock
18 Hill Police Department SWAT team and I was activated about
19 10:30 PM that night in reference to a York County deputy
20 being shot.

21 Q Where were you told to go?

22 A We were meeting at the northern end of Rock Hill on
23 Cherry Road near the Holiday Inn.

24 Q If you would step down from the witness stand, please.
25 I am referencing State's Exhibit 19 and ask if you are

1 familiar with the area depicted on this map.

2 A Yes, sir, I am. It would be in this area is where I
3 was first responding to with this being the Holiday Inn
4 and the law enforcement officers were in the parking lots
5 of Holiday Inn and, of course, this business here being an
6 oil changing facility, they were closed, which is where we
7 first met here.

8 Q And were you involved in the arrest of Mar-Reece
9 Hughes that evening?

10 A Yes, I was.

11 Q And where you deployed immediately prior to that
12 arrest?

13 A The first place that I was sent was an area this being
14 Red River Road or Celriver Road, you come down and make a
15 first right being Wilkerson Road. I was sent to a location
16 in this area. This is a heavily wooded area in here and
17 there were several officers in each given point and I was
18 told to stay in this area about here on Wilkerson Road.

19 Q Go ahead and take a seat. Did you see the SLED dog
20 handler that evening when you were down there at Wilkerson
21 Road that evening?

22 A Yes, sir, I was just inside the woodline, which is
23 probably eight to ten feet from the edge of the pavement,
24 just inside the woodline and I was lying down in that area
25 and I could hear the dogs coming upon the Celriver.

1 Road/Wilkerson Road intersection back towards my
2 direction. I could see the flashlights like scanning an
3 area and could hear the barking of the dog coming back
4 towards my location.

5 Q All right, what happened next?

6 A Well, about twenty yards inside the woodline from
7 where I was stationed there was a log and as the dogs were
8 approaching from my left and the lights from the
9 flashlight scanning I could see movement of what I could
10 tell was clothing and an individual attempting to crawl
11 away from the direction of the dogs barking.

12 Q You saw some movement in there?

13 A Yes, sir.

14 Q Did you hear anybody yell anything?

15 A The handlers and the security people with the canine
16 tracking team shouted "Police officer, lay down" and I
17 could see the person raise up from a prone position and
18 attempt to crawl away from their direction.

19 Q What happened next?

20 A At that point I got up and I ran toward the individual
21 that was crawling away from the animals; it was real dark
22 in the woods, but by the time I got to where he was there
23 was another officer, I couldn't see him from the waist up
24 for the flashlight, but he had issue type boots,
25 camouflage pants, was attempting to handcuff the

1 individual that was crawling out. As I got near him, he
2 jerked away from this officer and placed his arms
3 underneath him and at that point I dove on his back.

4 Q What happened next?

5 A I shouted in to him that I was a police officer, lay
6 still, and he just looked back up at me and told me he
7 hadn't shot anybody. At that I knew that he had knowledge
8 of someone being shot and I pulled his arms from under him
9 and at that point the other officers that were there, it
10 was just a crowd, and we just physically handcuffed him.

11 Q Did you escort him out of the woods?

12 A Yes, sir, after he was handcuffed and he was patted
13 there with what little light we had from the flashlights,
14 I knew the person's name that we were looking for, asked
15 him his name, he told us, at that point we walked him
16 right out in the same direction that I went in since
17 that's the closest direction to a roadway. We came back
18 out there, he was placed into a City of Rock Hill Police
19 car, a marked unit, he was placed in the passenger rear
20 seat, I got into the rear seat behind the driver, Lt.
21 Brandon from the Sheriff's Department was in the front,
22 Officer Buckaloo, which was a City officer at that time,
23 was the driver and we drove him from there straight to the
24 Rock Hill Police Department.

25 Q Did you have an occasion while you were in the vehicle

1 to read him his rights?

2 A Yes, sir, I had begun telling him his rights. Lt.
3 Brandon turned and gave me a Miranda card, which is the
4 same thing, which I read from and after each warning I
5 would ask him if he understood it.

6 Q Do you have that exact card that you used that night
7 with you here in court?

8 A No, sir, I don't have that exact card. I have a card,
9 which is basically the same thing.

10 Q Do you recall telling him that he had the right to
11 remain silent?

12 A Yes, sir.

13 Q Do you recall telling him that if he spoke or said
14 anything that it could be used against him at a later
15 time?

16 A Yes, sir.

17 Q Do you remember telling him that he has the right to
18 an attorney?

19 A Yes, sir, I did.

20 Q Can you recall if you told him if he couldn't afford
21 an attorney that one would be provided for him?

22 A Yes, sir, I did.

23 Q Do you recall telling him that he had the right to
24 stop answering questions at any time he wanted to?

25 A Yes, sir, I did.

1 Q And do you recall asking him if he understood all of
2 those rights?

3 A Yes, sir, I did.

4 Q And what did he indicate to you when you asked him if
5 he understood those rights?

6 A He told me that he did understand.

7 Q You didn't question him or anything in the car, did
8 you?

9 A No, sir, in the car; I told him I was not going to ask
10 him questions, but it was very important that he
11 understood what I had to say. I told him that before I
12 started to read.

13 Q Okay, now where did you go?

14 A We went directly to the Rock Hill Police Department.
15 We pulled into the parking lot at the rear, which there's
16 an area that police cars, it's a sally port, we were not
17 able to pull into the sally port because of other patrol
18 cars already in there. We pulled to a back door. We moved
19 him from the City Police car, took him directly in the
20 back door. When you go into the back door of the Rock Hill
21 Police Department, immediately to the right at that time
22 was a door going into the holding area. We went into that
23 door. I took him immediately around to a rest room, shower
24 room combination and I allowed him to -- he had two small
25 cuts, one on his left eyebrow, one on his lip. I allowed

1 him to wash and clean up to see how bad these two injuries
2 were. He was very muddy from crawling in the woods or
3 whatever. He had blood on his clothing, which that was the
4 reason that I was still with him. I had to retrieve his
5 clothing that contained blood.

6 Q Did you know how that blood got on the clothing?

7 A No, sir, I didn't.

8 Q And it was possible that it was evidence?

9 A Yes, sir, that was my concern.

10 Q Did you allow him to wash his hands?

11 A Yes, sir.

12 Q And did he?

13 A Yes, sir.

14 Q What did you do with respect to his clothing?

15 A As he removed it and handed it to me I simply wadded
16 it up and placed it in evidence bags, marked it to be
17 turned over.

18 Q Did you also remove any person items from his pockets
19 and so forth, from his clothing?

20 A Yes, sir, but as well as I remember it was two pocket
21 knives, a pack of cigarettes, a lighter. That's all I
22 remember.

23 Q Just one second.

24 THE COURT: Mr. Brackett, are you through with the
25 board here?

1 MR. BRACKETT: Yes, sir, for the time being.

2 THE COURT: Move it out of the way. Also, Ms. Harkman
3 is still having to kind of crook her neck to see around
4 you a lot. I can't see anybody else; I don't know if they
5 are or not.

6 MR. BRACKETT: Is that better?

7 THE COURT: Yes, sir, thank you.

8 Q I am showing you what's been marked State's Exhibit 53
9 for identification. Would you look inside that bag,
10 please, and tell me if you can recognize what's in there?

11 A Okay, first in the bag, which is a packet with my
12 handwriting on it, the contents in the bag articles taken
13 from suspect ---

14 Q Okay, at this point, Officer, just tell me if you can
15 look in there and do you recognize them - can you identify
16 what's in there.

17 A Yes, sir, these are the articles that we taken from
18 Mr. Hughes the night he was arrested.

19 Q And inside the larger brown grocery bag can you tell
20 me if you recognize what's in there.

21 A Inside the larger grocery bag also marked evidence is
22 the clothes I took from Mr. Hughes the night he was
23 arrested.

24 Q Okay. What did you do with that clothing once you
25 took it from him?

1 A Once I took it from him I placed it in these bags and
2 marked the bags as evidence, named each article, and
3 turned them over to Lt. Duke inside the Police Department.

4 Q Okay, you can place those items back inside.

5 A (Witness complied.)

6 MR. BRACKETT: Your Honor, I move these into evidence
7 at this time.

8 MR. SCHUSTERMAN: Without objection, Your Honor.

9 THE COURT: They will be received without objection.

10 (State's Exhibit 53 marked and filed.)

11 Q This is simply the clothing that he was wearing that
12 night?

13 A Yes, sir.

14 Q Did you give him some clothing to wear after you
15 relieved him of these items?

16 A Yes, sir, I did.

17 Q There are other items in there, socks, underwear and
18 so forth?

19 A Yes, sir.

20 Q That was his?

21 A Yes, sir.

22 Q And these items here you took these off of his person
23 out of his pockets?

24 A Yes, sir, there are socks in that bag. He was
25 barefooted when I removed him from the woods and took him

1 to the Police Department.

2 Q Did you see any shoes out there that night?

3 A No, sir, I didn't.

4 Q He had these cigarettes on him?

5 A Yes, sir.

6 Q This can of Skoal?

7 A Yes, sir.

8 Q These two lighters?

9 A Yes, sir.

10 Q This lock blade knife?

11 A Yes, sir.

12 Q This pack of matches?

13 A Yes, sir.

14 Q This straight razor?

15 A Yes, sir.

16 Q What did you do with these items when you recovered
17 them from Mr. Hughes?

18 A As they were removed from his pockets in the holding
19 area, they were placed in this evidence bag and the
20 contents were named and numbered on the outside of the bag
21 and it was sealed and turned in as evidence.

22 Q What type of cigarettes are those?

23 A Newport.

24 Q After Mr. Hughes was cleaned up and changed and you
25 recovered these items, what did you do with him?

1 A The articles of --

2 Q No, you gave those to Lt. Duke you testified.

3 A Yes, sir.

4 Q What did you do with Mr. Hughes?

5 A I gave Mr. Hughes some clothing to put on since I had
6 taken his and after he cleaned himself up and, of course,
7 there was a mirror in this bathroom and he did not feel
8 like he needed medical attention and I agreed and he
9 placed the clothes on that I had given him. I explained to
10 him the process that he would be going through next, which
11 would be going down a short hallway to another part of the
12 building where other officer would be talking with him.

13 Q And who did you leave him with?

14 A I left him with Investigator Scott Rockholt.

15 Q And is that the last you saw of Mr. Hughes?

16 A Yes, sir.

17 Q One final thing, sir, let me show you what's been
18 marked as State's Exhibit 47. Can you identify that?

19 A That was the jacket he was wearing at the time he was
20 arrested.

21 Q I am showing you what's been marked as State's Exhibit
22 54 for identification. Do you recognize that?

23 A That is Mr. Hughes the night he was arrested or
24 shortly thereafter.

25 MR. BRACKETT: I move this into evidence, Your Honor.

1 MR. SCHUSTERMAN: Without objection.

2 THE COURT: It will be received without objection.

3 (State's Exhibit 54 marked and filed.)

4 Q Thank you very much, Officer Devinney. Please answer
5 any questions Mr. Schusterman may have for you.

6 CROSS EXAMINATION

7 BY MR. SCHUSTERMAN

8 Q Officer Devinney, that night how long did you spend
9 looking for the suspects?

10 A The first suspect was arrested as I recall I would say
11 from 10:30 and 11:00 PM. We stayed out in the wooded area
12 searching and it was around about 2:30 AM Mr. Hughes was
13 located and arrested.

14 Q So you are saying the first suspect was arrested
15 approximately three hours before?

16 A Yes, sir.

17 Q I understand that when you were in the woods you were
18 on your belly, is that correct, before you apprehended Mr.
19 Hughes?

20 A I was on my belly at the times the dogs came closer
21 and closer to my location.

22 Q When was the first time that you spotted Mr. Hughes?

23 A The first time that I saw him at all was when the
24 flashlights on the tracking team were approaching closer
25 and closer in my direction and Mr. Hughes was sort of at

1 an angle, but between the dog and the flashlights and
2 myself. He was like between us.

3 Q So he created a silhouette, I mean, you could see his
4 body outline?

5 A I could see him; it was more than a silhouette.

6 Q Oh, you could see him?

7 A Yes, sir.

8 Q How close were you?

9 A I was about the distance between myself now and Agent
10 Bryant, the SLED agent in the audience.

11 Q And wasn't it very dark that night?

12 A Yes, sir.

13 Q I mean there was no artificial lighting, was there?

14 A Yes, sir, it was dark.

15 Q It was dark, but yet you were able to see that
16 distance?

17 A Yes, sir.

18 Q I assume -- or tell me from the moment you saw Mr.
19 Hughes did you immediately go over to him, did you
20 immediately reduce that space and begin to approach him?

21 A Yes, sir.

22 Q And you were the second person to arrive there as I
23 understand it?

24 A Yes, sir.

25 Q Mr. Clinton was the first one.

1 A I don't know who it was. I found out later that it was
2 him, but I didn't know --

3 Q At the time you didn't know who it was?

4 A No, sir.

5 Q You knew it was a police officer though?

6 A I figured it was because of the clothing.

7 Q What did you do when you got to Mr. Hughes?

8 A As I got to close proximity of him this officer had
9 his left arm, he was still in a kneeling position, he
10 jerked away and went to the ground crawling and I was
11 still moving, I dove at that point when he went down
12 placing his hands underneath his person, I went down on
13 top of him to confine his move.

14 Q Did you put his hands out in front of him?

15 A No, sir, I went underneath him. I could feel, I
16 couldn't see, I couldn't only feel his arms from his
17 shoulders underneath him and I went to his wrist and
18 confined his movements and I shouted at him "Police
19 officer, be still."

20 Q And was that -- his response to that was "I didn't
21 shoot anybody."

22 A He looked back into my face "I didn't shoot anybody"
23 and that's when I pulled his arms out from under him.

24 Q After you got him secured, were you the one that
25 brought him out of the woods?

1 A There were several there holding on. I never left him,
2 but we are talking maybe twenty seconds this whole
3 subduing took.

4 Q This happened very quickly?

5 A Yes, sir.

6 Q He was stood up and he was asked what his name was and
7 when he gave us the name of the person we were looking
8 for, we brought him out of the wooded area. This was maybe
9 a minute time lapse and he was brought out to the street.

10 Q When you brought him out of the woods, -- I believe
11 the jury is looking at the picture I wanted to refer to,
12 did Mr. Hughes except for the clothing, is that what he
13 looked like?

14 A He had mud and blood on his face.

15 Q Mud and blood. Is it possible, Officer Devinney, that
16 he got mud and blood on his face in the tussle with you to
17 get him under control?

18 A It would be possible. I could only -- at that time I
19 speculate the blood came from hitting the trees, running
20 through the woods without light.

21 Q But when you say "running through trees," you have no
22 evidence that he didn't just cut right into the woods
23 because wasn't he about ten to twelve feet into the woods
24 off Wilkerson Road?

25 A He was about twenty yards into the wooded area from my

1 location, but the route that he took to get to where he
2 was I have no idea.

3 Q Okay. When he was ultimate found though, how far do
4 you estimate the distance was if you took a straight line
5 where he was found and took the most direct path back out
6 onto Wilkerson Road? How far from the tree line was he?

7 A Twenty yards.

8 Q Twenty yards, okay. Once you got him out of the woods
9 did you pat him down or did someone else do that?

10 A I know I did; I don't know if someone else did as
11 well.

12 Q But you patted him down.

13 A Yes, sir.

14 Q Did you find any guns?

15 A No, I didn't, no, sir.

16 Q He did not have a gun with him.

17 A No, sir. I didn't pull the things out and examine them
18 there. I was like squeezing his pockets to feel for a gun
19 and bulges I could tell what was knives and whatever and I
20 just left it alone.

21 Q They didn't present any danger if he had a lighter in
22 there or a pack of cigarettes or a pocket knife?

23 A No, sir.

24 Q Nothing that you were concerned about at the moment.

25 A No, sir.

1 Q Your concern was guns?

2 A Yes, sir.

3 Q Did you know at that time that Mr. Forney was arrested
4 and he had a weapon on his person when he was caught? Did
5 that information get to you?

6 A I knew from information obtained from the first
7 suspect who we were looking for by name, but as far as
8 weapons I didn't know.

9 Q Do you have knowledge of how you received the name of
10 the suspect that you were looking for?

11 A I understand it was through information from Mr.
12 Forney.

13 Q So to your knowledge Mr. Forney gave the name of Mr.
14 Hughes?

15 A Yes, sir, that's my understanding.

16 Q When you took him -- did you get in the car with him
17 when you put him in the police car?

18 A Yes, sir.

19 Q Did you ride from the scene on Wilkerson Road to the
20 Law Center with Mr. Hughes?

21 A Yes, sir.

22 Q You indicated that you had read him his rights on the
23 way.

24 A Yes, sir.

25 Q That he understood his rights.

1 A He indicated to me that he understood.

2 Q Whether he actually understood them is another matter;
3 he indicated to you he understood them.

4 A Yes, sir.

5 Q But you told him at that point you were not going to
6 question him.

7 A Yes, sir.

8 Q Why on the picture of Mr. Hughes -- that's not the
9 shirt that he was wearing when you took him out of the
10 woods when you arrested him, correct?

11 A No, sir, that's the shirt that I gave him.

12 Q And that is --

13 A The shirt that's in the bag.

14 Q Where did you get that shirt from?

15 A That shirt at the Rock Hill Law Center in the
16 Detention area. There at that time was a stack -- a couple
17 of stacks of clothing. It's old type clothing, old
18 uniforms with patches taken off. The pants that I gave him
19 was an old pair of police trousers, issued trousers,
20 without any markings. For whatever reason we didn't have
21 the luxury of issued clothing for individuals, but from
22 time to time individuals would be arrested and if their
23 clothing was soiled from whatever reason, they were --
24 they had access to showers in the Law Center in which they
25 would be provided with a change of clothes for whatever

1 reason, this reason being his clothes being held as
2 evidence I was able to give him some old clothing in
3 exchange so he would have some.

4 Q Were you involved at all in the arrest of Mr. Forney?

5 A No, sir.

6 Q You had nothing to do with it?

7 A No, sir.

8 Q You indicated though that you did not when you entered
9 the Law Center you did not go through the entrance where
10 you normally take prisoners, is that correct?

11 A That's right.

12 Q And your reason for it was --?

13 A The sally port or entrance in that area is only little
14 enough for two police vehicles. There were already two
15 police vehicles probably from unrelated arrests, this
16 being a Friday night, lots of business. That's where they
17 were parked, so we pulled around to the front of the sally
18 port where this door is located that I spoke of.

19 Q When you refer to "we," again, who was in the car with
20 you that night? It was you and, obviously, Mr. Hughes.

21 A Mike Buckaloo, which now works for the Sheriff's
22 Department, which was a City employee at the time, a
23 police officer; York County Deputy Allen Brandon, which is
24 now a lieutenant - I think he was a sergeant at the time,
25 Hughes and myself.

1 Q Was this a marked car you were riding in?

2 A Yes, sir, marked Rock Hill City police car.

3 Q I take it at the time that Officer Buckaloo was
4 driving?

5 A I would say yes.

6 Q If he wasn't driving, what other relevance would he
7 have in being there? Did he participate in the arrest
8 also, Officer Buckaloo?

9 A None other than transporting us to the Law Center.

10 MR. SCHUSTERMAN: With the court's indulgence?

11 THE COURT: Certainly.

12 Q Is it correct that you located Mr. Hughes several feet
13 right in here (indicating), several feet into the wood
14 line off Wilkerson Road?

15 A Yes, sir, it's going to be in that general area.

16 Q Why don't you point?

17 A No, you are correct, it's going to be in that general
18 area. I don't know exactly what these buildings are that
19 are on this paper. I know of a brick house, if that is a
20 brick house, was between the two. This is a brick house
21 that was between these two. I just know what is out there
22 at that time and in relation to a brick house. All of this
23 in between each of these, as I said before, this is
24 heavily wooded all in here and it's heavily wooded in
25 between each of those.

1 Q Are you familiar with this piece of land either from
2 that night or before or after? Are you familiar with this
3 section from the corner of Wilkerson and Celriver down,
4 this pie shaped piece of property here?

5 A I know of its location and locale, but as far as how
6 many houses are in there, I'm not familiar.

7 Q Right here, approximately parallel to or at the same
8 level that Mar-Reece was found, from Wilkerson Road across
9 to here, what kind of distance is that?

10 A I would say roughly a hundred yards.

11 Q A hundred yards.

12 A And that's a guess.

13 Q Okay. I appreciate it. Thank you for answering my
14 questions.

15 MR. BRACKETT: Nothing further. I ask that this
16 witness be excused.

17 MR. SCHUSTERMAN: No objection.

18 THE COURT: Step down, you can be excused.

19 All right, we will take an afternoon break, ten to
20 twelve minutes, for those of you who want to smoke.

21 All right, we will take a break.

22 (Recess)

23 THE COURT: Is the defense ready?

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

25 THE COURT: Mr. Hughes is present. Bring in the jury.

GARY NORMAN STRETT DIRECT

(Jury returns to courtroom.)

GARY NORMAN STRETT, being duly sworn,
testified as follows:

DIRECT EXAMINATION

BY MR. BRACKETT

Q Would you please state your full name and spell your
last for the court reporter?

A My name is Gary Norman Streтт, S-t-r-e-e-t-t.

Q And where are you employed, sir?

A State that again, sir?

Q Where are you employed?

A I am employed with the State Law Enforcement Division.

Q How long have you been with SLED?

A I have been with SLED about seven and a half years.

Q All right. And did you have an occasion on September
25, 1992, to be in Rock Hill working with SLED?

A Yes, sir, I did.

Q And what were you doing up here then?

A I am a narcotics investigator and we were conducting a
narcotics operation in assistance to the Rock Hill Police
Department.

Q And at some time during your stay here did you have an
occasion to be called out to some other matter?

A Yes, sir.

Q What was that?

1 A It was reported to us that an officer had been shot in
2 the area or nearby the area that we were operating in and
3 we responded to assist in that matter.

4 Q And did you render assistance in that matter
5 throughout the evening?

6 A Yes, sir, I did.

7 Q And were you present when one of the suspects was
8 arrested?

9 A Yes, sir, I was.

10 Q And could you describe what your involvement in that
11 was or what you saw?

12 A One of the officers had stated to us that he had ---

13 MR. SCHUSTERMAN: Objection.

14 THE COURT: I sustain the objection.

15 Q Without going into -- just what you saw. Did you see
16 the individual get arrested?

17 A Yes, sir, I saw the individual arrested. I was
18 immediately at hand when he was arrested.

19 Q And were you on the scene at the location where he was
20 arrested?

21 A Yes, sir, I was.

22 Q I am showing you what has been marked as State's
23 Exhibit 55 for identification. Would you look inside that
24 bag or me, sir, and tell if you recognize what is in
25 there?

1 A A pair of Sirconi running shoes and a pair of socks.
2 These shoes are the shoes that I picked up at the arrest
3 scene and the socks and carried back to the police
4 department.

5 Q And did you keep those in your custody the whole time?

6 A Yes, sir.

7 Q Do you recognize what kind of document that is?

8 A Yes, sir, it's part of the chain of custody for them,
9 this is the bag that I sealed out there and this is the
10 property receipt from Mr. Black.

11 Q Who did you give those shoes to?

12 A Mr. Black.

13 Q Okay, David Black with SLED?

14 A Yes, sir.

15 Q Are those the shoes you recovered that night?

16 A Yes, sir, this is.

17 MR. BRACKETT: I move these into evidence.

18 MR. SCHUSTERMAN: Without objection.

19 THE COURT: Be received without objection.

20 (State's Exhibit 55 marked and filed.)

21 Q Did you see where the defendant was when he was
22 arrested, where his hiding spot was, where he was at the
23 time?

24 A Well, we were in a wooded lot, a wooded area, and at
25 the time that I got to him was when the second sets of dog

GARY NORMAN STREETT CROSS

1 persons were there, he was lying on the ground.

2 Q All right, sir, about how far from him were the shoes
3 found?

4 A Maybe six or eight feet.

5 Q Thank you very much Agent Streett. Please answer any
6 questions the defense may have for you.

7 CROSS EXAMINATION

8 BY MR. SCHUSTERMAN

9 Q Agent Streett, you indicated that you found his shoes
10 and socks six to eight feet from where?

11 A From where the subject was being arrested our lights
12 were able to illuminate an area probably six to eight
13 feet. It was dark and those shoes were immediate to that
14 area. Of course, I didn't measure it.

15 Q But in the immediate area?

16 A Yes, sir.

17 Q Were you there during this whole incident when he was
18 arrested with the dogs and all of that?

19 A I was not the first person to him, but I was to him
20 within seconds after the first person was.

21 Q Thank you.

22 MR. SCHUSTERMAN: I have no further questions.

23 MR. BRACKETT: Nothing further. I ask that this
24 witness be excused.

25 THE COURT: You may step down. You are excused.

JAMES SCOTT ROCKHOLT DIRECT

MR. BRACKETT: The State would call Scott Rockholt.

JAMES SCOTT ROCKHOLT, being first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. BRACKETT

Q Would you please state your full name and spell your last for the court reporter?

A James Scott Rockholt R-o-c-k-h-o-l-t.

Q Where are you employed?

A The Rock Hill Police Department.

Q And how long have you been with the Rock Hill Police Department?

A Seven and a half years.

Q What capacity are you with the Rock Hill Police Department now?

A I am a master patrol officer assigned to the night shift.

Q And what were you doing back in September of 1992?

A I was special investigator assigned to the burglary division.

Q Were you working on the 25th of September, the late evening hours of the 25th, the early morning hours of the 26th?

A Yes, I was.

Q And were you at the station when Mar-Reece Hughes was

JAMES SCOTT ROCKHOLT DIRECT

1 brought back to the station?

2 A Yes, I was.

3 Q Were you detailed any specific duties in regards to
4 the defendant?

5 A I was told by Captain Charles Cabaniss they were
6 bringing the second subject involved in the shooting and I
7 was told to sit in the interview room and wait for him to
8 come in.

9 Q Were you given any instructions in regard to speaking
10 to him or --

11 A No, sir, I was told to sit there and wait for them to
12 interview him.

13 Q Basically, you were making sure he didn't leave?

14 A That's right.

15 Q What happened when he came in the room?

16 A When he came in the room, he went to the chair.
17 There's a little chair in the interview room. He sat down
18 and put his hands inside his face and said, "I'm guilty,
19 I'm guilty."

20 Q Would you show us what you mean by putting his hands?

21 A He just went down (demonstrating) and said "I'm
22 guilty, I'm guilty."

23 Q Did you ask him anything?

24 A No, sir.

25 Q Did you talk to him at all before that?

JAMES SCOTT ROCKHOLT CROSS

1 A No, sir.

2 Q Did you talk to him after that?

3 A No, sir.

4 Q What happened after that?

5 A As soon as he made that statement, I was relieved by
6 Charles Cabaniss and Bruce Bryant with SLED.

7 Q Did you have any other contact with Mr. Hughes?

8 A No.

9 Q Thank you very much. Please answer any questions
10 defense counsel may have.

11 CROSS EXAMINATION

12 BY MR. SCHUSTERMAN

13 Q Mr. Rockholt, that evening was Mr. Hughes bleeding
14 when he walked into the room?

15 A I don't recall.

16 Q Did he have cuts on his face?

17 A I don't recall. He came in, as soon as he came in he
18 sat down in a chair, placed his hands to his face.

19 Q Was his face swollen?

20 A I couldn't tell; I couldn't tell.

21 Q So there is nothing you recall about his physical
22 features being altered in any way or obvious cuts or
23 abrasions?

24 A No, sir, he came in, went directly to the chair, and
25 buried his hands in his face.

CHARLES T. CABANISS DIRECT

1 Q Were you present -- what time was this approximately?

2 A About 2:40 in the morning when he came in.

3 Q Were you present fifteen minutes before in the woods
4 when Mr. Hughes indicated he didn't shoot anybody?

5 A No, sir.

6 Q You weren't there when he made that statement?

7 A I wasn't there.

8 Q You only heard "I'm guilty, I'm guilty."

9 A That's right.

10 Q And you don't recall him having any physical injuries?

11 A No, sir, he came in and sat down.

12 Q Thank you.

13 MR. BRACKETT: Nothing further. I ask that this
14 witness be excused.

15 THE COURT: You may step down. Thank you. You are
16 excused.

17 MR. BRACKETT: I call Captain Charles Cabaniss.

18 CHARLES T. CABANISS, being duly sworn,
19 testified as follows:

20 DIRECT EXAMINATION

21 BY MR. BRACKETT

22 Q Would you please state your full name and spell your
23 last for the court reporter.

24 A Charles T. Cabaniss C-a-b-a-n-i-s-s.

25 Q Where are you employed, sir?

CHARLES T. CABANISS DIRECT

1 A City of Rock Hill Police Department.

2 Q And in what capacity are you employed with the City of
3 Rock Hill?

4 A I am Captain of the Operations Division.

5 Q And how long have you been the captain?

6 A I was promoted to captain in 1992.

7 Q Were you captain of the operations back in September,
8 1992?

9 A That's correct.

10 Q Did you have an occasion to be called out to Dave Lyle
11 Boulevard about 10:30 that evening - 10:40?

12 A Yes, sir, I was working that evening and I did monitor
13 the traffic on the radio and I responded directly to the
14 scene.

