

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

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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

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

3 STATE OF SOUTH CAROLINA)
4 vs.) TRANSCRIPT OF RECORD
5 MAR-REECE ALDEAN HUGHES) (93GS46-4296; 93GS4303;
6 93GS46-4304; 93GS4305)

7 SEPTEMBER 11 - 22, 1995

8 BEFORE: THE HONORABLE JOHN C. HAYES, III and a Jury.

9 APPEARANCES:

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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		2603	
Mr. Schusterman		2591		2604
Leslie R. Herring				
Mr. Pope	2605			
Mr. Schusterman		2609		
Timothy Sanders				
Mr. Pope	2613		2671	
Ms. Brice		2631		
Broadus Lee Strain				
Mr. Brackett	2673		2685	
Mr. Schusterman		2679		
Randy Clinton				
Mr. Brackett	2687			
Mr. Schusterman		2697		
James Scott Rockholt				
Mr. Brackett	2705			
Ms. Brice		2708		

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

3	4	5	6	7	8
WITNESS	DIRECT	CROSS	REDIRECT	RECROSS	
Mary Henry Kitts					
Mr. Brackett 2711					
Mr. Schusterman		2714			
Larry P. Devinney					
Mr. Brackett 2715					
Ms. Brice		2725			
Michelle Ayers					
Mr. Pope 2752					
Mr. Schusterman		2758			
Crystal Ayers					
Mr. Pope 2760					
Mr. Schusterman		2769			
Dafferlin Barnard Dupree					
Ms. Brice 2777			2785		
Mr. Pope		2781		2785	
Charles Cabaniss					
Mr. Brackett 2789					
Mr. Schusterman		2807			
Bruce Bryant					
Mr. Brackett 2822					
Mr. Schusterman		2829			
Dafferlin Barnard Dupree					
Ms. Brice 2832			2854		
Mr. Pope		2838		2857	
Donald William Morgan					
Ms. Brice 2858			2883		
Mr. Pope		2870		2884	
Renee S. Kohanski					
Ms. Brice 2885			2921		
Mr. Pope		2903		2924	
Dafferlin Barnard Dupree					
Ms. Brice 2926			2943		
Mr. Pope		2935		2945	
Jerry Bailey					
Mr. Brackett 2968			2977		
Ms. Brice		2974			

 PRETRIAL MOTION AND INCAMERA HEARINGS
 SEPTEMBER 14, 1995

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

 TRIAL - PHASE I

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

TRIAL - PHASE I (CONTINUED)

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

1 TRIAL - PHASE I (CONTINUED)

2 WITNESS DIRECT CROSS REDIRECT RECROSS

3 Felix Wimborn

4 Ms. Brice 1557

Mr. Pope

1560

1567

1569

5 Donald William Morgan

6 Ms. Brice 1571

Mr. Pope

1579

1594

1595

7 Mar-Reece Aldean Hughes

8 Mr. Schusterman 1642

Mr. Pope

1663

9 Bob Ormseth (In camera)

10 Mr. Pope 1713

11 James Elbert Mann

Mr. Brackett 1722

12 Mr. Schusterman

1724

13 Bob Ormseth

Mr. Pope 1725

14 *****
15 TRIAL - PHASE I

16 CLOSING ARGUMENTS:

17 Mr. Brackett

Page 1740

Mr. Pope

Page 1747

18 Mr. Schusterman

Page 1768

19 CHARGE TO THE JURY

Page 1783

20 VERDICTS OF JURY

Page 1838

21 *****
22
23
24
25

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			

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

1 TRIAL - PHASE II (CONTINUED)

2 WITNESS DIRECT CROSS REDIRECT RE CROSS

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

COURT'S EXHIBITS

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

1 barely see it as a purple ring - I'll explain that in just
2 a moment. It's right here in the very center. There is
3 also a bullet hole - I'll call this bullet hole number 2 -
4 at the mid range side of the shirt. There is a bullet hole
5 number 3, which is towards the back of the garment. There
6 is a bullet hole number 4, which is off not from the very
7 center, but more to the right side of the back and there
8 is a 5th bullet hole, which is in the middle of the part
9 of the back. When I found these five holes, I then began
10 to do a chemical analysis. I wanted to determine if there
11 was any gun powder residue on any of these holes. All five
12 holes are analyzed for gun powder residue. I only found
13 gun powder residue or some particles of gun powder residue
14 on the hole which I called number 5. This is the hole at
15 the furthest part or the highest part of the back. I did
16 not find any gun powder residue on any of the other holes.
17 What this means is that the weapon that produced these
18 holes it was close enough to this area, this hole when it
19 was formed, to leave gun powder. The other four holes it
20 was far enough away that there was no gun powder deposited
21 on the garment. I then took and sprayed the garment down
22 with chemicals to be able to see if I could determine if
23 there was any lead, any type of lead residue. The pink
24 that you see around the holes, all five holes showing the
25 pink, is the residue of what's called bullet wipe.

1 Whenever a bullet passes through a garment, it leaves the
2 very top most surface of the lead dust, for lack of a
3 better way of explaining it, on the garment it enters.
4 This chemical test I ran shows what has been retained by
5 the garment and still remains there today. These are very
6 consistent with the passage of a bullet or a bullet
7 striking this on each one of the five holes.

8 Q Again, Mr. Powell, you also examined the t-shirt that
9 was involved, State's Exhibit 28. Is there a reason that
10 there would not be wipe on an underlying garment?

11 A Yes, sir. Whenever the garment, the first garment
12 that the material that is coming out of the weapon strikes
13 it adheres to that. Any subsequent layering will not be
14 affected by the gun powder. In other words, this garment
15 is the outer garment, which acts as a barrier, as this the
16 first garment this residue came in contact with. So
17 anything underneath there would not have any residue on it
18 because it could not go through this material.

19 Q Mr. Powell, is it your opinion that one of the shots
20 or one of the penetrations would have been closer than the
21 others based on the gun powder residue, is that correct?

22 A Yes, sir, that is correct.

23 Q Could you indicate which would again that would be for
24 the jury?

25 A The hole that has the powder residue is this hole

1 which is at the very middle upper part of the back. The
2 hole that is the furthest up. The other four holes, the
3 ones I described, coming down the back, on the side and
4 the one in the front does not have any residue at all
5 which means that the gun was further away, far enough away
6 that it would not leave any gun powder on this garment.

7 Q Thank you, sir. Answer any questions Mr. Schusterman
8 may have.

9 CROSS EXAMINATION

10 BY MR. SCHUSTERMAN

11 Q Mr. Powell, while we are standing here, is it possible
12 that for instance I believe that Mr. McCants at the time
13 that he was fatally injured he was wearing a bullet proof
14 vest.

15 A Yes, sir.

16 Q Would that indicate for instance why there would be no
17 lead shavings here? Would that have any bearing on it?

18 A No, sir. Any type of barrier to stop the bullet would
19 interact with the bullet subsequent after it had
20 interacted with this garment. So it would not have any
21 bearing on the test that I performed as far as depositing
22 the gun powder or as the amount of lead that was
23 deposited. In this case, the only lead that I found on any
24 of the holes was the round circular right at the entry
25 hole, which would be consistent with a bullet passing

1 through this garment.

2 Q In terms of that I think you said that only the fourth
3 bullet hole -- is this the bullet hole that had -- was the
4 only one?

5 A Yes, the bullet hole that you are pointing to in my
6 notes I call hole number 5. It is an arbitrary number.
7 But this is the hole that you are pointing to which is the
8 one that I found gun powder on and I did not find a
9 complete pattern of gun powder. I found several flakes,
10 four or five flakes on here. I did not find a real tight
11 patter which would be indicative of someone right on top
12 of someone but is far enough away that the pattern had
13 begin to disperse. It was away from the object being fired
14 at.

15 Q All right. When you talk about several flakes, I
16 assume that these are almost microscopic?

17 A Yes, sir, they are somewhat microscopic. You can't see
18 any with the eye. They are like little small disks that
19 have been attached to the garment, but I use a microscope
20 to aid me in looking at these.

21 Q And is it possible that - let me ask this question so
22 that you can answer it properly - just because there
23 happens to be flakes at one bullet hole and not have
24 flakes at another, isn't it possible that the bullet was
25 still fired from the same distance? Isn't it possible I

1 could stand in a certain place, the same distance, fire
2 two, three, four bullets from approximately the same
3 distance, some will show gun powder residue, some may not
4 for whatever reason?

5 A If what you're saying you were using different
6 ammunition if the weapon was using not the same type, but
7 different ammunition, then, yes, sir, what you are saying
8 is correct. If, however, you are firing the same type
9 ammunition, the pattern would be the same for each one of
10 these and so if you are standing at the same distance,
11 then each one of them would give the same pattern and also
12 the same distance, but it would vary if the ammunition
13 were different.

14 Q How finite is the difference between gun powder flakes
15 being present and not being present? Is it possible, for
16 instance, that if you are standing four feet, they might
17 be present and at a distance of five feet they wouldn't be
18 present? Is it that --

19 A Yes, sir, it is within plus or minus six inches we are
20 able to have a definitive range in which you would expect
21 to find powder and the pattern that it would generate. You
22 described exactly the range of most weapons, which is
23 between up to about four feet most weapons will leave a
24 certain amount of gun powder. There are variables
25 depending upon the weapon size and other things. At five

1 feet or greater usually unless you are dealing with just
2 the largest caliber weapons there would not be any gun
3 powder deposited.

4 Q Are you familiar with the 9 millimeter weapon?

5 A I have fired the 9 millimeter weapon numerous times in
6 testing as far as our laboratory requirements.

7 Q Mr. Powell, is this gun powder residue a function of
8 the power of the weapon?

9 A It is a function of both the type of weapon meaning
10 how is the weapon chamber. If you have a weapon that has a
11 fairly long barrel, that affects how far away these
12 particles can travel versus a short barrel. Also what
13 affects this would be the actual ammunition itself. You
14 can have ammunition which may be say 128 grain ammunition
15 or 152 grain ammunition. The difference in this ammunition
16 although it both are 9 millimeter ammunition could -- will
17 affect the pattern that you will find when you fire this
18 weapon.

19 Q Are you familiar with energy being exerted from a
20 weapon, the speed at which weapons are - the projectile
21 comes out and the force behind it?

22 A Are you talking about the muzzle velocity?

23 Q Yes, sir.

24 A Yes, sir, I am familiar with that.

25 Q Can you tell me what approximately the muzzle velocity

1 is of a 9 millimeter weapon?

2 A As far as this weapon I could not say because I did
3 not do any kind of testing to determine exactly what kind
4 of ammunition or the weapon itself; however, we do have an
5 agent who I think can answer your question that's coming
6 up.

7 Q I thank you. When you were talking in direct
8 examination with Solicitor Pope, you mentioned the atomic
9 absorption test. Again, are we looking for the same gun
10 powder residue? Is that the same residue that we are
11 talking about on the shirt?

12 A No, sir.

13 Q Okay.

14 A The residue that is looking -- there are some other
15 components that are found inside of the bullet that are
16 called gun primer. In the very back of a bullet, there is
17 a small round object which is placed in the middle of the
18 bullet with the exception of 22's and 25's. They have
19 materials which is coating on the inside, they work
20 differently, but in this case we have a small pin of
21 silver looking object, which is in the center of the
22 bullet. When the hammer strikes this, there is chemicals
23 which is inside here which is shock sensitive and they
24 will self-ignite. They begin to burn. Once they begin to
25 burn they then travel through a small hole and ignite and

1 gun powder which all in combination builds up gases and
2 pressure and pushes the bullet out of the weapon towards
3 its target. The gun powder, which was the second component
4 I described, would go out forward and strike any object in
5 the front. The primer is much smaller, it is much finer,
6 so when it comes out it develops or actually spews out
7 around the gun as a wispy cloud and does not go very far.
8 So to get the primer you have to be right by the weapon to
9 be able to receive it, but it develops around the weapon
10 and comes back to the hands, clothing or whatever may be
11 there.

12 Q What I was going to ask. You indicated on direct
13 examination that that atomic absorption test that through
14 the course of to a live person, through the course of
15 time, that powder can wear off either by as Mr. Pope said
16 being in the mud or trees or just every day life, washing
17 one's hands.

18 A Yes, sir, that is correct.

19 Q Would the same be true of any possible gun powder or
20 the disks, these flakes, that appear around different
21 bullet holes?

22 A They do not go away unless someone actively removes
23 them.

24 Q Or could they be actively removed just by rubbing?

25 A There would be a certain number which could be brushed

1 off; however, one of the properties of gun powder is that
2 as it leaves the weapon it is very hot. Being very hot
3 when it strikes a garment and it is still very hot, it can
4 adhere itself and actually become sticky and attaches
5 itself to the garment. So to remove it you literally have
6 to aggressively brush it off. Taking a garment and just
7 popping it like this will knock some off, but it does not
8 knock them all off. You would actually have to take some
9 type of brush and brush them until you were able to brush
10 them off and I don't know if you could really get them all
11 off because some make stick to the point where they
12 actually melt the fiber and hold on aggressively.

13 Q I think you had indicated on direct examination that
14 after a period going back to the atomic absorption test
15 that after a period of I believe you said four to five
16 hours on a live person that chances are every day activity
17 once again would cause those particles to disappear.

18 A Yes, sir, if someone is alive by window - we have set
19 a window of five to six hours as our main window - that
20 window is determined by the caliber of weapon, a 22 will
21 may be gone within two hours; a 45 magnum five hours, so
22 it would depend upon the caliber, but as a general rule
23 you can establish a window of six hours as being the time
24 when we expect to find residue on someone's hands due to
25 the very fact you presented that this material comes off

1 very easily and can be removed by whether someone has
2 intentionally removed it or just being alive it does not
3 matter.

4 Q If I understand correctly, you were aware that the
5 incident took place at approximately 10:40 that evening.

6 A Yes, sir, I have no reason to dispute that.

7 Q Well, I assume that when you got the test and I
8 presume it was one of the agents who said, Mr. Powell,
9 would you test this, that you were aware that in the case
10 of Mr. Forney it was some four hours after the alleged
11 incident and four or five hours as it relates to Mr.
12 Hughes.

13 A If I may consult my notes?--

14 Q Absolutely.

15 A Yes, sir, according to my notes the time of the day
16 the shooting occurred was at 10:40 PM and then the sample
17 were collected at 2:30 AM for Dwayne Forney. For James
18 McCants there was no time listed due to his being
19 deceased. And for Mar-Reece Hughes, it was collected at
20 3:45.

21 Q And is it in your professional opinion that that test
22 was still worthy of being given, that it was still within
23 the time frame that would possibly still give a relevant
24 answer?

25 A Yes, sir, due to the fact that there could be

1 circumstances which may be of interest to run it. We set a
2 window of six hours. Beyond six hours it is my policy that
3 I do not run these. I have been ordered on a couple of
4 occasions to do this, but as a matter of policy I will not
5 run them after six; however, if we are looking at five
6 even though if you are asking what is the possibility of
7 being able to find a positive after five hours, I'd say
8 very, very slight because we have made such a wide window
9 we would run them.

10 Q But it's still -- you made the determination that it's
11 still worthy of running?

12 A Yes, sir.

13 Q It wasn't futile to run this.

14 A No, sir, it was not futile.

15 Q But after six hours you would consider it futile?

16 A I would consider it to be - if someone is positive
17 after six hours I would question whether they received
18 this material from the actual crime scene we are looking
19 at or from something subsequent to it.

20 Q You can have a seat.

21 MR. SCHUSTERMAN: The court's indulgence?

22 Q Agent Powell, the same process that one would use on
23 hands to determine this residue can that same test be done
24 on clothes?

25 A I have been doing research on this very question for

1 approximately two to three years trying to ascertain if
2 we're able to develop a test to be able to pull these
3 particles out of the fabric of clothing to be able to
4 determine if someone has fired a weapon or not. The
5 problem that I've been running into is that unlike skin,
6 which is relatively a closed system, doesn't have any
7 holes for any material to fall away into, on garments
8 these particles are so small that fabric if you can think
9 of it in the microscopic world is huge gaping holes
10 between very large strands of materials and these
11 particles will work their way down through these holes
12 very easily and we have found it is unreliable to try to
13 pull these out off these holes.

14 Q So I assume that it was not tested. You don't put it
15 in active practice - you don't even try?

16 A I don't try at this point because I have not found it
17 to be reliable enough to be able to use it as a forensic
18 test.

19 Q Thank you, Agent Powell. I appreciate your time.

20 REDIRECT EXAMINATION

21 BY MR. POPE

22 Q Agent Powell, Mr. Schusterman was asking you about the
23 propriety or the reliability as far as your six hour
24 window and you said past six hours you have tested before,
25 but normally you wouldn't based on the likelihood of

1 positive results?

2 A That is correct.

3 Q Likewise, if you were informed that an individual had
4 washed their hands would you be most inclined to feel that
5 you would get a positive result?

6 A Oh, yes, sir, if I am informed that someone has washed
7 their hands before the test was administered, I would have
8 not run the test.

9 Q You were given no knowledge of that as far as one way
10 or another on this particular case?

11 A No, sir, the only information I was given was the
12 actual data sheets filled out at the crime scene dealing
13 with the time of collection and condition. I did not know
14 anything as far as what had happened with any of the
15 people who had been swabbed as far as the condition of
16 what happened before the testing.

17 Q Thank you, sir.

18 MR. SCHUSTERMAN: No recross, Your Honor.

19 THE COURT: You may step down.

20 MR. POPE: I ask that he be excused.

21 THE COURT: You may be excused. I appreciate your
22 time.

23 MR. POPE: The State would call David Collins.

24 DAVID J. COLLINS, being duly sworn,
25 testified as follows:

1 DIRECT EXAMINATION

2 BY MR. POPE

3 Q Mr. Collins, if you would, state your name and
4 occupation for this jury, please.

5 A David J. Collins. I am employed as a firearms examiner
6 an agent with the South Carolina Law Enforcement Division
7 commonly known as SLED.

8 Q Tell the jury what you do as a firearms examiner or
9 what your actual job is.

10 A A firearms examiner examines firearms or firearms
11 related evidence that is submitted to the laboratory.
12 These examinations can include examining fired bullets and
13 cartridge cases to determine if a specific suspect firearm
14 fired those pieces of evidence. It can involve test firing
15 the suspect weapons to determine if they function
16 properly. We also will examine ammunition components of
17 unknown origin to determine what type of ammunition,
18 brand, caliber they may be and if the weapon is submitted
19 what type of weapon may have fired them. We also will in
20 situations that demand it restore serial numbers that have
21 been obliterated or otherwise altered. We can also make
22 range or distance to target determinations where shotgun
23 pellets are involved.

24 Q Agent Collins, what kind of background and education
25 allows you to perform these type tests?

1 A After becoming employed at SLED I entered an
2 on-the-job training program in firearms examination which
3 lasted approximately two years. Upon completion of that
4 and becoming certified by SLED as a firearms examiner I
5 joined our professional association, the Association of
6 Firearms and Tool Marks Examiners. Through that
7 association I have received additional training through
8 annual training seminars and I have also attended firearms
9 repair courses and armor courses provided by the Beretta,
10 Sig, and Glock Firearms Manufacturers. Before becoming
11 employed at SLED I worked part time in a gun shop and also
12 was in competitive shooting.

13 Q How long have you been in law enforcement?

14 A I have been in law enforcement for just over five
15 years now.

16 Q Okay and have you had the opportunity to testify as an
17 expert in firearms examination?

18 A I have testified in South Carolina over eighty times
19 as an expert in firearms examination.

20 MR. POPE: Your Honor, at this time I tender Mr.
21 Collins as an expert in firearms examination.

22 THE COURT: Any voir dire?

23 MR. SCHUSTERMAN: No objection.

24 THE COURT: All right. I find he is so qualified. We
25 have another expert.

1 Q Mr. Collins, you received a number of items of
2 evidence to be tested in the Firearms Lab in this
3 particular case, first, I'll show you State's Exhibit 30,
4 which is Mr. McCants' Glock weapon and ask if you can
5 identify that.

6 A I examined this evidence. When this evidence was
7 submitted to the laboratory, I marked each individual item
8 with a marker so that I could identify it later in court.

9 Q And as to Mr. McCants' weapon now did you test it and
10 did it appear to be in proper working order?

11 A I did test fire this weapon and it was functioning
12 properly.

13 Q Did you receive any cartridges or any indication that
14 a bullet had been expelled or that it had been fired? Did
15 you receive any fired cartridges?

16 A Of the fired evidence I received none of it had been
17 fired by this particular firearm.

18 Q Mr. Collins, did you also receive State's Exhibit 43
19 for testing purposes?

20 A Yes, I also examined this evidence and it also bears
21 my markings I placed upon it for identification.

22 Q And could you identify that evidence for the jury,
23 please, what those items are?

24 A First, there was a Llama 9 millimeter semi-automatic
25 pistol. Also with this pistol a magazine, which I also

1 examined. From the chamber of this pistol we have one
2 unfired 9 millimeter Lugar caliber cartridge and there are
3 also four unfired 9 millimeter Lugar caliber cartridges in
4 the magazine.

5 Q And did you test that gun as far as being in proper
6 working order?

7 A I did.

8 Q And what did you note?

9 A Initial examination of the firearm revealed that the
10 grip panels were missing from the side of the grip portion
11 of the firearm. This did not in any way impede the
12 functioning of the firearm. Other than that the weapon
13 functioned and fired in a manner typical of this type of
14 weapon.

15 Q Did you also receive from Agent Black and Agent
16 Gainey, first, the vest, State's Exhibit 29?

17 A Yes, I examined this vest.

18 Q Did you also receive State's Exhibit 68, which would
19 be the two bullets recovered from autopsy?

20 A Yes, sir, I also examined both of these projectiles.

21 Q Okay, and, finally, State's Exhibit 68, which is the
22 casings that was recovered on Dave Lyle Boulevard?

23 A Yes, I have examined all of these fired cartridge
24 cases.

25 Q Mr. Collins, if you could before we begin with the

1 specific evidence would you tell the jury what firearms or
2 firearms' markings for identification entails, what you
3 actually do to compare the casings and the weapons and the
4 bullets?

5 A In firearms manufacturing various machine processes
6 are employed. These processes cut away metal to the
7 various portions of the raw part to create a finished
8 part. One of these processes, for instance, is the cutting
9 or rifling into the barrel of the weapon. Rifling or
10 spiraling grooves in the barrel of the weapon imparts a
11 spin on the bullet as it passes through the barrel. This
12 serves to stabilize the bullet in flight much the same way
13 as a quarter back attempts to throw a spiral in passing a
14 football. Also, the machine processes that are employed
15 will leave behind markings in this rifling that are
16 individual to that particular firearm and as the tool is
17 used, its unique markings are caused by the continuous
18 dulling and chipping of the edge, the cutting edge, of the
19 tool that is used. When the breach face or the back of the
20 barrel is formed or the firing pin is formed, similar
21 conditions cause individual imperfections and scratches on
22 these parts. As a bullet travels through the barrel of a
23 firearm these imperfections are transferred or scratched
24 on the surface of that bullet. Likewise, when a cartridge
25 case is forced to the rear of the barrel under pressure

1 under recoil, it gets the breach face or the firing pin of
2 the firearm, likewise, these imperfections have been
3 stamped or impressed off the cartridge case. These
4 imperfections and these marks that are left on these
5 bullets are as individual on each firearms as a
6 fingerprint is to a person. By taking a suspect firearm
7 and firing ammunition in the laboratory that as closely as
8 possible matches the type of ammunition that was used in
9 the incident and then comparing the test bullets that were
10 recovered from these test firings and the test cartridge
11 cases with the firing evidence side by side under a
12 comparison microscope we can find where these markings
13 match or do not match. If we find that these markings do
14 match, then we conclude that that particular item of
15 evidence was fired by that gun to the exclusion of all
16 others.

17 Q Mr. Collins, I am going to ask if you could step down,
18 please. And you first did testing or observation of the
19 bullet proof vest, is that correct?

20 A That is correct.

21 Q I am going ask if you would place this vest on the
22 torso as it would be worn. That's State's Exhibit 29.

23 A (Witness complied.) There would obviously be
24 differences in the way this vest would fit on somebody of
25 different size or stature. This is the manner in which

1 this vest would normally be worn.

2 Q Okay and could you tell the jury the results of any
3 observations or examinations that you did of that
4 particular vest?

5 A When I initially examined the vest, the first thing I
6 do is note its condition, the type of vest it is, and then
7 look for defects where the vest might have been damaged.
8 In this case a defect was noted here in the center line of
9 the vest in the front. Behind this area there is a plate,
10 a trauma reduction plate. Removal of the plate revealed it
11 had been perforated by a high speed projectile. By going
12 inside the panel and removing this carrier, this blue
13 portion is actually called the carrier, the panel of
14 kevlar material inside this. By removing the kevlar
15 material I found where a projectile had fallen to the
16 inside of the vest and I recovered that projectile.

17 Q I show you State's Exhibit 73 for identification and
18 ask if you can identify that, please, sir.

19 A From the front of this portion of the vest on the
20 bottom I recovered this projectile. It's a fired
21 projectile with some fragments of lead.

22 Q If you would, Mr. Collins, allow Mr. Schusterman to
23 see the whole, all three exhibits, the three items and
24 that may speed up the process.

25 A (Mr. Schusterman examines the exhibits.)

1 Q Mr. Collins, State's Exhibit 73 were items that you
2 recovered from the vest, is that correct?

3 A Yes, all three of these I recovered from the vest.

4 Q And they bear your identifying marks?

5 A They do.

6 MR. POPE: I move State's Exhibit 73 into evidence.

7 MR. SCHUSTERMAN: Without objection.

8 THE COURT: Be received without objection.

9 (State's Exhibit 73 marked and filed.)

10 Q Agent Collins, you said the first one you showed the
11 jury the boxes are designated as to where you recovered
12 them?

13 A They indicate where they were on some of them; I also
14 have in my notes a drawing I made of the vest that charts
15 exactly where these defects or holes were found and where
16 I recovered the actual projectile.

17 Q So the first defect you found was ---

18 A Right here in the front of the vest, directly the top
19 portion of the velcro strap.

20 Q I noted when you pulled out the shock plate the hole
21 was much larger than the hole that you pointed to in the
22 vest. Could you explain to the jury why that would be?

23 A When a projectile or bullet of this type passes
24 through cloth fabric it may not make a very large hole;
25 however, upon striking a harder substance such as this

1 metal plate it is going to tend to start to expand and
2 deform and as it does so, it is going to push a larger
3 hole through that material. The projectile passed through
4 this plate and impacted the kevlar material on the other
5 side of the plate; however, it did not penetrate into the
6 kevlar. That material stopped it and allowed it to then
7 drop by gravity to the bottom of the plate.

8 Q So on the first shot that you have indicated the vest
9 actually prevented the bullet from entering the body?

10 A That is correct.

11 Q Would you indicate the next area?

12 A Examination of the rear of the vest revealed, first of
13 all, two defects here, one above the other, near the
14 center line of the vest. I removed again the kevlar panel
15 from inside the carrier. There is no shock or metal plate
16 on the back of these vests. Examination of the panel
17 revealed that there is still a projectile imbedded in the
18 kevlar panel that would have been consistent with the
19 location of this hole here. In looking inside the carrier
20 there was a projectile located again in the bottom of the
21 carrier that would be consistent with a projectile that
22 struck here, did not penetrate the kevlar and fell to the
23 bottom. After removing this particular projectile from
24 the kevlar panel, this bullet here, this actually was
25 imbedded in the kevlar material. You can see where it is

1 expanded. This is a condition that we refer to as
2 riveting. The original diameter of the bullet is seen as
3 the base, the circle which you see on the base of the
4 bullet, the rest of it is expanded out into a mushroom
5 shape.

6 This projectile that I removed from the bottom of the
7 vest. It created a hole in the top or above the other in
8 the vest is this one here which as you can see is also
9 riveted and expanded. This is from impact with the kevlar
10 material. Kevlar material is designed such that it can
11 stop and slow down the projectile of this type or of this
12 caliber and at this velocity. There are several layers
13 sometimes as many as twenty or more layers of this
14 material in there. One layer of kevlar would not afford
15 too much protection. In this case, both of these
16 projectiles was stopped by the vest material.

17 An additional search revealed a defect here. This
18 passed all the way through the vest, is consistent with a
19 bullet passing through the vest, and there was no
20 projectile fragment recovered from this area.

21 Also, a defect consistent with a bullet hole found
22 here on the side of the strap. This also was through and
23 through penetration and no projectile was recovered.

24 Q So the first three you said, the ones that you
25 recovered the projectiles, the vest, in effect, did its

1 job?

2 A The vest stopped the first three projectiles that I
3 mentioned. The projectile that impacted here at the bottom
4 of the vest struck very close to the edge of the actual
5 kevlar material. These vests are not particularly designed
6 to stop the bullet passage when it is that close to the
7 edge. It is weaker at that point and so that did not stop
8 the projectile.

9 Q Likewise, the elastic strap is that made of Kevlar
10 also?

11 A The elastic strap is merely just an elastic nylon
12 material. It is not designed to perform any kind of
13 protection.

14 Q Did you also indicate State's Exhibit -- and these are
15 the three bullets that you recovered from the vest, is
16 that correct?

17 A That is correct.

18 Q You also indicated State's Exhibit 68 you recovered or
19 it was sent to you from the autopsy, is that correct?

20 A That's correct.

21 Q And did you have an opportunity to do testing on them?

22 A I did.

23 Q Could you take those and show the jury those
24 particular items and indicate to them - when you talk
25 about the rifling characteristics or the marks that you

1 look at and compare - if you could take one of these and
2 show them what you are talking about and, please, be aware
3 of the back row too.

4 A When the bullet is fired through the barrel, like I
5 said, these rifling grooves are engraved or scratched on
6 the surface of the bullet and in this case you can
7 actually see parallel grooves that run up the side of the
8 bullet. These are caused by the rifling in the barrel of
9 the firearm as it is fired through. The actual
10 microscopic defects that we are looking for to make our
11 comparisons cannot easily be seen with the naked eye, but
12 they are down in these grooves that are on the side of the
13 bullet.

14 Q And the bullet that you showed with the grooves where
15 was that recovered?

16 A This was recovered from it says mid-abdomen
17 twenty-five inches from top of here (indicating).

18 This bullet was more damaged. You can see where it is
19 flattened out on the base. It has been deformed; however,
20 the remnants of these grooves are still there, but it has
21 been distorted. There is also some very small fragments,
22 which were recovered and submitted. It is not uncommon for
23 a bullet of this nature to deform in this fashion upon
24 striking any object.

25 Q Where was that bullet recovered?

1 A This bullet was recovered it says from frontal skull.

2 Q Finally, I would ask you before you sit down if you
3 would use one of the eight casings as an example to show
4 the jury what you looked for as far as the markings.

5 A This is a fired 9 millimeter caliber cartridge case.
6 If you will look on the base of it you will see a silver
7 colored disk it's the primer. In the center of the primer
8 there's a dent that is caused by the firing pin on the
9 firearm when it is discharged. We are looking for to make
10 our comparisons markings that are left by the firing pin
11 or on the surface of the firing pin that's stamped into
12 the primer. Also, we are looking for markings that are
13 left by the breach face, the flat surface at the back of
14 the barrel, on this area of the bullet -- excuse me,
15 cartridge case. These markings would also be individual
16 to that particular firearm. Other areas that we have used
17 to make comparisons are chamber marks, which are scratch
18 marks that would be left around the outside of the
19 cartridge casing by the actual chamber, markings that are
20 left by the extractor which is used to pull the fired
21 cartridge case from the firearm. All of these areas can
22 be used to make identifications of the specific cartridge
23 case to a specific firearm.

24 Q Mr. Collins, you can have a seat. Mr. Collins, you
25 had indicated to the jury that upon receiving the weapon

1 you did test firings, is that correct?

2 A That is correct.

3 Q And, again, what is the purpose for doing that?

4 A There is really two functions involved in making test
5 firings of firearms. The first thing that you are trying
6 to do is obviously get test bullets and cartridge cases
7 that you can use to compare to fired evidence such as the
8 bullets and cartridge cases that are submitted. The other
9 function is to determine if the weapon functions properly.

10 Q Okay, and after making that comparison - you had
11 already indicated the weapon fired properly, is that
12 correct?

13 A The weapon fired as I would expect this type of weapon
14 to fire. All the safety mechanisms on the firearm
15 functioned as designed.

16 Q And as to the items, State's Exhibit 65, which are the
17 recovered casings from the scene of Brent McCants' death,
18 did you compare those and make a determination as to the
19 suspect weapon?

20 A I did.

21 Q And what was the results of that comparison and
22 determination?

23 A My comparisons of these fired cartridge cases with the
24 test cartridge cases that I fired from this firearm
25 revealed that they were fired from this firearm to the

1 exclusion of all others. This comparison was primarily
2 based on the actual breach face markings from the back of
3 the barrel.

4 Q State's Exhibit 67, which are three bullets that you
5 recovered that were stopped by the vest, did you also make
6 comparisons as far as rifling characteristics in comparing
7 that as to whether or not it had been fired by the suspect
8 weapon?

9 A I did.

10 Q And what was the results of that test?

11 A By comparing the microscopic markings on these bullets
12 with the markings on the test bullets that I fired from
13 this firearm I was able to conclude that all three of
14 these projectiles were fired by this gun to the exclusion
15 of all other guns.

16 Q Finally, I'll ask you the two bullets that were
17 recovered from the autopsy, State's Exhibit 68, did you
18 perform similar tests and what were the results?

19 A I basically performed the same type of test that I
20 just described to you. I was able to conclude that both of
21 these projectiles were also fired by this firearm to the
22 exclusion of all other firearms.

23 Q Thank you, Mr. Collins. Answer any questions the
24 defense may have.

25 CROSS EXAMINATION

1 BY MR. SCHUSTERMAN

2 Q Mr. Collins, in plain English that gun fired all the
3 shots?

4 A This gun fired all of these fired cartridge casings
5 and all of these fired bullets.

6 Q And as you are talking about different projectiles you
7 as I understand it are not making any representations as
8 to which was fired first or in what particular order?

9 A That is correct.

10 Q You would have, as I understand it, no way of
11 determining that from the evidence that's before you.

12 A That is correct. I would have no means of determining
13 which of the projectiles was fired first.

14 Q So when we use the term bullet number one or
15 projectile number two or three, that's purely
16 administrative for you?

17 A That is correct; that is merely the order in which I
18 recovered them from initially.

19 Q All right, you said that you fired that particular
20 weapon.

21 A That is correct.

22 Q And you indicated that you have a knowledge of 9
23 millimeter semi-automatic weapons?

24 A I have fired and tested numerous 9 millimeter weapons
25 in the course of my career.

1 Q Would you tell me either specifically to that weapon
2 or generally as to 9 millimeter semi-automatic weapons
3 what the muzzle is of them?

4 A It varies from manufacturer to manufacturer. It can go
5 anywhere from approximately eleven hundred feet per second
6 down or -- either side of that; it could vary by a couple
7 of hundred feet per second.

8 Q And did that eleven hundred feet per second correlate
9 into a force that is exerted upon hitting an object?

10 A That is a certain figure which is used by the firearms
11 community to describe the force that a bullet carries or
12 the energy that it carries. This is determined in a
13 manner of foot pounds. I do not have the information with
14 me as to what the exact foot pounds would be in this type
15 of 9 millimeter caliber ammunition.

16 Q Can you give me an approximation with your experience?

17 A I would hesitate to give an approximation. That is
18 typically something that I would refer to a reference to
19 determine.

20 Q In your experience a weapon such as this fired at a
21 range inside of five feet do you believe that it would
22 exert more or less than five hundred pounds of force?

23 A Five hundred pounds of force would probably be -- I
24 would imagine it would be less than that. Once again, I
25 don't have the specific literature before me to refer to;

1 however, that's ---

2 Q But given you are an expert, I am looking for an
3 approximation.

4 A It would be somewhere in between I would think three
5 hundred and five hundred foot panels of pressure.

6 Q Thank you. One other question, on this particular
7 weapon there's a magazine clip that was in it.

8 A Correct.

9 Q Is there such a thing as a standard magazine clip for
10 this weapon?

11 A Well, this is the magazine that is designed to fit in
12 this type of weapon. This is a Spanish manufactured weapon
13 and the magazine that was submitted with it was also
14 Spanish manufactured and it is designed to fit in this
15 specific model and type of weapon.

16 Q And how many bullets, projectiles, fit into that
17 magazine?

18 A In the laboratory I was able to fit nine cartridges
19 into this magazine.

20 Q All right. Is that -- is it rated for a certain
21 number or is it just as many as you can fit in?

22 A Typically, we do not research to see what the
23 manufacturer's specific design for this type of firearm
24 would be. We do testing individually on each magazine that
25 is submitted to the laboratory to determine how many

1 cartridges it will hold. Sometimes manufacturers will
2 state that their magazine is designed to hold a certain
3 number of cartridges; however, laboratory testings has
4 shown that this can vary less -- plus or minus by about
5 one cartridge.

6 Q And I understand it may be geared for eight, but it
7 holds nine?

8 A That is correct; it may be geared for eight. I do not
9 have the manufacturer's information.

10 Q Is it possible if I wanted to have a magazine that
11 held more bullets, could I go out and buy one that held
12 fifteen that would fit into that weapon?

13 A I do not know of any what we would call after market
14 manufacturers that produce magazines for this model
15 firearm that would allow you to buy a magazine that holds
16 more. There are other makes and models of firearms for
17 which magazines are available which holds more than the
18 standard number of cartridges. In other words, I know of
19 none for this specific model.

20 Q And my last question, when you are firing a 9
21 millimeter semi-automatic weapon or this one specifically,
22 if you can tell me, how quickly can you fire between
23 rounds?

24 A Really from a purely physical standpoint you could
25 fire this firearm about as fast as you could pull the

1 trigger.

2 Q So as fast as I could pull the trigger, that's how
3 fast the bullets can come into the chamber and be
4 expelled?

5 A The mechanical functioning of the firearm, the cycling
6 of the slide, the ejection of the spent cartridge case and
7 the reloading of the cartridge by the pistol itself is
8 very quick and most people would not be able to pull the
9 trigger faster than the gun could actually cycle.

10 Q So the gun is actually faster than the hand?

11 A It can be. In this specific case I can't obviously
12 speculate as to the abilities of somebody, you know, how
13 fast they could pull a trigger, but it's very fast.

14 Q Thank you. I appreciate your being here.

15 REDIRECT EXAMINATION

16 BY MR. POPE

17 Q Agent Collins, you indicated that you tested the clip
18 and it would hold nine in the clip?

19 A That is correct.

20 Q So with one in the chamber the most you could have in
21 the gun at one time would be ten bullets?

22 A That is correct.

23 Q Okay, you received I believe eight spent cartridges
24 from this gun, is that correct?

25 A That is also correct.

1 Q And you received five live rounds with the weapon?

2 A There was one live round in the chamber and there were
3 four in the magazine. So a total of five.

4 Q Eight and five, that's thirteen total. Is there any
5 way that weapon as you have it, that clip and that weapon,
6 would hold thirteen rounds without reloading?

7 A No.

8 Q Thank you, sir.

9 RECROSS EXAMINATION

10 BY MR. SCHUSTERMAN

11 Q So if I understand, you can absolutely say that
12 thirteen -- you can account for thirteen projectiles,
13 thirteen bullets, some process of reloading had to occur?

14 A With this magazine and firearm, yes, that's correct.

15 Q Thank you.

16 THE COURT: You may step down.

17 MR. POPE: I ask that he be excused.

18 THE COURT: You can be excused.

19 MR. SCHUSTERMAN: Without objection.

20 THE COURT: I appreciate your time. Thank you.

21 MR. BRACKETT: The State would call Chris Watts.

22 CHRIS WATTS, being duly sworn, testified
23 as follows:

24 DIRECT EXAMINATION

25 BY MR. BRACKETT

CHRIS WATTS

DIRECT

1 Q Sir, where are you employed?

2 A The Rock Hill Police Department.

3 Q And in what capacity are you employed with the Rock
4 Hill Police Department?

5 A Police officer, a master police officer.

6 Q How long have you been with them?

7 A Eight years.

8 Q Did you have an occasion on September 29th of 1992 to
9 go to the York County Courthouse?

10 A Yes, I did; I was escorting Hughes and Forney back for
11 bond hearings.

12 Q In the course of escorting the defendants to the
13 courthouse, were you privy to any statements that they may
14 have made as they went into the courthouse?

15 A Yes, I was. As we were walking in, one of the
16 reporters asked did anybody have any statements and he
17 made the statement "They put this on us, that we were ---

18 THE COURT: Well, wait, wait, wait, I think -- who
19 made that statement?

20 MR. SCHUSTERMAN: Your Honor, can we take something up
21 outside the presence of the jury?

22 THE COURT: Members of the Jury Panel, I'll let you go
23 to the jury room for just a few minutes.

24 (Whereupon the jury retired to the jury room.)

25 (THE FOLLOWING WAS HEARD OUTSIDE THE PRESENCE OF THE

1 JURY:)

2 MR. SCHUSTERMAN: Your Honor, at this time I am going
3 to object to any statement being made. I thought that was
4 covered in the pre-trial motions that all statements that
5 were going to be offered were going to be determined by
6 the court whether they would be allowed as to the various
7 constitutional safeguards. I don't recall Mr. Watts ever
8 testifying to a statement that Mr. Hughes allegedly made.

9 MR. BRACKETT: Your Honor, Mr. Watts was preparing to
10 testify to the exact statement that Kitts, Officer Kitts,
11 testified to regarding being arrested for a case up in
12 Charlotte and brought down here twenty miles away.
13 Officer Kitts, Mr. Kitts, is not available today. If, Your
14 Honor, you can see it is an identical statement. If Your
15 Honor would prefer, we can wait until tomorrow and have
16 Mr. Kitts here. But this is the exact same statement.
17 Chris Watts was there at the time the statement was made
18 and the statement itself has already been found to be
19 voluntary ---

20 THE COURT: Let's go ahead and at least put it on the
21 record. My concern - my notes indicate Kitts was the one
22 who testified as opposed to Watts.

23 MR. BRACKETT: Yes, sir.

24 THE COURT: So I'll know, he said, "They said."
25 First, let's get on the record who we are talking about

1 and who said what.

2 MR. BRACKETT: Yes, sir.

3 Q Officer Watts, were you privy to a statement made by
4 the defendant, Mar-Reece Hughes?

5 A That is correct.

6 Q And what was that statement?

7 A That statement was "They put this on us. We were ten
8 miles away in Charlotte and that's when they got us."

9 MR. SCHUSTERMAN: Your Honor, now we have a problem
10 because I can tell you that that's not the statement Marc
11 Kitts made.

12 THE COURT: My notes indicate Kitts testified "I don't
13 know why I'm here. I was arrested in Charlotte. It's a
14 set-up" or something to those effects. That's my notes;
15 that's cryptic, but that's in essence what --

16 MR. BRACKETT: That was the same basic testimony. I
17 mean he might have heard it, one, the variation, but yet
18 the essence of the statement is identical - It's a set-up
19 ---

20 THE COURT: He didn't say anything about the set-up I
21 don't think. "They put us ---

22 MR. BRACKETT: "They put this on us" ---

23 THE COURT: "They put it on us."

24 MR. BRACKETT: "I was twenty miles away in Charlotte
25 and" --

THE STATE VS HUGHES

1 THE COURT: I don't remember Kitts saying anything
2 about being twenty miles away.

3 MR. SCHUSTERMAN: I don't recall if there was any - I
4 just recall the Charlotte being used; I don't recall any
5 distance being used.

6 THE COURT: Are you saying these are two different
7 statements or is this supposed to be a recitation of the
8 same statement?

9 MR. BRACKETT: This is the same statement. There was
10 only one statement made to the press. Someone from the
11 press called out, "Do you have any statements to make" and
12 at that time Mar-Reece Hughes said --

13 THE COURT: Well, the dilemma is you now have somebody
14 testifying that the same statement and you have got two
15 different versions of it.

16 We can see. I think counsel for the defense ---

17 MR. SCHUSTERMAN: I have the transcript.

18 THE COURT: --- has the transcript. Read into the
19 record what was testified to by Mr. Kitts.

20 MR. SCHUSTERMAN: In pertinent part, the question was:
21 "Okay, do you recall upon arrival at the courthouse was
22 there any person present outside the courthouse?" Answer:
23 "There were members of the media and other bystanders
24 outside the court building." Question: "Did you hear Mr.
25 Hughes make any statement whatsoever as you were escorting

THE STATE VS HUGHES

1 him to the building?" Answer: "I did." Question: "And
2 was the statement a spontaneous one or was it in response
3 to a question? Can you describe the circumstances?"
4 Answer: "The best I recall it was a response to a question
5 from somebody in the crowd." Question: "What was the
6 statement?" Answer: "The statement was that he didn't
7 know why he was down here, he was in Charlotte and the
8 Rock Hill Police picked him up and brought him back to
9 Rock Hill and he didn't know what he was involved with. He
10 was set up." Question: "Was this a response to a
11 question that was asked by law enforcement or by the
12 media?" Answer: "Somebody in the media."

13 MR. BRACKETT: Your Honor, I think that the gist of
14 the statement is the same. I don't know that the
15 variations in any way materially prejudices the defendant.
16 Essentially he made a statement. It's undoubtedly -- we
17 are talking about the same statement. I believe Mr. Kitts
18 testified that was the only thing he said ---

19 MR. SCHUSTERMAN: That's correct.

20 MR. BRACKETT: --- That was the only statement he made
21 out there and I believe Officer Watts testified to the
22 same thing. We are talking about the same statement was
23 made. "I was in Charlotte and I was dragged down here and
24 this is a set-up."

25 THE COURT: Do you want to have an opportunity to

1 cross examine at this time, Mr. Schusterman?

2 CROSS EXAMINATION

3 BY MR. SCHUSTERMAN

4 Q Officer Watts, do you recall this particular incident?

5 A Yes, sir.

6 Q Who else was present other than you and Mr. Forney and
7 Mr. Hughes?

8 A Captain Cabaniss and Derek Williams.

9 Q And who was that?

10 A Derek Williams.

11 THE COURT: I still didn't hear him.

12 MR. SCHUSTERMAN: I didn't hear what he said either.

13 A Derek Williams.

14 Q Derek Williams. And what were the circumstances
15 around the statement?

16 A We were going in and somebody from the media - there
17 was a crowd of media on the outside - and we were going in
18 and as we were going into the courtroom somebody hollered
19 out "Do you have anything to say" and that's when Mr.
20 Hughes made the statement what I just said.

21 MR. SCHUSTERMAN: Your Honor, the statement that was
22 passed on by the court in pre-trial hearings was a
23 different statement. If Mr. Watts is saying that it is
24 the exact same statement that he heard, then I suggest he
25 read it from the transcript of Mr. Kitts, if that's all

THE STATE VS HUGHES

1 they are looking to do.

2 THE COURT: He can't testify as to what Kitts would
3 say. Let me ask you this. Where was Officer Kitts when
4 this occurred?

5 MR. WATTS: He was right beside one of them. As we was
6 walking in, I was behind them. We were walking in as a
7 group.

8 MR. BRACKETT: Possibly, Your Honor, he could say that
9 Mr. Hughes said something to the effect "I was brought
10 down here from Charlotte," I mean, nobody can remember the
11 exact words.

12 THE COURT: Wait, we can't tailor a witness'
13 testimony.

14 MR. BRACKETT: No, sir, I'm not attempting to do that.

15 THE COURT: Well, you are saying perhaps he could say.
16 What else is that?

17 MR. BRACKETT: Obviously, if we brought all five people
18 or ten people or whoever was standing around and brought
19 them in one by one and asked them what did you hear, every
20 single one would have a slight variation of what they
21 heard. The essence of the statement is going to be the
22 same.

23 THE COURT: How reliable is something if you are
24 telling me that if you brought all of the officers in here
25 and everybody would say different, what kind of

THE STATE VS HUGHES

1 reliability is that that you are imparting to the court to
2 put on this statement.

3 MR. BRACKETT: It's not the exact verbiage, a verbatim
4 transcript of what he said, it's whether or not the import
5 of his words is identical and I submit that the testimony
6 proffered by Officer Watts and the testimony proffered by
7 Officer Kitts are identical in that respect, that he was
8 brought down from Charlotte and he was framed. Basically
9 that's what you derive from this testimony. We can wait
10 until we get Officer Kitts in the morning. That's not a
11 problem and he can testify.

12 THE COURT: Well, I'm going to find that the statement
13 is voluntary. I am going to let him go ahead and testify
14 to it, but I just had some concern. I mean this is his
15 testimony and, of course, the defense could call Mr. Kitts
16 to show that somebody else has testified under oath that
17 the statement was different. But I guess also the court's
18 concern is we have spent time trying to avoid having to
19 spend time and a half of an hour doing this today and you
20 wanted to have all of this out of the way by Saturday in
21 the middle of the trial and that concerns the court to
22 some degree. I mean I'm not finding it's your fault in
23 that regard other than the fact that we tried to do this
24 last week so we wouldn't have to do it this week.

25 MR. BRACKETT: And I apologize. I was looking at the

THE STATE VS HUGHES

1 pretrial hearings I was looking more at the voluntariness
2 of the actual statement itself and I could have brought
3 Officer Watts at that time to testify, but given the
4 nature of the jury selection and the time involved and
5 also that Mr. Kitts is no longer with the police
6 department, he's in private business now, we were trying
7 to work with him the fact that he couldn't be here and
8 move on with the case. We wanted to get this testimony in,
9 but like I said --

10 THE COURT: Just a thought, if Mr. Kitts is in private
11 business and you knew that Mr. Watts was going to be
12 available and Mr. Kitts would perhaps not, why didn't you
13 just call Mr. Watts last week?

14 MR. BRACKETT: I could have done that, but we had the
15 statement --

16 THE COURT: Well, I find that the statement it was it
17 was one that was voluntary. The issue is is the statement
18 made after the Miranda Warnings and after the court had
19 found that Miranda Warnings were properly given, but,
20 again, I'll just put all of this on the record about the
21 statement, but I do find that this statement is divorced
22 from what Mr. Kitts testified, but the statement Officer
23 Watts overheard was not a statement given in response to
24 an interrogation or questioning by law enforcement,
25 perhaps by questioning from someone outside law

THE STATE VS HUGHES

1 enforcement and that this statement was therefore given by
2 the defendant, it was a volunteered statement at least as
3 to law enforcement and, additionally, that the statement
4 was given after Mr. Hughes had been completely apprised of
5 his rights and the effect of making any such statement
6 would have.

7 MR. BRACKETT: Yes, sir.

8 THE COURT: So I am going to allow him to testify.
9 Mr. Schusterman, anything else you want to put on the
10 record regarding that?

11 MR. SCHUSTERMAN: Your Honor, I think you are making a
12 ruling on a statement that I am not even sure that we have
13 heard everything that Mr. Watts is going to say yet.

14 THE COURT: Well, I hope so. I just asked Mr. Brackett
15 if he covered everything. I hope that's going to be all.
16 Don't tell me we are going to have something new yet.

17 MR. BRACKETT: That's the only statement ---

18 THE COURT: That's why I gave you the opportunity to
19 cross examine.

20 MR. SCHUSTERMAN: Thank you.

21 THE COURT: As to what I've heard I find that it's
22 voluntary.

23 MR. BRACKETT: That he was brought down from --

24 THE COURT: Well, yes, sir.

25 MR. BRACKETT: That's the only statement we have, Your

CHRIS WATTS DIRECT (RESUMED) and CROSS

1 Honor. That's the only statement he made that day.

2 THE COURT: All right, bring the jury back in.

3 (Jury returns to courtroom.)

4 THE COURT: All right, you may proceed.

5 MR. BRACKETT: Thank you, Your Honor.

6 DIRECT EXAMINATION

7 BY MR. BRACKETT (RESUMED)

8 Q Officer Watts, you have testified you were escorting
9 the defendants into the courthouse?

10 A That's correct.

11 Q And the question was posed to them?

12 A By a member of the media, which was "Do you have
13 anything to say" at which time Mr. Hughes made the
14 statement "They put this on us, we were ten miles away in
15 Charlotte and they got us and brought us back."

16 Q Was that the only thing said?

17 A That is correct.

18 Q Thank you very much, sir. Please answer any questions
19 Mr. Schusterman may have.

20 CROSS EXAMINATION

21 BY MR. SCHUSTERMAN

22 Q Officer Watts, you were assigned to take Mr. Hughes
23 and Mr. Forney together to the courthouse?

24 A That is correct for a bond hearing.

25 Q And this was part of the media, the media gathered

1 outside of the courthouse?

2 A That's correct, as we were going in from the outside.

3 The media had already gathered before we arrived.

4 Q And this was in response to a question from the media?

5 A That is correct.

6 Q Do you remember the particular person who asked the
7 question?

8 A I believe it was - I am not familiar with her name at
9 this time. I'm familiar with her.

10 Q And Mr. Hughes' response was he was set-up, he was in
11 Charlotte, he was ten miles away?

12 A Ten miles away in Charlotte, that he was stopped and
13 brought back.

14 Q Okay. Are you familiar with the Brent McCants' case -
15 were you familiar with it?

16 A Yes, sir.

17 Q Do you know where Mr. Hughes was arrested?

18 A I don't know the name, but it was in the woods, I
19 don't know the name of the streets.

20 Q Do you know what town it was in?

21 A That's correct, I do.

22 Q What town?

23 A It was in Rock Hill.

24 Q So that statement was wrong, a lie, wrong, fabrication

25 ---

1 A That's correct.

2 Q --- it wasn't right.

3 A That is correct; it was a lie.

4 Q He answered that he was in Charlotte at the time.

5 A That was his response.

6 Q Thank you, Officer Watts, I appreciate that.

7 MR. BRACKETT: Nothing further. I ask that this
8 witness be excused.

9 THE COURT: I appreciate your time. You can step down.

10 MR. BRACKETT: The State would call Harry Jennings.

11 THE COURT: You can step up, put your left hand on the
12 Bible and raise your right.

13 HARRY JENNINGS, being duly sworn, testified as
14 follows:

15 MR. BRACKETT: Your Honor, may we approach?

16 (Bench conference off the record.)

17 THE COURT: I am going to let you go to the jury room
18 for a few minutes.

19 (Jury retires to jury room.) All right, first, let me
20 caution counsel in the future to keep paper work on their
21 desk particularly printouts that have -- like that. Now,
22 Counsel, both counsel, have indicated to the court that
23 this particular witness does have a past record of crimes
24 possibly involving moral turpitude. There is a question
25 posed by counsel for The State, as I understand it,

1 regarding convictions that are prior to 1986 be conceived
2 that any post-1986 convictions of crimes which involved
3 moral turpitude of which several have been called to my
4 attention at the bench are, in fact, fertile ground for
5 use and admissible for purposes of impeachment?

6 MR. BRACKETT: Yes, sir.

7 THE COURT: All right, now tell me about any prior to
8 1986?

9 MR. BRACKETT: Your Honor, there is a conviction in
10 1977 for housebreaking and grand larceny, I believe and he
11 received three years confinement. We would contend that
12 that is too remote in time to be used to impeach. He has
13 several convictions, which I believe counsel would agree
14 for assault, simple assault, from 1980 up through 1985,
15 all of which are simple assaults, none of which carried
16 more than a year nor involved crimes which would be
17 considered crimes of moral turpitude. Those I think we can
18 agree are not ---

19 MR. SCHUSTERMAN: Absolutely.

20 MR. BRACKETT: --- admissible to impeach. The only
21 question is the 1977 conviction for the housebreaking,
22 grand larceny. That is eighteen years old, Your Honor, and
23 I submit it is too remote.

24 THE COURT: What is the position of the defense?

25 MR. SCHUSTERMAN: Your Honor, it is my understanding

1 that under the new Rules of Evidence that we basically
2 have abandoned the moral turpitude, but we've gone to any
3 defense that carries one year or more and that over ten
4 years is within the discretion of the court. Your Honor,
5 this man is taking the stand, I think it should be used
6 for impeachment, it certainly is not an isolated event.
7 It's from 1977 through 1993, November of 1993. In fact, I
8 will tell you, Your Honor, that the charge in 1993, an
9 identical charge, it's a burglary charge, the same charge
10 as it was in 1977, so it does show a pattern of behavior
11 as well.

12 THE COURT: I am going to deny the use of anything
13 prior to 1986. I am not going to allow the use of the 1987
14 conviction. I find it is too remote. Even though the
15 pattern is continued violations and I haven't had all of
16 those put on the record, they were for crimes not
17 involving moral turpitude. I will just for the record
18 state that had there been a continuing pattern of petty
19 larcenies or even anything involving ---

20 MR. SCHUSTERMAN: I am not sure I understand the
21 court's ruling. The conviction from 1977 is a crime of
22 moral turpitude.

23 THE COURT: I have no question about that. I am saying
24 from 1977 to 1986 what has been related to the court were
25 offenses that were Magistrate level, simple assaults,

HARRY JENNINGS

DIRECT

1 things which are not necessarily crimes that are involving
2 moral turpitude.

3 MR. SCHUSTERMAN: That's correct, Your Honor.

4 THE COURT: And what I'm saying is had there been a
5 continuing pattern from '77 through '86 of shopliftings,
6 bad checks, those type things, I would have allowed you to
7 connect them up, but since there is almost a ten year
8 hiatus of those type offenses, I'm not going to let you go
9 into the 1977. Also, I'm not being picky, but I am going
10 to ask when this witness is examined as to those
11 particular offenses that the Rap Sheet not be displayed
12 for the jury, that is, I understand -- they may not even
13 know what that is, but the implication if one were to
14 unroll or unfold a five or six foot long piece of paper
15 and scan it and search there over, it would certainly
16 convey to the jury that someone is having to look through
17 a mess of something to find whatever it is they are
18 looking for. If you know what they are and can write them
19 down on a separate piece of paper, ---

20 MR. BRACKETT: I have done that, Your Honor, --

21 THE COURT: That was mighty courteous of you and I
22 will hand it up. I am going to, of course, raise this
23 issue first with Mr. Jennings and then after I'm done I
24 will give this to him to Mr. Schusterman if he wishes to
25 --

1 MR. SCHUSTERMAN: Does it have the sentence that he
2 received?

3 MR. BRACKETT: Well, I don't believe that is relevant.
4 I think the conviction is all that you are allowed to get
5 in, the fact that ---

6 THE COURT: I think the conviction is. And I am going
7 to let the bailiff tell the jury to take about a five
8 minute break, so we can all take one and when we come
9 back, we will be here for a while.

10 MR. SCHUSTERMAN: Your Honor, am I to understand that
11 the fact that he is currently incarcerated in the
12 Department of Corrections under a sentence which are one
13 of the crimes of moral -- that you determined are used for
14 impeachment cannot be brought up?

15 MR. BRACKETT: I will bring out the fact that he is
16 currently incarcerated; however, the fact that he got
17 whatever he got back in 1986 is not relevant.

18 THE COURT: I don't think the sentence has anything to
19 do with whether he violated -- I don't think the sentence,
20 you know, the sentence one person could receive three
21 years from one judge and ten from another on the same
22 offense and that doesn't make it any more heinous.

23 MR. SCHUSTERMAN: I didn't make myself clear. I meant
24 the fact that he is currently housed in the Department of
25 Corrections.

HARRY LEWIS JENNINGS, JR. (IN CAMERA) DIRECT

1 MR. BRACKETT: I am going to bring that out.

2 THE COURT: Mr. Brackett said he is going to bring
3 that out.

4 All right, let's take about a five minute break and
5 then we will proceed.

6 Would you tell them they have about five minutes to
7 refresh themselves.

8 Mr. Jennings, you can step out and refresh yourself
9 too as long as you have your escort.

10 (Recess.)

11 THE COURT: All right, come on up.

12 We are first going to have a proffer of the testimony
13 and I think counsel for defendant has some in-camera -- in
14 chambers he asked that we have some in-camera discussions
15 concerning his testimony and the discovery process, so I
16 am going to take a proffer of testimony and then have any
17 motions on that.

18 DIRECT EXAMINATION

19 BY MR. BRACKETT (IN CAMERA)

20 Q Sir, would you please state your full name for us and
21 spell your last for the court reporter?

22 A Harry Lewis Jennings, Jr.

23 Q All right, where are you currently living right now?

24 A In Columbia.

25 Q Where at?

HARRY LEWIS JENNINGS, JR. (IN CAMERA) DIRECT

- 1 A Manning Correctional Institution.
- 2 Q Are you incarcerated now?
- 3 A Yes.
- 4 Q What are you incarcerated for?
- 5 A For second degree burglary.
- 6 Q All right. Where are you from originally?
- 7 A Right here in Rock Hill.
- 8 Q How long have you lived in Rock Hill, in York County?
- 9 A All of my life.
- 10 Q Were you incarcerated in the York County Detention
- 11 Center back in the middle of February, 1993?
- 12 A Yes, sir.
- 13 Q Do you know the defendant in this case, Mar-Reece
- 14 Hughes?
- 15 A Yes, sir.
- 16 Q Did you know him back then?
- 17 A Yes, sir.
- 18 Q How did you know him?
- 19 A We met, you know, at the time we was incarcerated over
- 20 there at the County.
- 21 Q Did you have an opportunity to talk to him at various
- 22 times?
- 23 A On several occasions.
- 24 Q When you are incarcerated in the Detention Center, do
- 25 they keep you pretty much in a cell most of the time?

HARRY LEWIS JENNINGS, JR. (IN CAMERA) DIRECT

1 A Yes, as a matter of fact, twenty-three hours a day.

2 Q Okay, and this was back in the old detention center?

3 A Yes.

4 Q Did you when you talk, did you talk back and forth to
5 people in their cells or was each cell kept confined one
6 cell block - how was that done?

7 A It was like four cells on the block and each one had
8 four people in the cell, but you could talk easily because
9 they was so close together.

10 Q So a person in cell one could talk to a person in cell
11 four?

12 A Yeah with no problem.

13 Q Could you hear what was going on down the cell block?

14 A Yes, sir.

15 Q In the middle of February did you have occasion to
16 hear a conversation between some inmates regarding
17 drinking and partying and that sort of thing?

18 A Yes, sir, I did.

19 Q Could you relate to us what the details of that
20 without saying what anybody specifically said, but what
21 were they generally talking about?

22 A Well, they started off partying, get high, having a
23 good time, you know, how drugs will make you feel and
24 stuff like that.

25 Q Did you hear Mar-Reece Hughes at any point enter that

HARRY LEWIS JENNINGS, JR. (IN CAMERA) DIRECT

1 conversation?

2 A Yes, sir.

3 Q And what did Mr. Hughes say?

4 A He said the greatest feeling he ever had was when he
5 shot that cop.

6 Q Okay and do you know Mr. Hughes' voice?

7 A Yes, sir.

8 Q Was there any question it was him?

9 A No question.

10 Q Now was he joking around?

11 A Well, my opinion ---

12 MR. SCHUSTERMAN: Objection.

13 THE COURT: I sustain the objection. You don't have
14 to answer that.

15 Q From the tenor of his voice ---

16 MR. SCHUSTERMAN: Objection.

17 THE COURT: Let him get the question out.

18 Don't answer it.

19 Go ahead and ask the question.

20 Q Was he laughing when he said it?

21 A No, sir.

22 Q Was he bragging when he said it?

23 A You could say ---

24 MR. SCHUSTERMAN: Objection.

25 THE COURT: I sustain the objection.

HARRY LEWIS JENNINGS (IN CAMERA) CROSS

1 Q What happened after he said it? What did anybody say,
2 if anything?

3 A Nobody said nothing, everybody got real quiet because
4 everybody was just shocked, you know.

5 MR. SCHUSTERMAN: Objection.

6 THE COURT: I sustain the objection.

7 Q The conversation stopped?

8 A Everything ceased.

9 THE COURT: He can testify to that, but not why it
10 ceased.

11 MR. BRACKETT: Yes, sir.

12 MR. SCHUSTERMAN: Also, I'd appreciate it if it wasn't
13 in the form of a leading question.

14 THE COURT: Don't ask leading questions, Mr. Brackett.

15 MR. BRACKETT: Yes, sir. Your Honor, that would be
16 the proffer.

17 THE COURT: Any cross?

18 MR. SCHUSTERMAN: Just briefly.

19 CROSS EXAMINATION

20 BY MR. SCHUSTERMAN

21 Q If I understand you are saying that was in a block,
22 there were four cells.

23 A Yes, sir.

24 Q And how many men are in each cell?

25 A Four.

HARRY LEWIS JENNINGS (IN CAMERA) CROSS

1 Q So there are sixteen people in a block?

2 A Occasionally, yes, sir.

3 Q All right. And were you in the same cell with Mr.
4 Hughes?

5 A No, sir.

6 Q Where were you?

7 A I was in Cell Number Three.

8 Q What number was he in?

9 A One.

10 Q Is One and Three on the same side?

11 A Yes, sir.

12 Q So when Mr. Hughes said or allegedly made the
13 statement, you couldn't see him?

14 A No, sir.

15 Q So you are basing the statement on you recognized his
16 voice?

17 A Yes, sir.

18 Q That wasn't the only time you had spoken to Mr. Hughes
19 either?

20 A No, sir.

21 Q You had talked to him before?

22 A Yes, sir, plenty of times.

23 Q Plenty of times.

24 MR. SCHUSTERMAN: That's all I have.

25 THE COURT: Just stay up there, please, sir.

1 All right, anything from the defense?

2 MR. SCHUSTERMAN: That's it.

3 THE COURT: Any motions?

4 MR. SCHUSTERMAN: Yes, Your Honor, we would, based on
5 for a variety of reasons, we would ask that the statement
6 not come in, number one, because of the reliability
7 factor, the fact that there was testimony last week about
8 Mr. Hughes' psychological conditions, the fact of the
9 psychotic state he was in at the time. Number two, Ms.
10 Brice had filed on behalf of Mr. Hughes a Motion for
11 Production of any and all oral statements that were made.
12 We had pretrial motions a week ago Thursday and at that
13 time for right or for wrong you were led to believe that
14 we had everything that was in the possession of the
15 Solicitor's Office. This would be obviously if we had
16 known about the statement, we would have the ability to
17 find out the truthfulness of it, the corroborating aspects
18 to it. In many ways we could have found out the basis for
19 the statement in terms of who were there at the time. We
20 would just -- this is in some form it just is an ambush,
21 this is absolutely where we are blind sided by this
22 statement and giving the fact that the court heard
23 abundant testimony regarding reliability of the statement
24 that I would submit that its prejudicial value toward Mr.
25 Hughes given his state of mind and the like far outweighs

HARRY LEWIS JENNINGS (IN CAMERA) CROSS

1 the probative value of it, all things considered. I would
2 respectfully ask that it be denied.

