

ORIGINAL

VOLUME 6 OF 7 VOLUMES

STATE OF SOUTH CAROLINA  
In the Supreme Court

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APPEAL FROM YORK COUNTY  
Court of General Sessions

John C. Hayes, III, Circuit Court Judge

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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.

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RECORD ON APPEAL

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

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

ATTORNEYS FOR APPELLANT

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Attorney General

John W. McIntosh  
Deputy Attorney General

Donald J. Zelenka  
Assistant Deputy Attorney General

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(803) 734-3727

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1675-1A York Highway  
York, South Carolina 29745  
(803) 628-3020

ATTORNEYS FOR RESPONDENT

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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:

10 THOMAS E. POPE, Solicitor  
11 1675-1A York Highway  
York, South Carolina 29745

12 KEVIN S. BRACKETT, Deputy Solicitor  
13 1675-1A York Highway  
York, South Carolina 29745

14 Attorneys for The State of South Carolina

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16 240 East Black Street  
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17 CHRISTINA C. BRICE  
18 9 North Roosevelt Street  
York, South Carolina 29745

19 Attorneys for Defendant Mar-Reece Aldean Hughes

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Rock Hill, South Carolina 29732  
24 Telephone #803-366-0554  
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PRETRIAL MOTIONS and INCAMERA HEARINGS:

SEPTEMBER 7-8, 1995 - YORK COUNTY

WITNESS

DIRECT

CROSS

REDIRECT

RECROSS

Roberta Tepper

Mr. Pope 2472

Mr. Schusterman 2474

Harold C. Duke

Mr. Pope 2580

Mr. Schusterman 2591 2603 2604

Leslie R. Herring

Mr. Pope 2605

Mr. Schusterman 2609

Timothy Sanders

Mr. Pope 2613

Ms. Brice 2631 2671

Broadus Lee Strain

Mr. Brackett 2673

Mr. Schusterman 2679 2685

Randy Clinton

Mr. Brackett 2687

Mr. Schusterman 2697

James Scott Rockholt

Mr. Brackett 2705

Ms. Brice 2708

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

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

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**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 |  |  |

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**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 |

|    | TRIAL - PHASE I (CONTINUED) |               |              |                 |                |
|----|-----------------------------|---------------|--------------|-----------------|----------------|
|    | <u>WITNESS</u>              | <u>DIRECT</u> | <u>CROSS</u> | <u>REDIRECT</u> | <u>RECROSS</u> |
| 1  | Cathy Ann Pittman           |               |              |                 |                |
| 2  | Mr. Pope 1074               |               |              |                 |                |
| 3  | Mr. Schusterman             |               | 1084         |                 |                |
| 4  | Marvin Bohon                |               |              |                 |                |
| 5  | Mr. Brackett 1087           |               |              | 1109            |                |
| 6  | Mr. Schusterman             |               | 1101         |                 |                |
| 7  | Jerry W. Waldrop            |               |              |                 |                |
| 8  | Mr. Brackett 1110           |               |              |                 |                |
| 9  | Mr. Schusterman             |               | 1116         |                 |                |
| 10 | Timothy Sanders             |               |              |                 |                |
| 11 | Mr. Pope 1118               |               |              | 1156            |                |
| 12 | Ms. Brice                   |               | 1135         |                 |                |
| 13 | Dan Ketchel                 |               |              |                 |                |
| 14 | Mr. Pope 1158               |               |              | 1164            |                |
| 15 | Mr. Schusterman             |               | 1161         |                 | 1164           |
| 16 | Gregory Scott Maggart       |               |              |                 |                |
| 17 | Mr. Pope 1165               |               |              |                 |                |
| 18 | Mr. Schusterman             |               |              | 1168            |                |
| 19 | James David Holcomb         |               |              |                 |                |
| 20 | Mr. Pope 1171               |               |              |                 |                |
| 21 | Craig Alexander             |               |              |                 |                |
| 22 | Mr. Pope 1174               |               |              | 1195            |                |
| 23 | Mr. Schusterman             |               | 1184         |                 | 1196           |
| 24 | Randy Clinton               |               |              |                 |                |
| 25 | Mr. Brackett 1196           |               |              | 1223            |                |
| 26 | Mr. Schusterman             |               | 1215         |                 |                |
| 27 | Larry R. Devinney           |               |              |                 |                |
| 28 | Mr. Bracektt 1224           |               |              |                 |                |
| 29 | Mr. Schusterman             |               |              | 1236            |                |
| 30 | Gary Norman Streett         |               |              |                 |                |
| 31 | Mr. Brackett 1246           |               |              |                 |                |
| 32 | Mr. Schusterman             |               | 1249         |                 |                |
| 33 | James Scott Rockholt        |               |              |                 |                |
| 34 | Mr. Brackett 1250           |               |              |                 |                |
| 35 | Mr. Schusterman             |               | 1252         |                 |                |

TRIAL - PHASE I (CONTINUED)

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

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TRIAL - PHASE I (CONTINUED)

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

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TRIAL - PHASE I

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

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Mr. Brackett

Page 1864

3 Ms. Brice

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4 WITNESS

DIRECT

CROSS

REDIRECT

RECROSS

5 Donald Diamont

Mr. Pope

1870

1875

6 Ms. Brice

1873

7 Randy Weavil

Mr. Pope

1875

8 Ms. Brice

1881

9 Robert Reese

Mr. Brackett

1887

10 Ms. Brice

1901

11 Broadus Strain

Mr. Brackett

1903

1911

12 Ms. Brice

1908

1912

13 Richard Douglas Waldrop

Mr. Brackett

1914

14 Mr. Schusterman

1940

15 Christopher Gorth

Mr. Brackett

1963

16 Ms. Brice

1970

17 Stella Lingerfeldt

Mr. Brackett

1975

18 David Black

Mr. Brackett

1980

20 Everett Earl Jenkins

Mr. Pope

1998

21 Craig Alexander

Mr. Pope

2000

23 Kelly Carroll

Mr. Pope

2004

24 William Douglas Taylor

Mr. Pope

2007



|    | WITNESS                      | DIRECT    | CROSS     | REDIRECT | RECROSS |
|----|------------------------------|-----------|-----------|----------|---------|
| 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                      RECROSS

3 Dafferlin Barnard-Dupree

Ms. Brice                      2296

2331

4 Mr. Pope                      2314

2334

5 \*\*\*\*\*

6 TRIAL - PHASE II

7 CLOSING ARGUMENTS

8 Mr. Pope

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Ms. Brice

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9 CHARGE TO THE JURY

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10 ADDITIONAL CHARGE TO THE JURY

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11 VERDICT

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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       |
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| 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,<br>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 |

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### 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                            |

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1 THE COURT: And the defense will close and I  
2 understand that Ms. Brice and Mr. Schusterman and Mr.  
3 Hughes are going to -- all right, we have got to have a  
4 record, you can't just shake your head now.

5 MS. BRICE: Right; I was waiting for you to finish.

6 THE COURT: I've finished.

7 MS. BRICE: Okay. Your Honor, I will be the only one  
8 arguing in the closing argument.

9 THE COURT: All right, Mr. Hughes, I have gone over  
10 with you on more than one occasion that you have the right  
11 along with Ms. Brice to make a plea or whatever you want  
12 it to be called, an argument or statement, an address, to  
13 the jury that will now be considering the sentence to  
14 impose upon you, which will be either life imprisonment  
15 without parole or the penalty of death. Do you understand  
16 that?

17 MR. HUGHES: Yes, sir.

18 THE COURT: And have you talked about this with your  
19 attorneys?

20 MR. HUGHES: Yes, sir.

21 THE COURT: Do you wish to make such an argument?

22 MR. HUGHES: No, sir.

23 THE COURT: Do you have any questions of me you want  
24 to ask about that?

25 MR. HUGHES: No, sir.

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1 THE COURT: All right, I find with full knowledge of  
2 his rights to so do Mr. Hughes has freely, voluntarily,  
3 knowingly and intelligently waived his right to personally  
4 address the jury and I would like the record to reflect  
5 that when I made my opening statements in his sentence  
6 portion I was very cautious not to make a statement to the  
7 jury that they may hear or even elude to the fact that the  
8 defendant had a right to or perhaps would address the jury  
9 because I did not want that to make any kind of suggestion  
10 his choosing to exercise his right.

11 Now the last thing that crosses my mind and I'll ask  
12 before we take a short break I have asked if the defense  
13 wanted a curative instruction regarding the episode of  
14 Mrs. McCants leaving the courtroom yesterday.

15 MR. SCHUSTERMAN: Your Honor, we have talked about  
16 that and, obviously, there is a certain dilemma in  
17 curative instruction that you may be drawing more  
18 attention.

19 THE COURT: So that's why I will not give one  
20 voluntarily, that's why I asked if you wanted one and if  
21 you drafted one, I would consider it, but I am not going  
22 to sui sponte give any such for that very reason.

23 MR. SCHUSTERMAN: And we certainly appreciate that,  
24 Your Honor, and after discussing it, we have decided that  
25 it would probably be best left alone and we would ask that



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1 a curative instruction not be given.

2 THE COURT: Does The State want anything in that  
3 regards?

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

5 THE COURT: Let's take about a three minute break.  
6 Just tell the jury they have got about three minutes.

7 (Recess.)

8 Is The State ready?

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

10 MS. BRICE: The defense is ready.

11 THE COURT: Bring in the jury.

12 (Jury returns to courtroom at 2:45 PM)

13 MR. POPE: May it please the court? Ladies and  
14 Gentlemen, this is going to be my last opportunity to  
15 speak to you and I know this sounds kind of repetitive,  
16 but, again, every day that you have spent here, every hour  
17 you have spent and all the time you have to spend outside  
18 while we are arguing Motions and the different things that  
19 go on we don't take lightly and, again, I want to tell you  
20 how much we appreciate the time and the fact that you have  
21 been involved in this almost two weeks now and I am sure  
22 you are ready to go home, but you have come this far, we  
23 have got to this second stage and we are now at the point  
24 when as we have talked about so many times before that the  
25 decision of whether the penalty should be life or should

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1 be death is now - it finally is upon us.

2 Ladies and Gentlemen, as I have said many times  
3 before, no matter what I say up here or what I do I don't  
4 take lightly what you are about to have to do, the  
5 decision. It is much easier for me to stand up and  
6 represent The State and to shout and to yell and to covet  
7 your hearts and try to pull you in this direction or pull  
8 you in that direction, but I don't do it to offend you. I  
9 do it because we are impassioned about what we are doing  
10 here, but you set that passion aside and you bring back a  
11 verdict that is proper in this case and that's why we  
12 chose you all and that's why the defense chose you and  
13 that's what we ask you to do.

14 The one thing that will be different we have now been  
15 through the first stage of the trial and we have now been  
16 through the area of the trial as far as guilty or not  
17 guilty and that has been determined. You have determined  
18 that the defendant is guilty of murder, guilty of armed  
19 robbery, guilty of the conspiracy and the other charges  
20 and so when you go back to the jury room this time it will  
21 be a little bit different than it was with your verdict  
22 form before. When you go back, you are really making a  
23 two-part decision. The first thing you have to determine  
24 as a jury in the penalty phase is the existence or lack of  
25 aggravating circumstances. Now what aggravating

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1 circumstances are are certain crimes or certain type  
2 crimes that our Legislature has indicated allow us to even  
3 have this second stage. In this particular case, The State  
4 has alleged that the aggravating circumstances, and,  
5 again, the Judge will instruct you all on this and you  
6 will also have these written instructions back in the jury  
7 room, but the aggravating circumstances The State would  
8 put forth and ask you all to consider is robbery or this  
9 crime this murder, and, again, we are talking about the  
10 murder of Brent McCants, that this murder was committed  
11 while in the commission of an armed robbery or robbery  
12 with the use of a deadly weapon, that it is committed  
13 during the commission of a larceny with the use of a  
14 deadly weapon, which the larceny, you notice you didn't  
15 see an indictment, that's really just a lesser charge  
16 under the robbery; and the third is the murder of a local  
17 law enforcement officer during or because of the  
18 performance of his official duty. So before you even go  
19 in and decide well what sentence should we give, the first  
20 thing you are required to do, and, again, the judge will  
21 instruct you on this, is to determine the aggravating  
22 circumstances. If you feel like after everything you have  
23 heard that there are no aggravating circumstances, then  
24 the foreman would sign it and that would be the end of it;  
25 however, I would submit to you that in the first stages of

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1 the case that you have already found enough aggravating  
2 circumstances to bring this trial forward, you found that  
3 the defendant committed this murder while in the  
4 commission of an armed robbery. So I ask when you get back  
5 there discussing it, if you unanimously believe that, in  
6 fact, is the case, then you would indicate it here.