15 Q What did you see when you arrived there?

16 A When I arrived the EMS and Brent were still there, EMS
17 was working with him at that time and Officer Bohon from
18 the Sheriff's Department was there and a couple of my
19 officers were there.

20 Q Were you in charge of the investigation for the City
21 of Rock Hill?

22 A Yes, sir, I was.

23 Q How long did you remain at the scene?

24 A I remained at the scene there trying to coordinate the
25 search efforts for the two suspects until shortly after

1 midnight one of the defendant's was arrested right at
2 midnight and they brought him back from his arrest
3 location back by the scene on Dave Lyle Boulevard. I got
4 in the car with him at that time and road with him to the
5 Law Center.

6 Q Which defendant was that?

7 A Dwayne Eric Forney.

8 Q Do you recall what time Mar-Reece Hughes was arrested?

9 A Yes, sir, at approximately 2:30 AM.

10 Q And where were you at that time?

11 A At the Law Center Special Agent Bryant and myself had
12 finished our interrogation of Mr. Forney and we were at
13 the Law Center and we heard by radio traffic that Mr.
14 Hughes had been arrested.

15 Q All right.

16 A During the interview and during that two and a half
17 hours I had been in pretty constant radio contact with the
18 search units.

19 Q Were you still coordinating the search?

20 A Yes, sir, to some degree. Agent Bryant and myself were
21 interviewing and interrogating Mr. Forney, but we did take
22 breaks there and I did step out of the room, but I did
23 have the lieutenant and other officers in the room. We
24 were passing on the information to the search units trying
25 to assist them in apprehending Mr. Hughes. We were able to

CHARLES T. CABANISS DIRECT

1 obtain his name from Mr. Forney and a description of him.

2 Q You knew who was coming in at 2:30 in the morning when
3 they made the arrest?

4 A That is correct.

5 Q Did you have occasion to see Mr. Hughes at any time
6 that evening at the Rock Hill Law Center?

7 A Yes, sir, we did.

8 Q At approximately what time did you first make contact
9 with him?

10 A I originally made contact with him when he arrived -
11 Officer Devinney and Sgt. Brandon and Officer Buckaloo
12 arrived with him at the Law Center. I met them out back at
13 which time they took him into the holding area and then
14 later, probably twenty or thirty minutes later, Agent
15 Bryant and myself went into the interview room with him
16 where Investigator Rockholt was with him at that time.

17 Q And did you interview Mr. Hughes that evening?

18 A Yes, sir, I did.

19 Q Did you read Mr. Hughes his rights?

20 A Yes, sir, I did.

21 Q Do you have that Rights card with you?

22 A It's in evidence.

23 Q I am showing you what's been marked State's Exhibit 56
24 for identification and ask if you can identify that.

25 A Yes, sir, this is my Rights card that is stapled to

1 this piece of paper here.

2 Q Was that the Rights card that you had that evening?

3 A Yes, sir, that's correct.

4 Q Did you read Mr. Hughes his rights?

5 A Yes, sir, I did from the card.

6 Q What did you read to him. If you could recite verbatim
7 what you read to him.

8 A "You have the right to remain silent; anything you say
9 can and will be used against you in a court of law. You
10 have the right to talk to a lawyer and have him present
11 with you while you are being questioned. If you cannot
12 afford to hire a lawyer, one will be appointed to
13 represent you before any questioning if you wish. You can
14 decide at any time to exercise these rights and not to
15 answer any questions or make any statements. Do you
16 understand each of these rights that I have explained them
17 to you" at which time he indicated he did understand his
18 rights. I then advised him, "Having these rights in mind
19 do you wish to talk to us now?"

20 Q What did he indicate?

21 A He indicated he did.

22 Q All right and when you read those rights to him did
23 you do any interviewing before you read those rights to
24 him?

25 A No, sir, that's the first thing I did when I got into

1 the room.

2 Q He indicated that he did wish to speak to you?

3 A That's correct.

4 Q What did you ask him and what did he tell you
5 initially?

6 A Special Agent Bryant and myself and then after a short
7 time after the interrogation started we were also
8 accompanied there in the room by Captain Rodney Hudgins
9 from the York County Sheriff's Department. Defendant
10 Hughes first started when we asked him to tell us about
11 what had transpired shortly before he was arrested that
12 night. He first started maintaining that he was at the
13 Holiday Inn and had been at the Holiday Inn and had never
14 been with Mr. Forney or ever on Dave Lyle Boulevard where
15 the shooting occurred. Sometime during this interrogation
16 he maintained that he was with Mr. Forney in Charlotte
17 when the car was acquired when they carjacked and robbed
18 the two students and acquired the car, but then Mr. Forney
19 dropped him off at the Holiday Inn and then later came
20 back and picked him up shortly before they were arrested.
21 His story kept changing throughout the night and as we
22 used different techniques and explained to him and asked
23 him questions and showed him what evidence we had and we
24 knew was the truth, he did add other bits to his
25 statement, which were more believable.

CHARLES T. CABANISS DIRECT

1 Q Did you inform him -- you had information coming in, I
2 believe, isn't that correct?

3 A That's correct. My investigators, the whole team of
4 police officers that were working on the shooting that
5 night, were gathering information as we were talking to
6 him continually throughout the night such as statements
7 from witnesses, identifications and stuff.

8 Q What kind of information did you have?

9 A That Mr. Hughes was definitely the one involved in the
10 carjacking in Charlotte and information as to how that
11 carjacking took place as far as the details et cetera,
12 information such as the two suspects after they shot
13 Deputy McCants how they were standing over the body
14 tugging on his body, that sort of information.

15 Q Did you apprise him of this information?

16 A Bits at a time as we needed to, we use these
17 techniques to try to convince him that we knew what
18 happened and to go ahead and tell us the truth.

19 Q And when you told him information that you had what
20 would he do?

21 A He would try to fit it into his story to where, yes,
22 the information that we knew did, in fact, occur, but it
23 occurred in such a way as to not to incriminate him as
24 much.

25 Q At any time during the evening did you ask him where

CHARLES T. CABANISS DIRECT

1 he went after he left out of Charlotte, after getting the
2 car in Charlotte?

3 A Yes, sir, we did.

4 Q And where did he say he went first? Did he say that
5 he went to the Holiday Inn?

6 A He originally said he went to the Holiday Inn and
7 never was involved with the incident at the movie theater
8 or with the shooting on Dave Lyle Boulevard.

9 Q Did you have any information regarding the incident at
10 the movie theater?

11 A Yes, sir, we had information indicating that both of
12 them had went to the movie theater.

13 Q Did you confront him with that information?

14 A At some point during the two and a half hours, yes,
15 sir, we did.

16 Q Did he indicate that he was, in fact, at the movie
17 theater out there?

18 A Yes, sir, he did. He indicated they went to the movie
19 theater. He first indicated that Dwayne Eric Forney it was
20 his idea to rob the movie theater.

21 Q And did he ever indicate that he was on Dave Lyle
22 Boulevard?

23 A Later on in the night, yes, sir, he did.

24 Q And can you describe what his initial statement
25 regarding his involvement at Dave Lyle Boulevard was to

1 you?

2 A He originally said he was in the car with Mr. Forney.
3 He stated and he maintained throughout the night that he
4 never drove the vehicle that they had stolen from the
5 couple in Charlotte. His original statement was that he
6 was in the car, but he never got out, that Mr. Forney was
7 the shooter and that Mr. Forney shot Deputy McCants, but
8 that he never ever got out of the vehicle.

9 Q Never got out of the vehicle at Dave Lyle Boulevard?

10 A That's correct.

11 Q Did you have any information that indicated otherwise?

12 A Yes, sir, we had the two lady witnesses that first
13 arrived upon Deputy McCants when Mr. Hughes and Mr. Forney
14 were still there as a matter of fact. They provided us
15 with the information they had observed two suspects over
16 the body, tugging on the body, and that they had ran and
17 got into the car, both subjects. When we confronted him
18 with that, then he said, "Yes, I did get out of the car"
19 and then we asked him what was he tugging, what was he
20 trying to steal, what was he trying. We asked him several
21 questions about what was he trying to do, take his gun, et
22 cetera, and he finally came up with the story that he got
23 out of the car and he just checked his pulse, checked the
24 officer's pulse.

25 Q Did he indicate anything in regards to the weapon that

CHARLES T. CABANISS DIRECT

1 was used? Did he give you any information about the
2 weapon that was used?

3 A Yes, sir, we specifically asked him about the weapon
4 several times and he stated that Dwayne Eric Forney who he
5 had met up with near the Revco in Charlotte the previous
6 night and they had robbed a couple of their car, he stated
7 that Eric had the gun when they met and it was Eric's gun.
8 He said he never had the gun. He was very specific he
9 stated it was Eric's gun and that Eric had it when they
10 met up.

11 Q Did you reduce his statements to you, his oral
12 statements to you, did you reduce those to writing,
13 Captain Cabaniss?

14 A Yes, sir, during the end of the night - during the
15 interview he was very, as I have indicated, he was very
16 deceptive in trying to make up a story that we would
17 believe that made him less culpable and at some point
18 during the interview, I'm going to say it was right before
19 four o'clock, he wanted to make a phone call. He wanted to
20 call a friend of his.

21 Q Who was that?

22 A Lt. Perry. Lt. Perry he had an acquaintance with Lt.
23 Perry from previous dealings with him. He was in North
24 Carolina and he wanted to call him before we talked to
25 him.

CHARLES T. CABANISS DIRECT

1 Q Did you give him an opportunity to make that phone
2 call?

3 A Yes, sir, I dialed the number. He provided me with the
4 number and I dialed the number and he did talk with Lt.
5 Perry.

6 Q Did you have an opportunity to talk with Mr. Perry?

7 A Yes, sir, I did.

8 Q And without going into the substance of the
9 conversation with Mr. Perry, you spoke with him before or
10 after Mr. Hughes had talked with him?

11 A Very briefly before. I explained who I was. It was
12 four o'clock in the morning and I explained why I was
13 calling and told him that Mr. Hughes wanted to talk to
14 him. He agreed that he would talk to him and then after
15 Mr. Hughes talked with him for a few minutes, I got back
16 on the phone with him and basically asked him a couple of
17 brief questions about what their conversation was. I
18 explained to Lt. Perry what our situation was here and
19 that the deputy had been shot. And then we went back and
20 talked with Mr. Hughes.

21 Q Did Mr. Hughes give a more complete statement after
22 speaking with Mr. Perry?

23 A It seemed to be a more complete statement, yes, sir.
24 Before he talked to Perry he would not even admit to being
25 on Dave Lyle Boulevard. It was after he talked to Perry,

CHARLES T. CABANISS DIRECT

1 to the best of my knowledge, that he finally did admit to
2 being in the car. And then the story evolved from there
3 until the final version.

4 Q Which was he did get out of the car?

5 A In which he did get out of the car to check his pulse
6 and run right back and get in the passenger side.

7 Q Did you have an occasion to reduce his statement, this
8 final version of what happened, in writing?

9 A Yes, sir, I did.

10 Q Captain Cabaniss, without reading this statement, can
11 you just look at it briefly and tell me if you can
12 identify what's been marked as State's Exhibit 57 for
13 identification?

14 A Yes, sir, I can.

15 Q What is that?

16 A This is the statement that's on a Rock Hill Police
17 Department Defendant's statement which includes the rights
18 again. This is the statement that I typed there after he
19 went over it with us again. The first time we, there were
20 two and a half hours of talking there, we talked and had
21 him go through the statement and then again I put this in
22 the typewriter and had him go through it again as we asked
23 him questions and typed it.

24 Q Did you type that as you were talking?

25 A Yes, sir.

CHARLES T. CABANISS DIRECT

1 MR. SCHUSTERMAN: Your Honor, I think we probably need
2 to take up an issue.

3 THE COURT: I am going to let you go to the jury room
4 just for a few minutes. This won't be a real long break I
5 don't think.

6 (Jury retires to jury room.)

7 MR. SCHUSTERMAN: Your Honor, at this time I assume
8 that Deputy Solicitor Brackett is going to introduce the
9 statement and have Captain Cabaniss publish it to the
10 jury. It makes a reference, Your Honor, to the fact that
11 he met Mr. Forney in prison directly. The statement begins
12 "Tonight shortly after dark I was at the Revco and met up
13 with Eric. I have known him three or four years. I met him
14 in prison." Your Honor, we would ask that that "I met him
15 in prison" be redacted. I understand he made the statement
16 voluntarily, but it injects his character in issue when
17 it's not one.

18 THE COURT: What says The State?

19 MR. BRACKETT: Your Honor, I think that also goes to
20 the conspiracy aspect that they did know each other, they
21 have relationships, and it establishes that point that
22 this was no mere fluke, that he wasn't just --

23 THE COURT: Let me see the statement.

24 MR. SCHUSTERMAN: Your Honor, may I reply to that?

25 THE COURT: Yes.

1 MR. SCHUSTERMAN: It says clearly, the sentence before
2 says, "Tonight shortly after dark I was at the Revco and I
3 met up with Eric. I had known him for three or four
4 years." So if a conspiracy if that's what he wants to put
5 in, we don't have an objection to that.

6 THE COURT: All right, I am going to require that that
7 part be redacted.

8 MR. SCHUSTERMAN: Thank you, Your Honor.

9 THE COURT: We will take a few minutes to do that. So
10 why don't we take a quick break? Can you do it now or --

11 MR. POPE: We can do it and move forward. We can get
12 some White-Out and take care of it.

13 MR. BRACKETT: That's the original statement.

14 THE COURT: We are going to have to have one copy
15 unredacted.

16 MR. BRACKETT: Yes, sir. This is the original. I have
17 a photocopy. We will just have to get another State's
18 Exhibit.

19 MR. SCHUSTERMAN: For the record I have no objection
20 to the card.

21 MR. BRACKETT: State's Exhibit 56 for identification I
22 move that in evidence.

23 THE COURT: While you are doing that I don't want to
24 take too much time. We will take about two minutes. I find
25 that when you send the jury to the jury room they all

1 need two or three minutes. It just turns out a function of
2 life. So, let's take about two or three minutes.

3 MR. POPE: We deleted "I met him in prison."

4 (Recess)

5 MR. BRACKETT: It's been blacked out and I don't
6 believe you can see anything and here's a copy that has
7 been whited out. Our concern is it looks doctored. You
8 know, from The State's perspective we don't want something
9 going back that we can't explain.

10 THE COURT: I can explain that something had to be
11 marked out. I am going to tell them the court required
12 something to be removed. Well, you know, the concern from
13 their standpoint is it looks like maybe they had doctored
14 it and nobody explained it and they may think they
15 doctored and took out something exculpatory.

16 MR. BRACKETT: Okay.

17 MR. SCHUSTERMAN: How did they black it out?

18 THE COURT: It's right here; I want you to look at it.

19 (Mr. Schusterman complied)

20 All right, bring in the jury.

21 MR. BRACKETT: And State's Exhibit 57 will remain with
22 the court reporter as a court's exhibit.

23 (Jury returns to courtroom.)

24 THE COURT: Members of the Jury, The State is going to
25 move forward with regard to the statement you have already

CHARLES T. CABANISS DIRECT

1 heard reference to. On I think it's the second line you
2 will see a blacked out place. That was done for me at my
3 behest and I have initialed that I'm the one who blacked
4 that out so you will know that that is not a doctored
5 document by someone. It was done by me.

6 MR. BRACKETT: Thank you, Your Honor. At this time I
7 would move State's Exhibit 56, the rights card, and
8 State's Exhibit 57, the statement, into evidence.

9 THE COURT: Subject to earlier Motions and rulings by
10 the court.

11 MR. SCHUSTERMAN: Absolutely.

12 THE COURT: And I will have some instructions to the
13 jury between this witness and the next regarding the
14 statement.

15 MR. SCHUSTERMAN: Thank you.

16 MR. BRACKETT: Thank you, Your Honor.

17 (State's Exhibits 56 and 57 marked and filed.)

18 DIRECT EXAMINATION

19 BY MR. BRACKETT (RESUMED)

20 Q Captain Cabaniss, referring your attention to the
21 statement, State's Exhibit 57, there are a number of
22 preprinted, there's a couple of paragraphs preprinted at
23 the top there. Can you tell us what those are?

24 A These are basically Waiver of Rights again. It
25 basically has the same information that I read from my

1 card.

2 Q And did you go over those rights with Mr. Hughes
3 again?

4 A Yes, sir, right before I started typing.

5 Q And prior to -- did he indicate after you had read
6 those rights to him that he understood them again?

7 A Yes, sir, he did.

8 Q Now the statement itself was that taken from your
9 memory what he had previously said? How was that statement
10 taken?

11 A No, sir, Agent Bryant and myself had him go over it
12 again and as he went over it again I typed it at that
13 time.

14 Q Would you read that statement as it is written there
15 ---

16 A Yes, sir.

17 Q --- to the jury?

18 A "Tonight shortly after dark I was at the Revco and met
19 up with Eric. I have known him for three or four years."
20 And then there's a line in there that I marked out. It
21 states he had an idea to rob someone at the stop light a
22 couple of blocks up the street near a restaurant.

23 Q Why is that particular line -- that's not the line the
24 judge was referring to, is it?

25 A No, sir, it's not.

1 Q Why is that line marked out?

2 A Because after we had completed typing the entire
3 statement, Mr. Hughes did not wish to sign it. We pressed
4 him as to is there something wrong with it, why won't you
5 sign it, why don't you want to sign it, and he said "The
6 details aren't exactly right" and I said, "Which details?"
7 I read that line and he said, "Well, I'm not sure it was
8 Eric's idea," so I said, "Okay, I'll mark that line out."

9 Q And did you?

10 A Yes, sir, I did.

11 Q After you marked the line out, -- well, go ahead and
12 continue reading it if you would.

13 A "He had a gun and we got a couple at the light. He
14 told the girl to give up her money several times and she
15 finally did. I told him that he didn't need to be pointing
16 the gun at her. He took a wallet from the man and I
17 thought he was going to shoot him. He was pointing the
18 gun at him. After we got the car, he was driving and we
19 came to South Carolina. We went to the movie theater near
20 the interstate. Sneakers was playing. We stayed only
21 five or ten minutes. We went there because Eric was going
22 to rob it. The woman let us in to watch the movie free
23 because it had already started, so we didn't rob her. We
24 left and Eric was still driving. Shortly after we left, a
25 police pulled us. The officer walked up to the car. He

1 said something about the lights not being on. The gun was
2 between Eric's legs. The officer was shining his light
3 into the car as he was walking up to the car. I think he
4 asked Eric to get out. The officer then said Buddy or
5 Partner, have you been drinking? As Eric walked toward
6 the front of the car, he turned and started shooting the
7 officer. It seems like he was running toward him to shoot
8 him. I heard a lot of shots, but I don't know how many. I
9 jumped out of the car and ran around toward the officer.
10 The officer was on the ground when I got there. I think
11 the officer was face down when I got there. I went and
12 felt his pulse at his neck and did not feel anything.
13 While I was doing this, Eric was tugging at the officer
14 trying to get something off him. This was from around his
15 belt area. The officer said something to the effect of
16 I've been shot or something like that. Eric started
17 hollering for me to come and get in. I got in and we left.
18 We went back toward I-77 and then Eric pulled into the
19 Holiday Inn. We were going to get a room, but we saw the
20 police and we ran. I hid in the woods and the police dogs
21 later found me. I was hoping like hell they would miss
22 me." The last line says, "I'm not exactly sure about all
23 the details in this statement, but they are true to the
24 best of my memory."

25 Q After you struck through the previous line on the

1 first page regarding whose idea it was to rob the couple,
2 ---

3 A That's correct.

4 Q --- would he sign it then?

5 A No, sir, he still would not sign it and, again, we
6 asked him if he wanted us to make any changes or add
7 anything to it to make it a version that he would want to
8 sign and he said, well, he's not exactly sure he couldn't
9 remember all of the details, he wasn't sure he was telling
10 us the complete truth. So I went back and added this
11 statement, this last line, that says "I'm not exactly sure
12 about all the details in this statement, but they are true
13 to the best of my memory." I added that to it and I read
14 it and showed it to him again, but he still refused to
15 sign it.

16 Q Did you press him on that point?

17 A No, after I added that last sentence, I probably
18 didn't give him the opportunity but two or three minutes
19 to sign it and then we placed him back in the holding
20 area.

21 Q Captain Cabaniss, how many different stories did you
22 get from him that night, how many variations did you get
23 from him that night?

24 A It would be too hard to put a number on that. He
25 started off with this statement and I finally concluded it

1 at 4:52 AM. Started it at probably three o'clock or a
2 little before, so there were a couple of dozen statements
3 and what he would do instead of complete variations he
4 never said, you know, once he said he never came to the
5 scene he was dropped off at the Holiday Inn and then he
6 left that story. He would just add different variations to
7 it to try to meet what we knew to be the facts, to try to
8 make us believe what facts we knew were true, but it went
9 into the story the way he was wanting to tell it to make
10 him less guilty or less culpable. There were just
11 different variations, I mean, of basically the same story.

12 Q Was he consistent in one or two respects with regards
13 to his story?

14 A Yes, sir, he was.

15 Q Was he consistent with who was driving that evening?

16 A Very consistent.

17 Q And what was his story in that regards?

18 A He stated that he never drove the vehicle, that Forney
19 was the one driving the vehicle. Through our investigation
20 that night Agent Bryant and myself were very confident in
21 that the driver of the vehicle was the actual shooter of
22 the police officer. We were trying to ascertain exactly
23 who was driving the vehicle. He was very adamant about he
24 never drove the vehicle at no time during the night.

25 Q And was he very consistent with respects to any other

1 matter?

2 A That he never had the gun.

3 Q At any time that night?

4 A He stated the gun belonged to Eric and that he never
5 had the gun that night at no time.

6 Q Captain Cabaniss, throughout the two hours or more
7 that you were with Mar-Reece Hughes that evening did you
8 ever get the impression -- how many people have you
9 interviewed or interrogated in your career as a law
10 enforcement officer?

11 A I have been with the Rock Hill Police Department for
12 approximately twenty-two years. Over fifteen of that has
13 been with investigations. And I would be very comfortable
14 in saying I have interviewed and interrogated over a
15 hundred suspects -- well, hundreds.

16 Q Did you ever get the impression from Mr. Hughes that
17 he was under the influence of any alcohol or drugs?

18 A No, I specifically asked him that. Agent Bryant and
19 myself we both definitely asked him had he been drinking
20 or using drugs and we both talked among ourselves during
21 the breaks in the interrogation and he was definitely not
22 under the influence of alcohol or drugs.

23 Q Throughout the course of your investigation or your
24 interrogation of Mr. Hughes did he always seem to know
25 where he was?

1 A He was very coherent, he was not disoriented at all.
2 He seemed to be in very well control of his reasoning
3 capacity and I am deducting this from the way he answered
4 our questions and the way he derived his story. He was not
5 confused and he knew exactly what he was trying to tell
6 us.

7 Q He knew who you were?

8 A Very much so, yes, sir.

9 Q And he knew the purposes of your discussions?

10 A That's correct. He understood the seriousness of the
11 situation that we were discussing.

12 Q Thank you very much, Captain Cabaniss. Please answer
13 any questions that Mr. Hughes may have for you, please.

14 A Yes, sir.

15 CROSS EXAMINATION

16 BY MR. SCHUSTERMAN

17 Q Captain Cabaniss, you arrived on the scene shortly
18 after it occurred after the killing occurred?

19 A I would say within five to ten minutes.

20 Q Would you the senior officer then?

21 A I believe so, yes, sir. Senior in rank, yes, sir.

22 Q Senior in rank. Were you the lead investigator? Were
23 you in charge of the crime scene?

24 A Yes, sir, in charge of the investigation, not
25 specifically the crime scene investigation.

1 Q Did you have the opportunity or were you aware that
2 Mr. Forney was arrested earlier that evening?

3 A Yes, sir.

4 Q Where were you when Mr. Forney was arrested?

5 A At the scene of the murder.

6 Q Did you have an opportunity to interrogate Mr. Forney?

7 A Yes, sir, I did.

8 Q Did that interrogation take place at the scene?

9 A No, sir, when Mr. Forney was arrested, he was arrested
10 near the Holiday Inn on North Cherry Road. The
11 transporting units brought him back down 77 to Dave Lyle
12 and was coming right back by the scene. I had them stop at
13 that time and I got in the vehicle with them at that time
14 and drove to the Law Center - rode to the Law Center with
15 them.

16 Q You rode in the car with Mr. Forney?

17 A Yes, sir.

18 Q Approximately what time did your interview with Mr.
19 Forney begin?

20 A Between 12:30 and one o'clock.

21 Q And was it you and Agent Bryant who did the
22 interrogation of Mr. Forney?

23 A That's correct. Special Agent Bryant and myself
24 interrogated Mr. Forney.

25 Q And did that interrogation result in Mr. Forney giving

1 a statement?

2 A Yes, sir, it did.

3 Q And approximately what time did he give the statement?

4 A That interrogation lasted about an hour so I would say
5 it would be somewhere around two o'clock give or take a
6 half hour. Mr. Forney started off basically the same as
7 Mr. Hughes. He gave us a wrong name to start with his own
8 name and ---

9 Q This was Mr. Forney you are talking about?

10 A That's correct.

11 Q He gave the wrong name to you.

12 A Mr. Forney gave us a different name and then he
13 finally gave us his correct name and also we were pressing
14 him at first to give us the identification and help us
15 arrest the second suspect that we knew was still in the
16 woods and Mr. Forney did give us Mr. Hughes' name before
17 he was arrested.

18 Q Let me ask you, how long did the interrogation last
19 with Mr. Forney until a statement was rendered?

20 A Without looking at the times written on the paperwork
21 I would say a little over an hour.

22 Q Was the interview with Mr. Forney basically the same
23 process of starting out with a story and modifications
24 being made to it and then as you say different - not
25 necessarily completely different versions, but -- changes

1 being made to it as you characterized what Mr. Hughes did.

2 A Not exactly. To the best of my memory Mr. Forney
3 immediately started off denying being on Dave Lyle at all,
4 being in the stolen car that was recovered and then,
5 finally, when Mr. Forney broke or decided to tell the
6 truth he basically came across more all at one time, in
7 other words, complete denial and then the truth versus
8 steps of the truth.

9 Q And did you take down the statement on tape - Mr.
10 Forney's on tape or did he just dictate a statement to
11 you?

12 A We did not tape any of their statements. I don't tape
13 any statements. I did the same way. Mr. Forney told me the
14 statement and I remember taking notes on Mr. Forney as he
15 told me the statement and then we went back over it again
16 and as he told me I typed it on the same form that I did
17 Mr. Hughes'.

18 Q Did you have an opportunity to leave the Law Center
19 between the time that Mr. Forney gave a statement and you
20 concluded with him and the beginning of Mr. Hughes'
21 statement or the interrogation session?

22 A I'm not sure. I've thought about that. I've thought
23 about it recently. I had been to the scene where they
24 were arrested. Since they were arrested I went back and
25 participated in some searches shortly thereafter and was

1 in very close contact with radio with the officers there.
2 I'm not absolutely sure if I had a chance to get back out
3 in the car and assist in looking for Mr. Hughes before he
4 was arrested. I was not there when he was arrested. I was
5 back at the Law Center. I'm not absolutely sure, but I
6 don't think I had the opportunity to leave the Law Center
7 from the time we completed with Mr. Forney until they
8 brought Mr. Hughes in.

9 Q When Mr. Hughes was brought in, it is my understanding
10 that Officer Devinney brought him to Officer Rockholt, is
11 that correct?

12 A That's my understanding.

13 Q When you walked in the room, the room that I suppose
14 you did this interrogation in for the hour and forty-five
15 minutes or hour and fifty minutes approximately, ---

16 A Yes, sir.

17 Q --- Officer Rockholt and Mr. Hughes were the only two
18 people in the room?

19 A That's correct.

20 Q How was Mr. Hughes secured? Did he have leg irons on,
21 did he have handcuffs, was he shackled? How was he
22 restrained?

23 A I don't believe he was. I am pretty sure he was not.

24 Q He was not restrained.

25 A That's correct.

1 Q When you walked in the room, I assume the first thing
2 you did was you read him his rights?

3 A That's correct from the card.

4 Q Off the card that we entered.

5 A Yes, sir.

6 Q That was entered as State's Exhibit Number 56.

7 A That is correct.

8 Q And you would have read this card, the provisions in
9 this card, to him at two o'clock? Was it two o'clock in
10 the morning, three o'clock in the morning when you started
11 the interview?

12 A Approximately. He was arrested at 2:30 and I would
13 say it took twenty or thirty minutes before we got in the
14 room with him.

15 Q So at approximately three o'clock was when you began
16 talking with Mr. Hughes?

17 A That's correct.

18 Q And you indicated that Mr. Hughes was telling you at
19 first giving you statements that were not true.

20 A That's true.

21 Q And that was based on this preliminary investigation,
22 at this point the crime was only approximately four hours
23 old.