3 THE COURT: All right. Let's look at Rule 5 just a
4 minute, A-1 Information Subject to Disclosure. "The
5 substance of any oral statement which the prosecution
6 intends to offer into evidence at the trial made by the
7 defendant whether before or after arrest in response to
8 any interrogation" -- okay, that just has to do with
9 interrogation.

10 MR. BRACKETT: Yes, sir.

11 THE COURT: All right, let me hear from you, Mr.
12 Brackett.

13 MR. BRACKETT: Your Honor, I believe, first of all,
14 under Rule 5 it is not discoverable, so, Motions for
15 Production notwithstanding we are not required to turn it
16 over, so whether they received it or not - I believe they
17 did receive it in another form through another individual
18 who also said that he heard Mr. Hughes say that other than
19 Mr. Jennings. So I submit that they were put on notice of
20 the existence of the statement, but certainly we weren't
21 required to tell them that Mr. Jennings was going to come
22 in and testify to that. I spoke to Mr. Jennings myself
23 personally and discussed this matter with him. This
24 wasn't done through law enforcement. I asked him if he had
25 heard the statement before and he said, "Yes." That was

HARRY LEWIS JENNINGS (IN CAMERA) CROSS

1 how I found out that Mr. Jennings had heard Mr. Hughes say
2 this. It wasn't done at the behest of no law enforcement
3 was involved. There are no reports generated to turn over
4 to them. I was the one that found out about this statement
5 from Mr. Jennings. I brought him down in regards to the
6 other matter, the April 12th matter regarding the death of
7 an inmate, and spoke to him in regards to that and while I
8 was discussing that I brought up this other incident and
9 asked him if he knew about it and he said, "Yes, as a
10 matter of fact, I was incarcerated in the York County
11 Detention Center at that time and I did hear this." So it
12 is entirely work product, it's my work product, my own
13 personal investigation that resulted in.

14 THE COURT: Just out of curiosity was Mr. Jennings
15 listed in that list of witnesses that was handed up?

16 MR. BRACKETT: Yes, sir, I believe he was.

17 THE COURT: Rule 5 does allow the defendant to move I
18 believe - I've already put my Rule up, but I think it says
19 "May upon sufficient showing require the production of any
20 statement of any prospective witness prior to the time
21 such witness testifies." Did the defense make a motion as
22 to the production of any statement of Mr. Jennings?

23 MS. BRICE: Yes, Your Honor, I did.

24 THE COURT: Let's see it.

25 MS. BRICE: I beg the court's indulgence. I have to go

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1 through the Motions so it may take me a moment.

2 THE COURT: Well, it appears actually that Rule 5,
3 A-2, is discussing memorialized statements in any event,
4 but I just want to know like I said out of curiosity
5 whether once the witness list was produced whether a
6 motion was particularly made regarding the substance of
7 the list of witnesses.

8 MS. BRICE: Your Honor, there were two motions filed by
9 me on behalf of Mr. Hughes, one being a Motion for a List
10 of Prosecution Witnesses. There was also another Motion
11 for Production, which I have shown the court previously
12 and ---

13 THE COURT: All right, let's take them one at a time.
14 As to the Motion dealing with the notification of
15 prosecution witnesses I believe we discussed that and
16 determined that they would not have to provide any such
17 list under the Rules; however, they did provide that list
18 at least by Monday when the jury was drawn.

19 MS. BRICE: Your Honor, also a Motion for Production
20 requested a list of witnesses intended to be called by the
21 Solicitor's Office to testify regarding any alleged oral
22 statements made by my client. I specifically asked for any
23 oral statements made by my client and I don't know how
24 much more specific I could get.

25 THE COURT: I think the request was specific, but the

1 question becomes then whether or not that is, in fact,
2 discoverable and unless it's exculpatory, if it's
3 exculpatory, obviously, they have to give it to you under
4 Brady. Otherwise, it has to be controlled by Rule 5. I
5 don't think Rule 5 requires the production of oral
6 statements.

7 MS. BRICE: Your Honor, also I believe in chambers it
8 was the position of the Solicitor's Office that they had
9 given to us or provided to us a statement from Officer
10 Stitts --

11 MR. BRACKETT: Strain.

12 MS. BRICE: Strain. I am still trying to locate that.
13 I pride myself on keeping pretty good notes, but I do not
14 have that statement that would even call my attention to
15 my client making such a statement. I have also cataloged
16 everything that I have received from the Solicitor's
17 Office as well as previous counsel we've had on this case.
18 I have indexed everything under statements as to what has
19 made what statements and the officer in question I do not
20 have that statement either.

21 MR. BRACKETT: I am confident it was given to them. It
22 was in our work product and I know we have given them at
23 least -- not out work product -- it was in our notebook,
24 our complete file of the case, which I know it has been
25 turned over at least two times in the course of this case.

HARRY LEWIS JENNINGS (IN CAMERA) CROSS

1 It's our contention, of course, that we weren't required,
2 but I was really pointing that out that it has been
3 referenced in another matter that was turned over to them.
4 Our position is it doesn't matter whether it is or not.

5 THE COURT: Ms. Brice, would you hand up a copy of
6 that last motion not the one about the production of the
7 witness list, but the oral statement motion.

8 MS. BRICE: It's in the back of my file. I will get
9 it.

10 THE COURT: And while she is looking, counsel for The
11 State, I don't have my list of all the Motions that were
12 heard last week. I can't remember whether this was
13 discussed or not.

14 MR. BRACKETT: The issue of oral statements?

15 THE COURT: Yes.

16 MR. BRACKETT: I believe I addressed that by saying
17 that they had been provided with everything that they are
18 entitled to under Rule 5 and Brady. I specifically recall
19 beyond that specifically oral statements made by civilians
20 and, in fact, in a Motion in Limine that dealt with the
21 Deno hearing I specifically said I was not bringing those
22 people because that was not - there was no question of
23 voluntariness in that they were oral statements made by
24 civilians, but I wouldn't be bringing them unless Your
25 Honor wanted me to, but being there was no state action I

1 saw no purpose for bringing civilian witnesses.

2 MS. BRICE: Your Honor, also looking through my work
3 product, when I went to the Solicitor's Office, I also
4 cataloged all the statements that were in their file and
5 nowhere on here is Officer Strain's statement on here.

6 MR. BRACKETT: This is our file right here, Judge. It
7 is right in here.

8 MS. BRICE: Well, I can tell you I cataloged it. I sat
9 down at the desk and I wrote the statements down. On my
10 sheet of paper I do not have Officer Strain on there. I
11 have got everybody else's, but I don't have Officer
12 Strain.

13 MR. BRACKETT: Again, it is our position it doesn't
14 matter whether they have it or not. That's not the issue
15 in this particular incidence. I just used that as a
16 reference saying that it was mentioned in his statement.
17 That's not a basis for getting the statement in now. Here
18 is our file, Your Honor, sandwiched in between the third
19 to the last statement and the last statement is the
20 statement of Broadus Strain dated 6-30 of 1993. I believe
21 he might have even had it with him or mentioned it when he
22 testified in the Motion in Limine. I asked him if he had
23 occasion to give a statement to a Rock Hill Police
24 Department Police Officer regarding the incident that he
25 heard. That's what this statement addresses that Strain

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1 went to Hughes' cell and observed that it was flooding and
2 Hughes said you are going to move me too, white boy.
3 Hughes had to be chained down due to his aggressive action
4 so he would not tear up his cell. Strain personally heard
5 Hughes say I am going to kill me another white boy before
6 they fry me. I'll get a gun down the road and I'll kill
7 another white boy. An inmate, Michael Quinn, told Strain
8 that Hughes said the best feeling I've ever had was
9 putting a bullet in the back of McCants' head.

10 THE COURT: Did someone knock on the door?

11 MR. BRACKETT: Yes, sir, Mr. Dunn.

12 THE COURT: Anything further?

13 MR. BRACKETT: Your Honor, as regards to Mr. Strain's
14 statement I regret that I ever mentioned it. It doesn't
15 matter. I merely brought that up as an example that it had
16 been given to them. If they can't find it now, I can't -
17 it doesn't have anything to do with whether or not we are
18 required to turn over information on Mr. Jennings'
19 testimony. I submit that under Rule 5 and Brady we are not
20 required to if we did not and that this is admissible.

21 THE COURT: In what fashion does the defense feel it
22 is handicapped in regard to this witness?

23 MS. BRICE: I'm sorry to switch back and forth.

24 MR. SCHUSTERMAN: Your Honor, had we had any
25 inclination of the statement and, obviously, the statement

HARRY LEWIS JENNINGS (IN CAMERA) CROSS

1 that Mr. Brackett just read, that kind of statement, I can
2 assure you the court we would not have turned the page and
3 ignored that statement. It is an element of reliability.
4 We spent a long time talking about Mr. Hughes'
5 psychological state, his psychotic state at that time.

6 THE COURT: You can still go into all of those things.
7 You can go into you can impeach this witness, you can go
8 into reliability and this does not change your approach to
9 his psychotic or whatever status he was at that time.

10 MR. SCHUSTERMAN: I understand. We would have
11 certainly inquired into who else was present and had the
12 opportunity to interview the other people in the cells.
13 I'm not certain at this point whether Mr. Jennings is
14 telling the truth or not as to what was said, but
15 certainly we would go into it, there would be some
16 investigation into it and so the Solicitor can tell they
17 gave us the statement twice. I can only assure you as an
18 officer of the court that if we had had that statement in
19 our possession, it would not have just been summarily
20 dismissed and then go on to something else. Whether it is
21 true or not, it is a very compelling statement.

22 THE COURT: All right, I find that the statement was a
23 voluntary statement given by the defendant, there is no,
24 taking the word of the Solicitor, there is no written or
25 transcribed or recorded statement that it was simply an

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1 oral statement that it was a production of attorney work
2 product, it does not fall within Brady as to discovery, it
3 does not fall under Rule 5 as to discovery and I am going
4 to allow it in.

5 MR. BRACKETT: Thank you, Your Honor.

6 THE COURT: Bring the jury.

7 (Jury returns to courtroom.)

8 You may proceed.

9 MR. BRACKETT: Thank you, Your Honor.

10 DIRECT EXAMINATION

11 BY MR. BRACKETT (RESUMED)

12 Q Sir, would you please state your full name for the
13 jury?

14 A Harry Lewis Jennings, Jr.

15 Q Mr. Jennings, where do you live right now?

16 A I live in Columbia.

17 Q And --

18 A I am in Manning Correctional Institution.

19 Q At the Manning Correctional Institution?

20 A Yes, sir.

21 Q That's a prison?

22 A Yes, sir.

23 Q Are you incarcerated there?

24 A Yes, sir.

25 Q And how long have you been there now?

HARRY LEWIS JENNINGS DIRECT

- 1 A For about thirty-two months.
- 2 Q And what are you there for?
- 3 A Second degree burglary.
- 4 Q Where are you from originally?
- 5 A Born in Rock Hill.
- 6 Q And have you lived there all of your life?
- 7 A Yes, sir.
- 8 Q Have you ever been in the York County Detention
- 9 Center, the old York County Detention Center over on
- 10 Cherry Road?
- 11 A Yes, sir, I have.
- 12 Q And were you in that Detention Center in February of
- 13 1993?
- 14 A Yes, sir.
- 15 Q Did you know the defendant in this case, Mar-Reece
- 16 Hughes?
- 17 A Yes, sir.
- 18 Q When did you first meet Mr. Hughes?
- 19 A At the County building over there at the Detention
- 20 Center.
- 21 Q And did you get an opportunity to talk to him while
- 22 you were there?
- 23 A Yes, sir, on several occasions.
- 24 Q Do you know him fairly well?
- 25 A Yes, sir.

HARRY LEWIS JENNINGS DIRECT

1 Q How long were you at the Detention Center during that
2 period of time, do you recall?

3 A About a year and a half just about.

4 Q You spent a significant amount of time there?

5 A Yes, sir.

6 Q Did you get a chance to talk to Mr. Hughes frequently?

7 A Yes, sir.

8 Q In the middle of February, 1993, -- well, first of all
9 let me ask you this -- in the Detention Center itself how
10 are people housed in the old Detention Center? How did
11 they use to have people --

12 A Well, in my cell block there are four different cells,
13 four inmates to each cell, but it was close together.

14 Q And was each cell with four people in it was it
15 blocked off or open or how was it?

16 A It was open like, you know.

17 Q Was it possible for one person to talk to another
18 person?

19 A Yes, sir.

20 Q Could you hear what was going on in the block?

21 A Yes, sir.

22 Q Did you know Mr. Hughes' voice?

23 A Yes, sir.

24 Q Have you had enough opportunities to talk to him to
25 know that?

HARRY LEWIS JENNINGS DIRECT

1 A Yes, sir.

2 Q Did you have occasion to hear a conversation between
3 some inmates in there about the middle of February about
4 partying and getting high?

5 A Yes, sir.

6 Q Can you tell us about that?

7 A Well, we was just talking about getting high and how
8 drugs will make you feel and, you know, people was telling
9 about how they would like to be high then, you know, stuff
10 like that.

11 Q Was Mr. Hughes a part of that conversation?

12 A Yes, sir.

13 Q When did he involve himself in that conversation?

14 A Well, when he did involve himself, he just said, "The
15 best feeling I ever had is when I killed that cop."

16 Q Any question in your mind that was Mr. Hughes who said
17 that?

18 A No, sir, no question.

19 Q Mr. Jennings, you have been incarcerated for
20 thirty-two months now?

21 A Yes, sir.

22 Q When are you due to get out?

23 A Forty-three more days.

24 Q Forty-three more days?

25 A Yes, sir.

HARRY LEWIS JENNINGS DIRECT

- 1 Q Do you have any charges pending anywhere?
- 2 A No, sir.
- 3 Q Are you due to get out, is that parole?
- 4 A No, sir, I am maxing out.
- 5 Q You are maxing out?
- 6 A Yes, sir.
- 7 Q And nothing can stop that?
- 8 A Nothing can stop it.
- 9 Q And you have no charges pending here or anywhere else?
- 10 A Nowhere.
- 11 Q Have any promises been made to you?
- 12 A No, sir.
- 13 Q Anything been offered to you in consideration for your
- 14 testimony?
- 15 A No, sir.
- 16 Q You have been in a little bit of trouble in your life,
- 17 Mr. Jennings, isn't that true?
- 18 A Yes, sir.
- 19 Q In 1986 you were convicted of burglary back then?
- 20 A Yes, sir.
- 21 Q In 1989 you were again convicted of burglary?
- 22 A Yes, sir.
- 23 Q And you had some forgery convictions, nine forgery
- 24 convictions?
- 25 A Yes, sir.

HARRY LEWIS JENNINGS DIRECT

1 Q Did you also have some convictions for obtaining money
2 under false pretenses?

3 A Yes, sir, I did.

4 Q And then the sentence that you are currently serving
5 is a burglary sentence from 1992; you were convicted in
6 1993?

7 A Yes, sir.

8 Q What happened to your hands?

9 A I broke both of my wrists playing football.

10 Q When was that?

11 A It's been about ten weeks ago now.

12 Q And you are due to get out in forty-three days you
13 say?

14 A Yes, sir.

15 Q What are you going to do when you get out?

16 A Well, I've already got a job set up for me. I am a
17 long distance truck driver. I already have a job situated.
18 I am going to try to make something out of my life.

19 Q Good luck to you, Mr. Jennings.

20 A Thank you.

21 Q Please answer any questions defense counsel may have..

22 CROSS EXAMINATION

23 BY MR. SCHUSTERMAN

24 Q Mr. Jennings, as I understand it, you were in a cell
25 block and there were four cells within a block?

HARRY LEWIS JENNINGS, JR. CROSS

1 A Yes, sir.

2 Q And how many people are in each cell?

3 A Majority of the time there are four people to a cell.
4 That's when it's full.

5 Q That would be sixteen people in a block?

6 A Yes, sir.

7 Q And are people constantly, you know, being released
8 and new people coming in?

9 A Yes, sir.

10 Q How many times in the sixteen -- how many months did
11 you serve in the York County Detention Center?

12 A About fourteen months.

13 Q About fourteen months?

14 A Yes, sir.

15 Q How many times were you changed? How many times were
16 you moved from one cell to another?

17 A I wasn't.

18 Q You stayed in that one cell the entire time?

19 A Yes, sir.

20 Q Was that common?

21 A No, not really.

22 Q A lot of people moved around?

23 A No, because of the people that was there when I was
24 there had been there just like I had, they couldn't
25 afford, you know, to make bond.

HARRY LEWIS JENNINGS, JR. CROSS

- 1 Q You were not in the same cell with Mr. Hughes?
- 2 A No, sir.
- 3 Q You were next to him or across from him?
- 4 A I was next to him.
- 5 Q So you couldn't see him?
- 6 A No, sir.
- 7 Q So did you ever have an opportunity to see him face to
- 8 face?
- 9 A Yes, sir.
- 10 Q How did you see him face to face?
- 11 A When we went out on Rec; we went out on Rec every day.
- 12 Q Okay, and you two went out on Rec together?
- 13 A Yes, sir.
- 14 Q And for how many months did you know Mr. Hughes?
- 15 A Ever since I was there.
- 16 Q Okay, when did you get there?
- 17 A About November I think it was of '92 along in there.
- 18 Q Okay. Did Mr. Hughes ever behave erratically, ever
- 19 behave funny?
- 20 A Most of the time he was to himself, you know, --
- 21 Q To himself?
- 22 A --- most of the time. Yes, he was.
- 23 Q You said you had conversations with him.
- 24 A Uh-huh.
- 25 Q Did he ever say things that like didn't make sense,

HARRY LEWIS JENNINGS, JR. CROSS

1 things that were kind of crazy?

2 A No, every time we talked we understood each other.

3 Q You understood each other?

4 A Yes, sir.

5 Q So there was nothing unusual about his behavior?

6 A No, sir.

7 Q This particular statement that you say he made who
8 were some of the other people in the cell?

9 A Anthony Quinn, Willie Stroud, and this guy named
10 Howard. I don't know his last name. And a guy named Harry
11 Anthony. That's just to name a few of them.

12 Q And they were there at this particular time?

13 A Yes, sir.

14 Q And you indicated you were not offered anything to
15 testify here today against Mr. Hughes.

16 A No, sir.

17 Q How did you make it known that he made the statement?

18 A I beg your pardon?

19 Q How did you make it known?

20 A That who made a statement?

21 Q That Mr. Hughes made a statement.

22 MR. BRACKETT: Your Honor, ---

23 THE COURT: Do you all want to approach just a minute?

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

HARRY LEWIS JENNINGS, JR. CROSS

1 Q Did you at the time that he said this did you write
2 this down anywhere?

3 A No, sir.

4 Q Did you report it to anybody?

5 A Yes, sir.

6 Q Who did you report it to?

7 A Well, when the SLED guy from SLED came to talk to us
8 one day, you know, I mentioned it to him.

9 Q That's the only time?

10 A Yes, sir.

11 Q Just for clarification we talked about the cell block
12 and we talked about individual cells within that cell
13 block. We're talking about - you said there were four
14 cells in that block.

15 A Yes, sir.

16 Q There are not two and two, there are actually four
17 across.

18 A Yes, sir.

19 Q Four down so to speak.

20 A Yes, sir.

21 Q And you were in what number?

22 A Number three.

23 Q And Mr. Hughes was in Number one?

24 A Number One.

25 Q And there were four men in each cell?

HARRY LEWIS JENNINGS, JR. CROSS

1 A Yes, sir.

2 Q You were actually not right next to him. You were two
3 down from him?

4 A Yes, sir.

5 Q Okay, didn't you say before that you were right next
6 to him?

7 A The way the cell block is built, you might as well say
8 I am right next to him because it's like open, you know,
9 you can hear everything.

10 Q When you say "open," you are not allowed to walk out
11 of the cell and walk down?

12 A At certain times you are, yes, sir.

13 Q Were you at this time?

14 A No, I was in the cell block then.

15 Q You were inside the cell block.

16 A Yes, sir.

17 MR. SCHUSTERMAN: That's all the questions I have.

18 REDIRECT EXAMINATION

19 BY MR. BRACKETT

20 Q Mr. Schusterman asked you, Mr. Jennings, about your
21 ability to hear on the cell block. Could you hear what Mr.
22 Hughes said that day?

23 A Very clearly.

24 Q Could you hear what, if anything, was said afterwards?

25 A Yes, sir.

HARRY LEWIS JENNINGS, JR. REDIRECT and RECROSS

1 Q What?

2 A Nothing. Everything just got quiet.

3 Q Thank you very much, Mr. Jennings.

4 RECROSS EXAMINATION

5 BY MR. SCHUSTERMAN

6 Q Am I to understand that based on this statement
7 sixteen people who are incarcerated everybody just shut up
8 at that point?

9 A Yes, sir.

10 Q Thank you.

11 THE COURT: You can step down. Thank you, Mr.
12 Jennings.

13 MR. BRACKETT: Your Honor, I ask that this witness be
14 excused.

15 THE COURT: Well, yes, sir.

16 MR. BRACKETT: The State would call Broadus Strain.

17 BROADUS LEE STRAIN, being duly sworn,
18 testified as follows:

19 DIRECT EXAMINATION

20 BY MR. BRACKETT

21 Q Sir, would you please state your full name and spell
22 your last for the court reporter?

23 A Broadus Lee Strain S-t-r-a-i-n.

24 Q Where are you employed, Mr. Strain?

25 A York County Sheriff's Department.

BROADUS LEE STRAIN DIRECT

1 Q What do you do for the Sheriff's Department?

2 A I am a Sergeant in the Detention Center.

3 Q How long have you been with the Detention Center?

4 A About five years.

5 Q And were you employed at the old Detention Center back
6 in 1993?

7 A Yes, sir.

8 Q Do you know the defendant in this case?

9 A Yes, sir.

10 Q Do you recognize him?

11 A Yes.

12 Q Who is that, sir?

13 A Mar-Reece Hughes.

14 Q And do you recall when he was incarcerated in the York
15 County Detention Center?

16 A Yes, sir.

17 Q Sir, I am going to call your attention specifically to
18 the middle of February back in 1993. Sometime in February,
19 1993, did you have occasion, sir, to have to remove Mr.
20 Hughes from his cell?

21 A Yes, sir.

22 Q What were the circumstances surrounding that?

23 A He was flooding his cell and we had to move him to the
24 front.

25 Q And where did you take him to?

1 A We took him to our holding cell up front.

2 Q Can you describe that for us, sir?

3 A It's just a regular one man cell and it's got one bunk
4 in it. It's got a shower and a commode.

5 Q Is it a secure cell?

6 A Yes, sir, it is right up front where you can watch it.

7 Q Does it have bars on the doors?

8 A No, sir, it has a flap where you can look through a
9 window.

10 Q And is that where you put Mr. Hughes?

11 A Yes, sir.

12 Q All right, once he was in the cell did you have an
13 occasion to overhear Mr. Hughes talking?

14 A Yes, sir.

15 Q Who was he talking to?

16 A He was talking to another inmate, Bobby Holmes, that
17 was housed in A.

18 Q Do you recall what, if anything, Mr. Hughes was saying
19 to Mr. Holmes? Don't tell us what Mr. Holmes was saying,
20 but do you recall what Mr. Hughes was saying?

21 A Yes, sir, he said he was going to kill him another
22 white boy.

23 Q And was this in response to a conversation he was
24 having or did he just blurt that out?

25 A He was talking to Bobby about when he was going to go

1 down the road, he knew some people who could get him a
2 gun at the CCI and he was going to kill him another white
3 boy.

4 Q Kill another white boy?

5 A Yes, sir.

6 Q Thank you very much Sgt. Strain. Please answer any
7 questions that Mr. Schusterman might have.

8 CROSS EXAMINATION

9 BY MR. SCHUSTERMAN

10 Q Mr. Strain, what cell was Mr. Hughes in when he made
11 the statement?

12 A He was in the holding cell.

13 Q That cell is an individual cell?

14 A Yes, sir.

15 Q He's the only person in it?

16 A Yes, sir.

17 Q Had he been moved from another cell?

18 A Yes, sir.

19 Q Why was he moved?

20 A He was flooding the cell.

21 Q What do you mean by flooding the cell?

22 A While he was holding a cup down into the commode and
23 flushing it he was causing an overflow in the commode.

24 Q Did you have to move other inmates also?

25 A Before that happened, yes, sir.

1 Q When Mr. Hughes was in that holding cell, could you
2 physically see him?

3 A Yes, sir, we had the flap open.

4 Q The flap open so you were looking at him?

5 A Yes, sir.

6 Q But you indicated no one was in the cell with him?

7 A No, sir.

8 Q How was he talking to another inmate?

9 A There's a vent, it has got little holes drilled
10 through it on the side of the wall and it goes into A
11 Block. It's like an air vent.

12 Q Can you describe Mr. Hughes' behavior around that
13 time?

14 A Well, he was mad because we moved some other inmates
15 out of Cell One to A Block and he got mad because we done
16 that and he flooded his cell. We took him and had
17 handcuffs on him to the holding cell and he started
18 kicking the shower and we had to put leg irons on him.

19 Q Did you feel that he could be a harm to himself?

20 A At that time, yes, sir.

21 Q Did you feel that he could be a harm to others?

22 A Yes, sir.

23 Q And that's why he was in the holding cell?

24 A Yes, sir.

25 Q During that period of time did he appear rational to

1 you?

2 A After a few minutes he calmed down and he started to
3 talking to inmates in A block.

4 Q But for that brief period of time you testified --

5 A He was real mad and he was where he had to be
6 restrained.

7 Q Have you had any training in psychiatry or psychology?

8 A No, sir.

9 Q So you wouldn't know if Mr. Hughes exhibited any
10 symptoms of being psychotic?

11 A We have had training as far as suicide prevention,
12 know what to look for, and when an inmate starts showing
13 signs of suicide.

14 Q I assume that when you say "shown signs of suicide,"
15 that would be the same thing as bringing harm to himself?

16 A Yes, sir.

17 Q So, he was exhibiting symptoms, according to your
18 testimony, to where he was exhibiting symptoms to where he
19 might harm himself, is that correct?

20 A Yes, sir.

21 Q What were those symptoms, sir?

22 A He was, well, when we went to the cell he was flooding
23 and he stated that "You're going to move me too, white
24 boy" and he was real mad and from what the other inmates
25 stated previously he pushed a tv off from a place we had

1 it on the wall and at that time we made a decision I went
2 and talked to my chief and we kept him in the holding cell
3 until the chief come back in that Monday.

4 Q I certainly don't want you to say anything about what
5 anybody else said. You know you can't say that, but,
6 again, could you describe other than pushing the tv off
7 the shelf what behavior gave you concern to go to your
8 chief that he might be a harm to himself?

9 A Well, I was going on what the other inmates told me
10 and from the statements they made and from what he had
11 done that morning. It was my decision to move him. I was
12 going to move him up front because of what he was doing by
13 flooding, but also by as mad as he was; he was mad because
14 I moved other inmates.

15 Q All right.

16 A Before then, I ---

17 Q But before then if I understand what you are saying is
18 that - don't go into what people said - but as I
19 understand it there were other reasons why you believed
20 that he could be a harm to himself?

21 A Yes.

22 Q Thank you.

23 REDIRECT EXAMINATION

24 BY MR. BRACKETT

25 Q Sgt. Strain, was he suicidal or was he mad?

BROADUS LEE STRAIN REDIRECT and RECROSS

1 A He was mad. As far as the reason the main reason I
2 moved him was because of him being mad and the temper he
3 had as far as putting the thing in the commode and the
4 threats he was making to other inmates.

5 Q Thank you very much.

6 RECROSS EXAMINATION

7 BY MR. SCHUSTERMAN

8 Q Sgt. Strain, I am sorry if I -- did you not just
9 testify several moments ago that you believed that he was
10 not only potentially harmful to other inmates, but he
11 could be harmful to himself?

12 A Yes, sir, any time we have an inmate go out of control
13 as far as what he was doing and stuff he was saying and
14 stuff he was doing like kicking the shower and stuff like
15 that, we restrain him for their protection and also any
16 other inmate or officer.

17 Q So you do stick by your statement that he was a harm
18 to himself as well as others.

19 A It's normal in our field of work that if he would lash
20 out at another inmate, he got's the capability of hurting
21 himself too.

22 Q Thank you. Now, my final question, did you not
23 indicate that there were things that occurred prior to
24 this that also gave you concern about his mental
25 condition?

EVERETT EARL JENKINS DIRECT

1 A From what the other inmates stated from what he was
2 doing, yes, sir.

3 Q Thank you very much, Sgt. Strain.

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

5 MR. POPE: The State would call Doctor Earl Jenkins.

6 EVERETT EARL JENKINS, JR. being duly
7 sworn, testified as follows:

8 DIRECT EXAMINATION

9 BY MR. POPE

10 Q Doctor Jenkins, if you would, state your name and
11 occupation for the jury, please.

12 A Everett Earl Jenkins, Jr. I am a medical doctor with
13 specialized training in pathology.

14 Q Doctor Jenkins, could you describe briefly and you say
15 pathology, could you tell the jury what that is and what
16 you actually do day to day?

17 A Pathology is a sub-specialized area of medicine that
18 is defined as the study of disease. It involves the
19 analysis of blood, body fluids and tissues removed by
20 surgeons in order to arrive at a diagnosis and to diagnose
21 and treat patients. Part of pathology training is autopsy
22 pathology wherein post-mortem, after death examination, is
23 performed in order to determine cause of death. An area
24 within autopsy pathology is forensic pathology, which is
25 the medical/legal investigation of death. I am in trained

EVERETT EARL JENKINS DIRECT

1 in autopsies wherein the cause of death resulted in
2 violent or unnatural and then performing post-mortem
3 examinations to determine the cause of death as well as
4 gathering information that might be of benefit in the
5 judicial system, in courts of law.

6 Q Doctor Jenkins, how long have you been doing forensic
7 autopsies?

8 A Since 1975.

9 Q Would you tell the jury what kind of background and
10 education you have had to allow you to do that?

11 A Yes, first I have a Bachelor of Science in Chemistry
12 from the University of North Carolina, which I got in
13 1969. In 1973 I finished Medical School and I obtained a
14 Medical License, an M.D. Degree. From '73 to '77 I was in
15 pathology training, a year of that was with the State
16 Medical Examiner of North Carolina where during that year
17 we did nothing but forensic work post-mortem examinations
18 within the legal system.

19 Q Doctor Jenkins, have you had the opportunity to
20 testify as a forensic pathologist as an expert in court?

21 A Yes, sir.

22 Q Do you know approximately how many times?

23 A Fifty.

24 MR. POPE: Your Honor, I move at this time that Doctor
25 Jenkins be qualified as an expert in forensic pathology.

EVERETT EARL JENKINS DIRECT

1 MR. SCHUSTERMAN: Without objection, Your Honor.

2 THE COURT: All right. I so find that he is qualified.

3 Q Doctor Jenkins, did you have the opportunity to
4 perform the autopsy on Brent McCants I believe on the day
5 of the 26th -- September 26, 1992?

6 A Yes, I did.

7 Q And during that autopsy did you also review certain of
8 his clothing that he was wearing and comparing the wounds
9 to the clothing and equipment that he had on?

10 A Yes, I did.

11 Q I'll show you what's been marked as State's Exhibit 74
12 for identification and ask if this would assist in you
13 giving your testimony to the jury.

14 A Yes, it will.

15 Q And also I show you what has been marked as State's
16 Exhibit 75 for identification and, likewise, ask if this
17 would assist you in providing this testimony?

18 A Yes.

19 Q Doctor Jenkins, I am going to ask you if you would to
20 step down, please, sir.

21 A (Witness complied.)

22 Q First, in performing the autopsy you had an
23 opportunity to prepare you said the garments, which would
24 be the vest, State's Exhibit 29, and Mr. McCants' shirt,
25 which would be our State's Exhibit 28, is that correct?

EVERETT EARL JENKINS DIRECT

1 A Yes, it is.

2 Q Doctor, I am going to ask you if you could first
3 relate for the jury by way of external exam what you did
4 as far as the autopsy and what notations you made.

5 A After first examining the decedent I first found
6 multiple life support lines in place for emergency medical
7 care. On removal of those lines I did find gun shot
8 wounds, six gun shot wounds, three of which were
9 non-penetrating, stopped by the vest, and three of which
10 were penetrating wounds.

11 Q Doctor, I am going to ask you - it is my understanding
12 you prepared a report that you refer to, is that correct?

13 A Yes, sir.

14 Q I am going to ask you referring to your report to
15 indicate the wounds and the areas of injury. I would ask
16 that you begin I noticed again that you have numbered them
17 just randomly, is that correct?

18 A Yes, sir.

19 Q First, I would ask you to indicate ---

20 THE COURT: Mr. Pope, I am going to ask you to kind of
21 help make sure everybody can see. Can the jury see better
22 if it's down where we had it earlier today down at this
23 end?

24 All right, Mr. Dunn, I am going to ask you to just
25 slide around here, bring your chair and sit, and I am

EVERETT EARL JENKINS DIRECT

1 going to let the Solicitor set up down here where you are
2 so everybody can see and we won't be blocking.

3 MR. DUNN: Will this be far enough?

4 THE COURT: I don't know.

5 MR. SCHUSTERMAN: Mr. Pope, I think the jurors would
6 have an easier time seeing if that board was move out to
7 the left.

8 Q You numbered the various injuries that you located.
9 Again, that is just randomly?

10 A Yes, it was.

11 Q I would first ask you to indicate that you have
12 indicated as gun shot wound number 4 on your sheet and if
13 you could and if you indicate that was gun shot wound
14 number 4 what --

15 A Gun shot wound number 4 was an impact mark just at the
16 level of the breast bone. This is a bruise, a
17 non-penetrating wound, a non-fatal wound that was
18 associated with a bullet that was stopped by the bullet
19 proof vest.

20 Q Okay and were you able to look at the shirt and the
21 vest and make a determination of --

22 A I haven't seen this in a while, so it may take a good
23 bit. This is the entrance area through the shirt. It was
24 stopped by the vest at this level my index finger. The
25 mark left -- there was a bruise, a mark, left on the skin.

EVERETT EARL JENKINS DIRECT

1 Q So there was a mark on the skin, but that would
2 represent one that was actually stopped by the vest?

3 A Exactly, yes, sir.

4 Q Okay, if you could then show us what you have listed
5 as gun shot wound number 3.

6 A Gun shot wound number 3 was just above the level of
7 the elbow if the arm were hanging straight down, about the
8 midaxilla line, which would be a line drawn from the
9 middle of the armpit downward. This was a penetrating
10 wound. It wasn't impeded by the vest, so it went into the
11 body at an upward angle doing intensive damage to the
12 heart resulting in a large volume of blood loss. This
13 wound would be fatal.

14 Q And that would be indicated on the torso?

15 A It would be this mark on the shirt right here just
16 under the armpit. You might want to take that around so
17 you can see it.

18 Q That would have been the one that penetrated the
19 underlying strap of the vest?

20 A Yes.

21 Q And, again, Doctor, you said that one did, in fact,
22 penetrate and that would have been a fatal wound?

23 A Yes, sir, it traveled upward going across the heart,
24 one of the major chambers of the heart, resulting in rapid
25 blood loss, large volumes of blood loss into the chest.

EVERETT EARL JENKINS DIRECT

1 Q Next I would ask you to refer to your gun shot wound
2 number 2, if you could indicate that one.

3 A This area (indicating) a gun shot wound. This was a
4 penetrating wound. It was not impeded by the vest. It went
5 through the skin into a part of the kidney, pancreas and
6 intestine. This would have been a serious wound, but not
7 necessarily a fatal wound.

8 Q Okay. I next ask you to refer to gun shot wound that
9 you have labeled number 6.

10 A This wound is similar to the first one I described. It
11 was stopped by the vest and what was left on the skin was
12 an impact mark or bruise.

13 Q Would you show the jury what that corresponded to?

14 A (Witness indicated.)

15 Q And so again that would be one that was stopped and
16 you would not have recovered anything.

17 A No, sir.

18 Q And then I would ask you next gun shot wound number 5.

19 A The impact abrasion of this wound was just above
20 number 6. Again, it was stopped by the vest, a
21 non-penetrating wound, a non-fatal wound, a large bruise
22 on the skin.

23 Q Okay, going back to the first penetrating wound, which
24 you said would be the first fatal wound, ---

25 A Yes.

EVERETT EARL JENKINS DIRECT

1 Q --- were you able to recover anything from that
2 particular wound?

3 A I wasn't. The path of the bullet went upward, left to
4 right, somewhat of a front angle. There was a bruise just
5 beneath the neck that was a result of this. I couldn't
6 find this bullet in the chest and I feel it was lost in
7 the treatment, the efforts made to save this man's life,
8 possibly through a line or tube which was placed in the
9 chest to remove blood from the chest cavity.

10 Q Is that a suction type tube?

11 A Yes, sir.

12 Q Was that the tube that you mentioned at the beginning
13 that you removed before you went further?

14 A Yes.

15 Q Okay, as to the second that you said would have been a
16 serious wound, but not a fatal that came into the lower
17 back area, did you recover an item that you associated
18 with that wound?

19 A Yes, I did. This wound went through the body, from
20 back to front, at a left to right angle, slightly downward
21 and the bullet was retrieved from approximately this area
22 beneath the skin. It had impacted the vest as it proceeded
23 through the body, but was stopped by the vest and remained
24 there beneath the skin.

25 Q So it was stopped by the vest actually coming through

EVERETT EARL JENKINS DIRECT

1 from the other side?

2 A Yes, it was.

3 Q I show you State's Exhibit 68 and ask if you can take
4 a look at that.

5 A Yes, this is a large caliber projectile that was
6 slightly distorted by its impact with the vest.

7 Q And did you turn that over to the SLED agent that was
8 present?

9 A Yes, I did, Larry Gainey.

10 Q Okay. And then the next two wounds going up the back
11 you said would have been stopped by the vest?

12 A Yes, they were.

13 Q I ask now if you could relate to the jury the final
14 wound that you observed.

15 A The final wound was to the left side of the head at
16 approximately this level (indicating). It entered the left
17 side of the back of the head and traveled along at an
18 angle from left to right through the head, slightly
19 upward. The bullet from this wound was retrieved
20 approximately at this level, this site, beneath the skin.
21 This wound resulted in brain damage and skull fractures
22 and was also a fatal wound.

23 Q Doctor Jenkins, I ask that you look at the other part
24 of this exhibit and ask if you recognize that.

25 A This is the distorted projectile from its impact with

EVERETT EARL JENKINS DIRECT

1 bone in the back of the head and front of the head.

2 Q You recovered that and gave it to Larry Gainey?

3 A Yes, I did.

4 Q Doctor Jenkins, I would ask you if you could indicate
5 on State's Exhibit 75 and show the jury the entrance and
6 ultimate recovery of the projectile and make sure to come
7 down so that each one can see the angle of travel.

8 A The entrance was to the left side of the back of the
9 head just above the level here and on the left side and
10 traveled down a path that brought it to the front of the
11 forehead and it was a bulging nodule there just beneath
12 the skin and I removed it with a scalpel.

13 Q Doctor Jenkins, reviewing these materials and
14 reviewing and performing the autopsy have you formed an
15 opinion as to the cause of death of Mr. McCants?

16 A Yes, I did.

17 Q Would you relate that to the jury, please.

18 A The cause of death were multiple gun shot wounds
19 involving the heart, the brain, and the abdomen. Blood
20 loss was the immediate cause of death, damage to the
21 heart.

22 Q Doctor, answer any questions Mr. Schusterman may have.

23 CROSS EXAMINATION

24 BY MR. SCHUSTERMAN

25 Q Doctor Jenkins, you can stand there. It probably will

EVERETT EARL JENKINS CROSS

1 be just as easy. Is there any way, Doctor Jenkins, of
2 determining in what order these gun shots were fired?

3 A Not absolutely.

4 Q If I understand it, let's go by the way you put these
5 down. Gun shot number one, this is the first mark you
6 made, that was a non-penetrating wound.

7 A Yes, it was.

8 Q But it did have some impact on the body, did it not?

9 A Yes, it did.

10 Q Had that been the only gun shot that was a non-fatal
11 wound?

12 A Exactly, yes, sir, that's correct.

13 Q Now this second shot, this was the one that you
14 indicated you thought it would end up in the neck area,
15 there was a bruise there.

16 A I followed it's track into that area, but couldn't
17 locate the bullet.

18 Q Now are you able to tell by the way a wound at impact
19 the path that it will take or the trajectory of the
20 bullet?

21 A Sometimes.

22 Q In that regard how would you describe that second
23 wound? Was it upward, downward, straight across?

24 A The trajectory was upwards. As a person stands in
25 this position, the trajectory was upwards from left to

1 right and slightly forward.

2 Q Upwards.

3 A Yes, sir.

4 Q From that, again, are you able to say to a reasonable
5 medical certainty that either the gun was fired from below
6 that level based on the entrance wound or Mr. McCants was
7 in some position which moved his body where it appeared to
8 be lower?

9 A The path of the bullet through a body would have to do
10 with both of those. I don't know the position of the
11 victim, so both of those things would have to be
12 considered.

13 Q And obviously a head or a body is not hollow. How did
14 the internal organs, bones, organs and the lack, how did
15 they impact on the trajectory or the path the bullet takes
16 within the body?

17 A Small caliber projectiles can be diverted by bone,
18 larger ones when they impact bone, they may be diverted
19 somewhat, but not near so often as smaller caliber wounds.

20 Q Would these ---

21 A I don't think that this was diverted in its path. This
22 one wasn't diverted.

23 Q Is this what you would consider a large caliber
24 weapon?

25 A Yes.

EVERETT EARL JENKINS CROSS

1 Q And am I to understand that the force of the bullet is
2 such that an organ, bone will not alter its course?

3 A That's correct. In this instance that's the case.

4 Q And if I understand correctly this wound is where you
5 never found the projectile.

6 A Correct. There was a bruise right here in the lower
7 part of the neck that corresponded with the path of that
8 bullet. I feel that it was in the chest cavity at some
9 point in time, but that it was probably suctioned through
10 one of the devices used to remove blood from the chest.

11 Q This is a fatal wound. Standing on its own ---

12 A Yes, sir.

13 Q --- this is a fatal wound.

14 A Yes, it is.

15 Q Would someone who had this type wound have the ability
16 to move any kind of distance?

17 A Not likely, no, sir. I think the damage done to the
18 heart would be such that within twenty or so feet there
19 would be loss of consciousness and collapse and those feet
20 would take place in seconds.

21 Q Then moving on to the this one this is the one that
22 you went over with Solicitor Pope. This wound was the
23 wound that just grazed the vest, is that not correct?

24 A That's correct. It went through the lower part of the
25 vest. It entered the body and damaged the kidney and the

1 pancreas.

2 Q These next two wounds as I understand it were stopped
3 by the vest.

4 A Yes.

5 Q You indicate a center line for the body; you indicate
6 that both the wounds are on the right side, but yet the
7 bullet holes appear to be and using the shirt's center
8 seam, one is on the right side and one is on the left
9 side. Can you explain that?

10 A I expect that there's just enough give, you know, any
11 gathering could pull those two together. These are impact
12 marks that I have diagramed here on the body.

13 Q Is there any way to determine when a wound is
14 non-penetrating such as these the trajectory of the
15 bullets?

16 A No, not that I know of.

17 Q How about the trajectory of this wound, this impact
18 wound?

19 A The trajectory was through the body from back to front
20 at a slightly left to right angle and very slightly
21 downward angle just an inch or so or less.

22 Q If I go on the assumption as an expert that the person
23 was laying prone, face down, would that type wound
24 indicate that the person was directly over?

25 A Probably not, not directly.

EVERETT EARL JENKINS CROSS

1 Q Would you say the person would be more towards the
2 head or more towards the feet?

3 A I think minor deviations in the position of the hands
4 could result in this. I think that there are so many
5 variables that I'm not sure I can give a qualified answer.

6 Q And then the final wound was to the skull.

7 A Yes.

8 Q And as I understand from your testimony that was a
9 fatal wound also.

10 A Yes.

11 Q That was -- you indicate that it's left to right,
12 front to back --

13 A Yes, ---

14 Q --- or back to front I should say.

15 A Back to front.

16 Q You indicated that based on the caliber of the
17 projectile that you don't believe that the projectile's
18 course was deviated because of the skull in any way?

19 A I don't believe that it was, no, sir. The defect in
20 the skull was clearly defined here and there was a defect
21 in the skull in front as well. There was a straight line
22 basically between those two points.

23 Q This is a fatal wound also?

24 A Yes, it is.

25 Q Would this wound -- assuming that this wound came

1 before this wound (indicating) would the person drop
2 equally as fast?

3 A Probably so.

4 Q So either of the two fatal wounds would produce a very
5 quick ceasing of motion?

6 A Yes, they would.

7 Q Are there too many variables with this wound also to
8 determine exactly where the person may have been standing
9 when the person was shot assuming that, again we are going
10 on the assumption that the person was laying prone at the
11 time?

12 A There are variables since the head rotates left and
13 right, up and down, and then as I said minor deviations in
14 the position of an assailant could account for some of
15 these things, so there are a good number of things you
16 have to fix before you could give a qualified opinion of
17 the positions involved.

18 Q Let me ask you one final question. Based on the body
19 laying prone, and, again, I understand this is a
20 hypothetical situation, we have the body laying prone, can
21 you render any opinion as to the proximity time wise in
22 these four shots?

23 A No, I can't.

24 Q There's no way of telling how they were -- in what
25 order they may have been?

1 A I think there are probabilities that you can consider
2 based on view and the circumstances that I am somewhat
3 aware of, but as to a positive determine I couldn't do
4 that.

5 Q Is there a probability in your mind as a pathologist
6 that these four wounds were made top to bottom in
7 consecutive order?

8 A Probably so, yes.

9 Q You do believe that.

10 A I do believe that.

11 Q Thank you. I have no other questions. Thank you,
12 Doctor Jenkins.

13 MR. POPE: Your Honor, I ask that this witness be
14 excused.

15 MR. SCHUSTERMAN: No objection.

16 MR. POPE: Your Honor, that's all we have at this
17 time.

18 THE COURT: All right, it's a quarter 'til six and we
19 are going to stop for the day. We are not going to start
20 until around one tomorrow. This will give you Sunday
21 morning to have your private devotional if you wish and
22 Mrs. Hartman has something which we have told her we will
23 accommodate her on. We are going to have you to have
24 something to eat before you get over here. They will take
25 care of that. We will see you here at one tomorrow. Have

THE STATE VS HUGHES

1 a pleasant evening.

2 (Jury leaves courtroom.)

3 MR. POPE: Your Honor, one thing I did not do. The two
4 pictures that Doctor Jenkins used for identification. I
5 showed them to Mr. Schusterman. I never did formally move
6 them into evidence.

7 MR. SCHUSTERMAN: Which two?

8 MR. POPE: The head and the diagram. I came to show
9 them to you, but --

10 MR. SCHUSTERMAN: I think I even said without
11 objection.

12 THE COURT: All right, they will be received without
13 objection.

14 (State's Exhibits 74 and 75 marked and filed.)

15 Anything further for this evening?

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

17 THE COURT: All right, what our plan is The State has
18 not rested, but I understand that there is only a slim
19 possibility of further testimony?

20 MR. POPE: Your Honor, at this point I would say no.
21 The only reason I don't rest is for that very reason if at
22 two o'clock in the morning I think of something.

23 THE COURT: Well, let me tell you what my thinking is.
24 Mrs. Hartman they have assured us that the Dental Board
25 would be out around noon, which means it may be later than

THE STATE VS HUGHES

1 one-thirty, one-fifteen or one-thirty before we get her
2 back up here. I would like us to be here at one and the
3 jury be back at one so we can start. If The State, in
4 fact, rests, any Motions that we need to dispose of after
5 The State rests and before we go further and I, obviously,
6 have to talk to Mr. Hughes, once The State rests, about
7 his right to testify or exercise his constitutional right
8 not to testify, so we'll get together at one even though
9 it probably will be one-thirty or so before we have the
10 jury all present and accounted for.

11 Anything this evening, Mr. Schusterman?

12 MR. SCHUSTERMAN: Just and certainly I can't make The
13 State rest, but just for my scheduling I have people
14 coming from out of town and I would like to have a feel
15 whether or not I need to have them here at one o'clock or
16 three o'clock?

17 THE COURT: No, I would have them here at one o'clock.
18 Based on what has now been put on the record and some of
19 our brief scheduling discussions outside the courtroom
20 about where we are time wise, I would expect that shortly
21 after we get the Motions heard and after I talk to Mr.
22 Hughes, we will be in your case.

23 Have a pleasant evening.

24 SUNDAY, SEPTEMBER 17, 1995:

25 THE COURT: You all let me know when the defendant is

THE STATE VS HUGHES

1 ready to come into the court room. We will take a break
2 until then.

3 (Recess)

4 Take your seats. Solicitor, based on our in-chambers
5 -- let's come to order now, we are starting court. Based
6 on our in-chambers conversation it is my understanding
7 that after a stipulation is placed on the record The State
8 is going to - that will conclude The State's case.

9 MR. POPE: That is correct, Your Honor.

10 THE COURT: All right and for all intents and purposes
11 The State is resting, so in order for things to proceed in
12 a timely fashion and we don't have to send the jury in and
13 out, I am going to read this stipulation. I am going to
14 consider that The State has rested and read the
15 stipulation since it is a stipulation by and between both
16 parties. In essence, it will be part of The State's case,
17 but I want to note that The State has rested so that we
18 can move into any Motions at this stage before we bring
19 the jury in and also the fact that there are -- depending
20 on the outcome or whether there are Motions or not I can
21 discuss with the defendant now his rights regarding his
22 remaining silent and/or testifying. All right?

23 MR. SCHUSTERMAN: Do you want me to make my Motion
24 first, Your Honor?

25 THE COURT: I am giving you the opportunity to make

THE STATE VS HUGHES

1 any Motions that you wish to make. The State has rested.
2 So we are at the stage just before the defense moves into

3 ---

4 MR. SCHUSTERMAN: So The State has officially rested?

5 THE COURT: Yes, subject to me reading the
6 stipulation.

7 MR. SCHUSTERMAN: Right and I understand the
8 stipulation will be between both parties.

9 THE COURT: It's a stipulation between the parties.

10 MR. SCHUSTERMAN: And am I to -- other than what Mr.
11 Pope wrote down, I've read it and I certainly approved it.
12 Will you explain to the jury ---

13 THE COURT: I will tell them what a stipulation is.

14 MR. SCHUSTERMAN: At this time, Your Honor, for the
15 record I would make a Motion for a Directed Verdict of
16 acquittal, Your Honor, taking the facts in the light most
17 favorable to The State, I believe The State has failed to
18 show that Mr. Hughes had either the intent or the means to
19 commit the act of murder or armed robbery. There has been
20 no evidence whatsoever that Mr. Hughes ever had the gun in
21 his possession on that evening. There has been no evidence
22 by The State that Mr. Hughes had any intent to commit any
23 harm to Mr. McCants and as such at this time, Your Honor,
24 I would submit to the court that it would be appropriate
25 for a directed verdict of acquittal. Thank you.

THE STATE VS HUGHES

1 THE COURT: That Motion will be denied. I think that,
2 the court, of course, does not weigh any evidence, the
3 court looks at the presence or absence of evidence. There
4 is evidence in the record from which the jury could
5 conclude and find beyond a reasonable doubt if they were
6 so inclined that the defendant was, in fact, involved and
7 guilty of the charges.

8 Anything further?

9 MR. SCHUSTERMAN: No, Your Honor.

10 THE COURT: All right. Anything from The State?

11 MR. POPE: And prior to the instructions -- Your
12 Honor, as we go into the defense case, it is my
13 understanding there will be a great deal of medical
14 testimony. Again, to speed things along, I would object to
15 the relevance of the testimony -- we had asked for a
16 notice of any intention to using insanity as any defense,
17 that was not given; it is my understanding that insanity
18 is, in fact, not a defense and so a structured teaching of
19 the jury on the aspects of schizophrenia I'm not sure
20 would be relevant information at this point. If the court
21 would so determine, I would like some guidance as to the
22 outline - certainly, I don't want to make a bad record for
23 this case either and some guidance as to what
24 admissibility it is deemed to be appropriate so that we
25 can --

THE STATE VS HUGHES

1 THE COURT: All right, I'll overrule the Motion
2 regarding the introduction of the testimony. I think that
3 one of the issues for the jury is the voluntariness of the
4 statement and to that extent I think the psychological
5 based on the prior testimony, the prior statement made to
6 me, I think that it is an issue that is relevant to the
7 issues in this case. I think maybe I know what The
8 State's further questions to guidance that's going to be a
9 hard one unless there is some proffer where we could
10 determine what the testimony is going to be, but I will
11 instruct on the record as I have to counsel in chambers
12 that if an expert testifies particularly a medical expert,
13 then that expert is subject to cross examination and that
14 cross examination can cover anything upon which the expert
15 relies in reaching their opinion. So that's all I can say
16 is that's not a guideline and it's not a caution or
17 caveat, but one cannot testify as to a -- or given an
18 opinion and then not be subject to that opinion being
19 fully examined through cross examination. Now if the
20 opinion if there are certain things that had happened that
21 the expert did not factor them in and they reach their
22 decision independent of those things, then, of course,
23 they have no relevance. But those things upon which a
24 medical expert relies are subject to being examined on
25 cross examination.

THE STATE VS HUGHES

1 MR. POPE: Your Honor, I also note you had asked us to
2 try to get to you today if we could whatever Requests as
3 far as charge and this may be something post-defense case
4 that we need to address in this particular area as to jury
5 charge.

6 THE COURT: All right. Anything further?

7 MR. SCHUSTERMAN: Nothing from the defense.

8 THE COURT: Mr. Hughes, can you hear me?

9 MR. HUGHES: Yes, sir.

10 THE COURT: All right, I am going to ask you to raise
11 your right hand. Do you swear that the testimony you will
12 give to me and the statements you will make to me at this
13 time will be the truth, the whole truth and nothing but
14 the truth so help you God?

15 MR. HUGHES: I do.

16 THE COURT: All right, I'm not going to ask you - you
17 can put your hand down - I am not asking you anything
18 about this thing with which you are charged. That's not
19 for me to inquire about, but I want to make sure that you
20 understand where we are in this trial. We have now reached
21 a stage where you may present a defense, if you wish. You
22 are not required to present a defense. You are presumed
23 innocent. I have told the jury that. I will tell them that
24 again when I charge them the law they are to apply to the
25 facts that they determine them to be. That presumption of

THE STATE VS HUGHES

1 innocence attached to you from the time of your arrest and
2 remains with you now and will even go with the jury into
3 the jury room. That presumption of innocence is removed if
4 and when and only if and when the jury were to find you
5 guilty beyond a reasonable doubt. So you don't have to
6 prove your innocence. You don't have to prove a thing. But
7 you have a right to. You have a right to present whatever
8 witnesses you wish in regards to this case.

9 Now you also have the right to remain silent and a
10 right to testify. If you choose to testify, you take the
11 stand and you would be sworn in again and testified, you
12 would be subject to cross examination. During that cross
13 examination, The State would be able to bring out your
14 past record. I don't know your record, but I understand
15 you do have some offenses, which have been handed up to
16 the court, I think two or three in which they have already
17 put your counsel on notice March 8, 1983, October 26th and
18 October 27th, '83, some charges. They put your counsel on
19 notice that they are going to inquire about those past
20 offenses. They can; they have every right to. That will
21 be not for the purpose of showing or trying to influence
22 the jury as to whether or not you are guilty of this
23 charge, but rather for what is called impeachment
24 purposes, that is, to show that because you had violated
25 the moral laws or the laws of society in the past, that

THE STATE VS HUGHES

1 you perhaps would be less likely to tell the truth, that
2 is, the law lets one's past record in as evidence perhaps
3 not of this crime, but of your lack of truthfulness. Do
4 you understand all of that?

5 MR. HUGHES: Yes, I do.

6 THE COURT: Now I will instruct the jury when I charge
7 the jury that those past offenses cannot be considered
8 regarding the guilt in this trial, but only as to your
9 credibility, that is, your believability.

10 Now if you choose to exercise your constitutional
11 right and you do have that constitutional right to remain
12 silent, if you choose to exercise that right, I will tell
13 the jury that they can in no way hold that against you. I
14 will instruct the jury that when they consider your case
15 the testimony they can in no way consider the fact that
16 you chose to exercise your right against you in any way. I
17 will tell them they cannot even in the jury room discuss
18 the fact that you chose to exercise your constitutional
19 right to remain silent. Do you understand all of that?

20 MR. HUGHES: Yes, I do.

21 THE COURT: Mr. Hughes, this is your right, not your
22 counsel's, not any of your physicians or advisors, it's
23 not your family's, it's not your friends, it is Mar-Reece
24 Hughes' decision. Do you understand that?

25 MR. HUGHES: Yes, I do.

THE STATE VS HUGHES

1 THE COURT: Okay, you can certainly inquire of your
2 counsel and of your treating physicians if you wish or
3 anyone else as to whether you should or should not
4 testify, but it comes down to being your decision. Do you
5 understand that?

6 MR. HUGHES: Yes, sir.

7 THE COURT: All right, do you have any questions about
8 that that you want to pose to me at this time?

9 MR. HUGHES: No, sir, I don't.

10 THE COURT: All right.

11 Anything else you wish me to cover, Mr. Schusterman
12 or Ms. Brice?

13 MR. SCHUSTERMAN: I think, Your Honor, everything that
14 you covered we talked about extensively.

15 THE COURT: Your counsel has discussed this with you
16 before, have they not?

17 MR. HUGHES: Yes, they have.

18 THE COURT: Does The State have anything else they
19 wish me to cover at this point?

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

21 THE COURT: All right, you may be seated. Thank you.

22 All right, are we ready for the jury?

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

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

25 THE COURT: All right, bring in the jury.

THE STATE VS HUGHES

1 I just want to clarify one thing. I don't think it
2 would make any difference in this case, Mr. Hughes, but I
3 want to tell you that under our new Rules of Evidence The
4 State could introduce any -- just hold them outside just a
5 minute -- could use against you any offenses that carry a
6 potential penalty in excess of one year. I don't think
7 that matters in your case, but I want you to be aware that
8 as of September 1st of this year we have new Rules of
9 Evidence that can make a difference in that, is that not
10 correct?

11 MR. SCHUSTERMAN: That's correct, Your Honor. I am
12 under the assumption that the letter that Mr. Brackett
13 handed to me and the criteria for impeachment were under
14 the new Rules of Evidence, is that not correct?

15 MR. BRACKETT: That is correct, Your Honor, and that
16 is all of his offenses. He has no offenses that are not
17 crimes of moral turpitude and don't carry less than -- or
18 carry less than a year. Everything he has is a crime of
19 moral turpitude and carries ---

20 THE COURT: I just wanted to make Mr. Hughes aware. I
21 used the word moral turpitude and that is, in fact, true,
22 but they could inquire in addition to any offenses that
23 carry a potential penalty in excess of one year whether
24 they fell under what we used to call moral turpitude
25 --- guidelines or not. Do you understand that?

THE STATE VS HUGHES

1 MR. HUGHES: Yes, sir.

2 THE COURT: Okay, bring the jury.

3 MR. POPE: May it please the court, before --

4 THE COURT: Wait.

5 MR. POPE: Your Honor, I had discussed with Ms. Brice
6 when we had the mental health testimony the other day
7 Doctor Dupree had indicated there was one report that she
8 had, but didn't have an extra copy of, and I think Ms.
9 Brice is looking for that now and I'd also ask as far as
10 reciprocal discovery if there are any other reports or
11 anything that we have not received yet.

12 THE COURT: I hate to keep the jury out.

13 MR. POPE: As long as we can get the reports before
14 the testimony.

15 THE COURT: Well, no, but one other thing that just
16 popped in my mind there's a witness for the defense - when
17 is he going to be called?

18 MR. SCHUSTERMAN: He will be first.

19 THE COURT: What don't you go ahead and bring that
20 witness out.

21 MR. SCHUSTERMAN: Your Honor, if we can just have him
22 sit here.

23 THE COURT: That will be fine. He can remain there
24 until the next break.

25 MR. SCHUSTERMAN: Yes, sir.

THE STATE VS HUGHES

1 THE COURT: Sit right over there, if you don't mind.

2 MR. SCHUSTERMAN: I'll instruct him, Your Honor, as to
3 what you just said.

4 THE COURT: He's to remain there until the next break.
5 All right, bring in the jury.

6 (Jury in.)

7 It's a little late. The best made plans, we built this
8 new building here and we had trouble with one of the
9 doors, we couldn't get the people in or out that we needed
10 to have in and out and so we had to have some help in
11 making sure that we didn't have some people locked out
12 when they needed to be in, so it's just one of those
13 things. I wanted to let you know that we weren't wasting
14 your time - maybe we did, but we didn't do it
15 intentionally.

16 All right, let me tell you at this time the parties
17 have entered into a stipulation. The State has rested. The
18 State is telling us that they have presented the evidence
19 they intend to present. They would under certain
20 circumstances have the right to present what is called
21 reply testimony or rebuttal testimony at a later stage in
22 the trial, but for all intents and purposes you have heard
23 the evidence that The State intends to present. This means
24 that the defense may, if it wishes, present evidence. The
25 --- defendant is presumed innocent. He does not have to prove

THE STATE VS HUGHES

his innocence and does not have to present any evidence, but has the right to. So we will move into that stage now. Before we do and before the defense calls or I turn it over to the defense to call any witnesses that they may wish, the parties have entered into a stipulation. I think I told you about this when we started, but I will tell you again or for the first time if I neglected to earlier. A stipulation is an agreement by the parties that a fact is true. I have told you that you are the sole judges of the facts and I will tell you that again when I give you the charge on the law. But where the parties agree that a fact is true, you don't have to wrestle with the truthfulness of it. For your deliberation you accept, take and apply a stipulated fact as proof. It does not have to be proven to you. It is for the purposes of your deliberation a proven fact. Here the parties have stipulated that Lt. Ira W. Jeffcoat of the South Carolina Law Enforcement Division, Department of Serology and DNA analysis, tested the evidence recovered from Mar-Reece Hughes and Eric Forney and the blood of Deputy Brent McCants was not found. Further, the blood spots on the clothing of Mar-Reece Hughes testified to by Witness Devinney was found to be the blood of the defendant, Mr. Hughes.

Let me read that the second time. The parties stipulate that Lt. Ira W. Jeffcoat of SLED, the Department

FELIX MONTEL WIMBORN DIRECT

1 of Serology and DNA analysis, tested the evidence
2 recovered from Mar-Reece Hughes and Eric Forney and the
3 blood of Deputy Brent McCants was not found. Further, the
4 blood spots on the clothing of Mar-Reece Hughes testified
5 to by Witness Devinney was found to be the blood of the
6 defendant, Mar-Reece Hughes.

7 All right.

8 MS. BRICE: Thank you, Your Honor. I will call my
9 first witness Felix Wimborn.

10 THE COURT: Please come around and be sworn, Mr.
11 Wimborn.

12 FELIX MONTEL WIMBORN, being duly sworn,
13 testified as follows:

14 DIRECT EXAMINATION

15 BY MS. BRICE

16 Q Hi, Mr. Wimborn.

17 A How are you doing?

18 Q Would you please state your full name?

19 A Felix Montel Wimborn.

20 Q Do you live here in Rock Hill?

21 A Yes, ma'am.

22 Q Do you know Mar-Reece Hughes?

23 A Yes, ma'am.

24 Q How do you know Mar-Reece?

25 A From the time he got locked up in the County.

FELIX MONTEL WIMBORN DIRECT

- 1 Q And was that after the shooting of Deputy McCants?
- 2 A Yes, sir.
- 3 Q And did you have occasion to speak with Mr. Hughes?
- 4 A Yes, ma'am.
- 5 Q And can you describe some of those occasions?
- 6 A What do you mean?
- 7 Q Can you tell me in what environment you talked to him?
- 8 A Yes, I talked to him numerous times in C Block.
- 9 Q And that's where you were incarcerated in C Block?
- 10 A Yes.
- 11 Q And did you talk to him on more than one occasion?
- 12 A Yes, ma'am.
- 13 Q Were you in C Block when Mr. Hughes was in C Block?
- 14 A Yes, ma'am.
- 15 Q Do you know a fellow by the name of Jennings?
- 16 A Yes.
- 17 Q Was he in C Block as well?
- 18 A Yes.
- 19 Q Do you ever recall Mr. Hughes making a statement about
- 20 killing Brent McCants?
- 21 A No.
- 22 Q You never recall that?
- 23 A No.
- 24 Q Would you have recalled that?
- 25 A Yes, because we most of the time stay up all night and

1 sleep all day and, you know, I was on the door talking and
2 stuff and I never heard him say nothing like that.