7 Secondly, you must find as an aggravating circumstance  
8 and I say you must find it, we ask you to find it, it is  
9 your choice to find it, but this was a murder of a law  
10 enforcement officer during the commission of his duties  
11 and that fact, Ladies and Gentlemen, I submit from the  
12 evidence is undisputed, that on the night of September  
13 25th, 1992, Brent McCants was making a car stop as a  
14 uniformed officer of York County. If you find that that is  
15 true beyond a reasonable doubt, then you would indicate  
16 the second aggravating circumstances.

17 Once you have the aggravating circumstances, you would  
18 then go as to what sentence would be imposed. And this  
19 takes us all the way back to Aiken again when we talked  
20 about only the foreperson would have to sign if you  
21 decided life, if the jury decided life. If you decided  
22 death, each and every juror would have to sign that. So  
23 again the first thing you need to do is make a  
24 determination as to aggravating circumstances. Then the  
25 next thing to do would be come and make the determination

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1 of what the proper penalty would be.

2 Ladies and Gentlemen, you have heard the evidence in  
3 the first stage and the judge will tell you it is all  
4 brought into the second stage, so everything you have  
5 heard, everything that has been said and was done in the  
6 first stage you are to consider that too, consider that  
7 equally.

8 Ladies and Gentlemen, as you garnered from my closing  
9 argument last time, The State's position is that Mar-Reece  
10 Hughes gunned down Brent McCants that night during that  
11 car stop. That is the position we maintain based on the  
12 forensic evidence, on the various testimony, and we  
13 continue to maintain that.

14 You were also instructed by the accomplice liability  
15 and I want to touch on this briefly not because it is my  
16 theory, but because I anticipate that you may hear this  
17 from the defense. The judge will tell you that if a  
18 defendant is found guilty under accomplice liability that  
19 they are still eligible if their part in the crime for the  
20 death penalty, but first, you have to find two things. You  
21 have to find major participation in the crime and you have  
22 to find a reckless indifference or a reckless disregard  
23 for human life. In that regard, Ladies and Gentlemen, and  
24 again I submit that Mar-Reece Hughes killed Brent McCants,  
25 but even if you feel that he did it in conjunction with

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1 Mr. Forney, I would submit that the facts of the case down  
2 over the body, both men over the body, both men leaving  
3 together, both men having the walkie-talkie, Mr. Hughes  
4 obviously dropped it on the trail. That participation  
5 coupled with what could be more reckless, what could be  
6 more indifferent about human life than to have a man who  
7 had just been filled with a number of 9 millimeter bullets  
8 as Mr. McCants had and then they are rifling over his  
9 body. Ladies and Gentlemen, I would submit that you would  
10 have that on both cases.

11 What I would like to do now too, Ladies and Gentlemen,  
12 I know you all have heard about a day and a half of mental  
13 testimony and you have heard the defense put it up and you  
14 have heard the Solicitor bring his notebook out and start  
15 asking about other testing and what about this and what  
16 about that, I know you have heard it until you are sick of  
17 it. What I would ask you to do before we even get into  
18 the jail murder, before we even talk about the death at  
19 the York County jail, so, let's just forget about all of  
20 that, let's forget about that time, anything even taking  
21 place. If you remember every one of the experts said that  
22 on September 25th when Brent McCants was killed Mar-Reece  
23 knew right from wrong. Mar-Reece Hughes was not mentally  
24 ill and so let's just look from September 25, 1992 back  
25 and see what we find before we even get into the mental

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1 aspect. The first thing that you will recall we had the  
2 officer, and you will have these indictments from North  
3 Carolina in, and you saw that Mar-Reece Hughes was first  
4 sentenced to six months for breaking and entering and  
5 larceny, discharging a firearm and assault with a deadly  
6 weapon with intent to kill. Do you remember the officer  
7 from Winston-Salem came down and he told us - what did  
8 Mar-Reece Hughes do in that particular incident. He had a  
9 9 millimeter, he fired into a car, he emptied the gun, an  
10 individual was hit with one of the bullets and then what  
11 did Mar-Reece Hughes do after that? He blamed an  
12 accomplice, he blamed somebody else for the crime that he  
13 committed. Also attached, if you will remember the  
14 officer coming down from North Carolina with all these  
15 thefts and you have heard all of these occurred because  
16 Mar-Reece needed money for food. And all these thefts and,  
17 again, you will have them back there with you, the  
18 breakings and enterings in '83 - I mean this was shortly  
19 after he had been sentenced and he's right back out  
20 breaking and entering and stealing. What is he stealing?  
21 One Italian made 25 caliber pistol, one small blue steel  
22 pistol, Winchester 30-30 rifle, a 22 caliber rifle, a  
23 Remington rifle, Winchester rifle, a shotgun. Ladies and  
24 Gentlemen, I submit that Mar-Reece has made a choice and  
25 he has made a choice young. Do you remember when one of

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1 his sisters testified she talked about when Mama died...  
2 everybody made their choices and went their different ways  
3 and Mar-Reece went to crime. He went to crime by his  
4 choice. He chose. He had brothers and sisters here that  
5 went to all walks of life, got married, worked in the  
6 church, but Mar-Reece Hughes made the choice to go into  
7 crime.

8 Now if we look back before the mental illness was even  
9 a question, before mental illness is supposedly explains  
10 all the bad things Mar-Reece did in the York County jail,  
11 all the bad things he did down in Columbia, before we get  
12 to that mental illness, they have got him in the North  
13 Carolina Department of Corrections. Now this is before  
14 mental illness, before that was brought up, and you  
15 remember the gentleman that came with all the violations  
16 and even in the Department of Corrections when he was  
17 incarcerated he had a weapon, he attempts to escape, he  
18 commits assaults. Again, they can't blame that on  
19 schizophrenia. And then you come down when he finally  
20 gets out in August, August 12, 1994, what is the first  
21 thing he does when he gets out (demonstrating) - had he  
22 learned anything from his incarceration? He goes and gets  
23 this weapon, the same weapon and we have discussed this  
24 before, the same weapon he took the grips off. Why did he  
25 take the grips off? So you can keep it going. If it jams,



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1 you can keep it going. Why do you wipe the fingerprints  
2 off of it? Because you never know, you never know, what  
3 might happen down the road. Sure enough, Ladies and  
4 Gentlemen, within a month he was down the road, he was  
5 down the road in Charlotte with that car-jacking, he was  
6 down the road on Dave Lyle Boulevard with the traffic  
7 stop.

8 Ladies and Gentlemen, I do want to touch briefly on  
9 the incarceration that he served in the York County jail  
10 and as it relates to the jail murder. Again, I point out  
11 as far as any mental defense, they are not ever saying or  
12 I have yet to hear them say that Mar-Reece didn't  
13 understand right from wrong when he killed Brent McCants  
14 and this really ties back in to how Mar-Reece Hughes'  
15 whole case is on. Do you remember the first time I talked  
16 about it, every time we would pin them down, they would  
17 twist it a little bit. Do you remember how Mar-Reece  
18 didn't say he was driving until we proved he was driving.  
19 Well, the same thing I submit to you is happening on the  
20 murder in the jail. What is Mar-Reece going to say? I  
21 didn't do it? He can't have another alibi, he is locked  
22 in the cell with the other three guys? How is he going to  
23 get out of that? He says I didn't do it or I'm insane.  
24 If you will remember he told Waldrop, do you remember  
25 Waldrop, the little short guy that testified up here who

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1 testified that he saw it and he ran out and helped  
2 Williamson get out? I submit to you that Waldrop is the  
3 guy they are talking about when they talk about playing  
4 possum. Where I come from playing possum means sleeping,  
5 pretending like you are sleeping. Pretending like you are  
6 laying there asleep when you are really not and I submit  
7 that's exactly when these psychiatrists talk about it,  
8 that's what Mar-Reece Hughes was talking about the very  
9 night when Waldrop says I was scared to go to sleep, I was  
10 listening to what he said and he saw my feet move and he  
11 started calling my name, started calling my name. I  
12 submit that when that came through that's when they say  
13 that he was playing possum. But Mar-Reece has told them  
14 that he's got the doctors fooled. Do you remember he told  
15 them that in jail, he's got the doctors fooled and yet he  
16 is able, if he is so mentally deranged, and he doesn't  
17 know right from wrong and he doesn't have a dose of  
18 reality, Ladies and Gentlemen, how did he get this in the  
19 jail cell? How does he conceal it? How does he hide this  
20 day in and day out? Why does he attempt to flush it when  
21 the officers come and, finally, one thing that I don't  
22 know if you caught it or not, remember when Waldrop was  
23 telling about the incident, they called the officers and  
24 the officers are coming, when the officers were coming,  
25 what did Mar-Reece do? He sat down on the toilet looking

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1 at them. Remember the officers were coming and they saw  
2 all of the blood and he said they ran off and what did  
3 Mar-Reece do then? Once the officers had gone, he gets  
4 back up and starts moving back around. When they come  
5 back, he goes back to the toilet. Ladies and Gentlemen, I  
6 submit Mar-Reece Hughes has been in the system and run the  
7 game long enough that he knows what buttons to push. He  
8 knows what to tell the psychiatrist and I submit when they  
9 said, oh, he didn't want to go to be evaluated, so that  
10 must mean that he's not malingering because if he was  
11 malingering, he would want to go to the doctor so they  
12 would see how sick he was. Ladies and Gentlemen, if he's  
13 faking it and he's got his own expert, why do you want  
14 anybody else to look at you because you have got your  
15 expert, you are making the people at the jail you are  
16 acting crazy around the jail, why do you want to go and  
17 see another expert? Because, Ladies and Gentlemen, I  
18 submit the man is not mentally ill. I will tell you this.  
19 If you feel that he is mentally ill to the point that he  
20 didn't know right from wrong, that he was able to use this  
21 weapon and truly not know what he was doing, then don't  
22 count that, don't even think about it, just pretend like  
23 he never killed the man in the jail. Don't concern  
24 yourself with it. But I submit the one thing the defense  
25 has told you that is true from the beginning is that

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1 Mar-Reece Hughes is a thief; he's a thief. He steals guns,  
2 he steals property and he will steal lives. He will steal  
3 dreams and he will steal hopes, the hopes of a police  
4 officer and the hopes of an inmate in the Department of  
5 Corrections at the York County jail.