24 A That's correct the statements we had gotten from
25 Forney. We had just got through talking to Forney. The

1 statements we got from him, the statements we got from the
2 eyewitnesses, those things led us to know that the
3 preliminary statements were untrue.

4 Q You indicated that you do not tape these interviews.

5 A No, sir.

6 Q You indicated that you don't take notes during these
7 interviews.

8 A No, sir, I didn't say that; I do take notes during
9 some of them and I distinctly remember taking notes ---

10 Q During Forney's?

11 A That's correct.

12 Q But my understanding from your testimony and please
13 correct me I understand from your questioning - being
14 questioned by Deputy Solicitor Brackett that you didn't
15 take notes during the Hughes' interview.

16 A That's correct; I did not. To the best of my memory
17 Special Agent Bryant was taking notes.

18 Q So these statements that you are recalling today and
19 testifying to today are the product -- are purely a
20 product of your memory?

21 A No, sir, -- the versions are, yes, sir, I'm sorry.

22 Q That's what I am saying.

23 A The final version is where he went over it again when
24 we thought we were getting his as close to telling the
25 truth as we could get him, then I set him down, I read him

1 the rights from the sheet again, put it in the typewriter
2 and said let's go it over one more time I am going to type
3 it and let's start and then I typed it.

4 Q But in terms of -- and I agree -- but in terms of
5 different versions though from three o'clock through when
6 that statement was typed, let's assume it was around 4:50
7 ---

8 A My memory.

9 Q It's your memory.

10 A That's correct.

11 Q As he was telling you these different versions during
12 this hour and forty-five minute period, you were skeptical
13 that that was not completely the truth, is that true?

14 A Some of the versions I knew not to be true.

15 Q Is it not true that at some point during the
16 interrogation that you allowed Mr. Hughes to read Mr.
17 Forney's statement?

18 A No, sir, it's not true that I let him read it. It may
19 be true I did refer to it. I did tell him that Mr. Forney
20 had given us a statement, basically what it said. I did
21 tell him that Mr. Forney was accusing him of being the
22 trigger man. I did tell him what Forney's statement said.
23 Forney said that the driver did the shooting and that
24 Forney said that he was the driver and I showed him the
25 statement - I'm not disputing ---

1 Q I am not questioning whether you showed it to him or
2 read it, but in some way, shape or form you addressed Mr.
3 Forney's statement to Mr. Hughes?

4 A I believe I did, yes, sir. I feel confident that I
5 did.

6 Q The ultimate byproduct that you came out with after
7 that hour and fifty minute interview closely paralleled
8 the statement Mr. Forney made, is that not true?

9 A Except for the culpable details, yes, sir, where Mr.
10 Forney states that Hughes was driving and did the
11 shooting.

12 Q And Mr. Hughes said Mr. Forney was driving and did the
13 shooting.

14 A Yes, sir, that's similar and there are a couple of
15 other similarities. You'd have to get them and we would
16 have to compare them. I wouldn't say they are exactly
17 identical. I would say the scenario that the
18 investigations led to was consistent with what we believe
19 from the witnesses and both defendants.

20 Q After you if I understand correctly when you finally
21 made the decision or you or Agent Bryant made the decision
22 that you had gotten as close to the truth as you felt you
23 were going to get, ---

24 A That's right.

25 Q --- that was your opinion, --

1 A That's correct.

2 Q --- that at that point did you type out the statement
3 based on your recollection at the time from the interview
4 as well as Agent Bryant's notes or did Mr. Hughes
5 basically dictate this page or page and a half?

6 A We had him go over it again. I did not type it from my
7 memory or from the other events. We had him go over it
8 again. As far as him dictating it, he was not sitting
9 there saying word for word as I was typing. He would say a
10 sentence and Agent Bryant or myself would say what
11 happened next or something like this and he would say it
12 and I would type it out.

13 Q So this would not be verbatim. This is Captain
14 Cabaniss' interpretation of what Mr. Hughes said.

15 A I wouldn't say it would be an interpretation. I'd say
16 that's what he said. That's what he stated and that's what
17 I typed, but it was in response to questions.

18 Q Did you not indicate that you put statements in here
19 that you felt needed to be in here?

20 A I did not -- if I gave that indication, I'm sorry, I
21 did not mean to; no, sir, I did not try to give anyone the
22 impression that I put statements in there that --

23 Q Needed to be in there?

24 A --- Well, what interpretation are you using that as?
25 We were asking questions to solicit answers that we

1 thought were pertinent to the investigation, yes, sir.

2 Q At a prior hearing the question was asked of you he
3 dictated a statement to you and your answer was not
4 verbatim, we had went over the story before and he would
5 leave something out that we thought we needed in the
6 statement or we would ask him a question and he would
7 respond and I would type it.

8 A Yes, sir, I mean, I agree with that.

9 Q So the statement that "He would leave something out
10 that we thought needed to be in the statement," you did
11 make that statement.

12 A Yes and we followed up with what I said there ---

13 Q "Or we would ask him a question and he would respond
14 and I would type it."

15 A I probably should have said and we would ask him a
16 question.

17 Q Should be an and and not an or?

18 A Probably.

19 Q Okay.

20 MR. SCHUSTERMAN: With the court's indulgence, Your
21 Honor?

22 THE COURT: Certainly.

23 Q Mr. Cabaniss, the method that you use for interviewing
24 or interrogation do you ask questions and seek a response
25 from the person in custody or do you lay out what you

1 believe to be a factual scenario and ask the defendant is
2 that correct, is that the way it happened or is it not?

3 A I use both at certain times. We try to have, of
4 course, when we start the initial interview, we try to
5 have the suspect provide -- do all the talking as much as
6 possible, but then when it is obvious that they are trying
7 to be misleading or deceitful, then, of course, we have to
8 say, you know, is that really the way it happened or did
9 it happen like this.

10 Q Given the fact that you were -- you appeared to be
11 frustrated that night, this took some time and as you
12 indicated there were different versions and we understand
13 what we mean by versions in this case, did you lay out
14 factual scenarios to Mr. Hughes and look for affirmation
15 or denial to those factual scenarios?

16 A I don't believe I said I was frustrated. If I did, I'm
17 sorry. I don't remember saying that. I cannot remember --

18 Q I used that term. I'm sorry.

19 A I don't remember being frustrated and in interrogating
20 suspects it is not uncommon at all for them not to come
21 right in and tell us everything that's the truth the first
22 time and this is a common ploy for guilty people to try to
23 use when they are talking to us. I do not remember giving
24 Mr. Hughes a scenario that I wanted him to put himself
25 into. I cannot remember that that night.

1 Q Did you indicate on direct examination that after this
2 statement was typed you allowed Mr. Hughes to read it or
3 did you read it to him before he was asked to sign it?

4 A Both.

5 Q So he had the opportunity to visually read it for
6 himself?

7 A Yes and he acted like he really did not want to read
8 it. I laid it on the desk in front of him and read it as I
9 followed along with words.

10 Q But he obviously glanced at it enough, according to
11 you, that he wanted that sentence crossed out, the one
12 that you crossed out.

13 A I don't remember him looking at that when he said he
14 wanted that crossed out. After I said it when he said he
15 wasn't sure about the details, I said, which details and
16 then he said the part about it being Eric's idea to rob
17 the couple. He didn't want to say that. I don't remember
18 him looking at the statement and saying that at that time.
19 I remember him voicing that concern as I read it to him.
20 There again he never took the statement and read it that I
21 can remember. I showed it to him and read it and went
22 along with him, but I don't remember him taking the
23 statement and reading it.

24 Q Are you aware, sir, that his first name Mar-Reece is
25 spelled as you have typed it out here Maurice is not the

1 way this gentleman spells his name?

2 A Yes, sir, I am aware of that now. I had not seen his
3 booking slip or his driver's license or anything at the
4 time I took that statement.

5 Q And one would agree that would be the most common way
6 to spell it.

7 A I would agree; that's the way I spelled it.

8 Q Do you find it interesting that it would be the first
9 thing that he would look at the first typed entry that you
10 made would be his name Maurice and you are testifying
11 there was no comment made about it being his wrong name,
12 not spelled correctly or anything like that?

13 A It is my testimony he did not bring it to my attention
14 or did not mention it. It is not my testimony that he
15 looked at it. He had the opportunity and I showed it to
16 him and read it to him, but I do not remember him actually
17 looking at it.

18 Q The form that you used to take a statement - I assume
19 that form is not created for Mr. Hughes or Mr. Forney, but
20 this is a uniform interview sheet.

21 A That's correct.

22 Q On the top on the first half of the first page there
23 is a statement basically a Miranda Warnings.

24 A Yes, sir.

25 Q At the bottom of the paragraph there's a place for the

1 defendant to sign it and then I assume have the officer
2 who had read it witness it.

3 A There's a place for three signatures on that document,
4 one where his rights were read to him, one to where he
5 understands his rights and he does wish to talk to us, and
6 the last one would be the contents therein is true and
7 correct to the best of his knowledge.

8 Q And that would be on the final page?

9 A That's correct.

10 Q That's on the bottom of the last page of the
11 statement, is that correct?

12 A Since that is a multiple page, there would be an extra
13 place for a signature. The next page would be the one I
14 was talking about. There are several places that he would
15 have to sign. That particular statement I believe it would
16 be four places that he would have to sign since it's a
17 multiple page.

18 Q You indicated that when you first met Mr. Hughes in
19 the interview room that you read him his rights by the use
20 of that card.

21 A Yes, sir, that's my card.

22 Q That's your card.

23 A Yes, sir.

24 Q And I believe you testified that he understood his
25 rights.

1 A That's correct.

2 Q Or he said he understood them?

3 A That's correct.

4 Q Yet an hour and forty-five minutes later when you took
5 the statement and there was an opportunity once again for
6 him to waive his rights, there is no signature on the
7 statement.

8 A That's correct; he would not sign any of the places on
9 there for his signature.

10 Q You asked him to sign?

11 A Yes, sir.

12 Q He didn't?

13 A Yes, sir.

14 Q And he refused to sign this, any of it?

15 A That's correct.

16 MR. SCHUSTERMAN: With the court's indulgence.

17 Q Sir, at a prior hearing these questions were asked of
18 you. I can read it to you or you can read it whichever you
19 are more comfortable with.

20 A It's up to you.

21 Q Question Number 2. "You indicate that before you
22 began typing the statement that you read him his rights,
23 Mr. Hughes' rights again." Your answer: "From the
24 statement, yes, sir." Question: "Is there a reason why
25 they are not signed at the top of the statement?" This is

1 continuing the question: "I assume that the purpose and,
2 please, correct me if I am wrong, but I assume the purpose
3 of it is that you have an understanding that I've read it
4 to him and somebody witnesses it." Your answer: "You
5 can't assume. The way I have always taken my statement is
6 it was in the typewriter, I put it in the typewriter and I
7 read it from the typewriter and I have him sign it all at
8 the same time. I don't like read it to him, have him sign
9 it, bring it back put it in the typewriter, read the
10 waiver, take it out, have him sign it, bring it back,
11 typed it, take it out, and have him sign again. I have
12 always just had them sign all three at the same time."

13 Question: "Well, I understand what you are saying, but
14 would you not agree that prerequisite to someone taking a
15 voluntary statement is to make a knowing and voluntary
16 waiver of their rights." Answer: "I would agree that he
17 should and did make a voluntary waiver of his rights. I do
18 not agree that I need to have him sign it before I
19 actually type it. The waiver is more important in my
20 opinion than the signing."

21 Is there a reason why at the prior hearing that the
22 reason then was not given that he refused to sign it?

23 A I think we must be miscommunicating. What you read is
24 exactly what I am testifying to and thinking today. If I
25 could go over it with you again, I'll be glad to.

1 Q Okay, are you saying something I read there indicated
2 that you asked him to sign it and that he wouldn't?

3 A I didn't ask him to sign anything on that paper until
4 after the entire statement was typed and then at that time
5 I was asking him to sign it in not three, but four, since
6 it's a multiple page statement.

7 Q You are saying that you asked him to sign everything
8 at one time?

9 A That's correct.

10 Q You didn't want him to sign the waiver of his rights
11 first and then the statement later?

12 A That's correct.

13 Q I believe at that hearing and again today that your
14 position is that it's not necessary that he first waive
15 his rights by signing and then give a statement, that that
16 all can be done at one time.

17 A No, I think what I said was it is not necessary for
18 him to sign it, but, yes, I agree with you it is necessary
19 for him to understand and waive his rights, but it's not
20 absolutely necessary that he sign it on that piece of
21 paper that I am fixing to type it on. Through my years of
22 experience I have found that to be -- suspects have a
23 little problem with that, you are asking them to sign a
24 blank piece of paper that you are fixing to type on and
25 they get the impression that once they sign it you are

1 going to type in something they are not really going to
2 say, so that's what I have learned to read it and then
3 type it and then ask them to sign the waiver which it's
4 also got typed on it what they said. And that's the way I
5 have been doing it for the last ten or twelve years.

6 Q And my final question to you, Captain Cabaniss, on
7 direct examination you had indicated that it was and I
8 assume today still is your theory that the shooter was the
9 driver of the vehicle.

10 A That's correct.

11 Q And you indicated that it was based on I believe you
12 said based on your investigation, is that correct?

13 A The totality of circumstances, everything that's known
14 to me, yes, sir. That's just a personal opinion of mine.

15 Q That's a personal opinion.

16 A That's correct.

17 Q Does that personal opinion have anything to do with
18 the fact that both defendants deny being the driver?

19 A Both defendants in their statements to the
20 interrogating and interviewing officers put little details
21 that no one could have known except the two people in that
22 car and maybe Officer McCants. Both of them knew some of
23 the details and told it in such a way that leads me to
24 believe that the driver was the suspect the person that
25 murdered Brent McCants. Both of them telling it two

1 different times not knowing the details that the other
2 one had told, only the persons there told some very
3 consistent things.

4 Q So, you know, I don't want to put words in your mouth;
5 I know it's a very touchy subject, but it is certain
6 consistency that you found within Mr. Forney's and Mr.
7 Hughes' statements that lead you to believe that the
8 driver of the vehicle is the shooter?

9 A That's correct. That's part of it.

10 Q Part of it?

11 A Yes, sir.

12 Q May I take that one step further and does that
13 statement infer that you believe only one person did the
14 shooting that night and I don't mean that in the theory of
15 accomplice liability; I mean the physical act of holding
16 the gun and pulling the trigger, that there was only one
17 trigger man that night.

18 A In my personal theory, yes, sir, that's correct.

19 Q Thank you. I have no other questions. Did you say
20 something?

21 A No, sir.

22 Q Okay, thank you.

23 REDIRECT EXAMINATION

24 BY MR. BRACKETT

25 Q Mr. Schusterman asked you in detail about Mr. Forney's

1 statement.

2 A Yes, sir.

3 Q Did Mr. Forney sign his statement?

4 A Yes, sir, he did.

5 Q In all the right places?

6 A Yes, sir, he did.

7 Q And Mr. Schusterman asked you basically the substance
8 from Mr. Forney's statement in that where Dwayne Eric
9 Forney when he spoke to you about the incident where he
10 said that he was located and Mr. Hughes was located. Can
11 you tell us what that was again? Where did Mr. Forney
12 place the two individuals in the car?

13 A Mr. Forney said that he was in the passenger side of
14 the vehicle ---

15 MR. SCHUSTERMAN: Your Honor, I am going to object to
16 this. I think the purpose of redirect is to go over
17 matters that were brought up during cross examination, not
18 to ask the same question that you asked on direct. You get
19 a second bite at the apple; that's not the purpose of
20 redirect as I understand it.

21 MR. BRACKETT: I never raised the issue of Mr.
22 Forney's statement during the direct.

23 THE COURT: I overrule the objection.

24 MR. SCHUSTERMAN: Thank you.

25 A Mr. Forney stated he was the passenger in the vehicle

1 at the time Brent McCants pulled the vehicle over for a
2 traffic stop. He indicated Mr. Hughes was driving the
3 vehicle.

4 Q What did Mr. Forney say he was doing at that time?

5 A He stated he was when the vehicle got pulled, I
6 believe his exact words were he was rolling a joint, which
7 means he was states he was in the front passenger side
8 bent over rolling a marijuana cigarette in the front seat.
9 That's what he stated he was doing when the officer pulled
10 them. He stated Mr. Hughes was driving.

11 Q How did Mr. Forney indicate the murder of the officer
12 took place, the actual details immediately preceding the
13 shooting of Officer McCants?

14 A He stated that they were pulled over, the officer
15 asked Mr. Hughes to get out of the vehicle, as soon as Mr.
16 Hughes got out of the vehicle he started walking toward
17 the front of their car, the suspect car, and the officer
18 stayed at about the driver's door, the driver's window. He
19 stated as the officer shined his flashlight into the
20 vehicle at Mr. Forney at that time Hughes turned and ran
21 at Deputy McCants firing the gun. He fired it many times.

22 Q How did Mr. Hughes in his statement indicate that the
23 murder of the police officer took place?

24 A He stated he was sitting in the - it's exactly the
25 same except he did not say -- he stated that Forney got

1 out of the car and walked to the front and turned around
2 and ran at him shooting many times. There was something,
3 one little thing, that was different. I can't put my
4 finger on it right now, I'm sorry.

5 Q Do you have Mr. Hughes' statement there?

6 MR. SCHUSTERMAN: I put it on the desk.

7 A Mr. Hughes said that the gun was between Eric's legs,
8 the officer was shining his light in the car as he was
9 walking up to the car. He thinks he asked Eric to get out
10 and the officer said Buddy or Partner - that's the
11 statement that I don't believe Mr. Forney made. That's the
12 one I was thinking of. I don't remember Mr. Forney
13 bringing in the Buddy or Partner, have you been drinking
14 statement. And as Eric walked to the front of the car, he
15 turned and started shooting the officer.

16 Q Identical statements except who was at the front of
17 the car, turned around with the gun in their hand.

18 A Yes, sir. Even if not in verbatim as it was typed
19 there, the details that they were relating to us both
20 Officer Bryant and myself realized the fact that they were
21 very identical on these two individuals and Brent was the
22 only one that knew some of these little details that they
23 were telling us. They did not have a chance to talk about
24 it before we talked to them. They were separated. And it
25 would be highly unlikely that they could have concocted a

1 story such as this and they knew the little details which
2 led us to believe they were telling the true about the
3 majority of the statement except for the fact who was
4 driving and who actually did the shooting.

5 Q Mr. Schusterman asked you about your theories.

6 A Yes, sir.

7 Q Those are just your theories, right?

8 A That's correct; it's mine.

9 Q Mr. McCants, Officer McCants, Mar-Reece Aldean Hughes
10 and Dwayne Eric Forney are the only people who really
11 knows?

12 A That's correct.

13 MR. BRACKETT: Nothing further.

14 RECROSS EXAMINATION

15 BY MR. SCHUSTERMAN

16 Q As a technical matter, Captain Cabaniss, the
17 flashlight as it's being referred to actually the
18 flashlight was found in Deputy McCants' car, was it not?
19 It was never found at the scene -- it was at the scene,
20 but it was located in the car, was it not?

21 A I'm sorry I don't know. I'm sure someone would know,
22 but I don't recall right now, I'm sorry. I don't remember.

23 Q Thank you.

24 MR. BRACKETT: Nothing more.

25 THE COURT: You may step down.

THE STATE VS HUGHES

1 MR. BRACKETT: I ask that he be excused. Your Honor,
2 we have one last witness.

3 THE COURT: All right, before that we need to take up
4 a matter.

5 MR. BRACKETT: Oh, yes, sir, pardon me.

6 THE COURT: Members of the Jury, I am going to ask you
7 to give me your attention for a couple of minutes. Now,
8 first, I want you to know, of course, that into the record
9 there has now been admitted a statement. That statement is
10 alleged to have been made by the defendant Mr. Hughes.
11 Before you may consider this statement as evidence for any
12 purpose, you must determine four questions. First, did the
13 defendant make the statement? Second, was the defendant
14 warned of his constitutional rights? Third, did he
15 knowingly and intelligently waive his constitutional
16 rights? Fourth, was the statement given voluntarily?

17 The fact that the court has admitted a statement into
18 evidence should not be considered by you as any evidence
19 whatsoever that the defendant made the statement or that
20 the required constitutional safeguards were, in fact,
21 provided and waived by the defendant or that the statement
22 was voluntarily given because these issues are for you,
23 the jury, to determine. The State must prove beyond a
24 reasonable doubt each of the four requirements that I have
25 just stated to you before you may consider the statements

THE STATE VS HUGHES

1 -- statement as evidence for any purpose whatsoever.

2 Now as to the first requirement, did the defendant
3 make the statement? If you conclude that the defendant
4 did not make the statement, you must then completely and
5 totally disregard the statement.

6 If you conclude that the defendant did not make the
7 statement, you cannot and you must not consider the
8 statement as evidence in any manner whatsoever and you
9 should completely disregard the statement in its entirety
10 and every part of it.

11 If you find that the defendant did make the statement,
12 you must then next consider the second requirement, that
13 is, was the defendant warned of his constitutional rights.
14 When an individual is taken into custody and otherwise
15 deprived of his freedom of action in any significant way
16 by a police or law enforcement officer, he must be warned
17 of his constitutional rights prior to and before any
18 custodial interrogation or custodial question.

19 These rights are: (a) that he has the right to remain
20 silent; (b) that any statement that he does make can and
21 will be used against him in a court of law; (c) that he
22 has the right to select a lawyer of his choice, but if he
23 does not have the money or resources to employ a lawyer,
24 the court will appoint and provide a lawyer to represent
25 him without cost or expense to him if he so desires; (d)

THE STATE VS HUGHES

1 that he has the right to consult a lawyer before any
2 questions or making any statements; and, (e) that he has
3 the right to have his lawyer present with him at all times
4 during all interviews and all interrogations.

5 If you determine that these constitutional warnings
6 were not given to the defendant prior to the interrogation
7 and the taking of the statement or that the defendant was
8 not afforded the opportunity to exercise these rights, you
9 must completely disregard the statement. In that event,
10 you cannot consider the statement as evidence in any
11 manner whatsoever.

12 If you find that the defendant did make the statement
13 and you conclude that these constitutional warnings were,
14 in fact, given to the defendant, and that the defendant
15 was afforded an opportunity to exercise these
16 constitutional rights, you must next consider the third
17 requirement, that is, did the defendant knowingly and
18 intelligently waive his constitutional rights. Before you
19 can consider the statement as evidence in the case, The
20 State must prove beyond a reasonable doubt, and I want to
21 define reasonable doubt for you at a late stage, The State
22 must prove beyond a reasonable doubt that the defendant,
23 after being given his constitutional warnings, knowingly
24 and intelligently waived his constitutional rights and
25 agreed to answer questions and make a statement.

THE STATE VS HUGHES

1 Therefore, if you find the defendant did not knowingly and
2 intelligently waive his constitutional rights, then any
3 answer given by him, any statement by him, cannot be used
4 against him and you must completely disregard all the
5 testimony concerning any such answers or alleged
6 statement. If you find that the defendant did make a
7 statement and if you conclude that the constitutional
8 warning were, in fact, given to the defendant and that the
9 defendant was afforded an opportunity to exercise these
10 constitutional rights and if you further find that the
11 defendant after being given his constitutional warnings
12 knowingly and intelligently waived his constitutional
13 rights and agreed to answer questions and make a
14 statement, you must next consider the fourth requirement,
15 that is, was the statement given voluntarily.

16 The word "voluntarily" means that the statement was
17 the expression of the defendant's own free will and was
18 not induced by the pressure, force or fear or the
19 influence or hope or promise of some benefit or reward or
20 extracted by threats, coercion or intimidation.

21 A statement is not voluntary and may not be used
22 against a defendant unless it is the product of an
23 essentially free and unconstrained choice by its maker.

24 If the statement is voluntary, if the defendant at
25 will make a statement, it may be used against him. If the

THE STATE VS HUGHES

1 statement is not voluntary, it cannot be used against him.
2 The true test to be applied is whether a statement is
3 freely, voluntarily, and understandingly made without
4 compulsion or inducement.

5 In determining whether or not the alleged statement of
6 the defendant was voluntary, you may consider all the
7 facts and circumstances surrounding the taking or the
8 making of the statement. You may consider all of the
9 evidence in the case in reaching an ultimate conclusion as
10 to the voluntary or involuntary character of any such
11 statement. The ultimate question to be resolved by you
12 with respect to the alleged statement of the defendant in
13 addition to the question of whether or not the defendant,
14 in fact, made a statement, but whether or not his
15 constitutional rights were observed and knowingly and
16 intelligently waived by him is was the statement the
17 expression of the defendant's own free will, made without
18 compulsion or inducement, but representing an essentially
19 free and unconstrained choice by the defendant or was it
20 the product of the overborne will of the defendant.

21 With regard to the alleged statement of the defendant,
22 The State must prove by evidence each and every
23 requirement about which I have instructed you beyond a
24 reasonable doubt before you may consider the alleged
25 statement as evidence in this case. Absent any one of the

LEROY PERRY

DIRECT

1 requirements about which I have instructed you the
2 alleged statement must be disregarded completely. In that
3 event you will accord no evidentiary weight whatsoever to
4 it or to any part of it. On the other hand, if you find
5 beyond a reasonable doubt that the defendant made the
6 statement, that the defendant was given the required
7 constitutional warnings before interrogation, that the
8 defendant knowingly and intelligently waived his
9 constitutional rights thereafter gave a voluntary
10 statement, the statement may be considered by you together
11 with all other evidence in the case and given such weight
12 and such value and such effect to which you conclude it is
13 entitled.

14 All right, call your next witness.

15 MR. BRACKETT: The State would call Mr. Leroy Perry to
16 the stand.

17 LEROY PERRY, being duly sworn, testified
18 as follows:

19 DIRECT EXAMINATION

20 BY MR. BRACKETT

21 Q Mr. Perry, would you please state your full name and
22 spell your last name for the court reporter?

23 A Leroy Perry P-e-r-r-y.

24 Q Sir, do you know Mar-Reece Aldean Hughes?

25 A Yes, sir.

LEROY PERRY

DIRECT

1 Q Do you see him in the courtroom?

2 A Yes, sir.

3 Q Would you point him out for us, please?

4 A The gentleman sitting over with the white stripped
5 shirt on.

6 Q Okay. Did you know Mr. Hughes back in September of
7 1992?

8 A Yes, sir.

9 Q Did you have an occasion to see him at your house in
10 -- where do you live now, sir?

11 A Franklinton, North Carolina.

12 Q And where were you living then?

13 A The same place.

14 Q Are you married?

15 A Yes, sir.

16 Q Do you have a family?

17 A Yes, sir.

18 Q All right, and did you have occasion to see him at
19 your house back in 1992, in September of 1992?

20 A Yes, sir.

21 Q About what part of the month was that?

22 A It was the weekend after Labor Day.

23 Q Okay. So the earlier part of the month? In the
24 earlier part of the month? That would have been the first
25 week or ten days of September?

□

1 LEROY PERRY

DIRECT

2 A The earlier part of the month, right.

3 Q Did Mr. Hughes -- what was Mr. Hughes doing at your
4 house that weekend?

5 A He just came for a visit.

6 Q Okay and how long was he there for?

7 A Friday, Saturday -- well, to Monday morning.

8 Q And did he leave on Monday?

9 A Yes.

10 Q Did he spend the night at your house?

11 A Yes, sir.

12 Q Did he have baggage with him?

13 A Yes, sir.

14 Q Did the time come on Monday morning when you came back
15 to your house and found you didn't have your keys on you?

16 A Right.

17 Q Tell us what happened after that?

18 A I left my keys locked in the house, so I got Mr.
19 Hughes to go through my bathroom window to open the door
20 so we could come in and to get his bag, so I could take
21 him to the bus station to catch the bus.

22 Q And did you stay at your house for a few minutes or
23 for a short time after you got into the house?

24 A Yes, sir.

25 Q I show you what has been marked as State's Exhibit 43
and ask you, sir, can you identify what this is?

LEROY PERRY

DIRECT

1 A That's a 9 milimeter.

2 Q Do you recognize this pistol?

3 A Yes, sir.

4 Q Where did you see this pistol before?

5 A Mar-Reece Hughes had it in his possession that day -
6 that morning.

7 Q When did you see it and what was the circumstances
8 that you saw it?

9 A Well, when he went into my son's bedroom to get his
10 tote bag, I was sitting at my kitchen table and when he
11 came to the kitchen, he pulled it out and that's the first
12 time that's when I saw it at that time.

13 Q He pulled it out in the kitchen?

14 A Yes, sir.

15 Q What was the circumstances, I mean, he wasn't pointing
16 it at you or anything?

17 A No, sir, he wasn't point it at me or anything.

18 Q What were the circumstances that he had it out? What
19 did he tell you at the time?

20 A Well, he just pulled it out and I asked him "What are
21 you doing with that?"

22 Q What did he say?

23 A He said, "I need it for my protection."

24 Q And did you ask him anything about the gun?

25 A Well, he said, "I need it for my protection." I said,

LEROY PERRY

DIRECT

1 "What do you need protection for?"