3 Q Would it be common for someone to make an admission
4 like that in jail?

5 A No, people don't need to discuss their case not
6 especially something like that.

7 Q Why?

8 A You know, they just don't.

9 Q Did Mar-Reece ever say anything to you about that
10 killing?

11 A Yeah.

12 Q What did he say?

13 A He told me he said the police pulled him over; he says
14 his partner was leaning out the window ---

15 MR. POPE: Your Honor, I am going to object. It is
16 self-serving hearsay. He said that Mar-Reece said that -
17 it is self-serving hearsay.

18 THE COURT: I overrule your objection.

19 Q Go ahead, Mr. Wimborn.

20 A He said the police pulled him over and his partner had
21 one hand out the door like that and the other hand in the
22 door like that right there, the pistol down, and he walked
23 up and pulled it up and started shooting.

24 Q He said his partner was the one who did the shooting?

25 --- A Yes, he said he ain't never seen nothing like that

FELIX MONTEL WIMBORN CROSS

1 before in his life and he was scared.

2 Q He was scared?

3 A Yes.

4 Q Would you have known if Mar-Reece ever made any
5 statement about killing Deputy McCants?

6 A I can't say - if he said it out loud, I would have,
7 but as far as, you know, screaming it out, no, I ain't
8 never heard him say nothing like that.

9 Q Thank you.

10 CROSS EXAMINATION

11 BY MR. POPE

12 Q Mr. Wimborn, when exactly were you incarcerated with
13 Mr. Hughes?

14 A It was probably back two or two and a half years ago.

15 Q Two or two and a half years ago?

16 A Yes.

17 Q What year would that have been? What would that have
18 put it?

19 A Probably around about '93 somewhere in there.

20 Q Let's see, this is '95. The summer of '93, the fall of
21 '93?

22 A It's been a long time. You know, it could have been
23 the end of '92 or the beginning of '93 or somewhere up in
24 there, I don't know.

25 Q Where are you staying now?

FELIX MONTEL WIMBORN CROSS

1 A Huh?

2 Q Where are you at now?

3 A I am incarcerated.

4 Q Okay. What are you down there for?

5 A I ain't. I'm waiting to go to trial.

6 Q Okay, so you are here in York County?

7 A Yeah.

8 Q Okay and when did you go in?

9 A You mean when I ---

10 Q When did you go in? Are you waiting for trial now?

11 A Yes.

12 Q What are you waiting for trial on?

13 A A drug charge.

14 Q And so when did you go in? Are you in the new

15 building?

16 A Yes.

17 Q And when did you go in there?

18 A May.

19 Q Okay.

20 A May 3rd.

21 Q Okay, you haven't been in there two and a half years?

22 A No.

23 Q Okay. What were you in back then when you were with

24 Mar-Reece the first time?

25 --- A That was violating probation.

1 Q Okay and so when you were back then and, again, I just
2 want you to try to take a second and remember as best you
3 can when you went in back then? How long were you in back
4 then for that violation?

5 A I did in all about six months, about a month at the
6 county, the old county, and then I went to Columbia.

7 Q So you were in there about a month?

8 A Yeah.

9 Q And then you did a total of six months for your
10 violation?

11 A Yes, sir, waiting to go to court, yes, sir.

12 Q Okay, so you were about a month after you came in for
13 your violation before you came up, right?

14 A Yeah before I got sent to Columbia.

15 Q All right, when did they put you in on the violation,
16 do you remember?

17 A I don't remember that. You know, I don't exactly know
18 what month it was. You can check it out.

19 Q Okay, so you were only there for a month, you say?

20 A Yes.

21 Q So Harry Jennings you say you did know Harry Jennings?

22 A Yes, sir.

23 Q So Harry was there when you got there, is that right?

24 A I believe he was.

25 Q And he was there when you left, is that correct?

1 A Yeah, I believe he was.

2 Q And so did you know Mar-Reece previously or is that
3 the first time you met him?

4 A I meet him, you know, we'd be out of the cell for Rec
5 and going back and forth to the shower and stuff like
6 that.

7 Q That's the first time you had met him?

8 A Yes, being locked up in jail?

9 Q Right.

10 A Right.

11 Q Did you know him before jail?

12 A No, I didn't know before jail.

13 Q So really that month was the only time you knew him, I
14 mean, you know of him now because you met him back then,
15 is that right?

16 A Yeah, I ain't seen him since then.

17 Q So what you are saying is that one month about two and
18 a half years ago during that time you didn't hear him
19 shout anything out about it feeling good to shoot the
20 deputy, is that right?

21 A No.

22 Q During that month you were there you didn't hear him
23 say that, right?

24 A No.

25 Q Now if he said that before you got there, you wouldn't

1 have any way of knowing because you were out on probation
2 then, is that right?

3 A Yeah, you're right.

4 Q Okay and likewise after you went down the road if he
5 said it then, you just - I mean, you'd only tell what you
6 know, you wouldn't have any way of knowing that, would
7 you?

8 A No, I wouldn't.

9 Q So really when Ms. Brice was asking you what you are
10 telling us is that for that one month two and a half years
11 ago whenever that was and you said it may have been the
12 end of '92 or sometime during '93, whenever it was you
13 were in there, for that month you didn't hear him say
14 anything about it, is that right?

15 A No, sir.

16 Q And Ms. Brice had asked you about people saying
17 talking about their crimes, there are times when people
18 talk about their crimes in jail, aren't there?

19 A Not nothing like that.

20 Q They don't talk about murders?

21 A A few of them say talk about, you know, about who they
22 get to represent them. Most of the time people don't be on
23 the door telling why they're in or telling what they're
24 locked up for until, you know, after they've been to court
25 --- for it ad see how they are going to come out first.

1 Q Oh, I see what you are saying, so it's different once
2 you have been charged with something -- I mean once you've
3 been convicted, then they start bragging about it?

4 A Not really bragging they just say, you know, tell how
5 much time they got and they'll go on down there and do
6 their time.

7 Q All right, let me ask you this. When people are in a
8 cell together they talk about what they're in for, is that
9 correct? Let me ask you this I don't want to interrupt
10 you, I want you to be able to say - when you are in the
11 cell or in lockup where there's like four guys, three
12 other guys in your cell, is that right?

13 A Yeah, four people to a cell.

14 Q And you see guys when you are working out, you know,
15 when you are walking and taking breaks, taking your
16 showers, and all of that, ---

17 A That's right.

18 Q --- when you first meet a guy, do you talk about what
19 you are charged with?

20 A No, not really, not right off. What I'm saying you get
21 to know a person, you know what I'm saying, you know, and
22 you and him might kick it, you know, talk a little bit,
23 you know, like that. You know, as far as just screaming it
24 out on the door, you know, people don't - I ain't never
25 --- heard nobody do that and I've been locked up a bunch of

1 times.

2 Q Oh, you have?

3 A Yes.

4 Q Okay and people don't ever say ---

5 A I didn't say they have I said hardly ever do it.

6 Q Are you good friends with Mar-Reece?

7 A No, I don't hardly know him as far as hanging with him
8 and stuff.

9 Q You are not really close to him?

10 A No, I ain't really close to him; I'm like, you know,
11 friends, you know, associates, not just say tight.

12 Q --- And he would never have any reason if you wasn't close
13 to him for him to tell you anything about his case, would
14 he?

15 A I can't say that; he talked, you know what I'm saying.

16 Q He told you his partner did it?

17 A Yeah, he said his partner did it.

18 Q And during that month that you were there you never
19 heard him say anything out on the Block, but you can't
20 tell these people one way or another whether he did it
21 except for that month that you were there, is that right?

22 A That's right.

23 Q One second.

24 MR. POPE: I beg the court's indulgence.

25 --- Q Mr. Wimborn, you said you have been in jail a lot, is

FELIX MONTEL WIMBORN REDIRECT

1 that right?

2 A Yeah, off and on, yeah.

3 Q You were in jail one time for giving false information
4 to an officer?

5 A Yes, sir, my driver's license.

6 Q But you were charged with some other stuff, grand
7 larceny and stuff like that?

8 A Yes, sir, and he asked me who I was when I'm driving
9 the car and I told him I was my brother.

10 Q So you didn't tell him the truth?

11 A Right.

12 MR. POPE: I have no further questions of this
13 witness.

14 REDIRECT EXAMINATION

15 BY MS. BRICE

16 Q Mr. Wimborn, when you were with Mar-Reece, you were
17 sent for a violation of probation, is that right?

18 A Yes, sir.

19 Q And you were there for six months, not one month, is
20 that right?

21 A I was at the County for about a month and then I went
22 down the road to do the rest of my time.

23 Q Okay, you were at the County for a month and how long
24 were you there with Mar-Reece?

25 A That whole month.

FELIX MONTEL WIMBORN REDIRECT

1 Q Okay. And during that time when were you released? Do
2 you remember what month you were released back then?

3 A From the County?

4 Q Yes, sir.

5 A I don't exactly remember. It's been a long time. I
6 don't remember.

7 Q So you don't have anything to gain here, we haven't
8 offered you anything - we couldn't offer you anything,
9 could we?

10 A No, I ain't got nothing to gain.

11 Q All right. And would it be something that is ---

12 MR. POPE: Your Honor, I am going to have to object to
13 Ms. Brice leading.

14 THE COURT: Rephrase your question.

15 MS. BRICE: I'll be careful.

16 Q I believe it was your testimony, Mr. Wimborn, that you
17 don't hear people make admissions, is that right?

18 A Not -- very seldom, you know, on the door like that,
19 you know what I'm saying?

20 Q And when you got to the County, did you ever hear
21 anybody say anything to you about Mr. Hughes taking the
22 life of that officer?

23 A No.

24 Q And Mr. Hughes never made any admission ---

25 MR. POPE: Your Honor, I am going to object to

1 leading again. I hate to keep doing this.

2 THE COURT: I sustain the objection.

3 Q Were there any statements by Mr. Hughes in regards to
4 the killing of that officer?

5 A No, nah.

6 Q Thank you, sir, I appreciate your time.

7 A All right.

8 RECROSS EXAMINATION

9 BY MR. POPE

10 Q Mr. Wimborn, I want to make sure. You go by a number
11 of aliases also, is that right, Frederick Young, is that
12 you?

13 A My cousin.

14 Q Felix Wimborn?

15 A That's me.

16 Q Felix Harris?

17 A That's me. My Mama and Daddy separated and I got the
18 last name of my Daddy instead of my Mama.

19 Q Was the cousin's name on here - is that the false --
20 you said your brother was the false name you gave with the
21 driver's license the lying to the police officer, that was
22 your brother's name?

23 MR. SCHUSTERMAN: Your Honor, I am going to object to
24 this. I don't see how this is recross.

25 THE COURT: I sustain the objection.

1 MR. SCHUSTERMAN: Thank you.

2 Q One final question. Ms. Brice came up asked you again
3 the same thing she'd asked on direct about people ---

4 MR. SCHUSTERMAN: Your Honor, I object to the
5 editorializing.

6 MR. POPE: Your Honor, one thing I'd object to is Ms.
7 Brice did the direct if she wants to object and I
8 understand that's the rules of the court.

9 THE COURT: All right, let Ms. Brice do the objecting.

10 MR. SCHUSTERMAN: Thank you, Your Honor.

11 THE COURT: You may proceed.

12 Q Ms. Brice had asked you about on the Block about
13 confessions on the Block, remember when she came back up
14 ---

15 A Yes.

16 Q --- and you said "Seldom do you hear that"? That was
17 the word "Seldom"?

18 A Yes, sir.

19 Q Okay, so not never, but seldom, is that right?

20 A Yeah, same thing.

21 Q Thank you, sir.

22 THE COURT: You may step down. Have a seat.

23 Call your next witness.

24 MS. BRICE: I call Doctor Morgan.

1 DONALD WILLIAM MORGAN, being duly sworn,
2 testified as follows:

3 DIRECT EXAMINATION

4 BY MS. BRICE

5 Q Doctor Morgan, would you please state your full name
6 for the record?

7 A Donald William Morgan.

8 Q And where are you employed?

9 A University of South Carolina School of Medicine.

10 Q And are you also affiliated with William S. Hall?

11 A Currently I am the interim director of William S. Hall
12 Psychiatric Institute in Columbia.

13 Q And can you describe what that facility is?

14 A That is the Department of Mental Health Research and
15 Training Facility. It was established in 1965.

16 Q And you are the director of that facility?

17 A Currently.

18 Q And what is your educational background?

19 A I received a Bachelor of Arts from the University of
20 Pennsylvania 1956; received a Doctorate of Medicine from
21 the University of Buffalo in 1960. In 1960 to '61 I did a
22 rotating internship at Tripler Army Hospital in Honolulu.
23 I then went to Walter Reed Army Medical Center where I
24 took a three year residency in general psychiatry. The
25 --- last year I was the chief resident. Following that I went

1 to Cal State Medical Center where I did a research in
2 psychiatry training and received a degree a doctor of
3 medical science.

4 Q Have you testified in court before?

5 A Yes.

6 Q And have you testified in court in your capacity as a
7 psychiatrist?

8 A Yes.

9 Q And how many times approximately have you testified in
10 court?

11 A Many, many times.

12 Q And when you testified in court, were you qualified as
13 an expert?

14 A Yes.

15 Q And if you attribute a percentage to the number of
16 times that you have testified in court how many or what
17 percent would you attribute to criminal cases?

18 A The vast majority probably eighty percent of the time
19 would be criminal cases. Most civil cases never come to
20 trial although there's a lot of work that goes into that
21 and I've testified in Family Court very infrequently.

22 Q And the number of times that you have testified in
23 court how many times would you say were for The State?

24 A Being called as a State's witness most of the time.

25 --- Most of the time I am a prosecution witness.

1 Q Okay.

2 MS. BRICE: Your Honor, at this time I would ask that
3 Doctor Morgan be qualified as an expert.

4 MR. POPE: No objection.

5 THE COURT: Without objection he is qualified as an
6 expert in the field of psychiatry.

7 Q Doctor Morgan, what is your association with Mr.
8 Hughes?

9 A I first met Mr. Hughes in late 1992 when he was
10 admitted with William S. Hall Psychiatric Institute for an
11 evaluation. The doctor immediately taking care of him was
12 Doctor Connie McKee, but I was her supervisor and I
13 discussed the case with her frequently although I was not
14 taking care of Mar-Reece.

15 Q In your contact with Mar-Reece back in 1992, did you
16 come to a diagnosis of Mr. Hughes?

17 A Along with Doctor McKee, yes.

18 Q And what was that diagnosis?

19 A We diagnosed him as an adjustment disorder with I
20 believe depression mood.

21 Q And subsequent to your original diagnosis did you have
22 an opportunity or an occasion to make a subsequent
23 diagnosis of Mr. Hughes?

24 A Yes.

25 Q And what was that diagnosis?

1 A Schizophrenia paranoid type.

2 Q Can you describe what that is?

3 A What the illness is?

4 Q Yes, sir.

5 A The illness is a major disorder of thought. It usually
6 has its onset in the late teens, early twenties. It takes
7 a number of different forms. In this particular case the
8 symptoms are being confused, having very magical thinking,
9 being very paranoid and extremely suspicious. No one knows
10 the exact cause of this illness. It is thought to have a
11 large genetic component and we know that it has to do with
12 a neurotransmitter dopamine and we know the parts of the
13 brain do not function while other parts of the brain seem
14 to be over-functioning, therefore, we get these symptoms
15 of delusions, which are false beliefs or hallucinations,
16 which are sensory perceptions, which are also false.

17 Q Doctor Morgan, can you account for the change of your
18 diagnosis?

19 A Yes. In August of 1994 we received an additional court
20 order asking for a re-evaluation of Mr. Hughes. Doctor
21 Geoff McKee and I did that and we felt that Mr. Hughes was
22 competent, but we knew that there was a discrepancy in our
23 findings and the findings of the defense attorneys -- the
24 defense psychiatrist, so we recommended to the court just
25 --- prior to the trial that both sides, both sets of doctors,

1 sit down along with both sets of lawyers and interview Mr.
2 Hughes. At that time it was clear to all of us that Mr.
3 Hughes was not competent, that his thinking was not
4 rational, and that he was misperceiving many things that
5 were going on during that evaluation. Subsequent to that
6 there was a court order which he was ordered admitted to
7 William S. Hall Psychiatric Institute a second time.
8 During that hospitalization again Renee Kohansky was his
9 immediate doctor, but I was supervising her, and it was
10 clear that the things that he had talked about during the
11 first episode, during this first hospitalization, had
12 greatly magnified and he had a scheme that had to do with
13 numbers and colors that made no sense. He really did not
14 understand the seriousness of the charges against him and
15 he, of course, refused to take any medicine, refused to
16 say that he had a mental illness, and we had to apprise
17 the court that we needed to medicate him against his will
18 and we did do that. After several weeks of medication, his
19 thinking began to return to normal and after about a month
20 he was then able to talk with his lawyers in a more
21 reasonable fashion.

22 Q Can you account for the like of a better term
23 mis-diagnosis from the first time?

24 A Well, I think in the first hospitalization Mar-Reece,
25 --- Mr. Hughes, did not bathe, did not come out of his room,

1 did not eat on occasion. When the nursing staff talked to
2 him about that because that's rather unusual he put the
3 nursing staff off and said that he knew he was going to
4 prison, that if he was going to prison, that he was going
5 to act like a prisoner. I think that those were the early
6 signs of his illness, but he wasn't saying anything that
7 he was afraid of people, talking about his lawyers or any
8 of those things at that time.

9 Q This was in 19 -- excuse me, this was in 1992?

10 A This was September-Novemberish 1992, yes. After he
11 left the hospital, he was referred to the Mental Health
12 Center in Rock Hill. They described him as being very
13 paranoid, which we had not seen. So I think at that time
14 it was just the early phases of the illness that he was
15 able to not tell us about how he was doing and what he was
16 thinking. In terms of the feeling that he was competent
17 in August, 1994, that I believe was because McKee and I
18 structured the interview and we asked him questions of
19 fact, yes, no, very brief answers and that was very
20 different from the combined interview just prior to the
21 originally scheduled trial where he was asked open-ended
22 questions: Tell us how you are doing, rather than, do you
23 know the charge against you and it was at that point that
24 his thinking was clearly disorganized.

25 --- Q So as I understand it back in 1992 when you and Doctor

1 McKee was posing questions to him that would call for
2 yes/no answers, isn't that correct? I'm sorry ---

3 A Back in 1992 he was given open-ended questions and he
4 did answer them. He refused to complete the MMPI because
5 "It's too personal." An MMPI is a psychological paper and
6 pencil test which has 550 items on it many of them are
7 suggestive of mental illness and I believe he felt at that
8 time that if he took that test, he would show his
9 disordered thinking so he never completed that. But he
10 was asked open-ended questions there. I was talking about
11 the 1994 evaluation that we did as an out patient where we
12 structured him. He was clearly sick at that time. We
13 simply missed it.

14 Q Would I be correct and saying and if I'm not, just let
15 me know, would I be correct in saying that or were there
16 early symptoms of his diagnosis back in 1992?

17 A Yes, I think his failure to take the exam - his
18 failure to complete the psychological tests, his not
19 bathing, not coming out of his room, missing meals were
20 early signs that we did not perceive to be the early signs
21 of this illness.

22 Q Is Mr. Hughes currently medicated for this illness?

23 A Yes, he is.

24 Q And what type of medication is he receiving?

25 --- A He is on Haldol; it's an injectable form of medicine

1 that you give to the patient once a month one every four
2 weeks. It is slowly released so that he has a blood level
3 of his anti-psychotic medicine throughout the entire
4 month. He's on 200 mg which is not a huge dose, but it is
5 certainly a recommended dose.

6 Q And you stated earlier that he at one time were
7 involuntarily taking that medication. Can you describe to
8 me how is he taking that now?

9 A He now says he has a little schizophrenia and he
10 really trusts the doctors that are caring for him now
11 that's not to say that if he changed doctors he might have
12 a different feel of things, but he really does trust us so
13 now there's no problem giving him this medicine. He
14 accepts it now.

15 Q And why does he need this medication?

16 A If he stops taking this medicine, he will relapse
17 maybe not the first week or the first month, but he will
18 relapse and have another psychotic episode certainly
19 within the year. That's just what this illness does. The
20 medicine doesn't cure this illness, it just keeps it under
21 control. Just like insulin doesn't cure diabetes, but it
22 does it does allow you to lead a relatively normal life.

23 MS. BRICE: I beg the court's indulgence.

24 Q That's all the questions I have. Thank you, Doctor
25 --- Morgan.

1 CROSS EXAMINATION

2 BY MR. POPE

3 MR. POPE: May it please the court?

4 Q Doctor Morgan, as I understand you have a number of
5 assistants or residents in training, doctors that work
6 under you, is that correct?

7 A I have Board Certified Psychiatrists, but I also have
8 trainees who are Fellows in forensic psychiatry. This is
9 in the fifth year of their training in other words they
10 have completed their general training and they take this
11 as extra training similar to the extra training that I
12 took after my residency.

13 Q And so when a report is issued from your department
14 back to the court, your signature is placed on it, is that
15 correct?

16 A Usually.

17 Q And you review their work, is that correct?

18 A I read the work of the fellows. I read every single
19 report. I don't read every single report of the Board
20 Certified psychiatrists and forensic psychiatrists that
21 are in the institution, but I do see any time that their
22 conclusions don't match with the incident I read that and
23 question them on it.

24 Q And again ultimately when the finding of mental
25 capacity comes back to the court it bears your signature,

1 is that correct?

2 A In most cases.

3 Q Doctor, you and your people were asked to do an
4 evaluation as to I believe competency, capacity to conform
5 and ability to distinguish right from wrong, criminal
6 responsibility of the defendant as to the crime that we
7 are trying now, is that correct?

8 A Yes, it is.

9 Q Okay. And that's when you talked to Ms. Brice about
10 Doctor McKee -- there's actually two Doctor McKees, is
11 that correct, there was a Constance McKee that's a
12 psychiatrist and there is a Geoff McKee who is with you
13 still that is a psychologist, is that correct?

14 A That's correct.

15 Q Okay. And when you did the evaluation back -- Doctor,
16 do you have a copy of the initial report you signed with
17 Constance McKee? I will in the meantime try to find one.
18 Doctor, I've got it right here. Doctor, I show you
19 State's Exhibit 76 for identification and ask if you would
20 take a look at that and tell me if you recognize it.

21 A Yes.

22 Q And that is the evaluation that Doctor Constance McKee
23 and yourself did back in it would have been November of
24 '92?

25 -- A It was in November.

1 Q Okay, November of '92. And when you talked about Mr.
2 Hughes being brought in as an in patient there at William
3 S. Hall, that is the court procedure where the court
4 ordered someone with pending charges and they have
5 evaluation and they send them down to you, is that
6 correct?

7 A Correct.

8 Q And in that particular evaluation again you were asked
9 to find out whether or not the defendant was criminally
10 responsible on the night of September 25, 1992, is that
11 correct?

12 A Yes.

13 Q Could you tell the jury what criminally responsible,
14 what that means?

15 A It means that even though he had a mental illness,
16 that that mental illness isn't so severe as to keep you
17 from knowing what you were doing or appreciating at the
18 time the wrongfulness of the behavior.

19 Q Okay and in essence is that knowing right from wrong
20 legally and morally, is that what that is?

21 A Yes.

22 Q Okay and based on your diagnosis and that of Constance
23 McKee back then, what was your conclusion, if you could
24 relate it to the jury, regarding whether Mar-Reece Hughes
25 --- was criminally responsible or knew right from wrong back

1 on September 25, 1992.

2 A We felt that he clearly did know right from wrong.

3 Q Could you relate to the jury what your exact report
4 indicated regarding criminal responsibility?

5 A "Conclusions regarding criminal responsibility: There
6 is no evidence of a major mental illness or defect which
7 impair Mr. Hughes' ability to differentiate moral and
8 legal right from wrong at the time of the alleged offenses
9 as per the McNaughten standard, therefore, we determine
10 that he is criminally responsible."

11 Q Okay and, again, this evaluation was done by your
12 department a month after the crime, is that correct?

13 A It began a month after the crime. This is a little
14 longer than that, but it began ---

15 Q Close to ---

16 A --- close to the incident, yes, sir.

17 Q Okay. And could you tell the jury the capacity to
18 conform? That's a world of difference than criminal
19 responsibility, isn't it?

20 A Capacity to conform means that you are able in spite
21 of your mental illness to control your behavior. It often
22 is said that you are able to voluntarily control your
23 behavior, that you can make a choice is probably the best
24 way to say that.

25 --- Q And so to have the capacity to conform or the ability

1 to make a choice first before you even got in really to
2 that arena, you'd have to find a major mental illness
3 present, is that correct?

4 A Correct.

5 Q Could you relate to the jury what your conclusion was
6 regarding the capacity to conform?

7 A "Conclusions regarding capacity to conform: There is
8 no evidence that a major mental illness or defect which
9 would have impaired Mr. Hughes' ability to conform his
10 conduct to the requirements of law on the day of the
11 alleged offenses; therefore, we determine that he did have
12 the capacity to conform his conduct to the requirements of
13 law."

14 Q And if I understand since there was never any
15 indication of major mental illness, the capacity to
16 conform really doesn't come up, I mean, because you could
17 have a major mental illness, but still have the ability to
18 exert will, is that correct?

19 A You can have a major mental illness and be criminally
20 responsible.

21 Q Okay. So, again, from your evaluation back at that
22 time and I realize we are talking about a lot of, in
23 essence, apples and oranges, but back to that time Mr.
24 Hughes had no major mental illness and had the ability to
25 --- conform his conduct and to know right from wrong. Is that

1 correct?

2 A Yes.

3 Q Doctor, I believe at a later time you indicated that
4 you and now Geoff McKee, the other Doctor McKee, did a
5 report that indicated that, and this would have been I
6 refer you to, and let me give you a copy of this also,
7 State's Exhibit 78 for identification, --

8 MR. POPE: I beg the court's indulgence.

9 You did an evaluation that you indicated to Ms. Brice
10 in July, is that correct, the end of July, beginning --
11 August 1st?

12 A August 1st in '94.

13 Q Okay. I'm going to try this one more time. Let me
14 show you 78 for identification. On August 1st you were
15 addressing competency to stand trial, is that correct,
16 Doctor?

17 A Yes, that's all we were asked to do.

18 Q Okay and on competency to stand trial was that also
19 addressed in the first report, the report that we just
20 discussed that you did a month after?

21 A Yes, sir, it was.

22 Q And could you explain to the jury what competency to
23 stand trial what that really is?

24 A That is the individual has to be well enough that he
25 --- can sit in a courtroom, that he can listen to testimony,

1 that he can follow the testimony, that he can consult with
2 his lawyer in a rational manner, that he understands the
3 charges against him, that he knows what a jury is, that he
4 can help make certain decisions that only the defendant
5 can make, certain things that he and only he can decide,
6 and, if possible, he is able to help with the defense and
7 decide on strategy.

8 Q Would that also entail this understanding of his basic
9 rights such as his Miranda Rights and things of that
10 nature?

11 A Yes, that's the first - that is the very first thing
12 that we do with anybody sent to us.

13 Q So the competency to stand trial evaluation is a
14 present evaluation, in other words, back a month after the
15 crime in this case you evaluated for capacity of
16 conformity and also competency. In other words, two of
17 the things were how was he on the night of the 25th.

18 A Correct.

19 Q Okay and the third is how is he now, is that correct?

20 A Right.

21 Q Doctor, would you agree with me that a lot of the
22 things that you look at as far as competency, how he is
23 now and does he understand his rights, would be the same
24 type things that are considered as far as whether anyone
25 --- understands their rights, in other words, the factors you

1 look at at the time when someone was giving a statement,
2 at the time the police read their rights, is that the same
3 type thing that he understands that you are looking at?

4 A We rarely talk about a competency that we weren't
5 present at. So a person may not have understood his
6 Miranda Warnings during investigation. We wouldn't comment
7 on that. We would only comment on whether we felt he
8 understands his rights when we were seeing him.

9 Q Okay, a month later when you ---

10 A A month later.

11 Q And what was the results in your report that month
12 later as far as Mr. Hughes being able to understand his
13 rights and all things of that nature?

14 A Mr. Hughes did understand his rights.

15 Q Could you relate to the court what your report
16 indicates as far as that?

17 A This is from the '92 evaluation. "Mr. Hughes was able
18 to understand his Miranda Rights and was considered
19 competent to waive them. Since his attorney was present
20 and since the Court Order had a hitopotus clause, it was
21 only necessary for him to waive his right to be silent,
22 exhibit an appreciation on the charges that had been filed
23 against him and was able to provide an appropriate
24 assessment of the possible penalties. He demonstrated an
25 --- understanding of the court procedures and was able to

1 correctly identify the roles of the defense attorney,
2 solicitor, judge and jury. He could define the pleas of
3 guilty and not guilty and demonstrated a basic knowledge
4 of plea bargaining. Mr. Hughes exhibits the capacity to
5 disclose to his attorney the pertinent facts relating to
6 the offenses and shows an ability to understand the legal
7 defenses available to him. He exhibits the capacity to
8 testify relevantly and to challenge the prosecution
9 witnesses appropriately. He demonstrates an appropriate
10 manifestation of self-protectiveness; therefore, we
11 determine that he is competent to stand trial."

12 Q Okay, now all of this again was done a month after
13 close in proximity to the crime.

14 A Very close.

15 Q Okay. Now up and through the next report we would
16 have had the next evaluation from your department would
17 have been in August of '94?

18 A '94, yes, sir.

19 Q So that would be one and a half to two years later, is
20 that correct?

21 A Almost two years later.

22 Q And that is the August of '94?

23 A Yes, sir.

24 Q Now in August of '94 you said you weren't asked to
25 --- talk about capacity or conformity or any of those. You

1 were just looking at competency. You were looking at in
2 August of '94 can the defendant understand his rights now.

3 A Yes.

4 Q So the competency evaluation you did a month after
5 wouldn't change. Back at that time when you looked at him
6 he was competent and will always be competent, that
7 wouldn't change from your next evaluation.

8 A For that period of time, that's right.

9 Q In other words, I could be competent today and then
10 next Friday you talk to me as far as competency now and I
11 may not?

12 A That's correct.

13 Q Likewise, the evaluation as far as capacity, in other
14 words, as far as did I know right from wrong or was I able
15 to conform my conduct, you are making that assessment as
16 to the night Brent McCants was killed, is that correct?

17 A Right, that would not change.

18 Q Okay.

19 A Absent some really startling data that we didn't have,
20 that is to say, one would look at the incident report when
21 we evaluate him and talk to him, we get information from
22 the family - that's the kind of information that would go
23 to terms of criminal responsibility. That generally does
24 not change.

25 --- Q Okay, in fact, in this case and you have been asked

1 and we may be confusing it with the competency versus the
2 capacity, Mr. Hughes' responsibility in your opinion of it
3 as far as the night Brent McCants was killed has not
4 changed, is that correct?

5 A Absolutely not. Even though he has a serious mental
6 illness and even though he needs potent medication to
7 control that illness, that has nothing to do with the
8 incident itself. The incident both from his statements
9 and from all the data was not predicated or not related to
10 his current paranoid schizophrenia.

11 Q Okay and so as you and the other doctors have
12 diagnosed him currently being paranoid schizophrenic that
13 would have come on after this because as you have stated
14 and continued to state, there is no mental illness
15 involving the Brent McCants case, is that correct?

16 A That's my opinion.

17 Q All right, Doctor, then, again, so all the different
18 evaluations Ms. Brice has talked about all don't deal with
19 the night of September 25th, but deal with present
20 competency, is that correct?

21 A Well, I think under the last Court Order we were asked
22 to revisit that and we did. You know, given that he now
23 has a major medical illness, I think the judge had asked
24 us to think again whether we thought he was still
25 --- responsible back at the time of this crime.

1 Q Okay and, again, that's kind of like you told the jury
2 the thing about if some startling new information comes on
3 the scene you want to take another look at it.

4 A Right.

5 Q Okay. State's Exhibit 77 for identification I believe
6 is when you actually at the request of the court did
7 another evaluation looking back at that night, is that
8 correct?

9 A That's correct.

10 Q And as far as that evaluation could you relate to the
11 court what your findings were as far as capacity? I'm
12 sorry, criminal responsibility first, my fault.

13 A Conclusions regarding criminal responsibility: "Though
14 Mr. Hughes suffers from schizophrenia paranoid type the
15 onset of this illness occurred after the time of the
16 alleged event, therefore, at the time of the alleged event
17 there is no evidence of a major mental illness or defect
18 which would impair Mr. Hughes' ability to distinguish
19 legal and moral right from legal and moral wrong or impair
20 his ability to recognize the wrongfulness of his behavior
21 on or about September 25th, 1992. Therefore, we determine
22 to a reasonable degree of medical certainty that he is
23 criminally responsible pursuant to the McNaughten standard
24 for his actions on or about that day."

25 --- Q And, again, as we go to capacity to conform you said

1 he didn't have any mental illness that day so his capacity
2 to conform wouldn't change either, is that correct?

3 A Correct.

4 Q Doctor, so as far as your testimony today you have
5 testified to two things if I understand it in general. As
6 far as the defendant's criminal responsibility on the
7 night that Brent McCants was killed, he was criminally
8 responsible in your opinion, is that correct?

9 A In my opinion.

10 Q And then as far as his competency to stand trial,
11 there are times when you have found him competent and
12 there are times when you have not and then again there are
13 times where you now say he is competent again, is that
14 correct?

15 A Yes.

16 Q Okay. And my understanding on the August 1st report
17 you said that he was competent.

18 A That's correct.

19 Q And then on the August 7th meeting you decided he was
20 not competent.

21 A That's correct.

22 Q And you explained to Ms. Brice the reasons for that as
23 far as competency that at that time you were asking, you
24 and Doctor Geoff McKee, were asking short questions or --

25 --- A Questions that could be answered with specific short

1 yes or no or tell me what the solicitor is, tell me who
2 the solicitor is, what is his role, all very brief answers
3 and he could do that. What he couldn't do and what we
4 didn't test was that his thinking when you ask him
5 questions that let him talk, for example, if we had asked
6 him tell us about his prior lawyers and why he dismissed
7 his prior lawyer, we didn't ask that. If we had gotten
8 into that at that time, I doubt that we would have made
9 that mistake. We made a serious mistake.

10 Q Okay, you made a serious mistake on August 1st as to
11 competency.

12 A As to competency.

13 Q Okay, does that opinion change anything as far as the
14 night of September 25th?

15 A No, as a matter of fact, in terms of the night of the
16 25th we have had more time to go over the events of that
17 day and the events of the incident itself and, if anything,
18 we have more data to show that he was criminally
19 responsible.

20 Q Now as to the competency issue that changed when you
21 met with the other attorneys here in the building right
22 prior to trial, is that correct?

23 A Yes.

24 Q Was that the first time that you had met with Doctor
25 --- Barnard-Dupree on this case?

1 A Yes.

2 Q Okay and who is Doctor Barnard-Dupree?

3 A She is a -- currently she is an employee of the
4 Institute.

5 Q Of your Institute?

6 A Yes, currently, but at that time she was not and this
7 was part of her private forensic practice.

8 Q Prior to going into private forensic practice who
9 trained her, who did she work with?

10 A I trained her.

11 Q And so you trained her and she went into practice and
12 became Mr. Hughes' - she was retained by the defense, is
13 that correct?

14 A Yes, sir.

15 Q And then when you came up for the competency
16 evaluation, that's the first time you had jointed
17 evaluated with her?

18 A Yes, on this case.

19 Q On that case.

20 A Right.

21 Q And now she is employed with William S. Hall?

22 A Yes, she is.

23 MR. POPE: I beg the court's indulgence.

24 I believe that's all I have.

25 --- Q Thank you, Doctor Morgan.

1 Q Doctor Morgan, there was a lot of talk about criminal
2 responsibility. Could you please describe what criminal
3 responsibility is?

4 A Criminal responsibility is having the mental ability
5 to know what you are doing and to know right from wrong
6 and in South Carolina at least if you had a mental
7 illness, the mental illness must relate exactly to the
8 incident for which you are charged. For example, a person
9 can have paranoid schizophrenia and believe that the
10 police are after him and that was part of his illness the
11 police were after me and the FBI is after me, the CIA is
12 after me. If that person, although he is seriously
13 mentally ill, goes into a Seven-Eleven and holds up the
14 Seven-Eleven, that has nothing to do with the mental
15 illness so that, you know, we have to have a serious
16 mental illness the symptoms of the mental illness must
17 match the crime that you are charged with.

18 Q And to be found criminally responsible, that doesn't
19 mean you are guilty, does it?

20 A Oh, no, not at all.

21 Q Can you distinguish the two?

22 A Criminal responsibility means that you have the mental
23 capacity to know what you are doing and know that
24 something is wrong. Being guilty means that the court
25 finds you guilty.

1 Q And Solicitor Pope was asking you questions in regards
2 to Mr. Hughes' criminal responsibility on the evening of
3 September of 1992. While I realize and understand you
4 stand by the fact that Mr. Hughes was criminally
5 responsible that evening, were there other findings that
6 you made that you were just revealing that you no longer
7 stand by? Do you understand what I'm talking about?

8 A No, I don't understand the question.

9 Q Okay, I believe your testimony was that you believed
10 there were early stages back in 1992 of his current
11 diagnosis.

12 A Yes, I think that we missed some prodromal symptoms.
13 He was not, however, psychotic ---

14 Q Right.

15 A In that hospitalization.

16 Q Right. But you believe that early symptoms or the
17 early phase of his illness were present at that time?

18 A In retrospect.

19 Q Right.

20 MS. BRICE: I beg the court's indulgence.

21 Q I have no further questions. Thank you.

22 RECROSS EXAMINATION

23 BY MR. POPE

24 Q Doctor, nothing in your opinion either then or now
25 --- keeps Mar-Reece Hughes from knowing right from wrong on

1 September 25th, 1992, is that correct?

2 A Correct.

3 Q Nothing in your opinion states that he did not have
4 the ability to exercise his free will to do as he chose
5 that night, is that correct?

6 A That's correct.

7 Q Thank you.

8 THE COURT: Doctor, you may step down. You may be
9 excused. Thank you.

10 MR. POPE: Your Honor, I just ask that this witness be
11 subject to recall.

12 THE COURT: You will be excused, but subject to
13 recall.

14 Call your next witness.

15 MS. BRICE: May we take a brief recess in order to get
16 some documentation together?

17 THE COURT: All right. Take the jury to the jury room.
18 (Recess.)

19 Is The State ready?

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

21 THE COURT: Is the defense ready?

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

23 THE COURT: Mr. Hughes is in. Bring in the jury.
24 (Jury returns to courtroom.)

25 MS. BRICE: Thank you, Your Honor. I call Doctor

DAFFELIN DUPREE DIRECT

1 DAFFELIN BERNARD DUPREE, being duly sworn,
2 testified as follows:

3 DIRECT EXAMINATION

4 BY MS. BRICE

5 Q Could you state your full name for the record?

6 A My name is Daffelin Bernard Dupree.

7 Q And where are you employed?

8 A I am currently employed by the South Carolina
9 Department of Mental Health specifically at the William S.
10 Hall Psychiatric Institute.

11 Q What is your educational background?

12 A I received my Bachelor's Degree from Boston University
13 in 1972; I received my Doctorate of Medicine Degree from
14 Georgetown University in 1984; I subsequently went to
15 Emory University in Atlanta for my general psychiatry
16 residency training and after that I did a one year
17 specialized training in forensic psychiatry at William S.
18 Hall Institute. I have worked as the medical director of a
19 mental health center from 1988 to 1993. In addition, I
20 have a private practice where I do forensic psychiatry.
21 And I am currently a teaching psychiatrist at the Hall
22 Institute.

23 Q So you are also teaching as well?

24 A Yes.

25 --- Q And do you have any -- are you licensed?

1 A Yes, I am licensed in South Carolina and in Georgia.

2 Q Have you testified in court before?

3 A Yes, I have.

4 Q And have you testified in court in the field of
5 psychiatry?

6 A Yes, I have.

7 Q How many times have you testified?

8 A Probably over an eight year period of time a hundred
9 or so, possibly more in an eight year period of time.

10 Q And of those times you have testified previously were
11 they in civil and criminal cases?

12 A Yes, in both.

13 Q Which one would you say you primarily have testified
14 in?

15 A Predominantly criminal work.

16 Q And on those occasions were you qualified as an
17 expert?

18 A Yes, I was.

19 Q And have you also testified for The State?

20 A Yes, I have.

21 Q And what percentage of the time would you have
22 testified for The State?

23 A Because of the evaluations I do as a State employee
24 with the Department of Mental Health it's probably about I
25 would say sixty percent for The State and forty percent

DAFFELIN DUPREE DIRECT

1 for the defense.

2 MS. BRICE: At this time, Your Honor, I would request
3 that Doctor Dupree be qualified as an expert.

4 THE COURT: Does The State have any questions?

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

6 THE COURT: I find she is qualified as an expert in
7 the field of psychiatry.

8 Q Doctor Dupree, what is your association with Mr.
9 Hughes?

10 A I have been as co-treating physician with Doctor
11 Morgan, Mr. Hughes' physician, for the past year now.

12 Q And you are treating him at this time?

13 A Yes, I am.

14 Q And what are you treating him for?

15 A Mr. Hughes has a diagnosis of chronic paranoid
16 schizophrenia.

17 Q How did you arrive at that diagnosis?

18 A What went into that diagnosis was a variety of
19 factors. There was a social history, an extensive social
20 history, that was obtained from various sources including
21 talking with family members, friends, and acquaintances.
22 There was an extensive review of all medical records
23 available including psychiatric reports, general medical
24 reports. He had an MRI scan of the brain, which is an
25 --- x-ray study of the brain. He had an EEG of the brain.

1 That went into my full evaluation to rule out any medical
2 problems. In addition, numerous evaluations in terms of
3 assessments over the past year, personal history,
4 consultations with other physicians also went into making
5 that diagnosis.

6 Q And all of these evaluations assisted you at arriving
7 at his diagnosis?

8 A That's correct.

9 Q Can you describe for the jury what paranoid
10 schizophrenia is?

11 A I thought it would be helpful if I could show some
12 teaching skills, that's what I do. Would that be okay if
13 I could step down?

14 Q That will be fine.

15 A Since Schizophrenia is rather complicated, I thought
16 it would be helpful if I could explain and give you some
17 information in writing, so I'll refer back to that. I also
18 made some sheets that people might want to refer to.
19 Schizophrenia is a major mental illness and it is apparent
20 in probably one percent of the people throughout the world
21 regardless of what culture you live in or what country you
22 live in. There is something called Schizophrenia. It may
23 show up in different forms, but it does exist throughout
24 the world. It's an illness that has a chronic course.
25 --- Sometimes a person is better, sometimes they are worse, so

1 it kind of waxes and wains. It depends upon when you see
2 them whether you see certain symptoms or not. Generally,
3 the onset, the beginning of this illness, is between the
4 late adolescent years, nineteen, eighteen, to the
5 mid-twenties and from then the average age is somewhere
6 around twenty-three, twenty-four, twenty-five. Women have
7 a later time of onset and like I said, that's throughout
8 the world, it doesn't change, they have done research to
9 show that. That's pretty consistent. There is a genetic
10 family pattern of this illness. If you have a family
11 member who has Schizophrenia, it doesn't mean you are
12 going to be schizophrenic, but it's certainly increases
13 the risk of another family member having this illness. Mr.
14 Hughes, as an example, has two family members that we know
15 documented with schizophrenia. We have other family
16 members that have had psychiatric hospitalization, but we
17 are not sure of the diagnosis just because of the time
18 frame of when those hospitalizations were.

19 The symptoms may come on suddenly with an acute
20 stressor or they can come on gradually and you may see in
21 a paranoia person they start to withdraw. Typically they
22 may start to seclude themselves, act a little differently,
23 often times the family will think, oh, they're just going
24 through a phase and they kind of deny what's going on or
25 — not realize what's going on. Things get worse over time.

without treatment, okay, and I tried to indicate some of those things here. One of the things that seem to be typical as the illness gets worse is they start to neglect their hygiene and grooming. They stop bathing, they stop caring for themselves, they stop combing their hair. When I first saw Mr. Hughes in July, 1994, he had not bathed for some many days, showed extremely poor hygiene, he had been fasting for three or four days at a time, which is not his usual behaviors according to the medical records, and he was in this particular period where you could see those symptoms gradually worsen.

The illness has three different phases, the prodromal period, and I'll go back over that in a minute, the active and the residual phase. In the prodromal period you can completely miss this illness especially if you are not a mental health person and even if you are a mental health person, you can still miss these symptoms because they are minor. They may just be some disorganized thinking going on. When they talk to you, they may not make quite the sense that you think they are, but still you don't necessarily this gross kind of behavior that you see when a person is seriously psychotic. They may start to like I said become paranoid, but instead of them saying it's paranoid, they may say I just want to be by myself. I need -- some time to myself.

1 The active phase of the illness is when they are
2 extremely sick. That's the person you might see on the
3 street who is talking to themselves, living in a trash
4 can, who is obviously very agitated, you know, shouting
5 out or screaming. That's the active phase of the illness.
6 But also even in the active phase, if you don't know what
7 to look for and to screen out the symptoms, a person still
8 may be missed, but generally by the time you get to that
9 phase, they will come to the attention of someone.

10 Then you have the residual phase and that's where Mr.
11 Hughes is currently in the residual phase of this illness.
12 Some of his symptoms are stabilized on medication and he
13 is on a very high dose of a medicine called Haldol, which
14 is an anti-psychotic medication. He gets 200 mgs of this
15 medication in his hip once a month and it is a slow acting
16 medication that releases a little bit every day kind of
17 like a Contact, a little bit goes into his system every
18 day, so that it lasts him for a month and that's why he is
19 able to sit in court and participate and help his
20 attorneys because he is in the residual phase of his
21 illness. He still has some of the symptoms and on the next
22 page I'll show you some of the symptoms he still has. You
23 can't tell just by looking at him.

24 As it says here, the prodromal and the residual, the
25 -- behavior is not as prominent, so, once again, you may not

1 see that. And his speech is a little off, but not
2 particularly noticeable.

3 There are five different kinds of Schizophrenia and
4 Mr. Hughes has what is called the paranoid type. Paranoid
5 people don't show as much of the hearing voices and seeing
6 things that I'll talk about in a minute. They tend to be
7 more circumscribed meaning that they will get these fixed
8 beliefs about things and then they will act in a paranoid
9 fashion, but if you interact with them or talk with them
10 or question that belief, you are not going to see the kind
11 of things you see with some of the other kinds of
12 Schizophrenia. And, finally, as I said before, the
13 treatment for this illness is medication and supportive
14 therapy. You see the person, make sure they are taking
15 their medication, you monitor whether there is any change,
16 any deteriorating. I make sure I see Mr. Hughes every day
17 because even though he is on medication there still could
18 be a change in his mental status, so I talk to him, I
19 interview him, I ask certain questions that I rely on that
20 lets me know what point he is, whether he is better or
21 worse or whether he is the same.

22 See I like teaching. Okay, this particular illness as
23 you can see involves dysfunction in both your thinking
24 processes and your emotions. It really affects all areas
25 -- of a person's ability to cope with the world.

1 Psychiatrists have divided symptoms into what's called
2 positive symptoms and what's called negative symptoms. And
3 the positive things are the more obvious things, things
4 that you can see on the outside necessarily. If I'm
5 hearing things, you might see me talking to myself or
6 mumbling to myself. If I have a delusion, which is a fixed
7 false belief that I think that somebody is controlling my
8 mind from outside in a van, I might act on that. Those
9 are called positive symptoms, disorganized thinking and
10 speech can be either mild or severe. The first time I met
11 with Mr. Hughes a year ago I sat down with him and he took
12 his foot and put it on my foot and I asked him why was he
13 doing that and he said he was doing that to see if he
14 could trust me. He then went on to try and explain for
15 about ten minutes this very long complicated rambling
16 period about numbers and how numbers affect people and the
17 order of life that was completely incoherent. It made no
18 sense at all. At that point he was receiving no
19 medication. Finally, as I said, there is a phase of acute
20 psychosis and positive symptoms.

21 Now negative symptoms they are much harder to treat
22 because they don't tend to respond to medication nearly as
23 well as positive symptoms and we don't know why that is.
24 We don't even know why with the exception of the factors I
25 — have gone into people get schizophrenia. We know some of

1 the stressors, but we really don't know particularly why.
2 Flat affect and that's real important to know because if
3 you don't know better and you look at a person, he looks
4 like he is just sitting there and not going along. Well,
5 his illness affects his ability to relate and smile and
6 socially and appropriately interact, so that if I make a
7 joke to you, hopefully a funny joke, you might smile and
8 laugh. You don't necessarily see that kind of emotion out
9 of Mr. Hughes. It's not that he doesn't want to do that,
10 he's not capable of doing that. The illness that he has
11 affects your ability to do that. His body language, as you
12 see, he sits there in a pretty stiff manner and posture.
13 Once again that's a part of the chemicals of the brain
14 being so affected he's not getting the kind of social and
15 appropriate kind of things that you normally get.

16 A positive speech. This was important. If you ask him
17 a yes/no question, he will give you yes/no. Most of us
18 will expound, will give what information, will ask
19 something. That's not what you are going to get from him.
20 He'll either say yes or no or he might fill in a little
21 bit. That's because he doesn't have the normal process of
22 thinking. So if you don't have the normal process of
23 thinking, then, of course, it's not going to come out in
24 your speech.

25 -- The decreased ability to initiate or persist in

1 activities. For most people who have Schizophrenia they
2 are not able to work and they are not able to maintain
3 employment, some are, not all, or go to school because
4 they can start something but when they get there, they
5 don't have the ability to follow through or they don't
6 even have the will to initiate and get going to do those
7 kinds of things.

8 Some other signs and symptoms associated with this
9 illness particularly social withdrawal and I have seen
10 medical records that indicated different periods of times
11 that he would do that. He also has done that when he was
12 hospitalized in the past, talking or mumbling to himself,
13 and periods of agitation and anxiety. A person may become
14 just extremely anxious or agitated for no reason at all.

15 Paranoia, peculiar behavior in speech, strange
16 sensations. People often feel things crawling on the skin
17 when nothing is there or they sense that there is a
18 presence in the room or they may sense that somebody is
19 watching them or trying to get them. At the time that I
20 saw Mr. Hughes he felt like people were putting things in
21 his food and so he had essentially pretty much stopped
22 eating as much as he could.

23 Bizarre social behavior and rituals. As I described,
24 sometimes people will have very complicated things that
25 — they go through. Before they eat they might have to

1 arrange their food in patterns or before they go outside
2 they may have to put their clothes on backwards and turn
3 around a few times when they go outside. So that's what I
4 mean by that.

5 And, finally, the last page, in addition to this
6 diagnosis of Schizophrenia the other diagnosis I made was
7 borderline intellectual functioning. Mr. Hughes in 1983
8 was tested and found to have an IQ of 101. In 1994 -- in
9 1995 at Hall Institute he was tested and found to have an
10 IQ of 78. Now clearly this is average, this is a normal
11 person with 101. This intellectual level is a 23 point
12 drop in terms of his intellectual functioning over a
13 period of twelve years. If he had 7 points less than this,
14 he would have been diagnosed as mild mental retardation.
15 The range of mental retardation is 50 to 70. So clearly
16 over the years there has been a significant effect of his
17 functioning and in my opinion it's in regards to his
18 mental illness.

19 Q Doctor Dupree, in arriving at your diagnosis of Mr.
20 Hughes, you testified that you looked at a number of
21 evaluations that had already been performed on Mr. Hughes.

22 A That's correct.

23 Q Can you tell me based upon those evaluations how were
24 they helpful to you?

25 -- A Whenever you consider making a diagnosis, it is always

1 helpful to have opinions of other medical professionals,
2 specifically, the other professionals who are also
3 forensically trained. In forensic training there is some
4 specialty training in looking at things like malingering.
5 And malingering is a faking of a mental illness, so there
6 are special issues that deal with making a diagnosis that
7 when you look at other professionals' reports, that can
8 give you some assistance.

9 Q Can you describe what malingering is?

10 A Malingering is an attempt to fake a mental illness.
11 Generally, obviously, in a situation where a person has
12 legal charges that's where you would see many of the
13 attempts to try and malingering and we have things that a
14 person will try - they will say I'm seeing things, I'm
15 hearing things, I didn't know what was going on, I'm
16 crazy, I need help. When you do the psychological testing
17 to try and get some objective data on paper to measure
18 that, it generally shows up on the psychological testing
19 that that person was malingering because they try so hard
20 to appear mentally ill that that comes out. In Mr. Hughes'
21 case, he does just the opposite. He tries very hard to not
22 appear mentally ill. He is very embarrassed about being
23 diagnosed mentally ill and is very resistant to being
24 called Schizophrenic.

25 Q Were there -- you have all the stages on your board

1 there, there were three stages. Can you tell me a little
2 bit about the first stage, the prodromal stage?

3 A The prodromal stage is the most confusing stage
4 because generally that's made in retrospect after you have
5 made the diagnosis when you go back and you say, okay, now
6 I understand why they were doing such and such. Now I
7 understand why someone who was making straights A's in
8 school dropped out a month before their senior year
9 generally when this illness starts. Now I understand why
10 they started hanging out with other people that were
11 different from them and talking strange and doing strange
12 things. So you go back and you look and that prodromal
13 period can go on for a period of weeks or months or even
14 years before you go into the active phase. And people go
15 back and forth between the phases. It's not like they are
16 step things where you are in this two months, in this
17 three months. There's an overlapping of the different
18 phases. In the prodromal phase, the symptoms certainly are
19 not as prominent, but as I stated before, they are
20 definitely present.

21 Q In Mr. Hughes' case were you able to go back after you
22 made your diagnosis and attribute things that he was doing
23 to this prodromal stage?

24 A Yes, I was.

25 -- Q And can you describe that for me?

1 A Well, in my opinion in reviewing the volumes of data
2 that was available, it appears that his behaviors and
3 relationships in terms of his environment, the things that
4 he was doing in terms of the fasting, the not bathing,
5 clearly to me in my medical opinion he was in the
6 prodromal stage for an extended period of time.

7 Q How far back based on your review of the record?

8 A Based on my review of the record, I see some symptoms
9 that are consistent with the prodromal period as far back
10 as in the late 80's. Once again, we are looking at medical
11 records and trying to put together, it's like putting
12 together almost like a psychological autopsy - I hate that
13 term, but that's really what it is - trying to go back and
14 make a picture and present that picture.

15 Q What prodromal evidence did you find going back to
16 September of 1992?

17 A Even prior to September of '92, there is evidence in
18 the medical records by psychologists and other medical
19 personnel that he had periods where he was paranoid and
20 would voluntarily request the different stages to be away
21 from other people. There were also periods where he would
22 talk to a family members specifically in August of '92
23 where he did not make any sense. Once he made a statement
24 to a brother that absolutely made no sense in terms of his
25 -- belief. That clearly in my mind was a delusional

1 statement.

2 Q Were there other incidences following the killing of
3 Brent McCants that indicated a prodromal stage?

4 A There were many incidences between 1992 and 1993 that
5 indicated he was in a prodromal phase.

6 Q And you have stated some signs of that were not
7 bathing?

8 A Not bathing, fasting, seclusion, disorganized
9 thinking, disorganized speech.

10 Q Can you describe that disorganized thinking a little
11 bit for me?

12 A You can't describe another person ---

13 Q Right.

14 A --- but you can describe the way we think is reflected
15 in our speech obviously, so, as I said, the statement that
16 he made to me when I went to see him was that I wanted to
17 see if I could trust you by touching my foot. How do you
18 know by touching my foot whether you can trust me?

19 Q Right.

20 A So clearly that statement was delusional and, once
21 again, the ritual number system was extremely bizarre.

22 Q In regards to his IQ that you have gone over already
23 what is borderline intellectual functioning? What does
24 that mean?

25 -- A As I explained, mental retardation and intellectual

1 functioning is based on an observable IQ by certain
 2 psychological measures. I am not a psychologist, I am a
 3 psychiatrist, so I work with psychologists and they obtain
 4 the data by psychological testing. They have scales that
 5 they use to measure and they can get a person's IQ. As I
 6 say, the normal IQ is in the 100 range, that's what most
 7 people function at. If you are in a borderline
 8 intellectual range, then, obviously, at 23 points less
 9 than what you were functioning at some years ago, then,
 10 obviously, you have lost certain abilities to understand,
 11 comprehend certain things, to relay information, to retain
 12 information and your memory is certainly going to be
 13 affected if you are not at a higher IQ level than you were
 14 previously. Clearly all levels of your thinking ability
 15 would be decreased if you have lost your so-called brain
 16 cells.

17 Q Okay. And you testified that Mr. Hughes is currently
 18 under medication for this illness.

19 A Yes, he is.

20 Q And how does that affect his memory as he is today?

21 A Unfortunately, Schizophrenia itself also affects a
 22 person's ability to retain and remember and the medication
 23 has a lot of serious side effects in itself and one of the
 24 side effects of long term medication therapy on
 25 — anti-psychotics is some memory problems.

1 MS. BRICE: I beg the court's indulgence just one
2 moment.

3 Q I have no further questions. Thank you.

4 CROSS EXAMINATION

5 BY MR. POPE

6 Q Doctor Dupree, I understand you worked at one point
7 with Doctor Morgan and then went into the private sector
8 and now are back with Doctor Morgan again, is that
9 correct?

10 A Yes, I have always worked with Doctor Morgan since I
11 trained at Hall Institute in some capacity. When I went to
12 the Mental Health Center for five years, I retained my
13 consulting status at Hall Institute so I would do
14 out-patient evaluations for The State under Doctor
15 Morgan's supervision at the Hall Institute. He is the
16 Associate Director of the Forensic Unit, so at some point
17 throughout the eight years I have always worked there.

18 Q Okay, you have had contact with Doctor Morgan in some
19 capacity.

20 A That's correct.

21 Q When you came into this case, this was in July of '94,
22 is that about right?

23 A That's correct.

24 Q And July of '94 was the first time that you dealt with
25 -- Mar-Reece Hughes, is that correct?

1 A That's correct.

2 Q And when you came in to this case you were retained by
3 the defense as the defense psychiatrist for Mr. Hughes, is
4 that correct?

5 A Well, it would probably be more accurately I was asked
6 to evaluate Mr. Hughes for his competency by the court --
7 by Mr. Schusterman and then later by the court.

8 Q Okay, let's get clear -- Mr. Schusterman brought you
9 into this case ---

10 A That's correct.

11 Q --- for an evaluation.

12 A That's correct.

13 Q And, of course, you get paid to do that, is that
14 correct?

15 A I get paid to do a psychiatric and medical assessment,
16 that's correct.

17 Q You, in fact, advertise in legal magazines as a
18 forensic psychiatric consultant, is that correct?

19 A That's correct.

20 Q Doctor, how much do you get paid by the defense to do
21 this?

22 A For the work that I do, I don't get paid for my
23 diagnosis. I'm not paid to say something, I'm not paid --
24 regardless of the outcome of the case, but my standard
25 -- salary, standard hourly pay, in fact, in this case is One

1 Hundred Fifty Dollars per hour.

2 Q Okay. Is that One Hundred Fifty Dollars per hour
3 testifying or is that One Hundred and Fifty ---

4 A No.

5 Q Okay. And again I am not questioning, like I say, you
6 don't get paid to give a certain answer.

7 A That's correct.

8 Q But you would agree with me if you didn't have a
9 certain answer, they probably wouldn't retain you.

10 A I would say that if I could not help them, I certainly
11 don't think they would ask me to participate.

12 Q Okay. So One Hundred Fifty Dollars an hour for each
13 hour you have been involved in this case, is that correct?

14 A Well, I wish that were true, but there are some hours
15 I have been involved that I have not billed for.

16 Q You chose not to bill for them?

17 A I chose not to bill for.

18 Q Are you billing for being present today?

19 A That remains to be seen.

20 Q Okay. You are not on a contingency of like whether
21 you win or lose?

22 A No, I'm not on a contingency, but I don't know, Your
23 Honor, I -- I don't know how to quite answer that.

24 Q But the important thing you will be paid.

25 -- A That is correct.

1 Q And so were you paid when we were down in Aiken when
2 you were present when we were drawing the jury?

3 A Have I been paid?

4 Q Were you billing the defense?

5 A Yes.

6 Q And your purpose of being down in Aiken was to be
7 there with Mr. Hughes or was it to help to select a jury?
8 What was your purpose?

9 A It was probably all of those things, Mr. Pope. As a
10 psychiatrist my primary purpose is his treating physician
11 and regardless of whether I am paid or not paid I have an
12 ethical obligation to him to see this through.

13 Q And, of course, if he was not diagnosed as he is
14 currently it very well may be no need for your services,
15 is that correct?

16 A If he was not a paranoid schizophrenic, I wouldn't
17 necessarily not be involved. He may have another diagnosis
18 or a mental illness.

19 Q You told the jury all the different things as far as
20 various mental illnesses. How do you as an expert
21 distinguish the actions, say for example, the actions of
22 wanting to be alone. Use that as an example him wanting to
23 be alone. How do you determine one person being
24 schizophrenic and one person just not being social?

25 — A Okay, let's take an example. If you come home from

1 work after a hard day at court and you say to your
2 friends, spouse, whatever, you know, I've had a rough day,
3 I'm tired, I would just like some time for myself. That's
4 a reasonable thing. If you go into a room and seclude
5 yourself for three days and won't come out, don't eat,
6 don't drink or take liquids, then that's another event.

7 Q Of course, certainly, I wouldn't have pending murder
8 charges at that time either, is that correct?

9 A Well, you asked me to tell how a person is different.

10 Q Yes, ma'am. Okay. And so what I'm saying the pending
11 charges would be another thing to take into consideration,
12 is that correct?

13 A Pending charges would always be something to take into
14 consideration, that's correct.

15 Q Likewise, a rigid environment, in other words, if he
16 was in an environment where there are certain rules and
17 certain procedures, in other words, in incarceration, then
18 if he chose not to follow those rules, it could be because
19 he was schizophrenic and unable to, is that correct?

20 A It could be because of that, that's correct.

21 Q Or it could be because he chose not to follow the
22 rules or flood a cell or do whatever to get his way, is
23 that true?

24 A That's true, Mr. Pope, but you also have to look at
25 -- the other things going on at the time. Most people don't

1 choose not to eat or three days just to prove a point. I
2 think if you look at not eating because you feel like
3 somebody put something in your food is one thing. Not
4 eating because you want to lose weight is another thing.

5 Q Okay, would you say then that everyone in the
6 Correction System that doesn't eat or has anger or knocks
7 off tvs or whatever are they automatically schizophrenic?

8 A No, they are not schizophrenic, but if you don't eat,
9 you don't bathe, you touch my foot and tell me I can
10 pretty much feel from your foot whether I can trust you or
11 not and then you go on for twenty minutes explaining
12 something I have no idea what you are talking about and no
13 one else has no idea of what he is talking about and your
14 attorney can't work with you, that's a different matter.

15 Q If I walk up and shake your hand and in shaking your
16 hand I try to feel whether you give me a firm grip or a
17 loose grip, whether you pull away quickly or whether you
18 don't as part of judging your character, does that make me
19 schizophrenic?

20 A That doesn't make you schizophrenic, but I don't think
21 you would say I can't trust Doctor Bernard by shaking her
22 hand, hopefully.

23 Q But you could possibly?

24 A Someone could.

25 — Q What I'm getting at is all the different signs that

1 you have given and you said you were able to tell that
2 back in September of '92 the prodromal stage may be
3 kicking on and you used the example of Mr. Hughes touching
4 your foot as an example you just gave, that actually
5 occurred in July of 1994, is that correct?

6 A That occurred in July of 1994. Once again, it's
7 important to put all the things together. You don't pick
8 out one isolated thing and say, oh, I could do that, I
9 could do that; you put all of those symptoms together.

10 Q Okay, and in putting all the symptoms together you
11 would agree that each symptom in isolation could be given
12 a variety of interpretations, again, using the foot
13 example, the hand shake example?

14 A Well, I don't know about delusions. A delusion is a
15 fixed false belief that even if I try and argue with you
16 and show you testimony or evidence or otherwise, you still
17 believe. So in a person with schizophrenia, unless you are
18 schizophrenic, you should not have a delusion.

19 Q I could feel because I've been in trouble that all
20 policeman are out to get me, right?

21 A Uh-huh.

22 Q Okay, and that could be because I am paranoid ---

23 A Uh-huh.

24 Q --- or just because I've had bad experiences in the
25 -- past, is that correct?

1 A Uh-huh.

2 Q Okay. So what I am asking you again is each of the
3 individual factors if they are set apart could be
4 interpreted a number of different ways, is that correct?