6 Ladies and Gentlemen, nothing you can do in  
7 incarceration is going to deter Mar-Reece Hughes. Do you  
8 recall the testimony when he went down to Columbia when  
9 they moved him to safekeeping after this had taken place,  
10 what did Mar-Reece Hughes do? He ends up with a handcuff  
11 key. He is at death row safekeeping, the tightest place in  
12 the Department of Corrections and he has a handcuff key,  
13 he has razor blades in his cell, he has a 14 inch, and  
14 these are after both of these have happened, he has a 14  
15 inch metal pipe sharpened into a point and this man  
16 doesn't reality, but he knew enough to take the screws off  
17 that mirror and hide it in the cell. Ladies and  
18 Gentlemen, I submit that Mar-Reece Hughes has made choices  
19 and throughout those choices it is a situation of  
20 meanness. They can give him 200 milligrams of Haldol and  
21 they can load him up and he can sit there like a teddy  
22 bear for the last two weeks, but as I told you in the  
23 first incidence this is not the man that commits these  
24 crimes, this is the man that commits these crimes, the man  
25 that committed this murder, the man that used this knife,

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1 the man that used this pistol.

2 Ladies and Gentlemen, finally I want to talk about the  
3 night of September 25 and the death of Brent McCants.  
4 Before I leave that I'd say remember I told you how there  
5 were two witnesses that night and I had to speak for  
6 Brent. I'd like to think now I am speaking for Brent,  
7 speaking for James Williamson, and I am speaking for  
8 whoever that guard, whoever that inmate is, the next time  
9 when Mar-Reece decides to take another life, decides to  
10 steal a life.

11 Ladies and Gentlemen, we have talked a lot about Brent  
12 McCants. You have heard Myra, you have heard her talk to  
13 you and you have seen pictures of Brent. Ladies and  
14 Gentlemen, we have had the shirt, we have had this  
15 evidence, this is not a faceless law enforcement officer  
16 that was killed that night, this is Brent McCants. He is  
17 the same man who was out there wearing this badge. You  
18 remember Doug Taylor told you about Brent wearing the  
19 badge and he said Brent was the type he didn't wear the  
20 badge for him, he wore it for all of us, he wore it  
21 because he was proud to do what he did and I submit that  
22 night this is all we are able to get from Brent. I would  
23 ask you and the judge will give you the opportunity to  
24 listen to his last transmission because you remember Lt.  
25 Taylor told us that they had had a a call in Columbia --

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1 I'm sorry, in Catawba and in that call from Catawba Brent  
2 had got called back to headquarters, so really Brent would  
3 have never been out there, but Doug was closer and Doug  
4 told Brent that he would go and take the call at  
5 headquarters. So that night, September 25th, this time of  
6 the years, three years ago this Monday, and as McCants was  
7 riding up Dave Lyle what does he see - a car with its  
8 headlights out. So he turns around and pulls up to stop  
9 it. How many times do you think Brent McCants has seen a  
10 car with its headlights out? Did somebody forget to leave  
11 their headlights -- turn their headlights on or maybe it's  
12 a drunk driver, Brent gets out of the car and he comes up  
13 to the car with this man sitting behind the wheel. That is  
14 undisputed. It is ironic in his statement that he denies  
15 giving law enforcement when Mar-Reece Hughes was saying  
16 that Forney was driving, he even goes as far as to say the  
17 officer then said, "Buddy" or "Partner," have you been  
18 drinking?" I submit there is a good chance that is what  
19 Brent McCants said and then he walks back to the car and  
20 made the call and he called in the vehicle check and asked  
21 for a stolen vehicle and undoubtedly Brent waited, waited  
22 for the check to come back. The reason I say that he got  
23 his walkie-talkie, he had his walkie-talkie out. If he  
24 didn't have his walkie-talkie down on his belt, then why  
25 would Mr. Hughes have ended up with a clip. He ended up

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1 with the clip because Brent McCants is waiting on that  
2 call and there in that darkness he may have seen that  
3 flash, he may have seen the muzzle flash before something  
4 drives in his chest like a hammer and, again, the shirt  
5 didn't do it justice, Ladies and Gentlemen, this is one of  
6 the ones that the vest stopped, this is one of the ones  
7 that the vest caught. The vest caught three of them and  
8 Brent caught three of them.

9 Ladies and Gentlemen, that night Brent McCants made  
10 that stop he made that stop in line of his duty. He made  
11 that stop to do honor by this badge. And as those bullets  
12 filled his body he may have tried to call out, he may have  
13 tried to reach for his walkie-talkie, but it was gone, and  
14 so that night Mar-Reece Hughes stole the walkie-talkie.  
15 Mar-Reece Hughes stole Billy Dale's brother. Mar-Reece  
16 stole Myra's son. Mar-Reece Hughes stole a law  
17 enforcement officer in this county and it's all because  
18 Mar-Reece Hughes does what Mar-Reece Hughes wants to do  
19 whether it is to play the game or lie to the officers and  
20 then give a little bit of information or run the mentally  
21 illness scam, Mar-Reece Hughes does what Mar-Reece Hughes  
22 wants to. He continues to do it during the Department of  
23 Corrections in North Carolina, he continues to do it here  
24 with the officers, he continues to do it in the Department  
25 of Corrections of South Carolina and I submit if you send

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1 him to the Department of Corrections, he will continue to  
2 do it again and again and again. Time means nothing to  
3 this man. He has shown it in the past. What I am going to  
4 ask you to do it will take a lot of courage. Remember  
5 when Doug Taylor talked about the toughest thing he ever  
6 did was go tell Myra McCants that Brent had been gunned  
7 down? And then the next night where was his shift? Where  
8 were his officers the next night? They were back on duty.  
9 One of their peers was gunned down and the next night they  
10 were back on duty. Ladies and Gentlemen, I submit to you  
11 that people who wear this badge make difficult decisions  
12 every day. They make difficult decisions so we can be safe  
13 in our homes. They make difficult decisions so our  
14 children can grow up in a safe community. They make these  
15 difficult decisions every day and I submit to be able to  
16 strap that gun, strap that vest back on, put that badge  
17 back on and go out September 26th takes courage. That's  
18 what I am asking of you because anything less, any verdict  
19 less than the sentence of death for the killing of Brent  
20 McCants would be mockery to every officer that wears this  
21 badge. Ladies and Gentlemen, I appreciate your attention.  
22 I know this is a difficult decision. You have been an  
23 extremely attentive jury. I ask you to just bring back the  
24 proper verdict. I ask you to bring back the verdict of  
25 death for Mar-Reece Hughes. Thank you.



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1 MS. BRICE: Ladies and Gentlemen, I am removing these  
2 things not because I want you to forget what happened that  
3 night, but so that I'll know you are paying attention to  
4 an extremely important thing that I want to talk to you  
5 about right now.

6 I do agree with Solicitor Pope on one thing and that  
7 is the fact that you all have carefully considered every  
8 piece of evidence that we have placed before you and for  
9 that we appreciate your attention.

10 A couple of days ago my co-counsel, Steve Schusterman,  
11 came to you with his arms like this and said that he  
12 handled Mar-Reece Hughes' life in his hand. Ladies and  
13 Gentlemen, I submit that at this time I have giving you  
14 Mar-Reece Hughes' life. Each and every one of you now have  
15 this man's life in your hand. In my opening statement I  
16 said that there is no greater task than for a human being  
17 to decide whether or not another human being should live  
18 or die. Essentially, Ladies and Gentlemen, those are the  
19 decisions that is now a factor that you are going to have  
20 to consider as to whether or not this man who has been in  
21 the courtroom is going to be sentenced to death.

22 As Solicitor Pope has already told you, you have  
23 already made your decision as to the guilt of Mr. Hughes,  
24 but, Ladies and Gentlemen, for the purposes of deciding  
25 whether or not you should sentence him to death I am going

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1 to recount what happened that night and what our position  
2 is that happened that night and based upon our account you  
3 can take as a factor in considering whether or not Mr.  
4 Hughes should be given life or death.

5 I would like you to recall the fact that there were no  
6 fingerprints on the gun, there were no fingerprints on the  
7 walkie-talkie, there's no evidence to show that Mr. Hughes  
8 ever had possession of that gun that night. There was not  
9 one bit of testimony that came out on this stand that said  
10 Mr. Hughes had that gun in his possession that night.  
11 Additionally, there was no testimony that came out that  
12 said that Mr. Hughes had that walkie-talkie that night.  
13 And I would submit to you, Ladies and Gentlemen, that  
14 where this figure is there was Mr. Hughes that night. Mr.  
15 Hughes saw Mr. Forney shoot Officer McCants. If you will  
16 recall the Solicitor stated that Mr. Hughes chased after  
17 him and gunned him down like a dog. I would submit to you,  
18 Ladies and Gentlemen, that if Officer McCants was running  
19 towards his car to take cover as the Solicitor told you,  
20 then how was it that his head was facing the opposite  
21 direction from his car? If he was running for his car,  
22 why is his head facing the Galleria Mall? The reason for  
23 that, Ladies and Gentlemen, is because Officer McCants  
24 fell right here. He was never chased by Mr. Hughes. He was  
25 never chased down by Mr. Hughes. Mr. Hughes stood and

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1 witnessed Officer McCants get shot by Eric Dwayne Forney.

2 The punishment that you are going to impose today,  
3 Ladies and Gentlemen, is going to be a punishment that is  
4 going to be indicative of Mr. Hughes' role of this crime.  
5 The sentence of life or death depends on whether or not  
6 you feel that Mr. Hughes' role in that murder was  
7 sufficient enough to warrant the taking of his own life  
8 and that is a decision that y'all are going to make. You  
9 are going to decide whether or not his role in that  
10 shooting warrants the taking of his own life.  
11 Essentially, Ladies and Gentlemen, you will decide whether  
12 or not Mr. Hughes will be put to death.

13 Let's talk a moment about the prison violations. If  
14 you would recall, the gentleman that was here from the  
15 North Carolina Department of Corrections I asked him did  
16 you bring with you any psychiatric records, medical  
17 records, in regards to Mr. Hughes. His response was no he  
18 did not. He was not asked to bring those records. Doctor  
19 Dupree stated that she pinpointed references to mental  
20 illness dating back to 1985. Ladies and Gentlemen, all  
21 the way through 1994, August of 1994, before being  
22 properly medicated for his mental illness. Yes, there are  
23 some infractions while he was in prison. How many  
24 infractions does he have since he was properly medicated?  
25 None. He has a clean slate. No infractions whatsoever

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1 since he has been properly medicated for the illness that  
2 he has been diagnosed, not by one doctor, not by our  
3 doctor, but by three doctors or more doctors. He has been  
4 diagnosed with schizophrenia by three independent  
5 psychiatrists. Not only our expert, but The State's own  
6 experts, testified that Mr. Hughes has a serious mental  
7 illness and properly medicated, which he has been for over  
8 a year, he has not had one single infraction. The  
9 Solicitor offered no testimony to contradict the fact that  
10 Mr. Hughes is a seriously mentally ill person. There were  
11 no doctors that came to refute any of the doctors'  
12 testimony the fact that he has paranoid schizophrenia. The  
13 reason for that is because The State's doctors testified  
14 for the defense.

15 Ladies and Gentlemen, the day of testimony and I'm  
16 sure you will recall when the officers testified and Mrs.  
17 McCants testified was a very emotional and traumatic day  
18 not just for the persons who took the witness stand, for  
19 everyone in this courtroom, for myself included. I don't  
20 think that any person in this courtroom does not cry and  
21 share the same grief for the loss of a loved one,  
22 particularly, the loss of an officer doing his duty. I cry  
23 for the loss of Brent McCants. I grieve for the loss of  
24 Brent McCants. I don't take that lightly. I know that  
25 y'all don't take that lightly.