2 Q What did he say to that?

3 A He said, "You never know," so he asked me did I have a
4 gun and I told him, "No," I didn't own a gun and I asked
5 him why were the handle grips off of the gun and he told
6 me that sometimes it jammed and with the handle grips off
7 you could stick something in there, if a bullet jams, you
8 could stick something in there and unjam it right quick
9 and keep going.

10 Q Did you have an opportunity to handle that weapon?

11 A Yes, sir, I had it in my hand.

12 Q Did he take it back from you after a period of time?

13 A Yes, sir.

14 Q Did you see any bullets in it or did you look?

15 A He took the magazine out when he handed it to me.

16 Q Did it have any bullets in it?

17 A Yes, it had some.

18 Q When he took it back from you, did he do anything with
19 the gun?

20 A He wiped -- he took a cloth and wiped it down.

21 Q Did you ask him what he was doing?

22 A Yes, sir.

23 Q And what did he say?

24 A He said he was wiping my fingerprints off of it.

25 Q Did you ask him why?

LERoy PERRY

DIRECT

1 A No, I think as he was saying that he was saying that
2 he wiped my fingerprints off because you never know what
3 may happen, you know, or something like that. I don't
4 think I asked him directly why.

5 Q Did you take him to the bus station later that day?

6 A Yes, sir.

7 Q And dropped him off?

8 A Yes, sir.

9 Q Was that the only dealings you had with that weapon,
10 sir?

11 A The only dealings I ever had with it.

12 Q Did you have an occasion to receive a phone call in
13 the early morning hours of September 26, 1992?

14 A Yes, sir.

15 Q And do you know who that phone call was from?

16 A I think I can pronounce the name, it was Captain
17 Chambaliss, Cabannis or --

18 Q Cabaniss?

19 A Cabaniss.

20 Q Had you spoken to Mar-Reece after he left, after you
21 dropped him off at the bus station?

22 A No, sir.

23 Q You haven't spoken to him at all?

24 A No, sir.

25 Q Did you speak to him that night?

LEROY PERRY

DIRECT

1 A Yes, sir.

2 Q What did he tell you?

3 A After I talked to Captain Caban -- what was his name?

4 Q Cabaniss.

5 A Cabaniss, and he told me what had happened, what had
6 transpired rather, and he told me he would put Mar-Reece
7 on the phone. Mar-Reece wanted to talk to me before he
8 would make a statement. Okay, when we got -- when I got
9 on the phone with Mar-Reece, I asked him what had
10 happened. He said, "A deputy sheriff had got killed" and
11 he wasn't going to make a statement and he wanted to talk
12 to me. I said, "Did you do it?" He said, "No." I said,
13 "Who did it?" He said, "A friend of mine." I said,
14 "Where did y'all link up at?" He said, "In Charlotte." I
15 said, "What are you doing in South Carolina?" He says,
16 "Well, we came down to buy some drugs" is my recollection
17 if it serves me right and I says, "What happened then?"
18 He said, "Well, we didn't get any drugs, so we" - I think
19 he said went to a movie. I think that is what he said. And
20 after they left the movie they were on their way back to
21 Charlotte and he said they got stopped by a deputy
22 sheriff. And I says, "Well, who was driving? Who was
23 driving the car?" He said, "Well, you know, I don't have
24 any license." He said, "The other guy was driving the
25 car," but he didn't tell me his name. And I said, "What

LEROY PERRY

DIRECT

1 happened then?" He said, "When the other guy got out of
2 the car, I stayed in the car." I said, "Did you know
3 whether he had a gun or not?" He said, "I didn't know he
4 had a gun." I said, "You were riding with him; you didn't
5 know he had a gun?" He said, "No, I didn't know." I
6 said, "Well, what happened." He said, "Well, he met him
7 back there and he heard some shots ring out." And I asked
8 him, "What happened then?" He said they got in the car
9 and left. And I told him I said, "What are you worrying
10 about then?" I said, "If, if," -- he says, -- I said,
11 "How come you don't want to make a statement then?" He
12 said, "Well, I'll be facing the chair." And I said, "Well,
13 if you did it, you did it; if you didn't do it, you didn't
14 do it, you are in trouble either way. Come true blue, go
15 on and make a statement and go on." And, basically, after
16 I talked to him about that about him making a statement
17 and everything that sort of ended our conversation.

18 Q Did you speak to him again?

19 A No more.

20 Q You spoke with Captain Cabaniss after that?

21 A Yes.

22 Q Did he get some information from you?

23 A Yes.

24 Q And were you later interviewed?

25 A Yeah, I was later interviewed.

LEROY PERRY

CROSS

1 Q Thank you, Lt. Perry. Please answer any questions that
2 counsel for the defense may have.

3 CROSS EXAMINATION

4 BY MS. BRICE

5 Q Hi, Mr. Perry.

6 A Okay, how are you?

7 Q How are you doing?

8 A Okay.

9 Q Mr. Perry, did Mar-Reece trust you?

10 A Trusted me?

11 Q Do you think Mar-Reece trusted you?

12 A I guess somewhat.

13 Q Do you believe that Mar-Reece thought of you as a
14 friend?

15 MR. BRACKETT: Your Honor, I am going to object to the
16 relevance.

17 THE COURT: I overrule your objection.

18 A Would you repeat your question?

19 Q I'll rephrase it for you. Mar-Reece came to your
20 house, I believe that was your testimony on direct, is
21 that correct?

22 A Yes, uh-huh.

23 Q And did he come to your house because he was friends
24 with you, did he like you?

25 A Yes.

LEROY PERRY

CROSS

1 Q And that weekend what did you all do?

2 A Well, basically, my back was hurting. Saturday we went
3 to a football game, a high school football game. And
4 Sunday we just stayed around the house.

5 Q Did Mar-Reece have any money when he was at your
6 house? Did he have any money on him? Do you recall?

7 A Maybe a couple of dollars; I am not sure how much,
8 maybe a couple of bucks.

9 Q And did he stay in your house the whole time?

10 A No, he stayed in a hotel on Friday night.

11 Q On Friday, the first night.

12 A The first night.

13 Q And on Saturday night and Sunday night he stayed in
14 your household?

15 A Yes, ma'am.

16 Q And how did he get home on Monday morning?

17 A On Monday? When we left my house Monday, I drove him
18 to Raleigh, which is twenty-eight miles, and I believe we
19 stopped by Kentucky Fried Chicken and I bought us some
20 lunch and we then went to the bus station and I don't
21 think I got out of the car. I gave him the money to go in
22 there to buy a ticket.

23 Q You gave him money to get home?

24 A Yes, ma'am.

25 Q He didn't have enough money to get home?

LEROY PERRY

CROSS

1 A I don't think so.

2 Q Okay and the next time you heard from Mr. Hughes was
3 the evening in question?

4 A Yes, ma'am.

5 Q When Mr. Hughes showed you the gun you have identified
6 today, what was the purpose of him showing you that gun?

7 A I don't know.

8 Q You're not sure?

9 A I'm not sure.

10 Q Did he ask you if you wanted any protection? Was he
11 concerned about your protection?

12 A Yes, and I told him I didn't own a gun, you know, and
13 I didn't need any protection.

14 Q Was he offering that gun to you for protection?

15 A No, he wasn't offering it to me. He didn't offer it to
16 me. The only thing he stated, he stated that they are
17 cheap and I guess in the Charlotte area, you know, it's
18 kind of a common thing that you can get them pretty cheap.

19 MS. BRICE: I beg the court's indulgence one moment.

20 Q The time frame that he was at your house the times
21 that he stayed over night, do you recall exactly when that
22 was? Was it late August or early September?

23 A Late August or in September -- it was after Labor Day,
24 the weekend after Labor Day.

25 Q Okay, so it was probably --

LEROY PERRY

CROSS

1 A Whatever date when I picked him up that Friday night
2 from Henderson bus station, that Friday night after Monday
3 after Labor Day.

4 Q Okay and so Monday was Labor Day and it was that
5 Friday following?

6 A Uh-huh.

7 Q And when he was talking to you that evening on the
8 telephone, --

9 A Which evening:

10 Q I'm sorry, sir. When you next heard from him in Rock
11 Hill, when he was in Rock Hill, and you were talking to
12 him on the telephone?

13 A Oh, okay.

14 Q Did he make any statements as to who shot Deputy
15 McCants?

16 A Yes, I asked him that. I asked him who was driving the
17 car and he says, "Well, you know, I don't have no license;
18 I wasn't driving" and he said -- I said, "Well, who shot
19 him?" He said, "The guy that was driving the car." I
20 don't know the gentleman's name.

21 Q He didn't say he shot him. He said the other person
22 shot Deputy McCants?

23 A He said the other person shot him.

24 Q Thank you, Lt. Perry.

25 MS. BRICE: I'm sorry. The court's indulgence?

LEROY PERRY

CROSS

1 Q Sir, when you talked to Mr. Hughes on the telephone
2 when he was in Rock Hill, how did he sound to you?

3 A Normal.

4 Q Did he sound scared?

5 A No, not to me.

6 Q And when he was at your home that weekend, did you all
7 have a good time?

8 A Well, my back was bothering me bad. I'm not the I
9 guess outgoing - I'm not an outgoing type person, so we
10 went to the football game, that's basically what happened.

11 Q Did he assist you around the house?

12 A Yes, he sure did. I had a wardrobe that I bought for
13 my son and he fixed that; he put it up for me.

14 Q Was it an enjoyable weekend?

15 MR. BRACKETT: Objection, Your Honor, may we approach?
16 (Bench conference off the record.)

17 Q Thank you, Lt. Perry, I appreciate it.

18 MR. BRACKETT: Nothing further. I ask that this
19 witness be excused.

20 THE COURT: You may step down. Thank you, I appreciate
21 your time.

22 MS. BRICE: Your Honor, we would ask that he remain
23 under subpoena.

24 THE COURT: You are free to go, but the subpoena you
25 are under is going to be continuing; you may be recalled.

THE STATE VS HUGHES

1 MR. PERRY: Okay.

2 THE COURT: All right, thank you.

3 MR. BRACKETT: I think the next witness may take a
4 little time.

5 THE COURT: All right, members of the jury panel, we
6 are going to stop for today. It's a little after six. We
7 are going to start back at nine in the morning. You all
8 are going to think I don't tell the truth every time. I
9 tell you one thing and I have to change it, but we have
10 had one of those things we have no control over. One of
11 the attorneys has had a death in the staff of their office
12 and I'm going to let that attorney attend the funeral at
13 eleven, so we will start at nine and go until about
14 ten-thirty. It's here in York, so there won't be a
15 problem with attending and then we will take an early
16 lunch or brunch, I guess it will be, and start back around
17 twelve-thirty. So, have a pleasant evening and I'll see
18 you here at nine in the morning.

19 Ms. Harkman, you can just stay for just a minute.
20 Everybody else can go.

21 (Jury excused.)

22 (The court discusses with Juror Harkman about the
23 examination she is to take and the arrangements therefor.)

24 If nothing else, we will see you at nine in the
25 morning.

KENT PRUETT

DIRECT

SEPTEMBER 16, 1995

THE COURT: Is The State ready to proceed?

MR. POPE: Yes, sir, I am trying to locate two pictures and I will be ready, Your Honor.

THE COURT: Is the defense ready to proceed?

MR. SCHUSTERMAN: The defense is ready, Your Honor.

THE COURT: For the record, the defendant is present.

MR. BRACKETT: Your Honor, one matter, I believe there were two shots of where Mr. Hughes was captured that I showed counsel for defense, but I don't think I ever formally moved them into evidence and I do so now.

MR. POPE: 48 and 49.

MR. SCHUSTERMAN: Without objection.

THE COURT: Without objection, they will be received.

(State's Exhibits 48 and 49 marked and filed.)

You can bring in the jury.

Good morning, I hope you all had a restful evening.

Mr. Solicitor?

MR. POPE: May it please the court, Your Honor? The State would call Kent Pruett to the stand.

THE COURT: Come around and be sworn, please, sir.

KENT PRUETT, being duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. POPE

KENT PRUETT

DIRECT

1 Q Mr. Pruett, if you would, state your name and spell
2 your last name for the court reporter, please, sir.

3 A Kent Pruett P-r-u-e-t-t.

4 Q Mr. Pruett, would you state your occupation for the
5 jury, please?

6 A I am assigned to the Patrol Division at the Rock Hill
7 Police Department.

8 Q How long have you been with law enforcement?

9 A Since January 1, 1990.

10 Q And how long have you been with the Rock Hill Police
11 Department?

12 A Five years.

13 Q Did you have an opportunity to assist in the capture
14 and the investigation surrounding Brent McCants' death?

15 A I did.

16 Q This was on September 25, 1992?

17 A That's correct.

18 Q Were you on duty that particular evening?

19 A Yes, sir, I was on second shift.

20 Q And did you have an opportunity to assist Craig
21 Alexander with the arrest and transportation of Dwayne
22 Eric Forney?

23 A That's correct.

24 Q Could you describe for the jury -- you say you were on
25 duty?

KENT PRUETT

DIRECT

1 A Yes, sir.

2 Q So were you dressed as you are here today?

3 A Yes, sir, I was dressed exactly except the patches
4 were different.

5 Q Okay, what type vehicle were you in?

6 A I was in a Ford Crown Vic.

7 Q Okay, were you in a marked unit?

8 A A marked.

9 Q Did you have the opportunity to come to the area on
10 Celriver/Red River Road where Mr. Alexander and Mr. Long
11 had captured Mr. Forney?

12 A That's right.

13 Q Could you relate to the jury what your part in that
14 was, what you did and what occurred?

15 A I responded to Officer Alexander's location on
16 Celriver Road to assist him with a subject that he was
17 later found to be Eric Forney. He had walked Mr. Forney up
18 to the road ---

19 Q He being who?

20 A Alexander. Officer Alexander had walked Mr. Forney up
21 to the roadway when I pulled up. I assisted him in
22 handcuffing Mr. Forney. When I frisked or patted down Mr.
23 Forney, I located a 9 milimeter automatic pistol in his
24 right pants leg. He was wearing sweat pants and it was
25 down in his right pants leg where the elastic is on the

KENT PRUETT

DIRECT

1 bottom of the sweat pants.

2 Q So it was all the way down to the ankle?

3 A That's correct.

4 Q I show you what's been marked State's Exhibit 43 and
5 ask if you would take a second and look at that and show
6 me if you could identify that, please.

7 A Yes, sir, this is the weapon that I had located on Mr.
8 Forney.

9 Q Okay, I am going to ask you - you checked it to make
10 sure that it's unloaded?

11 A That's correct; it is unloaded. It is safe.

12 Q If you would, I would ask you to step down in front of
13 the jury, please.

14 THE COURT: I have a standing rule in my courtroom
15 that when people display pistols, they keep them pointed
16 towards the floor.

17 WITNESS: Yes, sir.

18 Q I'd ask if you could, Officer Pruett, in addition to
19 the weapon itself, what other items are contained in here?

20 A A clip and some 9 milimeter rounds, five to be exact,
21 I believe.

22 Q Okay, so the clip, this is the black metal --

23 A That's correct, this is the magazine where the bullets
24 are placed.

25 Q And the five rounds that you recovered, are these

KENT PRUETT

DIRECT

1 spent rounds or live rounds?

2 A They are live. They are ready to be fired.

3 Q Okay, if you could, I would ask you to step down if
4 you could explain to the jury since you recovered the
5 weapon, stand right here, you recovered the weapon from
6 Mr. Forney -- first, if you could show the jury the
7 configuration, obviously, absent the bullets, but if you
8 could show them how the weapon was when you recovered it
9 as far as the magazine, was it in the clip and such as
10 that.

11 A Okay. When I located the weapon on Mr. Forney, it was
12 in this configuration right here (indicating) which this
13 was in the weapon. It had a round in the chamber, which
14 the gun was ready to be fired. The only thing that you
15 had to do to this weapon to fire it would be to pull the
16 hammer back and to pull the trigger.

17 Q Okay, as far as the other four rounds, where were they
18 found?

19 A They were located in the magazine. This is a
20 semi-automatic weapon. If you pull the trigger, it
21 automatically ejects the spent round and loads another one
22 into the chamber automatically.

23 Q Okay and so as you recovered it, there was one
24 actually in the chamber and four that were available to be
25 the next ones in the chamber?

KENT PRUETT

DIRECT

1 A That's correct. This weapon would have fired five
2 times. It had four in the clip, one in the chamber here
3 (indicating) ready to be fired.

4 Q When you say it would have fired five times, that was
5 it could have fired five more times as you found it with
6 five bullets available?

7 A That's correct; it could fire five times total.

8 Q Based on the way that you recovered it?

9 A That's right.

10 Q Okay; could you tell the jury too is there anything
11 unusual about this gun as far as the handle?

12 A This gun does not have any handles on it at all as far
13 as grips.

14 Q What would normally be there?

15 A There would be a set of rubber grips or wooden grips.

16 Q They would cover ---

17 A They would cover the entire open area here. You would
18 not be able to see the clip. When the clip is inserted,
19 you can see the clip here. With the handles on it, you
20 would not be able to see any of the clip at all.

21 Q Okay. Officer Pruett, once you recovered that weapon,
22 did you change anything as far as loading or unloading the
23 weapon?

24 A Yes, I did. I made the weapon safe. I took the
25 bullet out of the chamber and the clip out of the weapon.

KENT PRUETT

CROSS

1 I placed the weapon in my gun belt, finished the pat down
2 search on Mr. Forney to make sure there was not any more
3 weapons on him, put him in the back of my patrol car.

4 Q And the weapon that you recovered, the weapon and the
5 clip and five bullets, State's Exhibit 43, did you retain
6 these in your custody until it was turned over to SLED?

7 A Yes, I did.

8 Q Did you alter the gun in any way or change its
9 characteristics other than the unloading that you
10 discussed?

11 A No, sir, I did not.

12 Q And did you then turn it over to Agent Black with
13 SLED?

14 A That's correct.

15 Q Answer any questions the defense may have.

16 CROSS EXAMINATION

17 BY MR. SCHUSTERMAN

18 Q Good morning, Mr. Pruett.

19 A How are you?

20 Q Good, sir, how are you?

21 A Fine.

22 Q So that I understand, your involvement in the case was
23 with the defendant Dwayne Eric Forney?

24 A That is correct.

25 Q Did you ever come in contact with Mar-Reece Hughes

1 that evening?

2 A No, sir, I did not.

3 Q And this interaction that you had with Mr. Forney that
4 was with his apprehension as I understand?

5 A That's right.

6 Q Was there -- did you have to struggle with Mr. Forney
7 at all that night?

8 A We had to struggle with him as far as to get him
9 handcuffed. He was not willing to put his hands behind his
10 back.

11 Q When you arrived on the scene, was he handcuffed?

12 A No, sir.

13 Q He was not handcuffed?

14 A No, sir.

15 Q When you say you had to -- you say you had to struggle
16 with him to handcuff him?

17 A We had to physically struggle with him to subdue him
18 to get his hands - he would not do exactly what we were
19 commanding him to do as far as telling him to put his
20 hands behind his back.

21 Q What was he doing?

22 A He was pulling away from us, jerking away from us,
23 trying to squat down, that type of thing.

24 Q At any time while you were with him that night did he
25 or was he attempting to reach towards his lower body?

1 A As I said before he was trying to squat down. He was
2 squatting down; I couldn't tell you if he was trying to
3 reach for the weapon or not.

4 Q Ultimately you got him handcuffed?

5 A That's correct.

6 Q Was it then that you patted him down?

7 A Yes, sir.

8 Q When you patted him down, did you find -- are you
9 still holding the weapon?

10 A Yes, I am.

11 Q That weapon did you find it on his person?

12 A Yes, sir.

13 Q Where was it exactly, sir?

14 A In the pants leg of his warm-ups down towards his
15 ankle caught on the elastic part of the sweat pants.

16 Q Was he wearing socks that evening?

17 A I don't recall, sir.

18 Q So I assume you don't recall whether the gun was
19 tucked into his sock or not, into a sock to hold it in
20 place?

21 A No, sir, I don't know; all I know it was in the sweat
22 pants, the elastic part of the sweat pants.

23 Q And as I understand it your account of the events the
24 clip was in the gun ---

25 A That's correct.

1 Q --- and there were four live rounds in the clip and
2 one in the chamber?

3 A That's correct.

4 Q And is it my understanding that this is what is known
5 as a semi-automatic weapon?

6 A Yes, sir.

7 Q And do you know how semi-automatic weapons work?

8 A Yes, sir, I do.

9 Q Okay; every time the gun is fired does the weapon
10 automatically put another bullet into the chamber?

11 A That's correct.

12 Q Was there a bullet, a live bullet, in the chamber when
13 you took the gun off of Mr. Forney?

14 A Yes, sir, there was.

15 Q Would that be evidence to you that the gun had been
16 shot prior that evening?

17 A No, sir, that would be just that the gun was ready to
18 be fired.

19 Q Not necessarily that the gun had been fired that
20 evening.

21 A No, sir, that's not evidence that it had been fired.
22 It's evidence that it could be fired.

23 Q In the condition that you found the weapon what would
24 the shooter, the person holding the gun, have to have done
25 to have fired the weapon? What preparation in the

1 condition it was in would have to be done to fire that
2 weapon?

3 A The only thing that you would have had to have done
4 was to pull the hammer back and pull the trigger.

5 Q That's it?

6 A That's it.

7 Q Okay. Would there be any way to prepare that gun to
8 have that gun in any other condition where it would be
9 closer to firing or more prepared to be fired than it was
10 at that moment?

11 A No, sir.

12 Q So it was as I understand it it was loaded and ready
13 to be used if someone chose to use it?

14 A That's correct.

15 Q Thank you.

16 REDIRECT EXAMINATION

17 BY MR. POPE

18 Q Mr. Pruett, Mr. Schusterman was asking about preparing
19 the weapon to be fired.

20 A Yes, sir.

21 Q It's really just a matter of degree, like you say, it
22 has a bullet ready to be put on the pin if the hammer is
23 cocked back?

24 A Pull the hammer back and pull the trigger, yes, sir.

25 Q And, obviously, you said you know more about weapons.

1 A semi-automatic as it kicks out a shell loads the next
2 round. How does the hammer stay as it loads the next
3 round?

4 A The hammer will stay back. As you can see, as soon as
5 you take and load another round into the chamber, it's
6 ready to be fired.

7 Q So to make it more ready -- Mr. Schusterman asked was
8 that the most ready it could be -- I mean arguably you
9 could have the hammer back and have it even more ready if
10 you wanted to.

11 A Yes, sir.

12 Q Thank you, sir.

13 RECROSS EXAMINATION

14 BY MR. SCHUSTERMAN

15 Q I would ask you a question and I don't know if you
16 know the answer, but how many bullets fit in the clip if
17 the maximum number of bullets could fit in the clip of
18 that particular weapon that you are holding?

19 A Eight.

20 Q And would that be and you could put one in the
21 chamber?

22 A That's correct, this weapon will hold a total of nine.

23 Q Thank you.

24 MR. POPE: I ask that this witness be excused.

25 THE COURT: All right. Step down. I appreciate your

MICHAEL WILLIAMS

DIRECT

1 time.

2 MR. POPE: The State would call Mike Williams to the
3 stand.

4 MICHAEL WILLIAMS, being duly sworn,
5 testified as follows:

6 DIRECT EXAMINATION

7 BY MR. POPE

8 Q Mr. Williams, if you would, state your name and
9 occupation for the jury, please?

10 A Michael L. Williams. I'm a master police officer with
11 the City of Rock Hill Police Department.

12 Q Mr. Williams, do you have some special duties with the
13 police department?

14 A Currently I am assigned to the evidence room, evidence
15 room officer, and assigned to the crime scene unit with
16 the Rock Hill Police Department.

17 Q And did you have those same duties back on September
18 25, 1992, when Brent McCants was killed?

19 A No, sir, I did not.

20 Q And what were your duties back then?

21 A I was an investigator with the burglary division.

22 Q As part of your duties as an investigator did you
23 assist in preparing various diagrams and recovering
24 evidence in this particular case?

25 A Yes, sir, I did.

MICHAEL WILLIAMS

DIRECT

1 Q Mr. Williams, I will show you a series of evidence and
2 ask if you could identify these items for me. I show you
3 State's Exhibit 32 and ask if you recognize that.

4 A Yes, sir, I do.

5 Q Would you tell the jury what that is and where you
6 located it?

7 A This is a Motorola Walkie-Talkie, it's an HT-600
8 style. I recovered this in a wooded area off Wilkerson
9 Road.

10 Q And it is my understanding you went back with some of
11 the other officers on a day after the arrest and did a
12 search and did measurements, is that correct?

13 A Yes, sir.

14 Q And State's Exhibit 51 would that be the picture of
15 the Walkie-Talkie as you took it and you recovered it?

16 A Yes, sir, it's the photograph I took of the
17 Walkie-Talkie as I found it in the wooded area.

18 Q Okay. I show you State's Exhibit 52 and 50 and ask if
19 you could look at that and tell me if you can identify
20 that.

21 A This is a blue ball cap that I found in the wooded
22 area off of Wilkerson Road also.

23 Q And did you also likewise -- that was during the same
24 search as for the Walkie-Talkie?

25 A Several minutes later.

1 Q And did you also take a picture of how it was laying
2 when you located it?

3 A Yes, this is a photograph of the cap that I recovered
4 that day. Before I picked it up, this is a photograph of
5 the hat.

6 Q Okay, both the hat and the Walkie-Talkie, did you
7 retain them in your custody until you turned them over to
8 SLED?

9 A Yes, I did.

10 Q And who did you turn them over to with SLED?

11 A Both the Walkie-Talkie and the hat were transported to
12 SLED by myself and turned over to evidence in-take at SLED
13 Headquarters in Columbia.

14 Q I believe I referenced 52 as in evidence, that's 52
15 still marked for identification, the hat?

16 MR. SCHUSTERMAN: I think you moved it into evidence
17 yesterday.

18 MR. POPE: I notice it is marked for identification.
19 If not, The State would move it in evidence.

20 THE COURT: Without objection?

21 MR. SCHUSTERMAN: Without objection.

22 THE COURT: It is received.

23 (State's Exhibit 52 marked and filed.)

24 Q Mr. Williams, the Walkie-Talkie -- these items were
25 taken to SLED not on the night of the crime, the search

MICHAEL WILLIAMS

DIRECT

1 took place later, you took them down later, is that
2 correct?

3 A Yes, sir.

4 Q I show you State's Exhibit 33 for identification and
5 ask if you would take a look at that and tell me if you
6 can identify it.

7 A Yes, sir, I can.

8 Q And what is that item?

9 A This is a Walkie-Talkie clip holder, basically, it is
10 placed on a belt that holds the Walkie-Talkie in place.

11 Q And did you recover that, Mr. Williams?

12 A Yes, I did.

13 Q Where did you recover that and when?

14 A This was recovered on October 1st at 2:00 PM inside
15 the vehicle in question with the registration EMF 313.

16 Q So you recovered that at some later time from the
17 suspect vehicle?

18 A Yes, sir, I did.

19 Q And where did you recover it from?

20 A The vehicle was brought to the Law Center, placed in
21 the impound lot at our Law Center, which is a chain link
22 fence that is locked. The vehicle was secured in that
23 location. I went out on the 1st of October and basically
24 checked the vehicle over. It was going to be returned to
25 the owner and I noticed the Walkie-Talkie clip under the

MICHAEL WILLIAMS

DIRECT

1 driver's seat of the vehicle.

2 Q All right. You recovered it from under the driver's
3 seat. Did you also take that down to SLED to be tested?

4 A Yes, sir, I did.

5 Q Did you alter or change it in any way?

6 A No, sir.

7 MR. POPE: Your Honor, I move State's Exhibit 33 for
8 identification into evidence.

9 MR. SCHUSTERMAN: Without objection. I think that
10 yesterday he may have moved this into evidence.

11 THE COURT: Well, if they were, there should be a tag
12 on them. There is no tag on them.

13 MR. SCHUSTERMAN: It is without objection.

14 THE COURT: Received.

15 (State's Exhibit 33 marked and filed.)

16 Q Mr. Williams, the Walkie-Talkie was recovered in the
17 wooded area where the search took place, is that correct?

18 A Yes, sir.

19 Q And now the Walkie-Talkie clip is this the type clip
20 that would hold this particular Walkie-Talkie?

21 A Yes, sir, that Walkie-Talkie would fit in that clip.

22 Q Now this was recovered by you under the seat, the
23 driver's seat, of the suspect vehicle?

24 A Yes, sir, it was.

25 Q Mr. Williams, did you have an opportunity as part of

MICHAEL WILLIAMS

DIRECT

1 your duties to go back during the search at the time with
2 Officer Alexander and make various measurements as they
3 related to all the locations were, where you actually took
4 a tape measure and measured different areas from the
5 intersection?

6 A Yes, sir.

7 Q Mr. Williams, do you need a drink of water? You sound
8 like you are a little under the weather today?

9 A I'm just getting a little cold.

10 Q I am going to ask you to step down.

11 MR. POPE: Your Honor, we will be using a diagram. I
12 can use it at that end. It's the smallest diagram. If the
13 jury can see it, I will use it at that end; otherwise, ---

14 THE COURT: Can all the jurors see it?

15 (Jurors indicated in the affirmative.)