5 A They could be interpreted in a number of different
6 ways, if you take them apart.

7 Q Okay. You, in fact, you called it a psychological
8 autopsy, you, in fact, took parts and then went back and
9 you and Doctor Morgan talked about in retrospect, in
10 looking back, so you've looked now that he has been
11 charged with these actions, you then look back to
12 determine why this may have happened, is that correct?

13 A That's correct.

14 Q So, again, having informed the court and jury of
15 schizophrenia you then as you look back you say uh-huh, he
16 didn't eat for three days. That matches with
17 schizophrenia, is that correct?

18 A Well, when you start making your diagnosis, that's
19 certainly how you start to try and put the symptoms
20 together, but you are also looking at the other factors.
21 You never forget the other factors that go into making
22 your diagnosis.

23 Q And those other factors being?

24 A Family history. Mr. Hughes, as I said, has two family
25 — members that are currently hospitalized in psychiatric

1 institutions received anti-psychotic medication in
2 addition to some other things.

3 Q And that is one factor?

4 A That's a major factor with schizophrenia. That's one
5 of the major factors of schizophrenia is that it runs in
6 families.

7 Q Okay, what if nobody in your family had schizophrenia?
8 Can you still have schizophrenia?

9 A You can still have it, but you would be less likely to
10 have it.

11 Q So, again, what I am asking is each factor, you have
12 got down to the tail end, you have got the benefit of all
13 the hindsight, whatever, as we sit here today and say,
14 well, this happened and this happened and this happened in
15 the past and I am seeing schizophrenia, so these things
16 start folding in.

17 A Uh-huh.

18 Q Okay.

19 A And, unfortunately, we can't -- if we could take the
20 brain and open it and do certain studies as we start now
21 with the technology, you would be able to hopefully see
22 the markers, starting to see some things in the brain that
23 show patterns, but we can't do that, so that is the way we
24 make the diagnosis.

25 -- Q Okay, and, likewise, say for example we are sitting

1 here at the tail end and we look back at all of these
2 symptoms, all the various incidents in Mr. Hughes' life,
3 the televisions that have been pushed off or anger or not
4 eating or not taking care of yourself, if we could look at
5 the situation and go backwards and we go under the premise
6 he is not schizophrenic, then as to each incident we get
7 to, there can be some explanation other than mental
8 illness, isn't that true?

9 A Well, let me explain that.

10 Q If you could answer and then you could explain. Would
11 that not be true?

12 A That wouldn't be true in this case because of two
13 things, Mr. Pope.

14 Q Yes, ma'am.

15 A One is that he has been on medication for eleven
16 months and he is not at the tail end, he is in the
17 residual phase of the illness. If he was not
18 schizophrenic, his response to the medication would not be
19 what it is. If I gave you 200 milligrams of Haldol, you
20 would not have the response that Mr. Hughes has. So it's
21 not that we are in the tail end, we are in the residual
22 phase of an illness that goes up and down. And a person
23 who does not have schizophrenia would not react to the
24 medication. I can't give you 200 milligrams of Haldol and
25 -- you have the same response as a person who was not

1 seriously mentally ill.

2 Q All right, 200 milligrams is an exceptional dosage, is
3 that correct?

4 A According to the Physicians Desk Reference that's a
5 higher than average dosage.

6 Q Okay and what does 200 milligrams do, sedate you or
7 what does it do?

8 A It is to control symptoms of psychosis.

9 Q So if you gave me 200 milligrams, I'd be sitting in
10 that chair right there, I wouldn't be up walking around?

11 A No, you would be out.

12 Q It would knock you out?

13 A It would knock you out. You would have extremely
14 severe symptoms of your mouth moving and twitching, you
15 would be drooling, you would be extremely sick.

16 Q So if that's the case, then everybody that you ever
17 feel has schizophrenia you can give them a shot of Haldol
18 and figure out right quick whether or not they have
19 schizophrenia?

20 A I wish it was that easy. This illness is not that
21 simple. It is a very complicated illness.

22 Q It's nothing we can put our finger on, is it?

23 A Well, because of the technology we are starting to --
24 but right now I can't open his head up and show you where
25 -- it is schizophrenia.

1 A And I'm not asking that and I understand that, but, of
2 course, what you are giving us today is your medical
3 opinion based on your experience.

4 A That's my medical opinion, that's right.

5 Q And that's based on all the factors you have taken in,
6 is that correct?

7 A That's correct.

8 Q Okay, so, again, my question would be -- your opinion
9 is not going to change, I could ask you questions for four
10 hours and that's not going to change your opinion, is that
11 correct?

12 A It's not going to change.

13 Q Okay, so what I would ask is again the various
14 manifestations that we have here if somebody is
15 anti-social, somebody doesn't want to conform to rules,
16 many of these same factors would be present, is that
17 correct?

18 A Not the delusions.

19 Q When you say delusions, what do you mean delusions?

20 A As I explained a fixed false belief. People who are
21 anti-social and are attempting to malingering a mental
22 illness it's almost impossible to fake a mental illness
23 for a year. People who try for a couple of days or a
24 couple of weeks to be able to carry that on for a year
25 — with people watching you and observing you and then have

1 the response to the medication, that's not an anti-social
2 person. I don't care how many charges they have, they
3 won't be able to do it. Their response will not be the
4 same.

5 Q So, in other words, if they would be able to pull off
6 a mental illness and fool people for a period of time, but
7 you couldn't keep doing it, sometimes you would have to
8 let your guard down, is that right?

9 A For some brief periods of time and you have to be
10 fairly good, of course, and I'm not saying some people
11 aren't and I'm not saying I am never fooled, don't think
12 that I am saying that, I'm sure I have been fooled. I am
13 just saying the course of this illness, the response to
14 the medication, family history, those symptoms put
15 together I have no doubt that this man is schizophrenic.

16 Q Okay and, again, you admit you may pull the greatest
17 scam in the world, you may be fooled, but based on what
18 you have seen you don't feel that you are.

19 A Exactly.

20 Q Did -- in evaluating I noticed that you have spoken to
21 Mr. Hughes and have heard what he has had to say a number
22 of times, you have talked to the attorneys, you have
23 evaluated different records, is that correct?

24 A That's correct.

25 -- Q Did you evaluate the different people that he had been

1 housed in and some that said that he had never admitted to
2 the crime because he was going to plead insanity and that
3 would get him off?

4 A Did I evaluate that type statement?

5 Q Did you take into consideration those type statements
6 that he had made?

7 A Yes, I did.

8 Q And I would presume that falls in with schizophrenia,
9 right, that you would tell somebody that you are going to
10 malinger because you are schizophrenic?

11 A Well, if he told somebody that and then he tried to
12 malinger, he did a very poor job of malingering because he
13 did not ever admit to hearing things and seeing things and
14 faking mental illness. If anything, there's something
15 called faking good and faking bad, some people want to
16 fake good to appear mentally ill. Some people don't want
17 to be mentally ill. The stigma of mental illness is not
18 something that people are going to try and pretend to be,
19 so if he did try to do that, he did a very poor job of
20 trying to malinger.

21 Q And, again, malingering you explained it a minute ago.
22 Malingering is for lack of a better term faking ---

23 A Faking a mental illness.

24 Q --- pretending to be mentally ill for whatever --

25 -- A For whatever gain.

1 Q Okay. Doctor, I'm going to again try to help clarify
2 for the jury. Your involvement, your evaluations of Mr.
3 Hughes, took place again some almost two years after the
4 death of Brent McCants, is that correct?

5 A In July of 1994, that's correct.

6 Q And so as far as -- I think you have given Mr.
7 Schusterman a report and you provided, of course, me a
8 copy of the report on your opinions of competency back in
9 July when you first came on board, is that correct?

10 A That's correct.

11 Q And that's when Doctor Morgan came up and I think you
12 met with him and he came to the opinion for competency to
13 not, is that correct?

14 A That's correct.

15 Q Were you working for Doctor Morgan during that time?

16 A In July of '94 I was working a different division. I
17 was under the forensic umbrella, but I wasn't working in
18 that division where he was because I work with in-patients
19 and out-patients. At that particular time, July of '94, I
20 was working at the South Carolina State Hospital and doing
21 forensic services.

22 Q Which is their ---

23 A All upon the same grounds.

24 Q And so you had never from my understanding, you
25 -- correct me if I am wrong, but you have never given us an

1 evaluation as far as his capacity to conform, is that
2 correct?

3 A An independent evaluation I have not.

4 Q And again you are not here today, just to keep it
5 clear for the jury, you are not here today to testify as
6 far as insanity ---

7 A No.

8 Q --- involving the night of Brent McCants' death, are
9 you?

10 A No, I am not.

11 Q And so as far as the testimony you have brought today
12 that doesn't change Mar-Reece Hughes knowing right from
13 wrong on September 25th of 1992?

14 A That does not change the report of his criminal
15 responsibility.

16 Q And likewise it doesn't change what is known in the
17 jargon as capacity to conform, but the ability to make a
18 choice or exercise free will on that night. Your
19 testimony that you have told the jury as far as his
20 condition now does not change that, is that correct?

21 A That does not change.

22 Q Doctor, as to -- you have told the jury about what
23 malingering was, faking or pretending or whatever you want
24 to call it. You have also had a chance to review the
25 -- reports that were done in February of 1994 prior to you

1 being involved in an incident where he set fire to a cell
2 down in Columbia, is that correct?

3 A Yes, I did.

4 Q And you are aware of the diagnosis in that particular
5 incidence at Gilliam Psychiatric Hospital?

6 A Yes, I am.

7 Q And that was done by a psychiatrist and a psychologist
8 there, is that correct?

9 A It was done by a psychiatrist. He was not forensically
10 trained, but he certainly was a psychiatrist.

11 Q Okay, and a psychologist?

12 A And a psychologist.

13 Q And they were retained with -- is that actually the
14 Department of Corrections, Gilliam Psychiatric is the
15 hospital there?

16 A Gilliam Hospital is the hospital that cares for any
17 mentally ill inmate in the State of South Carolina.

18 Q And what were the results of that particular finding
19 at that time?

20 A This is the report of Doctor Ray Kimball and his
21 diagnosis was a diagnosis of malingering and anti-social
22 personality disorder. That was based on a six day
23 evaluation.

24 Q Okay, so that was six days ---

25 -- A Right.

1 Q And, again, you took this into consideration as part
2 of all that you did?

3 A Yes, I did.

4 Q Could you relate to the court or to the jury his
5 status at discharge at that time?

6 A Current status at discharge: "Mr. Hughes was found not
7 mentally ill by two designated examiners as he does not
8 meet the criteria set forth for a judicial commitment.
9 Additionally, he appeared extremely manipulative and
10 self-seeking as he tended to be selective in response to
11 specific questions along with selective lapses of memory
12 as well."

13 Q I think that statement is an appropriate example of
14 what I was talking about. If you talk to him, while he may
15 be selective, my opinion is that's a part of his mental
16 illness and, once again, this was a six day evaluation of
17 Mr. Hughes and the reason he was sent there in the first
18 place is because medical records indicate by another
19 psychiatrist that he was showing symptoms previously of
20 psychosis. When he got there, he didn't want to appear
21 mentally ill, so he told them, no, -- before he went, he
22 told them he was having hallucinations, when he got there,
23 he didn't want to be seen as mentally ill so he told them
24 he was not having any symptoms. So that would appear to be
25 -- manipulative to people - you are saying one thing one

1 time, you are saying one thing another time.

2 Q But the fact was that he didn't go there because he
3 referred, he went there because he set his cell on fire,
4 is that correct?

5 A He was referred by a social worker and he had a
6 physician who had been pushing for an admission
7 previously.

8 Q Would you tell us what the initial impressions were
9 where it says --

10 A Okay, all right, "Rather he was believed to be faking
11 psychotic symptoms for some undisclosed personal gain."

12 Q And, certainly, undisclosed personal gain could be
13 anything from getting moved to a different cell or
14 anything of that nature?

15 A It could be anything.

16 Q Going back to what you were talking about ---

17 A Correct.

18 Q --- about malingering.

19 A That's correct.

20 Q Okay and, finally, the recommendations of Doctor
21 Kimball and Doctor Johnson, again, this would have been in
22 February of 1994?

23 A Yes.

24 Q Would you read that for me, please, ma'am.

25 -- A Recommendations, Special Considerations: "Mr. Hughes

1 has been minimally cooperative with staff since his
2 admission to Gilliam. Although he is alert and properly
3 oriented, he tended to selectively respond to inquiry and
4 to ramble on incessantly; however, when unobtrusively
5 observed, he tends to behave in a manner
6 counter-indicative of a psychotic impairment.

7 Characterological traits of anti-social type were
8 observed, however. This patient should be held accountable
9 for any SCDC, " which is South Carolina Department of
10 Corrections, "Rules infractions and the appropriate
11 sanctions applied. Further this individual should be
12 approached with extreme caution as he has a tendency to
13 assault others without provocation."

14 Q And, again, this was an evaluation that was done right
15 after the incident down in Columbia involving the fire in
16 the cell, is that right?

17 A That was February of '94.

18 Q Doctor Dupree, when you said "However, when
19 unobtrusively observed," unobtrusively observed that means
20 watching basically without him knowing it?

21 A That's correct.

22 Q That when they watched him without him knowing it, he
23 tended to behave in a manner that was just the opposite of
24 anything that would show mental illness, is that right?

25 A Well, as I explained, there are periods, of course,

1 when a person will not show symptoms. And, again, it is
2 very important that you understand he was only there for
3 six days. There was no psychological testing done, there
4 was no medical work-up done; he was simply observed.

5 Q Doctor, is it fair to say that in schizophrenia as you
6 have pointed that out someone can be aggressive and be
7 schizophrenic ---

8 A Yes.

9 Q --- and not be aggressive and be schizophrenic?

10 A That's true.

11 Q They can bathe too much and be schizophrenic and not
12 bathe enough and be schizophrenic?

13 A That's true..

14 Q So, in other words, any item that I can point out of
15 anything that he did that was wrong could be explained by
16 schizophrenia?

17 A That's correct.

18 Q Okay, likewise, it can be explained about his desire
19 not to follow rules or whatever own motives he may have,
20 is that correct?

21 A With the exception of the bizarre behaviors you can
22 take the other things that he did say and explain them
23 away.

24 Q Doctor, when you talk about bizarre behaviors, what do
25 -- you mean by that?

1 A Things like smearing feces on walls, not eating,
2 fasting, again the things I've gone over before.

3 Q Okay, using the feces on walls example, have you had
4 the opportunity to evaluate other inmates?

5 A Yes, I have.

6 Q And if they want a means of moving out of the cell,
7 it's much like flooding the cell, that can also be a means
8 of getting removed from a cell, can it not?

9 A It can be.

10 Q Doctor, my last question, again would be - I know
11 we've been going for a while here ---

12 A That's all right.

13 Q --- Your diagnosis about the treatment, about the
14 schizophrenia, I think in one of your reports you
15 indicated that your opinion was that it had gone on for
16 about a year in one of your reports, is that correct?

17 A That's at least that long or longer.

18 Q Doctor, you had also indicated in your written reports
19 that he had a history of psychiatric treatment prior to
20 the death of Brent McCants, is that correct?

21 A He had seen a psychologist; he had not seen a
22 psychiatrist.

23 Q Is that--is that a distinction?

24 A Yes.

25 -- Q And so you said a year in the report; are you saying

1 now at least a year, this is September of '95, so we are
2 talking about September of '94 as far as what you are
3 calling the active phase, is that correct?

4 A That's correct.

5 Q Finally, this entire testimony does not change the
6 fact that he was responsible criminally, not whether he's
7 guilty or not, but responsible criminally, had the ability
8 to know right from wrong, had the ability to exercise his
9 will, on the night Brent McCants was shot down, is that
10 correct?

11 A It does not change the opinion that he's criminally
12 responsible.

13 Q Thank you.

14 REDIRECT EXAMINATION

15 BY MS. BRICE

16 Q Doctor Dupree, did you take into account - you
17 testified that you look at a number of records and take
18 into account your diagnosis of Mr. Hughes, is that
19 correct?

20 A Yes, that is.

21 Q And did you take into account Doctor Kimball's
22 records?

23 A Most definitely; I took into account all medical
24 records that were available to me.

25 -- Q And what weight did you give to Doctor Kimball's?

1 A I gave the weight like I did all - he's a trained
2 physician and I certainly respect his opinion as well as
3 other trained physicians' opinions. I do think it is
4 important that you understand that there is some advanced
5 training that's a part of forensic psychiatry that is a
6 little bit different than general psychiatry and that
7 training includes specifically criminal issues. So, of
8 course, I gave it weight, but I also am aware that there
9 are other issues, they did not have as long to observe Mr.
10 Hughes. I've been working with Mr. Hughes for over a year
11 now and have seen him anywhere from two or three times a
12 week to two or three times a month, so I have had
13 certainly a period of time to observe something you could
14 not observe in six days. He did not have psychological
15 testing that he did have at a later period that was
16 consistent with a mental illness.

17 Q And you have gone over already on your chart how often
18 is a schizophrenic diagnosis made?

19 A Well, as I stated, one percent of the population of
20 the world has a diagnosis of schizophrenia, so in your
21 average life time, a person's average life time, they will
22 even know someone who is schizophrenic, have a relative or
23 be acquainted with someone. They may not know the
24 diagnosis, but you can pretty much in talking to someone,
25 -- you know, make that diagnosis of someone in your life

1 time.

2 Q Is it easy to pretend that you are schizophrenic?

3 A It is extraordinarily difficult and there's no way you
4 could respond, once again, it's very important, to the
5 huge amount of medication this gentleman is on and not be
6 schizophrenic.

7 Q Thank you very much.

8 RE CROSS EXAMINATION

9 BY MR. POPE

10 Q Doctor, you talked about an easy diagnosis, a hard
11 diagnosis, DSM-IV that's the book that the ---

12 A It's our Bible.

13 Q Bible. This is the book that names all the disorders
14 and tries to give descriptions such that physicians and
15 doctors such as yourself and other experts can try to be
16 speaking the same language.

17 A That's correct, so if I am here and I am diagnosing
18 somebody is schizophrenic, someone in West Africa can have
19 the same kind of background --

20 Q Understanding of what kind of like a computers when
21 you are talking the same language. So the various
22 symptoms that you talk about schizophrenia also come up in
23 a number of different other that are not major mental
24 illnesses such as adjustment disorder and various symptoms
25 -- come in various areas, is that correct?

1 A Well, which specific ones?

2 Q Well, there's a Bible full of them.

3 A Right.

4 Q Okay. Various symptoms such as the smearing of the
5 feces on the wall, more than schizophrenics could do that,
6 is that correct?

7 A That's correct. Someone without schizophrenia could
8 smear feces on the wall.

9 Q Somebody who does not have a mental illness at all
10 could do it.

11 A Somebody without a mental illness could smear feces on
12 the wall.

13 Q Likewise fasting. Somebody without mental illness --

14 A Someone without mental illness could fast, that's
15 correct.

16 Q What I am saying, ultimately, this comes down to you
17 gathering everything together and I respect this and you
18 form your opinion -- it's not an exact science, is it?

19 A It is not an exact science, no.

20 Q You look at all the factors and you make your best
21 call.

22 A That's correct.

23 Q And like you said sometimes you can be right and
24 sometimes you can be wrong, you are only human, is that
25 -- correct?

THE STATE VS HUGHES

1 A That's correct.

2 Q Thank you.

3 A You are welcome.

4 THE COURT: You may step down. Thank you.

5 Call your next witness.

6 MR. SCHUSTERMAN: Your Honor, could we ask for a very
7 short recess.

8 THE COURT: All right, we'll take a short break.

9 MR. SCHUSTERMAN: Thank you.

10 (Jury retires to jury room.)

11 (Recess.)

12 THE COURT: Is The State ready to proceed?

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

14 THE COURT: The defense?

15 MR. SCHUSTERMAN: With the court's indulgence, Your
16 Honor, we are not ready yet.

17 THE COURT: Is the defense calling the defendant next?

18 MR. SCHUSTERMAN: Yes, we are.

19 THE COURT: Mr. Hughes, can you hear me?

20 MR. HUGHES: Yes, sir.

21 THE COURT: I just want to go over - do you have any
22 other questions of me? I know you have had a chance to
23 talk to your attorneys. Do you have any questions you want
24 to ask me?

25 -- MR. HUGHES: No, sir.

THE STATE VS HUGHES

1 THE COURT: All right. My understanding is you are
2 choosing to exercise your right to testify.

3 MR. HUGHES: Yes.

4 THE COURT: All right and this is what you want to do?

5 MR. HUGHES: Yes.

6 THE COURT: And you recall everything we had earlier
7 discussed? You remember we talked earlier today?

8 MR. HUGHES: Yes, sir.

9 THE COURT: Okay and I'll ask one more time, anything
10 you want to ask me?

11 MR. HUGHES: No, sir.

12 THE COURT: Okay, thank you.

13 All right.

14 Before the jury comes in, anything The State or the
15 defense wants me to cover before he testifies?

16 MR. POPE: No, Your Honor.

17 THE COURT: Ms. Brice?

18 MS. BRICE: No, sir. Thank you, Your Honor.

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

20 (Jury returns to courtroom.)

21 (Bench conference off the record.)

22 Your Honor, the defense would call Mar-Reece Hughes to
23 the stand.

24 THE COURT: Come around and be sworn, please, sir.

25

1 MAR-REECE ALDEAN HUGHES, being duly sworn,
2 testified as follows:

3 DIRECT EXAMINATION

4 BY MR. SCHUSTERMAN

5 Q Mar-Reece, please state your full name for the record.

6 A Mar-Reece Aldean Hughes.

7 Q Mr. Hughes, how old are you?

8 A Twenty-nine.

9 Q Where were you born, sir?

10 A Winston-Salem, North Carolina.

11 Q Did you reside in Winston-Salem, North Carolina most
12 of your life?

13 A Yes, I did.

14 Q How many brothers and sisters do you have?

15 A Nineteen.

16 Q Any of them deceased?

17 A Yes, sir.

18 Q How many?

19 A Two.

20 Q So you started out with twenty-one?

21 A No, sir, nineteen, started off with nineteen.

22 Q So now it's down to seventeen?

23 A Yes.

24 Q Mr. Hughes, do you recall the events of September 25,
25 -- 1992?

1 A Yes, I do.

2 Q At any time that night did you have possession of a 9
3 millimeter weapon?

4 A No, sir, I did not.

5 Q Did you in any way participate ---

6 MR. POPE: Your Honor, I am going to object to
7 leading. If he wants to ask him what took place, he can
8 certainly do so.

9 THE COURT: I sustain the objection.

10 Q Mr. Hughes, do you remember visiting Officer Perry?

11 A Yes, I do.

12 Q Approximately when did you visit him?

13 A The first week of Labor Day.

14 Q Was that back in 1992?

15 A Yes, sir.

16 Q How did you know Officer Perry?

17 A I had met him when I was incarcerated in prison.

18 Q You were in prison?

19 A Yes, I was.

20 Q Is it correct that you were convicted in 1983 in North
21 Carolina of two counts of housebreaking and two counts of
22 larceny?

23 A Yes, sir.

24 Q In 1983.

25 --- A In 1983.

- 1 Q Discharging a firearm into an occupied vehicle?
- 2 A Yes, sir.
- 3 Q Assault with a deadly weapon with intent to kill?
- 4 A Yes.
- 5 Q Later in 1983 convicted of eight counts of breaking
- 6 and entering and nine counts of larceny?
- 7 A Yes, sir.
- 8 Q And in October of 1983 one count of burglary in the
- 9 first degree?
- 10 A Yes, sir.
- 11 Q How old were you in 1983?
- 12 A Seventeen.
- 13 Q How old are you today?
- 14 A Twenty-nine.
- 15 Q How do you feel today?
- 16 A I feel all right.
- 17 Q Are you nervous?
- 18 A Sort of.
- 19 Q Where again did you say you met Officer Perry?
- 20 A I met him in prison at CP.
- 21 Q Did you develop a relationship with him?
- 22 A Yes, I did.
- 23 Q Did he become a friend?
- 24 A Yes, he did.
- 25 -- Q When you were released from prison, did you have

- 1 occasion to visit him?
- 2 A Yes, I did.
- 3 Q During that visit did you show him a weapon?
- 4 A Yes, I did.
- 5 Q Is this the weapon that you had?
- 6 A Yes, it is.
- 7 Q Where did you purchase it?
- 8 A I bought it in Winston-Salem?
- 9 Q I'm sorry?
- 10 A I bought it in Winston Lakes, North Carolina.
- 11 Q How much did you pay for it?
- 12 A Forty-Five Dollars.
- 13 Q Why did you have a weapon with you?
- 14 A For my own protection.
- 15 Q Did you ever have occasion to use it?
- 16 A No, I didn't.
- 17 Q After you left Winston-Salem, where did you go, after
- 18 you left visiting Officer Perry?
- 19 A I went back to Charlotte.
- 20 Q How did you get there?
- 21 A On a Grayhound bus.
- 22 Q Who bought the bus ticket?
- 23 A Officer Perry.
- 24 Q Did you have any money at that time?
- 25 A No, I didn't.

- 1 Q Who were you going to live with in Charlotte?
- 2 A My brother Marshall.
- 3 Q Did you have the weapon with you at that time?
- 4 A Yes, I did.
- 5 Q Does Marshall allow weapons in his home?
- 6 A No, he doesn't.
- 7 Q Did you still have the weapon with you?
- 8 A Yes, I did.
- 9 Q What did you do with the weapon?
- 10 A I would hide it at the back of the house at night
- 11 time.
- 12 Q Where is Marshall's house located?
- 13 A On 539 Billingsly.
- 14 Q Is that in Charlotte?
- 15 A Yes.
- 16 Q Does the neighborhood he lives in have a name?
- 17 A Yes, Greer Town.
- 18 Q How would you describe Greer Town?
- 19 A A pretty rough area.
- 20 Q How long after -- at any time after you came back from
- 21 Officer Perry's house did you have occasion to sell the
- 22 weapon?
- 23 A Yes, I did. I sold it to Dwayne Eric Forney.
- 24 Q When did you sell it to Mr. Forney?
- 25 -- A About a week before we got into this trouble.

1 Q Why did you sell it to him?

2 A I was beginning to feel uncomfortable with the gun.

3 Q Why did you feel uncomfortable with it?

4 A Because it was against my brother's rules to keep it
5 in the house.

6 Q How much did you sell it to Mr. Forney for?

7 A The same thing I paid for it, Forty-Five Dollars.

8 Q He paid you Forty-Five Dollars?

9 A Yes, sir.

10 Q And did you give him the weapon?

11 A Yes, I did.

12 Q When was the next time you saw that weapon again?

13 A On the night of Brent McCants' killing.

14 Q When, where and at what time did you meet up with Mr.
15 Forney that night?

16 A I met up with him at the Revco in Charlotte, North
17 Carolina.

18 Q How did you meet up with him?

19 A I was out walking going to the store.

20 Q And what happened?

21 A I met Eric Forney at the Revco.

22 Q And what happened at the Revco?

23 A We decided to get together later on that night.

24 Q Did Mr. Forney tell you why you were getting together?

25 A Yes, he did.

- 1 Q For what purpose did he say?
- 2 A Go out and rob some people.
- 3 Q What phrase did he use to describe robbing people?
- 4 A He said, "Do you want to go out and make some money?"
- 5 Q Did you have any money at the time?
- 6 A I had that Forty-five Dollars.
- 7 Q What time did you meet up with Mr. Forney?
- 8 A About eight o'clock.
- 9 Q And where did you go?
- 10 A Walked up to the Bellissimo Restaurant in Charlotte,
- 11 North Carolina.
- 12 Q What happened at the Bellissimo Restaurant?
- 13 A We seen a couple coming out and we robbed them.
- 14 Q How did you approach them?
- 15 A I came to the passenger side of the vehicle and Forney
- 16 went to the driver's side of the vehicle.
- 17 Q Did you have a weapon with you?
- 18 A No, I did not.
- 19 Q Did you in any way physically -- did you touch Ms.
- 20 Jayne?
- 21 A I had grabbed her shoulder and guided her to the
- 22 driver's side of the vehicle.
- 23 Q Why did you do that?
- 24 A So we would all be on the same side of the car
- 25 -- together.

1 Q When you walked Ms. Jayne around the vehicle, what did
2 you see?

3 A I seen Eric Forney with somebody laying on the ground.

4 Q Did Mr. Forney have a weapon?

5 A Yes, he did.

6 Q Was the weapon that he had this same gun?

7 A Yes, it is.

8 Q Did you touch the gun at all that night?

9 A No, sir, I didn't.

10 Q Did you in any way harm either Mr. McMillan or Ms.
11 Jayne?

12 A No, I did not.

13 Q Did you say anything to Ms. Jayne?

14 A I told her to take her time everything was going to be
15 all right.

16 Q Was it your intent to harm anybody that night?

17 A No, sir, it wasn't.

18 Q What happened after that?

19 A After that we was in the car driving down the
20 interstate and wound up in South Carolina.

21 Q Did you know you were going to South Carolina?

22 A No, I didn't.

23 Q Who was driving at that time?

24 A Eric Forney.

25 Q Had you ever been to Rock Hill, South Carolina before?

- 1 A No, sir, I haven't.
- 2 Q How did you get down here? What road did you take?
- 3 A Took I-77.
- 4 Q When did you realize you were in South Carolina?
- 5 A When I was arrested.
- 6 Q Before that you didn't know you were here in the State
- 7 of South Carolina?
- 8 A No, I didn't.
- 9 Q What was the first place you stopped when you got off
- 10 of I-77?
- 11 A We stopped at the Galleria Mall.
- 12 Q Did you have occasion to go to the movie theater?
- 13 A Yes, I did.
- 14 Q Did you walk in and see a movie?
- 15 A Yes, we did.
- 16 Q What movie?
- 17 A Sneakers.
- 18 Q How long did you stay?
- 19 A About twenty minutes.
- 20 Q And what did you do then after you left after twenty
- 21 minutes?
- 22 A We both got in the vehicle and drove down Dave Lyle
- 23 Boulevard.
- 24 Q Who was driving the car?
- 25 -- A Eric Forney.

1 Q He was still driving?

2 A Yes.

3 Q And where did you go?

4 A We had went down Dave Lyle Boulevard to a Convenience
5 Store.

6 Q Why did you go to a Convenience Store?

7 A Eric Forney wanted something to drink.

8 Q What happened at the Convenience Store?

9 A He got out and we switched drivers.

10 Q Why did you switch drivers?

11 A Just something to do he just wanted to switch drivers.

12 Q Okay. Did anything happen at the Convenience Store?

13 A No, sir.

14 Q Were your headlights on or off when you left the
15 Convenience Store?

16 A They were off.

17 Q Why were they off?

18 A Because Eric Forney had turned them off when we went
19 to the Convenience Store.

20 Q Why did he turn them off, do you know?

21 A Because the lady he had dropped some money or
22 something and she had pointed back out there towards the
23 car going like that and I guess he thought she meant to
24 turn off the headlights.

25 Q Okay. Were you parked in the parking space up against

1 the Convenience Store?

2 A Yes, he did.

3 Q You pulled up to the Convenience Store?

4 A Yes.

5 Q Where was the woman?

6 A She was working behind the store desk.

7 Q And what motion did she make?

8 A She just pointed out the window.

9 Q And based on that motion, what did Mr. Forney do?

10 A He turned off the lights to the vehicle.

11 Q Was it at this time that you say you got behind the
12 wheel of the car?

13 A Yes, sir.

14 Q Did you then leave the Convenience Store?

15 A Yes, we did.

16 Q Where did you go?

17 A Went down Dave Lyle Boulevard.

18 Q Did anything unusual happen while you were traveling
19 down Dave Lyle Boulevard?

20 A Yes, Officer Brent McCants he had seen the vehicle
21 with no lights on it.

22 Q And what happened?

23 A He told me to pull over -- well, he had motioned for
24 me to pull over. I pulled over to the side of the road and
25 ... he had got out of the car and he walked up towards the

1 front of the vehicle and told me to get out of the vehicle
2 and go in front of the vehicle.

3 Q I'll stop you right there, Mr. Hughes. Who was driving
4 at that time?

5 A I was.

6 Q Did he ask you -- are you saying he asked you to get
7 out of the vehicle?

8 A Yes, he did.

9 Q Did you get out of the vehicle?

10 A Yes, I did.

11 Q Did he instruct you to stand in a certain location?

12 A Yes, he did.

13 Q Where did he ask you to stand?

14 A He asked me to stand in front of the vehicle.

15 Q Did you stand there?

16 A Yes, I did.

17 Q What happened next?

18 A He asked for a driver's registration card and I told
19 him I didn't have any.

20 Q What did he do at that point?

21 A He asked Eric Forney to get out of the vehicle.

22 Q Where was Eric Forney at this time?

23 A He was in the passenger side.

24 Q Where was Mr. McCants standing when he asked Mr.
25 Forney to get out of the car?

1 A About two feet from the driver's door.

2 Q What happened next?

3 A Eric Forney started firing out of the vehicle.

4 Q When you say Eric Forney started firing out of the
5 vehicle, where was Eric Forney when he fired the first
6 shot?

7 A He was in the passenger seat.

8 Q Which door was open?

9 A The driver's side door.

10 MR. POPE: I am going to have to object to this ---

11 THE COURT: I can't hear you; why don't you come up
12 here.

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

15 Q Mr. Hughes, would you please come down, step down for
16 the jury.

17 (Defense Exhibit Number 1 marked for identification
18 purposes only.)

19 Q I show you what has been marked Defendant's Exhibit
20 Number 1 for identification. In this diagram --

21 JUROR: Would you hold it in front of you or put it on
22 that?

23 MR. SCHUSTERMAN: I was going to do half and half.

24 THE COURT: All right, let's do that then.

25 MR. SCHUSTERMAN: I'm sorry.

1 THE COURT: You can do half and half, but don't do it
2 in the middle, let's move down ---

3 MR. SCHUSTERMAN: I apologize ---

4 THE COURT: --- between those four and then down to
5 the others.

6 Q Can you tell me what this is?

7 A Yes, sir, that's a picture of the scene of the crime.

8 Q Or a facsimile of it?

9 A A facsimile.

10 Q This stick figure, who would this represent?

11 A Me.

12 Q And who would this stick figure represent?

13 A Officer Brent McCants.

14 Q And who this figure represent?

15 A Eric Forney.

16 Q Would you please come down here?

17 A (Witness complied.)

18 Q Once again, this stick figure, who would this stick
19 figure represent?

20 A Me.

21 Q And who would this stick figure represent?

22 A Officer McCants.

23 Q And who would this stick figure represent?

24 A Eric Forney.

25 Q Was Mr. Forney leaning over in this position when he

MAR-REECE HUGHES

DIRECT

1 fired the first shot?

2 A Yes, he was.

3 Q Please have a seat. How long did this whole episode
4 take, the shooting?

5 A Probably five seconds.

6 MR. POPE: Your Honor, as far as an objection if Mr.
7 Hughes is going to testify to what happened and then say
8 that this depicts it, I don't have an objection to it. But
9 if Mr. Hughes is going to be led by these pictures, I
10 would like Mr. Hughes to first testify as to what happened
11 before he's shown any picture and saying is this what
12 happened.

13 THE COURT: All right.

14 MR. SCHUSTERMAN: I'm sorry.

15 Q Mr. Hughes, I ask you to identify this diagram?

16 A This is the same picture except at a different angle.

17 Q It would be the same picture as the first document?

18 A Yes, sir.

19 Q Please step down one more time. Please describe to
20 this section of the jury --

21 MR. SCHUSTERMAN: I'm sorry, I'm trying to break right
22 here, Your Honor.

23 THE COURT: Can you see?

24 JUROR: Yes, sir.

25 THE COURT: Okay, thank you.

1 Q Please describe to the jury who this person in the
2 rear ground would represent?

3 A He would represent me.

4 Q And who would this represent?

5 A Officer Brent McCants.

6 Q Okay, and this person?

7 A Eric Forney.

8 Q And to the best of your recollection is this what you
9 remember?

10 A That's exactly what I remember.

11 Q Have a seat.

12 THE COURT: Did you show it to the other half?

13 MR. SCHUSTERMAN: Oh, I'm sorry.

14 Q Come back down, Mar-Reece. My fault. This diagram
15 what does it represent?

16 A It represents the crime scene.

17 Q From what perspective?

18 A From a different angle.

19 Q Different angle. Who would this person be in the rear
20 ground?

21 A It would be me.

22 Q And who would this person be?

23 A Officer Brent McCants.

24 Q And who would this person be?

25 A Eric Forney.

1 Q And is this the best of your recollection how it
2 occurred, ---

3 A Yes, it is.

4 Q --- the first shot at least? A Yes, sir.

5 Q Thank you, you may have a seat.

6 A (Witness complied.)

7 Q Mr. Hughes, after the first shot was fired, what do
8 you recall?

9 A I had panicked and I didn't know what to do.

10 Q Did Mr. Forney shoot any more that night?

11 A Well, he shot Officer Brent McCants some more that
12 night.

13 Q What did he do after he fired that first shot?

14 A After he fired the first shot, he leaned a little
15 further out of the car and eventually got out of the
16 vehicle and stood over Officer Brent McCants as he fired
17 into his body.

18 Q Do you know how many times he fired?

19 A No, I don't.

20 Q Where were you when this happened?

21 A I was still standing in front of the vehicle.

22 Q Did you know that he was going to do this?

23 A No, I didn't.

24 Q After you -- how long did this whole thing take until
25 Mr. Forney was done shooting?

1 A Probably five seconds.

2 Q Once it was done what did you do?

3 A I felt for Officer Brent McCants' pulse and I couldn't
4 feel any.

5 Q What did Mr. Forney do?

6 A He motioned for me to get back in the vehicle.

7 Q How did he get in the vehicle?

8 A He ran around the back side of the parked car.

9 Q Did he get in the passenger side?

10 A Yes, he did.

11 Q After he completed shooting, did he do anything to the
12 body?

13 A Yes, sir, he tugged on it, tried to get a
14 walkie-talkie off of it.

15 Q Do you know if he got the walkie-talkie?

16 A Yes, he did.

17 Q How do you know he got it?

18 A Because it was in the vehicle with us.

19 Q After you had bent down to feel his pulse, what
20 happened next?

21 A Eventually I got up and got in the vehicle myself.

22 Q What was your state of mind at that point?

23 A I was in shock. I didn't know what to do. It was the
24 first time I had seen somebody get shot.

25 Q Did you get in the car?

- 1 A Yes, I did.
- 2 Q When you drove away, where did you go?
- 3 A Headed back to Charlotte.
- 4 Q Were you driving?
- 5 A Yes.
- 6 Q Was it your intent to head back to Charlotte?
- 7 A Yes, it was.
- 8 Q Did you go back to Charlotte?
- 9 A No, sir, we pulled over at the Holiday Inn.
- 10 Q Why did you pull over at the Holiday Inn?
- 11 A Eric Forney said so.
- 12 Q What were you looking to do at that time?
- 13 A At that time I was looking to go home.
- 14 Q What happened once you stopped at the Holiday Inn?
- 15 A We both got out of the vehicle.
- 16 Q And then what happened?
- 17 A I told him to go his way and I was going to go my way.
- 18 Q Why did you tell him to go his way and you would go
- 19 yours?
- 20 A Because I didn't want to be caught up in any more
- 21 trouble.
- 22 Q Did he go his way?
- 23 A No, sir.
- 24 Q What did he do?
- 25 A He started following me.

1 Q How many times did you tell him to go his way?

2 A Probably two or three times.

3 Q Did you at any time that night have the walkie-talkie?

4 A No, I didn't.

5 Q When did you and Mr. Forney finally separate?

6 A When we was on the road called Celriver Road.

7 Q Were you familiar with that area?

8 A No, I wasn't.

9 Q Did you -- it was at Celriver Road that you broke
10 apart?

11 A Yes, sir.

12 Q Do you know where Mr. Forney went?

13 A No, sir.

14 Q When Mr. Forney left you, when you two finally
15 separated, did he have the gun?

16 A Yes, sir, he did.

17 Q Who had the walkie-talkie?

18 A Eric Forney.

19 Q Did you have anything?

20 A No, sir, I didn't.

21 Q What did you do then?

22 A I still didn't know what to do. I was still up under
23 panic, up under shock.

24 Q What happened then? What happened next?

25 -- A The police arrived, they arrested me..

- 1 Q Where did they find you?
- 2 A In the woods.
- 3 Q Before the police arrived, were you cut up and
- 4 bleeding?
- 5 A No, sir.
- 6 Q Were you cut up and bleeding afterwards later that
- 7 night?
- 8 A Well, they had beat me up.
- 9 Q How did they beat you up?
- 10 A They put restraints on me and started hitting me and
- 11 kicking me and stuff like that.
- 12 Q Were you then taken to the law center?
- 13 A Yes, I was.
- 14 Q Were you interviewed?
- 15 A Yes, I was.
- 16 Q I show you State's Exhibit Number 54. Can you tell me
- 17 what this is?
- 18 A That's a picture of me.
- 19 Q Would this -- what was your condition at this time?
- 20 A I was beat up.
- 21 Q Why did you change your clothes?
- 22 A Because I had blood on my old clothes.
- 23 Q Whose blood was that?
- 24 A Mine.
- 25 Q Did you give a statement?

1 A No, sir.

2 Q Were you shown somebody else's statement?

3 A Yes, sir.

4 Q Whose statement were you shown?

5 A Eric Forney's.

6 Q Did you do anything that night to aid Mr. Forney in
7 Officer McCants' death?

8 A No, I didn't.

9 Q Did you plan with Mr. Forney to kill an officer?

10 A No, I didn't.

11 Q Did you have a plan for any violence that evening?

12 A No, sir, I didn't.

13 MR. SCHUSTERMAN: I beg the court's indulgence.

14 Q I just have one more question and it may be similar to
15 one I've asked before. Do you recall ever giving a
16 statement to Captain Cabaniss or Agent Bryant?

17 A No, sir, I don't.

18 Q You have no recollection of that?

19 A None whatsoever.

20 Q Mr. Hughes, please answer any questions Solicitor Pope
21 may have.

22 CROSS EXAMINATION

23 BY MR. POPE

24 Q Mr. Hughes, Mr. Schusterman went through your prior
25 record. That was in North Carolina?

1 A Yes, sir.

2 Q Would you tell me what that was again, please?

3 A It was for breaking and entering, burglary, for firing
4 a firearm into occupied property.

5 Q Is that it?

6 A I can't remember all the charges.

7 Q You said "occupied property." That's an occupied
8 vehicle, is that right?

9 A Yes.

10 Q And you had an assault with a deadly weapon with
11 intent to kill, is that correct?

12 A Yes, sir.

13 Q So when you told Mr. Schusterman that you had never
14 been around anybody being shot, that wasn't true, was it?

15 A Those people that was in the car wasn't shot. They was
16 fired at.

17 Q You fired bullets at them, they just wasn't hit, is
18 that what you are saying?

19 A Right.

20 Q So you have been around pistols being shot at people
21 you just wasn't around when anybody actually was hit, is
22 that right?

23 A Right.

24 Q You said you met Lt. Perry. When was the last time you
25 had seen Lt. Perry before you went to visit?

- 1 A I only visited there once.
- 2 Q When is the last time you saw him prior to that?
- 3 A In prison.
- 4 Q When was that?
- 5 A Before I had maxed out.
- 6 Q When would that have been?
- 7 A August 11th.
- 8 Q Of what year?
- 9 A Of '92.
- 10 Q You had gotten out a month and roughly fourteen days
- 11 before this happened?
- 12 A Yes, sir.
- 13 Q Okay and then you said you went to see him the week of
- 14 Labor Day, is that correct?
- 15 A Yes.
- 16 Q The week before Labor Day or after Labor Day?
- 17 A It was a little after Labor Day.
- 18 Q So it was closer to the 25th? Do you recall the date
- 19 on that?
- 20 A It was the first week of Labor Day.
- 21 Q The first week in September?
- 22 A Yes, sir.
- 23 Q As I understand what you are telling Mr. Schusterman
- 24 and what you are telling the jury is that the gun that
- 25 -- killed Brent McCants you had that gun that day, is that

1 correct?

2 A Yes, sir.

3 Q And you showed it to Lt. Perry that day, is that
4 correct?

5 A Yes, I did.

6 Q Okay, you showed him how to operate it, you unloaded
7 the clip and all that stuff and you showed him why the
8 handles were off to be able to unjam it, is that correct?

9 A Yes.

10 Q Okay. And you told him that the purpose of being able
11 to unjam it is so if you get to shooting you can fix it
12 and keep on going, is that correct?

13 A That's correct.

14 Q You also said that after he got it back you removed
15 the fingerprints from it, is that correct?

16 A That's right.

17 Q Said something to the effect that you don't ever know
18 what may happen down the road?

19 A That's right.

20 Q So in other words when Lt. Perry came in here he was
21 telling the truth?

22 A Yes, he was.

23 Q You said you bought that gun for Forty-Five Dollars up
24 in Winston Lakes, is that right?

25 A Yes, sir.

1 Q When did you buy that gun?

2 A Prior to getting out of prison.

3 Q You bought it before you got out of prison?

4 A Yes.

5 Q Did you buy it there in prison?

6 A No, I didn't buy it in prison; I bought it prior to
7 getting out of prison.

8 Q Tell me how you do that. How did you buy the gun
9 before you get out of prison?

10 A I must be phrasing myself, no, I'm saying I had bought
11 the gun when I got out of prison.

12 Q Okay, after you got out of prison, okay. So after you
13 got out of prison - was it right after you got out of
14 prison you went and bought the gun?

15 A Right.

16 Q So as soon as you get out you went and bought a gun
17 for protection?

18 A Right.

19 Q Had you fired that type gun before?

20 A Yes, sir.

21 Q You were familiar with how it worked, familiar enough
22 to decide to take the grips off to help unjam it?

23 A Yes, sir.

24 Q Okay, and there came a time when you went to your
25 brother's house and you kept the gun hid out in the yard,

1 is that what you are saying?

2 A Yes.

3 Q You said you would hide it in back of the house at
4 night time, is that right?

5 A Yes, sir.

6 Q Was that because you weren't supposed to take it into
7 his house?

8 A Yes, sir.

9 Q Okay, what would you do with the gun during the day
10 time?

11 A If I didn't have it, I left it where it was at.

12 Q Okay, so you carried it on your person during the day
13 time?

14 A If I didn't have it, I left it where it was at.

15 Q It would be on your person or hid behind his house, is
16 that correct?

17 A Yes.

18 Q Did you just go visit your brother or were you staying
19 with your brother?

20 A I was staying with him.

21 Q How long did you stay with him? Do you remember when
22 that was?

23 A I stayed with him probably about two weeks.

24 Q So the two weeks prior to Brent McCants' death you
25 would have been staying at your brother's house?

1 A Yes.

2 Q And when was it you sold the gun to Eric Forney?

3 A About a week before the shooting.

4 Q Okay, why was it you sold the gun to Eric?

5 A I was beginning to feel uncomfortable with it.

6 Q Okay, what do you mean uncomfortable with it?

7 A Having to sneak and hide it and stuff like that.

8 Q Okay, uncomfortable as far as dealing with your
9 brother?

10 A Yes, as far as sneaking and having to hide the gun and
11 stuff like that.

12 Q So what did you do for protection after you got rid of
13 the gun?

14 A I was at home with them.

15 Q So you were going out when you had the gun and after
16 you got rid of the gun, you didn't go out any more?

17 A Yes, I still went out.

18 Q What did you do for protection then?

19 A I had a straight blade.

20 Q I'm sorry?

21 A I had a regular razor straight blade.

22 Q That's the one they took off of you when you were
23 arrested?

24 A Yes, sir.

25 Q And that's the one that looks like an old timey

1 shaving razor?

2 A Right.

3 Q Okay, and you carried that for your protection.

4 A Yes.

5 Q What do you mean for your protection? What did you
6 intend to do with that razor?

7 A In case somebody, you know, jump on me, beat me up or
8 something.

9 Q What would you do with the razor?

10 A Probably cut them.

11 Q Where did you get the razor from?

12 A I bought it at a flea market.

13 Q And so you had that in your pocket that night when
14 Brent McCants was killed, didn't you?

15 A Yes, sir.

16 Q And you had another knife in your pocket, is that
17 correct?

18 A Yes, sir.

19 Q So when you told Mr. Schusterman, Mr. Schusterman said
20 you didn't have any weapons that's not exactly correct, is
21 it?

22 A I don't remember him asking that question.

23 Q I may be wrong I had written down - I believe Mr.
24 Schusterman asked you if you had a weapon that night and
25 you said, "No." You did have a weapon that night, didn't

1 you?

2 A I had a razor.

3 Q Okay, we're talking about the night Brent McCants was
4 killed, September 25th. At that time - let me ask you
5 before I take you to that time. Dwayne Forney you say you
6 had known him you had met him at prison, is that correct?

7 A Yes.

8 Q When is the first time you saw Dwayne after you got
9 out in August?

10 A I didn't see him until later on in September.

11 Q So did you sell him that gun the first time you saw
12 him?

13 A Yes.

14 Q How did you see Dwayne that particular day, that was a
15 week before Brent McCants was killed, is that right?

16 A Yes, sir.

17 Q So how did you see him that day?

18 A I seen him like identical to meeting him at the Revco
19 this time except he was still walking.

20 Q He was walking that day and you were carrying the
21 pistol?

22 A Yes.

23 Q And what did you say to him? Did you flag him down
24 and say, Dwayne, I have a gun I want to sell to you?

25 A No, I had seen him, talked to him for a few minutes

1 and asked him if he wanted to buy a pistol.

2 Q Now you weren't supposed to have a pistol then, were
3 you, is that correct?

4 A No, sir.

5 Q And so he sold you the pistol for Forty-Five Dollars,
6 is that correct?

7 A I sold him the pistol for Forty-Five Dollars.

8 Q I'm sorry, sold him -- that's right, okay. All right,
9 how many times after you sold him the pistol did you talk
10 to him?

11 A None but the second time I had met him.

12 Q And the second time you met him was when he said do
13 you want to go with me to rob some people - he said what -
14 go to make some money?

15 A Yeah.

16 Q Okay, all right. So the first time you saw him you
17 sold him the pistol. The second time he asked you if you
18 wanted to rob somebody and you said yes, is that right?

19 A That's right.

20 Q Okay. Let me ask you as far as the events that
21 occurred with Mr. Forney, you had an opportunity to go
22 over in your mind what these are?

23 A Can you say it again?

24 Q Have you had an opportunity to go over in your mind
25 what the facts were that night?

1 A Yes, sir.

2 Q Okay. Did you have an opportunity to look at those
3 photographs Mr. Schusterman had before you came up?

4 A Yes, I did.

5 Q Okay, and you have talked and prepared your testimony,
6 is that correct?

7 A Yes.

8 Q Okay, that night when you go to hook up with Mr.
9 Forney, the second time you had seen him, you decided to
10 go rob somebody, what was the plan as far as robbing
11 somebody?

12 A Just rob people.

13 Q So I mean there's not like we are going to a certain
14 place and rob people, you just head out to rob people?

15 A Yes, sir.

16 Q You didn't have a pistol then, did you?

17 A No, I didn't.

18 Q Okay, and he showed you the gun that you had sold him?

19 A That's correct.

20 Q Where did he show you, down at the Revco?

21 A A little later on.

22 Q Okay, was it when -- you all were walking, I presume,
23 because you didn't have a car at that time, right?

24 A That's right.

25 Q And so you had the straight razor and he had the gun,

1 is that correct?

2 A Right.

3 Q Well, as you were walking and you are just going to
4 rob people, is -- you say you don't plan it, you just go
5 out and rob people, I mean, what were you and he talking
6 about while you were walking around? Did you look for
7 people to rob or did you make any kind of plans? You know
8 what I'm saying, you said you ended up at the Bellissimo,
9 right?

10 A Yes, sir.

11 Q How did you end up at the Bellissimo?

12 A Walked up.

13 Q Okay. Are you looking from the time you all got
14 hooked up at the Revco?

15 A No, we hooked up at Marshall's house.

16 Q That's your brother?

17 A Yes.

18 Q So Forney came over to your brother's house that
19 evening for you all to hook up to go rob people?

20 A Right.

21 Q Was that when it was about eight o'clock?

22 A Yes, sir.

23 Q How long do you think you all looked for people to rob
24 before you found somebody to rob?

25 A It was just a short time afterwards.

1 Q Okay and is Marshall's house near the Bellissimo?

2 A Probably about two or three blocks away.

3 Q All right, when you get up there to rob at the
4 Bellissimo and you first see those people you said they
5 were coming out of the restaurant?

6 A Yes, sir.

7 Q Okay, when they were coming out of the restaurant how
8 did you all decide let's go rob them?

9 A Just decided to rob them.

10 Q What I'm saying if you can tell the jury how, do you
11 know what I'm saying, you all were walking together,
12 right?

13 A Right.

14 Q Okay, wasn't it your testimony that Eric's got the gun
15 and you have got the razor and you all were looking - were
16 you looking around when you are going to try to find
17 people to rob?

18 A We just do it.

19 Q What do you mean if you could explain to this jury
20 when you say you just do it, I mean, how do you know which
21 ones you are going to rob? How do you know they were good
22 to rob and somebody else isn't good to rob? How did you
23 decide?

24 A You don't know that.

25 Q Sir?

- 1 A You don't know that.
- 2 Q Okay. But you saw them coming out of the restaurant.
- 3 A Yes.
- 4 Q What made you decide to go rob them?
- 5 A I couldn't answer that.
- 6 Q How did Eric know that you wanted to go rob them?
- 7 A I can't answer that.
- 8 Q Okay. How did you know Eric wanted to rob them?
- 9 A We just seen two people walking and decided to rob
- 10 them.
- 11 Q How did you know which one you are supposed to take
- 12 and which one Eric is supposed to take?
- 13 A He was clearly the aggressor.
- 14 Q I'm sorry, who was clearly the aggressor?
- 15 A Eric Forney was.
- 16 Q Where did you get that from?
- 17 A Because when we decided to rob the people he went to
- 18 the man.
- 19 Q So that's how you determine who the aggressor is
- 20 because he chose the man?
- 21 A Yes.
- 22 Q When you all went to the head of that car and they
- 23 were getting back in the car?
- 24 A Yes.
- 25 Q When you all went to the head of the car, he goes

1 around the front to the man, and you went to the woman,
2 you all split, right at the head of the car, right?

3 A Right.

4 Q Okay, how did you decide to go toward the woman?

5 A I didn't decide it, it's something I done.

6 Q You made your feet walk and you made your hands move
7 and you made yourself go over there to her, is that
8 correct? You chose to do it as part of robbing her, right?

9 A Yes, sir.

10 Q How did you all split up the money and the wallet and
11 what was it, a watch and some stuff you got from them?

12 A Yes, sir.

13 Q How did you all split that up?

14 A We never did split it up.

15 Q Were you all going to split it up?

16 A Eventually.

17 Q Okay, I mean, part of the understanding is if you are
18 going to rob people together we are going to split the
19 proceeds, is that right?

20 A Yes, sir.

21 Q So when you went into to rob with Eric Forney, you
22 planned on getting the benefit of it too, is that correct?

23 A Yes, sir.

24 Q And so you would agree with me that you and Eric were
25 partners in that robbery, is that correct?

1 A Yes, we was.

2 Q Once you all got the car, how did you decide when you
3 say you go out and rob people and get some money, is there
4 a certain number of people you are planning on robbing or
5 you just rob one or you rob more - you just kind of play
6 it by ear?

7 A Kind of play it by ear.

8 Q Okay, so at the time you all left and headed down I-77
9 you and Eric had robbed those two college students, is
10 that correct?

11 A Yes, sir.

12 Q And there is no disputing that, you agree with that
13 right?

14 A Yes, sir.

15 Q You were now his partner in that robbery and you were
16 riding in the stolen vehicle.

17 A Right.

18 Q So there's no doubt you are telling this jury that you
19 were in possession of that stolen vehicle when you came
20 down here, is that correct?

21 A That's right.

22 Q All right, so you all came down and you all went - was
23 the first place you all came down was straight to the
24 Galleria to the movie?

25 A Yes.

1 Q Doctor Morgan, you know who Doctor Morgan is that was
2 here earlier that you have talked to had said something
3 the other day about you all coming down looking for drugs
4 or something, do you recall that?

5 A No, sir.

6 Q Okay, so that would be incorrect if he said that, you
7 all weren't -- you didn't come down looking for drugs, you
8 came down to the movie, is that right?

9 A Yes.

10 Q When you get off the exit ramp, you go to the movie,
11 are you still looking for people to rob?

12 A No.

13 Q Okay, so when you had stated before that you had an
14 idea to rob someone at the stop light -- he had the idea
15 to rob someone at the stop light a couple of blocks up the
16 street near a restaurant, that was talking about the first
17 robbery, is that right?

18 A Yes.

19 Q Okay and I think you ended up getting Captain Cabaniss
20 to mark that out because you said you weren't going to say
21 whether it was his idea or your idea ---

22 A I never did write a statement.

23 Q I'm sorry?

24 A I never did write a statement.

25 Q You never did write a statement?

- 1 A That's right.
- 2 Q So you didn't tell Captain Cabaniss any of this stuff?
- 3 A No, I didn't.
- 4 Q What did you tell him?
- 5 A I didn't tell him nothing.
- 6 Q So you didn't say anything to him.
- 7 A I didn't say nothing to him.
- 8 Q So, in other words, he came up with you saying that
- 9 Mar-Reece -- I mean that Forney did it, is that right?
- 10 A That's correct.
- 11 Q Okay, when you all came down and you went to the movie
- 12 the first time, were you all intending to rob anybody?
- 13 A No, sir.
- 14 Q When did you decide to quit robbing people?
- 15 A After we had robbed the first couple.
- 16 Q Well, going back to my initial question is you just
- 17 start robbing when you feel like it and stop when you feel
- 18 like it, is that right?
- 19 A No.
- 20 Q Okay, Mr. Hughes, you chose to rob the people --
- 21 A Yes.
- 22 Q And you were out for a night of robbery to make some
- 23 money, is that right?
- 24 A Right.
- 25 Q Okay and if the opportunity had come up in the parking

1 lot when you got to the theater you would have robbed
2 again, is that correct?

3 A No.

4 Q All right, when did you decide to quite robbing
5 people?

6 A I didn't feel comfortable with robbing the first
7 couple.

8 Q Okay, so now you didn't feel comfortable with robbing
9 the first couple, okay, but you participated in it, didn't
10 you?

11 A Yes, I did.

12 Q As a matter of fact, you provided Mr. Forney with the
13 weapon that was ultimately used in that, is that correct?

14 A I had sold him the weapon.

15 Q Okay. Was it sold to him for his protection?

16 A No.

17 Q What was it sold to him for?

18 A He wanted it.

19 Q He wanted it to use for robbery?

20 A He wanted it for his own use.

21 Q Well, his own use ended up becoming your use too as
22 far as robbery, didn't it?

23 A I wouldn't know how to answer that.

24 Q Okay. You all were walking and he showed you the gun
25 -- that you all were going to use in the robbery, is that

1 correct?

2 A Yes.

3 Q Okay and you were going as a partner with him in the
4 robbery expecting to get the proceeds, is that correct?

5 A Correct.

6 Q So to that extent you did provide him the weapon that
7 you all used in that robbery, is that correct?

8 A Correct.

9 Q All right, so then you went down to the theater and
10 after you left the theater for about fifteen minutes, you
11 came in one time and asked for a drink machine.

12 A That's something Forney did.

13 Q Forney looked for a drink machine?

14 A Yes.

15 Q Okay, then you all went back in and went around to a
16 movie, is that correct?

17 A No, we was already in the movie.

18 Q When he asked for the drink machine?

19 A Yes.

20 Q Okay, if you could just explain to me what happened as
21 far as the movie asking for the drink machine and then you
22 all going around to the movie.

23 A When we got to the movie theater, we both went inside.

24 Q Okay, then what happened.

25 A We went inside and Eric Forney asked for something to

1 drink and that's it.

2 Q And did he get anything to drink in the movie?

3 A No, he didn't.

4 Q But then you all drove down Dave Lyle Boulevard to
5 another store?

6 A Yes.

7 Q What kind of store was that?

8 A Some type of Quick Stop.

9 Q Okay, how did you all end up going that way to look
10 for the Quick Stop, do you know?

11 A That's the only interstate -- well, that's the only
12 road by the interstate.

13 Q I'm sorry, you are saying Dave Lyle is the only road
14 by the interstate??

15 A Yes.

16 Q Well, that Cherry Road up there where you ended up
17 leaving your car at the Holiday Inn it was by the
18 interstate too, wasn't it?

19 A That was in a different direction.

20 Q That was north of where Brent McCants was killed,
21 wasn't it?

22 A I think so.

23 Q Well, you told the jury a minute ago you were heading
24 back to Charlotte after Brent McCants was killed, right?

25 .. A Right.

1 Q And that's where you pulled off at the Holiday Inn,
2 right?

3 A Right.

4 Q All right, and that's where you switched drivers when
5 you all got the drinks, is that correct?

6 A Yes.

7 Q And so any prior statement that was given that says
8 you weren't driving wouldn't be correct, is that right?

9 A I don't understand the question.

10 Q You previously said that you were not ever driving
11 that night. You told those officers that you were not ever
12 driving that night.

13 A I keep telling you I didn't make no statement.

14 Q Okay, nothing you told -- so no matter I ask you about
15 these officers you say you never told them anything.

16 A That's correct.

17 Q Okay, did you say you didn't shoot anybody?

18 A No, I didn't.

19 Q I'm talking about that night when you were arrested,
20 you didn't say that.

21 A No, I didn't.

22 Q Did you tell the media they picked you up ten miles up
23 the road?

24 A I said about ten miles from Charlotte.

25 Q And that they framed you or something to that extent?

1 A I don't remember saying they framed me.

2 Q Do you remember the exact words? I don't want to put
3 words in your mouth. What were your exact words?

4 A I said I was about ten miles from Charlotte when I was
5 arrested.

6 Q Okay, in other words, you were telling them where Dave
7 Lyle was, you were ten miles from there, is that right?

8 A I didn't know how far it was to Charlotte at the time.

9 Q You are telling us -- you told them you weren't
10 involved in this, did you not?

11 A No, I didn't.

12 Q All right, well, tell me exactly what you said. I want
13 to make sure exactly what you told the media that day.

14 A I already said it.

15 Q I appreciate it if you would tell me again to make
16 sure I understand what you are saying is exactly what you
17 said.

18 A I said I was about ten miles from Charlotte when I was
19 arrested.

20 Q Okay, so now we are down on Dave Lyle and you are
21 driving with no lights on, is that right, in a stolen car,
22 is that right?

23 A Yes.

24 Q Okay and where were you heading to when you were
25 driving on Dave Lyle?

1 A We was going back towards the interstate.

2 Q And where were you going to go?

3 A Headed back towards Charlotte.

4 Q So you rode all the way down here from Charlotte, you
5 weren't coming to get drugs, you weren't going to rob
6 anybody else, you walked in a movie for fifteen minutes,
7 went and got a drink and went back to Charlotte, is that
8 correct?

9 A That's correct.

10 Q Okay, now I want you to relate for the jury again when
11 Officer McCants turned around on you to pull you tell them
12 what happened again.

13 A Okay. I was driving the vehicle and I seen a police
14 car coming down the other side of the interstate. He
15 pulled us over. I was standing in front of the vehicle.
16 Eric Forney was in the passenger side of the vehicle and
17 the officer asked me for identification. I told him I
18 didn't have any. He had asked Eric Forney to get out of
19 the car, but he didn't and that's when he started
20 shooting.

21 Q All right. So you are in the front of the vehicle and
22 the officer is asking you for driver's license,
23 registration, that kind of stuff?

24 A Yes.

25 Q And so he is standing there right next to the

1 passenger door, is that right?

2 A About two feet from it.

3 Q Two feet away from it, like it'd be over to his right?

4 A It would be more or less to his left.

5 Q All right. All right, if you are standing where you
6 were that night, okay?

7 A Yes.

8 Q Your car is right here, is that right, the steering
9 wheel is right here, is that right?

10 A Yes.

11 Q Mr. Forney is sitting right here?

12 A Yes.

13 Q Where is the officer standing?

14 A He's standing back that way.

15 Q Behind the car?

16 A No, two feet -- about two feet from the driver's
17 window.

18 Q Two feet from the window?

19 A Two feet from the driver's window.

20 Q Okay, again, so what I'm asking you is, if I am Brent
21 McCants, I'm standing here talking to you, how close was
22 he to you?

23 A He was about five feet from me.

24 Q All right, he's right here to you?

25 A About five feet from me.

- 1 Q All right, closer, further?
- 2 A A little further than that.
- 3 Q Okay, standing right there?
- 4 A Right there.
- 5 Q You are in the front of the car?
- 6 A Yes.
- 7 Q He's asking you for your driver's license and
- 8 registration?
- 9 A Yes.
- 10 Q All right, where is the driver's side window? Where is
- 11 the driver's side door?
- 12 A Right over here.
- 13 Q Right here?
- 14 A Yes.
- 15 Q Okay, straight across?
- 16 A Yes.
- 17 Q So Forney is sitting straight across?
- 18 A Right.
- 19 Q And so the officer is standing here with his badge,
- 20 Forney is sitting in the car right here, right?
- 21 A Yes, sir.
- 22 Q Okay, now let me ask you from the time you all robbed
- 23 the people in Charlotte where was the gun at?
- 24 A It was in Forney's legs.
- 25 Q Okay, when he was driving?