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1           You have also heard the testimony of a number of  
2 family members yesterday that we presented about the life  
3 of Mar-Reece Hughes. The reason we did that, Ladies and  
4 Gentlemen, is not to give to you an excuse for any  
5 participation that Mr. Hughes has had in crime whether his  
6 prior conduct or the conduct today or which he stands  
7 trial. The reason we present to you the testimony of  
8 family members is so that you know a little bit about the  
9 life of Mr. Hughes about the fact that he is an  
10 individual, about the fact that he is a human being, about  
11 the fact that he went through a traumatic childhood, about  
12 the fact that he has people who love him. He has people  
13 who care for him. And doing that it caused me to reflect  
14 upon myself, my own personal experiences. I have two  
15 children and when I leave here at night I go home. I go  
16 home to two very small children. No better joy in the  
17 world the love that a parent has for a child. Ladies and  
18 Gentlemen, in hearing the testimony that you heard from  
19 the family members of Mar-Reece Hughes there was no love  
20 between a father and a son, there was fear. When the  
21 mother of twenty-one children, twenty-six births, had  
22 twenty-six children, died, this family fell apart and you  
23 will recall the testimony of the sisters closest to Mr.  
24 Hughes being MeLinda and Mary, the two that were still in  
25 the household at the time of the mother's death. The

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1 youngest children were abandoned by the father. They had  
2 no food, they had no money. They got jobs raking, picking  
3 blackberries, worked at McDonald's. They had no one to  
4 come home to. When they came home, they had no parent with  
5 open arms giving them embraces and love. They had  
6 themselves. They had no loving siblings. The older  
7 siblings had abandoned. They were gone. The younger  
8 children were to fend for themselves. If you will look,  
9 Milas, Mar-Reece and Manda are all mentally ill. Three of  
10 the girls, Melinda and Mary particularly, were sexually  
11 abused. The younger children, Mar-Reece, Samuel, Manda  
12 and Milas, all at one time have been at one point or  
13 another have been incarcerated whether it is due to mental  
14 illness for Manda, for Milas or whether or not just  
15 because they were in trouble the fact of Mar-Reece and  
16 Samuel. My point in bringing this up, Ladies and  
17 Gentlemen, is the fact that this man did not have a  
18 supportive home environment. He did not have a mother and  
19 father who loved him. He did not have food on the table  
20 when he came home at night. There were nights when he  
21 would go hungry. There were nights when he was afraid to  
22 eat the food that his own father cooked for him for fear  
23 that it was poisoned. They would walk to the park to get  
24 something to drink because they were afraid that the water  
25 at their own home would make them sick. I do not detract

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1 from the fact that my client had a tough life, from the  
2 fact that there are very serious charges that are  
3 currently pending against him as well as the charges to  
4 which you are deciding his fate today. Life when you  
5 consider the fact that whether or not he gets life or  
6 death. You are considering the sentence in regards to the  
7 shooting and a sentence that should be imposed in regards  
8 to the murder of Brent McCants. You have heard three  
9 psychiatrists testify, lengthy testimony about the fact  
10 that my client was not criminally responsible at the time  
11 of the jail murder. We concede the fact that he was fully  
12 competent and criminally responsible at the time of the  
13 killing of Brent McCants because the psychosis had not  
14 developed by that point in time. The fact of the matter is  
15 at the time of the jailhouse murder he was psychotic. It's  
16 clear, there is no doctor's testimony to dispute the fact  
17 that he was not criminally responsible at the time of that  
18 incident. The purpose in bringing up that second murder  
19 is to show you that my client has no regard for life,  
20 cannot be trusted within the prison system, cannot conform  
21 to the prison system. If that was the case, then why is  
22 that since he has been on medication he has not had one  
23 single infraction.

24 Ladies and Gentlemen, I am an appointed attorney on  
25 this case. I am a domestic attorney. For those who don't

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1 know what that is I represent people who want to get a  
2 divorce, child custody, occasionally a personal injury  
3 case. You have probably seen me talk to the lady in the  
4 blue dress several times. The reason is because I have no  
5 criminal experience. When I was appointed to represent Mr.  
6 Hughes, I was devastated, devastated. How was I going to  
7 represent somebody that is accused of murder? Ladies and  
8 Gentlemen, for the past nine months I have worked day in  
9 and day out representing my client because I believe in  
10 him. I believe in him. If you impose a sentence of death  
11 against my client, I will always wonder was there  
12 something more that I could have done?

13 MR. POPE: Your Honor, I am going to have to object.

14 THE COURT: I sustain your objection.

15 MR. POPE: I think this is improper.

16 MS. BRICE: Back in April I perhaps questioned some of  
17 you, but not all of you. Suffice it to say that at one  
18 point or another either myself or my co-counsel asked you  
19 whether or not you had the conviction in your beliefs  
20 enough to stand your grounds. If you believe in something,  
21 are you strong enough to stand your ground? Each and  
22 every one of you replied that you could. You are a  
23 collective body for the last week and a half of fourteen.  
24 Whatever your decision is whether it is life or whether it  
25 is death you will know why you are being in this



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1 collective group of fourteen once you go back home. When  
2 you return to your families, to your jobs, to your homes,  
3 when you sit down and you start thinking about what  
4 happened in this jury decision that you made, you will  
5 always have to live with that decision. I submit to you,  
6 Ladies and Gentlemen, when I was told that I would be  
7 representing Mr. Hughes, people kept saying to me your  
8 life will never be the same and I submit to you, Ladies  
9 and Gentlemen, your lives will never be the same. No  
10 matter what your decision is your lives will never be the  
11 same.

12 Finally, you are going to be charged by the judge that  
13 you can give Mr. Hughes death or life. And I think it is  
14 important for each and everyone of you to understand that  
15 life in this state is life. It doesn't mean life with  
16 parole. Life means life. It does not mean that Mr. Hughes  
17 is going to come up for parole in thirty years and there  
18 will be a possibility that he will get out. When I say  
19 life means life, I mean life means life. I want you to be  
20 very clear on that in making your decision as to whether  
21 or not this man should get death or life. I want you to  
22 understand there is no possibility if you decide life that  
23 he will be on the streets again.

24 And, finally, this will probably last time, I know it  
25 will be the last time I will get a chance to talk with you

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1 and address you and, again, I would like to thank each and  
2 every one of you for carefully considering this, carefully  
3 considering life or death, taking into that jury room the  
4 knowledge that my client is a person, he's an individual,  
5 and, remember, that you are sentencing him based on his  
6 actions that evening. Thank you.

7 THE COURT: Members of the Jury Panel, I am going to  
8 ask you now to give me your attention. I am going to first  
9 ask that somebody move this.

10 MR. POPE: Your Honor, are we going to take a break  
11 prior to the instructions?

12 THE COURT: We can. All right, we will take a brief  
13 break before I - about five minutes.

14 (Jury retires to jury room.)

15 MR. POPE: I apologize.

16 THE COURT: No, I had said we would, but you all  
17 collectively only took thirty-eight minutes.

18 MR. POPE: It wasn't that I needed the break. I  
19 thought we were supposed to address that other part of the  
20 instruction. That was my concern.

21 THE COURT: I thought we had covered everything, but  
22 let's go ahead and move that.

23 MR. POPE: Your Honor, again while we are waiting, my  
24 concern with the whole mentally illness charge is that  
25 when we start talking about guilt, my understanding the

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1 other part it conflicts with the other part of your  
2 instruction that says "We are not proving this beyond a  
3 reasonable doubt."

4 THE COURT: Well, I have a little concern about that  
5 and I have tried to look at it so that I could structure  
6 it such so there won't be a conflict and I hope I have; I  
7 may not have, but this is a very ticklish sort of  
8 situation and while I certainly think that and the rule  
9 that the jury can consider imposing September 25, 1992  
10 events including the death of Mr. Williamson and while he  
11 is not on trial at this time, I think it is incumbent upon  
12 me to point out to them that he is clothed with a  
13 presumption of innocence and so it's a very ticklish area  
14 and that's the way I determined to approach it.

15 MR. POPE: Your Honor, it is my understanding, again  
16 while we are waiting for Ms. Jefferson, that you would be  
17 instructing -- the instruction the defense handed up is  
18 that exactly what you would instruct as far as the mental  
19 illness?

20 THE COURT: Well, I am not going to do the last  
21 paragraph on the second page and I am going to do the  
22 language from the case that was handed up.

23 MR. POPE: Your Honor, Ms. Jefferson has gotten this,  
24 if I could just see what your instruction says, then we  
25 may can discuss it.

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1 THE COURT: I'm sure you can make it out. Well, let's  
2 take a short break. We will take about a two or three  
3 minute break, but not much longer.

4 (Recess)

5 Well, let me do it like this. Over the break I was  
6 handed a citation from State v Poindexter, a York County  
7 case, which covers both the defense of not guilty by  
8 reason of insanity and the defense of guilty but mentally  
9 ill. With the addition to that I will charge that the  
10 burden of proof as to an affirmative defense is by the  
11 greater weight or the preponderance of the evidence and as  
12 to some minor changes, well, in addition to the State's  
13 Request Number 3, an additional four lines have been  
14 added. I am going to charge this in substitution of that  
15 which I had earlier been handed by the defense, a  
16 handwritten page, a case wherein The State v McIntosh is  
17 cited and The State's Number 3 and that is without  
18 objection, I understand?

19 MR. SCHUSTERMAN: That is correct, Your Honor.

20 THE COURT: All right.

21 Anything further?

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

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

24 (Jury returns to courtroom.)

25 THE COURT: Members of the Jury Panel, I am going to

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1 ask you to give me your attention. I am going to charge  
2 you the law which you are to apply in this phase of the  
3 trial. It is my duty to charge this to you at this time  
4 and it is your duty to decide what sentence you will  
5 recommend that this court impose upon the defendant,  
6 Mar-Reece Aldean Hughes. I will during this charge perhaps  
7 simply use the word "defendant" and when I do this, I will  
8 be referring to and am referring to, Mar-Reece Aldean  
9 Hughes.

10 There are two recommendations you are to consider in  
11 this case. One is the death penalty, which is in this  
12 state by electrocution or by lethal injection, and the  
13 other is life imprisonment without parole. In addition to  
14 this, you are asked to determine the existence or  
15 non-existence of any statutory aggravating circumstances.  
16 I will in a moment explain that to you.

17 Now you will recall that I have said on various  
18 occasions that this is a two part trial. This is a  
19 continuation of the matter and we have already indicated  
20 to you that the evidence you have heard in the guilt phase  
21 of this trial has been incorporated and does apply in your  
22 consideration of the matter before you now, that is, you  
23 are to consider and may consider the evidence in its  
24 entirety including that which you heard in the first phase  
25 in determining the penalty and considering the penalty

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1 that you will recommend to the court.

2 As I told you earlier, I hope you recall, you must  
3 take, accept and apply the law to this case as I charge it  
4 to you whether you agree with it or not as I am the sole  
5 judge of the law.

6 As to your role, I told you before you are the judges  
7 of the facts and in this regard will be making these  
8 recommendations, but you are the sole judge of the facts  
9 in this case and I remind you that I have no opinion about  
10 the facts. The law forbids me to have an opinion about the  
11 facts and you have inferred or now infer from anything I  
12 have said or done or do during this trial as to being an  
13 opinion of mine about the facts, you must disregard that.

14 I earlier charged you as to the law and the elements  
15 of murder and armed robbery, larceny. I defined for you a  
16 deadly weapon and told you how to evaluate expert  
17 testimony. All of that still applies to this part of the  
18 trial. When I use any of these phrases, such as, murder,  
19 armed robbery, larceny, or a deadly weapon, the  
20 definitions and the elements that you have already been  
21 given and that you used in your earlier deliberations in  
22 the guilt phase of this matter are still the law that you  
23 apply at this time.

24 As in the first part if you wish me to recharge any of  
25 the law which I have charged you in the first part or

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1       which I charge you now, you may return upon request and I  
2       will charge you. I want to make sure you understand that  
3       if you want something from the first phase, I will go back  
4       and charge that to you if you so request.

5             In my talks I will again use the phrase and talk to  
6       you about standard and burden of proof, that being beyond  
7       a reasonable doubt. I again tell you that that burden of  
8       proof, that is, beyond a reasonable doubt is the kind of  
9       doubt which would cause a reasonable person to hesitate to  
10      act.