16 THE COURT: Okay; that's I think the best place for
17 it.

18 Q Officer Williams, first I'd show you State's Exhibit
19 48 and 49 and if you could indicate to the jury 48 and 49,
20 the area where Mr. Hughes was arrested? I understand you
21 marked it with your vehicle from the City, is that
22 correct?

23 A Yes, sir.

24 Q If you could show them and help them get oriented as
25 far as the Holiday Inn and all of that. Show them first

1 the approximate area on the diagram and then if you could
2 show them the pictures.

3 A This is basically I-77 headed north towards Charlotte.
4 This is Cherry Road. This is Celriver Road or Red River
5 Road with the Holiday Inn right basically in that area.
6 Celriver Road comes down and Wilkerson Road bears to the
7 right or you turn to the right. Mr. Hughes was located in
8 this area right here. What we did we went back with a
9 vehicle and did an area photograph of that same location
10 basically placing the vehicle on the edge of the roadway
11 to give you an overall look of the area and the location
12 where Mr. Hughes was found. And that's what these are.
13 These are representative photographs of this being the
14 vehicle on Wilkerson Road, Cherry Road being up here,
15 Celriver Road coming down and Wilkerson Road back this way
16 and the Holiday Inn would be up in this area and this is
17 the vehicle showing the location where Mr. Hughes was
18 brought out of the woods.

19 This is Wilkerson Road. I explained about Cherry Road.
20 The Holiday Inn is in this area here. You would come down
21 Celriver Road, turn to your right, this is Wilkerson Road
22 and then you come around Wilkerson Road and this is the
23 vehicle that he would have been ---

24 Q Make sure if any of the jurors didn't get to see
25 those.

1 A This photograph is taken the same location of the
2 vehicle, the same location, but you can tell that it was
3 taken on this side of the roadway and is just a closer
4 view of the area exactly where the vehicle was parked and
5 there is a patch of woods in this location.

6 Q And likewise, you also placed a vehicle where Mr.
7 Alexander had effected this arrest, State's Exhibit 45, is
8 that correct?

9 A Yes, sir. This photograph represents the arrest site
10 of Mr. Forney. Basically it's the same thing Cherry Road,
11 Celriver Road. Instead of coming up Wilkerson Road Mr.
12 Forney was brought out here, basically right in this area.

13 Q Could you indicate the area where the Quick C is where
14 Mr. Sanders had last seen the two individuals? Where would
15 that be?

16 A This is the Quick C Food Mart. Basically, it's right
17 at this intersection of Cherry Road and Cel-River Road.
18 This would be the general area.

19 Q Okay, if you could indicate on that also for the jury,
20 please.

21 A The vehicle is kind of small in this photograph. This
22 is the vehicle representing the wooded area where Mr.
23 Forney was brought out of the wooded area. You can look
24 back, this right here is the Holiday Inn. This being the
25 Quick C Food Mart. This is Celriver Road and you can see

1 where Wilkerson Road would turn off and you can see
2 Wilkerson Road in this area here. This is just straight
3 down Celriver Road where the vehicle was at.

4 This would be the Holiday Inn right here and the Quick
5 C Food Mart is this store right here. This is the turn
6 off right here for Wilkerson Road and it curves back
7 around. This would be this area here.

8 Q Finally, Mr. Williams, State's Exhibit 44 and 46 you
9 put a vehicle to mark where the suspect vehicle was
10 located in the Holiday Inn Parking lot ---

11 A Yes, sir.

12 Q --- and how it relates to these two roads you have
13 indicated. Show the jury, you might need to stand in front
14 of them.

15 A This right here would be the suspect vehicle where it
16 was spotted would be right here. What we did we went back
17 again and made a photograph and placed the vehicle in the
18 parking space of that location. This represents the
19 photographs of where the vehicle was located. This is
20 just two photographs of the same little area. I'll just do
21 one at the time. This right here represents the vehicle.
22 This photograph would have been taken from Cherry Road
23 north of I-77 looking across towards the Holiday Inn. You
24 can note Wilkerson Road here in the background and then
25 Celriver Road runs this way. And that's the vehicle there.

1 This will be the vehicle we placed there.

2 JUROR: Right here?

3 THE COURT: Ma'am, I am going to ask you all not to
4 ask questions.

5 A This is Wilkerson Road. You can see it just curves
6 back around. Celriver Road runs down from the Holiday Inn
7 -- from the intersection of Cherry Road, which this would
8 be Wilkerson Road here.

9 This right here is the same photograph of the same
10 location. Basically, this was taken a little farther
11 north. This would be on the opposite side. This
12 photograph would have been taken basically in this area
13 here looking back this way.

14 This is a photograph of the vehicle we placed in the
15 parking lot. It gives you a little better view of what
16 Wilkerson Road looks like and Celriver Road in conjunction
17 with the Holiday Inn. This is Celriver Road. This is
18 Wilkerson, the Holiday Inn.

19 Q Mr. Williams, have a seat, please. You also had an
20 opportunity to or did you have an opportunity while you
21 were developing these photos and locating these items to
22 take physical measurements and to draw diagrams of those
23 physical measurements of the various locations you just
24 indicated to the jury?

25 A Yes, sir.

1 Q I show you State's Exhibit 58 through 62, all for
2 identification, and ask you to take a second to look at
3 these and tell me if you can identify them.

4 A Yes, sir, these are photocopies of the measurements
5 that I took of every item that was recovered by me in the
6 wooded area and also the arrest sites and the location of
7 the vehicle.

8 Q Would these assist in your explaining to the jury the
9 various areas and the various measurements of these items?

10 A Yes, sir.

11 MR. POPE: I move these be admitted into evidence at
12 this time.

13 MR. SCHUSTERMAN: Without objection.

14 THE COURT: Be received.

15 (State's Exhibit 58, 59, 60, 61 and 62 marked and
16 filed.)

17 Q Mr. Williams, I am going to ask you if you would to
18 step down, please. With the pointer if you could first
19 indicate was there an intersection that you used as a
20 reference point for the various measurements, that you
21 always measured back to to give the jury one single
22 location to measure from?

23 A Yes, sir, this would be the intersection of Wilkerson
24 Road and Celriver Road. Everything that was measured by me
25 that day went back to this intersection, my point of

1 reference.

2 Q In other words, if you measure from the vehicle back
3 to that intersection - you measured from the vehicle back
4 to that intersection, that is not necessarily designating
5 the way of travel of the defendant, you are just measuring
6 the location to see how close it is to that intersection,
7 is that correct?

8 A Yes, sir. It's for me to be able at a later time if I
9 had to to go to this location and measure - what I did was
10 measure up the right side of the pavement on this roadway
11 and measured from there and the distance from where the
12 vehicle is.

13 Q Okay. First, I would have you take a look at State's
14 Exhibit 58. If you could explain to the jury what that
15 indicates.

16 A This is the copy of the drawings I did on the scene
17 that day when I went back to that wooded area, the
18 location of the arrest. This was prepared by myself. What
19 I did on this was was this is measurements; it's just
20 backwards by looking at this and this this way. What I did
21 I measured from the point where the vehicle was recovered
22 and then back to from here across the roadway at the edge
23 of the pavement on Wilkerson Road. At that point I turned
24 and I measured from the edge of where I measured here to
25 the intersection and this is the measurements I came

MICHAEL WILLIAMS

DIRECT

1 up with, 382 feet from the car to here and 180 feet from
2 here back to the intersection and that's what this
3 represents.

4 Q Mr. Williams, this designation chain link fence is
5 that what these lines and x's are?

6 A Yes, sir, there is a chain link fence around the
7 property of the Holiday Inn that extends around basically
8 the property to this location and then it came back up and
9 this is an old road that's no longer in use. The chain
10 link fence goes across this roadway up towards Celriver
11 Road and back up beside the Carolina Furniture World. I
12 measured from here to the road. What I had to do is
13 measure to the fence basically stick the measurement or
14 the rule through the fence.

15 Q What is the height of the chain link fence?

16 A I didn't measure the height of the fence. It was
17 taller than me, I'd say a 10 foot, maybe a 12 foot fence.

18 Q So to get around the fence there's no gate or anything

19 --

20 A No.

21 Q But it ends there at the corner where they cut through
22 behind the Quick C?

23 A Yes, sir.

24 Q Next I would have you indicate State's Exhibit 59
25 where Dwayne Eric Forney was arrested. If you could

1 indicate again on there both where he was arrested and
2 where you measured from.

3 A On the day in question, this would be the 29th, the
4 day that we went back to this location. The officers
5 involved with the initial arrest were at this location.
6 Captain Cabaniss had coordinated the search of this
7 location on that date. I had Officer Alexander take me
8 back to the location where he found Mr. Forney. Once he
9 did that I had Mr. Alexander go into the woods area where
10 he made the arrest or where he detained Mr. Forney. From
11 that point myself and Mr. Alexander measured back to the
12 edge of the roadway on Celriver Road. This distance was 30
13 feet. From that point we turned and measured back up to my
14 point of reference being Wilkerson and Celriver Road and
15 the distance there is 718 feet. So he was arrested 718
16 feet in this direction, 30 feet is the woodline. And this
17 is what this drawing represents and it was made by me that
18 day. What I did was I basically drew off the drawing and
19 measured and I put the measurements on it.

20 Q And this was as to the arrest of Mr. Forney?

21 A Yes, sir.

22 Q 718 feet; he was not off other than the chase went
23 into the woods he was not off Celriver Road, is that
24 correct, I mean as far as your measurements.

25 A As far as my measurements.

MICHAEL WILLIAMS

DIRECT

1 Q I show you State's Exhibit 60 the location the
2 Walkie-Talkie was found and ask if you could again
3 indicate roughly to the jury what road that is off of and
4 how that lay-out is.

5 A The Walkie-Talkie -- once the radio was found by
6 searchers, I basically stayed on the roadway, once Deputy
7 Clinton located the Walkie-Talkie he radioed for me to
8 come to where his location was at. At that time I
9 photographed the Walkie-Talkie and then Deputy Clinton
10 helped to measure -- basically assisted in the
11 measurement. He stayed in the woodline, I came back out to
12 the roadway with the measurement and I measured back to
13 the roadway 26 feet, so basically in this wooded area 26
14 feet from the roadway was the Walkie-Talkie. So the
15 measurement back to the roadway of 26 feet to my point of
16 reference being this intersection and 228 feet. So
17 basically 228 feet up this roadway and 26 feet into the
18 woodline the Walkie-Talkie was recovered. And this
19 basically represents the measurements and the drawing I
20 did that day.

21 Q Mr. Williams, coming on down the next item would be
22 the ball cap. If you could indicate that, indicate the
23 measurements to the jury.

24 A Basically what we did on this was the same thing. This
25 was recovered a couple of minutes after the radio was

1 recovered. I was called to this location where I did
2 photograph the hat. I retrieved the hat and measurements
3 were taken from where the hat was laying back to the
4 roadway of Wilkerson Road. This will be a little distance
5 farther than the Walkie-Talkie. Just the general area
6 would be in this area here. It was 88 feet into the
7 woodline. We measured 88 feet from the hat back to edge of
8 the pavement. From the pavement back to the intersection
9 was 305 feet. So basically you if you go 305 feet up and
10 then 88 feet that's where the hat was located in that
11 area. And this is a drawing of the location of the hat and
12 the measurements of the hat I did that day.

13 Q Finally, Mr. Williams, coming on down Wilkerson, did
14 you mark the area where Mr. Hughes was arrested?

15 A Yes, sir.

16 Q Show that to the jury.

17 A The same day I had Mr. Clinton direct me to where he
18 arrested Mr. Hughes in the wooded area. He took me down
19 the roadway down Wilkerson Road and into the woodline
20 approximately 40 feet. What we did was measure from where
21 he showed me Mr. Hughes was arrested and measured back to
22 the roadway, 40 feet back to the edge of the pavement.
23 From the pavement we measured back my point of reference
24 being the intersection and that would 856 feet. So
25 basically if you come down Celriver Road, turn right on

1 Wilkerson, go 856 feet and then 40 feet into the woodline,
2 that would be the area where Mr. Hughes was apprehended.
3 And this is basically the same thing, a drawing I did that
4 day and the measurements I did that day.

5 Q Mr. Williams, were you present there at the Police
6 Department when both of the defendants were brought in for
7 questioning?

8 A Yes, sir, I was on duty on the 26th.

9 Q Okay and were they booked there at the Police
10 Department, is that correct?

11 A Yes, sir.

12 Q And were their heights and weights determined there at
13 the Police Department?

14 A Yes, sir, they were.

15 Q Could you tell us, sir, the height and weight of Mr.
16 Forney at the time he was arrested?

17 A On Mr. Forney, the height would have been 5'8" 125
18 pounds.

19 Q Okay, could you tell us the height and weight of Mr.
20 Hughes at the time of the arrest?

21 A Mr. Hughes' height would have been 6'1" 170 pounds.

22 Q And did you have ages for both the individuals?

23 A Mr. Hughes' age was 25; Mr. Forney was 25.

24 Q Finally, Mr. Williams, you discussed the Walkie-Talkie
25 Clip, State's Exhibit 33, that was recovered and you

MICHAEL WILLIAMS DIRECT

1 indicated it was under the driver's side under the bench
2 of the seat, is that correct?

3 A Yes, sir.

4 Q I show you State's Exhibit 63 and 64 for
5 identification and ask if you can identify those, please.

6 A Yes, sir, these are photographs taken of the clip
7 under the seat and an individual pointing in the direction
8 of where the clip would be found underneath the seat.

9 MR. POPE: Your Honor, I move State's Exhibit 63 and
10 64 for identification into evidence.

11 MR. SCHUSTERMAN: Your Honor, may we approach?

12 (Bench conference off the record.)

13 THE COURT: Identification Number 63 will be admitted
14 over objection; 64 without objection.

15 MR. SCHUSTERMAN: Thank you, Your Honor.

16 (State's Exhibits 63 and 64 marked and filed.)

17 Q Mr. Williams, you say currently now you are the
18 evidence custodian, you keep all the evidence for the
19 City, is that correct?

20 A Yes, sir.

21 Q As far as this particular case, as far as you
22 transporting to SLED, you took the two items recovered in
23 the woods, the Walkie-Talkie and the hat, and you also
24 took the Walkie-Talkie clip you recovered under the car
25 seat, is that correct?

MICHAEL WILLIAMS · CROSS

1 A Yes, sir, I did.

2 Q You took those to SLED?

3 A Yes, sir.

4 Q Okay, as far as all the other items that you had in
5 your custody this week they weren't taken to SLED by you,
6 is that correct, on the night of the crime.

7 A No, sir, they were all turned over to the SLED agent
8 the night of the crime and they were taken by the SLED
9 agent that night.

10 Q Answer any questions the defense may have.

11 CROSS EXAMINATION

12 BY MR. SCHUSTERMAN

13 Q Mr. Williams, it is my understanding that as the
14 evidence officer that your primary responsibilities with
15 this was to secure the scene or to take notes or in some
16 way memorialize the scene so that you would be able to
17 recount where everything was found?

18 A Of the incident itself or the day of the search?

19 Q Let's talk about the incident itself.

20 A Well the incident itself my participation that night I
21 responded to the location, it was roped off and I
22 basically stayed on the outside the roped area to keep
23 anyone from coming in.

24 Q And then the next day you participated in the search
25 of these various items.

1 A The 29th.

2 Q Okay, the 29th of September?

3 A Yes, sir.

4 Q So that was some three days later?

5 A Yes, sir.

6 Q And where you found these items during those three
7 days that area was not corded off in any way, was it?

8 A No, not to my knowledge it was not.

9 Q So it would be fair to say that anybody could have
10 come walking through that area?

11 A That's possible.

12 Q Why -- do you know why three days elapsed before you
13 began searching that area?

14 A No, I do not.

15 Q Could you come down here for a minute?

16 A (Witness complies.)

17 Q You indicated that this is your reference point, the
18 corner of Celriver and Wilkerson Road.

19 A Yes, sir.

20 Q All your measurements refer to that corner.

21 A Right in there.

22 Q You further indicated from your diagrams that the
23 Walkie-Talkie was found some 220 feet in down Wilkerson
24 Road and approximately 26 feet into the woodline, is that
25 correct?

1 A Yes, sir.

2 Q Let me ask you, sir, would you not agree that 220
3 something feet in here - the total distance, did you get
4 to measure that, the total distance at that point from
5 Wilkerson Road to Celriver Road?

6 A From here to here?

7 Q Correct, sir.

8 A I was not able to do that, not in a straight line, due
9 to the woods and due to the growth of that area I would
10 not be able to basically say it's a straight line in that
11 location.

12 Q Okay. Did you have an opportunity in your search to
13 walk that distance?

14 A I did not myself. My participation that day was I
15 stayed out. The search of the area was conducted. Once
16 anything was found I was taken to that location to
17 document and recover.

18 Q Would you basically in your walking around and I
19 certain don't want you to answer if you don't know, but
20 would you agree that the distance even with the brush
21 right there is approximately 75 feet between Wilkerson
22 Road and Celriver Road at this juncture?

23 A I don't know.

24 Q You have no basis for knowing, okay. You further
25 testified that from the reference point here it was 856

1 feet to the point at which you would enter into the
2 woodline to locate where Mr. Hughes was arrested.

3 A Correct.

4 Q And you indicate that he was 40 feet into the
5 woodline, correct?

6 A Yes, sir.

7 Q Just as a reference, just so the jury understands,
8 standing where you are, would 40 feet be to the back of
9 the courtroom where the deputy is standing?

10 A An average guesstimation it would be in the area I
11 would say. It may be longer, may be shorter.

12 Q Approximately? As opposed to from where you are
13 standing to this wall?

14 A Oh, yes --

15 Q Much further?

16 A It would be toward that direction.

17 Q Thank you, sir. You indicated that you took pictures
18 of these items before they were picked up or Deputy
19 Clinton called you and you didn't touch the items.

20 A No, sir, when I arrived at the item, a photograph was
21 taken of the item.

22 Q You can have a seat. The Walkie-Talkie case you found
23 under the driver's side of the car, correct?

24 A Yes, sir, under the driver's seat area.

25 Q Once the car was towed in that evening, when it was

1 found in the Holiday Inn parking lot, I believe it was
2 towed in, and is it then put, you were the evidence
3 officer, was it put in your custody at that point?

4 A The vehicle was brought into our sally port and at
5 that time SLED Agent Black and I believe Gainey had
6 control of the vehicle as far as processing the vehicle.

7 Q How long does it take to process a vehicle?

8 A You can process a vehicle anywhere from five minutes
9 to, you know, it depends on the detail of the processing.
10 There's not set time on processing a vehicle.

11 Q Do you know how long it took to process the 1986 gray
12 Buick EMF 313 New York tags?

13 A No, sir, I do not.

14 Q Did the car remain at the Rock Hill Law Center once it
15 was towed there?

16 A Yes, sir, after it was processed, the vehicle was
17 placed in an impound lot at the Law Center.

18 Q What is the impound lot?

19 A It's an area at the Law Center there's a chain link
20 fence with barbed wire across the top and it's locked or
21 there's a lock at the gate.

22 Q Who, if anybody, has access to the impound lot?

23 A The impound lot had access by the evidence officer and
24 the supervisor for each shift. Also, inside the impound
25 lot there's a bike lot where bicycles are impounded and

1 officers place bikes into that location.

2 Q So is it fair to say there is a fair amount of traffic
3 in and out of the impound area by law enforcement
4 personnel, but a fair amount of traffic?

5 A Only if there were items to be placed in there, at
6 that time it would have been.

7 Q And was it on September 29th that the car was taken
8 from the impound lot and put back in the parking lot of
9 the Holiday Inn for the purposes that you testified this
10 morning?

11 A No, sir, the vehicle in question, those photographs,
12 is not that vehicle that was recovered. That is a vehicle
13 that is owned by the Police Department in the photographs.

14 Q So it's not the identical vehicle?

15 A Just of the area shots, of what I showed you today
16 that's a vehicle that is owned by the Police Department.

17 Q All right. From the time the car was brought in by
18 Agent Black was it for any reason taken out of the impound
19 lot?

20 A After he processed it?

21 Q After he processed it.

22 A Not to my knowledge.

23 Q It sat there?

24 A It sat in the impound lot locked up.

25 Q What constitutes processing a vehicle? When we use

1 the term "processing a vehicle," tell me what that means.

2 A Processing basically is you check the vehicle for
3 fingerprints, you dust the vehicle with powder to see if
4 you can obtain a latent fingerprint, which is an invisible
5 print, to gather evidence from a vehicle, basically
6 looking for any type of physical evidence, fingerprints,
7 items, et cetera.

8 Q And I assume the attempt is to process the vehicle as
9 soon as possible after the incident to preserve any
10 evidence?

11 A That's correct.

12 Q This incident occurred on September 25, 1992, at
13 approximately 10:40 in the evening, correct?

14 A Yes, sir.

15 Q I gather from other testimony you have been sitting in
16 here from Officer Maggart that the car was towed several
17 hours later to the Rock Hill Law Center?

18 A Yes, sir.

19 Q I assume then it was processed some time after that?

20 A Yes, sir, when it was towed to the Law Center it was
21 processed I would say an hour later or several minutes
22 later.

23 Q And the purpose of processing it as you have indicated
24 is to determine if there were fingerprints or any evidence
25 or anything like that to preserve them in the condition

1 that they are as soon after the crime happens so that
2 police in their investigation can get a realistic approach
3 as to what happened to derive a theory?

4 A That's correct.

5 Q Okay. Could you, please, look at this. Do you
6 recognize State's Exhibit Number 33?

7 A Yes, sir, this is the clip that I recovered underneath
8 the seat of the car.

9 Q Would you please tell the jury when you recovered the
10 clip underneath the car?

11 A I have got marked as the date and time of recovery
12 10-1-92 at 2:00 PM.

13 Q 10-1-92 would be approximately six days after the
14 incident, is that correct?

15 A Yes, sir.

16 Q Now you were not part of the original processing of
17 the car as I understand it.

18 A That's correct.

19 Q So that piece of evidence was overlooked?

20 A I would say it was overlooked.

21 Q Overlooked by SLED?

22 A Yes, sir.

23 Q And who had access to the car and what activities
24 occurred in the car even by law enforcement people between
25 September 25, 1992, at 1:00 or 2:00 in the morning that

1 the car was towed and October 1, 1992 back at 4:40 PM you
2 had no idea?

3 A No, sir, the vehicle once it was placed in the impound
4 lot the doors were locked on the vehicle and then the gate
5 was locked and to my knowledge nobody had messed with the
6 car until I was told to go out.

7 Q Now how did you find it? Did you re-process the car?

8 A No, sir, the vehicle was to be released to the owner
9 that day on the 1st. It's just normal habit anything to
10 be released I just basically go back and check for my
11 personal satisfaction, I guess, and upon checking the
12 vehicle and getting it out of the impound lot I noticed
13 that under the seat.

14 Q And you say that is just out of Mike Williams'
15 procedure?

16 A Yes, sir.

17 Q You weren't doing any kind of protocol police
18 procedure?

19 A No, sir, that's just the way I do stuff.

20 Q Okay. You have indicated - I assume that it's either
21 Mike Williams' philosophy or the Rock Hill Police
22 Department's philosophy to photograph items were they are
23 found?

24 A That's department policy in any case that we
25 investigate. Before we remove any item, we photograph the

1 item.

2 Q Are you aware that the night that this incident
3 occurred, September 25th, 10:40, that Officer McCants on
4 his gun belt, State's Exhibit Number 31, that there were
5 two magazine clip holders?

6 A Am I aware of that?

7 Q They were found approximately ten to twelve feet from
8 the body.

9 A As far as that part I don't have any idea on that.

10 Q You don't have any idea on that?

11 A No; I was not there at the collection of evidence.

12 Q But is it not -- did you not just state that it would
13 be Rock Hill Police Department protocol that if an item is
14 found in a location that it should be photographed prior
15 to its removal?

16 A That is the Police Department - I believe that was
17 recovered by a Sheriff's Deputy. I don't think it was a
18 Rock Hill Police officer that had first initially
19 recovered those items.

20 Q And you are not aware of any photographs?

21 A No, sir, only the night in question of the shooting
22 itself all my function was to basically keep people
23 outside the concealed area, so as far as going into the
24 scene and seeing the belt or any items like that, no, sir,
25 I have no knowledge of that.

1 Q The incident though occurred within the City of Rock
2 Hill, did it not?

3 A Yes, sir.

4 Q And is it not correct that Captain Cabaniss was the
5 lead investigator at the scene?

6 A When he arrived he was.

7 Q Are you indicating that this was not a Rock Hill
8 Police Department investigation?

9 A Once the location was secured, Brent was removed, the
10 investigation was Rock Hill Police Department.

11 Q Could you explain to me why the Rock Hill Police
12 Department evidence recovery procedures would not have
13 been used?

14 A Once the item was picked up, you could not go back and
15 place the items back on the ground and get an actual
16 photograph of the exact location that the item was picked
17 up from. That would be my impression of like you picking
18 up the gun, laying it over here, and you say you got it
19 from over here and you are putting it back exactly like
20 you found it; I don't think you could do that.

21 Q Are you saying, Mr. Williams, that it is your belief
22 that this item was found prior to Mike Williams securing
23 the area?

24 A I would say it was or I guess it was. I mean, as far
25 as what actually happened right around Brent that night I

1 don't have any idea. I was not there; I can't guess or
2 give you an answer to that really.

3 MR. SCHUSTERMAN: With the court's indulgence.

4 Q Mr. Williams, how soon were you on the scene after the
5 incident occurred? Were you the first person there?

6 A No, sir.

7 Q Who was there when you arrived?

8 A Investigator Williams, Waldrop, some Sheriff's
9 deputies. I didn't like take mental or make a note of
10 everyone that was there. I got there, I was directing
11 Officer Guyton basically to let's seal the area off, to
12 divert traffic from coming down Dave Lyle Boulevard.

13 Q Thank you, sir. I appreciate your time.

14 REDIRECT EXAMINATION

15 BY MR. POPE

16 Q Mr. Williams, Mr. Schusterman was asking you about
17 some of the things off Brent's belt. You weren't involved
18 in that recovery there on Dave Lyle, is that correct?

19 A No, sir, I was not.

20 Q The items that you were involved in would have been
21 recovered down here near the Holiday Inn where the car was
22 left?

23 A Yes, sir.

24 Q And would have also been from under the seat of the
25 car that was left at the Holiday Inn, is that correct?

THE STATE VS HUGHES

1 A Yes, sir.

2 Q Thank you.

3 MR. SCHUSTERMAN: Nothing further, Your Honor.

4 THE COURT: You may step down. Thank you.

5 Do you have another witness?

6 MR. POPE: Your Honor, Mr. Herring we discussed his
7 wife's pregnancy.

8 THE COURT: Okay, all right. We have one witness who
9 is going to be here a little late because of the impending
10 birth of a child, not the witnesses', and even so I said
11 we would go to 10:30 and start at 12:30, we will stop
12 earlier. We will start back around 12:30. I am going to
13 ask that everybody be back, the SLED officers have all
14 back and all participants be back, if possible, by 12:15
15 and if we can start a little earlier, we will. So we will
16 have a long brunch hour instead of a lunch hour today. So
17 I want you to go to the jury room. I will see you after
18 lunch.

19 (Jury retires to jury room.)

20 At a side bar counsel for the defendant objected to,
21 my notes indicate, I hope I'm right, State's for ID 63 as
22 being suggestive, that is, a photograph inside the car
23 with a hand pointing under the seat.

24 MR. POPE: That is correct, Your Honor.

25 THE COURT: I overruled that objection. Anything the

THE STATE VS HUGHES

1 defense wants to put on the record regarding that?

2 MR. SCHUSTERMAN: I think the court surmised it quite
3 well.

4 THE COURT: All right. Try to back and, Ms. Brice, I'm
5 not pushing you, but we will start at 12:30, but, if
6 possible, if we could start about 12:15 that will be just
7 a little bit better.

8 MS. BRICE: Thank you, Your Honor.

9 THE COURT: Okay, we will see everybody back at about
10 12:15.

11 MR. BRACKETT: Your Honor, yesterday we had a problem
12 with getting the courtroom secured. We are going to leave
13 all of the evidence in here. Can the court see to it or
14 ask that the courtroom be locked up?

15 THE COURT: The courtroom will be locked over lunch.
16 (Recess.)

17 Is The State ready?

18 MR. POPE: The State is ready, Your Honor.

19 THE COURT: The defense?

20 MR. SCHUSTERMAN: The defense is ready, Your Honor.

21 THE COURT: All right, and Mr. Hughes, the defendant,
22 is present.

23 Bring in the jury.

24 (Jury returns to courtroom.)

25 MR. POPE: May it please the court, Your Honor?

LAWRENCE EUGENE GAINNEY

DIRECT

1 The State calls Special Agent Larry Gainney to the stand.

2 THE COURT: Come around and be sworn, please, sir.

3 LAWRENCE EUGENE GAINNEY, JR., being duly
4 sworn, testified as follows:

5 DIRECT EXAMINATION

6 BY MR. POPE

7 Q Officer Gainney, if you would, state your name and
8 occupation for the jury, please, sir.

9 A My name is Lawrence Eugene Gainney, Jr. I work for the
10 South Carolina Law Enforcement Division, also known as
11 SLED. I am presently assigned to the Firearms Laboratory
12 and have been so since 1993. Prior to that I worked for
13 the Crime Scene and Latent Prints Laboratory.