- 1 A Yeah.
- 2 Q Okay, what about when you all went in the theater?
- 3 A I don't believe he had it on him then.
- 4 Q Okay. What about when -- it stayed in the car?
- 5 A Yes, it down.
- 6 Q What about when you all came up and went to get
- 7 drinks, where was the gun?
- 8 A I think it was in the car.
- 9 Q It was a bench seat, wasn't it?
- 10 A Yes.
- 11 Q It wasn't bucket seats, it was a bench seat?
- 12 A Yes.
- 13 Q It was laying between the seat and right there?
- 14 A Yes.
- 15 Q And so the gun basically rode between you and Mr.
- 16 Forney at that time from the time you all left those
- 17 college students until when you are saying he put it in
- 18 his lap, is that right?
- 19 A No, he had it in his jacket all the time.
- 20 Q Okay, Mr. Hughes, it can't be both ways. You said it
- 21 was between - was it always in his lap?
- 22 A It was on the seat between his legs.
- 23 Q Okay. And now whether he was driving or whether he was
- 24 riding, is that right?
- 25 A Yeah.

1 Q So he's sitting in the passenger side now with the gun
2 between his legs sitting in his lap?

3 A Yes.

4 Q And the width of that car the officer is standing
5 there where his badge is at, right?

6 A Yes.

7 Q Tell me what he did with the gun.

8 A He shot him.

9 Q Tell me specifically how he did it, what he did with
10 the gun.

11 A He took the gun up, pointed at him and shot him.

12 Q Okay, so he's sitting right here, he reached between
13 his legs and shoots the officer who is standing right
14 there, is that correct?

15 A Yes.

16 Q Okay and, of course, -- was the officer still talking
17 to you when he gets that first shot?

18 A No, he wasn't.

19 Q What was he doing, facing you?

20 A I believe he was telling Eric Forney to get out of the
21 vehicle.

22 Q So he was telling him to get out of the vehicle.

23 A Yes.

24 Q Okay, and so Forney -- again, I want to make sure I
25 understand. Forney he didn't jump out of the car and run

1 around and shoot him, he was sitting in the seat when he
2 shot him, is that right?

3 A Yes.

4 Q Okay, how many shots did he fire from that seat?

5 A I don't know.

6 Q Okay. All right, what did he do -- was it more than
7 one?

8 A More than one what?

9 Q All right, again, Forney was sitting in the seat with
10 the gun between his lap, right, -- between his legs, you
11 are standing where you are at. Brent McCants is right up
12 here at the door, is that right?

13 A That's right.

14 Q Okay, and Forney fired at least a shot, is that
15 correct?

16 A Yes.

17 Q Okay, did he fire more than one, you say you don't
18 know?

19 A I couldn't recollect.

20 Q All right, when he fires that shot, he's sitting in
21 the passenger side of the car, right, again, I know I have
22 asked you several -- I just want to make it clear; he
23 doesn't get out and run around, is that correct?

24 A No, he doesn't.

25 Q Okay, and what happens after he shoots Brent McCants

1 that first time, what happens then?

2 A He come through the passenger side -- from the
3 passenger side to the driver's side of the vehicle and he
4 shot some more.

5 Q Right over here where he was at?

6 A Right.

7 Q So he comes -- he fires the initial shots or shot
8 sitting right here in the passenger seat?

9 A Right.

10 Q Okay, and then he slides on through and comes out the
11 driver's side door?

12 A Right.

13 Q So he never gets out ---

14 A The passenger side door.

15 Q --- the passenger side door. Brent McCants is now
16 laying roughly in front of you where you are at? You
17 know, you said he was right here, he was laying there?

18 A Yes.

19 Q Okay and Forney comes out and gets over him and
20 finishes him off and you are still standing right there?

21 A Yes.

22 Q Okay. All right, now Forney is outside. You say the
23 car is about two foot behind you right here, is that
24 right?

25 A Yes.

1 Q Do you remember if the driver's door was open or
2 closed?

3 A It was open.

4 Q Okay, so the driver's door is open. The other door is
5 closed because he never got out of that door, right?

6 A Correct.

7 Q So he's over him shooting Brent McCants, you are
8 standing right there. What happens next?

9 A I feel for a pulse.

10 Q So you walk forward where it's right next to the car
11 door, right there where he is laying and the car is over
12 here, right?

13 A Yes.

14 Q And you feel for a pulse. Where do you feel for a
15 pulse at?

16 A On his neck.

17 Q Once you felt for his pulse, what did you feel?

18 A I didn't feel nothing.

19 Q And what did you do then?

20 A I stood over him a little while and felt his pulse.

21 Q Okay, you felt his pulse and then you stood - were you
22 straddle him?

23 A No, I wasn't.

24 Q How were you standing?

25 A I was standing over him.

1 Q When you felt his pulse, did you bend down like this
2 and feel his pulse? How did you feel his pulse?

3 A I didn't bend my knees.

4 Q So you bent over like this to feel his pulse?

5 A Yes.

6 Q Okay, after you felt his pulse, what did you do then?

7 A Eventually I got back in the vehicle.

8 Q Okay, you said "eventually" because you said you stood
9 over him.

10 A Right.

11 Q All right, if he's laying here on the ground where
12 he's been shot next to the car, tell the jury how he was
13 laying -- so Eric shot him and he dropped right there and
14 Eric got out and finished him off and you were standing
15 right there. How was he laying? Tell the jury how his body
16 was laying right there?

17 A His body was laying towards the Mall.

18 Q Okay, what do you mean?

19 A His head is pointed towards the Mall.

20 Q Okay, so his head is towards the Mall. Face up or face
21 down?

22 A Face down.

23 Q Okay, so he is face down right there?

24 A Yeah.

25 Q So when you come over, where did you stand when you

1 checked the pulse?

2 A I stood over his head.

3 Q Which way were you facing?

4 A I was facing towards Dave Lyle Boulevard.

5 Q And, of course, you are on Dave Lyle Boulevard, right?

6 A Yes.

7 Q So are you facing back towards town or were you facing
8 towards the Mall or were you facing sideways?

9 A Facing in the opposite direction of the Mall.

10 Q All right, so you are facing back down the other way.
11 In other words, his head is laying here face down and you
12 come straight up that way to feel his head, is that right?

13 A Right.

14 Q Then at some point you got in the car?

15 A Yes.

16 Q Okay, did Eric get in before you?

17 A Yes, he did.

18 Q Okay, so he got in. Did he slide back over?

19 A No, he ran around to the passenger side.

20 Q Okay, so at that time he ran around.

21 A Yes.

22 Q He ran around the passenger side and got in. Where
23 was the gun then?

24 A He had it in his hands.

25 Q Okay, when you are standing over checking Brent

1 McCants' pulse, what is Forney doing?

2 A He grabbed his walkie-talkie off of him.

3 Q So he got the walkie-talkie off of him as he's laying
4 right there next to the door and then he runs around the
5 back with the gun and the walkie-talkie and gets in the
6 car, is that right?

7 A That's right.

8 Q And then what did you do?

9 A I got back in the car.

10 Q And you got in the car as well?

11 A In the driver's side.

12 Q And knowing what you had just seen you drove that car
13 away from there, is that correct?

14 A Correct.

15 Q And you drove up and you say you got on the interstate
16 and headed towards North Carolina?

17 A Yes.

18 Q And then you decided to get off the interstate?

19 A Yes.

20 Q Why did you decide to get off?

21 A Because Forney wanted to get off the interstate.

22 Q Did he say why he wanted to get off the interstate?

23 A Because he was listening to the walkie-talkie.

24 Q Okay and what was he hearing on the walkie-talkie?

25 A I can't remember at this time.

1 Q When you say "listening to the walkie-talkie," he was
2 listening to the walkie-talkie about police coming to look
3 or about the officer being shot?

4 A Right.

5 Q Okay. So after he told you to get off the interstate
6 you got to the Holiday Inn, is that right?

7 A Yes.

8 Q You parked the car there at the Holiday Inn?

9 A Yes.

10 Q Okay, what did you do then?

11 A Got out and ran.

12 Q Is there any reason you didn't just let him out at the
13 Holiday Inn and drive on up to Charlotte?

14 A I wasn't thinking straight.

15 Q So you all went up toward the Quick C Mart or
16 whatever, the little Zippy Mart that's on the corner right
17 there, is that right?

18 A Yes.

19 Q And then you say you remember the name of the road,
20 Celriver Road?

21 A I remember that from police reports.

22 Q So a lot of the things like the names and stuff you
23 remember from what you have heard here, is that correct?

24 A Right.

25 Q You have also heard the testimony about how many times

1 he was shot and all that stuff, is that right?

2 A Yes.

3 Q And so when you all went down Celriver Road and you
4 kept telling him to split off and he didn't want to?

5 A Right.

6 Q And did you tell him he gave me the gun and you walk
7 on one side and me on the other. Did you tell him to walk
8 on one side of the road and you walk on the other?

9 A No, I didn't.

10 Q You were saying something to Mr. Schusterman about
11 getting separated or separating or trying to get loose
12 from him.

13 A I told him to go his way and I'd go mine.

14 Q I'm sorry?

15 A I told him to go his way and I'd go mine.

16 Q Okay. And you told him that I think about three times?

17 A Yeah.

18 Q All right, you told him that and he started to
19 following you?

20 A Yes.

21 Q Was there a time you were finally able to get loose
22 from him?

23 A Yes, it was.

24 Q How did you do that?

25 A He eventually just stopped following me and started

1 tagging behind.

2 Q Okay and so then he went on straight down Celriver and
3 you went off to the right, is that right?

4 A Uh-huh.

5 Q Okay. And you said you never had the gun and you
6 never had any of Brent McCants' stuff, is that right?

7 A That's true.

8 Q And the only thing you did was check his pulse, is
9 that right?

10 A That's right.

11 Q Okay and you told Mr. Schusterman you don't know where
12 Mr. Forney went is that right?

13 A Yes, I did.

14 Q Mr. Hughes, if I understand your testimony now today,
15 you have never made any statement about this case, is that
16 correct?

17 A That's true.

18 Q Mr. Schusterman asked if you did anything to aid Mr.
19 Forney that night starting when you all started your crime
20 spree up in North Carolina and coming all the way down and
21 you said, "No."

22 A That's true.

23 Q That's not correct, is it?

24 A No, that's true.

25 Q Okay, you aided in the armed robbery up in Charlotte,

1 is that correct?

2 A Yes, it is.

3 Q So that's not exactly true as far as aiding and
4 working with Mr. Forney, is it?

5 A I was charged with killing a cop as well, so I didn't
6 kill a cop; I didn't aid him.

7 Q So in other words, if not aiding Forney is what you
8 need to say to prove you didn't kill a cop, then that's
9 what you are saying, is that right?

10 A That's right.

11 Q Okay. You were the man behind the wheel that drove
12 off when those ladies stopped to help him, didn't you?

13 A Yes.

14 Q Okay. You were the man that pulled over and ditched
15 the car at the Holiday Inn, is that correct?

16 A Yes.

17 Q You told Mr. Schusterman that you didn't plan for
18 anything that night, but, again, I guess that goes back to
19 my initial question about -- you didn't plan to get
20 together and go make and go do some robberies, is that
21 right?

22 A No, it just happened.

23 Q Hold on a second. You told me earlier that you met
24 with Mr. Forney and planned to get back with him at eight
25 o'clock that night, is that correct?

1 A I don't remember saying it like that.

2 Q You told Mr. Schusterman that you didn't plan for any
3 violence that night?

4 A That's true.

5 Q You were carrying that straight razor in your pocket?

6 A Yes.

7 Q Mr. Forney had the gun with him?

8 A Yes.

9 Q When you arm rob somebody you plan for whatever
10 violence is going to be necessary to effect the armed
11 robbery, is that true?

12 A No, it's not.

13 Q So then why are you carrying weapons and carrying
14 knives and going out robbing people, Mr. Hughes?

15 A I never did pull no knife on Ms. Jayne.

16 Q But you didn't leave it on the dresser at the house
17 either, did you?

18 A No, it was in my pocket.

19 Q And Mr. Forney showed you that pistol that you sold
20 him as you all went to make your plans for robbing, is
21 that correct?

22 A Yes.

23 MR. POPE: I beg the court's indulgence.

24 Q Mr. Hughes, you ran from that car that night, is that
25 correct?

1 A Yes, I did.

2 Q You took off your shoes out there that night?

3 A I don't remember taking my shoes off.

4 Q You are not saying you didn't, you are just saying you
5 don't remember?

6 A Right.

7 Q So if you came in bare footed and they found your
8 shoes elsewhere, you might have taken your shoes off, is
9 that right?

10 A I don't remember taking my shoes off that night.

11 Q I just want to make clear. Are you saying you didn't
12 do it or you just don't remember?

13 A I don't remember it.

14 Q You told me you never talked to anybody about this
15 case?

16 A That's true.

17 Q So you haven't talked to Mr. Wimborn about this case?

18 A No, I haven't.

19 Q When you talked to Mr. Perry, you did talk to Mr.
20 Perry that night, didn't you?

21 A Yes, I did.

22 Q You did talk to Mr. Perry about the crime, didn't you?

23 A I related a few messages about it.

24 Q You told Mr. Perry that you weren't driving that
25 night, didn't you?

1 A Yes, I did.

2 Q You lied to Mr. Perry about that, didn't you?

3 A Yes, I did.

4 Q Mr. Hughes, that was your gun, is that correct?

5 A No, it wasn't. I sold it to Forney.

6 Q You sold it to Forney. The first time you have ever
7 told anybody you have sold it to Forney was today, is that
8 correct?

9 A No.

10 Q Who else have you told that to?

11 A My defense lawyers.

12 Q You told them, you talked to them about it, right?

13 A Yes.

14 Q Okay. You sold it to Mr. Forney a week before this
15 happened.

16 A Right.

17 Q Okay, but then you together -- the two of you had in
18 your possession -- Mr. Forney had it, but you were with
19 him when you all went out to rob, is that correct?

20 A Yes.

21 Q And you all did in fact rob with your full knowledge
22 and consent, is that right?

23 A Yes.

24 Q And you intended to get a benefit from that, right?

25 A Yes.

1 Q And you were riding in a stolen car and the benefit
2 that that gave you, right?

3 A Right.

4 Q And you were well aware what would have happened to
5 you if that officer took you in on that armed robbery in
6 Charlotte, aren't you?

7 A Yes, sir.

8 Q And what would that mean?

9 A Possibly pull some more time.

10 Q You just got out a month before?

11 A Yes.

12 Q You also told Mr. Perry you had never seen that gun,
13 didn't you, that night.

14 A No, I didn't.

15 Q I'm sorry, I mischaracterized that. You told Mr.
16 Perry that night when you talked to him, you first told
17 him you weren't driving, which wasn't true, is that
18 correct?

19 A Correct.

20 Q You also told him you didn't even know Mr. Forney had
21 a gun.

22 A I didn't tell him that.

23 Q So if Mr. Perry said that, that would be incorrect?

24 MR. SCHUSTERMAN: Objection, Your Honor, pitting
25 witnesses.

THE STATE VS HUGHES

1 THE COURT: I sustain the objection.

2 MR. SCHUSTERMAN: Thank you.

3 THE COURT: Disregard the last exchange regarding the
4 conflict in the two statements.

5 MR. POPE: No further questions.

6 MR. SCHUSTERMAN: Nothing further, Your Honor.

7 THE COURT: You may step down.

8 Anything further from the defense?

9 MR. SCHUSTERMAN: Your Honor, at this point the
10 defense would rest.

11 THE COURT: Any reply?

12 MR. POPE: Your Honor, we may have a few items of
13 reply. We could do them first thing in the morning.

14 THE COURT: Members of the jury panel, now the defense
15 has rested and The State under certain circumstances has
16 the right to present reply testimony. It's almost six, so
17 we are going to stop for today. Let me just so you will
18 know tell you what I see for tomorrow. If there is any
19 reply testimony, I will be surprised if it's lengthy. I'm
20 not restricting anybody with that, but that's just --
21 we've tried cases over the years enough to know that reply
22 testimony, and it's limited, so I can tell you without
23 much reservation that that will not take a long time. And
24 what I'm really trying to get at is that hopefully by mid
25 to late morning you will hear the arguments of the

THE STATE VS HUGHES

1 attorneys and they will be somewhat lengthy. This is a
2 long case and, of course, a very important case for both
3 sides and I will give them a full opportunity to make
4 their arguments. Then you will have the judge's charge on
5 the law, which will be somewhat lengthy also. Then you
6 will have the case for your consideration. So, hopefully,
7 around lunch time tomorrow you will have this case in your
8 hands for deliberation. We will do as we did the other day
9 and send out for lunch so you can eat here and we won't
10 take that time away from your work. But that's where I
11 see us headed tomorrow.

12 Now let me tell you this as to one last thing
13 regarding testimony that you just heard. During that
14 testimony there was a reference to evidence of an alleged
15 prior record of the defendant of a crime. This evidence
16 was admitted for a limited purpose. I instruct you that
17 you must not consider the evidence of alleged prior record
18 for any purpose except for the purpose for which it was
19 admitted. This type evidence is admitted and in this case
20 was admitted and may be considered by you as trial jury if
21 you conclude that it is true only for the purpose of
22 evaluating the credibility or the believability of
23 testimony presented by the defendant himself and for no
24 other purpose. You cannot and you must not consider a
25 prior record, if any, of the defendant as any evidence of

THE STATE VS HUGHES

1 his guilt for the charge for which he is now on trial. You
2 may give to this evidence such weight and such value, if
3 any, to which you find it is entitled on the sole issue of
4 the credibility or believability of the testimony offered
5 by the defendant, Mr. Hughes, himself. So it may not,
6 cannot, and is not to be used or considered by you as any
7 evidence of his guilt of the crimes for which he is now
8 being tried.

9 Now, anything further before we dismiss the jury
10 today?

11 MR. POPE: Nothing from The State, Your Honor.

12 MR. SCHUSTERMAN: Nothing by the defense, Your Honor.

13 THE COURT: All right, we will have you back at the
14 regular time, 9:30 in the morning. Have a pleasant
15 evening.

16 (Jury exits courtroom.)

17 Let's remain in order, please, remain seated while the
18 jury exits.

19 Before we quit today, first, now that the defense has
20 rested, we are looking at reply. Is there anything that
21 The State needs to call to my attention or put on the
22 record or anything at this time?

23 MR. POPE: No, sir, nothing from The State.

24 THE COURT: The defendant?

25 MR. SCHUSTERMAN: Your Honor, I would renew my prior

THE STATE VS HUGHES

1 Motion for a Directed Verdict on the conclusion of the
2 defense case for all the same reasons.

3 THE COURT: We will reserve that until after the reply
4 it will be more appropriate to make that, but anything
5 further -- I'll note that it has been properly made and I
6 will --

7 MR. SCHUSTERMAN: I just want to be protected on the
8 record, Your Honor.

9 THE COURT: Okay, that Motion is denied and I suggest
10 that it also be made after the --

11 MR. SCHUSTERMAN: My concern was that The State has
12 not said there is going to be reply and I just didn't want
13 to overlook it tomorrow morning, Your Honor.

14 THE COURT: Okay. Now as to the Requests to Charge. I
15 have gone over the Forney Charge and coupled with it gone
16 over some other items. Let me ask and I don't think this
17 is premature because even if there is reply I still have
18 to know this now and if you change your mind, if either
19 side changes their mind before we actually go to
20 arguments, you can tell me, is the defense requesting a
21 charge on reasonable doubt?

22 MR. SCHUSTERMAN: Yes, Your Honor.

23 THE COURT: And then that charge would be that
24 reasonable doubt is the kind of doubt which would cause a
25 reasonable person to hesitate to act.

THE STATE VS HUGHES

1 MR. SCHUSTERMAN: That is correct, Your Honor.

2 THE COURT: All right. Now in the trial of the
3 co-defendant there was a charge of a lesser included
4 offense of accessory after the fact. Is it the defense
5 position that that would be a lesser included offense to
6 murder in this?

7 MR. SCHUSTERMAN: I believe it is, Your Honor. I
8 believe it is a lesser included offense.

9 THE COURT: All right.

10 MR. SCHUSTERMAN: I believe that is not only a lesser
11 included offense, I believe the facts would be appropriate
12 to charge that to the jury.

13 THE COURT: Well, I'm just covering all of this. What
14 is The State's position on that?

15 MR. POPE: Your Honor, I believe that would be
16 something I would like to address in the morning.

17 THE COURT: All right, that's why I am going over it
18 now so everybody will have plenty of time.

19 Now I'll also have verdict forms tomorrow and the
20 only thing that may be a little out of the ordinary on
21 that, not out of the ordinary, but the verdict form on
22 possession of stolen vehicle as I understand the section
23 would also in addition to having to have a finding of
24 guilty or not guilty would also require a finding by the
25 jury as to the not the precise value of the vehicle, but

THE STATE VS HUGHES

1 whether the value of the vehicle was under One Thousand or
2 more than Five Thousand Dollars. Just look at that over
3 night. I'm not trying to load you up over night, but it's
4 16-21-80 and it won't take but a second so we will talk
5 about it.

6 MR. SCHUSTERMAN: I understand, sir.

7 THE COURT: Oh, now, just housekeeping the indictment
8 for murder wherein we have dropped or the court has ruled
9 count 2 out, we need to have a redacted copy of that to
10 send in to the jury.

11 MR. POPE: Sir, there was a redacted copy attached to
12 the front.

13 THE COURT: Okay, that's fine. You can hang onto it
14 right now, Madam Clerk.

15 Do you have a copy of the murder indictment? All
16 right, we, in fact, have that and I ask counsel for the
17 defense to at least take a look at it sometime to make
18 sure they have no problems with it.

19 The only other thing, and, of course, we are going to
20 go over the charge tomorrow, but I'm just trying to let
21 everybody have some idea - I can't think of anything
22 extraordinary, but, please, hand up what your Requests may
23 be first thing in the morning. I plan to be here by 8:30
24 and I ask the court reporter to be here by 9:00 and we can
25 go on the record even though the jury is not coming in

THE STATE VS HUGHES

1 until 9:30, we can probably go on the record around 9:00
2 to cover anything we need to cover then.

3 Can anybody think of anything else we need to do this
4 evening?

5 MR. POPE: Nothing further, Your Honor.

6 MR. SCHUSTERMAN: Nothing by the defense, Your Honor.

7 THE COURT: All right and, of course, counsel for the
8 defense and as I read the statute, counsel for the defense
9 and the defendant, both would have a right to make closing
10 argument. Is that The State's position?

11 MR. POPE: Yes, sir, it is my understanding that the
12 defendant would have an additional right. As far as
13 counsel either it would be to make two and two or one and
14 one, it's up to the defendant, but we probably intend just
15 for one of us to argue.

16 THE COURT: All right.

17 MR. SCHUSTERMAN: Can we reserve that decision until
18 tomorrow morning?

19 THE COURT: Yes, yes, I just want --

20 MR. POPE: I do stipulate or agree that the defendant
21 has a right independent of his counsel to address the
22 jury.

23 THE COURT: Mr. Hughes, do you understand that? What
24 we are saying is that you, in addition to having
25 testified, you would also have the right to closing

THE STATE VS HUGHES

1 arguments. I'm going to let your lawyer - I'm telling you
2 this tonight and let your lawyers explain it to you more -
3 but you have a right tomorrow before this jury deliberates
4 on these charges as to your guilty or innocence to
5 actually stand before that jury and argue your case,
6 present an argument as to why you believe they should find
7 you not guilty. You have that right by law to actually get
8 up - your attorney is going to do it anyway, you are not
9 going to bump your attorney out of the way, you are not
10 going to preempt your attorney, that is, it is not an
11 either or, they will have the right to make the argument,
12 they have the right to make the closing argument and an
13 opening and you would also have the right to make an
14 argument on your own. Do you understand that?

15 MR. HUGHES: Yes, sir, Your Honor.

16 THE COURT: Do you have any questions about that?

17 MR. HUGHES: No, sir.

18 THE COURT: Okay. Well, again, your counsel is going
19 to talk to you about that tonight, but I just wanted to
20 make sure we are looking into that.

21 All right, then we will be at ease until 9:00 in the
22 morning.

23 SEPTEMBER 18, 1995

24 THE COURT: Is The State ready to proceed?

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

THE STATE VS HUGHES

1 THE COURT: The defense?

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

3 THE COURT: The stage where we are is the defense has
4 rested and the question now is, first, whether or not The
5 State has any reply testimony.

6 MR. BRACKETT: Yes, sir, we do. We have two witnesses
7 that we would like to call, the second of which involves a
8 video and perhaps we could take that matter up prior to
9 the jury.

10 THE COURT: Are you saying you need to make a proffer?

11 MR. POPE: It probably would be best so we won't have
12 to run them in and out.

13 THE COURT: All right. Call your first witness.

14 MR. POPE: Your Honor, as to the proffer, it actually
15 will be the second witness.

16 THE COURT: Well, I mean call the witness, how about
17 that? I am not going to number them.

18 MR. POPE: The State would call Bob Ormseth.

19 BOB ORMSETH, being duly sworn, testified
20 as follows:

21 DIRECT EXAMINATION

22 BY MR. POPE

23 Q Mr. Ormseth, if you would, state your name and spell
24 your last name for the court reporter, please.

25 A Bob Ormseth, O-r-m-s-e-t-h.

1 Q Mr. Ormseth, where are you employed?

2 A At WCNC TV in Charlotte.

3 Q And were you so employed back in September, 1992?

4 A I was.

5 Q And what is your job with Channel 36?

6 A I am a reporter.

7 Q Okay. And did you have an opportunity on September 29,
8 1992, to cover an appearance by the defendant at the old
9 courthouse in York?

10 A Yes, I did.

11 Q And did you have an opportunity with your crew to
12 video tape that appearance outside the courthouse?

13 A Yes, sir.

14 Q And there became an incident when the defendant was
15 asked a question by the media concerning having anything
16 to say?

17 A That is correct.

18 Q And have you had an opportunity to review the tape
19 that we have here today?

20 A I have seen it in the past.

21 Q Okay. And does it accurately reflect the statements
22 that were made by the defendant that day?

23 A Yes, it does.

24 MR. POPE: Your Honor, at this time, we would ---

25 THE COURT: Do I need to come down or can you tilt it

1 a little.

2 MR. POPE: I can turn it around for you.

3 THE COURT: All right, that's good.

4 (Tape played.)

5 MR. POPE: That would be it, Your Honor. That would be
6 the proffer.

7 THE COURT: Does the defense have any questions?

8 MR. SCHUSTERMAN: I don't have any questions of Mr.
9 Ormseth.

10 THE COURT: You may step down. I am not releasing you
11 yet.

12 MR. ORMSETH: All right, sir.

13 THE COURT: Anything on behalf of the defendant?

14 MR. SCHUSTERMAN: Yes, sir. Your Honor, primarily for
15 three reasons -- You cannot hear? I'm sorry -- Your Honor,
16 for three reasons I believe that this testimony should not
17 be allowed in. Reason number one, Your Honor, is that Mr.
18 Ormseth is not on The State's Witness List. This is a tape
19 that was obviously made, according to Mr. Ormseth, on
20 September 29, 1992, and has been either in his custody or
21 Mr. Pope's custody either one or both since that time. At
22 no point when we received a witness list was it ever
23 indicated that he was on the witness list and we never had
24 an opportunity to talk with him. We were not put on notice
25 of that. Two, I have never seen the video tape before. I

BOB ORMSETH (IN CAMERA)

DIRECT

1 have not had an opportunity review it. This is a situation
2 if Mr. Pope was going to use it, I submit that it would be
3 discoverable and, as such, he has not complied with
4 discovery. And the third reason and possibly the most
5 important is that it is my understanding that in reply
6 testimony that the purpose of reply testimony is to clear
7 up any new issues that may have come up on the defense.
8 Clearly, he went through this with Officer Kitts or
9 Officer Watts, who testified to statements that Mr. Hughes
10 allegedly made on that day. Mr. Hughes, I believe,
11 yesterday denied it, so we have one person saying that it
12 was said and the next person saying it wasn't. I don't
13 believe the purposes of reply is to put up a third witness
14 so that the prosecution gets the last word, that the
15 prosecution gets the last work; it's in effect the second
16 bite at the apple. It's truly no different than putting
17 Officer Watts up there and saying now tell the jury once
18 again what Mr. Hughes said that day. That's not - it's my
19 understanding it's not a new issue and thus should not be
20 allowed in. Thank you.

21 THE COURT: All right, let me hear from The State.

22 MR. POPE: May it please the court, Your Honor? In
23 the beginning with the Witness List issue this is reply
24 testimony. We do not know what reply testimony will be
25 until we have heard the defense case, so as to the Witness

BOB ORMSETH (IN CAMERA)

DIRECT

1 List issue, that would be why it was not included.

2 As to the issue of us having this in our custody,
3 first, I submit it doesn't fall into Rule 5. Secondly,
4 Your Honor, we had no knowledge of this until this was
5 brought to us yesterday and we, in fact, acquired the tape
6 this morning. And so as far as us having it our custody,
7 as I understand Rule 5 speaks to "Statements within the
8 possession or custody or control of the prosecution the
9 existence of which . . may become known to the attorney
10 for the prosecution." Again, this was not in our custody
11 and control until this morning when we subpoenaed the tape
12 and had the tape in hand.

13 Your Honor, as to addressing the matter of reply
14 testimony, this is an issue that the defendant has
15 interjected or brought up and flatly denied that it
16 occurred and reply certain would address the fact that we
17 now have a video to show that he testified falsely on the
18 stand and that the purpose of reply is to impeach also and
19 we would have the opportunity to show that.

20 THE COURT: All right, run that last by me again. Are
21 you saying the fact that he testifies that there was
22 testimony by the Officer Watts, I believe, ---

23 MR. POPE: Yes, sir.

24 THE COURT: --- that such a statement was made and the
25 fact that he denied that, this can be brought up for

1 impeachment purposes?

2 MR. POPE: Yes, sir, to impeach - he has taken - he
3 didn't have to take the stand. He chose to take the stand.
4 He took the stand and specifically said what he had stated
5 at the courthouse that day was "I was about ten miles from
6 Charlotte when I was arrested." He clearly and
7 specifically stated that through his choice to testify and
8 so now in reply - he has brought that up and we would be
9 allowed to --

10 THE COURT: Mr. Pope, I couldn't understand, what does
11 he say in this?

12 MR. POPE: Your Honor, do you want me to play it
13 again?

14 THE COURT: No, I don't think I can --

15 MR. POPE: The essence of which is that they were
16 picked up and brought down here and cut loose in the woods
17 and told to run and, again, I can play it so that it can
18 be specific for the record.

19 THE COURT: Anything further?

20 MR. SCHUSTERMAN: Yes, sir, Your Honor. I do not deny
21 the testimony was that Officer Watts made a statement and
22 that Mr. Hughes denied the statement. My point being that
23 reply is just, all that we are allowing here is for the
24 prosecution to have the last word and it's not
25 interjecting a new -- we are not addressing a new issue.

BOB ORMSETH (IN CAMERA)

DIRECT

1 The fact is that Mr. Hughes has denied many things and on
2 the theory that The State is using they should be allowed
3 to put up everything again that Mr. Hughes refuted
4 yesterday. It's the same logic and I submit that that's
5 not what reply testimony is for. It truly is a second bite
6 at the apple.

7 MR. POPE: Your Honor, I submit that truly anything
8 that Mr. Hughes - if we wanted to take two days worth of
9 reply, we could reply to whatever Mr. Hughes - Mr. Hughes,
10 again, never had to testify, but when he did and he told a
11 version of the story, then we should be allowed to refute
12 it; that's exactly what reply is.

13 THE COURT: And how did The State become aware of this
14 yesterday?

15 MR. POPE: We had the testimony, the testimony had
16 come up and in a discussion dealing with the officer, one
17 of the media was present said, "Well, have y'all seen the
18 video?" Of course, we said that we had not and that's
19 when we set in motion, of course, with it being the
20 weekend, that's when we set in motion to attempt to try to
21 get the video.

22 THE COURT: Well, I am going to allow it in. I am
23 going to allow this reply.

24 Now, what about the other witnesses, any --

25 MR. POPE: Your Honor, I don't think there are any

BOB ORMSETH (IN CAMERA)

DIRECT

1 other issues like that on the other witnesses, Your Honor.

2 I am going to ask with the difficulty that we have had
3 with the VCR if I could have an opportunity to set it,
4 make sure that it is set up.

5 THE COURT: That will be fine.

6 MR. SCHUSTERMAN: Your Honor, so I'll be clear on the
7 ruling, the ruling is that they can play the video once?

8 THE COURT: Yes.

9 MR. SCHUSTERMAN: They will not be allowed to replay
10 it several times?

11 THE COURT: Well, is he going to offer - are you
12 offering it into evidence?

13 MR. POPE: Yes, sir, I will have it marked at this
14 time.

15 THE COURT: Well, he will play it once for the jury, if
16 it's in evidence, if it is received, the jury would have
17 the right to view it.

18 And I find that under the circumstances that the
19 failure to disclose by The State under Rule 5 that there
20 was no violation since they just became aware of it and I
21 don't find that the exercise of due diligence requires The
22 State obtain each and every media coverage of any event
23 for which a charge is made.

24 MR. POPE: Your Honor, I believe it should be ready; I
25 can't promise.

1 The State is ready, Your Honor.

2 THE COURT: All right, bring in the jury.

3 MR. SCHUSTERMAN: Your Honor, one issue. I believe Mr.
4 Pope said there was a first witness before the second
5 witness. Would the court consider proffering that
6 testimony to make sure that that's within the scope of
7 reply.

8 THE COURT: I invited that and I was told that the
9 Solicitor felt comfortable that that was not going to be a
10 problem, but ---

11 MR. POPE: I'll tell you what that is.

12 THE COURT: --- tell us the gist of that, who it is
13 and ---

14 MR. BRACKETT: Chief James Mann, the Deputy Chief over
15 at the Detention Center, who will be called specifically
16 to testify to when Felix Wimborn, the defense's first
17 witness, was in the York County Detention Center from what
18 time to what time, and how many days he was incarcerated
19 there at the same time that the defendant was incarcerated
20 there.

21 THE COURT: All right.

22 MR. SCHUSTERMAN: Thank you, Your Honor.

23 THE COURT: Bring in the jury.

24 (Jury returns to courtroom.)

25 Good morning, we have some what is called reply

1 testimony. I think I told you that The State would under
2 certain circumstances have the right to reply. It will not
3 be long. Once that is over, I'll have to excuse you for a
4 few minutes and then when you come back after that, we
5 will move into the presentation of the arguments of the
6 attorneys. As I told you these will not be excessively
7 long, but I anticipate they will be somewhat lengthy and
8 it may be that we will take a break between them so that
9 you will not have to take a break during them if they are,
10 in fact, as lengthy as I anticipate. I still think that
11 we will have this case in your hands by lunch and we will,
12 of course, under those circumstances have a lunch catered
13 here for you.

14 All right, Mr. Solicitor?

15 MR. BRACKETT: Thank you, Your Honor. The State would
16 call James Mann.

17 THE COURT: Please come around and be sworn, please,
18 sir.

19 JAMES ELBERT MANN, being duly sworn,
20 testified as follows:

21 DIRECT EXAMINATION

22 BY MR. BRACKETT

23 Q Would you, please, state your full name and tell us
24 where you work?

25 A James Elbert Mann. I work for the York County

1 Sheriff's Department Detention Center.

2 Q What do you do with the Detention Center?

3 A Assistant Jail Administrator.

4 Q How long have you been in that position?

5 A About two years and eight months.

6 Q You were so employed back in 1993?

7 A Yes, I was.

8 Q Have you in your position as chief over the Detention
9 Center do you have access to the records of inmates and
10 when people were incarcerated and so forth?

11 A Yes, I have.

12 Q Have you examined the records to determine when an
13 individual named Felix Wimborn was incarcerated at the
14 Detention Center?

15 A I have.

16 Q Can you tell us when he was admitted if at all in the
17 year 1993?

18 A In 1993 he was admitted April 2nd of '93 and released
19 April 26th of '93.

20 Q Have you got the records of when Mar-Reece Hughes --

21 A I have.

22 Q Have you examined those records?

23 A Yes, I have.

24 Q How many days was Felix Wimborn in the Detention
25 Center at the same time Mr. Hughes was?

1 A Ten days.

2 Q Was there any time in February of 1993 when Felix
3 Wimborn was in the Detention Center?

4 A No, he was not.

5 Q Thank you very much. Please answer any questions
6 defense counsel may have.

7 CROSS EXAMINATION

8 BY MR. SCHUSTERMAN

9 Q Mr. Mann, if I understand what you are saying, that
10 according to your records there was a ten day overlap
11 where both Mr. Wimborn and Mr. Hughes were inmates, is
12 that correct?

13 A That's correct.

14 Q And can you tell me was Mr. Wimborn, in fact, for
15 those ten days housed in Cell Block C?

16 A Yes, he was.

17 Q And during those ten days was Mr. Hughes housed in
18 Cell Block C?

19 A Yes, he was.

20 Q Thank you, Mr. Mann, I appreciate your being here.

21 MR. BRACKETT: Nothing further, Your Honor.

22 THE COURT: You may step down. You can be excused,
23 thank you.

24 MR. POPE: The State would call Bob Ormseth.

25

BOB ORMSETH

DIRECT

1 BOB ORMSETH, being duly sworn, testified as
2 follows:

3 DIRECT EXAMINATION

4 BY MR. POPE

5 Q Mr. Ormseth, if you would, state your name and
6 occupation for the jury, please.

7 A Bob Ormseth and I am a reporter at WCNC TV in
8 Charlotte.

9 Q Mr. Ormseth, how long have you been employed with
10 WCNC?

11 A Eight years.

12 Q Were you employed with them back on September 29th of
13 1992 when the defendant was taken to the courthouse, the
14 old courthouse?

15 A Yes, I was.

16 Q Did you have an opportunity to cover that as part of
17 your job?

18 A I did.

19 Q And were you, in fact, present when he was transported
20 from the car into the courthouse when the media asked if
21 he had anything to say?

22 A I was.

23 Q And were you privy to statements he made in regards to
24 how he was captured or something of that nature?

25 MR. SCHUSTERMAN: Objection, Your Honor, leading.

1 THE COURT: I sustain the objection. Rephrase your
2 question.

3 Q Were you privy to any statements that were made?

4 A Yes, sir.

5 Q And were they recorded on video by yourself and your
6 crew?

7 A By my photographer, yes.

8 Q Have you had an opportunity to review or to see played
9 State's Exhibit 79?

10 A Yes, sir.

11 Q Does it accurately reflect what you heard and saw that
12 day?

13 A It does.

14 MR. POPE: Your Honor, at this time we move State's
15 Exhibit 79 into evidence.

16 THE COURT: Over objection it is received.

17 (State's Exhibit 79 marked and filed.)

18 Your Honor, at this time we would play State's Exhibit
19 79.

20 (State's Exhibit 79, Video Tape, played.)

21 Q Does that accurately reflect the statement you heard
22 Mr. Hughes make that day?

23 A It does.

24 Q Okay, answer any questions the defense may have.

25 MR. SCHUSTERMAN: I have no questions of Mr. Mann,

THE STATE VS HUGHES

1 thank you.

2 THE COURT: You may step down and be excused. Thank
3 you.

4 Anything further?

5 MR. POPE: That would be The State's case, Your Honor.

6 THE COURT: Even though you have only been in here
7 briefly I have to take up certain legal matters at this
8 point. The trial has certain stages and we are at that
9 point of progression where I have to take up some legal
10 matters. I don't think that that should take too long, but
11 when you come back, we will be here for a duration of at
12 least one if not both of the arguments of counsel. So go
13 to the jury room just for a few minutes.

14 (Jury retires to jury room.)

15 Mr. Schusterman, any Motions?

16 MR. SCHUSTERMAN: Yes, sir, Your Honor. Now at the
17 conclusion of The State's reply witnesses we would renew
18 our Motion for a Directed Verdict of acquittal for all the
19 reasons that were articulated during the prior stages of
20 the trial.

21 THE COURT: That Motion is denied.

22 MR. SCHUSTERMAN: Your Honor, I understand that you
23 have admitted the tape into evidence. I would submit
24 though, Your Honor, that I believe that there is more on
25 that tape than just that one blur; I think that Mr. Pope

THE STATE VS HUGHES

1 turned it off fairly quickly. I would submit that if the
2 jury wants -- that the jury should know that it is in
3 evidence and that they are welcome to view it, but I
4 believe that they should if they want to view it again
5 view it out in court so that we can control.

6 THE COURT: I think that's a reasonable request.

7 MR. POPE: Your Honor, I have no objection. Also, I'm
8 willing to have one of the officers go over it with Mr.
9 Schusterman to make sure there isn't anything inadvertent
10 on the tape.

11 MR. SCHUSTERMAN: I just heard voices afterwards. It
12 may or may not be relevant. I thought just out of an
13 abundance of caution certainly they can as many times as
14 they want, but I think they should do it in here with some
15 court official and Mr. Pope controlling the play and pause
16 switch.

17 THE COURT: All right.

18 MR. POPE: I have no objection. Again, we'll do both.
19 When we get through, we will review it and make sure that
20 there's nothing that would need to be switched.

21 THE COURT: Anything from The State?

22 MR. BRACKETT: Your Honor, we handed up to the court a
23 series of charges we would request be given in this case.
24 In addition to that, it was mentioned briefly yesterday
25 the possibility of a charge on accessory after the fact

THE STATE VS HUGHES

1 and I would like to be heard on that issue, if I may.

2 THE COURT: Let's first go through - have you given
3 them to the defense?

4 MR. BRACKETT: Yes, sir.

5 THE COURT: In the future please number these so we
6 will all know which one we are referring to.

7 MR. BRACKETT: Yes, sir. I apologize.

8 THE COURT: I numbered mine in the way you handed them
9 up.

10 MR. BRACKETT: That's just one of the things in the
11 hurly burly I overlooked.

12 THE COURT: All right. Request to Charge Number 1 I
13 have "Murder is an unlawful killing of any person." What
14 says the defense as to that particular request?

15 MR. SCHUSTERMAN: Your Honor, maybe it would be easier
16 if I tell you that there are only two charges that I have
17 an opposition to.

18 THE COURT: All right, which one is that?

19 MR. SCHUSTERMAN: I don't know what the numbers are.
20 One is the charge that under the theory of accomplice
21 liability it is immaterial whether one codefendant knew
22 beforehand that the other codefendant was going to shoot
23 the victim. Accomplice liability applies to murder which
24 is a natural and probable consequence of armed robbery.

25 MR. BRACKETT: I think the law is clear on that, Your

THE STATE VS HUGHES

1 Honor.

2 THE COURT: State vs Longworth

3 MR. SCHUSTERMAN: State vs Bell.

4 THE COURT: I'm just trying to make sure we are on the
5 same one.

6 MR. SCHUSTERMAN: Yes, sir, that's the charge I am
7 referring to, Your Honor. And that the murder here there
8 is no evidence that the murder is a natural and probable
9 consequence of the armed robbery. That phrase in and of
10 itself implies that the purpose of this stop was armed
11 robbery and the armed robbery occurred prior to the murder
12 and that's not the facts here even taking the facts in the
13 light that The State addresses that Mr. McCants was on the
14 ground, had been wounded and then the walkie-talkie was
15 taken.

16 THE COURT: Well, could not the jury consider and
17 determine that the purpose in Mr. Forney shooting the
18 officer was to effect an armed robbery? We don't know
19 why, I mean, assuming that Mr. Forney was the shooter,
20 under your theory, how can we determine when -- they
21 didn't stop the officer from any version that I've heard,
22 but once the officer was stopped, could the jury not
23 conclude that whoever did the shooting did it with the
24 purpose of getting the walkie-talkie?

25 MR. SCHUSTERMAN: Isn't that, Your Honor, putting the

THE STATE VS HUGHES

1 cart before the horse? I mean, there's no testimony that
2 there's -- we are hypothesizing that -- I would submit the
3 jury would have to say that the purpose of the wounding
4 was to garner the walkie-talkie and there's no evidence of
5 that. I mean we are injecting ---

6 THE COURT: There is circumstantial evidence. They
7 shot him and then they took it. Somebody shot him and then
8 somebody took it. I'm going to charge; I'm going to give
9 a charge along this line. You are on record as opposing
10 it.

11 MR. SCHUSTERMAN: Thank you.

12 THE COURT: Which is the other one?

13 MR. SCHUSTERMAN: The other one was the one citing
14 State v Johnson and State v Crowe.

15 THE COURT: All right.

16 MR. SCHUSTERMAN: "If two or more parties combine
17 together to commit an unlawful act and in the commission
18 of that act one party commits a homicide that is a
19 probable and natural consequence thereof or present and
20 participating in the unlawful act are as guilty as the one
21 who committed the homicide." I think that that charge is
22 covered in, if I read - if you are planning to charge what
23 you charged in the Forney trial, then ---

24 THE COURT: I am not going to charge it twice. What I
25 am going to do - I've already gone over it earlier this

THE STATE VS HUGHES

1 morning - these were just handed to me shortly before I
2 came in and I did not get to those last two. Actually, all
3 the other ones I had already looked over and determined
4 that they were covered or I have put them into the charges
5 I was going to give. I hadn't gotten to these two. As
6 luck would have it those are the two that you had some
7 concerns about. I'm not going to charge it twice. I am
8 going to charge the principle. It may not be in this exact
9 language, but I will charge the principle. Your concern
10 though is not that it is a wrong principle of law, but
11 rather that you don't want it said twice.

12 MR. SCHUSTERMAN: Said twice and also I have a concern
13 that if you start referring specifically to the homicide
14 as -- when I read the Forney charge, you bring that out as
15 a theory of law. It clearly is a theory of law,
16 accomplice liability, there's absolutely no doubt that
17 they could even Mr. Hughes not being the shooter they
18 could find him guilty as an accomplice to it. I think that
19 when you start giving the charges like this talking
20 specifically about homicide in the commission of armed
21 robbery, I think that you are taking the position of a
22 prosecution; I don't think that is necessarily an
23 objective charge to the jury, but it is a charge that is
24 tailored directly factually not legally.

25 THE COURT: Well, I'm not sure that's correct. What do

THE STATE VS HUGHES

1 you suggest we substitute in place of "When one party" ---

2 MR. SCHUSTERMAN: I've read the charge that you gave
3 in the Forney trial when you talked about the principle of
4 law being the hand of one is the hand of all, but I don't
5 believe in that particular case in that charge you spoke
6 specifically of a robbery and a natural consequence
7 thereof being a homicide. I don't believe that that was in
8 your Forney charge and I'm just saying that I think that
9 at some point while the theory is correct, I think it is
10 getting too fact specific for the court to charge that.

11 THE COURT: Well, I will charge, in essence, the legal
12 principle whether I charge in exactly those words. I'll
13 have to look and see what I already have.

14 MR. BRACKETT: Yes, sir. We would for the record
15 specifically -- this does address the question of probable
16 and natural consequences, which is the principle of law
17 that distinguishes this from the hand of one is the hand
18 of all. Where they are conspiring to commit an act, one
19 person might not intend that the other get hurt, but if it
20 is a probable consequence and they do, in fact, get hurt,
21 he is responsible.

22 THE COURT: I think that's covered, but I'll make sure
23 one way or the other.

24 MR. BRACKETT: Yes, sir. Thank you, Your Honor.

25 MR. SCHUSTERMAN: I think you wanted -- didn't you

THE STATE VS HUGHES

1 want to be heard on accessory after the fact?

2 MR. BRACKETT: Yes, sir.

3 THE COURT: All right.

4 MR. BRACKETT: And I apologize that I have not had
5 time to photocopy this. I have the Southeastern Reporters
6 here which address the issue. Your Honor, I would refer
7 your attention to 302 SE2d 338 THE STATE VS ARTHUR EDWARD
8 SUTTLES under key note 2. The Supreme Court outlines the
9 test for determining when a crime is a lesser included
10 offense of the crime charged and they specifically say
11 "The test for determining when a crime is a lesser
12 included offense of the crime charged is whether the
13 greater of the two offenses includes all the elements of
14 the lesser offense." Then in STATE VS I believe it's
15 LEGGETT, the cite is 330 SE2d 293, STATE VS JAMES LEGGETT,
16 the Supreme Court outlines what the elements of the
17 offense of accessory after the fact of a felony are. "(1)
18 The felony has been completed. (2) The accused must have
19 knowledge that the principal committed the felony; and (3)
20 the accused must harbor or assist the principal felon
21 after the felony is concluded." If the lesser offense
22 must contain all of the elements of the greater offense in
23 order to be accessory after the fact or in order to be a
24 lesser included offense, I would submit that accessory
25 after the fact in this case, after the fact of murder,

THE STATE VS HUGHES

1 they cannot be because the elements of must harbor or
2 assist the principal felon is not an element of murder.
3 "The accused must have knowledge that the principal
4 committed the felon." That's not an element of the
5 offense of murder. And, certainly, "the felony must have
6 been completed." That's not an element that the unlawful
7 taking of a life, but there is no - under no theory could
8 accessory after the fact under the Rule that is laid out
9 in SUTTLES that it must include all the elements of the
10 greater offense, there's no theory under which accessory
11 after the fact could be a lesser included offense.

12 THE COURT: Let me hear from the defense.

13 MR. SCHUSTERMAN: Your Honor, I believe when you talk
14 about accessory after the fact of a felony that phrase in
15 and of itself is an umbrella, it is not - accessory after
16 the fact of a felony is not specific to any one criminal
17 offense; that it's never going to list all the elements of
18 every felony that could possibly be; it's an umbrella.
19 Under the phrase "after the fact" or "the fact of a
20 felony," would encompass any felony with which you put
21 under that umbrella. If not, then the statute would have
22 to be - the statute would have to be written to encompass
23 every element of every felony that we have in South
24 Carolina or else it would never be charged.

25 THE COURT: Well, I don't completely agree with that

THE STATE VS HUGHES

1 because this offense does not exist, if that's the right
2 word, until a felony whatever the felony has been is
3 completed. Isn't that basically what you are saying, Mr.
4 Brackett?

5 MR. BRACKETT: Yes, sir. There can't be any accessory
6 after the fact until there is --

7 THE COURT: I did charge this in the Forney case, but
8 based on the case law that's been related to me, I find
9 that lesser included offenses in this case of either
10 murder or armed robbery and so I'm going to strike that
11 from my charge and the verdict form.

12 MR. BRACKETT: Thank you.

13 MR. SCHUSTERMAN: Thank you, Your Honor.

14 THE COURT: All right, before we take a short break,
15 Mr. Hughes, I want to remind you - can you hear me?

16 MR. HUGHES: Yes, sir.

17 THE COURT: All right, I want to remind you that you
18 and your counsel have the right to the last argument in
19 this phase of the trial and that you, in addition to your
20 attorney, have the right to make a statement to the jury.
21 As I have told you before, that does not mean if you wish
22 to make a statement that your counsel can't. Your counsel
23 can make a statement, argument, and then you can yourself
24 make one. Do you understand that?

25 MR. HUGHES: Yes, sir.

THE STATE VS HUGHES

1 THE COURT: Do you have any questions of me concerning
2 that?

3 MR. HUGHES: No, sir, I don't.

4 THE COURT: Have you decided whether you wish to make
5 an argument or not?

6 MR. HUGHES: Yes, sir, I won't.

7 THE COURT: You will not.

8 MR. HUGHES: Yes, sir.

9 THE COURT: Okay, all right. Have you discussed that
10 with him Mr. Schusterman and Ms. Brice?

11 MR. SCHUSTERMAN: Yes, sir.

12 MS. BRICE: That's correct.

13 THE COURT: All right, well I find that Mr. Hughes is
14 freely, voluntarily, knowingly and intelligently waiving
15 his right to personally make an oral argument to the jury
16 in this the guilty phase of this bifurcated death penalty
17 trial.

18 All right, let's take about two or three minutes and
19 then we will come back.

20 How much time does The State believe that they need?

21 MR. POPE: Your Honor, I think what we are going to do
22 is Mr. Brackett will open on the law and then I think
23 probably a total I'd say an hour at the most. I normally
24 take about thirty minutes, Mr. Brackett maybe fifteen
25 minutes, and so I'd say an hour at the most for The State.

THE STATE VS HUGHES

1 THE COURT: How about the defense?

2 MR. SCHUSTERMAN: I can't imagine arguing more than
3 thirty or forty minutes, Your Honor.

4 THE COURT: Well, we will take a break between
5 arguments just out of an abundance of caution because I
6 would rather them have a break even if it's only two or
7 three minutes just to get refreshed between arguments and
8 then again before we charge.

9 All right, now I am going to have the verdict forms
10 basically prepared now and I will certainly give counsel
11 an opportunity to review it before they are submitted.

12 All right, we will take a short break.

13 MR. SCHUSTERMAN: One evidentiary matter? One matter?
14 I know you agree that the video tape should not go back.
15 Is your ruling the same as with regards to the cassette
16 tape?

17 THE COURT: No, I am going to allow the cassette to be
18 taken back and played if they wish.

19 MR. SCHUSTERMAN: But they will not have the
20 transcript back there?

21 THE COURT: They will not have the transcript.

22 MR. SCHUSTERMAN: And am I to understand that on that
23 reproduction that I think it was Mr. Gibson made that the
24 only transmission on there is that two minute period or --

25 THE COURT: That was my understanding. Is that

THE STATE VS HUGHES

1 correct?

2 MR. POPE: Yes, sir.

3 MR. SCHUSTERMAN: Thank you.

4 MR. POPE: And, again, if Mr. Schusterman feels it is
5 necessary, we can review it.

6 THE COURT: If you want to listen to it, --

7 MR. SCHUSTERMAN: I believe the Solicitor.

8 THE COURT: Okay.

9 (Recess.)

10 Is The State ready?

11 MR. BRACKETT: The State is ready, Your Honor.

12 THE COURT: The defense?

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

14 THE COURT: Bring in the jury.

15 (Jury returns to courtroom.)

16 Members of the Jury Panel, you will now hear the
17 arguments of the attorneys. The State -- well, is the
18 defense going to open?

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

20 THE COURT: All right. The State will go first and
21 the defense will have the right to go last. What the
22 attorneys tell you is not evidence, as I told you earlier
23 I believe. If they make a statement as to a recall of
24 some testimony or some evidence, you remember what was
25 actually said and seen during the trial. I don't think

THE STATE VS HUGHES

1 they would misstate something, if they did it would be
2 inadvertent, but you go by what you recall. They most
3 probably will outline for you some legal principles and we
4 have discussed those and they will probably be telling you
5 correctly the principles; they may, if they were to
6 inadvertently give you those principles that you later
7 don't hear me charge to you, disregard what they have told
8 you about the law because as I have told you before I am
9 the sole judge of the law in this case and you will have
10 to take, accept and apply the law as I charge it to you.

11 All right, Mr. Brackett?

12 MR. BRACKETT: May it please the court? Good morning,
13 Ladies and Gentlemen, I am going to speak to you very
14 briefly about the law that applies to this case and as His
15 Honor has just told you, he is the judge of the law. If
16 anything I say you don't hear from him as he just said
17 disregard it or if something I say is different from what
18 he says somehow, then take the law as he applies it to
19 you. He is the judge of the law in this case and I am not
20 the judge and I have my understanding of the law and I am
21 going to tell you what my understanding of the law is as
22 it applies to this case, as it applies to these charges.

23 Mar-Reece Hughes is, of course, charged by Indictment
24 93GS46-4296 with murder and that is the most serious of
25 these offenses and that's where I will be spending the

THE STATE VS HUGHES

majority of my time.

He is also charged in 93GS46-4305 indictment for armed robbery and possession of a firearm during the commission of a violent crime. Armed robbery is a violent crime.

He is also charged in indictment 93GS46-4304 with a charge of criminal conspiracy in that he did conspire with one Dwayne Eric Forney to commit the crimes of murder and armed robbery.

And, finally, he is charged with 93GS46-4303 with the charge of possession of a stolen vehicle. The charge that you heard the defendant admit he was guilty of yesterday on the stand.

I want to speak to you about several principles of law that are particularly important in this case. The first and most important principle of law in any criminal case is the concept of reasonable doubt. The judge is going to charge you and you will hear probably twenty-five times during his charge beyond a reasonable doubt, satisfy you beyond a reasonable doubt, beyond a reasonable doubt this, beyond a reasonable doubt that. It is a very important principle. It is the burden of proof in this case and it is the highest burden of proof in any legal dispute when we have to prove something. But beyond a reasonable doubt should not be construed by you to mean beyond all doubt. Nothing can ever be proven beyond all doubt. If you are

THE STATE VS HUGHES

1 trying to prove something that happened even yesterday or
2 a year ago or ten years ago, you can't prove it beyond all
3 doubt. Beyond a reasonable doubt. When I spoke to you at
4 the outset, I told you that the most important tool that
5 you brought with you as you sit in the jury box you may
6 have been afraid I'm not equipped to hear a criminal case;
7 I don't know the law; I'm not familiar with what's going
8 to happen here. But you all have the most critical tool
9 that you need to decide this case and that is your common
10 sense. Each of you brings to this jury box your years of
11 experience and education and training, the years that you
12 have lived and you have gleaned dealing with people, and
13 you have through all those years built up a reservoir of
14 common sense and it is your collective common sense that
15 is going to decide this case. When you retire to
16 deliberate on this, you must summon all of your common
17 sense, sit down together, review the evidence that's being
18 presented and decide what are the true facts in this case.
19 The term "reasonable doubt" contains in it the word, the
20 most important word that you use in deliberating. You use
21 your "reason." Sit down and look at the evidence and
22 think about the evidence, compare the evidence. The judge
23 is going to charge you that when you are comparing the
24 evidence you can compare the testimony of one witness
25 against the other, one witness against many, you can

THE STATE VS HUGHES

1 believe one witness against many or many against one. You
2 can believe part of what a witness says and disregard the
3 rest of it or you can believe nothing that a witness says
4 or you can believe everything that he says, but you all
5 have to sit down in the jury room and make that decision
6 yourselves using your common sense and using your reason.

7 The charge of murder is defined as the unlawful taking
8 or killing of another person with malice aforethought. The
9 first part of that is pretty easy to understand, the
10 unlawful killing or taking of a human life. We all know
11 what that is. Malice aforethought you might wonder what
12 exactly is malice. Malice is not something that I can
13 show you a picture of. Malice isn't something that I can
14 play a tape and you can hear it and know what malice is.
15 Malice is a condition of the human spirit. Malice is a
16 condition of the human heart. Malice is indicative, malice
17 is found in a heart that is fatally bent on mischief, a
18 heart that's devoid of any social conscience or reason, a
19 heart that doesn't care about the consequences of his
20 actions, a heart that is unconcerned with other people's
21 wants or needs, a malignant, foul, evil heart. And malice,
22 Ladies and Gentlemen, malice can occur in the blink of an
23 eye. Malice is not necessarily pre-meditation, lying in
24 wait. Malice can be there for hours before or it can be
25 there the second before they strike the fatal blow because

THE STATE VS HUGHES

1 it's, as I said, a condition of the human spirit; it is
2 something that can overcome somebody in the fraction of a
3 second. That is what malice is. And you are going to have
4 to make a determination whether there was malice in this
5 case and I submit to you, Ladies and Gentlemen, that the
6 evidence is overwhelming on that point. This case is ripe
7 with malice from the moment they acquired the car, when
8 they came down to Rock Hill, South Carolina. There was no
9 concern for anybody else's wants or needs, no concern for
10 the consequences of their actions. This case is ripe with
11 malice. It is spilling over the top.

12 The judge will also charge you that you can derive or
13 there is a rise given to the existence of malice when you
14 find that someone uses a deadly weapon in the course of
15 the commission of murder. It is an inference only, which
16 you are free to accept or reject, just like any other
17 evidentiary fact, but you can find just by the fact that
18 they used a deadly weapon that there is malice in this
19 case, the fact that Mr. Hughes shot with a gun Brent
20 McCants is enough to give rise to the inference of malice
21 and the judge will charge you and I'm sure the common
22 sense I referred to earlier makes clear to all of you that
23 a 9 millimeter pistol is a deadly weapon. There is no
24 doubt about that.

25 The judge will also charge you that a person is

THE STATE VS HUGHES

1 responsible for the reasonable, the probably natural
2 consequences of their actions. This is I'm going to
3 describe exactly what I mean by that and then I'm going to
4 discuss accomplice liability. These are two different
5 concepts. If I, along with three other people, decide we
6 are going to rob a bank and I say we get together and we
7 plan it and we decide that we are going to put a bunch of
8 dynamite in a bag with a remote control device on it that
9 I can blow that place up from anywhere I want and I go in
10 there and I hide the bag and I say give me the money or
11 I'm blowing the bank up, I've got the remote control
12 device out there, it's in the hands of a friend, I assume
13 that I never intended to blow that bank up. I never
14 intended to hurt anybody. If they told me, no, we are not
15 going to give you the money, you are not going to get one
16 red cent from us, get out of the bank, assume for just a
17 second it was my intention to turn around and leave and
18 never blow that bank up. And, in fact, they tell me that.
19 I go in there and I say there's a bomb in that bag, give
20 me a billion dollars and they say, beat it. I turn around
21 and I go in the car and I say, okay, we are not going to
22 blow the bank up, they wouldn't give me any money and as I
23 get in the car, my elbow hits the button and that bank
24 blows up and everybody inside it dies. By putting a bomb
25 in the bank, by strapping a bunch of dynamite together and

THE STATE VS HUGHES

1 putting a timer on it and a remote, you are creating a
2 dangerous situation and it is reasonable that would of the
3 probable and natural consequences of sticking a bunch of
4 dynamite in an inhabited building is that dynamite could
5 blow up and it could blow up when you set it down and you
6 could kill somebody and you are responsible for it and
7 it's murder. It's murder. Even though I never intended
8 to blow it up, it's murder and I'm guilty.

9 Accomplice liability by contrast is when two people
10 get together to commit an unlawful act or three people get
11 together to commit an unlawful act and one person in the
12 course of doing that unlawful act kills another person,
13 each person is as responsible as the other for that
14 unlawful act. Each is as guilty as if they had been the
15 one that killed the person and each person is guilty of
16 murder because the hand of one is the hand of all. You
17 can't say that he did it; he's the one responsible; I'm
18 not responsible. You can't do that. If you conspired and
19 combined to do an unlawful act, then you are responsible
20 for the actions of each of the people involved. You are as
21 responsible as the man who pulled the trigger. I submit
22 to you Mar-Reece Hughes pulled the trigger that night. I
23 submit to you Mar-Reece Hughes is guilty of murder. Even
24 if you don't believe that, there is no question, there is
25 an abundance of evidence which indicates they were

THE STATE VS HUGHES

1 together and in on it from the very beginning of the evil
2 starting from Charlotte and coming down, from the minute
3 they got together. Each of them is responsible as the
4 other for what happened to James Brent McCants on
5 September 25th, 1992.

6 Mr. Pope is going to get up and address this case is a
7 little more detail. He is going to discuss the facts with
8 you. I just want to leave you to where I found you when I
9 first started off talking about reasonable doubt. There
10 are chairs in that jury room. There are chairs in there
11 for a reason, so that you can sit down and reason out what
12 is justice in this case. If you were just supposed to go
13 in there and make a split decision, they wouldn't put
14 chairs. You all would just walk in there, stand in there,
15 take a look, come back in. Sit down, sift through this
16 evidence, look at the diagrams, look at the photographs,
17 think about what people say and ask yourself is this
18 possible, could this have happened this way. I submit to
19 you, Ladies and Gentlemen, there is absolutely no
20 reasonable doubt, none, that Mar-Reece Hughes is guilty of
21 the murder of James Brent McCants. Thank you very much.

22 MR. POPE: May it please the court? Ladies and
23 Gentlemen, this is the first time I have had the
24 opportunity to address each and every one of you and it
25 sounds so cliché to say we appreciate your being here, you

THE STATE VS HUGHES

1 are not from around here and all of that, but we don't
2 take lightly what we do here in this courtroom, neither
3 side takes lightly what's being done, certainly the
4 families involved don't take lightly the job you all have
5 to do. And so when we talk about the different things and
6 remember we talked about life and death and all the
7 penalties and all the questions and there were some high
8 times and some low times in the courtroom when we talked
9 to you, we didn't take it for granted what you are doing.
10 So all I'm saying and I'm sure the defense feels the same
11 way we appreciate the time you have spent. It is not easy
12 to be taken away from your home and we realize that the
13 job you have to do here today is a serious job. And we
14 talked before about the bifurcated trial and the penalty
15 and all of this stuff and as Mr. Brackett said at the
16 beginning what we are looking at here now is the fact of
17 guilty or not guilty. That's all we are looking at now.
18 That's all you need to concern yourself with, not looking
19 at what the penalty should be down the road.