11            Just as in the first phase of this trial and this one,  
12      credibility, that is, the believability of the witnesses  
13      is for your consideration. Please continue to use the  
14      evaluators that I outlined for you in earlier stages in  
15      this trial.

16            Now when I send you into the jury room this time in  
17      addition to having the exhibits, which have been  
18      incorporated also, you will have those exhibits along with  
19      any other exhibits that have been introduced in this  
20      phase, you will have before you what is called a sheet of  
21      paper with what are called the statutory instructions. I  
22      hold it in my hand now. And on this sheet of paper is  
23      written the words "Statutory Instructions" and you will  
24      have this with you during your deliberation.

25            Now I charge you that as to these instructions these

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1 are the instructions that you are to follow in your  
2 considerations and I will now read them and go over them  
3 to you. It says, first, in determining whether the  
4 defendant, Mar-Reece Hughes, be sentenced to life  
5 imprisonment without parole or death, you shall first  
6 determine whether The State has proven the existence of  
7 one or more of the following statutory aggravating  
8 circumstances beyond a reasonable doubt. Those statutory  
9 aggravating circumstances are: one, that the murder was  
10 committed while in the commission of a robbery while armed  
11 with a deadly weapon. Two, the murder was committed while  
12 in the commission of a larceny with the use of a deadly  
13 weapon. Three, murder of a local law enforcement officer  
14 during or because of the performance of his official  
15 duties.

16 Number two under here says if you do not unanimously  
17 find the existence of one or more of the alleged statutory  
18 aggravating circumstances listed above, you shall so  
19 indicate on Part A of the Sentencing Verdict Form entitled  
20 Jury's Verdict on Proof of Aggravating Circumstances. And  
21 you will see, Mr. Foreman and Ladies and Gentlemen of the  
22 Jury, that there is three pages, the third page says Part  
23 One and says Jury's Verdict on Proof of Aggravating  
24 Circumstances. And that's what is referred to in paragraph  
25 two of the Statutory Instructions. And if you do not



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1 unanimously find the existence of one or more of the  
2 alleged statutory aggravating circumstances, when  
3 considering Number two of the Statutory Instructions, you  
4 will indicate on Part A of the Sentencing Verdict Form,  
5 which I have just gone over. If that is your finding,  
6 that is, if you unanimously find that there does not exist  
7 one or more of the alleged statutory aggravating  
8 circumstances, at that point you will cease deliberations  
9 and return to the courtroom with your verdict, which is to  
10 signed by your foreman. That is stated in paragraph two.

11 Number three states, if, however, you unanimously find  
12 the existence of one or more of the alleged statutory  
13 aggravating circumstances listed above, you shall so  
14 indicate on Part B, Part One (B) of the Sentencing Verdict  
15 Form. This finding made by you must be signed by every  
16 member of the jury. If you unanimously find the existence  
17 of one or more of the alleged statutory aggravating  
18 circumstances and designate this finding on Part B of the  
19 Sentencing Verdict Form, which is Part One I just went  
20 over, you must then continue your deliberation in order to  
21 determine whether you should recommend that the defendant,  
22 Mar-Reece Hughes, be sentenced to life imprisonment  
23 without parole or to death by electrocution or lethal  
24 injection. And the fourth paragraph says in determining  
25 whether to recommend that the defendant, Mar-Reece Hughes,

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1 be sentenced to life imprisonment without parole or to  
2 death. you may consider any of the statutory aggravating  
3 circumstances found by you to exist beyond a reasonable  
4 doubt. You may also consider any of the following  
5 statutory mitigating circumstances. And I have listed five  
6 of those. They are, one, that the murder was committed  
7 while the defendant was under the influence of mental or  
8 emotional disturbance. Two, the defendant was an  
9 accomplice in the murder committed by another person and  
10 his participation was relatively minor. Three, the  
11 defendant acted under duress or under the domination of  
12 another person. Four, the capacity of the defendant to  
13 appreciate the criminality of his conduct or to conform  
14 his conduct to the requirements of law was substantially  
15 impaired. Five, the age or mentality of the defendant at  
16 the time of the crime.

17 Paragraph four states further, furthermore you may  
18 consider any other mitigating circumstances which are  
19 supported by the evidence in this case.

20 Number five says, when you have determined the  
21 sentence to be imposed upon the defendant, indicate your  
22 verdict by completing either A or B of the form entitled  
23 Jury's Determination of the Sentence to be Imposed. And  
24 that's the last page of these four pages.

25 If the unanimous verdict of the jury is a

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1 recommendation that the defendant should be sentenced to  
2 death, each member of the jury shall indicate his or her  
3 agreement with the verdict by signing as indicated.

4 And that is the form you will have and let me at this  
5 time in the event you find a statutory aggravating  
6 circumstances, let me discuss with you now and I will  
7 discuss in these discussions tell you what a statutory  
8 aggravating circumstance is and how you evaluate that;  
9 likewise, how you evaluate and look at mitigating  
10 circumstances.

11 A statutory aggravating circumstance is a fact, an  
12 incident, a detail, or an occurrence which our General  
13 Assembly has declared by statute which would make worse,  
14 that is, aggravate the offense of murder when the two  
15 occur together. In other words, it is something which  
16 increases the enormity or adds to the injurious  
17 consequence of the offense. If you find the existence  
18 beyond a reasonable doubt of the statutory aggravating  
19 circumstance, then you are permitted, but not required to  
20 recommend the death penalty.

21 There are three conditions that you should consider in  
22 reaching your decision. First, whether the defendant has  
23 proven by any evidence the existence of a statutory  
24 mitigating circumstance, and I will tell you in a moment  
25 more about that. Second, whether the defendant has proven

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1 by any evidence the existence of any other mitigating  
2 circumstance. Third, whether for any reason you can think  
3 of or no reason at all the defendant should be sentenced  
4 to life imprisonment without parole rather than death by  
5 electrocution or lethal injection.

6 A statutory mitigating circumstance is a fact,  
7 incident, detail or occurrence which The General Assembly  
8 has declared by statute which reduces the severity of the  
9 offense of murder. In other words, it is a circumstance  
10 recognized by statute and is one which in fairness and  
11 mercy may be considered as extenuating or as reducing the  
12 degree of moral culpability for the commission of the act  
13 of murder.

14 And mitigating circumstances are neither justification  
15 nor excuse for the murder, it simply lessens the degree of  
16 one's guilt, that is, makes him less blameworthy or less  
17 culpable.

18 Let me tell you now again these are on the sheets of  
19 paper which you will have in the jury room called  
20 Statutory Instructions and I have set forth thereon in  
21 paragraph four the statutory mitigating circumstances  
22 which you can consider along with any other mitigating  
23 circumstances. As I told you a moment ago in this  
24 paragraph I have set forth five mitigating circumstances.

25 Now a non-statutory mitigating circumstance is one

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1 which is not provided for by statute, but is one the  
2 defendant claims and serves the same purpose, that is, to  
3 reduce the degree of his guilt in the offense. While there  
4 must be some evidence which supports a finding by you that  
5 a statutory or non-statutory mitigating circumstance  
6 exists, you need not find the existence of such mitigating  
7 circumstance beyond a reasonable doubt.

8 In reaching your decision as to which sentence to  
9 recommend, you will consider the aggravating and  
10 mitigating circumstances. While an aggravating  
11 circumstance must be found before you can even consider  
12 recommending the death penalty, once such finding is made  
13 beyond a reasonable doubt, you may recommend the sentence  
14 even though you find the existence of a statutory  
15 mitigating circumstance or any mitigating circumstance. In  
16 other words, the existence of an alleged statutory  
17 mitigating circumstance or any mitigating circumstance is  
18 not a bar to the imposition of the death penalty, but you  
19 may also in that event consider life imprisonment without  
20 parole. The third element you may consider, if you should  
21 conclude that a statutory aggravating circumstance exists,  
22 is whether the defendant should be sentenced to life  
23 imprisonment without parole for any reason or for no  
24 reason at all. That is what has been traditionally  
25 referred to as a recommendation of mercy and should such

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1 be your decision, you would so indicate by returning to  
2 the court the recommendation of life imprisonment form  
3 which will be signed by the foreman alone. In other words,  
4 you may choose to recommend life imprisonment without  
5 parole if you find a statutory or non-statutory  
6 circumstance or you may choose to recommend life  
7 imprisonment without parole as an act of mercy. In any  
8 instance, should you choose to recommend life imprisonment  
9 without parole, your decision must be a unanimous one and  
10 the foreman alone will be required to sign the recommended  
11 sentence form.

12 Now The State has presented in this the second stage  
13 of the trial the defendant's prior previous convictions  
14 and his record while he was earlier incarcerated. In  
15 addition they have presented evidence of events that have  
16 occurred after the defendant's arrest and while he was  
17 incarcerated here in York County. I tell you now as to  
18 the April 12th, 1993 event in the York County Detention  
19 Center, I remind you -- I tell you first that the  
20 defendant is not on trial for those events at this time  
21 and I remind you that one is presumed innocent of a crime  
22 until a jury finds them guilty of the charge beyond a  
23 reasonable doubt. And I also tell you that as to the  
24 charge of the events of April 12, 1993 there is in law  
25 what is known as an affirmative defense that means a

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1 defense which the defendant must prove by the greater  
2 weight or the preponderance of the evidence. That defense  
3 is the defense of not guilty by reason of insanity. Now  
4 the defendant has the burden of proving this defense if he  
5 has tried or on trial for the offense, but to prove that  
6 defense by what's called the greater weight or the  
7 preponderance of the evidence. I'm telling you that in  
8 your consideration of this matter at this time you must,  
9 even though he is not on trial for that offense, you must  
10 adhere to these legal principles. As to the affirmative  
11 defense of not guilty by reason of insanity, the burden of  
12 proof is on the defendant to prove that defense and it  
13 must be done by what's called the greater weight or the  
14 preponderance of the evidence, that's a lesser standard  
15 than beyond a reasonable doubt. I can explain best to you  
16 the preponderance of the evidence by asking if you would  
17 imagine with me the scale the blindfolded justice holds.  
18 You recall they are even, but when a party has the burden  
19 of proof to prove an issue by the greater weight or the  
20 preponderance of the evidence, the weight of the evidence  
21 and you can't mechanically weigh it, you have to weigh it  
22 through mental processes, but the weight of the evidence  
23 must tip the scales in that person with the burden of  
24 proof's favor, that is, the defendant. If the scales  
25 remain even or tip back towards The State on that issue,

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1 then the defendant has failed to carry that burden of  
2 proof. Now as to this affirmative defense, it is our law  
3 that it is an affirmative defense to a prosecution for a  
4 crime that at the time of the commission of the act  
5 constituting the offense the defendant as a result of  
6 mental disease or defect lacked the capacity to  
7 distinguish moral or legal right from moral or legal wrong  
8 or to recognize the particular act charged as morally or  
9 legally wrong. There is an additional matter, another  
10 verdict in the event one is tried and raises the issue of  
11 mental deficiency, that is not a complete defense, but  
12 that is known as a verdict of guilty but mentally ill that  
13 is in addition to not guilty by reason of insanity. Here  
14 where a defendant claims or is to be or to find a  
15 defendant guilty but mentally ill, a jury would have to  
16 find at the time of the commission of the act constituting  
17 the offense the defendant has the capacity to distinguish  
18 right from wrong or to recognize their act as being wrong  
19 as defined by law, but because of mental disease or defect  
20 they lack sufficient capacity to conform their conduct to  
21 the requirements of the law. Now as to this evidence that  
22 is the evidence of previous convictions, incarceration,  
23 infractions and offenses and the events that have occurred  
24 after September 25, 1992, I charge you that this evidence  
25 should not be considered as substantive evidence of



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1       aggravating circumstances, but if you are convinced that  
2       the defendant committed those offenses, then you may  
3       consider them as evidence of his character, his  
4       characteristics, and/or his future dangerousness, but for  
5       no other purpose. These may be considered along with all  
6       the other evidence and you may give them whatever weight  
7       you deem proper and appropriate under the circumstances of  
8       this case. Evidence and testimony that the defendant  
9       committed a murder and other acts while in prison awaiting  
10      his trial on the charges before the court may be  
11      considered by you as evidence of the defendant's character  
12      and is evidence regarding the defendant's future  
13      dangerousness to society. Such testimony and evidence is  
14      not being offered as evidence of the defendant's guilt of  
15      a statutory aggravating circumstance and, therefore, such  
16      evidence is not to be considered by you as proof of a  
17      statutory aggravating circumstance. Rather, the evidence  
18      has been admitted as evidence of the defendant's character  
19      and evidence of the defendant's future dangerousness to  
20      society, therefore, you as jury are not required to find  
21      proof of these acts beyond a reasonable doubt or even by  
22      clear and convincing evidence before considering such  
23      evidence as character evidence. Rather, if you, the jury,  
24      are convinced that the defendant committed these other  
25      offenses, you may consider them as evidence of the

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1 defendant's characteristics and give them whatever weight  
2 that you deem appropriate under the circumstances of this  
3 case in determining the appropriate sentence to be issued  
4 in this case. The evidence and testimony has been  
5 presented to you regarding the mental condition of the  
6 defendant on April 12, 1993. Again, you may consider such  
7 evidence as evidence of defendant's characteristics and  
8 give such evidence whatever weight you deem appropriate in  
9 determining the appropriate sentence to be issued in this  
10 case.