14 Q How long have you been in law enforcement, Mr. Gainney?

15 A I have been in law enforcement for a little over
16 seventeen years.

17 Q And how long have you been with the State Law
18 Enforcement Division?

19 A Going on ten years.

20 Q You said you are currently in Firearms, is that
21 correct?

22 A Yes, sir, that is correct.

23 Q Back at the time of Brent McCants' death back in
24 September of 1992 you were in a different division of SLED
25 or a different investigation area?

1 A Yes, sir, I worked for the Latent Print and Crime
2 Scene Department. The duties there included processing
3 items for latent prints, processing items for footwear
4 impressions and making comparisons in order to try and
5 determine results. Also, I was required to process crime
6 scenes, that is, the looking for or the development of
7 items of evidence, physical evidence, either to be
8 processed by myself at a crime scene or to be taken back
9 to SLED for disbursing to the proper laboratory there.

10 Q Could you tell the jury what you call "processing a
11 crime scene," I guess each crime scene are they unique
12 each one, you do different things at different ones, is
13 that a fair statement?

14 A Yes, sir, it depends upon the crime scene as to what
15 you would do. There are some basic things that are common
16 to most all crime scenes and that would be, for instance,
17 documentation through photography or through drawing a
18 sketch. The collection of physical evidence and how you
19 preserve that physical evidence is consistent throughout
20 most crime scenes. In my case I would process things for
21 latent prints that would be too large to carry back to
22 SLED or that would be easier or better to process at the
23 scene. Processing for latent prints would include such
24 things as powders and some chemical treatments in order to
25 bring out prints that are not normally visible to the

1 human eye.

2 Q Mr. Gainey, what type of background, education and
3 training do you have that allows you to process or to
4 handle crime scenes and to make fingerprint analysis?

5 A I have a Bachelor's Degree from the University of
6 South Carolina. I attended the Federal Bureau of
7 Investigations basic latent fingerprint course and also
8 the advance latent fingerprint techniques course and also
9 the administrative advance latent fingerprint course in
10 Quantico, Virginia. I have also attended courses given by
11 the South Carolina Criminal Justice Academy including
12 photography and basic latent print development. I have
13 attended and am a member of the International Association
14 for Identification and am certified by that body as a
15 senior crime scene analyst. I have attended workshops
16 through the International Association for Identification
17 in Nashville, Tennessee and in Pensacola, Florida, as well
18 as here in Columbia. These workshops included areas of
19 crime scene photography, physical evidence collection and
20 preservation, development techniques for latent
21 fingerprints, comparison of footwear and tire tracks. I
22 have also been working for SLED for the last ten years in
23 the identifications field and worked in the identification
24 field for most of my law enforcement career except for
25 three years in which I was the police chief and public

1 safety director for the Town of Winnsboro.

2 Q Let me ask you, Mr. Gainey, have you had the
3 opportunity to past testify as an expert in this area?

4 A Yes, I have. I've testified in courts in South
5 Carolina in all fields of my expertise well over a hundred
6 times.

7 MR. POPE: Your Honor, at this time I would move that
8 Officer Gainey be qualified as an expert in crime scene
9 analysis and fingerprint analysis.

10 MR. SCHUSTERMAN: We would have no questions of the
11 witness and we are not opposed to his being deemed an
12 expert.

13 THE COURT: All right. Ladies and Gentlemen, let me
14 tell you what this is. First, I find that he is qualified
15 as tendered. We have in trial and in law two type of
16 witnesses, those who are eyewitnesses and come in and
17 report what they have seen and then people who are called
18 experts who can give an opinion, that is, people who are
19 qualified by virtue of their experience, their education,
20 their skill, their knowledge and their training who have a
21 certain expertise in an area can give an opinion about
22 certain things. The best way I can explain that to you is
23 to give you an example. Take a medical doctor. Say I have
24 a four or five year old and one day the child is obviously
25 sick. I can feel a temperature; I can feel the child's

1 face is hot. I can take the temperature and say it's a
2 hundred and one; the child may be nauseous, the child may
3 be sweating, the child may be complaining about his
4 stomach hurting, all of those things. Well, those things
5 I have seen, I've heard, any sense of my five senses. I
6 could come into court and testify to all of those things,
7 but I cannot give an opinion about what was wrong with the
8 child. I could guess, but it would have no value. I could
9 take that child to a medical doctor. A medical doctor
10 could see the same things, hear the same things, feel the
11 same thing, and because of their experience, training and
12 knowledge and background, the doctor could render an
13 opinion. The doctor could say this child has a virus or
14 this child has the flu. In medicine it's often called a
15 diagnosis and, of course, this witness is not a physician,
16 but that is what opinion evidence is. When one is
17 qualified as an expert, they can give opinions whereas one
18 is not an expert in the area can only testify as to
19 something they have sensed with one of their senses.

20 I will in my charge to you at the end when I give you
21 what I told you earlier my concise and comprehensive
22 charge tell you how you evaluate and assess expert
23 opinion. But that is a little different from what we call
24 fact witnesses, people who again see things, hear things.
25 These are people who can render opinions.

1 MR. POPE: May it please the court, Your Honor?

2 THE COURT: Certainly.

3 Q Mr. Gainey, in your duties with SLED did you have an
4 opportunity to come up on the evening of September 25th
5 working into September 26, 1992?

6 A Yes, sir, I did.

7 Q Could you tell the jury what you did first when you
8 came, where you went when you came to York County?

9 A I first arrived just off of I-77 onto Dave Lyle
10 Boulevard heading in towards Rock Hill. There is an
11 intersection where Dave Lyle Boulevard and I believe it is
12 Lyles Lumber Road. At that intersection I found an area
13 that had been corded off using barrier tape. In that area
14 there was a Sheriff's Department police car, a cruiser,
15 and there were several officers with the Rock Hill Police
16 Department and with the Sheriff's Department there on the
17 scene. Everyone was outside of the corded off area. At
18 that time I talked with the officers there and began
19 taking photographs and organizing a sketch of that area.

20 Q I will show you State's Exhibit 23, 24, 25, 26, and 27
21 that are already in evidence and ask if you could take a
22 look at those and tell me if you can identify those.

23 A Yes, I can. These are photographs that were taken by
24 me that night of the crime scene area. They are as I found
25 the crime scene with the exception of the orange cones

1 that are in the photographs. These orange cones are cones
2 which I placed there in order to mark items of evidence
3 that I found at the scene.

4 Q Agent Gainey, when you got to the scene and it was
5 corded off, what did you do as far as processing the
6 scene? What did you actually do?

7 A The initial phase would be to photograph and to draw a
8 sketch as I stated earlier. After photographing I began
9 searching the area. In searching areas for a particular
10 search I go back and forth across the scene in order to
11 see if there is any evidence that may be there. As I would
12 find items of evidence, I marked them with a cone so that
13 I don't lose them and also so I could take a photograph of
14 their relative position to other things in the area.
15 That's what I did. After marking them and photographing
16 them, then I collected the items of evidence. After
17 collecting these evidence, I then used a metal detector to
18 go back over the area to determine if there was anything
19 that I may have missed that I could not see with a naked
20 eye. In this case I did find one additional piece of
21 evidence.

22 Q I should you what's been marked as State's 65 for
23 identification. I ask if you could take a look at those
24 and see if you can identify them.

25 A Yes, sir, this is a plastic bag that contains eight

1 tins. These are like old style ointment tins and they have
2 a piece of paper on the top used for marking. It is a two
3 piece tin. Inside of each one of these I placed a
4 cartridge case that I found at the scene. These were
5 collected by me. The bag has my case numbers and initials.
6 Also, each one of the tins bears by case number and
7 initials and other markings as to where I located the
8 particular piece of evidence. These were transported by
9 me back to SLED and were turned over to Agent David
10 Collins of the Firearms Department.

11 Q Was there another agent that was working with you in
12 the various aspects? When we say crime scene, when you
13 tell the jury crime scene, do you just work the area where
14 the crime is perpetrated or do other areas, in essence,
15 become crime scenes too?

16 A In many cases there are more than one area to a crime
17 scene. It will maybe require and most of the time
18 particularly in a case where a death occurred, there would
19 be more than one agent that would respond. You might well
20 imagine that it would take more than one person to
21 adequately work a crime scene. In this case there were
22 three people from SLED that responded, myself, Richard
23 Hunton, and David Black. While I was working the scene on
24 Dave Lyle, David Black arrived and ultimately was sent
25 back to the Rock Hill Police Department to look and to

1 gather other items of evidence.

2 Q And was there also a scene of evidence that was
3 ultimately developed out at the Holiday Inn too, would
4 that be correct?

5 A Yes, sir, there was and when I had completed
6 processing the area off of Dave Lyles Boulevard I then
7 proceeded to the Holiday Inn and found a vehicle there.
8 The vehicle was only towed back to the Rock Hill Police
9 Department and put into their bay or their sally port.
10 This is because at that time of night the dew had already
11 fallen. The dew causes a problem with fingerprints and you
12 all are familiar with fingerprinting by using powder.
13 Well, powder adheres to water, so that an object would
14 have to be dry in order to process that for latent
15 fingerprints. In order to help dry the vehicle, we needed
16 to get it out of the weather outside so that the dew could
17 leave.

18 Q Going back now to the items that you have identified,
19 these were the ones that were recovered by you on Dave
20 Lyle Boulevard, is that correct?

21 A Yes, sir, they were.

22 MR. POPE: Your Honor, I move State's Exhibit 65 into
23 evidence.

24 MR. SCHUSTERMAN: May we approach?

25 (Bench conference off the record.)

1 MR. SCHUSTERMAN: Thank you, Your Honor.

2 THE COURT: Without objection, it be received. Is that
3 correct?

4 MR. SCHUSTERMAN: That's correct, Your Honor, thank
5 you.

6 (State's Exhibit 65 marked and filed.)

7 Q Mr. Gainey, you had indicated that you had found seven
8 of these cases by eyesight and one with a metal detector,
9 is that correct?

10 A Yes, sir, that is correct.

11 Q I am going to ask you if you could to step down and,
12 first, if you could maybe open - are each at least the
13 identical type - could you show the casings or some of the
14 casings to the jury and explain what you actually
15 recovered there and what they are?

16 A This is a fired cartridge case. This is part of a
17 component of a cartridge, a cartridge being the case, the
18 bullet, the powder and the primer. This particular one is
19 a fired cartridge case. It means it has been fired. This
20 one is a 9 millimeter Lugar caliber. These cartridge cases
21 were laying on the ground. There was an area that I find
22 two cartridge cases that are on the roadway right at the
23 intersection of Dave Lyle and Dave Lyle Lumber Road.
24 There's another six cartridge cases that are laying in
25 close proximity to one another near a large pool of blood

1 in the median area of Dave Lyle Boulevard.

2 Q Mr. Gainey, would State's Exhibit 24 through 27 would
3 that aid you in explaining to the jury the locations and
4 the designations of where these were recovered?

5 A Yes, sir, it would. These photographs have a series of
6 five cones here. This is the five cones that I referred
7 to. I found five that were together and I picked them up
8 and used a metal detector and found one more cartridge
9 case. This cluster of cones right here located - and this
10 is the large pool of blood that I referred to earlier
11 right at the cones. And the reason why I had to move the
12 cones and why you only see five cones instead of six cones
13 when there are actually six cartridge cases there is that
14 if you are going to use the metal detector if there's any
15 other metal around, it will cause the detector to go off.
16 Also, the metal detector has to be held at approximately
17 four to six inches above the ground. As you can tell, the
18 cones are also in my way, so I have to move the cones in
19 order to sweep with the metal detector. So once I removed
20 these cones, I made by sweep with the metal detector and
21 found one more cartridge case, which bring a total of six
22 cartridge cases near this pool of blood. There are two
23 other cartridge cases, which are approximately ten yards
24 away and they are represented by these two cones at the
25 far end. These two cones that are together. There is one

1 more cone in the photograph, this one, which was a key
2 that was located right here.

3 Q Mr. Gainey, were you able to make any determination of
4 any connection with this case of the key?

5 A No, sir, I was not. The key may have just been there,
6 but it was marked and it is in the photograph. So that
7 would be what this cone was put there for.

8 These two are the two cartridge cases approximately
9 ten yards away. This is the cluster, the five cones, but
10 there's one more cartridge case for a total of six cones
11 near the large pool of blood.

12 This photograph shows the two cartridge cases on the
13 roadway, these two cartridge cases, and in relative
14 position to the front of the police cruiser.

15 Again, these are the two cones marking the two
16 cartridge cases in the position of in front of the police
17 cruiser here and this is the cone that represents the key.
18 These two are the cartridge cases.

19 This is another photograph has the same two cones in
20 front of the vehicle and the relationship to the pool of
21 blood. Again, the large pool of blood is here. The two
22 cones represent the cartridge cases here in front of the
23 police vehicle.

24 This is a photograph taken from in front of the police
25 vehicle and in front of this would be back towards -- my

1 back would be towards I-77 facing towards Rock Hill down
2 Dave Lyle Boulevard except that I would be in the
3 eastbound lane. Again, here are the two cones, shows the
4 relationship to the front of the police vehicle; the five
5 cones they actually represent six cartridge cases found in
6 that area.

7 Q Mr. Gainey, could you explain -- excuse me.

8 A Again, here are the two cartridge cases found on the
9 roadway in front of the police vehicle and these are the
10 five cones. There are actually six cartridge cases found
11 in that area. And again the pool of blood is right here at
12 this point.

13 THE COURT: Mr. Pope, before you go any further, ---

14 MR. POPE: Yes, sir.

15 THE COURT: --- I notice he has not been referencing
16 the exhibit number ---

17 MR. POPE: Yes, sir.

18 THE COURT: -- if he could in the same order in which
19 he went through the photographs go through and tell us the
20 order of the photograph by exhibit number.

21 If you could. If you can't go through them in the
22 same order, let me know and just put what exhibits they
23 were in and a brief description for the record.

24 WITNESS GAINNEY: I've got one left, Your Honor.

25 THE COURT: Why don't you do that and then go back.

1 WITNESS GAINY: Give all of them?

2 THE COURT: That would be good. I just don't want to
3 get away from this portion without doing that.

4 MR. POPE: Yes, sir.

5 A The last photograph just shows - this is the Road Dave
6 Lyle Lumber Road; it shows the intersection of Dave Lyle
7 Lumber Road and Dave Lyle Boulevard. It shows the police
8 vehicle and the two cones representing the two cartridge
9 cases found in the roadway. And that would be State's 27.

10 Again, this is Dave Lyles Lumber Road, the road sign,
11 this is the intersection it says Dave Lyle Boulevard, the
12 one that the police vehicle was pointed east on Dave Lyle
13 Boulevard, and these two cones represent the two cartridge
14 cases found separate from the six near the pool of blood
15 that are in front of the police vehicle.

16 The photograph, as I explained earlier, taken from the
17 front, that is, my back towards I-77 facing towards Rock
18 Hill. It's State's Exhibit 26. A photograph showing the
19 two cones representing the two cartridge cases in front of
20 the police vehicle is State's Exhibit 25. A photograph
21 showing five cones near the pool of blood. The two cones
22 representing two cartridge cases I found to the front of
23 the police vehicle and the front of the police vehicle is
24 States Exhibit 24. And a photograph showing the two cones
25 representing the two cartridge cases in front of the

1 police vehicle, State's Exhibit 23.

2 Q Mr. Gainey, have a seat, please. I show you what's
3 been marked into evidence as State's Exhibit 43, which is
4 a weapon that was recovered. Could you explain to the jury
5 how the cartridge casings how they come about, how they
6 come to be outside the weapon?

7 THE COURT: If you use the gun for any demonstrative
8 purposes, keep it pointed towards the floor.

9 WITNESS GAINNEY: Your Honor, the gun is unloaded. I
10 checked the chamber and it is unloaded. The magazine is
11 not in the gun.

12 THE COURT: I appreciate that. I think it still gives
13 people a chill if it is pointed towards them. Remember
14 those circumstances.

15 WITNESS GAINNEY: Yes, sir. Your Honor, the magazine
16 is also unloaded, it has no cartridges in it.

17 Q What I am asking you to do is to explain to the jury
18 how you get from a bullet that has not been fired to these
19 casings? How do they get outside the weapon? If you could
20 explain revolver versus automatic.

21 A May I approach the jury?

22 Q Yes, sir.

23 A If I may, this is a magazine and as you can see it has
24 a -- this magazine is unloaded, that is, that there are no
25 cartridges in this magazine. A lot of times we call

1 cartridges bullets and, technically, this is a cartridge
2 that has a bullet, which is the part of the cartridge that
3 is expelled from the firearm. It is the thing that is
4 pushed out. It's the lead. And you see a cartridge case,
5 which is the brass portion. This is an unfired cartridge.
6 It has a primer, the silver thing in the back is a primer.
7 The primer has an explosive compound in it. When the
8 firing pin or striker hits it, it causes an explosion, a
9 small explosion, that then ignites the powder in this
10 cartridge. As the powder burns, gases builds up. It
11 forces the bullet out of the cartridge and down the barrel
12 of the firearm. That's basically how a cartridge works.

13 This cartridge is loaded into a magazine. It's loaded
14 into a magazine like that (demonstrating). The cartridge
15 is placed in, pushed down, right here at the wide spot and
16 pushed back and it's locked in there. As the firearm is
17 charged, this particular firearm, to charge it, you pull
18 the slide back and then let it go. It's charged. Okay?
19 The firearm is charged. There is a bullet now in the
20 chamber and it's ready to be fired. Also, the hammer,
21 which stays back normally, in this particular case the
22 magazine is out, the hammer is not staying back. It will
23 also not fire unless the magazine is in it. This gun once
24 a cartridge is placed in the chamber and it is charged,
25 the hammer is back like this, it is ready to be fired.

1 This is a safety. The safety must be taken off -- excuse
2 me, the magazine must be inserted for it to fire. When it
3 is fired, when the hammer hits the firing pin, the firing
4 pin hits the primer that I spoke of earlier, it causes the
5 gases to expand and the bullet to go down the barrel, at
6 that time this slide starts to move backwards. As it moves
7 backwards, there is a part on this gun known as an
8 extractor. The extractor grips this little recess in the
9 cartridge, in the cartridge case, and pulls it back as the
10 slide is going back and then the cartridge case hits the
11 ejector and the ejector causes the cartridge, the fired
12 cartridge, to be expelled out of the firearm. It is
13 normally expelled out of the firearm slightly to the
14 right, up and back (demonstrating).

15 Q Agent Gainey, the casings -- is that right, casings?

16 A Cartridge casings, yes.

17 Q Cartridge casings are fired cartridge casings that
18 have been expelled from a gun, is that right?

19 A Yes, sir.

20 Q Let me ask you? What material is that made of? Is it
21 brass or --

22 A It's brass, yes, sir.

23 Q In your experience, when one is fired out of the gun,
24 what -- do the casings fall right next to where you are
25 shooting or is there any way to ascertain that? I think

1 you said up and back, but is there any way to ascertain?

2 A It is difficult to determine exactly where the
3 cartridge casing is going to fall. It depends on whether
4 it is the first cartridge or the last cartridge that's
5 fired. It also depends upon the type cartridge, that is,
6 the manufacturer and also whether it's a -- how the
7 cartridge is loaded, that is, how much power that it has.
8 So it depends. It also depends upon the surface it hits.
9 If it hits a harder surface, it's going to bounce further.
10 But if it hits a softer surface, it doesn't preclude any
11 bouncing. The bouncing wouldn't be as far and it's not
12 going to go as far from the firearm on a softer surface.

13 Q Agent Gainey, when you worked that area, at that time
14 Brent McCants was already taken from the scene, is that
15 correct?

16 A That's correct.

17 Q Okay, so the evidence you yourself recovered would
18 have been the evidence that you have indicated to the jury
19 at that particular scene?

20 A At that particular scene the only evidence I recovered
21 was the fired cartridge cases.

22 Q And then you reference next going and making a
23 determination on the suspect vehicle that was located at
24 the Holiday Inn, is that correct?

25 A Yes, sir, I left from Dave Lyle and went to the

1 Holiday Inn and found the Buick vehicle.

2 Q When that vehicle was located, you told the jury, I
3 show you State's Exhibit 35, 37 and 38, --

4 A Again, these are photographs taken by me. These
5 photographs depict a grayish colored Buick. These are
6 photographs that were taken in the parking lot at the
7 Holiday Inn.

8 Q Okay, I notice some evidence tape there. Was that
9 placed there by you?

10 A No, sir, when I arrived, the vehicle had been found
11 prior to this point by the Sheriff's Department or the
12 Police Department and the banner tape again was placed
13 around the vehicle and there were officers there that were
14 not allowing anyone in or out of that area.

15 Q And once you were there you made the call as a part of
16 your job to have the car moved down as you have explained
17 to the jury to get it out of the dew, is that correct?

18 A That's correct. We had the vehicle moved to the sally
19 port area of the Rock Hill Police Department so that it
20 could be under cover.

21 Q At some point later -- well, I assume later that
22 evening after this is now going into the morning hours of
23 the 26th, is that correct?

24 A Yes, sir, it is.

25 Q You had the opportunity to go down and work with David

1 Black in processing that vehicle, is that correct?

2 A Yes, sir, we did. We processed the area again for
3 latent fingerprints and we processed the inside and the
4 outside of the vehicle for latent fingerprints.

5 Q I show you State's Exhibit 66 for identification. Take
6 a look at that. Open the bag and see if you can identify
7 that.

8 A Yes, sir, this is a gear shift knob which was removed
9 from the Buick, the gear shift knob that is on the collar
10 of the steering column. This was removed by Agent Black
11 and myself and taken back to SLED for further processing.

12 Q If you dust an area for prints or you have items like
13 that that you take back and then you or Agent Black or
14 another officer will take it to the lab and make
15 comparisons, is that accurate?

16 A Yes, sir, what we did in this particular case was we
17 used fumes to help us develop fingerprints. We used a
18 cynacolate (phonetically) or super glue, which fumes are,
19 and actually it adheres to some latent fingerprints. As I
20 said earlier, a latent fingerprint is a fingerprint that
21 is not readily visible to the human eye. And some of these
22 take some form of processing or bringing out in order to
23 make visible. In this particular case we took super glue
24 and used the fumes to adhere to the print and then took
25 and dusted with some black powder, some black carbon type

1 powder. We found an area of ridge detail on this. Because
2 of its position on the steering column, it could not be
3 readily photographed. Now we could also use some tape in
4 some cases to get the fingerprint off; however, we decided
5 to take this piece off of the vehicle and take it back to
6 SLED for processing, which both Agent Black and I did.
7 Agent Black took it and ultimately completed the
8 processing on it and made comparisons.

9 Q Would you explain where off the vehicle -- where it
10 would have been as far as the steering console?

11 A It's on the steering column. It would be the gear
12 shift knob right behind the steering wheel.

13 MR. POPE: I move State's Exhibit 66 for
14 identification into evidence.

15 MR. SCHUSTERMAN: Without objection.

16 THE COURT: Be received.

17 (State's Exhibit 66 marked and filed.)

18 Q Agent Gainey, it is my understanding that this item
19 and all the other items that you recovered that you and
20 Agent Black transported them back to SLED for testing both
21 in the fingerprint lab, but other various labs, firearms
22 and trace, various labs such as that?

23 A Yes, sir, as I explained earlier our job is not merely
24 to develop items of evidence, but also we take the items
25 of evidence back to the SLED laboratory. Within the SLED

1 laboratory there are various smaller laboratories, for
2 instance, the fingerprint laboratory, the firearms
3 laboratory, the trace laboratory and we send the evidence,
4 we route it, to its proper place. In the case of the
5 gearshift knob, that would have been -- we would have kept
6 that and processed it, which Agent Black did. Other
7 evidence is sent to the proper laboratory for analysis.

8 Q And I believe, in addition, you also would receive
9 items if law enforcement had other items such as the
10 walkie-talkie and the walkie-talkie case that they would
11 bring down and you would process them there at SLED, is
12 that correct?

13 A Yes, sir, we would.

14 Q After processing the vehicle, did you recover items
15 out of the ashtray also?

16 A Yes, sir, there were some cigarette butts that were
17 recovered out of the ashtray.

18 Q And, again, any items that you all recovered you and
19 Agent Black took to SLED, is that right?

20 A Yes, sir, we did.

21 Q After processing the vehicle did you have an
22 opportunity to, now I guess this would be on into the
23 morning of the 26th, the next morning, to attend the
24 autopsy of Brent McCants?

25 A Yes, sir, we did and that would have been around eight

1 o'clock or eight-thirty in the morning. We had been there
2 all night and worked on through the morning and now we've
3 gone to the autopsy here in Rock Hill or in Rock Hill.

4 Q And that morning at the autopsy did you have the
5 opportunity to do what's called an atomic absorption test
6 on Mr. McCants' hands?

7 A Yes, sir, I did.

8 Q Mr. Gainey, just briefly, when I say you did the test,
9 actually, you collect the evidence and they analyze it in
10 Columbia, is that correct?

11 A Yes, sir, that's correct.

12 Q Tell the jury basically what that test is or what your
13 collection of it is and what you did? I show you State's
14 Exhibit 67 for identification and ask if you can identify
15 that.

16 A Yes, sir, I can. This is a heat seal bag which
17 contains the gun shot residue collection kit; it has my
18 name on it. This is the kit that I used to collect or
19 attempt to collect any gun shot residue from the hands of
20 Mr. McCants. This was done in the autopsy room in Rock
21 Hill and it requires, it has a stub, a metal stub, which
22 has a tacky substance on it, which is similar to the back
23 of a post-it note, that kind of tack is placed on this
24 metal stub. The metal stub is placed into a plastic
25 receiver and the tacky side is then just dabbed on the

1 area of the palm and what it does is that picks up any of
2 the gun shot residue particles. That's placed in a
3 container, which clicks shut and placed into an evidence
4 bag and concealed with evidence tape, and take that to
5 SLED and that goes to the trace department. In this
6 particular case it was analyzed by Joe Powell at the trace
7 department.

8 Q Okay and this is the actual tacky metal - this
9 contains the things where you actually did Brent McCants'
10 hands?

11 A Yes, sir.

12 MR. POPE: State's Exhibit 67 for identification, Your
13 Honor, I move into evidence.

14 MR. SCHUSTERMAN: Without objection.

15 THE COURT: It be received without objection.

16 (State's Exhibit 67 marked and filed.)

17 Q Mr. Gainey, we will have Mr. Powell to get into the
18 test. My brief question would be the purpose of doing the
19 deceased's hands was what? What was the purpose of you
20 requiring this test?

21 A To determine if he had fired a weapon, fired a
22 firearm.

23 Q Did you also recover some other evidence there at the
24 autopsy?

25 A Yes, sir, I did. I was present during the autopsy and

1 recovered and took possession of the two bullets that were
2 found in Mr. McCants, one from the head and one from the
3 abdomen at the autopsy.

4 Q I show you State's Exhibit 68 for identification. I
5 ask if you could look at that and tell me if you can
6 identify it, please.

7 A Yes, sir, I can.

8 Q Is that the items you discussed that you recovered at
9 the autopsy?

10 A Yes, sir, they are.

11 MR. POPE: State's Exhibit 68 for identification I
12 move into evidence, Your Honor.

13 MR. SCHUSTERMAN: Without objection.

14 THE COURT: Without objection, received.

15 (State's Exhibit 68 marked and filed.)

16 Q Again, Agent Gainey, the items that were recovered at
17 autopsy would be an atomic absorption test and the bullet
18 fragments would have been transported to SLED to be
19 analyzed also?

20 A Yes, sir, they were. The bullets were turned over to
21 Agent David Collins of the Firearms Department to be
22 compared with this firearm and the atomic absorption test,
23 as I stated earlier, was turned over to agent Joe Powell
24 of the Trace Department.

25 Q And as far as the evidence of making prints or that

LAWRENCE EUGENE GAINY, JR.

CROSS

1 type of identification that would have been done in your
2 laboratory by David Black?

3 A Yes, sir, that's correct.

4 MR. POPE: I beg the court's indulgence.

5 Q Answer any questions the defense may have.

6 CROSS EXAMINATION

7 BY MR. SCHUSTERMAN

8 Q Mr. Gainey, how soon were you on the scene on Dave
9 Lyle Boulevard after this had occurred?

10 A I arrived sometime between 11:00 and 11:30 -- I
11 arrived between 11:30 and 12:00 I believe, so I don't know
12 exactly when this occurred.

13 Q Was Mr. McCants, Officer McCants, still on the scene
14 when you arrived?

15 A No, sir, the body had been moved. They had moved
16 possibly to the hospital. At the autopsy there were tubes
17 that were in him, so I assume he was taken to the
18 emergency room.

19 Q When you arrived at the scene on Dave Lyle Boulevard,
20 was the scene corded off?

21 A The scene as I described earlier it had banner tape
22 around it and there were no persons inside the banner tape
23 when I arrived.