20 What I would like to do with you, Mr. Brackett has
21 talked to you about the law, again, as he said, as the
22 judge said, and I'll say again, both on the law and on the
23 facts as I get up here and I start talking about the
24 evidence and I start talking about what came from that
25 witness stand I'm human too. I've heard what you heard and

THE STATE VS HUGHES

1 I remember what you remember, but I am not the jury. So
2 what you hear and what you heard and what you bring from
3 this evidence and what you bring from the video, from what
4 you bring from anything you have seen if I tell it wrong,
5 I'm telling you in advance I don't mean to do that. I
6 don't mean to do that. What we are here to do is seek the
7 truth. It's not a game where we try to pull one over on
8 the defense or try to trick you all or persuade you all a
9 certain way, we are here to speak the truth. So if at any
10 time you say, hey, the Solicitor was saying so and so, but
11 that's not the way I remember it, I want you to take the
12 way you remember it, the way each of you remember it and,
13 again, I would apologize in advance for doing so.

14 Ladies and Gentlemen, Mr. Brackett has talked about
15 malice in this case. He has talked about the hand of one
16 is the hand of all and all of these things tied in
17 together and the judge will give you that. What I would
18 like to do is start up in North Carolina when this whole
19 course began, when the whole ball started rolling, and
20 ended up coming down the interstate ultimately resulting
21 in this weapon gunning down Brent McCants on Dave Lyle
22 Boulevard.

23 Ladies and Gentlemen, the first time we even know
24 anything about this weapon, the first time we hear
25 anything about this weapon chronologically time-wise is

THE STATE VS HUGHES

1 from Lt. Perry. You all remember Lt. Perry, the gentleman
2 from North Carolina that came down that ended up that had
3 met Mar-Reece in prison, was a friend of Mr. Hughes. Lt.
4 Perry told about getting that call that night. Remember,
5 the one that Mr. Hughes said Law Enforcement was making
6 all of this stuff up, but you remember that Mr. Perry told
7 you about getting that call that night, the night that
8 Mar-Reece was arrested. Well, when Law Enforcement then
9 talks to him, he tells about a time a couple of weeks
10 before when Mar-Reece Hughes was staying at his house and
11 shows him this gun. Mar-Reece shows him this gun two weeks
12 prior. Mar-Reece sat there on the stand yesterday and he
13 told you that he got this as soon as he got this out of
14 prison. He wanted it for his own protection. Well, what
15 was the couple of things he tells Lt. Perry? One, why
16 does it not have any grips on it? Why does it not have any
17 grips on it? So you get that thing going and it jams, you
18 can unjam it and keep on going. That's what Lt. Perry said
19 and that's what Mar-Reece Hughes said from this stand.
20 Mar-Reece Hughes knew how to use this weapon and he had
21 even modified it to make sure it never left his hand,
22 make sure it never hung up on him.

23 What's the next thing he did when he got through with
24 Lt. Perry? Lt. Perry handled the weapon. He took a rag
25 and he wiped it off, wiped his fingerprints off. Said you

THE STATE VS HUGHES

1 never know what's going to happen down the road, never
2 know what might happen.

3 And when is the next time we see that weapon? It is
4 when Sean McMillan, a college student with his girlfriend,
5 the first witness you heard, Beth Ann Jayne and Sean
6 McMillan, see Forney and Hughes coming around the corner.
7 Now we went to great lengths during this case to have
8 photo IDs, to describe clothing, to tell all these things
9 to show that these witnesses, the witnesses in Charlotte,
10 the witnesses down here, Tim Sanders at the Holiday Inn,
11 identified these two men, that these two men were
12 together. And now the defense doesn't dispute -- it's kind
13 of like that night at the police station you remember
14 Captain Cabaniss testifying and he'd say Mar-Reece would
15 tell us a little bit, first he said he was dropped off and
16 then we'd show we knew a few more facts and then he wasn't
17 dropped off and then he had gone to the movie, we'd show a
18 few more facts and then he was out here and each time it
19 changed. I submit that that is what this defendant has
20 done from day one and that's what he continues to do and
21 that's what he did yesterday from the stand. If we would
22 come up with another piece of evidence that said the car
23 was purple, he'd have a way to say how the car was purple.
24 So now he tells us after we are able to show that he had
25 that gun, oh, yeah, I had that gun, I sold it, I sold it,

THE STATE VS HUGHES

1 I sold it to Forney a week before for Forty-Five Dollars,
2 still had the Forty-Five Dollars. Ladies and Gentlemen,
3 when you get back here and look through his personal
4 effects, find that Forty-Five Dollars. It's not in there.
5 The reason it is not in there is I submit to you that that
6 day they went out to just go to rob people. What was it he
7 said? Go make some money. And, again, I want you to
8 remember how you heard it. But when Hughes sat here on the
9 stand and he was calm and well-rehearsed and when he sat
10 here on the stand, he told us two different stories about
11 something as subtle as getting together. The first time
12 when he went through with Mr. Schusterman, he had seen
13 Forney and they were going to meet that evening, they were
14 going to meet that evening to go make some money, to go
15 rob some people. But then when I came back on direct, you
16 were going to meet him, you had a plan, well, then
17 suddenly, it kind of wasn't a plan, suddenly, they kind of
18 met up. I submit to you they got together to set this
19 ball in motion, this course of conduct to just go out and
20 rob people. You remember I asked him, well, who do you
21 decide, how do you pick, oh, we just go do it. I submit
22 that this man and Mr. Forney had gone wild. They don't
23 care whose rules they follow, the only rules they follow
24 are the rules of that gun and what they want to do. They
25 put Sean McMillan on the ground. Well, Mr. Hughes said,

THE STATE VS HUGHES

1 oh, Mr. Forney was clearly the aggressor. That just came
2 out of the blue, Mr. Forney was clearly the aggressor.
3 When you look in the light of all of the other statements
4 the defendant has made, all the different things, on this
5 video, and you'll have the opportunity - I know that went
6 by pretty quick - you can ask to see this again; you can
7 ask to listen to this tape. All this evidence, you think,
8 well, I think that's what they said, you can hear it
9 again, you can look at it again. When he went through
10 this whole thing, each time he modified, he keeps turning,
11 turning it just a little bit. I submit to you that when
12 they were in Charlotte and had that college student on the
13 ground and he brought the other girl around, they were
14 acting in concert. He said himself he was going to get
15 part of the benefits and, certainly, it was obvious that
16 he did because he was riding around in the stolen car, so
17 they headed toward Rock Hill. Remember, Beth Ann Jayne,
18 she was the one that wasn't on the ground, she was the one
19 that was able to see. What did she see this gun, where
20 did this gun go, did Mr. Forney put it in his pocket? She
21 said when I saw him he put the gun down between the seat
22 on the bench seat.

23 They come down to Rock Hill and they go to the movie.
24 There is some testimony that indicated possibly that Eric
25 was going to rob the theater and then it ended up that,

THE STATE VS HUGHES

1 no, they weren't, they were just going to go to the movie.
2 So that wandered around in there about fifteen or twenty
3 minutes and left. Do you recall when Mar-Reece talked to
4 Captain Cabaniss about the movies? First, he didn't know
5 anything about a movie. Suddenly, when he has got two
6 people that can identify him at the theater, oh, yeah, we
7 went to a movie. Again, that's what I'm saying. That's
8 what you see throughout the whole defense case. Each time
9 we can prove something, then it moves forward, it changes,
10 it alters just a little bit to make it fit into what we
11 can prove and still have Mar-Reece doing nothing.

12 They leave and they came back and of all the
13 statements, of all the times we have heard things, the
14 first time we ever heard Mar-Reece Hughes, and don't get
15 me - he never had to testify, he never has to prove
16 anything, but he chose to testify, and with all of the
17 statements and all the different things you've heard, of
18 course, he denies, but all the things he told Law
19 Enforcement who was the driver? Forney. When does
20 Mar-Reece Hughes become the driver? Is it during some of
21 this part (demonstrating), it was after the SLED agent
22 puts him driving. Each time he is turning, he's turning
23 it, he's turning it just a little bit. So now we have got
24 him driving and they pull over and Brent McCants makes the
25 stop. Ladies and Gentlemen, you will have these pictures

THE STATE VS HUGHES

1 back there with you. These pictures of the stop.
2 Remember the SLED agent told us about these cones and how
3 there were five bullets over here where the body was or
4 five casings where the body was, two out here on the
5 roadway? When you get back there and look, remember what
6 he said. The defense got up here and they now admit
7 Mar-Reece was driving. Mar-Reece is driving, The State's
8 going to say the driver did it, let's see, okay, we've got
9 these pictures, this is how it happened. This is how it
10 happened. Now this is how it happened. Mar-Reece got out
11 of the car and he is standing out of the car, Forney
12 slides over and shoots him. Do you remember I got up and
13 I was very careful not to put words in Mr. Hughes' mouth,
14 yesterday we sat this bag here and we asked him how he
15 would have been standing at the car and Forney was sitting
16 over here in the passenger side and McCants was there and
17 you heard it, Mr. Forney shot McCants and then he came out
18 the door and he got over him and shot him again. Ladies
19 and Gentlemen, this is going to be the last time I can
20 talk to you. I am going to go through this slow. You
21 will get a chance to listen to the defense after you hear
22 from me and I want you to keep in mind how many times the
23 story has changed. All right, it either happened the way
24 they drew it up and got it all printed up or it happened
25 the way he said before, which would have put Mr. Forney

THE STATE VS HUGHES

1 sitting right here. If Mr. Forney did it while he's
2 sitting in the car and these casings kicked out of this
3 gun and he was in the car, where are the casings, they
4 would be in the car. The casings that would be fired if he
5 were sitting in the car as Mr. Hughes told us would be in
6 the car. The casings would be in the car. That's why
7 they have that hand hanging out the window because that
8 what explains how those two casings -- see, if it happened
9 the way Mr. Hughes said, that hand is out the window,
10 well, that explains those two casings. See, because
11 Forney stuck that gun out the window and that's where the
12 casings went. That's close enough to being a good story,
13 but it's not close enough. One thing they left out in
14 that diagram, one thing they didn't give you, when this
15 gun is hanging out the window and these casings are flying
16 out, Mr. Hughes said he was about five feet away, McCants,
17 Deputy McCants, would have been two foot from the door.
18 Remember that testimony from yesterday when he was about
19 two foot from the door? Two foot from the door. Two foot
20 from that weapon that's hanging out the window or less,
21 one and a half feet, one foot from that weapon when it's
22 hanging out the window. Remember Joe Powell from SLED,
23 the blonde headed guy, who did the atomic absorption test
24 on the gun powder on everybody's hand and he put the
25 diagram of Brent's shirt up here, he brought he put the

THE STATE VS HUGHES

1 torso and had Brent's shirt up here? What did he tell you
2 about this test? What did he tell you about all of these
3 holes in this shirt? With the exception of the one at the
4 top, one of the ones that caught in the vest, one of the
5 ones in the back, no gun powder on these holes. One
6 exception, when you talk about bullet wipe when a bullet
7 goes through, no gun powder on those holes. So, in other
8 words, he explained to you about the primer that you find
9 on the hands and you remember the big cloud that he talked
10 about that encompassed the gun, the big cloud of gun
11 powder residue, and he said four to six feet that it would
12 get it. Mr. Schusterman said, well, you can brush it off
13 and stuff. Do you remember he talked about no, it would
14 burn into the uniform. If Mr. Hughes has the truth in him
15 and that gun is a foot from Brent McCants' chest, it would
16 have made a black powder spot. Ladies and Gentlemen, the
17 reason there was no powder on his chest is the man sitting
18 in the car didn't shoot him; the man standing at the front
19 of the car shot him. You can look at the evidence, look
20 at where those casings are, two shots fired and I submit
21 what happened -- now it is undisputed now that Mr. Hughes
22 is driving. So now Mr. Hughes is driving, he gets out of
23 the car, the weapon is in the center, he gets out of the
24 car and he goes forward to the front of the car, and,
25 again, you look at the pictures, it hit him like a

THE STATE VS HUGHES

1 baseball bat in the chest. When you look at that vest, it
2 doesn't look like that big of a deal until you pull that
3 plate out. See that hole it knocked in that thing? I
4 submit that McCants then went for cover and as he tries to
5 go back to his car, he is gunned down like a dog; he is
6 shot again and again and again. The only proximity, the
7 only closeness we have on the vest was that little gun
8 powder at the back down, the final bullet right in the
9 base of his skull.

10 Ladies and Gentlemen, Mr. Hughes said yesterday this
11 all took place with Forney doing it right there next to
12 the car, next to their car where the stop took place. I am
13 just asking you to look at the evidence. Brent McCants was
14 laying in a ditch, he was laying in a ditch where the
15 ladies found him, not over next to the car, not over next
16 to where the car would have been stopped, but where he was
17 run down and gunned down and where he lost his life.

18 Now, Ladies and Gentlemen, that wasn't enough that
19 Brent McCants was killed. You say, why would they kill
20 Brent McCants? They had armed robbed a car and that's
21 something the judge is going to tell you too about the
22 armed robbery. The only armed robbery they have got now is
23 not the students; the armed robbery is the taking of the
24 stuff off the belt. So it's not the North Carolina charge
25 of armed robbery, the armed robbery is what they took, the

THE STATE VS HUGHES

1 walkie-talkie they took from him. You can use the armed
2 robbery in North Carolina to look at motive, to look at
3 common scheme and plan, and, again, that's what I'm saying
4 - from the time at eight o'clock when they took that car
5 and they are coming down here, they are hell bent on
6 mischief. They've had a good time, they have got the
7 stolen car. Do you remember the tape? Brent McCants makes
8 the stop and he asked for the vehicle information, the
9 standard vehicle information. And then he's out of the
10 car and he says "28, stand by for 29" or "29, stand by for
11 28." Do you remember suddenly he's asking about a stolen
12 vehicle. At the point he doesn't get a driver's license
13 from the driver, he's checking on a stolen vehicle, what's
14 going on in these two fellows' minds? They have armed
15 robbed a couple in Charlotte, he's just got out and he
16 doesn't want to go back. I submit to you that that's when
17 the decision was made and it was made together.

18 Brent McCants is laying down on the ground and they
19 saw the ladies come up and it's going to be important
20 again to go slow on this. The ladies that came up and saw
21 what was done to Brent McCants, two, one bent over and one
22 down lower shaking the body. It's like a vulture circling
23 over something that's dying, flying down here and pick off
24 the body. Mr. Hughes told you, oh, I was out there
25 checking his pulse. Mr. Hughes told you, I was the one

THE STATE VS HUGHES

1 that was bent over; he wasn't the one down on the body.
2 But do you recall what the lady said? The first one that
3 went to the car, the one that ran in front of the patrol
4 car, ran where? In front of the patrol car and got in on
5 the passenger side. And, again, I want you to remember it
6 the way you heard it, but Ms. Grant and Ms. Pittman said
7 that the one they saw run first was the one that was
8 standing up like this. He got in on the passenger side.
9 And the one that waited longer, the one that was down
10 there working on that belt, he had on dark clothes, he was
11 about six foot tall, about 180 and you have heard the
12 description in sizes, the difference between 5'8" and 130
13 and 6 foot tall and 180. Mar-Reece Hughes was down
14 working on that belt trying to get something loose from
15 it. What was he trying to get? Well, we found the ammo
16 pouch slung loose because that ammo doesn't do you any
17 good unless you have got that gun. And, so, he was down
18 tugging on his belt trying to get this gun out of this
19 holster. Do you remember when they got the holster,
20 Captain Bohan, the guy that was with the County then,
21 that's with the City now, came and said this is something
22 about a level three safety holster, that it snapped in the
23 back too and that was a means of keeping the gun from
24 getting jerked out? This was opened up, that magazine was
25 off the belt, but he couldn't get the gun, he couldn't get

THE STATE VS HUGHES

1 the gun, so he's tugging, tugging, tugging, and, finally,
2 these ladies show up and he has to make his escape. He
3 couldn't get the gun, so what does he get? He gets the
4 walkie-talkie, snatches the walkie-talkie and the
5 walkie-talkie clip.

6 If they weren't acting together, if it is as they say
7 that one is a murderer and the other one is just scared,
8 just happened to be there, why did they need two guns?
9 They have got one gun, they had killed an officer with it,
10 they have armed robbed college students with it, why did
11 they need two guns unless they were actively aiding and
12 abetting, conspiring, confederating and operating
13 together.

14 So they get in the car and head up the road.
15 Undisputed now, now that we have proved it, it is
16 undisputed that Mar-Reece Hughes is driving. So he drives.
17 Does he ever once stops, abandons the car and say Forney,
18 you have killed somebody, I'm out of here, I'm gone? No.
19 They were listening to that walkie-talkie. You think,
20 well, why did they have a walkie-talkie? I submit that
21 the reason they grab a walkie-talkie next to the gun
22 that's the best piece of equipment you could have off
23 Brent McCants because if you are out robbing, committing
24 crimes, running from Law Enforcement, wouldn't it be nice
25 to know what they were saying, where they were going? And

THE STATE VS HUGHES

1 if Mar-Reece if all he did was check his pulse, why was
2 that walkie-talkie clip under the driver's seat? I submit
3 that when he got back in the car he slung that back down.

4 Now the pistol they explained to you about the number
5 of shots was reloaded after they left. Now whether they
6 reloaded as they are easing off while these ladies are up
7 there trying to help Brent McCants or whether they
8 reloaded at the Holiday Inn we don't have any way of
9 knowing, but it wasn't one of these things of ut oh we've
10 made a mistake, let's end it, so as they go up and I know
11 you all have seen the diagrams, numerous diagrams, but you
12 remember Tim Sanders talked about and the defendant said,
13 "We split up once we got on Celriver." Remember he said
14 that Forney went on down Celriver. Remember this is where
15 Forney was captured on Celriver. Mar-Reece Hughes was
16 captured over here on Wilkerson. You will have these back
17 there to look at them again. These are the measurements
18 and diagrams. If you cut off of Celriver on Wilkerson as
19 far as evidence, what is the first thing they recovered?
20 The walkie-talkie. You get on up and get a ball cap, get
21 on up and there is Mar-Reece Hughes with his shoes out.
22 He knew that dog was trailing him. He had taken his shoes
23 off again to try to conceal himself, to try to hide from
24 committing that crime.

25 Ladies and Gentlemen, once they are taken in you have

THE STATE VS HUGHES

1 heard a series of statements the defendant has made and,
2 again, this is like the judge instructed you, you have got
3 to determine where you are going to base credibility,
4 where you are going to base believability. Mar-Reece said
5 he didn't make any of these statements. As a matter of
6 fact, Mar-Reece Hughes said he didn't make the statement
7 that they brought a witness in, remember the guy from the
8 jail that said, well, Mar-Reece told me Forney was driving
9 and Forney had his arm on the window and he did it, the
10 Wimborn guy, the first guy they brought in yesterday.
11 Mar-Reece says he didn't even talk to him, so they are
12 even bringing witnesses contradicting each other. So then
13 he says he didn't tell Law Enforcement all of these various
14 things that he said. I want to as best that I can, Ladies
15 and Gentlemen, to appeal to your common sense. First,
16 where would Law Enforcement come up with the information
17 that is contained in that. Well, you can say, oh, Forney
18 told them all of that. Well, if Law Enforcement is going
19 to frame this defendant and got Forney saying that this
20 defendant did it, well, why would they write a statement -
21 why would Law Enforcement write a statement that said that
22 Forney did it? Does that appeal to your common sense,
23 that if they are going to frame anyone by writing a
24 statement that says that "We had a gun and went to the
25 movies; we left; Eric was driving" - let's see - "Gun

THE STATE VS HUGHES

1 between Eric's legs, the officer was shining a light,
2 asked Eric to get out." If Law Enforcement is trying to
3 frame Mr. Hughes, wouldn't all of this say Hughes said I
4 did this and I did that? Again, I just ask does it appeal
5 to your common sense.

6 Now, Ladies and Gentlemen, you will have these back
7 there to take a look at. Law Enforcement gives him a
8 chance that night to call his friend, Mr. Perry. You
9 heard Mr. Perry on the stand. Mar-Reece told him, "You
10 know I wouldn't be driving; I don't have a driver's
11 license." He told his friend, Mr. Perry, "I had never
12 seen that gun before." Mar-Reece Hughes tells whatever it
13 takes to turn it just a little bit.

14 Now, Ladies and Gentlemen, Mr. Hughes took the stand
15 yesterday and he told his story, which he certainly has a
16 right to do. I think people watch a lot of tv and think
17 well, why didn't the Solicitor get up there, why didn't I
18 jump down his throat, why didn't I accuse him, and why
19 didn't I put the gun in his hand because this isn't the
20 Mar-Reece Hughes, this isn't the Mar-Reece Hughes that
21 killed Brent McCants. This is the Mar-Reece Hughes
22 several years later who has prepared his testimony, knows
23 his answers, has this diagram. This is the Mar-Reece
24 Hughes that Brent McCants faced that night. Mar-Reece
25 Hughes, the saw the one at the courthouse. I want you to

THE STATE VS HUGHES

1 go back and listen to that. He said they picked him up and
2 Law Enforcement took him and Forney in the woods and told
3 them to run for their lives. I want you to look at this
4 man; he's inside of this man.

5 Ladies and Gentlemen, we have tried to bring to you
6 every piece of evidence we have on Brent McCants getting
7 gunned down that night. There were three witnesses to
8 what actually took place, three witnesses to this crime:
9 Eric Forney points that finger, Mar-Reece Hughes points a
10 finger back at Forney, James Brent McCants. The only
11 testimony James Brent McCants was able to leave for us was
12 EMF313; that's the only thing he was able to tell us.
13 That puts the defense at a distinct advantage. The State
14 has got to prove the case. We have got to prove beyond a
15 reasonable doubt. Brent didn't get to tell us much more.
16 He didn't have a chance. There were bullets in his head,
17 bullets shot through his body. What I would ask you to
18 do, Ladies and Gentlemen, to not put any premium on the
19 defendant killing the witness because I submit to you that
20 is exactly what has took place here. If you ever reward
21 defendants for killing a witness, then we have created a
22 perfect crime. If you can always take one more person
23 with you and you can blame it on him and he can blame it
24 on you, if the officer cannot speak because he certain
25 can't speak from his grave, then we have created a perfect

THE STATE VS HUGHES

crime.

Ladies and Gentlemen, I respect the job you are doing here, I respect what you have to do. It's not a game. If I get impassioned, I am not doing it for fun. I am not doing it to get a rise out of you. I am doing it because this case demands it. Brent McCants has to have somebody speak for him and let's just forget he is a Law Enforcement officer. That's got nothing to do with this. This thing where Mar-Reece Hughes says "The best feeling I ever had, the best high I have ever had, was shooting that cop" you take that for what it is worth. When Broadus Strain comes in here and says Mar-Reece told him "I am going to kill me another white boy down the road," drop out the white boy. This isn't about race. You know the defense has talked about race in this and race in that, this isn't about race. This is about a man killing an innocent man, an innocent man who was out there trying to do his job, trying to protect us. As Forney and Hughes came out of North Carolina and ended up on Dave Lyle, they weren't going to jail and they were willing to do anything to prevent it and that obviously included killing James Brent McCants. For that I ask you to render a verdict that speaks the truth, the verdict of guilty of murder, guilty on armed robbery, guilty of possession of a firearm, guilty of conspiracy and guilty of possession of stolen

THE STATE VS HUGHES

1 vehicle.

2 Ladies and Gentlemen, I respect your intelligence; I
3 respect your common sense. I just ask for a verdict that
4 speaks the truth because there's a lot of it hadn't been
5 heard in this courtroom by Mr. Hughes and I would ask you
6 to return a verdict that does, in fact, speak the truth.
7 Thank you.

8 THE COURT: Do you need a break before we move into
9 the -- okay, all right, we'll take a short break. This
10 will be just a refresher break.

11 (Jury retires to jury room.)

12 We will take a short break. I'm going to let you I am
13 going to put up here the verdict forms. I am going to ask
14 that the indictments be handed back up to me before the
15 charge. We will take a short break.

16 (Recess.)

17 Is The State ready?

18 MR. BRACKETT: The State is ready, Your Honor.

19 THE COURT: The defense?

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

21 THE COURT: And Mr. Hughes is ready. All right, bring
22 in the jury.

23 (Jury returns to courtroom.)

24 Mr. Schusterman?

25 MR. SCHUSTERMAN: Thank you, Your Honor. May it please

THE STATE VS HUGHES

1 the court? Good morning, Mr. Foreman, Ladies and
2 Gentlemen of the jury.

3 Let me begin where I finished up in my opening
4 statement. A horrible crime has been committed, an
5 absolutely horrific crime. There is no doubt about that.
6 James Brent McCants was savagely killed on September 25th,
7 1992. There is no doubt about that. For that I, Mr. Pope,
8 and everybody mourn. After we are done mourning, we have
9 an obligation to separate our emotion and intellect and
10 while we grieve for him and for the family, we now need to
11 look at who perpetrated the act. Certainly, these halls
12 of justice do not say that because a crime has been
13 committed, as savage and heinous as this may be, that we
14 just point a finger and whoever we point a finger at, that
15 person has to take guilt. That's not what our system is
16 about. Our system is based on a concept that one is
17 innocent until proven guilty beyond a reasonable doubt.
18 That aside and I know that you will because the judge is
19 going to charge you that emotion, sympathy and the like is
20 not to play a role in your deliberations. So when Mr.
21 Pope makes the statement that he was savagely gunned down
22 like a dog, that's a true statement. That's an absolutely
23 true statement and that's horrible, but it doesn't mean
24 that if you put that statement and you raise your voice
25 like Mr. Pope did and you point your finger at Mar-Reece

THE STATE VS HUGHES

1 Hughes that you have got a murderer.

2 I would like before I get into the facts of this case
3 to talk about one thing that I would like all of you to
4 please keep in your mind. When you go back in the jury
5 room, the one question you have to ask yourselves with all
6 settings what is The State's theory, who did this crime.
7 The State doesn't have a theory. That's why for the next
8 couple of minutes I am going to talk about The State's
9 theories and I am going to try and work through them with
10 the facts so that we can show you exactly what happened
11 that evening. I submit that theory number one is that
12 Mar-Reece Hughes that night was the shooter. That's one
13 theory. On that theory he would be convicted of murder.

14 Theory number two - Mar-Reece Hughes was an
15 accomplice. Mar-Reece Hughes didn't do the shooting, but
16 acted in consort with Mr. Forney and together they
17 committed this murder and that's where the charge of
18 conspiracy, one of the indictments, comes in.

19 And the third theory something that I have come up
20 with and it's called the kitchen sink and I'll talk about
21 that as the third State's theory. Theory number one that
22 The State proposes, Mr. Hughes is the shooter. Well,
23 there are some logical flaws with that with Mr. Hughes
24 being the shooter. Number one, there is not a shred, not a
25 shred of evidence that Mr. Hughes ever had the gun that

THE STATE VS HUGHES

1 night. Not a shred. The State cannot put that gun, the
2 murder weapon, in the hands of client - cannot do it at
3 any time unless as Mr. Pope attempted to bring forth in
4 his closing argument that Mr. Hughes did the shooting, but
5 then one would say that then at some point, Mr. Pope
6 didn't go this far, that if Mr. Hughes is in the front of
7 the car and he does the shooting, at some point when it's
8 over he says, here, now, Eric, you take the gun for your
9 protection. He gives up the weapon, gives it back to
10 Forney, and Mr. Forney receives it. There's no basis for
11 that. There is no basis at all for that. In addition, why
12 it is impossible for Mr. Hughes to be the shooter, I show
13 you State's Exhibit Number 18. This will be back in the
14 jury room with you and I encourage you to look at it. You
15 see the patrol car, Mr. McCants' patrol car in the
16 background. In the foreground you see two cones. I believe
17 and, of course, the same rules that Mr. Pope laid out
18 prior to his statement, you take the testimony as you
19 heard it, but I believe that one of the SLED agents
20 testified that those two cones, and I believe it was Mr.
21 Gainey, those two cones represent two of the spent shells
22 that were there. Well, the problem is that if, in fact,
23 if, in fact, that Mr. Hughes is standing in the front of
24 the car and we assume that the car is in front of the
25 patrol car, most patrol cars pull up behind, that's the

THE STATE VS HUGHES

1 way the testimony was, why would the shells be over here
2 this far to the left if the car is pulled in. If Mr.
3 Hughes is shooting from the front of the car, those two
4 shells should be far to the right because you will
5 remember from the ballistics expert from SLED he testified
6 that the shells expend to the right, up and back. Why
7 would the two shells be this far to the left? They have a
8 logical possibility. The State never addresses that
9 because The State doesn't have a theory. The State has no
10 theory how this happened.

11 Further, Mr. Hughes not being the shooter, Mr. Hughes
12 testified that he bent over the body, didn't feel a pulse,
13 and Mr. Forney said, "Get in the car, get in the car." Why
14 would Mr. Hughes be down tugging for the gun if he already
15 has a gun? According to Mr. Pope, Mr. Hughes runs up and
16 savagely kills him and then he runs up to get another gun?
17 He's got a gun in his hand, why would he be tugging? Why
18 does he need two guns? It is illogical.

19 What is happening here is a set of facts and we are
20 going to make it work, we are going to make it work. We
21 are going to push those facts and we are going to somehow
22 incorporate Mr. Hughes into this whole scenario. Now Mr.
23 Hughes is no angel. That's absolutely true. He's
24 absolutely no angel, but when you talk about what his role
25 is that night, we talk about someone who clearly near they

THE STATE VS HUGHES

1 were going to rob in Charlotte. Now understand that the
2 robbery that you are addressing today, the armed robbery,
3 that armed robbery had nothing to do with Charlotte. That
4 is another jurisdiction, another time, another place, and
5 another jury, another courtroom. That's not today. But
6 Mr. Hughes readily admits that's what they went for. But
7 even within that robbery did Mr. Hughes exhibit any
8 violent tendencies? Does he at all exhibit anything that
9 would indicate that he had a violent propensity. Clearly
10 robbery is wrong, but who had the gun to the back of Mr.
11 McMillan's head? Who threatened to kill Mr. McMillan or
12 "his whore," as the phrase went if he moved? Mr. Forney.
13 So there's a reason why throughout the identification
14 process why everybody identifies Mr. Forney and not
15 everybody can identify Mr. Hughes? Because Mr. Forney is
16 the leader here. So now The State is trying their second
17 theory, which is as an accomplice. They can't survive on
18 him being the shooter; it just doesn't work with Mar-Reece
19 being the shooter. So now we are going to work on an
20 accomplice. Now how do you work on an accomplice? How do
21 you work accomplice theory? Well, we make him look bad
22 enough, we make him look bad enough in North Carolina that
23 whatever happened after Bellissimo he's responsible for.
24 That's absurd because for the accomplice theory to work
25 one would have to say and the judge is going to charge you

THE STATE VS HUGHES

1 that there was an agreement between Forney and Hughes,
2 they agreed to work together and that's what The State is
3 trying to do, that would be the theory that The State is
4 trying to get across to all of you. They are going to make
5 this work. They are absolutely going to make this work.
6 They are linking the two of them together and whatever the
7 evidence shows they have got to keep them together because
8 if they separate, Mr. Hughes is not guilty because what
9 The State didn't tell you was the flip side to this
10 accomplice liability theory, an absolutely true theory,
11 the hand of one is the hand of all if they are working
12 together. If they are not working together, then the law
13 says that mere presence at the scene of a crime does not
14 impede guilt. And the judge is going to tell you that,
15 just being present. So then the question becomes, well,
16 and I am trying to use common sense, the question is,
17 well, why if Mr. Forney reaches out, out of the dark,
18 fires this weapon, stands over him, shoots him four times,
19 grabs a walkie-talkie, why did Mr. Hughes leave with him?
20 Why did he leave with him? The reason he left with him
21 was the same reason I submit to you as what Mr. McMillan
22 said. Mr. McMillan said I saw two black males; I saw two
23 black males walking up from Bellissimo from the back. I
24 was intimidated by them. I was suspicious, whatever phrase
25 he used, the same reason Crystal Ayers at the Galleria, at

THE STATE VS HUGHES

1 the Mall, the movie theater, they did nothing wrong there,
2 absolutely nothing wrong, but her feeling was while they
3 never threatened her they let them in because they looked
4 like they could cause trouble. So the alternative at that
5 point, the alternative at that point, is for Mr. Hughes to
6 say, no, Eric, I'm staying here with the body and so two
7 minutes later people are on the scene and there is
8 Mar-Reece Hughes standing over a body, getting out of a --
9 had a stolen vehicle, clearly was in the possession of a
10 stolen vehicle, a black male from Charlotte and he's
11 saying, yes, I was with the killer, but I'm staying here
12 because I didn't do anything. It's not logical. It's not
13 logical. So The State then tries to tie in from before and
14 after, the reality is that Mr. Hughes got out of prison,
15 he bought a gun. Whether he bought it -- whether he should
16 have had a gun or shouldn't have had a gun, I guess that
17 could be a long debate, but he's living in a part of
18 Charlotte called Greer Town, a rough neighborhood. People
19 carry guns. He never testified that he used it, he only
20 testified that it was for his protection, for his
21 protection, but his Brother Marshall wouldn't allow him to
22 keep it, so he sold it to Eric Forney. Did he know Eric
23 Forney? Yes. He met him in prison. So he sold it for
24 Forty-Five Dollars. The question that you are going to
25 have to ask yourselves and Mr. Pope talked about how he is

THE STATE VS HUGHES

1 speaking for Brent McCants. Well, I'm speaking for
2 Mar-Reece Hughes and I hold his life in my hands and I'm
3 telling you that we have to consider these facts beyond a
4 reasonable doubt, beyond a reasonable doubt.

5 They are arguing everything they can to keep these two
6 men intertwined, but they are not intertwined because
7 Mar-Reece Hughes even said that after they went to that
8 robbery, which he said he was uncomfortable with, after he
9 said he was uncomfortable with it, he was on his way back
10 to Charlotte. To talk about a conspiracy then are we
11 saying that they baited the field, that what we are doing
12 is we intentionally turned the headlights off to entice
13 Brent McCants? There is nothing to show that. This was
14 spontaneous, spontaneous on Mr. Forney's part. He had the
15 gun. He had took the walkie-talkie. Mar-Reece Hughes
16 testified that from the moment they did this when they got
17 out of the car at the Holiday Inn his attitude was Eric,
18 get out of here, separate. Now the question is do you
19 believe Mr. Hughes? Did he come across as believable?
20 What Mr. Pope said is absolutely true, the Mar-Reece
21 Hughes of today is not the same Mar-Reece Hughes of
22 September 25, 1992. The Mar-Reece Hughes of today has an
23 IQ of 78. He is borderline intellectual functioning. The
24 Mar-Reece Hughes of today takes 200 milligrams of Haldol
25 so that he can sit in this courtroom. He didn't do that

THE STATE VS HUGHES

1 back then. Am I telling you he is not guilty by reason of
2 insanity? Absolutely not. Am I telling you he is guilty
3 but mentally ill? Absolutely not. I am telling you he is
4 not guilty, but I am also explaining why he sits there and
5 why he can maintain a stoic appearance. But even through
6 it all he had this composure, he has answered questions
7 and did that to the best of his ability. Is he any
8 competition for Mr. Pope? Are they on the same
9 intellectual plane? Do they have the same mind? Not even
10 close. So Mr. Pope says he was very nice to Mr. Hughes,
11 the fact is that he could have done anything he wanted
12 with Mr. Hughes. But Mr. Hughes never caved in. Mr.
13 Hughes never said you got me, Solicitor Pope, I was the
14 shooter. You got me, Mr. Pope, yeah, we knew what we were
15 doing. That's not what he said. Through this 78 IQ,
16 through the Haldol enough that I believe Doctor Dupree
17 said would lay Mr. Pope out or something like that - you
18 remember the testimony - through that he was able to come
19 up with a coherent, believable story. He told you exactly
20 what happened. Not only is it logical because it works,
21 it's logical. But there are only one of three people who
22 could tell this story I agree with Solicitor Pope only Mr.
23 Hughes, Mr. Forney and Brent McCants and the only one who
24 has taken the stand through this entire proceeding is Mr.
25 Hughes. What was he lying about? He didn't know what was

THE STATE VS HUGHES

1 going on. If one pulls out and one is standing at the
2 front of the car and the person you are with is a maniac
3 and starts shooting, does that make you guilty? Was there
4 any evidence that there was a plan, that they were working
5 together? Absolutely not. So you have a black gentleman,
6 twenty-seven years old, who clearly is in possession of a
7 stolen vehicle standing over a body and if that's the
8 case, if you're standing over a body, what would be the
9 likelihood, only for you to determine, that we wouldn't be
10 in this courtroom today, that people like Officer Cabaniss
11 or the SLED agents would have said, Mar-Reece, you are a
12 good man, put their arm around you, you didn't do anything
13 wrong here. So he ran.

14 Now Mr. Pope brings out the point that Mr. Hughes has
15 a selective memory. We saw the concept that you remember
16 Doctor Dupree said the Mr. Hughes of today is not the Mr.
17 Hughes three years ago. His memory has clearly been
18 affected, affected by the medication as well as the
19 paranoid schizophrenia. But if Mr. Hughes did truly have a
20 selective memory, why would he not say, why would he not
21 reject all the statements that were made that were against
22 him and remember all of the statements that were for him?
23 When asked Mr. Hughes, did you say I didn't shoot anybody,
24 a self-serving statement it certainly points towards his
25 innocence, "I don't remember saying that." When we bring

THE STATE VS HUGHES

1 up Felix Wimborn to testify that Mr. Hughes even came out
2 and told him - Mr. Wimborn came here and said that his
3 partner put his hand outside the door and shot the
4 officer. He didn't remember that either. If he had a
5 selective memory, that would be great to remember. Of
6 course, I remember talking to Felix every day, but I don't
7 remember anything else. But he didn't do that. So there
8 are gaps in his memory.

9 You have four indictments. Mr. Hughes is guilty of one
10 indictment. He was in possession of that stolen vehicle.
11 What has The State shown you? What has The State shown to
12 indicate that Mr. Forney and Mr. Hughes were in cahoots.
13 We know who shot Officer McCants. Eric Forney shot Officer
14 McCants, but we have got to get Hughes in there, so that's
15 where we come to theory number three, The State's
16 position, we have a tiger by the tail. We know who shot
17 him, we know who shot him, but let me tell you we have got
18 Hughes here, he's a bad apple and we are going to get him.
19 So what we do is the kitchen sink theory. We take eighty
20 exhibits, we bring everything and bring it to you and say
21 look at the gross violence shown by this man. We are
22 going to convict him. That's not true. That's not true.
23 Mr. Hughes that night never exhibited any outward
24 violence. He talks about the weapon, the razor blade. Is
25 there any evidence that there was any cutting, that he

THE STATE VS HUGHES

1 ever exposed the blade? Mr. Pope says that if he truly
2 sold Mr. Forney the gun that night, where's the Forty-Five
3 Dollars? Well, he sold it to him a week before. He would
4 still be holding onto that same Forty-Five Dollars, it
5 should be intact in that pocket if it was true. That's
6 absurd. Going to push everything down on Mr. Hughes. Mr.
7 Hughes we've got to get him, we can't let him loose and
8 that's why they get up here and talk about accomplice
9 liability and that's why to reemphasize their case they
10 have got to put Harry Jennings on the stand, bring him up
11 from Manning Correctional. That's why they have to do it
12 because it's corroboration. That's what they are looking
13 for. I'm just as guilty of that. I put up Felix Wimborn,
14 so we started playing games my convict is more believable
15 than your convict. But that's the reality because The
16 State is just we're going to get him, we're going to get
17 him. And so Mr. Pope says eliminate the white boy concept.
18 We can eliminate the white boy, the statement Mr. Hughes
19 allegedly made, because race is involved here. That's the
20 reality. The reality is that we have a twenty-nine year
21 old black man standing over a white officer and that has a
22 certain connotation especially if you have committed a
23 robbery before. So what the Solicitor says don't worry
24 about it, don't worry about I know you can't consider
25 North Carolina, but look how bad he was; the wheel started

THE STATE VS HUGHES

1 turning. Where did the first word, the first utterance
2 that if we have to kill somebody tonight, we'll kill
3 somebody. Eric, you have got the gun and I've got my
4 knife. Where is it? There's none because that's not where
5 they were going. That's not what Mr. Hughes was doing that
6 night. So as to the conspiracy, hang on, they want you to
7 hang on and find him guilty because if you find guilty of
8 conspiracy, you can find him guilty of murder. That's not
9 how we play the game. That's not what this courtroom is
10 about. It is innocent until proven guilty and they haven't
11 proven anything other than a heinous crime has been
12 committed. Where is there the first, the first shred of
13 evidence that Mr. Forney didn't stand over the person,
14 shoot him, grab the walkie-talkie and get into the
15 passenger side exactly, exactly as Mr. Hughes said?
16 There's none.

17 Mr. Pope talks about the radio transmission. The radio
18 transmission occurred prior to Mr. McCants even making
19 contact with these people and the code that Mr. McCants
20 called in was not a stolen vehicle, it was for a
21 suspicious vehicle and that was done even before he got
22 out of the car. So there was no time for Mr. Hughes and
23 Mr. Forney to get together and say, okay, when he comes
24 back from the radio, you kill him and then we'll run.
25 Nothing. Absolutely nothing.

THE STATE VS HUGHES

1 I ask you to remove yourself, I hope that's possible,
2 remove yourself emotionally and look at the facts. I find
3 it equally difficult because I am emotional that I have a
4 man's life in my hands, but I ask you to look at the
5 facts, think about the three theories, go through them,
6 and are you convinced not, well, it could be, probably is,
7 beyond a reasonable doubt because the one thing that you
8 are going to have to do in order to convict my client is
9 to somehow come up with a theory. And in order to come up
10 with a theory, you would have to make one up because The
11 State has never offered you one so you would have to come
12 up with a theory. I submit to you that it happened
13 exactly, exactly the way Mr. Hughes said it did. Exactly.
14 And Mr. Hughes even testified that how -- on cross
15 examination of Mr. Pope was talking about how Mr. Hughes
16 had changed his story and Mr. Hughes' reaction was I told
17 my defense lawyer all along the story. The first time
18 anybody ever heard from Mr. Hughes was yesterday. He
19 didn't have an obligation to talk to anybody but his
20 lawyer, but he took the stand in spite of all his
21 infirmities he took the stand. That was not my decision,
22 that was not the other lawyer's decision, only Mr. Hughes
23 made that decision. That was his decision to make and he
24 said I am taking the stand; they have to hear from me; and
25 you have heard him and you have a theory and he told you

THE STATE VS HUGHES

1 the truth. And did he mince words, did he say he wasn't a
2 part? He told you what he's guilty of and what he wasn't
3 guilty of. This is a man who could not -- who led a life
4 of crime and did the best he could to separate himself
5 from Mr. Forney. I ask you to take a look at everything
6 and can you be convinced beyond a reasonable doubt (a)
7 what happened that night and (b) that Mr. Hughes somehow
8 conspired or was an accomplice to Mr. Forney. I submit to
9 you the answer is no. And that's why at the beginning
10 when I spoke to you I told you that we talked some much
11 about life and death, but we are not even thinking about
12 that because guilt or innocence hadn't even come close to
13 being established. And so I submit to you when you look at
14 all the evidence, all of it, that you will be compelled
15 that Mr. Hughes is not guilty of murder and the armed
16 robbery and the conspiracy. He is not guilty of it. He was
17 merely present when it happened and he came and told you
18 that. I ask you to return a verdict, as Mr. Pope said,
19 that does speak the truth, not based on emotion, not based
20 on sympathy - there's a time and place for that - based on
21 intellect and reasoning and common sense, a verdict of not
22 guilty. Thank you.

23 THE COURT: Counsel, do you need a break?

24 MR. SCHUSTERMAN: No, sir.

25 THE COURT: First, let me thank all of you for your

THE STATE VS HUGHES

1 kind attention throughout this trial. You have followed
2 very patiently the evidence that has been presented and my
3 instructions to you as we have gone along. You have been
4 very attentive to the presentation of the evidence, the
5 arguments of the attorneys and I now ask you to give me
6 your full attention. My duty as the trial judge in this
7 trial under the Constitution and laws of this state to
8 instruct you the law which is applicable to this case. It
9 is your duty as jurors to accept and apply the law just as
10 I charge it to you. If you think I charge you the law in
11 error or if you think the law is different from that that
12 I tell you it is, you must disabuse it from your mind and
13 disregard your thoughts on the law and under your oath
14 take, accept and apply the law as I have charged it to
15 you.

16 It will be your exclusive duty to decide all the
17 factual issues, all of the issues of fact in this case to
18 that purpose to determine the effect, the value, the
19 weight and the truth you believe the evidence should have.

20 Both The State and the defendant have a right to
21 expect that you will conscientiously consider the evidence
22 and evaluate it and apply the law of this case to the end
23 that both The State and the defendant receive a fair and
24 impartial trial.

25 When I use the word defendant in this charge, I am

THE STATE VS HUGHES

1 referring to Mar-Reece Aldean Hughes.

2 Now The State has by several indictments charged Mr.
3 Hughes with the offenses known as murder, armed robbery,
4 and in that indictment there is a second count of
5 possession of a firearm in the commission of a violent
6 crime. A third indictment is for conspiracy and a fourth
7 for possession of a stolen vehicle. I will tell you in
8 more detail about these indictments and the elements of
9 those particular crimes and offenses and charge you in
10 just a few moments.

11 To each of these charge and to each indictment the
12 defendant has entered pleas of not guilty. These pleas of
13 not guilty by him places the burden on The State to prove
14 by evidence the guilt of the defendant, Mr. Hughes, beyond
15 a reasonable doubt before you as trial jury could find the
16 defendant guilty.

17 Mr. Hughes, as are all defendants, is presumed in law
18 innocent of the charges contained in each of the
19 indictments and as to each charge. It is a cardinal and
20 fundamental rule of law that a defendant, irrespective of
21 the enormity of the charge against him, will always be
22 presumed innocent of the crime for which they are indicted
23 unless or until their guilt, that is the guilt of the
24 defendant, has been proven by evidence that satisfies you
25 as trial jury of that defendant's guilt beyond a

THE STATE VS HUGHES

1 reasonable doubt.

2 This presumption of innocence is not a mere legal
3 theory nor is it a mere legal phrase. It is a substantial
4 right which every accused including Mr. Hughes is
5 entitled. Our Supreme Court has declared this presumption
6 of innocence is like a robe of righteousness placed around
7 the shoulders of a defendant and assigns the defendant to
8 that class called the innocent until that presumptive robe
9 of righteousness has been stripped from his person by
10 evidence satisfying you as the trial jury of the guilt of
11 the defendant beyond a reasonable doubt. This presumption
12 of innocence accompanies the defendant from the time of
13 his arrest through his arraignment and his appearance in
14 this court and continues with the defendant through every
15 stage of this trial and continues with him even after you
16 retire to the jury room to deliberate on your verdict. The
17 presumption of innocence continues in existence for the
18 benefit of the defendant, Mr. Hughes, until you as trial
19 jury reach the conclusion, if you do, that The State has
20 proven the guilt of the defendant beyond a reasonable
21 doubt. Now The State is not required to prove the guilt
22 of the defendant beyond all or beyond every doubt, but
23 beyond a reasonable doubt.

24 A reasonable doubt is the kind of doubt that would
25 cause a reasonable person to hesitate to act.

THE STATE VS HUGHES

1 Now the defendant is entitled to every reasonable
2 doubt arising in this whole case. If upon any issue of
3 fact essential to conviction and a verdict of guilty you
4 have a reasonable doubt as to how that issue should be
5 resolved, it would be your duty to resolve that reasonable
6 doubt in favor of the defendant, Mr. Hughes.

7 A defendant, and Mr. Hughes particularly, is not
8 required to prove their innocence. The State is, however,
9 required in law to prove every essential element of the
10 offense charged against a defendant by evidence which
11 satisfies you of that defendant's guilt beyond a
12 reasonable doubt before you could convict the defendant
13 and find the defendant guilty. If then upon the whole
14 case as to any charge or all charges you have a reasonable
15 doubt as to the guilt or innocence of the defendant, he is
16 entitled to that reasonable doubt and would be entitled to
17 acquittal and a verdict of not guilty as to charge that
18 you have such reasonable doubt. On the other hand if upon
19 the whole case as to any or all charges you find that The
20 State has proven by evidence satisfying you of the guilt
21 of the defendant beyond a reasonable doubt in this
22 circumstances it would equally be your duty to convict the
23 defendant and find him guilty as to such charges where you
24 are satisfied of the guilt of the defendant beyond a
25 reasonable doubt.

THE STATE VS HUGHES

1 Now you will have these four indictments in the jury
2 room with you. As I told you earlier, they are not
3 evidence. They are the paper work by which this case has
4 been processed through our court system and will
5 ultimately be the record of this case wherein the verdicts
6 will ultimately be set forth.

7 Now I have told you earlier about our respective
8 roles. I just talked to you a moment ago about my being
9 the sole judge of the law and you the sole judges of the
10 facts.

11 Now you are to consider in this trial only such
12 competent evidence as has been admitted. By that I mean if
13 I have ruled out any evidence, testimony or exhibits and
14 you have seen or heard such testimony or exhibits, then
15 you must, if I told you to disregard it, you must, in
16 fact, disregard it and disabuse from your mind any such
17 evidence which I have told you to disregard. You must
18 consider only the competent evidence which has been
19 presented from the witness stand together with the
20 exhibits admitted into the case and the stipulations.

21 Now I have told you that I am the sole judge of the
22 law and you must under your role take, accept and apply
23 the law just as I charge it to you. You are the sole
24 exclusive judges of the facts. Our Constitution and our
25 law declares that a trial judge cannot intimate or form an

THE STATE VS HUGHES

1 opinion about the facts of the case. That would be an
2 invasion of your province as jurors. It goes further and
3 states that the trial judge shall not intimate, state, or
4 comment upon or make any statement to a trial jury about
5 the facts in a case. If you have inferred from anything I
6 have said or done during this trial or if you were to
7 infer anything from anything that I say or do at any stage
8 throughout this trial including now or later as being an
9 indication of an opinion of mine as to the facts of the
10 case, your inference would be wrong. The law does not
11 permit me to have an opinion about the facts. I have not
12 formulated one and if you infer that I have, you would be
13 incorrect. This is a matter solely for you to determine.
14 It is up to you as I believe I have already stated to
15 evaluate the evidence and give to the evidence the effect,
16 the value, the weight and the truth you believe it should
17 have.

18 In doing this you must of necessity assess the
19 credibility of the witnesses who have testified.
20 Credibility is a legalistic term that simply means
21 believability. It becomes your duty to analyze and
22 evaluate the evidence and determine that evidence which
23 convinces you of its truth.

24 I charge you that you may believe one witness as
25 opposed to several. You may believe several witnesses as

THE STATE VS HUGHES

1 opposed to one. You may believe all, a part, or none of a
2 witness' testimony.

3 In evaluating the believability of a witness you may
4 consider whether the witness has exhibited any interest or
5 any bias or any prejudice in the case or has any interest,
6 any bias or any prejudice in the case. You may consider
7 the demeanor of a witness, that is, the way the witness
8 acted when they were testifying. You may consider whether
9 a witness was responsive or hesitant or straightforward,
10 whether they were consistent or inconsistent with the
11 witness' own testimony or consistent or inconsistent with
12 that of others. You may further consider the opportunity
13 a witness had to know the things about which the witness
14 testified. All of these things you can consider in
15 determining the credibility, that is, the believability of
16 the witness who have testified. You do not exercise these
17 considerations arbitrarily. Your objective is to find the
18 truth whether it comes from a witness or witnesses on
19 behalf of The State or the witness or witnesses on behalf
20 of the defendant.

21 Now in doing this you exercise your mental processes
22 and you determine what you consider to be true and in
23 doing this the law simply requires you exercise your good
24 judgment, your common sense, your sense of logic and
25 reasoning and your experiences in life. You then apply

THE STATE VS HUGHES

1 these attributes to the evidence and determine what you
2 consider the truthful evidence and to these true state of
3 facts as determined by you you take and apply the law as I
4 now charge it to you and thus you arrive at a true
5 verdict.

6 Now I am going to go through the indictments and tell
7 you the elements of the charges.

8 The first indictment is that for the offense of
9 murder. That indictment, which is number 93GS46-4296,
10 alleges that Mar-Reece Aldean Hughes did in York County on
11 or about September 25, 1992, feloniously, wilfully, and
12 with malice aforethought kill one James Brent McCants by
13 means of shooting the victim with a firearm and that the
14 said James Brent McCants died as a proximate result
15 thereof.

16 Now I will charge you as to the offense of murder. Now
17 under the law of South Carolina where The State seeks the
18 death penalty, as it does in this case, and we discussed
19 that when we were in Aiken, the trial would be a
20 bifurcated and, that is, a trial which has two parts.
21 First, as to the charge of murder, a trial is held, and
22 that's where we are now, to determine the guilt or the
23 innocence of the defendant. At the conclusion of this
24 trial, should your verdict be guilty as to the charge of
25 murder, and I make no recommendation or intimate any

THE STATE VS HUGHES

1 opinion as to that verdict, but if you determine that The
2 State has proven the guilt of the defendant as to murder
3 beyond a reasonable doubt, then a second proceeding will
4 be held, that is the penalty phase. At that second
5 proceeding extenuating, aggravating, and mitigating
6 circumstances may be introduced into evidence and
7 considered by you. I will further instruct you if that
8 stage is reached. Please derive no inference from what I
9 have just told you to be any indication as to what your
10 verdict should be. The purpose of my telling you this is
11 to emphasize that you are not to consider punishment or
12 sentence in this phase of the case. You are only to
13 determine the innocence or guilt of the defendant based
14 upon the evidence that has been introduced in this trial.

15 Murder is defined as the wilful, felonious killing of
16 a human being by a human being with malice aforethought.
17 Murder is the unlawful killing of any person with malice
18 aforethought either expressed or implied. Malice is
19 defined as the wrongful intent to injure another and
20 indicates a wicked or depraved spirit intent on
21 wrongdoing.

22 In order to convict the defendant of murder, The State
23 must not only prove the killing of the deceased by the
24 defendant, but that it was done with malice aforethought
25 and such proof must be beyond a reasonable doubt. Malice

THE STATE VS HUGHES

is a word suggesting wickedness, hatred, and a determination to do what one knows to be wrong without just cause or excuse or legal provocation. Malice need not be in the mind of the one doing the killing any particular length of time before the act of killing to render the killing murder. If it is present in the mind of the one doing the killing for any length of time before the act or if it is conceived at the very moment the fatal blow is given, it would be aforethought and its presence would be sufficient to render the killing murder. Murder is said to be expressed where there is manifested a violent, deliberate intention unlawfully to take away the life of another human being. Malice may be inferred where one intentionally and deliberately does an unlawful act which he then knows to be wrong in violation of his duty to another. Malice may be inferred when no excuse or legal provocation for the killing appears and where the circumstances attending a killing show an abandoned heart, a malignant heart fatally bent upon mischief. Such inferences are not conclusive and you as trial jury depending upon your view may accept or reject these inferences. The law says that if one intentionally kills another with a deadly weapon, the inference of malice may arise. If facts are proven beyond a reasonable doubt sufficient to raise an inference of malice to your

THE STATE VS HUGHES

1 satisfaction, this inference would simply be an
2 evidentiary fact to be taken into consideration by you
3 along with other evidence in the case and you may give it
4 such weight as you determine it should receive. In other
5 words, an inference of malice from the use of a deadly
6 weapon is simply an evidentiary fact to be taken into
7 consideration by you as trial jury along with the other
8 evidence in this case and it is to be given such weight as
9 you as trial jury determine it should receive. The
10 inference of malice may be drawn from proof of the use of
11 a deadly weapon if you as trial jury conclude such is
12 proper after considering all the facts and circumstances
13 in this case.

14 The law says if one intentionally kills another during
15 the commission of a felony, the inference of malice may
16 arise. If facts are proved beyond a reasonable doubt
17 sufficient to raise an inference of malice to your
18 satisfaction, this inference would be simply an
19 evidentiary fact to be taken into consideration by you as
20 trial jury along with the other evidence in this case and
21 you may give to it such weight that you determine it
22 should receive.

23 Armed robbery is under the statutes of South Carolina
24 a felony.

25 A deadly weapon is defined as any article, instrument

THE STATE VS HUGHES

1 or substance which is likely to produce death or great
2 bodily harm.

3 If the evidence should show under what circumstances a
4 shot was fired or a blow delivered which took the life of
5 another and you as trial jury will have to determine
6 whether under such circumstances the act was malicious. As
7 long as malice accompanies the act of killing instead of
8 appearing only thereafter it will suffice; however, it is
9 not sufficient that malice form after the act of killing.

10 Again, you will have the murder indictment with you in
11 the jury room. Please remember it is not evidence and
12 cannot be considered as such.

13 Now I am going to go over the indictment for armed
14 robbery. This indictment has two counts and I will read
15 them to you now. This indictment is number 93GS46-4305.
16 Count one is armed robbery and it states that Mar-Reece
17 Aldean Hughes did in York County on or about September 25,
18 1992, while armed with a deadly weapon, to wit, a firearm,
19 feloniously take from the person or presence of James
20 Brent McCants by means of force or intimidation goods or
21 monies of York County such goods or money being described
22 as follows: a police radio, a walkie-talkie.

23 Count two, possession of firearm during the commission
24 of or attempt to commit a violent crime. That alleges that
25 Mar-Reece Aldean Hughes did in York County on or about

THE STATE VS HUGHES

1 September 25, 1992, possess a firearm or physically
2 display what appeared to be a firearm during the
3 commission of a violent crime, to wit, armed robbery, in
4 violation of Code Section 16-23-490 Code of Laws of South
5 Carolina as amended.

6 Our State law provides that any person convicted for
7 the crime of robbery while armed with a pistol or other
8 deadly weapon is guilty of armed robbery.

9 Now in order that you may understand what it meant by
10 armed robbery I am going to first define for you the crime
11 of larceny and then robbery and then what constitutes
12 armed robbery because larceny is embraced within robbery
13 and then armed robbery is an aggravation of the crime of
14 robbery.

15 Larceny is the felonious taking and carrying away by
16 any person of the goods or the personal property of
17 another with felonious intent to permanently deprive the
18 owner of their property and convert it to the taker's own
19 use. The essential elements of the crime of larceny,
20 which ordinarily is called stealing, are (1) the felonious
21 taking into possession the personal property of another;
22 (2) the carrying away and removal of the personal
23 property; and (3) the felonious intent, that is, the
24 intent to steal on the part of the taker to permanently
25 deprive the owner of their personal property and to

THE STATE VS HUGHES

1 convert that property to the taker's own use. Now that was
2 larceny.

3 Robbery is the felonious taking and carrying away of
4 the personal property of any value of another from his
5 person or in his presence by violence or putting him or
6 her in fear of violence. Robbery includes larceny. All
7 the elements which are necessary to constitute larceny are
8 also necessary to constitute robbery. The elements of
9 robbery are, first, the property taken must be the subject
10 of larceny, that is, it must be personal property; second,
11 there must be a felonious taking and carrying away of the
12 personal property, that is, there must be a trespass to
13 and asportation of the personal property with intent to
14 steal. The complete possession of the personal property
15 by the taker even for an instant is sufficient and the
16 carrying away or even the slightest removal of the
17 personal property is sufficient in law; third, the taking
18 and carrying away of the personal property must be with
19 felonious intent, that is, with the intent to steal on the
20 part of the taker to permanently deprive the owner of the
21 personal property and to convert the personal property to
22 the taker's own use; fourth, the aggravating circumstances
23 necessary to constitute robbery as distinguished from
24 larceny are (a) the property must be taken from the person
25 of another, but if it is taken in his or her presence, it

THE STATE VS HUGHES

1 is taken constructively from his or her person; and, (b)
2 the taking must not only be without his or her consent,
3 but it must be accomplished with violence or by putting
4 the person in fear of violence.

5 Now in order for one to be guilty of robbery while
6 armed with a deadly weapon, the law requires that one must
7 have used a deadly weapon to accomplish the purpose of the
8 robbery which I have defined to you.

9 The State of South Carolina is required to prove all
10 the material elements and essential allegations of the
11 charges made in the indictment beyond a reasonable doubt
12 before you could convict the defendant and find him guilty
13 of armed robbery.

14 Additionally, there is in this charge a second count
15 or in this indictment and that is possession of a firearm
16 during the commission of or attempt to commit a violent
17 crime. That is a statutory offense which is in law passed
18 by our Legislature and this particular statute makes it an
19 additional offense for a person to be in possession of a
20 firearm during the commission of a violent crime and armed
21 robbery is defined by law as a violent crime.

22 The next indictment is for that of criminal
23 conspiracy. That indictment, which is 93GS46-4304, charges
24 that Eric Dwayne Forney and Mar-Reece Aldean Hughes did in
25 York County on or about September 25, 1992, unlawfully and

THE STATE VS HUGHES

1 wilfully unite, combine, conspire, confederate, agree and
2 have tacit understanding with each other and/or other
3 persons whose names are unknown to the grand jurors for
4 the purpose of committing murder and armed robbery.

5 Now the word wilfully does not mean merely voluntarily
6 or intentionally. Doing or omitting to doing anything
7 knowingly and wilfully implies not only a knowledge of the
8 thing, but a determination with bad intent to do it or
9 omit doing it. It signifies evil intent without
10 justifiable excuse and is employed to characterize a thing
11 done without ground to believe it is lawful or conduct
12 marked by a careless disregard whether or not one has a
13 right to act. Section 16-17-410, which is as I say a
14 minute ago, that's another statute passed by the
15 Legislature, states that the crime known to common law as
16 conspiracy is defined as a combination between two or more
17 persons for the purpose of accomplishing a criminal or
18 unlawful object or an object neither criminal or unlawful,
19 but by criminal or unlawful means.

20 And the word conspire is defined substantially as
21 follows: If two or more persons agree acting upon a common
22 purpose to commit a criminal act, they conspired. A
23 conspiracy is a combination between two or more persons to
24 do an unlawful act or to do a lawful act by criminal or
25 unlawful means. There can be no conspiracy when one

THE STATE VS HUGHES

individual acts by and for themselves only. In order to become a party to a conspiracy, a person must combine with someone else to effect the object of the conspiracy by the means agreed upon. A mere mental purpose cannot justify a conviction of conspiracy. A common design or agreement is the essence of the charge. In order to establish conspiracy, it is necessary, first, that the conspiracy or the agreement to commit the offense alleged in the indictment be established; and, second, to prove further that one or more of the parties engaged in the conspiracy of committing some of the act to effect its object.

To constitute conspiracy it is not necessary that two or more persons should meet and enter into an express or formal agreement for the doing of the unlawful act or that they should directed by words or in writing state between themselves or otherwise what the unlawful object is to be or by words or writing set forth the details thereof or the means by which the unlawful combination is to be made effective. It is sufficient that two or more persons in any manner or through any contrivance positively or tacitly come to a mutual understanding to accomplish a common and unlawful design. In other words, when an unlawful end is sought to be effected and two or more persons actuated by the common purpose of accomplishing that end work together in any way in furtherance of the

THE STATE VS HUGHES

1 unlawful scheme, each of such persons becomes a member of
2 the conspiracy. Success or failure of the conspiracy is
3 immaterial, but before any person may be found guilty of
4 this charge, it must appear beyond a reasonable doubt that
5 a conspiracy was formed as set forth in the indictment and
6 that the defendant was an active participant to it. Under
7 these charges here made the conspiracy constitutes the
8 offense and it must be made to appear from the evidence
9 beyond a reasonable doubt before Mr. Hughes could be
10 convicted and it must -- let me rephrase that. Under the
11 charge of conspiracy the conspiracy constitutes the
12 offense and it must be made to appear from the evidence
13 beyond a reasonable doubt before Mr. Hughes could be
14 convicted that he was a party to the conspiracy and an
15 unlawful act was committed. Conspiracy is an offense
16 requiring specific intent or purpose which must be shown
17 to exist beyond a reasonable doubt. This may be shown by
18 acts and declarations of the defendant, if any, and by the
19 circumstances surrounding the defendant's actions. They
20 must when taken together prove the specific intent and
21 purpose, which in this case is to knowingly, wilfully,
22 unlawfully, and feloniously conspire, combine,
23 confederate, arrange and agree together and with each
24 other to violate the law in the manner charged in the
25 indictment. Conspiracy may be proven by the specific overt

THE STATE VS HUGHES

1 acts done in furtherance of the conspiracy, but the crime
2 is, as I said, the agreement. Conspiracy is an on-going or
3 continuing crime. The crime of conspiracy is the agreement
4 or mutual understanding. Substantive crimes committed in
5 furtherance of the conspiracy constitute circumstantial
6 evidence of the existence of the conspiracy, it's object
7 and scope. At the risk of repetition let me add as to
8 determining the existence or non-existence of a conspiracy
9 in relationship with each defendant you should consider
10 the following matters: Was there a conspiracy as charged
11 in the indictment for the objects or any of them alleged
12 in the indictment? If there was a conspiracy, was the
13 defendant a party to it? Did any of the alleged
14 conspirators after the formation of the conspiracy, if it
15 was so formed, commit the overt acts or any one of them
16 alleged in the indictment? If the evidence satisfies you
17 beyond a reasonable doubt that the existence -- as to the
18 existence of such conspiracy and such overt acts one or
19 more were committed and that the defendant was a party to
20 such conspiracy when the overt act or acts were committed,
21 you will find him guilty as charged in the indictment. If,
22 however, the evidence fails to so satisfy you of the
23 existence of such conspiracy or of the commission of any
24 of the overt acts alleged in the indictment or that Mr.
25 Hughes was not a party to such conspiracy when any of the

THE STATE VS HUGHES

1 overt acts were committed then, in that event, you would
2 find the defendant not guilty.