11 I now instruct you and emphasize that the defendant  
12 had a right not to testify in his own behalf and the fact  
13 that he did not in this phase of the trial or testify is  
14 not to be considered by you in any way in your  
15 deliberations and is not to be utilized by you in your  
16 consideration on the question of the sentence to be  
17 imposed. The defendant has an absolute right to remain  
18 silent under our Constitution and the exercise by the  
19 defendant of that right cannot and must not be considered  
20 by you in any fashion in your deliberations and cannot be  
21 used against the defendant or mitigate against him in any  
22 respect whatsoever. Under your oath you are to reach no  
23 inference and draw no conclusion whatsoever from the fact  
24 that the defendant did not himself testify. That the  
25 defendant did not testify should not even be discussed by

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1       you in the jury room. The burden of proof is upon The  
2       State to prove beyond a reasonable doubt the aggravating  
3       circumstances, the statutory aggravating circumstances as  
4       outlined to you, and that the defendant has exercised his  
5       right not to testify is not to be considered by you in any  
6       fashion whatsoever in determining the sentence to  
7       recommend.

8               Now I talked to you in the guilt phase about something  
9       called accomplice liability. It is immaterial whether one  
10      co-defendant knew before hand that the other co-defendant  
11      was going to shoot the victim. Accomplice liability  
12      applies to murder which is a natural and probable  
13      consequence of armed robbery nor is such knowledge before  
14      hand material to the imposition of a death penalty. I  
15      charge you that major participation in the felony  
16      committed combined with reckless indifference to human  
17      life is sufficient culpability to impose the death penalty  
18      upon a defendant liable for murder. In determining  
19      whether to sentence the defendant to death or life  
20      imprisonment without parole you must focus on the  
21      defendant's own personal culpability or blameworthiness  
22      for the killing.

23              I charge you that in determining the sentence that the  
24      defendant should receive you may consider the emotional  
25      impact of the murder on the victim's family. In

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1 considering such evidence you may consider the victim's  
2 uniqueness as an individual human being. You may consider  
3 in determining the defendant's moral culpability and  
4 blameworthiness you may consider the specific harm caused  
5 by the murder, the consequences of the defendant's  
6 criminal act, the emotional impact of the murder upon the  
7 victim's family, the personal characteristics of the  
8 victim and the injury done to society by the crime. You  
9 may consider the unique loss to society and particularly  
10 to the victim's family caused by the victim's death. You  
11 may further consider the human cost of the crime committed  
12 by the defendant.

13 Our South Carolina Code Sections 16-3-28 and 24-21-640  
14 and I've told you earlier our Code of Laws are simply the  
15 laws passed by our Legislature provides as follows: It  
16 first provides that "The person who is convicted of or  
17 pleads guilty to murder must be punished by death or by  
18 imprisonment for life. No person sentenced to life  
19 imprisonment for murder may receive any work release  
20 credits, good time credits, or any other credit that would  
21 reduce his mandatory imprisonment." It is further stated  
22 in Code Section 16-3-28 that "Parole shall not be granted  
23 nor is parole authorized by law to any prisoner serving a  
24 sentence for a second or subsequent conviction following a  
25 separate sentencing for the prior conviction for any

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1 violent crime as defined by South Carolina law." And  
2 Section 24-21-640 of our law charges that "Murder,  
3 burglary first degree, and armed robbery are violent  
4 crimes under South Carolina law."

5 If you sentence the defendant to death, you must  
6 assume that the sentence will be carried out. If the  
7 recommendation of death is not made, the defendant shall  
8 be sentenced to life imprisonment without the possibility  
9 of parole.

10 I have instructed you that any finding regarding a  
11 statutory aggravating circumstance must be unanimous, it  
12 must be a unanimous decision, a unanimous finding, and it  
13 must be beyond a reasonable doubt. No such requirement  
14 exists with consideration of mitigating circumstances;  
15 however, rather, in deciding the appropriate sentence in  
16 this case each individual juror must consider each  
17 mitigating circumstance which he or she finds to be  
18 supported by the evidence. It is not necessary that the  
19 entire jury unanimously agree on the existence of any  
20 mitigating factor before you as jurors may consider it.  
21 Rather, the existence of mitigating circumstances and the  
22 weight to be accorded to such are matters which each of  
23 you may determine for yourself. It is not necessary for  
24 the existence of any mitigating circumstance to be proven  
25 beyond a reasonable doubt before each of you may consider

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1 it. The defendant does not bear any such burden of  
2 proving the existence of such mitigating circumstance.  
3 Rather, you are to consider each and every mitigating  
4 circumstance which you find to be supported by the  
5 evidence before you. You must consider mitigating  
6 circumstances because if you are to make an individualized  
7 assessment of the appropriateness of the death penalty in  
8 this case, which the law requires you to do, evidence  
9 about the defendant's background and character is very  
10 relevant. Mitigating circumstances, as I noted, will not  
11 be justification or excuse for the event in question,  
12 rather, a mitigating circumstance simply lessens the  
13 defendant's guilt and makes him less blameworthy or less  
14 culpable.

15 Now before you can recommend the imposition of a life  
16 sentence, it is not necessary that you find beyond a  
17 reasonable doubt the existence of the alleged statutory  
18 mitigating circumstance or any other relevant mitigating  
19 circumstance. While it is necessary for you to find  
20 beyond a reasonable doubt the existence of at least one of  
21 the alleged statutory aggravating circumstances before you  
22 can recommend that a defendant be sentenced to death, it  
23 is not necessary that you so find as to a recommendation  
24 of life imprisonment without parole. It is not required  
25 that you find the existence of at least one alleged

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1 mitigating circumstance in order to recommend that the  
2 defendant receive a life imprisonment without parole.  
3 Furthermore, even if you do not find the existence of a  
4 mitigating circumstance, you are still permitted to  
5 sentence the defendant to life imprisonment without  
6 parole. You do not have to find that a mitigating  
7 circumstance exists before you can sentence the defendant  
8 to life imprisonment without parole, rather you may  
9 sentence the defendant to life imprisonment without parole  
10 for any reason or for no reason at all. The law of this  
11 state permits you as jurors in a capital case to sentence  
12 the defendant to life imprisonment without parole because  
13 of the existence of mitigating circumstances or purely and  
14 solely as an act of mercy. Now let me briefly summarize.  
15 You will have in the jury room these statutory  
16 instructions, the jury's verdict on proof of aggravating  
17 circumstances and the jury's determination as to sentence  
18 to be imposed. The statutory instructions sets forth and  
19 states thereon the only aggravating circumstances you  
20 shall consider in this case. Should you fail to find  
21 beyond a reasonable doubt at least one of these  
22 circumstances existed at the time the murder was  
23 committed, then you would go no further. Your  
24 recommendation must be for life imprisonment without  
25 parole, that is, if you do not find beyond a reasonable

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1 doubt that at least one statutory aggravating  
2 circumstance, you must return a verdict of life  
3 imprisonment without parole.

4 Should you find beyond a reasonable doubt the  
5 existence of an aggravating circumstance or circumstances,  
6 you would then be authorized to consider recommending the  
7 death penalty. In your deliberations you will consider  
8 any statutory or non-statutory mitigating circumstances,  
9 any mitigating circumstances whatsoever which are  
10 supported by the evidence. You may also consider any  
11 other factor in mitigation of the offense and you can  
12 recommend a sentence of life for no reason at all. If you  
13 decide to recommend the death penalty, you will complete  
14 the proper form and all twelve jurors must sign the  
15 recommendation. Should you decide to recommend life  
16 imprisonment without parole, only the foreman must sign  
17 the recommendation and no reason need be given or should  
18 be given for your decision. Whatever your recommendation  
19 is it must be a unanimous one, that is to say, it must be  
20 the verdict of each and every juror. The State and the  
21 defendant have a right to expect that you will carefully  
22 and impartially consider all the evidence in this case and  
23 that you will follow the law as I have explained it to  
24 you.

25 You will notice that I have during these instructions



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1 used the word "recommendation" referring to your decision  
2 on the question of what punishment the defendant should  
3 receive. I have used this word because it is the word set  
4 forth in the statute, but it is important for you to  
5 understand that your decision as to the sentence is really  
6 more than a recommendation as you or I might use the word  
7 in every day speech. I tell you this because the law  
8 provides that whatever your recommendation is I, as the  
9 trial judge, must accept it, therefore, you should  
10 understand that whatever your recommendation might be that  
11 recommendation will, in fact, be the sentence which will  
12 be imposed upon the defendant. I do not have the power  
13 under South Carolina law to modify or change the verdict  
14 even I were to disagree with it.

15 Your verdict may not be based on passion, prejudice,  
16 sympathy, sorrow, public feeling, public opinion,  
17 sentiment, race, conjecture or any arbitrary factor.

18 Now before I will allow you to deliberate and send in  
19 to you the four sheets of paper that I have talked to you  
20 about, the statutory circumstances and the two forms, I  
21 have to go over my charge with the attorneys to make sure  
22 that I have not made any error just as I have done in the  
23 past. So I am going to let all of you go to the jury room  
24 in just a minute, but don't start your deliberation.

25 The alternates will be taken to another jury room.

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1 Don't start your deliberations yet, just like I told  
2 you earlier in the guilt phase, if you have questions,  
3 write them down and send them out as you did. When you  
4 have reached a verdict, knock on the door and let the  
5 bailiff know and they will come and get us. We are not  
6 going to be involved in any business and we should be able  
7 to send for you promptly when you have reached a verdict.  
8 If you want to take breaks, the same applies as last time.  
9 Take them just don't have of you work and half of you  
10 break.

11 Now if you would follow the bailiff to the jury room,  
12 but don't start your deliberations until the bailiff  
13 instructs you to do so and the two alternates will be  
14 escorted to the other jury room.

15 (Jury retires to jury room at 4:25 PM.)

16 All right, any exceptions by The State?

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

18 THE COURT: Any by the defense?

19 MR. SCHUSTERMAN: None, Your Honor.

20 THE COURT: All right, if you want to check the  
21 evidence. I am having the statutory aggravation form  
22 retyped because I left out in one place words about  
23 parole. I have corrected it everywhere else but in one.  
24 That's being done right now. Check the exhibits and we  
25 will send them in. We will be at ease pending a verdict.