24 Q And once you arrived on the scene even though this was
25 a joint investigation between the Rock Hill Police

1 Department and the York County Sheriff's Department, does
2 SLED take precedence over them? Does SLED take over the
3 scene in terms of gathering evidence?

4 A Well, we are called to work a crime scene and in this
5 particular case SLED does not usurp the case. We don't go
6 in and push those folks out of the way. We join with them
7 in trying to process the evidence, so we don't push them
8 out of the way so to speak. We work with them in
9 collecting the evidence. Often times persons that are on
10 the scene have information or have knowledge of what
11 occurred that we don't have. We find it useful and it is
12 most productive to work with people from local
13 jurisdictions in order to try and find the most evidence
14 that we can find.

15 Q Other than the eight cartridges - you found eight
16 cartridges, is that correct, at the scene?

17 A As I explained earlier, I found eight cartridge cases;
18 those are fired cartridge cases.

19 Q Eight fired cartridge cases you found.

20 A Yes, sir.

21 Q And a key?

22 A Yes, sir.

23 Q And I understand you later discovered the key to your
24 knowledge bears no relevance to this situation.

25 A That's correct.

1 Q Other than those items, was anything else - did you
2 either personally find anything else from the scene that
3 night or did somebody turn over items to you that they had
4 either discovered before or after you were there that were
5 on the scene that night?

6 A There were items that were turned over to Officer
7 Black and I later on that night.

8 Q Were they from the scene, that corded off area?

9 A The things that were from that area were items that
10 would have been on the deceased body of Officer McCants.
11 We received his bullet resistant vest and received his Sam
12 Brown belt, his gear.

13 Q And that was it from the scene that night?

14 A From Dave Lyles Boulevard to the best of my
15 recollection other than the clothes that he was wearing,
16 that sort of thing.

17 Q That would be it then?

18 A From the scene at Dave Lyles Boulevard that is the
19 best of my recollection.

20 Q Now when you left the scene on Dave Lyle Boulevard, is
21 it my understanding that you went then to the Holiday Inn
22 parking lot to the car?

23 A Yes, sir, I did. Agent Black went to the Rock Hill
24 Police Department and he collected items there that may
25 have been from the scene, but that's all that I collected

1 while I was there. Then I went to the Holiday Inn parking
2 lot and looked at the vehicle.

3 Q Did Agent Black ever come out to the parking lot at
4 the Holiday Inn?

5 A No, sir, he did not.

6 Q He was not present then?

7 A No, sir.

8 Q Did you do anything to secure the vehicle once you
9 arrived at the Holiday Inn?

10 A The vehicle was secured when I reached the Holiday
11 Inn. There was banner tape around the vehicle at the
12 Holiday Inn and there was a deputy, as I explained
13 earlier, on the scene and actually it encompassed - there
14 were other vehicles there that the banner tape didn't let
15 anybody in or out of a couple of vehicles that were there,
16 so the scene appeared secure to me when I arrived.

17 Q In your did you say seventeen years of law
18 enforcement?

19 A Yes, sir.

20 Q Was it corded off properly?

21 A Yes, sir, it was.

22 Q You thought the area was secure?

23 A Yes, sir, I did.

24 Q Should a law enforcement officer have stayed there
25 with the vehicle to secure it?

1 A To my knowledge they did. There was an officer there
2 on the scene when I arrived.

3 Q And that would be proper procedure?

4 A Yes, sir.

5 Q Okay. And may I assume that the reason is that you
6 are concerned about somebody tampering with a piece of
7 evidence and you want to keep it in that state until
8 people such as yourself can process that piece of
9 evidence?

10 A That would be correct, yes, sir.

11 Q You indicated that you chose not to process the car at
12 the Holiday Inn and you said because it was wet?

13 A That's correct, the dew had fallen.

14 Q Had the dew not fallen, could you normally not process
15 a piece of evidence such as a car at the scene while it
16 was still at the parking lot?

17 A It's possible, it depends upon several different
18 factors. It depends upon whether the weather looks to me
19 inclement or not, whether there is sufficient area. We
20 like to process things that we can as soon as we can get
21 to it. In this case the dew was on it and it had to be
22 dried before we could process it, so that's why it was
23 moved to the sally port area of the Rock Hill Police
24 Department.

25 Q And would you please -- were you part of the team or

1 did you do it alone, the person who processed the car -
2 did you ultimately process this vehicle?

3 A Agent Black and myself processed the vehicle.

4 Q Once again, please explain to me what you do when you
5 process the vehicle how you go through the vehicle and
6 determine it has now been processed?

7 A We look at the vehicle, take photographs of the
8 vehicle and look for any physical evidence that may be
9 there, collect physical evidence that we see, and also
10 then we process it for latent fingerprints and as I stated
11 earlier, we use various techniques including super glue
12 and powders in order to develop latent fingerprints. And
13 in this particular case we did develop two latent
14 fingerprints, one off of the gear shift knob and also one
15 off of the inside door handle.

16 Q Is it a comprehensive process, a very detailed process
17 this processing?

18 A We process it from information that we have available.
19 We process it and try to get as detailed as possible.

20 Q You indicated in your demonstration to the jury about
21 the gun that a 9 milimeter gun the cartridge casings when
22 they are expelled by the firearm that they go as a general
23 rule to the right, up and back. Is that a correct
24 statement?

25 A As a general rule, but you have to also realize that I

1 don't know what position and it depends on what position
2 the gun is being held in. If a person, for instance, were
3 to hold the gun sideways and some people shoot that way,
4 it may go in a different direction. So that's very
5 general. If you hold the gun vertically so that you are
6 using the sights on the top of the gun, that's the general
7 direction that it will go and this can vary some from
8 firearm to firearm and it can also vary some from
9 ammunition to ammunition.

10 Q And when you say it can vary from firearm to firearm,
11 I assume it can vary from manufacturer to manufacturer?

12 A It can vary some, but generally in weapons of this
13 type that have an extractor on one side, the ejector on
14 the other side, it tends to extract the bullet back, eject
15 and knock it up, out and slightly back and all of that's
16 to the right side. Then, again, it depends on how the gun
17 is being held. If the ejection port is held upside down or
18 if the gun is pointed down, then the ejection powder can
19 be different.

20 Q Have you ever fired that type weapon?

21 A I have fired that type weapon, but I have never fired
22 this particular weapon.

23 Q This particular weapon to your knowledge has this
24 particular weapon been fired by some testing process?

25 A Yes, sir, it has been test fired to gain ammunition

1 components in order to determine if the bullets, which I
2 recovered from the autopsy, and the cartridge cases, which
3 I recovered from the scene on Dave Lyle Boulevard, if they
4 matched this firearm.

5 Q Now do I understand correctly that once you gathered
6 the evidence either directly or sometimes as I think
7 Solicitor Pope asked you is passed on to you by another
8 law enforcement agency they bring it to you you route it
9 then to the appropriate testing facility?

10 A Yes, sir, that's correct.

11 Q Are all those testing facilities where they are
12 routed, are they all affiliated with SLED or are they
13 private companies that have a contractual relationship
14 with The State?

15 A All of these are at SLED. They are laboratories within
16 the SLED Forensic Services Laboratories. They are divided
17 into several different units and I would route it to the
18 correct unit for analysis.

19 Q Do you do any testing personally? Do you perform
20 tests?

21 A Presently I am employed with the Firearms Department
22 so that I do on a daily basis perform firearms testing.
23 Prior to that I worked with the Latent Print Crime Scene
24 Department at SLED and I did testing for latent prints,
25 footwear, tire tracks, that type of thing, made

1 comparisons and rendered opinions.

2 Q In September of 1992 when this incident occurred, were
3 you working in that Latent Fingerprint Department?

4 A Yes, I was.

5 Q Are you the person who after you tried to obtain
6 fingerprints off of various items that have been admitted
7 into evidence are you the person who tested those
8 fingerprints and compared those fingerprints?

9 A Officer Agent Black was the person that actually
10 compared, made the initial comparison, and also did the
11 processing of those items. I at that time would have been
12 the senior agent and I would have been the person that
13 looks at that work because everything at the SLED
14 laboratory we have a micro-comparison of any fingerprints
15 that would have been developed and the same thing with the
16 Firearm Department. There is a micro-comparison that
17 occurs. That is an internal rule. Yes, I did look at it.
18 He is the one that developed it, rendered the opinion, but
19 I have looked at the evidence, yes, sir.

20 Q So you look at it afterwards and corroborate his
21 opinion?

22 A I look at what he's got and I render - I have an
23 opinion and our opinions must be the same.

24 MR. SCHUSTERMAN: With the court's indulgence?

25 Q One more question, Mr. Gainney, your familiarity with

1 this 9 -- it is 9 milimeter semi-automatic weapon, is that
2 correct?

3 A It is a semi-automatic firearm that is chambered in a
4 9 milimeter Lugar caliber, yes, sir.

5 Q Is there a standard magazine that goes into the
6 handle? Is it always the same size, the magazine that goes
7 in there?

8 A I'm not sure I understand your question.

9 Q Okay, how many bullets fit in the magazine to that
10 gun?

11 A I did not test the magazine to see how many cartridges
12 actually fit into the magazine. These various firearms due
13 to weak springs or they may be just over-sized magazines
14 may be rated for one thing and may actually hold something
15 else. For instance, you could have a firearm that is
16 designed to carry fifteen cartridges that may only carry
17 fourteen or it may carry sixteen. You may be able to put
18 sixteen cartridges in it. But I did not test this
19 particular magazine, so I don't know.

20 Q You may be giving me too finite an answer - what I am
21 saying is assuming that that magazine held eight
22 cartridges, do they make - can you buy another magazine
23 for that gun that holds fifteen cartridges?

24 A I don't know that there's a specific manufacturer that
25 makes a fifteen round magazine for this particular

1 firearm. It may be that there are some magazines that are
2 available that may carry or may be able to carry an
3 additional or two additional rounds in the magazine. I
4 don't know that fifteen would be made for this particular
5 firearm.

6 Q How powerful a weapon is that? Is there a rating to
7 weapons in terms of the pounds of pressure that are
8 exerted when the actual bullet is ejected from the
9 firearm?

10 A There is a rating, a muzzle velocity rating. I did not
11 check this gun for what its muzzle velocity with that
12 particular type of ammunition would be. But what do you
13 mean by how powerful?

14 Q I would just curious as to how many pounds
15 approximately how many pounds of pressure is coming out of
16 the -- is being ejected when the bullet comes out.

17 A I don't know. Possibly David Collins may have
18 performed that test. I did not.

19 Q Thank you. I appreciate it, Officer Gainney.

20 MR. POPE: I ask this witness be excused.

21 MR. SCHUSTERMAN: Without objection, Your Honor.

22 THE COURT: Feel free to leave.

23 Call your next witness.

24 MR. POPE: The State would call David Black.

25

DAVID BLACK

DIRECT

1 DAVID BLACK, being duly sworn, testified
2 as follows:

3 DIRECT EXAMINATION

4 BY MR. POPE

5 Q Mr. Black, if you would, state your name and
6 occupation for the jury, please.

7 A Yes, sir, my name is David Warren Black B-l-a-c-k. I'm
8 employed with the South Carolina Law Enforcement Division
9 better known as SLED.

10 Q What particular area are you involved in with SLED,
11 Mr. Black?

12 A I'm a latent print examiner assigned to the Latent
13 Print Crime Scene Department.

14 Q And how long have you been with the State Law
15 Enforcement Division?

16 A I've been with SLED for approximately four years.
17 Prior to SLED I was employed with the Richland County
18 Sheriff's Office for almost seven years.

19 Q Mr. Black, were you working in the Crime Scene Lab,
20 the Fingerprint Lab, back in 1992 when Brent McCants was
21 killed?

22 A Yes, sir, I was.

23 Q Did you have an opportunity to come up with Larry
24 Gainey and other SLED agents and process the various crime
25 scenes for various evidence in this case?

DAVID BLACK

DIRECT

1 A Yes, sir, I did.

2 Q Mr. Gainey has explained what the Crime Scene Lab
3 does, what the Fingerprint Lab does, would you tell the
4 jury what your qualifications are that allow you to
5 perform those type tests?

6 A Yes, sir, I have an Associate of Arts Degree in
7 Criminal Justice from Florence-Darlington Technical
8 College. I transferred to the University of South Carolina
9 in Columbia where I completed by degree and received a
10 Bachelor of Science Degree in criminal justice with a
11 minor in sociology. I have attended the South Carolina
12 Criminal Justice Academy where I was certified in basic
13 law enforcement. I have also attended the South Carolina
14 Criminal Justice Academy and received training as a basic
15 fingerprint examiner and law enforcement photography,
16 detective level I and other courses that deal with the
17 processing of evidence in crime scene and also the
18 processing of evidence for latent prints. I have also
19 been instructed by the Federal Bureau of Investigation in
20 advanced latent techniques by Special Agent Dwayne
21 Johnson. I'm also a member of the International
22 Association for Identification, which is a professional
23 organization that keeps through training seminars and
24 publications examiners up to date in the field of latent
25 prints, how to process evidence and how to make latent

DAVID BLACK

DIRECT

1 comparisons. Also as part of my training I have attended
2 the Federal Bureau of Investigation in Quantico, Virginia,
3 with footwear and tire tread training. I have also been an
4 apprentice with senior agents who were court qualified
5 agents, Special Agent Larry Gainey, Special Agent Steve
6 Derrick and Special Agent John Crissy. Also I was latent
7 print examiner and crime scene technician with the
8 Richland County Sheriff's Department for three years of
9 the seven that I was employed with them and contained the
10 same duties that I now have at SLED.

11 Q Mr. Black, have you had an opportunity to testify as
12 an expert in these type matters previously?

13 A Yes, sir, I have.

14 Q Approximately how many times?

15 A In the area of latent prints alone in approximately
16 over six years forty times.

17 MR. POPE: Your Honor, at this time I move that Mr.
18 Black be qualified as an expert in latent prints and crime
19 scene analysis.

20 MR. SCHUSTERMAN: I have no objection.

21 THE COURT: Without objection he is qualified as to
22 latent prints and crime scene analysis. Another expert as
23 I explained earlier.

24 Q Mr. Black, it is my understanding that you came up
25 with Mr. Gainey, basically you all were a crime scene

DAVID BLACK

DIRECT

1 team, you worked together in various aspects of this
2 particular case, is that correct?

3 A Yes, sir, that is correct.

4 Q And, also, my understanding is that you worked from
5 the evening Brent McCants was killed on in through the
6 next morning before leaving, is that correct?

7 A Yes, sir, I received a call on September 25, 1992, at
8 approximately 10:45 PM and I did not leave the Rock Hill
9 area until almost two o'clock in the afternoon the next
10 day.

11 Q And when you finally did leave Rock Hill, there were a
12 number of items of evidence that you received both that
13 you and Officer Gainey had collected and that you received
14 from other individuals?

15 A That is correct.

16 Q Did you transport all of those back to SLED - I'm
17 going to go through those, but did you transport those
18 back to SLED and turn them in to be analyzed by your lab
19 and other labs?

20 A Yes, sir, I did.

21 Q Any of the evidence that you transported back did you
22 in any way tamper with, change or alter in any form?

23 A No, sir, I did not.

24 MR. POPE: Your Honor, I beg the court's indulgence.
25 This would be for the purpose of tying up the chain, so

DAVID BLACK

DIRECT

1 I'm just going to go through the various items that was
2 transported back to SLED.

3 Q I'll just begin with State's Exhibit 43, this would be
4 the pistol and the unspent rounds. I ask if you could
5 look and identify that. Are they items you transported
6 back?

7 A Yes, sir, I can. All of these items bear either on
8 the item of evidence itself or the container it was in
9 with the SLED laboratory number, their item number and my
10 initials DWB.

11 Q And again this, along with other items, you
12 transported for various other testing, is that correct?

13 A Yes, sir, that is correct. I transported those
14 particular items not only for latent processing, but also
15 for processing in our Firearms Department.

16 Q Okay. I show you State's Exhibit 68, which were the
17 items that were recovered at the autopsy by Larry Gainey.
18 Was that also transported to SLED?

19 A Yes, sir, it was. I was present also at the autopsy
20 with Special Agent Gainey and upon completion of the
21 autopsy, we were together and I took all of the evidence
22 to Columbia with me.

23 Q So every item that Agent Gainey had received
24 ultimately you turned it into SLED, is that correct?

25 A That is correct.

DAVID BLACK

DIRECT

1 Q State's Exhibit 67, the atomic absorption test that
2 was taken at autopsy?

3 A That is correct.

4 Q State's Exhibit 66, the handle that was recovered from
5 the suspect vehicle?

6 A That is correct.

7 Q State's Exhibit 53, which would be clothing and
8 personal effects of Mar-Reece Hughes?

9 A Yes, sir, that is correct.

10 Q State's Exhibit 42, the clothing of Dwayne Eric
11 Forney?

12 A That is correct.

13 Q State's Exhibit 55 would be the shoes of Mar-Reece
14 Hughes?

15 A That is correct.

16 MR. POPE: Your Honor, I can continue. I don't know of
17 a more efficient way to do this. I'll be glad if the court
18 has a suggestion to continue, but I will go through every
19 item contained in the chain.

20 THE COURT: If you want to, you can go through them.

21 MR. SCHUSTERMAN: Or, Your Honor, if you want to if we
22 take a brief recess and myself and Mr. Pope and Agent
23 Black go through it, we may be able to stipulate to them
24 and not go through this regimen.

25 MR. POPE: Your Honor, I think by the time you sent

DAVID BLACK

DIRECT

1 the jury out, I could finish this up.

2 MR. SCHUSTERMAN: That will be fine.

3 Q Mr. Black, this is State's Exhibit 28, the clothes
4 recovered from Brent McCants?

5 A Yes, sir, that's correct.

6 Q State's Exhibit 47 would be Mar-Reece Hughes' blue
7 jacket?

8 A That is correct also, sir.

9 Q State's Exhibit 31 Brent McCants' belt with various
10 equipment.

11 A That is correct.

12 Q State's Exhibit 30 would be Brent McCants' service
13 revolver.

14 A That is correct.

15 Q State's Exhibit 29 would be the vest recovered off of
16 Brent McCants?

17 A Yes, sir, that's correct.

18 Q In addition to those items did you also have the
19 opportunity to take back some cigarette butts that you
20 recovered from the car?

21 A Yes, sir, I did. I was present when these cigarette
22 butts were recovered from the suspect vehicle.

23 Q Do you have them here with you today also?

24 A Yes, sir, they are right here.

25 Q I am going to ask if you could open this and remove

DAVID BLACK

DIRECT

1 that container there.

2 A (Witness complied.)

3 Q Those are the cigarette butts that you recovered from
4 the ashtray of the suspect vehicle or were recovered in
5 your presence?

6 A Yes, they were recovered in my present by Special
7 Richard Hunton, who was also one of the members who
8 responded with us to Dave Lyle Boulevard.

9 MR. POPE: Your Honor, that would be State's Exhibit
10 69 for identification. I move that it be admitted into
11 evidence.

12 THE COURT: Any objection?

13 MR. SCHUSTERMAN: Without objection, Your Honor.

14 THE COURT: It be received.

15 (State's Exhibit 69 marked and filed.)

16 Q Agent, in addition to the items that you recovered and
17 took back to Columbia, some of which were recovered from
18 the vehicle, some were turned over to you by other
19 officers, did you also lift some prints or what do you
20 call the tag or the card that you lift the prints off?

21 A The latent lift, the latent print cards, yes, sir, I
22 have those also with me.

23 Q You have those with you?

24 A Yes, sir, I do.

25 Q Likewise did you have the fingerprint card of the two

DAVID BLACK

DIRECT

1 defendants in this case that you took to Columbia for
2 comparison?

3 A Yes, sir, I had those with me also.

4 Q Okay, and all of that went with you the day you left,
5 the 26th, back to Columbia?

6 A As far as the latent lifts, the inked fingerprints
7 cards of the two defendants were provided to us I believe
8 at a later date, if I may check my notes on this chain of
9 custody form.

10 A We will check when we get into the prints, but you
11 have received those for comparison?

12 A Yes, sir, I have.

13 Q State's Exhibit 32, 33, 52, did you receive these at a
14 later date from Officer Williams of the City?

15 A Yes, sir, I did.

16 Q Agent Black, if you would tell the jury what you did
17 as far as processing the vehicle, what that exactly
18 entailed.

19 A The two vehicles, that of the victim's patrol car, and
20 also the suspect car, was photographed and documented on
21 the initial scenes where they were located. They were then
22 towed to the sally port at the Rock Hill Police
23 Department. The first thing that we do in anytime in
24 processing a car or any object if we take our flashlights
25 and we will literally go over every piece of that object

1 or item of evidence. By reflecting the light on a surface
2 you may actually see a latent print or a fingerprint. When
3 we refer to a latent print, the print that is from
4 generally a crime scene - if I may take a moment, I would
5 like to tell what a latent print is.

6 Q Go ahead.

7 A You can look at your hands from the tips of your
8 fingers to the bottoms of your palms and on the soles of
9 your feet are raised portions of skin. These raised
10 portions of skin are known as friction ridge skin. They
11 are not continuous or broken up. They will remind you of
12 firms in a field. On the tops of these ridges are minute
13 sweat pores that constantly exude perspiration, water.
14 Approximately 99 to 99.5 percent perspiration is water.
15 The other half of one percent being contaminants such as
16 grease, oils, sebums, salt. When this water or
17 contaminants adhere to the ridges and you touch a surface,
18 it may leave an outline of the ridges and the ridge
19 characteristics that may be present. When I say a ridge
20 characteristics, I am referring to certain things as a
21 latent print examiner that I would look for in conducting
22 my examination. A bifurcation is a ridge that will flow
23 and split like a fork in a road and at that split it then
24 forms two ridges. Or I may be looking for something known
25 as an ending ridge. This is where a ridge will flow in for

1 no apparent reason or a dot. It's just that. It looks like
2 a dot. It has the same thickness of the ridge, but it's a
3 dot or maybe sometimes referred as an island. We look for
4 these things, but again a latent is random, it's
5 accidental. There's no guarantee that it may be left on a
6 surface. Some surfaces are more conducive than others. If
7 I touch this piece of wood, for instance, the likelihood
8 that it being a porous surface where it absorbs the sweat,
9 absorbs the water, those contaminants, I may not be able
10 to raise an identifiable fingerprint or raise a print at
11 all. But you can have some surface, such as a piece of
12 glass, I'm sure you have seen with mirrors or with a
13 polished piece of metal by reflecting light you might be
14 able to see the fingerprint. Well, that's what we are
15 doing, reflecting a light to see if we can actually see
16 the print.

17 Then the process we use is a chemical known as
18 cyanoacrylate, which is super glue. What we simply do is
19 take this chemical process where we have a sodium
20 hydroxide pad and a container. We saturate it with a super
21 glue and during the chemical reaction a fuming process
22 will begin and hopefully that cyanoacrylate will adhere to
23 the water, the moisture or those contaminants I talked
24 about earlier. After this is done, we take fingerprint
25 powder with a brush, put it in a powder and brush over the

DAVID BLACK

DIRECT

1 surfaces and any latent print that may be developed is
2 then lifted with the tape, clear scotch tape and placed
3 onto a latent lift card on the glossy side and the reason
4 why that is done is to help to get the contrast to better
5 help the examiner in making an examination and that's the
6 steps that were followed in this card.

7 The latent processing is the last thing that we do. We
8 look for any other evidence that may be in the car first
9 because what may happen if we process the latents first,
10 we could potentially destroy any other evidence.

11 Q Okay, in looking in the car for evidence at the time,
12 you recovered, I believe, the cigarette butts. You didn't
13 identify the type, is that correct?

14 A Yes, sir, that is correct.

15 Q Would you look and tell the jury what type of
16 cigarette butts they were, please, sir.

17 A On two of the three cigarette butts I see the brand
18 name stamped of Newport. On the third butt I see no type
19 of stamping to indicate the brand name.

20 Q Agent Black, you processed the vehicle looking for
21 various evidence, is that correct?

22 A Yes, sir, that is correct.

23 Q I am going to show you State's Exhibit 70 for
24 identification and ask if you will look at that and tell
25 me if you can identify that.

DAVID BLACK

DIRECT

1 A At this time, yes, sir, I can. This unbeknownst to be
2 at the time we were processing the suspect vehicle looking
3 under the seat, when I shined my flashlight I could see an
4 object. Based on the shape of the object, I thought it was
5 something to do with the mechanism of the seat or had
6 something to do with the car. In actuality, it's a walkie
7 talkie clip and it is the first one I have seen of this
8 type. I am not familiar with this particular brand.

9 Q Is that the walkie-talkie clip as it appeared that
10 night when you processed the car as State's Exhibit 33?

11 A Yes, sir, that is correct.

12 MR. POPE: State's Exhibit 70 for identification I
13 move into evidence.

14 MR. SCHUSTERMAN: Without objection.

15 THE COURT: It be received.

16 (State's Exhibit 70 marked and filed.)

17 Q So based on the appearance of State's Exhibit 70 as
18 you indicated, if you could step and show the jury that
19 just briefly, please.

20 A (Witness complied)

21 Q You did not recover that that night to take to
22 Columbia with you, is that correct?

23 A That's correct. This was later recovered by I believe
24 - it was brought to me by Mr. Williams of the Rock Hill
25 Police Department.

DAVID BLACK

DIRECT

1 Q If you could just explain to them what you talked
2 about it being in the car.

3 A Okay, this was under the driver's seat from if this
4 was the driver's seat and you were in the passenger's
5 compartment behind the driver's seat, looking under the
6 seat. This is the walkie-talkie clip that I am referring
7 to and that early in the morning and you shine your
8 flashlight looking under the car, a quick glance, based on
9 the shape and made out of plastic, you know, I thought it
10 was a part of the car, had something to do with the seat
11 mechanism and later it turned out to be a walkie-talkie
12 clip.

13 Q Agent Black, that clip was there that night, you just
14 did not retrieve ---

15 MR. SCHUSTERMAN: Objection.

16 THE COURT: I sustain the objection.

17 Q Agent, did you see that that night?

18 A Yes, I did.

19 Q Did you retrieve it and take it to Columbia?

20 A At that time, no, I did not.

21 Q Agent Black, you said once you recovered the items
22 that you recovered and you then did the fingerprint
23 process, is that correct?

24 A That is correct.

25 Q And did you, in fact, were you able to lift -- you

1 explained to the jury what the latent prints are, tell
2 them the difference between latent prints and inked
3 prints. Tell what the difference is.

4 A As I said earlier, a latent print is random, it is
5 accidental, it is a touching. With an inked print, this
6 is where you actually have someone who is controlling
7 every aspect of the known permanent print. They were
8 taking black printer ink, applying it to these surfaces,
9 the ridges, the raised portions of the skin and rolling it
10 onto the recipient's surface, like a ten print card. This
11 is a white fingerprint card, you can see it has got the
12 block and each block a certain finger or thumb is rolled
13 in that spot. And on the bottom of the card you simply
14 press the fingerprints down on that portion of the card
15 and that is used to insure that the proper fingers were
16 rolled in the proper slot. With palm prints you have a
17 larger card and the palm is either rolled onto the card or
18 pressed down onto the card to recover that ridge detail,
19 those ridge characteristics. You know who the person is.
20 There is information on the card that would have their
21 name and maybe some biographical data and a signature of
22 the person who actually took the prints and the date that
23 the prints were taken and that is a known lasting print
24 card, it's a known lasting impression. Again, with latent,
25 it is random, it is accidental. An inked print it is

1 permanent, there is some form of control involved.

2 Q Okay, in the ink prints, your knowns, is that what you
3 use to compare any latent prints you may have?

4 A That's correct. We take the latent print and compare
5 it to the known inked prints.

6 Q Did you have the opportunity or did you recover off
7 the suspect vehicle New York tag EMF 313 did you recover
8 any latent prints off of that vehicle?

9 A Yes, sir, we did.

10 Q Okay and were you able to match any of those prints or
11 compare any of those prints?

12 A Yes, sir, I did.

13 Q Okay, have you prepared a diagram to help you explain
14 your testimony in that regards?

15 A Yes, sir, I did.

16 Q And the diagram -- you tell me what this is.

17 A Yes, sir, this is a fingerprint chart. One side of the
18 chart includes a photographic enlargement of the latent
19 print, that is the latent print developed at the scene.
20 The other side of the chart is the known inked print. That
21 particular area that is being compared to the latent
22 print. It is the known inked print of Mr. Hughes.

23 Q That would be State's Exhibit 71 for identification.

24 MR. POPE: Your Honor, I'll move this after he
25 testifies.

DAVID BLACK

DIRECT

1 Agent Black, I am going to ask you if you could if you
2 could step down with your exhibit. If you could explain to
3 the jury first the latent prints that you recovered from
4 the vehicle and how you make a comparison.