3 By the term overt act as used in these instructions it
4 is meant an act committed by one or more of the
5 conspirators. If the evidence shows there was, in fact, a
6 conspiracy, what he intended to and had a tendency to --
7 let me rephrase that. By the term overt act as used in
8 these instructions it is meant an act committed by one or
9 more of the conspirators. If the evidence shows that there
10 was, in fact, a conspiracy and what defendant intended to
11 and had a tendency to do to forward the purpose of the
12 conspiracy such act may be an agreement between two or
13 more of the conspirators or it may be any act performed by
14 any one of the conspirators which would have a tendency to
15 forward or accomplish the purpose of the conspiracy and
16 the intent of conspirators. The act need not be a criminal
17 act nor the very crime which is the object of the
18 conspiracy. It must, however, accomplish or follow the
19 agreement and must be done in furtherance of its object.
20 The mere fact that the defendant named may have been
21 engaged in the performance of any of the acts charged in
22 the indictment as overt acts do not authorize a
23 conviction by reason of that fact alone, but it is
24 necessary to show that such defendant was party to the
25 conspiracy and unlawful agreement before his guilt of the

THE STATE VS HUGHES

1 offense charged is made out. Each party to a conspiracy
2 must be actuated by an intent to promote the common
3 design. If persons pursue by their acts the same unlawful
4 object one performing one act and another another act all
5 with a view to the attainment of the object they are
6 pursuing, the conclusion is warranted that they are
7 engaged in a conspiracy to effect the object. Cooperation
8 in some form must be shown. There must be an intentional
9 participation in the transaction with a view and purpose
10 to further the common design. And if a person
11 understanding the unlawful character of the transaction
12 encourages, advises, or in any manner with a purpose to
13 forward the enterprise or scheme, assist in its
14 prosecution, he becomes a conspirator. Joint assent or
15 joint participation in a conspiracy may be found like any
16 other fact as an inference of facts proven. I state to you
17 again that as to the charge of conspiracy The State must
18 prove each essential element beyond a reasonable doubt
19 before you can convict the defendant and find the
20 defendant guilty. As I have said, the gravamen of the
21 offense of conspiracy is an agreement. The agreement
22 requires the attestation and mutual understanding between
23 the conspirators resulting in a wilful and intentional
24 adoption of a common design to commit an illegal act and
25 it is not enough that The State show evidence of

THE STATE VS HUGHES

1 inference. The fact that The State has shown inference
2 upon inference is not enough to obtain a conviction on
3 conspiracy. A conspiracy may be shown not only by direct
4 evidence but by circumstantial evidence or both. I will in
5 a moment define for you circumstantial evidence.

6 The last of the four indictments is that for
7 possession of a stolen vehicle. That indictment,
8 93GS46-4303, alleges that Mar-Reece Aldean Hughes did in
9 York County on or about September 25, 1992, wilfully and
10 unlawfully did knowingly have in his possession a stolen
11 vehicle, to wit, a 1986 Buick, New York Registration
12 EMF313, from the City of Charlotte, North Carolina.

13 Another statute, 16-21-80 deals with the possession of
14 a stolen vehicle. And it states that it is a criminal
15 offense for a person who is not entitled to the possession
16 of a vehicle to receive or possess it knowing it to be
17 stolen. A vehicle is defined by law or by our statutes as
18 every device in, upon, or by which any person or property
19 is or may be transported or drawn upon a highway. A motor
20 vehicle is defined as every vehicle which is
21 self-propelled except for a moped.

22 Now what is possession? Proof of possession requires
23 more than proof of mere presence at the place where the
24 vehicle alleged to have been possessed is found. The State
25 must prove beyond a reasonable doubt that the accused had

THE STATE VS HUGHES

1 both (1) the power, that is, the actual or constructive
2 control and (2) the intent to control its disposition or
3 use. Actual control occurs when the vehicle is found to
4 be in the actual physical custody of the person charged.
5 Constructive control occurs when the person charged with
6 possession has dominion and control over the vehicle. It's
7 enough for constructive control that the accused had the
8 right to exercise dominion and control over the vehicle
9 allegedly possessed. Constructive control may be
10 established by circumstance as well as direct evidence and
11 may be jointly shared by two or more individuals. Actual
12 knowledge of the presence of the vehicle, allegedly
13 possessed is strong evidence of intent to control its
14 disposition or use so that it can often be equated with or
15 substituted for the intent element. However, actual
16 knowledge of the presence of the vehicle is not the only
17 circumstance in which this intent can be inferred.
18 Additionally, the possession by the accused must be with
19 the knowledge that the vehicle is stolen.

20 Finally, as to the charge of possession of stolen
21 vehicle, the law requires a further finding by the jury as
22 to the value of the stolen vehicle if you the trial jury
23 find the defendant guilty of possession of a stolen
24 vehicle beyond a reasonable doubt. You must further find
25 beyond a reasonable doubt, if you find him to be guilty of

THE STATE VS HUGHES

1 possession of stolen vehicle, you must make a finding
2 beyond a reasonable doubt as to whether the vehicle's
3 value was One Thousand Dollars or less or more than One
4 Thousand Dollars, but less than Five Thousand Dollars, or
5 Five Thousand Dollars or more.

6 Now that as I have charged you now as to the elements
7 of each of the charges against the defendant, Mr. Hughes.
8 I am now going to talk to you about what is called
9 accomplice liability.

10 I charge you that the law is if a crime is committed
11 by two or more persons who are acting together in the
12 commission of an offense, the act of one is the act of
13 both or all. If the two persons act together, aid, abet,
14 or assist each other, they both would be guilty of that
15 crime. If both are knowingly together and either acting
16 together or assisting each other in the commission of the
17 offense, the law says under those circumstances the act of
18 one is the act of all, the hand of one is the hand of all.
19 The person engaged in the commission of an unlawful act is
20 legally responsible for all the consequences which
21 naturally or necessarily flow from it. If he combines with
22 other persons to accomplish an illegal purpose, he is
23 liable criminally for everything done by his confederate
24 which follows incidentally in the execution of the common
25 design as one of its probable and natural consequences

THE STATE VS HUGHES

1 even though what was done was not intended as a part of
2 the original design or common plan.

3 I ask you to note in these instructions regarding the
4 responsibility of an accomplice as to the homicide or
5 murder committed by another that an accomplice is liable
6 for such homicide when he is present, aiding and abetting,
7 and when the homicide was a natural and probable
8 consequence of the common design.

9 I caution you, however, this rule is subject to
10 important limitations. In order to hold an accomplice
11 liable for murder committed by another, the law requires
12 proof that the accomplice personally agreed on the
13 commission of an unlawful act which would naturally and
14 probably result in a killing. In other words, you may not
15 convict the defendant of murder as an accomplice in a
16 killing committed by another unless you also find beyond a
17 reasonable doubt that the defendant himself agreed with
18 the accomplice to commit an act of killing or else to
19 commit some unlawful act which would probably result in a
20 killing. If after considering all of the evidence you
21 conclude beyond a reasonable doubt that the defendant was
22 an accomplice and he aided and abetted another in an
23 unlawful act, but if you are left with reasonable doubt as
24 to whether the unlawful act which the defendant actually
25 agreed upon was one which would naturally and probably

THE STATE VS HUGHES

1 result in death and that the accomplice thereafter took a
2 life without the defendant's prior knowledge, approval or
3 assistance, do not convict the defendant of the ensuing
4 murder under the doctrine of the hand of one being the
5 hand of all.

6 I charge you that mere knowledge that the principal is
7 going to commit an offense even when coupled with the
8 presence at the commission of the crime is not sufficient
9 to convict the defendant. He must aid or abet in the
10 commission of the offense. Mere presence at the scene of
11 the crime is not sufficient to convict one as the
12 principal of that crime.

13 I have mentioned circumstantial evidence. There are
14 two kinds of evidence, direct and indirect. Indirect is
15 often known and sometimes called circumstantial evidence.
16 In order that you understand these kinds of evidence I am
17 going to define or explain these two types to you. The
18 facts in a case may be proven by direct evidence,
19 circumstantial evidence or a combination of direct and
20 circumstantial evidence.

21 Direct evidence of a fact may be proven by the
22 testimony of a person who perceived the existence of a
23 fact by means of his or her senses such as where a person
24 sees the crime committed and comes into court and
25 testifies as to what they saw. This is frequently called

THE STATE VS HUGHES

1 eyewitness testimony. In other words, it comes from a
2 person who by their own senses had actual personal
3 knowledge that an event has occurred. It may be from the
4 use of any of our senses, sight, smell, taste, sound,
5 touch without the aid of any inferences.

6 Circumstantial evidence is testimony of surrounding
7 facts from which one may or may not infer that an event or
8 a fact has occurred. Stated another way circumstantial
9 evidence means the proof of some other fact or facts which
10 either taken singly or collectively the existence of a
11 particular fact in issue may be inferred as a necessary
12 consequence. Where certain facts are known through one or
13 more of the five senses and give rise to logical
14 inferences that other facts do, in fact, exist without
15 directly proving those facts. The State in proving its
16 case may rely on either or both of these types of
17 evidence, that is, direct or circumstantial.

18 With regard to direct evidence it must be such as to
19 prove the guilt of the accused beyond a reasonable doubt.
20 Circumstantial evidence is good provided it meets the test
21 required by law. If in a case there is no direct evidence
22 as to the crime in question and The State relies wholly on
23 circumstantial evidence this means that The State relies
24 upon inferences, the law, therefore, requires that in
25 addition to the requirement that the evidence must

THE STATE VS HUGHES

1 establish to your satisfaction guilt beyond a reasonable
2 doubt, the law also requires that when and to the extent
3 The State relies on circumstantial evidence The State must
4 prove all the circumstantial evidence relied upon and all
5 the circumstances relied upon beyond a reasonable doubt.
6 The circumstances must be wholly and in every particular
7 consistent each with the other and the circumstances must
8 point conclusively to the guilt of the accused to the
9 exclusion of every other reasonable hypothesis, that is,
10 the circumstances must be absolutely inconsistent with any
11 other reasonable hypothesis other than the guilt of the
12 accused.

13 In the consideration of circumstantial evidence you
14 must seek some other reasonable explanation other than the
15 guilt of the accused and if such reasonable explanation
16 can be found, you as trial jury cannot convict on such
17 circumstantial evidence. Therefore, if you as jury make
18 such a determination that such circumstantial evidence
19 does not meet these tests, then you would in such case set
20 aside such circumstantial evidence and disregard it and
21 find the defendant not guilty unless The State has proven
22 by direct evidence or proven by a combination of direct
23 and circumstantial evidence the guilt of the defendant
24 beyond a reasonable doubt.

25 I further instruct you that the mere fact that the

THE STATE VS HUGHES

1 circumstances are strongly suspicious and the guilt of the
2 defendant is probably is not sufficient to sustain a
3 conviction because the proof offered by The State must
4 exclude every other reasonable hypothesis except the guilt
5 of the defendant and such proof must satisfy you as trial
6 jury beyond a reasonable doubt.

7 Criminal intent is a necessary element of each of
8 these crimes and it must be proven by The State beyond a
9 reasonable doubt. Criminal intent is always a matter that
10 must be determined by you from the circumstances
11 surrounding a situation. There is no way to prove intent
12 to a mathematical certainty. There's no medical science
13 which can dissect a person's brain and determine what they
14 had in mind. So the law says that criminal intent may be
15 inferred from circumstances shown to have existed. This
16 is how a jury makes a determination of whether or not the
17 elements requiring intent was present. Criminal intent is
18 a state of mind which operated jointly with an act in the
19 commission of a crime. Criminal intent is a mental state,
20 a conscious wrongdoing. So it's up to you as jury to
21 determine what the defendant intended to do based on the
22 circumstances shown to have existed. I tell you The State
23 must prove criminal intent beyond a reasonable doubt just
24 as The State must prove every element beyond a reasonable
25 doubt as I have previously explained to you.

THE STATE VS HUGHES

1 Now there has been in this case some evidence and
2 testimony concerning the identification of the defendant.
3 An important issue in this case is the identification of
4 the defendant as a perpetrator of the crime for which he
5 is charged. The State has the burden of proving
6 identification beyond a reasonable doubt. It is not
7 essential that a witness himself be free from doubt as to
8 the correctness of a statement; however, you the jury must
9 be satisfied beyond a reasonable doubt of the accuracy of
10 the identification of the defendant before you may convict
11 him. If you are not convinced beyond a reasonable doubt
12 that the defendant was the person who committed this
13 crime, you must find the defendant not guilty.

14 Identification testimony is an expression of belief or
15 impression by the witness. It's value depends on the
16 opportunity the witness had to observe the offender at the
17 time of the offense and to make a reliable identification
18 later. In appraising identification testimony you can
19 consider the following: Are you convinced that the witness
20 had the capacity and an adequate opportunity to observe
21 the defendant? Whether the witness had an adequate
22 opportunity to observe the defendant at the time of an
23 offense will be affected by such matters as how long or
24 short a time was available, how far or close the witness
25 was, how good were the lighting conditions, whether the

THE STATE VS HUGHES

1 witness had occasion to see or know the person in the
2 past. Another factor you could consider are: Are you
3 satisfied that the identification made by the witness
4 after an offense was the product of their own
5 recollection. You may take into account both the strength
6 of the identification and the circumstances under which
7 the identification was made. You may further take into
8 account any occasions in which a witness failed to make an
9 identification of the defendant or made an identification
10 that was inconsistent with identification at trial.
11 Finally, you must consider the credibility of each
12 identification witness in the same way as other witnesses
13 considering whether they are truthful and whether they had
14 the capacity and opportunity to make a reliable
15 observation on the matter covered in their testimony.

16 Now in this case you have heard evidence as to an
17 alleged prior record of the defendant as to other crimes.
18 This evidence, as I told you earlier, was admitted for a
19 limited purpose. I instruct you now that you must not
20 consider such evidence for any purpose except for the
21 purpose for which it was admitted. The evidence of a
22 prior record was admitted and may be considered by you if
23 you conclude that it's true only for the purpose of
24 evaluating the credibility or the believability of the
25 testimony presented by the defendant himself and for no

THE STATE VS HUGHES

1 other purpose. You cannot and must not consider a prior
2 record of a defendant as to any evidence of their guilt
3 for the charge for which they are now being tried. You
4 may give to this evidence such weight and such value, if
5 any, to which you find it is entitled on the sole issue of
6 credibility or believability of the testimony offered by
7 the defendant himself, but not as any evidence of his
8 guilt of the crimes for which he is now being tried.

9 There has also been in this case evidence of other
10 crimes or offenses. This evidence is limited to a
11 consideration by you and that is as to alleged crimes and
12 offenses for which he is not indicted and not on trial at
13 this time. This evidence is limited to a consideration by
14 you as it relates to the offense charged in this case on
15 the following factors: one, as to motive; a second, is as
16 to intent; third is as to the absence of mistake or
17 accident; fourth is as to a common scheme or plan
18 embracing the commission of two or more crimes so related
19 to each other that the proof of one tends to establish the
20 other; and, fifth, as to the identity of the person
21 charged with the commission of the crime for which he is
22 on trial. This evidence is limited to those purposes.
23 This evidence cannot be used for any other purpose in this
24 case and this type evidence must not be considered by you
25 in any other fashion.

THE STATE VS HUGHES

1 You will recall there was a typewritten transcript of
2 a tape recording. I charge you that you were permitted to
3 have that or the limited purpose of helping you follow the
4 conversation and to help you keep track of it. I charge
5 you and remind you that the transcript was not and is not
6 evidence. The tape recording itself was the primary
7 evidence of its contents and you should, therefore, rely
8 on what you have heard rather than what was typed on the
9 transcript. During your deliberations, if you wish, you
10 may have the tape played. You will have it with you in the
11 jury room and we are going to make sure you have something
12 to play it on, if you wish.

13 Now you recall during the testimony a statement by Mr.
14 Hughes was admitted and I charged you certain things at
15 that time. I will tell you again that while the court
16 determines the admissibility of evidence, you, as trial
17 jury, must determine the existence, voluntariness and
18 weight of any alleged statement made by the defendant. You
19 must make the ultimate determination of whether or not the
20 defendant, in fact, made the alleged statement. If you
21 determine the defendant made the statement, you must then
22 determine whether the statement was made voluntarily.
23 Finally, you will decide what weight, if any, should be
24 given to any alleged statement. You must determine
25 whether the alleged statement was a product of an

THE STATE VS HUGHES

1 essentially free and unconstrained choice by its maker.
2 The State must prove the voluntariness of a statement
3 beyond a reasonable doubt. If you determine beyond a
4 reasonable doubt that a statement was given freely and
5 voluntarily, then you may give the statement such further
6 consideration as you deem proper. If you determine that
7 the alleged statement was not the free and voluntary will
8 of expression of the defendant, then you should not
9 consider the statement as evidence. I determining whether
10 a defendant's will was overcome in obtaining a statement,
11 the law requires you to consider what is known as the
12 totality of the circumstances. You should consider both
13 the characteristics of the defendant and the circumstances
14 surrounding any question or interrogation. Some of the
15 factors the law says you may consider are the age of the
16 defendant, the defendant's educational background, the
17 defendant's mental ability or capacity, and the
18 defendant's background along with all the other facts and
19 circumstances surrounding the making of the alleged
20 statement. In determining the voluntariness of any
21 alleged statement you should consider whether the
22 defendant was advised of and understood his constitutional
23 rights. The law requires that before any interrogation or
24 questioning of a person in custody may begin law
25 enforcement must advise the accused of his Miranda Rights.

THE STATE VS HUGHES

1 This means the authorities must advise the accused that
2 the accused has a right to remain silent, that any
3 statement could be used against the accused in a court of
4 law, that the accused has a right to have a lawyer
5 present, that if the accused cannot afford a lawyer, then
6 a lawyer would be appointed to represent the accused
7 without any cost to the accused, and, finally, that the
8 accused could stop making a statement at any time. Other
9 factors to consider are the place and length of any
10 detention and the nature of the questioning. You must
11 carefully scrutinize all the surrounding circumstances
12 before you give any weight to an alleged statement. You
13 must be satisfied beyond a reasonable doubt that the
14 statement was made by the defendant uninfluenced by
15 promise or reward or threat of harm. If you find beyond a
16 reasonable doubt that any alleged statement was given
17 voluntarily, then you must decide what weight, if any,
18 should be given to the statement. If you find a statement
19 was not voluntary, then, in that event, you must not
20 consider the statement as evidence for any purpose.

21 Now no alleged confession or statement or admission on
22 the part of an alleged co-defendant can be considered as
23 affording any evidence whatsoever against the defendant or
24 should any alleged confession, statement or admission be
25 considered as any evidence in this case unless The State

THE STATE VS HUGHES

1 has satisfied you beyond a reasonable doubt that the same
2 was freely and voluntarily made without threat or
3 inducements addressed to hope or fear. You may also and
4 must also consider and be convinced of The State's
5 reliability before you consider a statement of an alleged
6 participant in any fashion. In other words, before an
7 alleged confession or statement or admission by an alleged
8 participant can be considered by you as evidence, it must
9 not have been induced by promises nor extorted by fear,
10 but must be free and voluntary in every respect. Even then
11 it must be believed by you as trial jury. Taking into
12 consideration as to reliability you may take into
13 consideration the bias, prejudice, self-interest, and such
14 other factors as you deem appropriate.

15 Now in this case we have had what we call expert or
16 opinion testimony. Ordinarily I have told you witnesses
17 cannot testify as to their opinion of a matter. An
18 exception to this is where a witness qualifies as an
19 expert. In considering the opinion of an expert witness
20 that has been admitted in this case you could consider the
21 factual evidence first. An expert may base their opinion
22 upon facts and data which is not in evidence. You may
23 consider the expert opinion if you find the testimony is
24 based upon facts that are reasonably relied upon experts
25 in that particular field. You must consider expert

THE STATE VS HUGHES

1 testimony in the same manner as you do any other testimony
2 and give to it such weight as you may believe it to be
3 entitled and when considered with all the other evidence
4 in this case. Such testimony is given for the purpose of
5 helping you understand the evidence and not for the
6 purpose of controlling your judgment. The value of it
7 does not depend upon the skill or knowledge professed by
8 the expert, but rather upon the skill and knowledge
9 possessed by the expert. It is for you to judge whether
10 the expert possesses such knowledge. In this regard you
11 may consider their training, experience, ability to
12 communicate their ideas, the logic of their opinion, the
13 factual support for their opinion and all other factors as
14 you would judge and weigh the testimony of any other
15 witness. The value and effect of expert testimony is a
16 matter solely for you. No mere opinion of an expert can be
17 accepted as in and of itself truthful or reliable, but
18 must be weighed by you and convince your judgments beyond
19 a reasonable doubt and with the same force and effect as
20 any other fact proven in this case before you can rely on
21 it as a basis of a conviction.

22 You have heard testimony of witnesses who have special
23 knowledge, skill, experience, training or education in a
24 particular field and who have given their opinions as
25 experts as to matters in which they are skilled. In

THE STATE VS HUGHES

1 determining the weight to give such opinions you should
2 consider the qualifications and credibility of the experts
3 and the reasons given for their opinions. You are not
4 bound by such opinions. Give to those opinions the weight,
5 if any, you deem they are entitled.

6 The indictments in this case allege several different
7 charges against the defendant. Each charge is a separate
8 and distinct charge and a separate offense. You must
9 decide each charge separately on the evidence and the law
10 applicable to it uninfluenced and unprejudiced by your
11 decision as to any other charge. The defendant may not --
12 I'm sorry, the defendant may be convicted or acquitted on
13 any or all of the offenses charged. You would be asked to
14 write a separate verdict as to each charge.

15 Now you are not here as partisans or advocates; you
16 are here to serve as fair and impartial jurors and to
17 return a fair and truthful verdict. It is your duty by
18 your joint deliberations to determine the truth in this
19 case giving to the defendant the benefit of every
20 reasonable doubt on each and every issue, then to the
21 facts, which you determine to be true, you take and apply
22 the law, which I have now given to you, and you arrive at
23 a verdict which speaks the truth. The word "verdict" has
24 a Latin derivative, which simply means a true saying. When
25 you have accomplished these responsibilities, you would

THE STATE VS HUGHES

1 have satisfied your oath as jurors and you would have
2 discharged your duty to the court. You are not to be
3 swayed by mere sentiment, conjecture, sympathy, passion,
4 prejudice, public opinion or public feeling.

5 Now in addition to the indictments you will have in
6 the jury room four verdict forms. I am going to go over
7 those with you and we're pretty much at the end of this -
8 I'm going to go over them with you. Now I first tell you
9 that whatever verdict is rendered as to each charge the
10 verdict on that charge must be unanimous, that is, all
11 twelve jurors must agree on each verdict before you
12 authorize your foreman to write a verdict on your behalf.
13 And I'm going to go over these in the same order as I went
14 over them in my charge.

15 As to the verdict form for murder, the two choices are
16 and the fact that one is before the other is to be given
17 no significance by you. I simply must put one first and
18 one second and I always do them this way, but you are not
19 infer from the order in which they are in to be any
20 indication of opinion of mine as to what the verdict
21 should be and you should not consider them as one being
22 given any more weight than the other. That is your
23 consideration and determination and no one elses.

24 The verdict form for murder your two choices are: If
25 you find The State has proven the guilt of the defendant

THE STATE VS HUGHES

1 beyond a reasonable doubt as to the crime of murder, as I
2 have charged that to you, your verdict would be we find
3 the defendant guilty. If you find that The State has
4 failed to carry its burden of proof and failed to prove to
5 your satisfaction the guilt of the defendant beyond a
6 reasonable doubt as to the charge of murder, you would use
7 the second which says we find the defendant not guilty.
8 Mr. Foreman, you simply put an X in front of the verdict
9 which the jury has chosen unanimously and you would then
10 sign and date it.

11 The verdict for for armed robbery has two counts. One
12 is, of course, armed robbery and the other is possession
13 of firearm during the commission of or attempt to commit a
14 violent crime. If you find that The State has proven the
15 guilt of the defendant beyond a reasonable doubt as to
16 armed robbery, you would use the first form under that
17 that says we find the defendant guilty. If you find The
18 State has not carried its burden of proof and proven the
19 guilt of the defendant as to armed robbery beyond a
20 reasonable doubt, you would use the second line that says
21 we find the defendant not guilty.

22 Then as to possession of firearm during the commission
23 of or attempt to commit a violent crime if you find The
24 State has proven that offense beyond a reasonable doubt,
25 then you would use the first form we find the defendant

THE STATE VS HUGHES

1 guilty. If you find The State has failed to carry its
2 burden of proof and failed to prove the defendant guilty
3 beyond a reasonable doubt as to the charge of possession
4 of firearm during the commission or attempt to commit a
5 violent crime, you would use the second form that says we
6 find the defendant not guilty.

7 As to the verdict form for criminal conspiracy, the
8 choices are the same. If you find that The State has
9 proven the guilt of the defendant beyond a reasonable
10 doubt as to criminal conspiracy, you would use the first
11 form that says we find the defendant guilty. If you find
12 The State has not carried its burden of proof and proven
13 the guilt of the defendant as to criminal conspiracy
14 beyond a reasonable doubt, you would use the second form
15 that says we find the defendant not guilty.

16 As to the verdict form for possession of stolen
17 vehicle, that one is a little different than the others.
18 If you find that The State has proven the guilt of the
19 defendant beyond a reasonable doubt as to being in
20 possession of a stolen vehicle as alleged in the
21 indictment you would use the first form that says we find
22 the defendant guilty. That form goes further and says and
23 we find the value of the vehicle was. If you find the
24 defendant guilty beyond a reasonable doubt as to
25 possession of stolen vehicle, you then must make a finding

THE STATE VS HUGHES

1 beyond a reasonable doubt as to whether or not the value
2 of the car was One Thousand Dollars or less, more than One
3 Thousand Dollars, but less than Five Thousand Dollars, or
4 Five Thousand Dollars or more. And you simply would, in
5 addition to putting an X or a check as to the verdict
6 form, you would choose A, B or C as to the value that the
7 jury unanimously determines. If you find The State has
8 failed to carry the burden of proof and failed to prove
9 the guilt of the defendant as to possession of stolen
10 vehicle beyond a reasonable doubt, you would use the
11 second that says we find the defendant not guilty.

12 Now that, in essence, is my charge, but I want to tell
13 you before I allow you to start deliberating I must by law
14 go over my charge with the attorneys to make sure that I
15 have not misstated something or left something out. If
16 that is the case, I will have to bring you back in and
17 recharge you to correct any errors I have made. That's my
18 job. I tell you you have got to follow the law as I give
19 it to you and that puts the burden on me to give you the
20 law correctly. So if I have made an error, I will bring
21 you back. If I have not made an error and do not need to
22 call you back, we will send in to you the exhibits and the
23 verdict forms and that will be your cue along with the
24 bailiff telling you to start your deliberations. Don't
25 get too comfortable. If I have to send for you, it will be

THE STATE VS HUGHES

1 within four or five minutes. Now your lunch will be here
2 around one. I'll give you the choice as to whether you
3 want to eat and deliberate or want to take a break and
4 just stop and eat and not work and deliberate during that
5 time. You can take breaks when you wish and make
6 arrangements to go out and smoke as you wish. To do so you
7 don't have to ask me, but do, of course, let us know
8 through the bailiff when you are taking a break. We will
9 wonder why we see you walking down the hall. When you
10 take a break, you all must take a break. The verdicts have
11 to be unanimous as I have said several times and,
12 therefore, four of you can't take a break and the others
13 continue to work. You all work or you all take a break.
14 When you go to the jury room, if you have any questions,
15 Mr. Foreman, please write the questions down and give them
16 to the bailiff and I will consult with counsel to
17 determine how to respond and I will respond to your
18 questions. Once you have reached a verdict, just simply
19 knock on the door and let us know that you have reached a
20 verdict and we will send for you as promptly as we can.
21 Now if you need to come back I can recharge you on the
22 law. That's one of the things that you send me a note out
23 if that's what you need. We can play back testimony; that
24 will take some time to find, but it can be done if you
25 want to have played back some testimony. We are not going

THE STATE VS HUGHES

1 to send in to you even though it is in evidence the tape
2 from the news report. If you wish to see that, just send
3 us a note that you wish to see it and we will bring you
4 back in here and show it. That's just logistics, no other
5 reason other than logistics. We will have a player
6 available to play the cassette of the radio call that is
7 in evidence, if you so desire.

8 Now Mr. Brissey and Ms. Frazier, I am going to ask
9 that you go at this time. You are not to deliberate
10 because we have all twelve jurors and alternates, so I am
11 going to ask you to go to the second jury room and let the
12 other jurors, the twelve, go to the grand jury room where
13 they will be deliberating. Don't start deliberating. Don't
14 get too comfortable once you are there because I might
15 have to call you back in. All right, follow Mr. Dunn to
16 the jury room.

17 (Jury retires to jury room at 12:55 PM.)

18 Any exceptions or additions on behalf of The State?

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

20 THE COURT: Any on behalf of the defendant?

21 MR. SCHUSTERMAN: None, Your Honor.

22 THE COURT: All right, please check the exhibits, if
23 you wish. Please check and make sure the indictments are
24 in the proper form as they need to be and then we will
25 send all of that in. We will be at ease. The two

THE STATE VS HUGHES

1 alternates are in the other room.

2 (Whereupon the exhibits were reviewed with the court
3 reporter by counsel for The State and counsel for the
4 defendant.)

5 (Recess)

6 Let the record show that The State represented by The
7 Solicitor and counsel for defendant are present. Mr.
8 Hughes is present. We have a note from the foreman. It
9 says, first, "We need a clarification on the definition of
10 criminal conspiracy." I will call them in and recharge. It
11 is a lengthy charge, but I will recharge the entire
12 charge. The second is "Can we take notes during your
13 reading?" The court has no objection to that. What says
14 The State?

15 MR. POPE: Your Honor, I don't know that I care one
16 way or the other. I think the problem it might fall into
17 is the same as why you don't send back the charge book or
18 whatever, so, obviously, if they need to be charged more
19 than once ultimately, I think that may be the proper way
20 to proceed.

21 THE COURT: What says the defense?

22 MR. SCHUSTERMAN: I concur with Mr. Pope.

23 THE COURT: I will tell them not to take notes, but if
24 they still don't understand it, we ---

25 MR. SCHUSTERMAN: You can read it as many times they

THE STATE VS HUGHES

1 would like and, Your Honor, you did say you were going to
2 -- looking at your conspiracy charge, it is a rather
3 lengthy charge, but if you will charge them on the entire
4 --

5 THE COURT: Well, what I think I need to do is the
6 only other way would be is to have them come in and tell
7 me exactly what the clarification is and then we will be
8 into a morass, so I'm just going to charge them the whole
9 thing and hope that will cover it.

10 Bring them in.

11 (Jury returns to jury room at 2:30 PM.)

12 Go ahead and have you seat.

13 Members of the jury panel, I have your message and I
14 am going to recharge the entire charge on conspiracy. I am
15 going to ask you not to take notes on it again for the
16 reasons and concerns that I had about taking notes during
17 the trial, but I will tell you I will read this a dozen
18 times if it takes that if you want to come back out
19 because, again, I'm afraid that someone even though I go
20 slow and try to be clear may write down one thing and miss
21 the next and those same reasons I gave earlier.

22 Now the indictment for criminal conspiracy alleged
23 that in York County Eric Dwayne Forney and Mar-Reece
24 Aldean Hughes did on or about September 25, 1992,
25 unlawfully and wilfully unite, combine, conspire,

THE STATE VS HUGHES

1 confederate, agree and have tacit understanding with each
2 other or other persons whose names are unknown to the
3 Grand Jurors for the purpose of committing murder and
4 armed robbery against the peace and dignity of The State
5 and contrary to the statutes such cases made and provided.
6 In this the use of the word "wilful" does not mean merely
7 voluntarily or intentionally. Doing or omitting to doing
8 anything knowingly and wilfully implies not only a
9 knowledge of the thing, but a determination with bad
10 intent to do it or omit doing it. It signifies an evil
11 intent without justifiable excuse and is employed to
12 characterize a thing done without ground to believe it is
13 lawful or conduct marked by a careless disregard of
14 whether or not one has the right to act. Section
15 16-17-410 of our Code states that the crime known to the
16 common law was conspiracy hereby defined as a combination
17 between two or more persons for the purpose of
18 accomplishing a criminal or unlawful object or an object
19 neither criminal nor unlawful, but by criminal or unlawful
20 means.

21 Now the word "conspire" is defined substantially as
22 this. If two or more persons agree acting upon a common
23 purpose to commit a criminal act, they conspire. A
24 conspiracy is a combination of two or more persons to do
25 an unlawful act or to do a lawful act by criminal or

THE STATE VS HUGHES

1 unlawful means. There can be no conspiracy when one
2 individual acts by or for themselves only. In order to
3 become a party to a conspiracy, a person must combine with
4 someone else to effect the object of the conspiracy by the
5 means agreed upon. A mere mental purpose cannot justify a
6 conviction of conspiracy. A common design or agreement is
7 the essence of conspiracy. In order to establish
8 conspiracy it is necessary first that the conspiracy or
9 agreement to commit the offense alleged in the indictment
10 be established and, second, prove further that one or more
11 of the parties engaged in the conspiracy have committed
12 some act to effect its object. To constitute conspiracy
13 it is not necessary that two or more persons should meet
14 and enter into an expressed or formal agreement for the
15 doing of the unlawful act or that they should directly by
16 words or in writing state between themselves or otherwise
17 what the unlawful object is to be or the details thereof
18 or the means by which the unlawful combination is to be
19 made effective. It is sufficient that two or more persons
20 in any manner or through any contrivance positively or
21 tacitly come to a mutual understanding to accomplish a
22 common and unlawful design. In other words, when an
23 unlawful end is sought to be effected and two or more
24 persons actuated by the common purpose of accomplishing
25 that end work together in any way in furtherance of the

THE STATE VS HUGHES

1 unlawful scheme each of such persons becomes a member of
2 the conspiracy. The success or failure of the conspiracy
3 is immaterial. But before any person may be found guilty
4 of the charge, it must appear beyond a reasonable doubt
5 that a conspiracy was formed as alleged in the indictment
6 and that the defendant was an active party to it. Under
7 the charge here made the conspiracy constitutes the
8 offense and it must be made to appear from the evidence
9 beyond a reasonable doubt before a defendant can be
10 convicted and that he was a party to the conspiracy and an
11 unlawful act was committed.

12 Conspiracy is an offense requiring specific intent or
13 purpose which must be shown to exist beyond a reasonable
14 doubt. This may be shown by acts and declarations of a
15 defendant, if any, and by the circumstances surrounding
16 the defendant's actions. They must when taken together
17 prove the specific intent and purpose which in this case
18 is the knowingly, wilfully, unlawfully and feloniously
19 conspire, combine, confederate, arrange and agree together
20 and with each other to violate the law in the manner
21 charged in the indictment. Conspiracy may be proven by
22 the specific overt acts done in furtherance of the
23 conspiracy, but the crime is the agreement. Conspiracy is
24 an ongoing or continuing crime. The crime of conspiracy is
25 the agreement or mutual understanding. The substantive

THE STATE VS HUGHES

1 crimes committed in furtherance of the conspiracy
2 constitutes circumstantial evidence of the existence of
3 the conspiracy its object and scope. At the risk of being
4 repetitious I add in determining the existence or
5 non-existence of a conspiracy in relationship with each
6 defendant you should consider the following matters: Was
7 there a conspiracy as charged in the indictment for the
8 objects or any of them alleged in the indictment? If there
9 was a conspiracy, was the defendant a party to it? Did
10 any of the alleged conspirators act to the formation of
11 the conspiracy, if it was so formed, commit the overt acts
12 or any one of them as alleged in the indictment? If the
13 evidence satisfies you beyond a reasonable doubt that the
14 existence of -- as to the existence of such conspiracy and
15 that such overt acts, one or more, were committed and that
16 the defendant was a party to such conspiracy when the
17 overt act or acts were committed, you will find him guilty
18 as charged in the indictment. If, however, the evidence
19 fails to so satisfy you of the existence of such
20 conspiracy or the commission of any of the overt acts
21 alleged in the indictment or that the defendant now on
22 trial was not a party to such conspiracy when any of the
23 overt acts were committed, then, in that event, you will
24 find the defendant not guilty.

25 By the term "overt act" as used in these instructions

THE STATE VS HUGHES

1 it is meant an act committed by one or more of the
2 conspirators. If the evidence shows there was, in fact, a
3 conspiracy, what he intended to do and had a tendency to
4 do to forward the purpose of the conspiracy such act may
5 be an agreement between two or more of the conspirators or
6 it may it may be any act performed by any one of the
7 conspirators which would have a tendency to forward or
8 accomplish the purpose of the conspiracy and the intent of
9 the conspirators. The act need not be a criminal act nor
10 the very crime which is the object of the conspiracy. It
11 must, however, accomplish or follow the agreement and must
12 be done in furtherance of its object. The mere fact that
13 the defendant named, here Mr. Hughes, may have engaged in
14 the performance of any of the acts charged in the
15 indictment as overt acts do not authorize a conviction by
16 reason of that fact alone, but it is necessary to show
17 that such defendant was party to the conspiracy and
18 unlawful agreement before his guilt of the offense charged
19 is made out. Each party to a conspiracy must be actuated
20 by an intent to promote the common design. If persons
21 pursue by their acts the same unlawful object one
22 performing one act and another another act all with a view
23 to the attainment of the object they are pursuing, the
24 conclusion is warranted that they are engaged in a
25 conspiracy to effect the object. Cooperation in some form

THE STATE VS HUGHES

1 must be shown. There must be an intentional participation
2 in the transaction with a view and purpose to further the
3 common design. And if a person understanding the unlawful
4 character of the transaction encourages, advises or in any
5 manner with a purpose to forward the enterprise or scheme
6 or assist in its prosecution, he becomes a conspirator.

7 Joint assent or joint participation in a conspiracy may be
8 found like any other fact as an inference on facts proven.

9 I state to you again that as to the charge of conspiracy

10 The State must prove each essential element beyond a
11 reasonable doubt before you can convict the defendant and
12 find the defendant guilty. Following up on conspiracy,
13 the gravamen of the offense of conspiracy is an agreement.

14 The agreement requires the attestation and mutual
15 understanding between the conspirators resulting in a
16 wilful and intentional adoption of a common design to
17 commit an illegal act and it is not enough that The State
18 show evidence of inference. The fact that the State has
19 shown inference upon inference is not enough to obtain a
20 conviction on conspiracy. A conspiracy may be shown not
21 only by direct evidence but by circumstantial evidence or
22 both and I define circumstantial evidence for you at a
23 later point.

24 I hope that is helpful. If it is not, I will be glad
25 to go over it again.

THE STATE VS HUGHES

1 I will let you go back to the jury room and continue
2 your deliberations.

3 (Jury retires to jury room at 2:43 PM.)

4 Any exceptions by The State?

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

6 THE COURT: By the defense?

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

8 THE COURT: All right, we will stand at ease.

9 MR. SCHUSTERMAN: Thank you, sir.

10 (Recess)

11 THE COURT: Counsel for The State and the defendant
12 and the defendant are present. We have received another
13 note from Mr. Neeley, the foreman of the jury, that says
14 "We would like to see the defense pictures 1 and 2 that
15 were shown this morning with "Forney" shooting the gun. My
16 proposal rather than bring them in and tell them that
17 those are not in evidence is simply to write that on the
18 note and send it back in. Does The State consent?

19 MR. POPE: The State consents, Your Honor.

20 THE COURT: Does the defense consent?

21 MR. SCHUSTERMAN: Your Honor, I would want it
22 fashioned in such a way that while -- yes, I agree. I
23 agree, but logistically my concern is that they not the
24 impression that they can't consider what they saw. It
25 might convey to them that they are not to -- that that is

THE STATE VS HUGHES

1 not to be considered much like the statement you made
2 about the indictments - this is not evidence in the case
3 and that's not necessarily true. They are free to consider
4 it, but they can't physically have the pictures back
5 there.

6 MR. POPE: This would be no different than the
7 transcript that didn't go back.

8 THE COURT: Well, it almost not be much different from
9 saying we hear Mr. Schusterman argue again.

10 MR. SCHUSTERMAN: And I have no problem with that,
11 Your Honor.

12 THE COURT: Well, I know, but I mean, so I am going to
13 write on here, it's over objection --

14 MR. SCHUSTERMAN: Of course.

15 THE COURT: Huh?

16 MR. SCHUSTERMAN: Yes, over objection.

17 THE COURT: All right, bring them in. I will explain
18 it the best I can.

19 MR. SCHUSTERMAN: I would just like you to
20 differentiate between the pictures and the indictments.

21 THE COURT: Well, I can't say too much.

22 MR. SCHUSTERMAN: Okay.

23 THE COURT: I will bring them in because we want
24 everything on the record to be right.

25 (Jury returns to courtroom at 3:26 PM.)

THE STATE VS HUGHES

1 You may take a seat.

2 All right, you have requested to be allowed to see two
3 photographs that were produced in the case for the
4 defense. I understand it was computer enhanced or
5 whatever, but -- computer generated I guess would be the
6 right word. The note says "We would like to see the
7 defense pictures that were shown this morning with Forney
8 shooting the gun" and signed by B. E. Neeley. The only
9 exhibits that can be sent to you in the jury room are
10 those which were placed into evidence by either one of the
11 attorneys or by one without objection of the other or
12 ordered into the record by the court. These pictures were
13 not placed into evidence as exhibits and, therefore,
14 cannot be sent back to the jury room.

15 All right, you may return to the jury room.

16 (Jury retires to jury room at 3:30 PM.)

17 Any exceptions by The State?

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

19 THE COURT: By the defendant?

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

21 THE COURT: All right, we will be at ease.

22 (Recess)

23 I understand the jury has reached verdicts. Is The
24 State ready?

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

THE STATE VS HUGHES

1 THE COURT: The defense?

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

3 THE COURT: All right, bring in the jury.

4 While they are getting the jury, let me caution those
5 in attendance no matter what the verdict is, please, keep
6 decorum. If you don't feel like you can remain decorous, if
7 that's the right word, when the verdict is returned, I'd
8 rather you excuse yourself from the courtroom now rather
9 than have to be escorted from it at the time the verdict
10 is read.

11 (Jury returns to courtroom at 5:25 PM to report its
12 verdicts.)

13 Has the jury reached the verdicts?

14 FOREMAN OF JURY: Yes, sir, we have.

15 THE COURT: If you will hand them up by way of the
16 bailiff.

17 All right, I ask the Clerk to publish the verdicts.

18 THE CLERK: The State of South Carolina, County of
19 York, versus Mar-Reece Hughes indicted under Indictment
20 93GS46-4296 the charge or murder. "We find the defendant
21 guilty" and it is signed Mr. Neeley, foreman. If this be
22 your verdict, would you signify by raising your right
23 hand, please?

24 State of South Carolina, County of York, ---

25 THE COURT: Let the record reflect that all twelve did

THE STATE VS HUGHES

1 raise their hand.

2 THE CLERK: --- under Indictment 93GS46-4304 The State
3 of South Carolina versus Mar-Reece Hughes, the charge of
4 criminal conspiracy. "We find the defendant guilty." If
5 this be your verdict, would you signify by raising your
6 right hand, please? Let the record show that all twelve
7 of the jurors affirmed this verdict.

8 The State of South Carolina, County of York,
9 Indictment 93GS46-4305 the charge of armed robbery. "We
10 find the defendant guilty." Possession of Firearm during
11 the commission of or attempt to commit a crime. "We find
12 the defendant guilty." If this be your verdict, would you
13 signify by raising your right hands, please? Let the
14 record show that all twelve jurors affirmed these
15 verdicts.

16 THE COURT: Is that all? What about the stolen
17 vehicle? Did you read that?

18 THE CLERK: I'm sorry. The State of South Carolina,
19 County of York, Indictment 93GS46-4303 the charge of
20 possession of a stolen vehicle. "We find the defendant
21 guilty and we find the value of the vehicle more than a
22 Thousand Dollars, but less than Five Thousand." If this
23 be your verdict, would you signify by raising your right
24 hands, please? Let the record show that all twelve jurors
25 affirmed this verdict.

THE STATE VS HUGHES

1 THE COURT: All right. Anything from The State before
2 the jury is released -- I mean they are not - before we
3 move into the next phase.

4 MR. POPE: No, sir.

5 THE COURT: Anything from the defense while the jury
6 is still present?

7 MR. SCHUSTERMAN: I would like the jury to be polled.

8 THE COURT: All right. Members of the jury panel, the
9 defense is requesting that you be what is called polled,
10 that is, as to each verdict the Clerk will pose a question
11 to you and actually I believe there will be two questions
12 and you will respond to that question with whatever your
13 appropriate answer is.

14 THE CLERK: Mr. Bryant Neeley, Jr., ---

15 JUROR: Byron Neeley.

16 THE CLERK: Byron -- would you stand, please? Are
17 these your verdicts, Mr. Neeley?

18 JUROR: Yes, ma'am.

19 THE CLERK: And you still adhere to them?

20 JUROR: Yes, ma'am.

21 THE CLERK: Thank you, you may be seated.

22 James R. Harrison. Mr. Harrison, are these your
23 verdicts?

24 JUROR: Yes, ma'am.

25 THE CLERK: And do you still adhere thereto?

THE STATE VS HUGHES

1 JUROR: Yes, ma'am.

2 THE CLERK: Thank you, you may be seated.

3 Arnold Tompkins. Are these your verdicts, Mr.
4 Tompkins?

5 JUROR: Yes, ma'am.

6 THE CLERK: And do you still adhere thereto?

7 JUROR: Yes.

8 THE CLERK: Thank you.

9 Lana Carter? Are these your verdicts, Ms. Carter?

10 JUROR: Yes, ma'am.

11 THE CLERK: And do you still adhere there?

12 JUROR: Yes, ma'am.

13 THE CLERK: Dwayne Heyward? Mr. Heyward, are these
14 your verdicts?

15 JUROR: Yes, ma'am.

16 THE CLERK: And do you still adhere thereto?

17 JUROR: Yes, ma'am.

18 THE CLERK: Thank you.

19 Bobby L. Wylie? Are these your verdicts, Mr. Wylie?

20 JUROR: Yes, ma'am.

21 THE CLERK: And do you still adhere thereto?

22 JUROR: I do.

23 THE CLERK: Thank you.

24 Willie F. Battles? Are these your verdicts, Mr.
25 Battles?

THE STATE VS HUGHES

1 JUROR: Yes, ma'am.

2 THE CLERK: And do you still adhere thereto?

3 JUROR: Yes, ma'am.

4 THE CLERK: Thank you.

5 Virginia Kitchens? Are these your verdicts, Ms.

6 Kitchens?

7 JUROR: Yes, ma'am.

8 THE CLERK: And do you still adhere thereto?

9 JUROR: I do.

10 THE CLERK: Thank you.

11 Ruby Howie? Are these your verdicts, Ms. Howie?

12 JUROR: Yes, they are.

13 THE CLERK: And do you still adhere thereto?

14 JUROR: Yes, ma'am.

15 THE CLERK: Thank you.

16 Reuben L. Lee? Are these your verdicts, Mr. Lee?

17 JUROR: Yes, ma'am.

18 THE CLERK: And do you still adhere there?

19 JUROR: Yes, ma'am.

20 THE CLERK: Thank you.

21 THE COURT: Anything further from The State?

22 THE CLERK: WE have two more.

23 THE COURT: Oh, I'm sorry.

24 THE CLERK: Eileen Hartman? Are these your verdicts,

25 Ms. Hartman?

THE STATE VS HUGHES

1 JUROR: Yes, they are.

2 THE CLERK: And do you still adhere thereto?

3 JUROR: Yes, ma'am.

4 THE CLERK: Thank you.

5 And Ann Keller? Ms. Keller, are these your
6 verdicts?

7 JUROR: Yes, they are.

8 THE CLERK: And do you still adhere thereto?

9 JUROR: Yes, I do.

10 THE CLERK: Thank you.

11 THE COURT: Anything else from The State?

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

13 THE COURT: Anything from the defense?

14 MR. SCHUSTERMAN: Not with the jury.

15 THE COURT: Members of the jury panel, as I told you
16 in Aiken and also when I was giving you my charge earlier
17 today, this case is one wherein the death penalty is
18 sought and that requires a bifurcated or two part trial.
19 We have discussed that. This is the end of the first
20 part. As the defendant was found guilty of murder, we will
21 move into the second part. The law allows a twenty-four
22 hour waiting period before that trial can start. Now I
23 know it is not convenient for you to be here and have
24 nothing to do for that period of time, but there are
25 reasons for that, that is the law, and I understand that

THE STATE VS HUGHES

1 the defendant is requesting that.

2 MR. SCHUSTERMAN: Correct.

3 THE COURT: So, the time the verdict was returned
4 today was, of course, September 18th at 5:25, which means
5 we will have to wait until 5:25 tomorrow. We are not
6 going to start at 5:25 tomorrow. We are going to wait and
7 start Wednesday morning. That will make it better for all
8 of us to start rather than start at 5:30 or so tomorrow
9 afternoon because we wouldn't be able to get a whole lot
10 in before I think everybody would need to retire. You
11 still -- I am instructing you at this time even though you
12 have been discussing the case at length, The State and the
13 defense have the opportunity if they wish to present
14 mitigating or extenuating or aggravating circumstances.
15 They are not required to. Don't start discussing - you
16 don't know what these are. You don't know what the law
17 calls aggravating circumstances and you don't know what
18 are mitigating circumstances. So don't start discussing
19 the sentencing phase at this time. Just like when I told
20 you about the fact questions and the questions that we had
21 to resolve and you had to resolve in the guilt phase or
22 the guilt or innocence of the defendant, I likewise tell
23 you that you cannot with good conscience or with any
24 degree of intellect or reasonableness try to make up your
25 mind on the second aspect of this until such time you have

THE STATE VS HUGHES

1 heard the evidence and I have instructed you on the law
2 and you have heard from the defendant himself or his
3 counsel or counsel for The State. So I'm going to just ask
4 you to relax. It's been a hard day, it's been a hard
5 several days, so maybe you will welcome having a little
6 bit of time tomorrow. We will start back at 9:30 on
7 Wednesday and I don't know how long that will take because
8 I don't know at this point what sort of witnesses will be
9 presented, if any, or what evidence will be presented. So
10 we will see you back at 9:30 on Wednesday. Now you still
11 cant receive information outside the courtroom. You still
12 can't read the paper about this case. You can't listen to
13 the radio about this case or watch tv concerning this
14 case. Now your two fellow jurors will be joining you.
15 Don't discuss with them what you discussed in the jury
16 room. If for some reason one or both of them end up being
17 with you deliberating on the penalty phase then, of
18 course, you could discuss it, but at this time, don't
19 discuss with them anything about what you all talked about
20 in the jury room because that would be inappropriate.

21 I hope you have a relaxing evening and the individuals
22 from the Law Enforcement Division who have been escorting
23 you will continue to do so and we will see you back here
24 at 9:30 on Wednesday morning. Thank you.

25 (Jury exits courtroom at 5:34 PM)

THE STATE VS HUGHES

1 The Foreman needs to sign? Do you have the
2 indictments?

3 THE CLERK: No, sir, I don't.

4 (Foreperson brought in.)

5 THE COURT: Mr. Neeley, I am going to let you sign the
6 verdicts on the actual original indictments. On the next
7 line just put vehicle valued at - I think you decided ---

8 FOREMAN: Over One Thousand, but less than Five
9 Thousand.

10 THE COURT: Yes, just write that down.

11 FOREMAN: Yes, sir.

12 THE COURT: Thank you. Appreciate it.

13 Anything from The State?

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

15 THE COURT: Counsel for Defendant, anything at this
16 point?

17 MR. SCHUSTERMAN: Yes, sir, for the record, Your
18 Honor, I make a motion for a judgment notwithstanding the
19 verdict of acquittal based on the fact that the facts as
20 presented did not lean itself for the jury reaching a
21 conclusion of guilt on the charges.

22 THE COURT: That motion is denied.

23 MR. SCHUSTERMAN: Thank you, sir.

24 THE COURT: All right, as I earlier said, the verdict
25 was returned today, September 18th, at 5:25 PM. The

THE STATE VS HUGHES

1 verdict on the indictment for murder was guilty.

2 Mr. Hughes, do you understand that verdict?

3 MR. HUGHES: Yes, sir.

4 THE COURT: Do you understand that we will now move
5 into the second part of the trial involving penalty, which
6 would be the option of life imprisonment or the death
7 penalty? Do you understand that?

8 MR. HUGHES: Yes, sir.

9 THE COURT: Now you have the right to have a
10 twenty-four hour waiting period and your counsel has
11 indicated you wish to have that. Is that correct?

12 MR. HUGHES: Yes, sir.

13 THE COURT: Do you understand while this is Monday
14 evening we will not start back until - it will give you a
15 little more than twenty-four hours because of the timing.
16 We will start back on Wednesday morning. Do you understand
17 that?

18 MR. HUGHES: Yes, sir.

19 THE COURT: Is that all right with you?

20 MR. HUGHES: Yes, sir.

21 THE COURT: Now does The State intend to offer
22 additional evidence at the penalty phase regarding
23 extenuating or aggravating circumstances?

24 MR. POPE: Yes, sir, we do, Your Honor.

25 THE COURT: Does the defendant intend to present

THE STATE VS HUGHES

1 evidence in mitigation?

2 MS. BRICE: Yes, Your Honor.

3 THE COURT: Can The State tell me at this time what
4 aggravating circumstances it contends is involved?

5 MR. POPE: Your Honor, it would be the death of a law
6 enforcement officer engaged in his duties. It would also
7 be murder during the commission of an armed robbery. And I
8 believe the third one is murder during a larceny with a
9 deadly weapon. I believe that would be the three.

10 THE COURT: Are you on notice? Do you understand
11 those, Mr. Schusterman and Ms. Brice?

12 MS. BRICE: Yes, sir.

13 MR. SCHUSTERMAN: I do, Your Honor.

14 THE COURT: Now from the defense if you could at this
15 time inform the court of the statutory mitigating
16 circumstances you contend are involved.

17 MS. BRICE: Your Honor, we will be presenting evidence
18 that Mr. Hughes was not the shooter. We will be presenting
19 testimony from a social worker. We will be presenting
20 testimony of psychiatrists, which the court has already
21 heard from. We also have a psychologist who may also
22 testify. We will have family members and acquaintances of
23 Mr. Hughes that would present evidence of mitigating
24 circumstances.

25 THE COURT: All right, the statutory mitigating

THE STATE VS HUGHES

1 circumstances are, first, if the defendant has no
2 significant history of prior criminal conviction involving
3 the use of violence against another person. Are you
4 presenting any evidence on that issue?

5 MS. BRICE: No, sir.

6 THE COURT: The second is that the murder was
7 committed while the defendant was under the influence of
8 mental or emotional disturbance. Are you going to present
9 that?

10 MS. BRICE: I believe so, Your Honor.

11 THE COURT: The third was that the victim was a
12 participant in defendant's conduct or consented to the
13 act.

14 MS. BRICE: No, Your Honor.

15 THE COURT: Fourth is that the defendant was an
16 accomplice in the murder committed by another person and
17 his participation was relatively minor.

18 MS. BRICE: Yes, Your Honor.

19 THE COURT: Fifth, the defendant acted under duress or
20 under the domination of another person.

21 MS. BRICE: Yes, Your Honor.

22 THE COURT: The sixth would be the capacity of the
23 defendant to appreciate the criminality of his conduct or
24 to conform his conduct to the requirements of law was
25 substantially impaired.

THE STATE VS HUGHES

1 MS. BRICE: As to the aggravating circumstance that
2 would be coming into evidence, yes, we will, Your Honor.

3 THE COURT: All right, seven, the age or mentality of
4 the defendant at the time of the crime.

5 MS. BRICE: Yes, Your Honor.

6 THE COURT: Eight, the defendant was provoked by the
7 victim in committing the murder.

8 MS. BRICE: No, Your Honor.

9 THE COURT: The defendant was below the age of
10 eighteen at the time of the crime.

11 MS. BRICE: Yes, Your Honor.

12 THE COURT: It would be Mr. Hughes was below the age
13 of eighteen --

14 MS. BRICE: Oh, I'm sorry; I thought you said above the
15 age of eighteen.

16 THE COURT: No, under the age.

17 MS. BRICE: No, Your Honor.

18 THE COURT: All right. And, ten, the defendant had
19 mental retardation at the time of the crime. Mental
20 retardation means significantly so the average intellect
21 -- intellectual functioning existing concurrently with the
22 defects and adaptive behavior and manifested during the
23 developmental period.

24 MS. BRICE: No, Your Honor.

25 THE COURT: Now I will ask that both sides tomorrow if

THE STATE VS HUGHES

1 they could leave in my office any Requests to Charge you
2 may have regarding the sentencing phase.

3 Now, Mr. Hughes, let me talk with you one more time.
4 You will have the time to talk with your attorneys and I
5 am sure they have already covered this, but do you
6 understand you have a right to again -- well, not again,
7 but you have the same right you had in the guilt phase to
8 address the jury, that is, you may appear before the jury
9 in the sentencing phase and make an argument on your own
10 behalf. Do you understand that?

11 MR. HUGHES: Yes, sir.

12 THE COURT: All right, I am not asking you now whether
13 you wish to do that or not. I just want to make sure that
14 you understand that, okay?

15 MR. HUGHES: All right.

16 THE COURT: And like with the other matters regarding
17 your rights this is Mar-Reece Aldean Hughes' rights; it's
18 not your counsel's, it's not your physicians', it's not
19 any of your individuals who have been helping you, so it
20 is ultimately your decision. You certainly can and should
21 talk with your people I have just named, the people who
22 have worked with you on this case, your counsel, your
23 physicians, the other people you continue to have some
24 confidence and trust. You certainly should talk with them
25 about that decision, but it boils down to being your

THE STATE VS HUGHES

1 decision and your exclusive decision. Do you understand
2 that?

3 MR. HUGHES: Yes, sir.

4 THE COURT: All right, I intend to defer sentencing on
5 the other charges, conspiracy, two counts under the armed
6 robbery, the commission of a violent crime while in
7 possession of a firearm and possession of stolen goods
8 until the penalty phase of the murder conviction is
9 completed. Does The State have any problems with that?

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

11 THE COURT: The defense?

12 MR. SCHUSTERMAN: No, Your Honor.

13 THE COURT: Anything else from The State?

14 MR. POPE: Your Honor, yes, sir, just for the record
15 and I think the court made it clear, I want to understand
16 while you have asked the defense as to any statutory
17 mitigating circumstances they are proceeding on, certainly
18 they remain free to put in any evidence of mitigation.

19 THE COURT: Oh, of course, but I wanted them to
20 delineate for me those statutory mitigating circumstances.
21 They have a right to present anything in mitigation they
22 feel appropriate.

23 MR. POPE: And, likewise, as we indicated statutory
24 aggravating circumstances it allows us now to go into the
25 second phase. We have noticed the defense and certainly

THE STATE VS HUGHES

1 would be constrained by that, but we have noted the
2 defense that we would proceed with our evidence of
3 aggravation as has been noticed to them previously.

4 THE COURT: All right. Now anything further from The
5 State?

6 MR. POPE: No, sir.

7 THE COURT: From the defense?

8 MR. SCHUSTERMAN: None, Your Honor.

9 THE COURT: All right, we will be in recess then. The
10 case continues. We are only through with the first part of
11 the bifurcation of the trial. We will reconvene at 9:30
12 AM Wednesday, the 20th, to go forward with the penalty
13 phase. Thank you.
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THE STATE VS HUGHES

SEPTEMBER 20, 1995

THE COURT: Is The State ready to proceed?

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

THE COURT: The defense?

MS. BRICE: Your Honor, there are just a few things I want to take up and put on the record.

THE COURT: All right.

MS. BRICE: Your Honor, yesterday I discovered by talking to several potential witnesses that are currently incarcerated in the York County Detention Center that especially in regards to the second murder statements were taken of all the inmates that were housed in Cell Block C during the time of that second incident and I have only been provided with I believe brief statements from the inmates that were incarcerated at that time and I have not been provided with I believe the complete statements of all the inmates that were taken by SLED back at that period of time and I am requesting at this time for all the statements that were taken subsequent to the April, 1993, incident or I want the statements of the potential witnesses to be excluded from testimony. I don't know at this time what other inmates testified to, how it could have helped my client. I have no way of judging or cross examining based upon statements that other inmates had filed with SLED. So for those reasons, Your Honor, I

THE STATE VS HUGHES

1 would ask that all statements of the other inmates be
2 excluded or, in the alternative, I would ask for a
3 continuance in order to interview all the inmates of the
4 sentencing phase in order to interview all of the inmates
5 concerning all of the statements that were taken.

6 THE COURT: Does The State have any statements other
7 than the three that have been provided?

8 MR. BRACKETT: I am not which three she is referring
9 to.

10 MS. BRICE: I have the statements of Christopher Gore,
11 Richard Waldrop and a John Patton, but I am of the opinion
12 that statements were taken of Mr. Jennings who testified
13 here before the court, Mr. Wimborn who testified
14 previously before the court, Mr. Gaithers, Mr. Stroud.
15 These are all statements of inmates who I am of the
16 opinion or I am of the knowledge that did, in fact, give
17 statements, but I have never had access to them nor have I
18 been provided them by The State.

19 MR. BRACKETT: The only statements that were taken in
20 the form of written statements are the ones that she just
21 said except there was another statement from a Joseph
22 Lowery, who was not incarcerated at the time of the second
23 jail murder and I believe that was given to you as well
24 regarding how the knife came into Mr. Hughes' custody. As
25 far as other statements other inmates were interviewed but

THE STATE VS HUGHES

1 refused to give written statements and oral statements
2 were taken, but there's nothing written, that they have
3 written and signed that could be turned over to them.

4 MR. POPE: Your Honor, my understanding is that SLED
5 did an investigation of the jail murder, a standard SLED
6 investigation, and that was turned over in its entirety to
7 the defense. Is that correct?

8 MS. BRICE: Well, from my knowledge at this point in
9 time I'm not sure that that is correct, Your Honor. I have
10 been told that everyone in Cell Block C gave a statement
11 to SLED.

12 THE COURT: Did they say they gave a written statement
13 to SLED or a taped or they did just make a statement?

14 MS. BRICE: I can tell you from a person that I spoke
15 with he informed me that he gave a written statement, that
16 each person was taken in individually and given a
17 statement, but everyone at that time was given a deal
18 concerning the statements that they were giving. And
19 based on that, I think all statements in regards to
20 inmates should be excluded.

21 THE COURT: The State is saying they have given you
22 all they have. I'm going to ask them to make a diligent
23 search of their file to make sure that they have, in fact,
24 given all statements.

25 MR. POPE: Your Honor, ---

THE STATE VS HUGHES

1 THE COURT: Wait and let me finish ---

2 MR. POPE: I apologize.

3 THE COURT: The State is saying that they have already
4 given you everything.

5 All right, Mr. Pope.

6 MR. POPE: Your Honor, the SLED file is a bound file,
7 a report in its entirety, if Ms. Brice wants to get it,
8 I'll be glad to hand up the same file that was given to
9 the defense, hand it to the court.

10 THE COURT: All right. I am going to deny the Motion
11 for Continuance and I am going to look at the file myself
12 and if you would make a short list giving me the names or
13 just tell me right now the names of the three that you say
14 you do have.

15 MS. BRICE: The names of the persons who have given
16 statements that I do have are: Richard Waldrop, a John
17 Patton, and a Christopher Gore. Perhaps prior, I don't
18 know how to do this, but prior to taking testimony I would
19 like to proffer the testimony of each person who takes the
20 stand that I talked with yesterday, that being Mr. Patton
21 and Mr. Gore, who informed me that everyone in the Cell
22 Block gave statements.

23 THE COURT: Well, I don't think anybody is contending
24 that everybody did not. You can certainly do that, but if
25 what I am following the scenario you are saying the

THE STATE VS HUGHES

1 individuals were taken into a private room and
2 individually interviewed, so I don't know how Mr. Gore
3 could testify that anyone other than himself gave a
4 written statement unless someone came back and displayed
5 one to him and said, well, when he went in, they said here
6 are five written statements, you had better give one too.

7 MS. BRICE: What I am concerned about, Your Honor, is
8 the fact that we have already taken testimony concerning
9 statements of other incidences by my client, the fact that
10 these statements were unreliable due to his mental illness
11 and I think that it would certainly help the defense, it
12 would make us more effective in defending Mr. Hughes to
13 present a full picture as to whether or not he was sane at
14 the time of the second murder.

15 THE COURT: Well, I understand. I am going to review
16 the file. They can't give you what they don't have. That's
17 the bottom line and they have said they have given you
18 what they do have and, of course, I don't know why you
19 would have to make a proffer. You'd have these individuals
20 on the stand, you can just ask them if as to their
21 knowledge were other statements and by whom were they
22 given.

23 MS. BRICE: Yes, sir.

24 THE COURT: Of course, it may be subject to objection
25 unless they have some foundation for saying that somebody

THE STATE VS HUGHES

1 else gave a statement. You know, a lot of times things
2 occur that everybody assumes went on. I'm not saying
3 that's what happened here, but I think you have got take
4 each witness at a time and if they told you one thing, you
5 can certainly examine them.