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1 (Whereupon counsel for The State and counsel for the  
2 defense reviewed all exhibits with the court reporter  
3 before the same was sent to the jury room.)

4 THE COURT: Take your seats.

5 All I have received -- Is The State ready?

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

7 THE COURT: Is the defense ready?

8 MR. SCHUSTERMAN: Yes, sir, Your Honor.

9 THE COURT: Let the record show Mr. Hughes is present.

10 I received a note at 8:30 stating "We, the jury, are  
11 unable to come a unanimous decision on the 'sentence to be  
12 imposed' for the defendant. This being the case? Where do  
13 we go from here? Byron Neely, Jury Foreman.

14 Based on that I determined to considering at this  
15 point to giving an Allen charge and I will be glad to hear  
16 from either side on that.

17 Anything from The State?

18 MR. POPE: Your Honor, we handed up a Request to  
19 Charge that we would have on that matter, Your Honor.

20 THE COURT: Page 5 of Judge Ervin's, part of 1-1  
21 that's found on page 5 in Judge Ervin's book.

22 All right?

23 MR. SCHUSTERMAN: Thank you, Your Honor, may it please  
24 the court? First, Your Honor, let me generally object to  
25 an Allen Charge. I believe that they are coercive in

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1 nature. I think that this has been a jury or two weeks  
2 that have been listening to all the testimony, a jury that  
3 has taken their responsibility very seriously and this  
4 particular jury comes back and indicates that they are at  
5 an impasse and I think the court should honor that, so I  
6 would object to that.

7 In the event that Your Honor believes that an Allen  
8 Charge is the appropriate remedy, Your Honor, the one  
9 phrase within that page that I read that I take exception  
10 to would be the phrase where it is indicated that it is  
11 the jury's duty to agree on a verdict and I understand  
12 that there is a cite after it and I understand it is  
13 quoted from a case, it may have been quoted from Allen.  
14 but, Your Honor, I believe that that is such a compelling  
15 statement that it could cause someone to give up a well  
16 thought out for a conviction they may have based on the  
17 court charging them that it is their duty to agree. I  
18 believe, Your Honor, that it would be their duty to  
19 deliberate and to weigh both sides and all the factors  
20 that you go into in the charge; I don't know that it is  
21 their duty to agree. Thank you, sir.

22 MR. POPE: Your Honor, if I'm not mistaken on the  
23 charge in the book the last sentence I believe also says  
24 at the end of it we would ask them to return and continue  
25 deliberations, is that correct?

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1 THE COURT: Uh-huh.

2 MR. POPE: Okay.

3 THE COURT: Bring in the jury.

4 (Jury returns to courtroom at 9:10 PM.)

5 Members of the jury, I have received Mr. Neely's note.  
6 It states "We, the jury, are unable to come to a unanimous  
7 decision on the 'sentence to be imposed' for the  
8 defendant." You then ask me this question: 'This being the  
9 case, where do we go from here?'"

10 Well, by law I cannot tell you where to go from here,  
11 but I can ask and make a suggestion that you continue  
12 deliberations in an attempt to reach a verdict. I can  
13 tell you all of you have a duty to consult with one  
14 another and to deliberate with a view to reaching an  
15 agreement, if this can be done without violence to any one  
16 of your individual judgments. Each of you as jurors must  
17 decide the case for yourself, but only after impartial  
18 consideration of the evidence with your fellow jurors.  
19 During the course of your continued deliberations each of  
20 you should not hesitate to re-examine your own views and  
21 change your opinion if convinced that your opinion is  
22 erroneous. Each juror who finds himself or herself to be  
23 in the minority should reconsider their views in light of  
24 the opinions of the jurors of the majority and,  
25 conversely, each juror finding themselves in the majority

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1 should give equal consideration to the views of the  
2 minority. No juror, however, should surrender their  
3 honest conviction as to the weight or effect of the  
4 evidence solely because of the opinion of your fellow  
5 jurors or for the mere purpose of returning a unanimous  
6 verdict.

7 I ask you to remember that after full deliberation and  
8 consideration of the evidence it is your duty to agree  
9 upon a verdict if you can without disobeying your  
10 individual judgment and conscience.

11 And with these instructions I am going to ask that you  
12 in response to your question "Where do we go from here," I  
13 am going to ask that you retire to your jury room and do  
14 some further deliberations.

15 (Jury retires to jury room at 9:15 PM.)

16 That, of course, is a very abbreviated Allen Charge,  
17 but I have reviewed both Judge Ervin's and my own and find  
18 quite frankly in a case of this type the majority of the  
19 usual Allen Charge just simply would not apply, so I feel  
20 comfortable with the direction that particular portion of  
21 the Allen Charge gave.

22 So, anything from The State?

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

24 THE COURT: I know the defendant objected to any Allen  
25 Charge, so you objected to giving the Charge substantively

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1 and is there any objection to the Charge as given?

2 MR. SCHUSTERMAN: As I said before, Your Honor, ---

3 THE COURT: Other ---

4 MR. SCHUSTERMAN: --- other than the duty to I think I  
5 took exception prior to the -- with the phrase being "that  
6 the jurors have a duty to agree upon a verdict" or wording  
7 similar to that.

8 THE COURT: That's the way it is written here "It is  
9 your duty to agree." I'm not sure I used - sometimes I  
10 use my own words, but I did use the word "duty."

11 MR. SCHUSTERMAN: I understand. I object to that  
12 language.

13 THE COURT: I understand and I appreciate your  
14 concern.

15 MR. SCHUSTERMAN: As I understand that would be the  
16 only time - one Allen Charge.

17 THE COURT: That's the court's intention.

18 MR. SCHUSTERMAN: Thank you.

19 (Recess)

20 THE COURT: I have received word that the jury has  
21 reached a verdict.

22 Anything from The State? Anything from the defense?

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

24 MR. SCHUSTERMAN: Not at this time, Your Honor.

25 THE COURT: Let the record show Mr. Hughes is present

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1 in the courtroom. Bring in the jury.

2 (Jury returns to courtroom at 11:30 PM to report its  
3 verdict.)

4 Mr. Foreman, I understand the jury has reached a  
5 verdict.

6 FOREMAN: We have, Your Honor.

7 THE COURT: All right, if you will hand it up by way  
8 of the bailiff.

9 (Complied.)

10 I would ask the Clerk to publish.

11 THE CLERK: State of South Carolina versus Mar-Reece  
12 Hughes Indictment Number 93GS46-4296 "We the jury in the  
13 above entitled case unanimously recommend that the  
14 defendant Mar-Reece Hughes be sentenced to death," signed  
15 by B. E. Neely, Foreperson, Ruby M. Howie, Elaine Hartman,  
16 Virginia Kitchings, Lana Carter, Ann Keller, Bobby Wylie,  
17 James Harrison, Arnold Tompkins, Reuben Lee, Willie Hayley  
18 (sic) and Dwayne Heyward."

19 THE COURT: Read Part One also.

20 THE CLERK: Part One, "We the jury in the entitled  
21 case unanimously find beyond a reasonable doubt that the  
22 existence of the following statutory aggravating  
23 circumstances: Murder of a local law enforcement officer  
24 during or because of the performance of his official  
25 duties. And it is signed by B. E. Neely, Foreperson, Ruby



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1       Howie, Arnold Tompkins, Reuben Lee, Lana Carter, -- I  
2       can't read this, I'm sorry --

3               THE COURT: Willie Neely?

4               THE CLERK: Willie Neely?

5               THE COURT: Isn't that right?

6               JUROR: Willie Battles.

7               THE COURT: Willie Battles, I'm sorry.

8               THE CLERK: James Harrison, Bobby Wylie, Ann Keller,  
9       Virginia Kitchings, Elaine Hartman and Dwayne Heyward.

10              THE COURT: If this be your verdict, so say you all by  
11       the raising of your right hand.

12              (Each juror complied by raising right hand.)

13              All right. Anything from The State?

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

15              THE COURT: Defense? Do you want the jury polled?

16              MR. SCHUSTERMAN: Yes, sir.

17              THE COURT: All right, you will be polled just as you  
18       were on the matter of the guilt phase.

19              THE CLERK: Mr. Neely, would you stand? Mr. Neely, is  
20       this your signature on this document ---

21              JUROR NEELY: Yes.

22              THE CLERK: --- and do you still affirm thereto?

23              JUROR NEELY: Yes, ma'am.

24              THE CLERK: You may be seated.

25              Ms. Howie, Ruby Howie? Is this your signature, Ms.

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1       Howie?

2               JUROR HOWIE: Yes, it is.

3               THE CLERK: And do you still affirm thereto?

4               JUROR HOWIE: Yes, I do.

5               THE CLERK: Thank you very much.

6               Ms. Hartman? Is this your signature, Ms. Hartman?

7               JUROR HARTMAN: Yes, it is.

8               THE CLERK: And do you still affirm thereto?

9               JUROR HARTMAN: Yes, I do.

10              THE CLERK: Thank you.

11              Ms. Kitchings, Virginia Kitchings? Is this your  
12 signature, Ms. Kitchings?

13              JUROR KITCHINGS: Yes, it is.

14              THE CLERK: And do you still affirm thereto?

15              JUROR KITCHINGS: Yes.

16              THE CLERK: Thank you.

17              Ms. Carter? Ms. Carter, is this your signature?

18              JUROR CARTER: Yes, ma'am.

19              THE CLERK: And do you still affirm thereto?

20              JUROR CARTER: I do.

21              THE CLERK: Thank you.

22              Ms. Keller? Is this your signature, Ms. Keller?

23              JUROR KELLER: Yes, it is.

24              THE CLERK: And do you still affirm thereto?

25              JUROR KELLER: Yes, I do.

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1 THE CLERK: Thank you.

2 Bobby Wylie? Mr. Wylie, is this your signature on  
3 this document?

4 JUROR WYLIE: It is.

5 THE CLERK: And do you still affirm thereto?

6 JUROR WYLIE: I do.

7 THE CLERK: Thank you.

8 Mr. Harrison? Is this your signature, Mr. Harrison?

9 JUROR HARRISON: Yes, ma'am.

10 THE CLERK: And do you still affirm thereto?

11 JUROR HARRISON: Yes, ma'am.

12 THE CLERK: Thank you.

13 Mr. Tompkins? Is this your signature, Mr. Tompkins?

14 JUROR TOMPKINS: Yes, it is.

15 THE CLERK: And do you still affirm thereto?

16 JUROR TOMPKINS: I do.

17 THE CLERK: Thank you.

18 Ruben Lee? Is this your signature, Mr. Lee?

19 JUROR LEE: Yes, ma'am.

20 THE CLERK: And do you still affirm thereto?

21 JUROR LEE: Yes, ma'am.

22 THE CLERK: Thank you.

23 And Willie -- your last name?

24 JUROR BATTLES: Battles.

25 THE CLERK: Willie Battles; I'm sorry, Mr. Battles. Is

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1 this your signature, Mr. Battles?

2 JUROR BATTLES: Yes, ma'am.

3 THE CLERK: And do you still affirm thereto?

4 JUROR BATTLES: Yes, ma'am.

5 THE CLERK: Thank you very much.

6 And Mr. Heyward? Is this your signature, Mr.  
7 Heyward?

8 JUROR HEYWARD: Yes, ma'am.

9 THE CLERK: And do you still affirm thereto?

10 JUROR HEYWARD: I do.

11 THE CLERK: Let the record show that all jurors  
12 affirmed.

13 THE COURT: Anything from The State?

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

15 THE COURT: Anything from the defense?

16 MR. SCHUSTERMAN: Yes, sir, there are matters that I  
17 would like to take up, it doesn't have to be in the  
18 presence of the jury, it can be.