5 A May I explain this to the jury?

6 Q Yes, sir.

7 A Okay. Again, this is the latent print. This is the
8 print that was developed at the crime scene. In particular
9 this latent print was developed on the gear shift of the
10 Buick. This is the gear shift that's on the steering
11 column of the Buick. By activating or controlling that
12 gear shift you put the car in gear to either go forward,
13 go backwards, put it in park or neutral. This is the
14 known inked print of the defendant, Mr. Hughes. In
15 particular this is his right palm. In the inner digital
16 area of the palm and in particular what I am referring to
17 as this area right below the fingers, it's in the joint
18 area of the ball of the palm. This is the inner digital
19 area. Each one of these are a photograph here
20 respectively is a latent and of the inked card of which I
21 have at my witness seat. These photographs or these
22 impressions have been enlarged approximately twelve times.
23 This chart is used to assist you and to show how in an
24 examination how a comparison is made. What the latent
25 print examiner will look for are the ridge characteristics

1 to determine if they ran similar in the relevant and
2 position and area. The ridge characteristics I talked
3 about earlier like a bifurcation, an ending ridge or a dot
4 ridge. What the latent print examiner will do is say do
5 those ridge characteristics are they similar, do they
6 share the same inner relationship with each other and, of
7 course, the number of characteristics that may be present.

8 Now I am going to start with the latent print as I
9 have designated here as number one. If you follow this
10 ridge down it forks, which is known as a bifurcation. And
11 if you follow the outside ridge of that bifurcation down,
12 which is illustrated by number two, it flows into forks
13 again, which is another bifurcation. And if you go one
14 ridge count to the left and down, there is a dot ridge,
15 which is indicated as number three. And if you look here
16 at the inked print, if you follow to where one is, in
17 fact, a ridge flows down, it forks forming a bifurcation.
18 You follow the outside ridge down again, it forks forming
19 another bifurcation shown as number two. And if you go one
20 ridge count over to the left, again, you have a dot ridge.
21 Q Agent Black, I am going to ask if you come and be sure
22 that each half of the jury can see what you are talking
23 about.

24 A Again, earlier, number one if you follow it, it is a
25 downward bifurcation. If you follow the ridge down, it

1 forks again as shown as number two in the latent, another
2 downward bifurcation. If you go one ridge count over to
3 the left, you have a dot ridge shown as number three. And
4 if you look at the inked print, you would see here you
5 have a down flowing bifurcation, you follow the ridge
6 down, it again forks again, which is another bifurcation.
7 If you go one ridge count over to the left, you will see a
8 dot ridge shown as number three. Each one of these numbers
9 go to a different ridge characteristic that was in the
10 latent print. Those are also represented in the inked
11 print. I only drew up fourteen. There are over twenty
12 ridge characteristics present in the latent that are also
13 present in the inked print. I only did the fourteen just
14 to demonstrate as a display how that is done. But you can
15 go anywhere in the chart, for example, if you follow
16 number six, which is an ending ridge, if you count over
17 one ridge count and go up, you have got another up-ending
18 ridge that has not been marked. Here number six in the
19 latent is an up-ending ridge; you go over one ridge count
20 and follow this up again, you have an up-ending ridge that
21 has not been marked.

22 Q Would you show that again for this end, the up-ending
23 ridge?

24 A In the latent print, which is shown as six, you have
25 an up-ending ridge and if you follow this ridge up beside

DAVID BLACK

DIRECT

1 it, there's another up-ending ridge. In the inked print if
2 you go to number six you have an up-ending ridge and if
3 you go over one ridge and follow up, you have another
4 up-ending ridge that has not been marked. I purposely did
5 not mark all of the ridge characteristics so when you are
6 deliberating you will be doing this and you may see other
7 ridge characteristics ---

8 MR. SCHUSTERMAN: Objection.

9 THE COURT: I sustain the objection.

10 Q If you would have a seat. Agent Black, that was a
11 comparison, you use that as an example, but you actually
12 did a number of comparisons or found a number of latents,
13 is that correct?

14 A Yes, sir, that is correct.

15 Q And in the vehicle how many latents did you find that
16 matched Mr. Hughes?

17 A In the suspect vehicle, the Buick, I identified Mr.
18 Hughes three times, twice on the gear shift column of the
19 steering wheel, one his right palm, the other is the right
20 ring finger. And again, I identified his right little
21 finger on the front passenger door handle.

22 Q And as to the gear shift, this is State's Exhibit 66.
23 If you would step down and show the jury you recovered two
24 prints of Mr. Hughes on that one, is that correct?

25 A Yes, sir, that is correct.

DAVID BLACK

DIRECT

1 Q If you could show the jury where the prints were
2 recovered and what parts of the hand you are talking
3 about.

4 A When I was speaking earlier about reflecting light,
5 you can do so with any type light. Here on the upper
6 column of the gear shift, this is how the gear shift if it
7 were in the steering column, up in this area here you have
8 a latent print that you can see by reflecting the light.
9 It is going to be from the palm area as such. And on the
10 opposite side in this area is where the right ring is
11 going to be and it would be consistent if somebody was
12 grasping the gear shift as such.

13 Q Were you able to compare both Mr. Forney and Mr.
14 Hughes inked prints to the latents you recovered?

15 A Yes, sir, I did.

16 Q Okay and were you able to find any of Mr. Forney's
17 prints on the gear shift?

18 A No, sir, I did not.

19 Q You said you also found a right pinky?

20 A Yes, sir, the right little finger of Mr. Hughes was
21 also on the passenger door handle on the front of the
22 passenger door on the inside of the handle.

23 Q Is that the inside of the car or the outside?

24 A That's on the inside of the car.

25 Q Agent Black, in making this match, can you tell

DAVID BLACK

1 the jury as far as fingerprints go what - you formed an
2 opinion based on your analysis, is that correct?

3 A Yes, sir, I did.

4 Q What is your opinion as far as Mr. Hughes leaving that
5 print on the gear shift?

6 A It is my opinion that he would have had to be behind
7 sitting in the driver's seat of the car and from the
8 driver's seat grasping the gear shift as I have
9 demonstrated and operating the car.

10 Q Did you also have an opportunity to do the jury has
11 previously been told what an atomic absorption or gun
12 powder test - did you also have an opportunity to do the
13 test, not the analysis, but the gathering of evidence on
14 both of the defendants?

15 A Yes, sir, I did.

16 Q I show you State's Exhibit 72 for identification. You
17 may need to open it if you need to.

18 A Yes, sir, this is the kit that I used to perform the
19 test on Mr. Forney.

20 Q Okay, if you would open the bag.

21 A (Witness complied.) And also present in the bag is the
22 gun shot residue kit that I performed on Mr. Hughes.

23 Q Would you tell the jury first what time you performed
24 the gun shot residue test on Mr. Forney?

25 A On Mr. Forney I performed the test at 2:30 in the

DAVID BLACK

1 morning, which would have been September 26th. On Mr.
2 Hughes I performed the test at 3:45 in the morning on
3 September 26th.

4 Q And, again, when we say performed the test you are
5 actually collecting the evidence, which was turned into
6 Joe Powell at SLED?

7 A That is correct.

8 MR. POPE: I move State's Exhibit 72 for
9 identification into evidence.

10 MR. SCHUSTERMAN: Without objection.

11 THE COURT: Be received.

12 (State's Exhibit 72 marked and filed.)

13 Q Mr. Black, first, I show you State's Exhibit 65, which
14 are some casings that were recovered by Officer Gainey
15 from Dave Lyle Boulevard and I ask if you also transported
16 those to SLED?

17 A Yes, sir, I did.

18 Q And, finally, as to State's Exhibit 71 for
19 identification, does this accurately reflect the results
20 of your testing and particularly as to the palm print
21 ridge, is that correct?

22 A Yes, sir, that latent print was made by the right palm
23 of Mr. Hughes.

24 MR. POPE: Your Honor, at this time I move State's
25 Exhibit 71 for identification into evidence.

DAVID BLACK

CROSS

1 MR. SCHUSTERMAN: Without objection.

2 THE COURT: Be received without objection.

3 (State's Exhibit 71 marked and filed.)

4 Q Mr. Black, answer any questions Mr. Schusterman may
5 have.

6 CROSS EXAMINATION

7 BY MR. SCHUSTERMAN

8 Q Good afternoon, Mr. Black.

9 A Good afternoon, sir.

10 Q If I understand the results of your fingerprint, those
11 latent tests, what you are saying is that some time during
12 the evening during the time that Mr. Hughes was in the car
13 he was behind the driver's wheel and held the gear shift
14 and he touched the right side passenger seat or door --
15 the handle on the door, is that correct?

16 A Yes, sir, that's correct.

17 Q Okay. But you did fingerprint testing on more than
18 just the car, did you not?

19 A Yes, sir, that's correct.

20 Q And you looked for fingerprints on the weapon, the
21 Llama 9 millimeter, did you not?

22 A Yes, sir, that is correct.

23 Q And is it correct Mr. Hughes' fingerprints did not
24 appear on that?

25 A One identifiable latent was developed on the pistol

1 itself, which was identified to an Officer Pruett who
2 recovered that weapon. There were other areas of ridge
3 detail that developed on the weapon and on the magazine of
4 the weapon, but they were not identifiable to anyone.

5 Q Let me ask you again. You were not able to identify
6 Mr. Hughes' fingerprint on the Llama 9 millimeter gun,
7 were you?

8 A That is correct.

9 Q You were not able to identify Mr. Hughes' print on the
10 walkie-talkie, is that correct?

11 A That is correct.

12 Q You attempted to identify fingerprints on the eight
13 cartridge cases that were submitted to you, did you not?

14 A That is correct.

15 Q And Mr. Hughes' fingerprints did not appear on those,
16 did they?

17 A No, sir, no ridge detail was developed; no
18 fingerprints were developed on those casings.

19 Q You attempted to take fingerprints from the magazine
20 that was in the Llama, did you not?

21 A That is correct.

22 Q And Mr. Hughes' fingerprints did not appear on that,
23 did they?

24 A Again, a latent was developed, but it is not an
25 identifiable latent. I can't say that it's not your

1 client's print. I can't say who it belongs to. It is an
2 unidentifiable latent. It cannot be identified to anyone.

3 Q All right, this obviously appears to me to be a
4 somewhat sophisticated science in terms of determining
5 fingerprints, so the latent print that you came up with,
6 if it was Mr. Hughes, wouldn't that be identifiable?

7 A Yes, sir, it would if it's an identifiable latent; I
8 could tell you who it belongs to. The only thing I can say
9 is it is not an identifiable latent. There aren't enough
10 ridge characteristics present to conduct an
11 identification.

12 Q Okay. Did you perform a -- or look for latent
13 fingerprints on Mr. Brent McCants' police belt?

14 A Yes, sir, I did.

15 Q Okay, did any fingerprints come up on that?

16 A No, sir.

17 Q Did you perform a fingerprint test on specifically
18 this magazine holder that was attached to the belt?

19 A Yes, sir.

20 Q Did any fingerprints come out on that?

21 A No, sir, it did not.

22 Q Could you step down here a minute?

23 A (Witness complied.)

24 Q You have testified that processing a vehicle is a
25 sophisticated process I mean you are really looking for

1 minute details.

2 A Yes, sir.

3 Q You indicate that when you looked underneath the seat
4 you saw this?

5 A Yes, sir, I did.

6 Q And you said you thought that it was a part of the
7 mechanism under the seat?

8 A Yes.

9 Q What would make you believe that this was part of the
10 mechanism considering that there are no wires on it or any
11 such thing?

12 A I'm looking at that it's made of plastic. I seen the
13 screws that are here. I thought it was bolted into the
14 carpet. I seen the shape of it. I had no idea it was a
15 walkie talkie clip or case. With my law enforcement
16 experience I do not have a walkie talkie clip case like
17 this and I was with the Sheriff's Office, I'm used to a
18 big bulky, leather case, so my experience on that by
19 looking at the shape, the size, what it was made of and
20 seeing the screws I thought it was something bolted down
21 under the seat.

22 Q Now did you take this picture?

23 A No, I did not.

24 Q So you don't know when this picture was taken?

25 A No, I do not.

1 Q And this may not have been the exact way it was
2 sitting that night that you looked at it?

3 A That's possible, but it is the same as I saw it that
4 night; it's similar to what I saw that night under the
5 seat.

6 Q Okay. When you looked under the seat, I take it you
7 were outside the car like on your knees looking
8 underneath, like leaning into the car looking underneath?

9 A Yes, sir, I was.

10 Q How far away was this item from you?

11 A I'm not sure of the distance that I was looking in. I
12 had my flashlight.

13 Q Was it six inches?

14 A I'm sure it was more than six inches, but I'm not
15 exactly sure of the distance.

16 Q Would you say it was within arms length?

17 A I would say so, yes, sir.

18 Q And as an investigator when you looked at it, it never
19 occurred to touch it just to confirm what this item was?

20 A Again, when I looked at the item, I thought it was
21 something a part of the car. I did not know at the time
22 that it was a walkie-talkie clip.

23 Q Thank you. I appreciate it. Did you go out to the
24 scene that night to the Holiday Inn where the car was
25 found?

DAVID BLACK

CROSS

1 A No, sir, I did not. That was done by Special Agent
2 Gainey and Special Agent Richard Hunton. I went to the
3 Rock Hill Police Department.

4 Q Are you the only Agent Black involved in this case
5 from SLED?

6 A To my knowledge, yes, sir.

7 Q I'm asking you was there possible that there's another
8 Agent Black who worked on this case from SLED?

9 A Not that I'm aware of no, sir.

10 Q So if anybody referred to Agent Black, they are
11 referring to you, just so we are not confused.

12 A In regards to this case ---

13 Q In regards to this case, yes. In regards to this case
14 and the events that occurred September 25th through
15 September 26th.

16 A To my knowledge, yes, sir, I would be the Agent Black
17 they are referring to.

18 Q Okay. And to summarize your testimony of all the
19 attempts that you made to fingerprint - to do fingerprints
20 on the various items that I have shown you and Solicitor
21 Pope has shown you, the net result as it applies to Mr.
22 Hughes that you found, a palm and a ring finger print on
23 the gear shift consistent with him sitting in the driver's
24 seat and manipulating the gear shift and you found one
25 print on the inside of the passenger side door.

1 A That is correct.

2 Q And that is all that you found?

3 A As far as latent prints to Mr. Hughes, that is
4 correct.

5 Q One other question. You took the atomic absorption
6 test. What do you do, wipe their hands down, is that what
7 you do with that?

8 A In these particular kits, the atomic absorption kits,
9 there are two phases, first, there is something that we
10 refer to as a SEM stubby, that's S-E-M, which stands for
11 scanning electronic microscope. It has like an aluminum
12 disk that has an adhesive side. There is one each for each
13 palm, the right palm and the left palm, and there is one
14 each for the back of each hand for a total of four and you
15 just stubby, press it on those areas of the hand. When you
16 are finished with each one, you put a cap over it and then
17 you have what is known as the nitrate acid swab, which are
18 Q-tip swabs. We place nitrate acid on it, we swab the same
19 area of hands, they each go in their own container, and
20 they are sealed in an envelope and I took that to SLED.

21 Q Do you perform the test?

22 A I only collect, I only swab or go over their hands.
23 No, I do not perform the test on them at SLED.

24 Q Do you know what the purpose is for swabbing? Do you
25 know what the ultimate purpose is of the tests?

DAVID BLACK

REDIRECT

1 A My understanding of the test is to determine if the
2 three substances that the trace analysts are looking for
3 which comprise gun powder or gun powder residue would be
4 present on the hands.

5 Q And those chemicals are supposedly a byproduct of
6 firing a weapon?

7 A It's my understanding, yes, sir.

8 Q I appreciate your being here, Agent Black.

9 A Thank you.

10 REDIRECT EXAMINATION

11 BY MR. POPE

12 Q Agent Black, he had talked about unidentifiable prints
13 and insufficient ridge detail, does that mean - could you
14 explain to the jury what that means when you say you had
15 insufficient ridge detail. Does it mean it's not a print
16 or what does that mean?

17 A Earlier when I discussed a latent print, there are two
18 factors that come into play, the condition of the hands
19 and the condition of the surface. I'm not saying someone
20 didn't touch an item. I'm saying that the material may not
21 be conducive for prints. For example, the Sam Brown belt
22 that the victim, Office McCants, wore with the various
23 material, he wore that on a daily basis and I developed no
24 latent prints on it. Generally, if you look at material,
25 it's got a laminate on it and it has a weave to it, which

1 would affect whether or not an identifiable latent print
2 could be developed or if a print could be developed on the
3 item itself. Weather will play a factor, environmental
4 conditions will play a factor. If, you know, there is any
5 movement whatsoever and something is being touched, it may
6 create a smear where you can see where something is
7 touched, but there is no ridge detail. It all comes back
8 to the condition of the hands and the condition of the
9 surface. As I said earlier, if you touch this piece of
10 wood, the likelihood is that you cannot develop my prints
11 on this wood based on the type surface it is.

12 Q So a surface that is course like the belt or like the
13 walkie-talkie you may not be able to pick it up, but it
14 doesn't mean nobody has touched it, is that right?

15 A That is correct.

16 Q You said on the weapon that was recovered that the
17 only print you were able to get off of that was the print
18 of Officer Pruett, the officer that recovered it, is that
19 correct?

20 A Yes, sir, that latent print was developed. If you hold
21 the weapon, you can still see it right here. It's above
22 the magazine release as I press it to take the magazine
23 out and it would be when I received the weapon from
24 Officer Pruett, he had already discharged the loaded
25 magazine and had already taken out the live round that was

1 in the chamber of this weapon.

2 Q Okay, so again, his was the only print that you
3 recovered, but that doesn't preclude other people from
4 touching it?

5 A It was the only identifiable print on the weapon.
6 There were four other areas of ridge detail on the weapon
7 that are unidentifiable. I can't tell you who they belong
8 to.

9 Q And that's because it's not enough ridge detail to
10 compare it to?

11 A That is correct.

12 Q One final question, Agent Black, you told us what
13 prints are made out of, the moisture and all the different
14 factors, can a print be wiped off with something?

15 A Most definitely.

16 Q Thank you, sir.

17 THE COURT: Recross?

18 MR. SCHUSTERMAN: Nothing, Your Honor.

19 THE COURT: Can this witness be excused?

20 MR. POPE: Yes, sir.

21 MR. SCHUSTERMAN: No objection.

22 THE COURT: We will take an afternoon break, which
23 will be about a twelve or fifteen minute break. I have
24 been saying that those who wish to smoke may go out and
25 smoke and I reiterate that, but for those of you who don't

JOSEPH D. POWELL

DIRECT

1 smoke, if you want to step outside, of course, you can
2 too.

3 I used to say step out and get some fresh air, but I
4 always found that was being inconsistent with smoking and
5 so on.

6 We will be at ease for ten or fifteen minutes.

7 (Recess)

8 THE COURT: Is the defense ready?

9 MR. SCHUSTERMAN: The defense is ready, Your Honor.

10 THE COURT: Mr. Hughes is present.

11 Bring the jury in.

12 Call your next witness.

13 MR. POPE: May it please the court, Your Honor? The
14 State will call Special Agent Joe Powell to the stand.

15 THE COURT: Come around and be sworn, please, sir.

16 JOSEPH D. POWELL, being duly sworn,

17 testified as follows:

18 DIRECT EXAMINATION

19 BY MR. POPE

20 Q Mr. Powell, if you would, state your name and
21 occupation for the jury, please, sir?

22 A My name is Joseph D. Powell and I am employed at the
23 South Carolina Law Enforcement Division as a forensic
24 chemist.

25 Q Is there a particular area in the - that's in the

1 laboratory, is that correct?

2 A Yes, sir, that's correct.

3 Q Is there a particular area of expertise that you have
4 there at the lab?

5 A Yes, sir, I am currently assigned to the trace
6 evidence department, which is principally involved with
7 such things as hair, fiber, paint, glass, gun powder
8 residue, gun primer residue and explosives. I am currently
9 the only person in the Trace Department, which is fully
10 qualified in all of these areas I just mentioned.

11 Q Mr. Powell, what type of background and training and
12 expertise that you have that allows you to be qualified to
13 do these various trace tests?

14 A I received my American Chemical Society Certified
15 Degree in chemistry from the University of Southern
16 Mississippi. After leaving there, I came to South
17 Carolina, became employed at SLED and went to an extensive
18 in-house training program in the area of both drug
19 analysis and also trace analysis, which included all of
20 these areas I just mentioned. After completing my
21 training in these areas at SLED, I then began to attend a
22 number of schools around the country, several at the FBI
23 Academy in Quantico, Virginia where I studied gun primer
24 and gun powder residue analysis and I've also attended
25 several symposiums offered at the FBI in the area of

1 talking with other experts around the world in the area of
2 both gun primer and gun powder residue analysis.

3 Q Have you had the opportunity to testify in the area of
4 tract analysis in the courts in this state in the past?

5 A Yes, sir, I have.

6 Q Did you qualify as an expert to testify in those
7 areas?

8 A Yes, sir, I have been qualified as an expert in these
9 areas in both Federal, State, Municipal and also in
10 several cases Magistrate's level.

11 Q And how many times have you been qualified as an
12 expert?

13 A I have testified approximately five hundred times.

14 MR. POPE: Your Honor, at this time I would tender Mr.
15 Powell as an expert in trace analysis.

16 MR. SCHUSTERMAN: Without objection, Your Honor.

17 THE COURT: I find that he is qualified as an expert
18 in trace analysis.

19 Q Mr. Powell, as part of your duties, did you receive
20 State's Exhibit 67 and 72, which are gun shot residue
21 evidence collection kits?

22 A Yes, sir, what is listed as State's Exhibit 60 and
23 State's Exhibit 66 are gun shot residue kits, which were
24 submitted to our laboratory for analysis.

25 Q Mr. Powell, you may not be aware - we have a number of

1 labels placed on this.

2 A Oh, I'm sorry, 67 -- I stand corrected. State's
3 Exhibit 67 and State's Exhibit 72.

4 Q Would you tell the jury what those collection kits are
5 and what did you do with them as part of your job?

6 A These kits are utilized by various agencies including
7 our own to collect residue from the hands of anyone who
8 wants to check to see if they have fired or discharged any
9 type of weapon. When a weapon is fired, there is a cloud
10 which will come out from that weapon. It will envelope
11 around any object which is adjacent to or near the gun. If
12 you are holding the weapon, this material will come out
13 and actually deposit itself on the back of your hand and
14 also can be transferred from holding the weapon to the
15 palm of your hand. This kit is nothing more than a means
16 to collect this material. It has in it both swabs and also
17 what is called particle lifts. The first action is to take
18 the particle lifts and actually go over the area of the
19 hand and in this case I am describing the palm of my left
20 hand. You actually dab it or pick up any large particles
21 that might be there. After completing this type of
22 sampling for all four areas of the hand, which would be
23 the left palm, left back, right palm and right back, we
24 would then follow up with a swabbing, which is called and
25 atomic absorption test, which is where you go through with

1 a cotton swab and actually wipe down an area to pick up
2 any trace amount of material that might be captured or
3 retained inside your fingerprints or cracks, crevices on
4 the hand.

5 Q What type of factor would involve the results of the
6 test? What type of things would interfere with it or make
7 it give a certain result?

8 A The test is to look for the presence of the gun primer
9 residue. Once this material has been deposited on your
10 hands, it is extremely fragile. You can think of it just
11 like a very fine light flour material. So it is easily
12 removed. If you wash your hands, it is immediately washed
13 away. You can wipe your hands down with a towel or a cloth
14 or even just the normal activity of moving around will
15 cause your body to absorb this material and diminish or
16 remove it completely within a short period of time. So
17 there are several mechanisms which can remove or erase it
18 from someone if they had fired a weapon.

19 Q So this test can tell you - if it is positive, there
20 would indicate there was gun powder particles present, is
21 that correct?

22 A That is correct. If it is positive, that would tell
23 me that someone has fired a weapon or been around a weapon
24 when it has been fired.

25 Q And what if it tests negative? What does that

1 indicate?

2 A Well, if the test is negative and someone had let's
3 say the victim had died immediately, if it is negative,
4 that would show me they did not handle the weapon and
5 fired the weapon because there was no evidence of that. If
6 we have someone who is alive and there is nothing on the
7 hands, it could mean they never fired the weapon or never
8 been around one or if they did fire the weapon and it came
9 up negative, then it has been removed by some process
10 before the sampling was taken.

11 Q Okay, you named the various processes, washing the
12 hands and wiping and you said "every day life"?

13 A Yes, sir.

14 Q What do you mean by that?

15 A This material is so fragile that just the normal body
16 oils and materials which are being excreted or extruded by
17 the skin can dissolve and remove this material. So after
18 five to six hours, any material that is found or would be
19 deposited by firing the weapon is gone from someone's hand
20 just from being alive. You don't have to do anything
21 special.

22 Q Could wiping hands in the dirt or on the ground or on
23 the trees anything, would that remove it also?

24 A Yes, sir, as I indicated earlier wiping your hands is
25 a way to lose the material very easily and remove it and

1 you would not be able to detect it.

2 Q How does time play a factor from the time that one
3 would have supposedly have handled the weapon until the
4 time the test was given? How does time play a factor?

5 A We have found through our research that after five or
6 six hours we would not expect to find any residue on
7 someone's hands even having it deposited, we would not
8 find it on a live person. So we have a window in which we
9 work in. After five to six hours we would not expect to
10 find any material whatsoever. If someone had fired a
11 weapon and two to three hours had passed, there would be a
12 lot less material left, so you would not find as much and
13 in some cases it would not be a sufficient amount to have
14 it be a positive.

15 Q And you were able to do an atomic absorption test and
16 gun powder residue test on the hands of Brent McCants as
17 it was taken from the autopsy?

18 A Yes, sir, that is correct.

19 Q And what were the results of that test?

20 A I did not find any residue on the hands of Brent
21 McCants.

22 Q And, again, you said if someone was unable to move or
23 to wipe the hands such as Mr. McCants' situation, then
24 there would be a higher expectation on your part of
25 finding it if he had discharged a weapon?

1 A Yes, sir, if someone had discharged a weapon and died
2 fairly quickly afterwards unless someone took the active
3 role of removing it such as washing his hands or wiping
4 his hands. I would expect to find that residue there.

5 Q Okay, likewise you had analyzed the test that was
6 performed on first Mr. Forney that I believe was done at
7 2:30 that morning, is that correct?

8 A Yes, sir, there was a sample kit that was taken from
9 Mr. Forney and we did run the analysis. At that time -
10 bear with me a moment - it was at 2:30 AM.

11 Q And what were the results of that test?

12 A He was also negative. He had no gun powder residue on
13 his hands.

14 Q And, again, you said that that doesn't preclude him -
15 that (a) means it doesn't mean that he didn't shoot a gun
16 or (b) it got taken off, is that correct?

17 A That is correct. I have no evidence that he fired a
18 weapon, but that does not mean that he could not have
19 fired the weapon as the material could have been removed
20 by either him intentionally or just by normal activity.

21 Q And, finally, Mr. Hughes at 3:45.

22 A Yes, sir, at 3:45 there was a kit which was collected
23 on a Mar-Reece Hughes.

24 Q And what were the results of that test?

25 A The results were the same in this case also. There was

1 no primer residue found on his hands also.

2 Q And the explanation could be the same as you have
3 given for the others?

4 A That is correct.

5 Q So in none of the tests of the three individuals, the
6 victim and the two defendants, were you ever able to find
7 any gun powder residue, is that correct?

8 A That is correct. They found no residue on any of the
9 three kits that were submitted to me.

10 Q Okay and, again, according to your expert testimony,
11 that does not prohibit based on what you have explained a
12 gun from being fired, is that correct?

13 A That is correct.

14 Q Also, did you have the opportunity to receive Mr.
15 McCants' clothing to test it for gun powder residue?

16 A Yes, sir, his shirt was submitted to our laboratory
17 for us to examine to see if we could find any type of
18 material which had been deposited by a weapon to determine
19 how far away that weapon was from him when it was
20 discharged.

21 Q I show you State's Exhibit 28 and ask if you could
22 look at that and tell us if the shirt - I realize it
23 contains other items - but is it the shirt that you
24 tested?

25 A Yes, sir, State's Exhibit Number 28 is a shirt that I

1 analyzed in this case.

2 Q Mr. Powell, I am going to ask if you could remove the
3 shirt and step down, please.

4 A (Witness complied.)

5 Q Mr. Powell, would this assist you in your indications
6 to the jury?

7 A Yes, sir, it would.

8 Q Mr. Powell, if you could indicate what tests you
9 performed and what you noted about this shirt, please.

10 A Yes, sir. The shirt when it was submitted to me was
11 asked to be examined for gun powder residue. If I may
12 explain how this comes about. When a weapon is
13 discharged, there is a tremendous amount of material which
14 is released from the weapon along with the bullet. This
15 material will strike any object that's fairly close to the
16 weapon and adhere to that object. What we are looking for
17 in this case is what's called gun powder. If a weapon is
18 discharged, there is a certain amount of gun powder which
19 is not burned or partially burned which will leave out of
20 the weapon and will adhere to an object. In most cases
21 this can go up to maybe four to five feet. This shirt was
22 submitted to me. I initially ran an initial examination
23 looking to see if I could ascertain how many bullet holes
24 were found in the garment. I found five bullet holes.
25 There was a bullet hole here in the very front. You can