6 MR. POPE: May it please the court, Your Honor, I have
7 shown Ms. Brice and I'm handing to the court this SLED
8 Report, it even outlines - it has a table of contents - my
9 understanding is included in there a number of inmates did
10 not, in fact, give written statements, but did give
11 statements that are summarized on page 7, but I'm going to
12 hand this up to the court.

13 THE COURT: All right, anything further?

14 MS. BRICE: Your Honor, are the uniformed officers
15 that are present in the court today, are they witnesses in
16 the second phase?

17 MR. POPE: Yes, sir, they are and there is one that
18 will be our first witness and I would ask the others to
19 step out in the hallway.

20 THE COURT: Yes, the sequestration order continues
21 through the duration of the trial.

22 Do the parties agree that the evidence produced in the
23 first phase is applicable to, incorporated in the second
24 phase?

25 MR. POPE: Yes, sir, we would so move, Your Honor.

THE STATE VS HUGHES

1 MS. BRICE: I'm sorry, Your Honor, I'm trying to read
2 these statements.

3 THE COURT: Well, what I said was if both sides agree
4 that the testimony and evidence presented in the first
5 phase is incorporated into the second phase? -

6 MS. BRICE: Yes, sir, I'm sorry.

7 THE COURT: You agree that that's correct?

8 MS. BRICE: Yes, sir.

9 THE COURT: Okay.

10 Is The State ready to proceed?

11 MR. POPE: Yes, sir, Your Honor, I am going to hand up
12 to the court reporter items to be premarked.

13 THE COURT: All right. Defense, anything further?

14 MS. BRICE: Your Honor, I would also request to
15 receive all the Rap Sheets of all the witnesses on behalf
16 of The State so that I can review them prior to them
17 taking the stand.

18 THE COURT: Mr. Brackett?

19 MR. BRACKETT: Yes, sir, we'll have those run; I don't
20 have them now, but we will have them.

21 THE COURT: As soon as you have them, please provide
22 them to the defense.

23 MR. BRACKETT: Yes, sir.

24 MS. BRICE: And, also, additionally, I would like for
25 The State to put on the record what deals, if any, have

THE STATE VS HUGHES

1 been offered to potential witnesses who are currently
2 incarcerated in the York County Detention Center?

3 MS. BRACKETT: No deals have been offered to any of
4 the inmates who will testify, Your Honor.

5 MS. BRICE: And I guess just for the record I would
6 like to renew all motions that have been previously made
7 in regards to photographs and oral statements, as to the
8 reliability of oral statements as well.

9 THE COURT: And I'm sure you include in that the
10 admissibility of the April ---

11 MS. BRICE: The April, '93 incident ---

12 THE COURT: --- incidences in which an inmate was
13 killed and one cut.

14 MS. BRICE: Yes, Your Honor.

15 THE COURT: The rulings of the court are the same and
16 will continue.

17 MS. BRICE: Thank you, sir.

18 THE COURT: Are we ready for the jury?

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

20 MS. BRICE: Yes, Your Honor.

21 THE COURT: Bring the jury.

22 MS. BRICE: Your Honor, I would like to address the
23 jury by way of opening statement prior to calling the
24 witnesses.

25 THE COURT: I'll allow both sides if they wish to make

THE STATE VS HUGHES

1 a brief opening statement.

2 Bring them in.

3 (Jury returns to courtroom.)

4 Good morning, members of the jury panel, I am not
5 going to ask you if you missed me because I know the
6 answer and I probably wouldn't want to hear it. Now in
7 this case you will recall that the defendant, Mar-Reece
8 Aldean Hughes, was convicted and a verdict returned at
9 approximately 5:30 -- 5:25, according to my notes, on
10 September 18, so twenty-four hours have elapsed and it is,
11 therefore, necessary for us to hold this additional
12 proceeding which will determine punishment that the court
13 will ultimately impose upon the defendant. Section 16-320
14 of our Code of Laws of South Carolina as amended provides
15 in part that "A person who is convicted of or pleads
16 guilty to murder shall be punished by death or by
17 imprisonment for life" and further provides that "Upon
18 conviction of a defendant of murder, the court shall
19 conduct a separate sentencing proceeding to determine
20 whether the defendant should be sentenced to death or life
21 imprisonment." Our purpose in conducting the proceeding in
22 which we are now engaged is to determine whether the
23 defendant, Mar-Reece Aldean Hughes, should be sentenced by
24 the court to death or life imprisonment. With respect to
25 your particular role in this portion or the proceeding,

THE STATE VS HUGHES

1 you will be asked to recommend, and when I use the word
2 "recommend," I tell you that the court will follow, even
3 though I use the word "recommend," whatever verdict is
4 returned will be the sentence imposed. But you will be
5 asked to recommend to the court whether it should sentence
6 the defendant, Mar-Reece Aldean Hughes, to death or life
7 imprisonment. During this sentencing proceeding, both The
8 State and the defendant have an opportunity to introduce
9 additional evidence in extenuation, mitigation or
10 aggravation and both sides will have an opportunity to
11 present arguments to you for and against the death
12 penalty. Should you recommend the sentence of life
13 imprisonment or should you recommend the sentence of death
14 that is the only issue here involved. I will give you
15 instructions again that apply to this phase just as I did
16 in the guilt phase after closing arguments.

17 Now I remind you that the charges that I gave you at
18 first still pertain. This is not a new trial, this is a
19 phase, a second proceeding or phase of the trial. All
20 things I told you about not reading anything, hearing
21 anything, or listening or seeing anything outside the
22 courtroom still apply. What I told you about not
23 discussing this portion of the case until such time as I
24 instruct you to deliberate applies equally as it did in
25 the first. What I told you about not trying to make up

THE STATE VS HUGHES

1 your own mind equally applies because until you have heard
2 everything, including the judge's charge, you don't have
3 all the tools you need to make a fair and reasonable
4 decision concerning this phase. The things I told you
5 about credibility, all of those things still adhere
6 equally to this phase of the trial.

7 Now in just a moment I am going to allow each side, if
8 they wish, to make a brief opening statement again and
9 outline for you what to expect from their position in this
10 the second phase.

11 Anything else The State wishes me to cover at this
12 time?

13 MR. BRACKETT: No, sir.

14 THE COURT: Anything from the defense?

15 MS. BRICE: No, sir.

16 THE COURT: All right.

17 MR. BRACKETT: May it please the court?

18 THE COURT: Certainly.

19 MR. BRACKETT: Good morning, Ladies and Gentlemen. It
20 now becomes our responsibility to determine what
21 punishment should be meted out to Mr. Hughes for what he
22 has now been convicted of, the murder of James Brent
23 McCants, the armed robbery of James Brent McCants,
24 possession of a firearm during the commission of a violent
25 crime, possession of a stolen vehicle, and criminal

THE STATE VS HUGHES

1 conspiracy. Essentially, we have two options, life
2 imprisonment or death. In order to make that decision it
3 becomes our responsibility to tell you about Mr. Hughes,
4 to tell you some things we couldn't and didn't tell you in
5 the first phase because it had no relevance there, they
6 had no relevance to the question of whether he was guilty
7 or innocent. But now that we are past that phase, it's
8 time for us to tell you a few things about Mr. Hughes that
9 you did not know. It's time for us to tell you about Mr.
10 Hughes' extensive criminal record starting from when he
11 was a young adult and when he could be charged as an adult
12 extending through his behavior in the North Carolina
13 Department of Corrections, where he spent a significant
14 period of his adult life, extending up until the time that
15 he was paroled and released in August of 1992, a month
16 before this time was committed, extending up to the time
17 when he was arrested, what happened out there on the side
18 of the road, which you already know from the first phase,
19 and what happened after Mr. Hughes was arrested and
20 incarcerated in the York County Detention Center. There
21 are a lot of things you don't know. You don't know about
22 what his life was like in the North Carolina Department of
23 Corrections and how he comported himself in the North
24 Carolina Department of Corrections. You don't know how he
25 comported himself in the York County Detention Center.

THE STATE VS HUGHES

1 There are many things you don't know. It was almost
2 hinted at, but not directly, when Mr. Felix Wimborn
3 testified that he was placed in the York County Detention
4 Center on April 2, 1993, and released on April 26 of 1993
5 and I asked him, so how many days were you in the York
6 County Detention Center with Mr. Hughes and he said,
7 "Ten." Well he was in the Detention Center for over
8 twenty days. How could he have only been in there for ten
9 at the same time as Mr. Hughes? It's because, Ladies and
10 Gentlemen, one of those things that you don't know on
11 April 12th, ten days after Mr. Wimborn was put into the
12 Detention Center, at about five o'clock in the morning,
13 while other inmates in the same cell with Mr. Hughes were
14 sleeping in their bunks, Mr. Hughes took a contraband
15 knife, a lockblade knife about eleven inches long and
16 drove it into the throat of James Earl Williamson fatally
17 killing him, a senseless, brutal murder, while he was
18 awaiting these charges here. We are going to tell you
19 everything you need to know about Mr. Hughes to make the
20 decision as to whether or not Mr. Hughes deserves to live
21 in this society, whether he is a menace to society,
22 whether he poses a danger in the future to other people,
23 people in jail, guards who work there. You all have to
24 make the decision. We submit to you we are going to
25 present you with ample evidence that Mr. Hughes, Mr.

THE STATE VS HUGHES

1 Mar-Reece Aldean Hughes, has forfeited his right to live
2 in a decent society even half decent society, the half
3 decent society of the Department of Corrections. That's
4 not all we are going to tell you. We are going to tell you
5 about the impact that Mr. Hughes' life and the impact Mr.
6 Hughes' misdeeds have had upon good, decent people, decent
7 people like Myra McCants who sits over here in the front
8 row, the mother of James Brent McCants, raised him. And to
9 tell you about James Brent McCants and the life that he
10 led and what the significance of his death has had on
11 Myra, his fellow officers, his family, on this society
12 that we are asking you to remove Mr. Hughes from. This is
13 not going to be easy testimony to listen to. It is going
14 to be some of the most difficult gut-wrenching testimony
15 you are going to hear in the course of this trial. I
16 appreciate in advance your tolerance and your willingness
17 to hear this. Somebody has to and you all were chosen. In
18 the end Mr. Pope will get up and summarize this for you.
19 Until then I will ask you to keep your minds open, keep
20 your ears open, and listen as we let you hear the tale of
21 Mar-Reece Hughes, so you can make an intelligent decision
22 as to whether or not he needs to live or die. Thank you
23 very much.

24 MS. BRICE: Good morning. It's been over a week ago
25 since we were down in Aiken County and we were going

THE STATE VS HUGHES

1 through the jury selection process. At that time either
2 myself or my co-counsel, Mr. Schusterman, were asking you
3 ladies and gentlemen a number of questions. One of the
4 questions that we were asking you was whether or not you
5 believed that someone could suffer from a mental illness.
6 We also questioned you as to whether or not you believed
7 in the role of a psychiatrist or a psychologist and how
8 they could help someone with a mental illness. All of you
9 were selected by myself, Mr. Schusterman, Mr. Hughes and
10 The State to serve on this jury based upon the careful
11 questions that you all answered last week as well as the
12 questions you answered in your questionnaire. You stated
13 last week that each of you would carefully consider the
14 testimony of psychiatrists and psychologists. I submit to
15 you, Ladies and Gentlemen, that Mr. Hughes has a very
16 serious mental illness. You have already heard the
17 testimony of Doctor Dupree and Doctor Morgan telling you
18 that Mr. Hughes suffers from paranoid schizophrenia. He
19 sits here today on medication. He sits here today on
20 Haldol. Some of the witnesses that we are going to
21 present are State's witnesses witnesses that usually the
22 prosecution will present to show mental illness or not to
23 show mental illness. They are going to come here to
24 testify on behalf of Mr. Hughes. Mr. Brackett is exactly
25 right. There are bad things about Mr. Hughes. He does not

THE STATE VS HUGHES

1 come here with a clean record. After he was present at
2 the shooting of Brent McCants, the shooting that was done
3 by Dwayne Eric Forney, he ran. He was chased by dogs, he
4 was interrogated, he was beaten, without medication for
5 his mental illness, without treatment for his mental
6 illness, he had a psychotic episode which resulted in the
7 death of a fellow inmate and an assault on another inmate.
8 Ladies and Gentlemen, he currently has charges filed
9 against him for that assault and death. Another jury will
10 consider the charges pending against him for that death
11 and that assault. The task that you have is not an easy
12 one. Each of you have a responsibility of deciding between
13 life and death. It's an awesome responsibility placed
14 upon you, Ladies and Gentlemen, to decide whether this man
15 lives or dies. We are going to present testimony as to
16 who Mar-Reece Hughes is as an individual and a human
17 being. Essentially what you will be asked to do is to
18 decide whether a fellow human being should live or die.
19 Thank you, Ladies and Gentlemen.

20 THE COURT: The State may call the first witness.

21 MR. POPE: May it please the court, Your Honor, I had
22 previously marked State's Exhibits 80 and 81, which are
23 true copies of sentencing sheets and indictments in
24 Forsythe County, North Carolina and, first, I need to note
25 that there was an attachment that I did not include on

DONALD DIAMONT

DIRECT

1 each one that I will now include and allow the defense the
2 opportunity to review it.

3 MS. BRICE: Your Honor, may we approach the bench?

4 (Bench conference off the record.)

5 MR. POPE: Your Honor, I also hand up 80 and 81 so the
6 court can note the true copies have been signified by the
7 court on each one of them.

8 MS. BRICE: No objection, Your Honor. May I approach
9 the bench?

10 THE COURT: Certainly. These are two sets of ---

11 MR. POPE: Sentence sheets.

12 THE COURT: --- sentence sheets both dealing with
13 Mar-Reece Hughes being moved into evidence as State's 80
14 and 81 without objection.

15 MS. BRICE: Thank you, sir.

16 THE COURT: Is that correct?

17 MS. BRICE: That is correct.

18 THE COURT: All right.

19 MR. POPE: Thank you, sir.

20 (State's Exhibits 80 and 81 marked and filed.)

21 May it please the court, Your Honor? The State would
22 call Officer Diamont to the stand, please.

23 THE COURT: Come around and be sworn, please, sir.

24 DONALD DIAMONT, being duly sworn,
25 testified as follows:

DONALD DIAMONT

DIRECT

1 DIRECT EXAMINATION

2 BY MR. POPE

3 Q Officer, if you would, state your name and spell it
4 for the court reporter, please.

5 A Donald L. Diamont D-i-a-m-o-n-t.

6 Q Officer, could you tell the jury where you are
7 employed?

8 A Yes, I am employed with the Winston-Salem, North
9 Carolina Police Department as a police lieutenant.

10 Q And how long have you been in law enforcement?

11 A A little over twenty-two years.

12 Q And how long have you been with Winston-Salem?

13 A A little over twenty-two years.

14 Q Were you so employed back in the early eighties, 1982,
15 '83?

16 A Yes, I was.

17 Q And did you have the opportunity to work a number of
18 cases that involved the defendant, Mar-Reece Hughes?

19 A Yes, sir, I did.

20 Q In particular I am going to hand up to you a sentence
21 regarding breaking and entering, two counts, and
22 discharging a firearm and assault with a deadly weapon
23 with intent to kill and ask if you could relate to the
24 jury the dates that those crimes occurred, please.

25 A Yes, there's a breaking and larceny that occurred on

1 October 16, 1982, another breaking and entering and
2 larceny that occurred September 22, 1982 and then a
3 discharging firearm in occupied property and assault with
4 a deadly weapon with intent to kill on October 3, 1982.

5 Q Okay and as to those the defendant was sentenced on
6 all four of those, is that correct?

7 A Yes, sir.

8 Q And what was the sentence he received on those?

9 A He received three years, an active term of six months
10 and supervised probation two and one half years as a
11 committed youthful offender.

12 Q Particularly -- so, basically, we have two theft type
13 charges and two assault type charges, is that correct?

14 A Yes, sir.

15 Q Could you relate to the jury the last two charges, the
16 discharging of firearm and the assault, what that charge
17 really means, what that is in North Carolina, those
18 particular charges?

19 A Yes, sir, this particular incident he was charged with
20 discharging a firearm into an occupied vehicle, which
21 means shooting into a car or a truck, which it doesn't
22 have to be occupied, and the assault with a deadly weapon
23 with intent to kill arose from subjects in the vehicle
24 being injured by the shooting.

25 Q And you had an opportunity to work that particular

1 case?

2 A Yes, sir, I did.

3 Q Could you relate to the jury what type weapon was used
4 in that particular case?

5 A Our investigation revealed that a 9 millimeter
6 semi-automatic handgun was used.

7 Q Okay and could you tell the jury briefly the facts,
8 how many occupants there were in the vehicle that was
9 fired on and approximately how many shots?

10 A Yes, it was a Volkswagen Rabbit, a 1981 Volkswagen
11 Rabbit. There were three occupants in that vehicle. There
12 were four shots fired into the vehicle injuring a
13 passenger in the right front and another front seat
14 passenger.

15 Q Thank you, sir. Answer any questions the defense may
16 have.

17 CROSS EXAMINATION

18 BY MS. BRICE

19 Q Sir, was there a co-defendant on those charges?

20 A No, ma'am.

21 Q Are you sure?

22 A There was another subject with him, but he was not
23 charged.

24 Q Do you know an Albert Cole?

25 A Yes, that's who it was Albert Cole.

1 Q Right and you are telling me he was not present on
2 that occasion?

3 A He was with him, relating back to my report and my
4 remembrance is that only Mar-Reece Hughes was charged with
5 it. He was the shooter.

6 Q Do you know if Mr. Hughes pled guilty to those
7 charges?

8 A I believe he did. I got a statement from him.

9 Q And he pled guilty to those charges?

10 A I believe he did.

11 Q And is it your testimony that you don't recall whether
12 or not Mr. Cole was charged?

13 A Yes, that's my testimony.

14 Q So you are not sure if Mr. Cole was charged with the
15 offense or whether or not he served any time for it.

16 A According to my report, I charged Mar-Reece Hughes
17 only.

18 Q But it is possible that Mr. Cole, his co-defendant,
19 was also charged?

20 A We do what we call a prosecution report booklet for
21 the District Attorney's Office and in my report I only had
22 Mar-Reece Hughes as the defendant, so in a case such as
23 this if it was a co-defendant, both of them would have
24 been on it and only Mr. Hughes was on this case.

25 Q Thank you, sir.

1 REDIRECT EXAMINATION

2 BY MR. POPE

3 Q Officer, you were asked about Mr. Cole. You actually
4 investigated the case?

5 A Yes, I did; I was a detective at that time.

6 Q And you determined that Mr. Hughes was the shooter, is
7 that correct?

8 A Yes.

9 Q Did Mr. Hughes try to indicate at some point that Mr.
10 Cole did fire some of the shots?

11 A Yes, Mr. Hughes stated that the handgun had fired six
12 rounds that he fired three rounds, handed the gun to Mr.
13 Cole who in turn fired three rounds. Mr. Cole stated Mr.
14 Hughes fired -- emptied the gun out, fired six rounds and
15 actually chased the car as it drove off shooting at it.

16 Q Thank you, sir. Answer any questions the defense may
17 have.

18 MS. BRICE: Nothing further. Thank you.

19 THE COURT: You may step down. Appreciate your time.

20 MR. POPE: I ask that this witness be excused.

21 THE COURT: You may be excused.

22 Call your next witness.

23 MR. POPE: The State would call Officer Weavil.

24 RANDY WEAVID, being duly sworn, testified
25 as follows:

RANDY WEAVID

DIRECT

1 DIRECT EXAMINATION

2 BY MR. POPE

3 Q Officer, if you could, state your name and spell your
4 last name for the court reporter, please.

5 A Yes, sir, my name is Randy Weavil W-e-a-v-i-l with the
6 Winston-Salem Police Department.

7 Q Officer, how long have you been employed with
8 Winston-Salem?

9 A Seventeen years.

10 Q Were you so employed back in 1983?

11 A Yes, sir, I was.

12 Q Did you have an opportunity to work a number of
13 investigations concerning Mar-Reece Hughes?

14 A Yes, sir, I did.

15 Q I am going to hand up what has been admitted into
16 evidence as State's Exhibit 81, which is the judgment
17 Superior Court in North Carolina concerning a first degree
18 burglary and a series of breakings and enterings. I ask
19 first that you indicate what the defendant received on
20 those particular charges.

21 A Yes, and this series of charges, the ones he was
22 actually charged with out of the investigation he received
23 a total of fifteen years.

24 Q And the ones that he was charged with would be the
25 indictments that are reflected that you have?

RANDY WEAVID

DIRECT

1 A Yes, sir, there are ten indictments. There was a total
2 of seventeen cases that I was involved with investigating
3 in which he did, ten of which he was charged with.

4 Q And the primary case on that would be the burglary
5 case, which is the first case, is that correct?

6 A Yes, sir, it is.

7 Q Could you explain to the jury in North Carolina what a
8 burglary entails?

9 A For a first degree burglary case it has to be
10 committed at night and there has to be someone in the
11 residence and it is an unlawful breaking into a residence.

12 Q I would ask you referring still to State's Exhibit 81
13 beginning first with the indictment as to the burglary
14 charge if you could relate - you worked this particular
15 case, was a witness for the Grand Jury, is that correct?

16 A Yes, sir, I was.

17 Q Okay, if you could relate just briefly the facts to
18 the jury just in general such as was it a residence and
19 the type things you just indicated, the time of the
20 entering and so forth?

21 A Yes, sir, the date of the offense was June 15, 1983.
22 It states that the defendant unlawfully, wilfully and
23 feloniously during the night time about the hours between
24 4:00 AM and 6:00 AM broke into a residence at the address
25 and then it lists the property taken after the breakin.

1 Q And my understanding again for burglary first in North
2 Carolina, in other words, between 4:00 and 6:00 PM when he
3 went into the residence the occupants were at home, is
4 that correct?

5 A Yes, sir, they have to be in the house; for first
6 degree burglary in North Carolina someone has to be in the
7 residence.

8 Q And you say a number of items were taken?

9 A Yes, sir.

10 Q And what was that?

11 A Taking and carrying away one black wallet containing
12 Three Dollars in goods and lawful money of the United
13 States, a North Carolina driver's license, four credit
14 cards, a purse containing Twenty Dollars, two credit
15 cards, a key ring and a Pentax 35 millimeter camera, a
16 gold and bead necklace, one class ring, one gold necklace
17 for a total value of Seven Hundred Fifty-Nine Dollars.

18 Q Now as you go through the next their term breaking and
19 entering, is that what you call it in North Carolina?

20 A Yes, breaking and entering.

21 Q What does that entail?

22 A A breaking and entering can be done day or night
23 without occupants in the dwelling; most of the time a
24 breakin will be classified as a day time breakin. Night
25 time we usually use the term second degree burglary.

1 Q So the distinction between the burglary charge you
2 just recited and the one that you are fixing to tell us
3 about is the difference of somebody being home or not?

4 A Yes, sir, someone being in the residence when the
5 breakin actually occurs.

6 Q And you say there are a series of charges, I believe?

7 A Yes, sir, there are nine more charges here or there
8 were nine more listed on the indictment of breakins and
9 one burglary. There were a total of seventeen cases that I
10 was investigating at that time.

11 Q As to the indictment, I believe as you said, there was
12 ten additional charges and I believe you have got nine
13 indictments, if you could, what I would ask you to do, is
14 to tell the jury the date of the crime and what was taken
15 in each one of those breaking and enterings.

16 A Yes, sir. On September 1, 1983, this will be a
17 breaking and entering and larceny, it occurred in a
18 residence. One Italian made 25 caliber semi-automatic
19 pistol was taken, the value of Eighty-Four Dollars.

20 The next is a breaking and entering and larceny of Bob
21 Hill Pontiac, which is a corporation warehouse. Aluminum
22 wheels belonging to Bob Hill Pontiac and a Channel Master
23 Stereo. The value of Five Hundred Sixty-Two Dollars.

24 The next one occurred June 27, 1983. This is a
25 residence, breaking and entering and larceny of one small

1 blue steel pistol, the value of a Hundred Dollars.

2 The next occurred June 30, 1983, a residence in
3 Winston-Salem, diamond earrings, large emerald with gold
4 earrings, a pair of pearl earrings, Twenty Dollars worth
5 of liquor, value of One Thousand Eighty Dollars.

6 The next one was June 15, 1983, residence on Henrietta
7 Avenue, one 30-30 Winchester Rifle, one 22 caliber Marlin
8 rifle, value of Three Hundred Twenty-Five Dollars.

9 The next is a breaking that occurred June 28, 1983, at
10 a residence, stolen was one Remington Rifle, 700 model 6
11 millimeter, four shirts and a brown wallet with Fifty
12 Dollars and several credit cards, valued at Six Hundred
13 Ninety Dollars.

14 The next was August 3, 1983, a residence on Home Road,
15 some money was taken Six Dollars and Fifty Cents in money,
16 earrings, sterling silver chain, one 30-30 caliber rifle,
17 model 3094, one 12 gauge J. C. Higgins Shotgun and one
18 watch, valued at Six Hundred Seventy-Two Dollars.

19 And on August 3, 1983, a residence, one 35 millimeter
20 Nikon camera was taken, valued at Five Hundred Eighty
21 Dollars.

22 Q In the time period these were taking place this would
23 have been after his sentencing under the previous four
24 charges for which we have heard, is that correct? It
25 would be your investigation would have taken place after

1 the first charges?

2 A Yes, sir.

3 Q Officer, were you able to count or could you tell the
4 jury how many weapons were taken totally?

5 A In the cases that he was charged with there were
6 seven.

7 Q And does that include -- those were all firearms, is
8 that correct?

9 A Yes, sir.

10 Q Officer, I would ask you if you would to answer any
11 questions the defense may have.

12 A Yes, sir.

13 CROSS EXAMINATION

14 BY MS. BRICE

15 Q Officer, how old was Mar-Reece Hughes at this time?

16 A Seventeen.

17 Q And are you aware of a co-defendant by the name of
18 Albert Cole during these incidents?

19 A During these incidents, no, ma'am.

20 Q And are you aware why people steal these type of
21 items? Is it not true to make money, sell them?

22 A In my seventeen years of experience they have stolen
23 for a variety of reasons, some to do other crimes with and
24 some to sell and make money with.

25 Q So one reason to steal would be to make money?

1 A Yes, ma'am.

2 Q And have you ever been to Mr. Hughes' home?

3 A Yes, ma'am, on several occasions.

4 Q And how many children were in that household?

5 A On personal history sheets that I have seen in the
6 past there were eighteen children - seventeen to eighteen
7 children. As far as how many there were there on any
8 particular occasion I couldn't tell you.

9 Q Thank you, sir.

10 MR. POPE: Your Honor, I ask that this witness be
11 excused also.

12 THE COURT: Appreciate your time. You are excused.

13 MR. BRACKETT: I need one minute to step out.

14 THE COURT: Members of the Jury Panel, we will be at
15 ease. We will take a short break, a five minute break.

16 (Jury retires to jury room.)

17 (Recess.)

18 Is The State ready?

19 Is the defense ready?

20 MS. BRICE: Yes, Your Honor, I have had during this
21 break the opportunity to review the SLED Report that was
22 provided prior to the jury coming in this morning. Your
23 Honor, I have not been provided with the written Report of
24 the SLED Department. There were, in fact, three statements
25 that were given which all show the fact that my client was

THE STATE VS HUGHES

1 insane at the time of the offense. I don't have
2 possession off this report. I asked our psychiatrist if
3 she had had possession of these records previous to my
4 looking at it today. She saw it for the first time
5 approximately five minutes ago as well, Your Honor. There
6 are three witnesses, one being a John H. Walker, who in
7 this report stated that during several conversations with
8 Mar-Reece his little man would come and go. Harry
9 Jennings, the fellow that testified earlier, talked about
10 the little green man that Mar-Reece saw, the fact that he
11 had told someone else about flushing a toilet. Another
12 person by the name of James Gaithers, also Mr. Hughes
13 relayed information that he would talk to the little green
14 man and everyone in the cell was calling him crazy. Your
15 Honor, as an officer of the court, I am telling you I do
16 not have these reports. It clearly goes to the fact that
17 we were posing back in the Motions hearings on Thursday
18 and Friday in regards to our client's mental capacity or
19 lack thereof at the time of the second murder and I just
20 think it is outrageous that we are finally seeing it for
21 the first time before we go forward with an aggravation
22 phase. If I could approach the bench to provide you with
23 this report.

24 THE COURT: Certainly. Have you talked with these
25 particular witnesses?

THE STATE VS HUGHES

1 MS. BRICE: No, Your Honor. Your Honor, last week we
2 were, in fact, looking for all of the persons who were
3 incarcerated at the time of the second offense. In fact,
4 the day that Mr. Jennings was present at the Detention
5 Center we were told that he was not here. It was only when
6 we learned after he testified that, in fact, he had been
7 here the whole day. We were prevented from speaking with
8 him on the day that he testified earlier in the week. As
9 far as the other two witnesses, we do not have addresses,
10 but we are at this point in time immediately going forward
11 to trying to find these people and speak with them, but
12 the fact I think I need to stress, Your Honor, is the fact
13 that they had possession of this, it was not provided to
14 us, it clearly goes to the insanity defense, it clearly
15 goes to the inconsistencies and the lack of reliability of
16 my client during the incidents that occurred on that day
17 and I think it would be outrageous for the court to allow
18 the testimony to come in concerning that second incident
19 now knowing that we have not been provided with
20 potentially exculpatory statements by other persons.

21 MR. POPE: I beg the court's indulgence. Mr. Brackett
22 will be prepared for the next witness that does not
23 involve this. I will go get the Discovery Receipts where
24 we provided this on at least two separate occasions.

25 THE COURT: All right, let me ask you this and maybe

THE STATE VS HUGHES

1 some of the other people present might know this, is
2 Special Agent Harry E. Benson still with SLED?

3 MR. BRACKETT: Yes, sir.

4 THE COURT: It may be that we will need him at some
5 point. Where is he stationed?

6 MR. BRACKETT: Your Honor, we intended to call him,
7 but I spoke with him last evening and he apparently is
8 suffering from some sort of internal bleeding, he had a
9 doctor's appointment, so we tried to amend our witness
10 order to allow him to go see the doctor.

11 THE COURT: That's fine. But he will be here at some
12 point?

13 MR. BRACKETT: I don't know what his condition is, but
14 he said he could be here if we absolutely needed him
15 depending on what the doctor told him today.

16 THE COURT: Let's see the receipt.

17 MR. BRACKETT: Can we proceed with the next witness?

18 THE COURT: Why don't we do that and I can be taking a
19 look at this matter.

20 Bring in the jury.

21 MS. BRICE: Your Honor, if I may respond before the
22 jury comes in? I would like the court to note that I have
23 received a portion of that report. I have received
24 statements. The only thing I have is the original I think
25 the first eight pages. I submit to Your Honor as an

THE STATE VS HUGHES

1 officer of this court I did not receive those items and my
2 psychiatrist, who was working with The State's own
3 doctors, never saw it.

4 THE COURT: Well, let me see what you have got. You
5 have got a report that just started with page 9?

6 MS. BRICE: If I can look at it, I can tell you exactly
7 which page it started with.

8 THE COURT: While you are coming up here to look at
9 it, my question is did that not put somebody on notice
10 that there were numbers before that?

11 MS. BRICE: My pages are not numbered, Your Honor.

12 Your Honor, I don't have any of this all the way
13 through page 17. I don't have this Report of South
14 Carolina Law Enforcement Agent Harry Benson.

15 THE COURT: Anything else? Can we go ahead and start
16 with the next witness while I am reviewing this?

17 MS. BRICE: Yes, sir.

18 THE COURT: All right, bring in the jury.

19 MS. BRICE: I would move at this point in time for a
20 mistrial based upon prosecutorial errors and misconduct.

21 THE COURT: I will take that under advisement.

22 MS. BRICE: Thank you.

23 (Jury returns to courtroom.)

24 THE COURT: You may call your next witness.

25 MR. BRACKETT: The State would call Robert Reese.

1 ROBERT L. REESE, being duly sworn,
2 testified as follows:

3 DIRECT EXAMINATION

4 BY MR. BRACKETT

5 Q Sir, would you, please, state your full name and spell
6 your last for the court reporter?

7 A Robert L. Reese R-e-e-s-e.

8 Q And where are you employed, sir?

9 A North Carolina Department of Corrections.

10 Q How long have you been with the North Carolina
11 Department of Corrections?

12 A Thirty-five years.

13 Q And what do you do for the North Carolina Department
14 of Corrections now?

15 A I'm currently Superintendent of the North Carolina
16 Correctional Center at Statesville, North Carolina.

17 Q And in your capacity as Superintendent what are your
18 responsibilities, sir?

19 A To manager and supervise the inmate population and to
20 advance their discipline and order for the facility.

21 Q All right. In your workings with the Department of
22 Corrections over the thirty-five years are you familiar
23 with the infractions and rule systems that's in place in
24 the Department of Corrections?

25 A I am.

1 Q And do you have access to the records of inmates in
2 the North Carolina Department of Corrections?

3 A I do.

4 Q Are you familiar with the defendant in this case,
5 Mar-Reece Hughes? First of all, are you familiar with him
6 personally?

7 A No.

8 Q Are you familiar with his record of infractions in the
9 Department of Corrections?

10 A I am.

11 Q Have you had an opportunity to review that record?

12 A I have.

13 Q And have you seen previously a board, a large poster
14 board, that lists those infractions?

15 A I have.

16 Q And in your reviewing his official records in
17 comparison with that board does that board accurately
18 reflect his records?

19 A It accurately reflects the records.

20 MR. BRACKETT: Your Honor, I would ask that this be
21 marked as State's Exhibit - I'm not sure what number ---

22 COURT REPORTER: 82.

23 MR. BRACKETT: 82. Your Honor, I would move this into
24 evidence at this time.

25 THE COURT: What says the defense?

1 MS. BRICE: No objection, Your Honor.

2 THE COURT: Be received.

3 (State's Exhibit 82 marked and filed.)

4 Q Mr. Reese, would this board assist you in explaining
5 Mr. Hughes' record of infractions in the Department of
6 Corrections in North Carolina?

7 A I will do my best with it, yes, sir.

8 Q Could you step down from the witness stand, if you
9 would, sir?

10 A (Witness complied.)

11 Q All right, sir, starting from the top here can you
12 tell us the date November 19, 1983, can you tell us what
13 this offense means?

14 A He would be wrongfully taking someone else's personal
15 property.

16 Q Okay and what were the remedies for that? What
17 punishment, if any?

18 A It would depend on the severity of how it was taken.
19 If it was just stolen, it probably would be considered a
20 minor offense by policy.

21 Q Could you tell us what this D/S and A/S means?

22 A Okay, the D/S means disciplinary segregation, which
23 means that you are undergoing punishment by lockup.
24 Administration segregation means you are being held until
25 a disposition of a case can be determined or investigation

1 completed.

2 Q All right, when was Mr. Hughes first incarcerated?
3 When was he placed in the North Carolina Department of
4 Corrections?

5 A I would say somewhere in the neighborhood of 1982 or
6 '83.

7 Q Okay, specifically for this burglary third degree
8 right here?

9 A September 26, '83.

10 Q Okay, now I'll go through this briefly and ask you if
11 you can assist me in understanding what some of these
12 violations are. We won't go through every one of them, but
13 what is this one here 1-8 of '84 it says rule violation,
14 disobeying a prison official?

15 A That would be involved being told to carry out some
16 responsibility, to carry out a duty, to go to a different
17 area and a person might refuse to do that. That would be
18 disobeying a prison official once he's given a lawful
19 order.

20 Q All right, now it's got some rule violations here on
21 April 10, '84 profane language. Could you tell us about
22 that?

23 A That can involve cursing an officer, cursing in his
24 presence, giving him so to speak the finger as a lot of
25 people say or any kind of act that would show disrespect.

1 Q Yes, sir, and can you tell us what it got's 4-10,
2 4-10, its got two of them here and its got 4-10-84
3 segregation A/S, off 06-1-84. Could you tell us what that
4 means?

5 A That would indicate that on the 10th of April, 1984,
6 there were two rule violations involving use of profane
7 language or a gesture or an act and he was put on
8 segregation as a result of that offense on the 10th of
9 April here.

10 Q And what does this off mean?

11 A It means that he was taken off of segregation on 6-1
12 of '84.

13 Q All right. Coming down some these, apparently, here
14 4-17 of '84 segregation A/S, there's no rule violation
15 attached to that. Does it always have to be a rule?

16 A Not necessarily. Sometimes during an investigation
17 they might find a person may not be guilty of what they
18 suspected him of being guilty of, so they will lock him up
19 until the investigation is completed and then if he is
20 found not to be any truth in it, they will release him
21 back to the regular population.

22 Q So there's a hearing held in the jail?

23 A Yes, at the facility a hearing is held once the
24 investigation is completed and a charge made.

25 Q These rule violations here can you explain attempt to

1 commit a major violation? What is that?

2 A That would be, for instance, in a case of using
3 profane language, it's a borderline case where if he
4 completely succeeds in what he was trying to accomplish,
5 so this being an attempt, and so the charging person
6 rather than challenging him with a complete charge, they
7 would just say he attempted to commit it, which would
8 result in a lesser punishment.

9 Q Yes, sir, right in there, is that exactly what it
10 says?

11 A That's self-explanatory. That means exactly what it
12 says.

13 Q Coming down to 2-12-85 it says custody/med. What is
14 that?

15 A Custody medium. In North Carolina you have got four
16 custody levels. Medium, maximum, minimum and close. The
17 highest level of custody is close, the next lowest -- I
18 mean the highest level is maximum, the next level is
19 close, and then a level under that is medium and then
20 minimum.

21 Q What custody level did Mr. Hughes start in his term in
22 the Department of Corrections?

23 A Medium custody.

24 Q Medium custody? And on 2-12-85 and 2-20-85 it
25 indicated this was a custody hearing?

1 A Yes, there he remained at the same level. Can I
2 explain why they would have custody hearings?

3 Q Yes, sir, please.

4 A Any time you have a custody hearing it determines
5 whether you go to a lesser custody level or a higher
6 custody level or remain at the same level. So in his case
7 they reviewed him and he was assigned to remain in the
8 same custody level.

9 Q Okay, then that was in February of 1985?

10 A Yes.

11 Q Then in March of 1985 he had rule violations here?

12 A Yes.

13 Q And then approximately seven days later administrative
14 disciplinary segregation?

15 A Yes, he was placed in disciplinary segregation as a
16 result of these two rule violations. He was taken out
17 disciplinary segregation on 4-19-85.

18 Q And then on the same day he was given a disciplinary
19 segregation 3-20-85 and its got a different off date. Can
20 you explain?

21 A Two different offenses.

22 Q Okay, so --

23 A Or either two counts of the same offense.

24 Q I see. Then going down 7-25 of '85 and 8-1 of '85
25 those are rule violations?

1 A Same situation, yes.

2 Q And on 9-5-85 what happened then?

3 A He had a custody review.

4 Q And did they change his status?

5 A No, he remained the same. He was having constant
6 custody reviews because of conduct and activity and they
7 do that once a person commits a certain amount of
8 infractions because it can result in points and points
9 determine what custody level you go in.

10 Q Okay, then on 9-5 of '85 wrong taking of property. Is
11 that the same up here?

12 A That's correct.

13 Q Improperly receiving property?

14 A Yes.

15 Q Then 9-7 ---

16 THE COURT: Can the witness move a little bit, the
17 jurors can't see.

18 WITNESS: Yes, sir.

19 Q 9-7 of '85.

20 THE COURT: Still can't see.

21 JUROR: Just Mr. Reese.

22 Q Mr. Reese, if you could maybe step back and move this
23 back a little bit as well. 9-7 of '85?

24 A Another rule violation involving assault upon another
25 inmate.

1 Q Okay and then on 9-20 of '85 sexual offenses. Can you
2 explain that?

3 A The sexual offense involved masturbation on his part.

4 Q Okay, not an assault on another individual?

5 A No.

6 Q Okay. Were these administrative segregations here a
7 result of these violations?

8 A Yes.

9 Q All right, let's go ahead and lift this up. Starting
10 in October of '86 more rule violations? Is this pretty
11 much the pattern rule violations segregation?

12 A Yes. Generally, following a rule violation they lock
13 you up and an investigation occurs and it may be
14 determined from an investigation where there is a formal
15 charge or not.

16 Q Okay. Here 4-24 of '86 it has got custody/med/close.
17 Could you explain what that is?

18 A All right, in custody reviews once a person's entire
19 record is looked at, they make a determination based on
20 the offenses, the inmate's conduct, as to what is the best
21 custody level to place that person in and a point value is
22 given to each violation. Now when those point values
23 exceed 19 points, you end up in close custody in most
24 cases. And, of course, in this situation that's what
25 happened he was demoted to close custody.

1 Q Here it has got on 4-28 of '86 administrative
2 segregation October 5, 1987, more than a year later. Can
3 you explain that?

4 A It would appear I think I might have that - give me
5 that date again?

6 Q Yes, sir, that would be administrative segregation
7 April 28, 1986.

8 A Okay.

9 Q It appears he was on administrative segregation for
10 almost eighteen months.

11 A Okay, in April of '86 --

12 Q I'm sorry, until January of '87, so that would have
13 been about a seven or eight months period of time.

14 A If I remember correctly that involved an attempt to
15 escape from one of the facilities, a close custody
16 facility.

17 Q This was up here medium/close immediately following
18 this - from medium to close. They put him on that
19 administrative segregation until January?

20 A Yes.

21 Q Do they have to make a change from one institution to
22 another?

23 A They do and sometimes they may not - if he was in
24 medium custody, they may not have had a bed available for
25 him and holds them until a bed becomes available at a high

1 custody level facility and then the inmate is transferred
2 to that facility, which means he may stay in segregation
3 for a long period waiting on a bed.

4 Q Okay, then down here this is just more of this up
5 here?

6 A Yes.

7 Q Okay and he got another review on 8-14 of '84 or I'm
8 sorry, March 13 of '87, custody/close?

9 A They let him remain on close.

10 Q Okay. These rule violations are the same as you
11 explained up there?

12 A Yes.

13 Q Okay, damage destroying property on 6-13 of '88. Can
14 you explain that?

15 A All right, when you destroy State property, which
16 could be breaking out a window, destroying clothes, or may
17 even be equipment that has to be used by the inmate
18 population, it's a violation and in this incidence he was
19 placed on administrative disciplinary segregation for
20 thirty days which extended from, I believe, June 13th '88
21 to July 13th of '88, which is thirty days.

22 Q Okay, and he is still in close custody as of 8-17 of
23 '89?

24 A Yes, he was.

25 Q Down here on October 30 of '89 it has got threatening

1 another person. Could you tell us about that?

2 A On the 30th of October of 1989 the record indicates
3 that he threatened bodily harm to a Correctional Officer
4 and as a result he was placed on segregation.

5 Q And then on October 31st of 1989?

6 A Another violation, attempt to commit a major
7 violation.

8 Q What was that about, October 31st, 1989, attempt to
9 commit a major violation? Can you tell us what --

10 A That would be the same as making a threat and not
11 being able to complete it.

12 Q Okay, does that carry the same -- you mentioned an
13 escape earlier, maybe you can look at your records on
14 October 31st of '89 and tell us.

15 A Okay, two offenses, the first one was committed on the
16 30th of October and this has to do with a situation where
17 he was given several direct orders to leave the office and
18 he refused to leave the office and refused to be
19 handcuffed and, of course, the officers had to use force
20 on him to get him handcuffed and that occurred on the
21 30th. On the 31st of October Mr. Hughes was assigned to a
22 close custody institution, in fact, Eastern Correctional
23 Center in Eastern North Carolina and while in the
24 recreational yard he tried to climb onto the fence and ran
25 around and begin climbing over the first fence and he

1 reached the top before officers got to stop him, so this
2 was an escape attempt while assigned to close custody on
3 the 31st of October of '89.

4 Q Okay, then staying down through May of 1990 he
5 remained in close custody?

6 A Yes.

7 Q And subsequent custody reviews he remained there?

8 A Yes.

9 Q Can you explain what the rule violation of March 7,
10 1991, possessing weapon, could you explain that?

11 A On March 7th Mr. Hughes was involved in a fight and
12 both inmates received stab wounds because they used shanks
13 in prison terminology.

14 Q What is a shank?

15 A Generally, it is a knife that is formed from a piece
16 of metal that is sharpened by rubbing it against concrete
17 over a period of time or maybe a knife that's, you know, a
18 silver knife that was taken out of the kitchen or
19 somewhere.

20 Q He was charged in the assault and for the shank?

21 A Yes.

22 Q Two separate charges?

23 A Yes.

24 Q Okay, and as a result of that was he was put under
25 administration segregation on the same day?

1 A Yes.

2 Q For almost two months?

3 A Yes.

4 Q And coming down to the final ones here disobeying
5 prison official. Did he ever at any time come off of
6 close custody?

7 A The record does not indicate that he came off. He was
8 released by what we call parole termination based on a law
9 that we have that any inmate that is not charged with an
10 assaulting crime he is paroled and terminated within
11 ninety days of his maximum release date, so in theory he
12 maxed out all of that sentence but the last ninety days.

13 Q So he went in on 10-26 of '83?

14 A Yes.

15 Q And completed the entire sentence?

16 A Yes, less ninety days.

17 Q Less ninety days. Almost nine years total and never
18 really made parole?

19 A No.

20 Q And he started in medium security and ends up in
21 close?

22 A That's correct.

23 MR. BRACKETT: I beg the court's indulgence one
24 moment.

25 Q Mr. Reese, thank you very much. Please answer any

1 questions counsel for the defense may have for you.

2 CROSS EXAMINATION

3 BY MS. BRICE

4 Q So you were asked to come here today and testify
5 concerning solely infractions, is that correct?

6 A That is correct.

7 Q And you are the record keeper, is that correct?

8 A No, I'm not the record keeper, no.

9 Q And who are -- and what do you do? What is your role?

10 A I am the Superintendent in one of the State prisons.

11 Q And you could have brought the medical records
12 concerning his psychiatric problems, is that true?

13 A Yes, ma'am, if I had been requested, yes.

14 Q So you could have brought the psychiatric records?

15 A Yes, if I had been requested, yes.

16 Q And you have no personal knowledge of Mr. Hughes, do
17 you?

18 A I do not.

19 Q And are you aware that Mr. Hughes repeatedly asked to
20 be segregated?

21 A No, I'm not.

22 Q And on this infractions sheet as far as wrongfully
23 taking a piece of property, that could be as simple as
24 maybe taking a pack of cigarettes, is that true?

25 A In a prison setting it's not that simple.

1 Q You have also written him up for using profane
2 language, is that right?

3 A That is correct.

4 Q That's swearing?

5 A Yes.

6 Q Okay. And on the incarceration where you were
7 questioned and you stated that he was written up for a
8 shank incident and that the other person involved also had
9 a shank, is that correct?

10 A The record indicates that Mr. Hughes had the shank.
11 Now whether the records are accurate, I cannot --

12 Q Do the records also indicate that Mr. Hughes was also
13 cut in that incident?

14 A Both inmates were segregated is what I can understand
15 from the record.

16 MS. BRICE: I beg the court's indulgence for one
17 moment.

18 Q And so, finally, the inmates know that when they
19 commit a minor infraction that they are going to be
20 segregated, is that true?

21 A It depends on whether the superintendent feels the
22 offense is serious enough to take the man out of the
23 population. If you have got a medium custody unit, you
24 have got -- every offense that a man might commit in
25 prison would not necessarily result in lockup or

BROADUS STRAIN

DIRECT

1 administrative segregation.

2 Q But, certainly, sir, where he used profane language
3 and he was listening to a prison official that resulted in
4 segregation for him, is that true?

5 A That is correct.

6 Q And he knew that if he acted that way he would go to
7 segregation, is that true?

8 A I would assume that he would.

9 Q Thank you, sir.

10 MR. BRACKETT: The court's indulgence.

11 Nothing further, Your Honor. I would ask that this
12 witness be excused.

13 THE COURT: You may step down and be excused.

14 MR. BRACKETT: The State would call Broadus Strain.

15 BROADUS STRAIN, being duly sworn,

16 testified as follows:

17 DIRECT EXAMINATION

18 BY MR. BRACKETT

19 Q Sir, you are Sgt. Strain?

20 A Yes, sir.

21 Q You work at the Detention Center and you testified
22 earlier in this trial?

23 A Yes, sir.

24 Q Sir, specifically, I address your attention to a
25 couple of areas I did not ask you about earlier. Are you

1 familiar with the incident in the Detention Center in
2 which Mr. Hughes was charged with killing another inmate?

3 A Yes, sir.

4 Q Do you recall that specifically?

5 A Yes, sir.

6 Q Did you have much interaction with Mr. Hughes at that
7 time in that period in early April, late March of 1993?

8 A Yes, sir.

9 Q Can you describe the type of interaction you would
10 have with him in the course of your duties?

11 A You would go around and talk to inmates that was in
12 Unit C because, you know, they were locked down and pretty
13 much let them know what is going on and ask them if you
14 can help them, you know, phone calls and stuff like that.

15 Q Was your interaction with Mr. Hughes - how often did
16 you talk to him or see him and interact with him?

17 A All during the day; we didn't set no time limits going
18 in and out of the housing units. We had to feed back
19 there, give showers, just, you know, day to day
20 activities.

21 Q Can you tell me how many cell blocks are there in the
22 York County Detention Center?

23 A At the old jail we had housing unit C and we had four
24 on the back side, four man cells, and four on the front
25 side. The back side didn't have tvs and phones and the

1 front side had tvs and phones.

2 Q And that's C Block?

3 A Yes, sir.

4 Q Was there an A Block?

5 A Yes, there was an A Block and there was a B Block and
6 D Block.

7 Q And what was the difference between D and C and D and
8 A if there was any difference?

9 A D at the time we were keeping juveniles over night.
10 The back side of C was like maximum as far as you didn't
11 get no telephone privileges except once a week, no
12 television. You worked your way around to the front side
13 --

14 Q Of C?

15 A ---of C and then you would go to either B or A Block.

16 Q And when you say you worked your way around, how did
17 you get from the back side of C to the front side of C?
18 What did you have to do?

19 A If we didn't have no trouble out of the inmate, if he
20 done what he was supposed to do, he got along with
21 everybody, we didn't have no trouble out of him, then he
22 would be moved around to front side of C.

23 Q So it was linked with behavior?

24 A Yes.

25 Q Now in your interactions with Mr. Hughes did he seem

1 to understand this?

2 A Yes, sir.

3 Q Where did he start out when he first came there?

4 A He started out on the back side, he was in C-5, he
5 moved to C-7 and later on he was moved around to the front
6 side of C.

7 Q And that was linked to his behavior?

8 A Yes, sir.

9 Q Did he understand that if he acted out he could go
10 back to the back side of C?

11 A Yes, sir.

12 Q Did he appear to understand the rules and regulations
13 that govern prisoners' conduct in the Detention Center?

14 A Yes, sir.

15 Q Did he indicate or appear to you to have the
16 understanding of those rules?

17 A Yes, sir.

18 Q At any time did Mr. Hughes act out in an unusual
19 bizarre fashion to give you any indication that he didn't
20 know he was or who you were or who he was or what his
21 situation was?

22 A No, sir.

23 Q At any time did he give you any indication that he was
24 suffering from any sort of mental illness?

25 A No, sir.

1 Q Now referring your attention I believe you mentioned
2 when you testified previously regarding an incident of
3 cell flooding and you indicated that you had to take Mr.
4 Hughes out of his jail cell?

5 A Yes, sir.

6 Q And you said that he had made some comments about a
7 weapon or obtaining a weapon. Could you tell us again what
8 that was?

9 A He made a comment while he was in the holding cell
10 that when he got down the road that he would be able to
11 talk to some of his buddies down the road to get a gun and
12 kill him another white boy.

13 Q Okay.

14 MR. BRACKETT: Your Honor, I ask that this be marked
15 for identification purposes at this time.

16 (State's Exhibit 83 marked for identification cases
17 purposes only.)

18 Q So I'm showing you what has been marked as State's
19 Exhibit 83 for identification and ask you if you could at
20 the very top under here where it says York County
21 Detention, can you tell us if you recognize the incidents
22 that are reflected on this regarding Mr. Hughes?

23 A Yes.

24 Q Is that an accurate reflection of his behavior in the
25 York County Detention Center?

BROADUS STRAIN

CROSS

1 A Yes, sir.

2 Q Thank you very much, sir. Please answer any questions
3 that counsel for the defense may have.

4 CROSS EXAMINATION

5 BY MS. BRICE

6 Q Officer Strain, when you had conversations with
7 Mar-Reece Hughes, did you actually sit down and talk to
8 Mr. Hughes?

9 A No, ma'am, we would just check on inmates as we walked
10 through for checks and ask them how are they doing and if
11 they want to take a shower, feed them breakfast, lunch,
12 supper or if they need to make a phone call.

13 Q So your contact was incidental to your job?
14 Essentially your contact with him was just briefly how are
15 you doing today, got your lunch?

16 A No, sir -- no, ma'am, you would have to interact
17 because you have to stay back there when you give showers,
18 make sure everybody took a shower, make sure they got a
19 clean uniform, if they had any questions as far as
20 lawyers, public defenders.

21 Q So your contact with him was just incidental to your
22 performance of your duties. You did not sit down at length
23 and talk with Mr. Hughes?

24 A Not that I recall.

25 Q Officer Strain, were you also present when Mr. Hughes

1 was talking about little green men?

2 A No, ma'am.

3 Q And you are aware, aren't you, that other inmates
4 thought Mr. Hughes was crazy?

5 A Thought he was crazy? They told me he would talk
6 about stuff that would scare them.

7 Q So you are aware that other inmates thought Mr. Hughes
8 was crazy?

9 A No, ma'am, they said stuff like he would make
10 statements - I was told I couldn't say what another inmate
11 said.

12 Q All right.

13 A He would make statements that would scare them.

14 Q And you are also aware that Mr. Hughes would not
15 bathe?

16 A He took showers.

17 Q Isn't it true that he had very poor hygiene, a lot of
18 inmates complained about the way he smelt?

19 A We made sure everybody took showers; that was our job.

20 Q Isn't it true that Mr. Hughes refused to take showers?

21 A Not when I gave showers, I can only account for what I
22 gave him.

23 Q But you are aware, sir, that Mr. Hughes was
24 transported to and from Mental Health, is that correct?

25 A I don't know.

1 Q You don't know that?

2 A The medical department took care of all of that as far
3 as transportation where they went. We were not told where
4 they go.

5 Q Your testimony was that you had contact Mr. Hughes and
6 now you are saying you didn't have enough contact to know
7 when he was coming and going from the prison?

8 A We knew he would leave, but we don't know where he
9 went; the medical department took care of that. I did not
10 do no transporting. All I know if they told us to get the
11 inmate ready to go to the doctor, dentist, or whatever, we
12 would get them ready and they would transport. We wouldn't
13 know where they went.

14 Q So you are aware that Mr. Hughes was transported?

15 A I can't recall as far as knowing for sure, I mean, we
16 had a hundred and something inmates in that facility.

17 Q And you are also aware are you not that he was treated
18 in Columbia at the State Hospital, is that correct?

19 A When he came into our facility?

20 Q When he left your facility and before he got to your
21 facility?

22 A We was aware of it that he went down there before he
23 came into our facility and when he come in, we put him on
24 the back side of C Block.

25 Q And you are also aware that he was sent to Columbia to

BROADUS STRAIN

REDIRECT

1 the State Hospital after he left your facility, is that
2 correct?

3 A Is this after?

4 Q Yes, sir.

5 A For safekeeping, yes, ma'am.

6 MS. BRICE: The court's indulgence?

7 Q So you don't have any psychiatric training, do you?

8 A Only the training that we are provided at the Criminal
9 Academy.

10 Q And out of the hundred inmates that you supervised in
11 the Corrections facility your testimony is that you did
12 not think that Mr. Hughes was crazy?

13 A No, ma'am.

14 MS. BRICE: That's all I have, Your Honor.

15 MR. BRACKETT: Briefly, Your Honor.

16 REDIRECT EXAMINATION

17 BY MR. BRACKETT

18 Q How long have you been with the Detention Center now
19 as a Detention Officer?

20 A Approximately five years.

21 Q Have you seen individuals there who are or you later
22 found out were, in fact, crazy?

23 A Yes, sir.

24 Q And did you have an opportunity to view those
25 individuals?

1 A Yes, sir.

2 Q How often was that, how many times?

3 A We have them come into our facility a lot, we would
4 have to deal with them because of the fact they were
5 seeing things. You could tell right away as far as the
6 medical department.

7 Q And when someone is taken out of the Detention Center
8 and sent down on a safekeeping order, do they go to the
9 Department of Mental Health or the Department of
10 Corrections?

11 A I thought it was the Department of Corrections; I
12 thought they put him in safekeeping to keep him away from
13 other inmates.

14 Q Thank you very much.

15 MS. BRICE: I beg the court's indulgence just one
16 moment, Your Honor.

17 RE CROSS EXAMINATION

18 BY MS. BRICE

19 Q So, again, of the hundred inmates that you testified
20 you are in charge of it's your testimony the way I
21 understand it that you don't recall Mr. Hughes being sent
22 to Mental Health, is that correct?

23 A We have so many transportations as far as where they
24 went - all we done if the medical department tells us to
25 get an inmate ready, we make sure he is dressed out in a

1 uniform, bring him to the front to the medical department
2 and the transportation officer would come in and take them
3 where they needed to be taken. The medical department
4 would keep up with the mental transports and the medical
5 transports. All our job was to bring them up front and get
6 them ready to go.

7 Q But I believe it was your testimony that of the
8 hundred inmates you were in charge of you don't recall Mr.
9 Hughes going to Mental Health?

10 A No, ma'am, I don't. I know we have got him ready and
11 brought him up to the medical department, but I don't know
12 where he went.

13 Q And of the hundred inmates that you are in charge of
14 at the facility you never had at length conversations with
15 Mr. Hughes?

16 A I would talk with him the same as other inmates. If he
17 needed something, we would get it for him. If he needed us
18 to bring him something, we would bring it to him, just
19 like everybody else.

20 Q And you have no psychiatric training, is that correct?

21 A Just what we got at the Criminal Academy.

22 Q Thank you, sir.

23 THE COURT: You may step down.

24 MR. STRAIN: Thank you.

25 THE COURT: Call your next witness.

1 MR. BRACKETT: Your Honor, I ask that this witness be
2 excused.

3 THE COURT: Feel free to leave.

4 MR. BRACKETT: Your Honor, The State would call
5 Richard Waldrop.

6 RICHARD WALDROP, being duly sworn,
7 testified as follows:

8 DIRECT EXAMINATION

9 BY MR. BRACKETT

10 Q Would you please state your full name for us, please?

11 A Richard Douglas Waldrop.

12 Q Sir, where do you currently reside?

13 A In Gaston County is where I live.

14 Q Okay and currently, right now, where are you?

15 A In York County.

16 Q Where?

17 A In York County, South Carolina.

18 Q Okay, and what is your current status, sir, where did
19 you come from to York County?

20 A From the Brown Creek Correctional.

21 Q And where is that?

22 A In North Carolina.

23 Q In North Carolina. Are you serving a sentence there?

24 A Yes, sir.

25 Q For what are you serving a sentence?

1 A Breaking and entering and larceny.

2 Q All right and how long is that sentence?

3 A Twenty-four years.

4 Q Mr. Waldrop, where are you from originally?

5 A Gaston County.

6 Q Were you -- I believe you have been in trouble before,
7 have you not, Mr. Waldrop?

8 A Yes, sir.

9 Q And you have been in trouble in York County before, is
10 that correct?

11 A Yes, sir.

12 Q Were you in the York County Detention Center back in
13 1993?

14 A Yes, sir.

15 Q And where you housed in the Detention Center? Where
16 were you incarcerated?

17 A I started out on the back side of the Detention Center
18 in Cell Block and after a few weeks or a month or so, I
19 moved to another Cell Block where there was a tv at.

20 Q And what Cell Block was that, do you remember, A, B,
21 C, D?

22 A It was one I was moved to the last was C-1, I think.

23 Q Cell Block C, cell one?

24 A Yes, sir.

25 Q And who -- how big was the cell? How many people?

1 A It was a four man cell.

2 Q And how many people were in the cell?

3 A Four.

4 Q And who was in the cell with you, do you recall?

5 A There was a seventeen year old boy named Chris Gorth,
6 I think, a thirty-two or thirty-three year old man that
7 had slept over the top of me. His name was Jim. And there
8 was another fellow that slept underneath, well, over the
9 top of Chris, and he was Mar-Reece Hughes.

10 Q And these were bunk beds?

11 A Yes, sir.

12 Q How long were you in that cell? How many days were
13 you in that cell with Mr. Hughes?

14 A Probably several weeks to the exact calculation I'm
15 not sure, but several weeks.

16 Q And, Mr. Waldrop, how much time did you spend in the
17 cell in a given day? Were you awaiting trial on charges
18 that were pending then?

19 A Yes, sir.

20 Q What charges were they?

21 A Two first degree burglaries, two common law robberies.

22 Q Have those charges been resolved to this day?

23 A No, sir.

24 Q They are still pending?

25 A Yes, sir.

1 Q And how did you get out of jail on those charges?

2 A Well, after what went down in the cell, my mental
3 status and everything just totally went berserk and my
4 brother-in-law and sister come up there and made bond.

5 Q And you were released on bail?

6 A Yes, sir.

7 Q And then you subsequently went to North Carolina?

8 A Yes, sir.

9 Q And you are now in the North Carolina Department of
10 Corrections?

11 A Yes, sir.

12 Q All right, sir. How much time do you spend -- what's
13 the daily routine if I was in C-1 now, how much time would
14 I spend in the cell itself and how much time out of the
15 cell would I have? What would be the routine?

16 A Well, usually one time a day you can get out and take
17 a shower. You go straight to the shower and back. That's
18 just a few minutes and there's times during the week, not
19 every day, but some times that you can go to the sally
20 port where they bring people in to come into the jail and
21 you get to go out there for something like an hour.

22 Q And then the rest of the time is spent where?

23 A Inside the cell block.

24 Q So you got to know the people you were in there with
25 pretty well?

1 A Yes, sir.

2 Q You dealt with them every day for several weeks?

3 A Yes, whenever you are with somebody twenty-four hours
4 a day, seven days a week, even when we went outside we
5 were still with each other.

6 Q Did you get a shower every day?

7 A Not every day, you know, when the officers had time,
8 sure we got to shower, but sometimes they didn't have
9 time.

10 Q Did all of you take showers on a regular basis?

11 A Yes.

12 Q Including Mr. Hughes?

13 A Yes, sir.

14 Q Mr. Waldrop, I want to turn your attention
15 specifically to the early morning hours of April 12, 1993.
16 Were you incarcerated in that cell, C-1, with Mr. Hughes
17 that night?

18 A Yes, sir.

19 Q And were you sleeping at the time?

20 A No, sir.

21 Q What happened, could you tell us, where were you, what
22 was going on in C-1?

23 A It's a long story, but I'll make it as short as
24 possible.

25 THE COURT: Speak up so all the jurors can hear.

1 Q Could you speak into that microphone so all the jurors
2 can hear you better.

3 A I had gotten me and Mr. Hughes had been in a different
4 cell block prior to this one and he had told me certain
5 things about what he had done, this, that, and another.

6 Q What had he told you?

7 A He had asked me when me and him first got to know each
8 other he told me that -- he asked me what I was in jail
9 for and I explained to him what I was in there for and I
10 asked him what he was in jail for and he told me for
11 shooting a police officer. I didn't ask him nothing about
12 how he done it, but he come out and explained to me how he
13 said the police officer pulled him over, whenever he
14 pulled him over, he said the officer come up and got his
15 license and whenever he got his license and started back
16 towards his patrol car, as he started back to the patrol
17 car he said he leaned out of his car and shot the officer.
18 He said the officer fell and when he did, he jumps out of
19 his car and he said he unloaded the gun in him and about
20 the time he got that far I said, "Look, as far as I am
21 concerned I don't even care to hear about all of this."

22 Q How did that make you feel?

23 A Very weird because I know I'm a criminal, which
24 breaking in and taking people's stuff is wrong, but to
25 take somebody's life for no reason, that's definitely

1 wrong and I do my best to stay away from people like that,
2 which where I'm at there's people like that, but I don't
3 hang around them.

4 Q Now were you in the same cell with him at the time he
5 told you this, Mr. Waldrop?

6 A Yes, sir. And after he told me that, several days
7 later I tried my best to talk to one of the officers which
8 he had told me after we got through talking about that he
9 told me that he had a knife and stuff in there and I was
10 thinking to myself, you know, he's in here for killing and
11 stuff and he's a pretty good sized fellow. I explained to
12 the officer if I could get in a different cell block.

13 Q Did they move you to a different cell block?

14 A About a day or so after I had requested that, they
15 finally got an opening and they moved me.

16 Q Where did they move you to, which cell?

17 A C-1.

18 Q C-1 and was Mr. Hughes with you at that time?

19 A No, sir. Whenever the officer was taking me from my
20 cell to C-1 I had explained to him that Mr. Hughes had
21 told me he had a knife and that I was worried and I was
22 wanting out of the cell mainly because I didn't want to be
23 around him and I would appreciate it if they wouldn't you
24 know put us back together no more. Well, I get over in
25 C-1 to the exact days I'm not sure, but it was around a