19 THE COURT: I will allow them to be made in the  
20 presence of the jury.

21 MR. SCHUSTERMAN: Before sentencing, the first Motion  
22 I would make would be for the trial judge to consider a  
23 proportional review that the sentence of death for Mr.  
24 Hughes is disproportionate in that Mr. Forney convicted of  
25 the same offense received a life sentence and when looking

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1 at the event as it stands on September 25, 1992, for Mr.  
2 Hughes to receive the death penalty and for Mr. Forney to  
3 receive a life sentence is a disproportionate punishment  
4 and I would ask for the court to acknowledge that and  
5 consider imposing a life sentence based on a proportional  
6 review.

7 THE COURT: I deny the Motion.

8 MR. SCHUSTERMAN: Thank you. Your Honor, that will be  
9 all I have.

10 THE COURT: All right, bring the defendant forward.

11 Anything, Mr. Schusterman?

12 MR. SCHUSTERMAN: I don't think that he wants to say  
13 anything.

14 THE COURT: Ms. Brice?

15 MS. BRICE: No, sir.

16 THE COURT: Mr. Hughes, anything you wish to say to me  
17 or --

18 MR. HUGHES: No, sir.

19 THE COURT: Are you sure you don't want to -- this is  
20 your opportunity if you wish to talk to me.

21 MR. HUGHES: No, sir.

22 THE COURT: You have nothing to say?

23 MR. HUGHES: No, sir.

24 THE COURT: All right.

25 As presiding judge in the case of The State of South

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1 Carolina versus Mar-Reece Hughes, Indictment 93GS46-4296  
2 Indictment for murder and at this time prior to the  
3 imposition of the death penalty upon the defendant,  
4 Mar-Reece Hughes. I find as an affirmative fact that the  
5 evidence in this case warrants the imposition of the death  
6 penalty and its imposition is not a result of prejudice,  
7 passion or any other arbitrary factor.

8 Mr. Hughes, the sentence of the court on criminal  
9 conspiracy, 93GS46-4304 is a term of five years. That is  
10 to be consecutive to all other sentences imposed at this  
11 time.

12 93GS46-4303 possession of stolen vehicle, the sentence  
13 of the court is confinement for a term of five years. That  
14 is also consecutive to all other sentences today.

15 93GS46-4305(a) count number one, armed robbery, the  
16 sentence of the court is you will be confined to the State  
17 Board of Corrections, York County Detention. for a term of  
18 thirty years. That is to be consecutive.

19 And on that same indictment, count two, possession of  
20 firearm during the commission of a crime, the sentence of  
21 the court is that you be confined to the State Board of  
22 Corrections, York County Detention, for a term of five  
23 years. That's consecutive.

24 And you, the defendant, Mr. Mar-Reece Hughes, you have  
25 been found by the jury to be guilty of the offense of

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1 murder. The jury has recommended that you should be  
2 sentenced to death. It is, therefore, the judgment of law  
3 and the sentence of the court that you, Mar-Reece Hughes,  
4 be taken to the County Jail of York County and thence to  
5 the State Penitentiary and henceforth be kept in close and  
6 safe environment until the 28th day of November, 1995,  
7 upon which date between the hours of six o'clock AM and  
8 six o'clock PM you, the defendant, Mar-Reece Hughes, shall  
9 suffer death by electrocution or lethal injection in the  
10 manner provided by law.

11 Do you understand that, Mr. Hughes?

12 MR. HUGHES: Yes, sir.

13 THE COURT: All right, Mr. Hughes, I advise you that  
14 if you believe there has been any error committed in any  
15 way this case has been handled by the court or anything in  
16 the proceedings leading up thereto, you have ten days from  
17 today's date to file a Notice of Appeal. Do you understand  
18 that?

19 MR. HUGHES: Yes.

20 THE COURT: Have you explained that to him, Mr.  
21 Schusterman?

22 MR. SCHUSTERMAN: I believe we discussed it, Your  
23 Honor.

24 THE COURT: All right.

25 MR. SCHUSTERMAN: Your Honor, just for the record,

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1 Your Honor, in my Motion to Set Aside the Verdict of Death  
2 as well as the guilt. I would incorporate all the Motions  
3 that have been made throughout the course of the trial  
4 both in the guilt phase and in the penalty phase  
5 incorporated into that one Motion.

6 THE COURT: Those Motions are denied for the reasons  
7 set forth during the trial including the proportional  
8 argument made. I believe that was addressed at one point  
9 during the trial ---

10 MR. SCHUSTERMAN: Yes, sir.

11 THE COURT: --- and for the same reasons that were  
12 articulated then, that Motion is denied. All right.

13 MR. SCHUSTERMAN: Thank you.

14 THE COURT: Members of the Jury Panel, on behalf of  
15 York County I want to thank you and I am going to let you  
16 go to the jury room along with the two alternates and  
17 unless you have some objection thereto, I am going to step  
18 in in just a minute and personally thank you. So if you  
19 will go to the jury room, I will be in in just a minute.  
20 If you don't want me in there, that's fine, just let me  
21 know, but if you will just go to the jury room at this  
22 time.

23 (Jury retires to jury room.)

24 Anything from The State before we adjourn?

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



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1 THE COURT: General Sessions Court be concluded and is  
2 adjourned.

3 MR. SCHUSTERMAN: There are two matters that need to  
4 be dealt with. The first in regards to Mr. Hughes' medical  
5 condition. There is testimony Mr. Hughes is on an  
6 injection of Haldol 200 milligrams, a slow acting drug,  
7 that is given once every month - I believe it is four  
8 weeks actually, Your Honor, it is my understanding from  
9 talking to Doctor Morgan, the head of The Hall Institute.  
10 I would ask the court as part of the sentences that's  
11 given for the court to order that the Department of  
12 Corrections is to transfer Mr. Hughes on a timely basis to  
13 the William S. Hall Institute and have his medication  
14 administered to him so that he can continue to be treated.

15 And, the other, Your Honor, I want for the record to  
16 reiterate the concern I have regarding the Allen Charge.  
17 At 9:15 this evening I believe that's when approximately  
18 you gave the Allen Charge to this jury. Again, I believe  
19 the charge could be coercive based on conduct of the  
20 jurors in passing on the sentence of death. It is my  
21 information that several of the jurors were in very great  
22 emotional turmoil and they had to be consoled and I would  
23 submit, Your Honor, that it is conceivable that it was the  
24 pressure of the court coercing that a jury must agree on a  
25 verdict that led to people who had another situation and

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1 not giving what they believed to be in good conscience  
2 their position gave up because of the instruction of the  
3 court and I would like for the court to be noted of that.

4 THE COURT: It is noted. I deny the relief you are  
5 asking for. It has already been done, but I felt like it  
6 was appropriate at that time.

7 MR. SCHUSTERMAN: This would go the proportional  
8 review that the sentence of death should be abandoned.

9 THE COURT: That Motion is still denied.

10 MR. SCHUSTERMAN: Thank you.

11 \*\*\*\*\*

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1     SEPTEMBER 7, 1995

2             THE COURT: Mr. Dunn, would you go ask my law clerk,  
3 Mr. White, to bring me that stack of Motions that we are  
4 taking up this morning. I don't see them out here.

5             BAILIFF: All right.

6             MR. POPE: May it please the court, Your Honor, I had  
7 given the defense a copy of The State's index of the  
8 motions.

9             THE COURT: Okay.

10            MR. POPE: In essence, it's just a list of the defense  
11 motions that we have received. I have given the defense  
12 copy and a copy to the court and I have a copy for the  
13 court reporter also.

14            Your Honor, I have spoken to the defense and there are  
15 a number of, in essence, housekeeping things that we may  
16 need to deal with before we get into the Motions and  
17 certainly those particular Motions are necessarily in that  
18 order that we have presented. That was just a way of  
19 grouping them.

20            THE COURT: All right. Is the defense ready to  
21 proceed?

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

23            THE COURT: For the record, Mr. Hughes is present in  
24 the courtroom with counsel, Mrs. Brice and Mr.  
25 Schusterman. On behalf of The State we have Mr. Pope and

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1 Mr. Brackett.

2 Counsel, we have a long list of defense Motions and I  
3 am going to let you present them in the order you deem --  
4 you have talked to the Solicitor and you have gotten - I  
5 don't want to call it a schedule - but some matters deal  
6 with witnesses and we do have a matter dealing with the  
7 jurors. We have someone from Aiken coming later in the  
8 day. But I am going to let counsel for the defense and The  
9 State sort of determine how best these should be grouped  
10 and argued and the order.

11 MR. SCHUSTERMAN: Your Honor, prior to the start of  
12 court today, myself, Ms. Brice and Solicitor Pope have  
13 talked about how to handle this using the court's time as  
14 best as possible and what we believe we should do is  
15 similar to the meeting with had in chambers several days  
16 ago. We think that if we go through the list of the  
17 fifty-two motions some of them can be dealt with fairly  
18 easily. Once we do that, we think we will be left with a  
19 core number of motions where testimony has to be taken or  
20 a more in-depth argument has to be made and it might be  
21 the easiest way to do it just to clean up, do some, as  
22 Mr. Pope says, some housekeeping measures. Some of the  
23 motions will go fairly quickly. Others will require some  
24 in-depth testimony. There are also several motions, Your  
25 Honor, having gone through the list Mr. Pope has, but

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1 there are several motions based on witnesses that the  
2 defense has to call that we need to wait and hear tomorrow  
3 just because there are a number of witnesses that were not  
4 able to be here today and so we have subpoenaed them for  
5 tomorrow.

6 THE COURT: All right.

7 MR. SCHUSTERMAN: Thank you, sir.

8 MR. POPE: May it please the court, Your Honor? I,  
9 again, talked to the defense. There are a number of things  
10 that aren't necessarily on this list that will be dealt  
11 with. The first would be as part of the Lyle evidence  
12 which would come in primarily right at the beginning of  
13 the trial with the two out-of-state witnesses that would  
14 testify as to the incident in Charlotte. The only  
15 additional evidence that The State has proffered  
16 previously was true copies of the Indictments to help show  
17 the clear and convincing standard as far as the Lyle  
18 evidence. Under our new Rules that are now in effect, it  
19 is my understanding that this document would be  
20 self-authenticating, but I have also brought the District  
21 Attorney from North Carolina, Roberta Tepper, who signed  
22 those two Indictments. And I show this to the defense,  
23 these are merely indictments on the North Carolina charge.  
24 We won't get into any more Lyle things today, but Ms.  
25 Tepper is present and I will put her up just ever so

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1 briefly to explain what this is even though it is  
2 self-authenticated.

3 THE COURT: All right.

4 MR. POPE: I call Ms. Roberta Tepper.

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

6 ROBERTA TEPPER, being duly sworn,  
7 testified as follows:

8 DIRECT EXAMINATION

9 BY MR. POPE

10 Q Ms. Tepper, if you would, state your name and  
11 occupation for the court reporter, please.

12 A My name is Roberta Tepper. I am the Assistant District  
13 Attorney, Mecklenburg County, North Carolina.

14 Q Ms. Tepper, were you so employed back in October of  
15 1992?

16 A Yes, I was.

17 Q Did you have the opportunity to submit to the Grand  
18 Jury against Mar-Reece Aldean Hughes an indictment for  
19 robbery with a dangerous weapon, two counts?

20 A Yes, sir.

21 Q I'll show you what has been marked State's 1 for the  
22 purpose of this hearing, certified true copies from your  
23 Clerk of Court, and I'd ask if you would look at the back  
24 two pages and tell me if you can identify it.

25 A Those are the indictments that I sent to the Grand

1 Jury in October of '92 against Mar-Reece Hughes.

2 Q And what was the results of the Grand Jury action?

3 A The Grand Jury returned a true bill on both counts.

4 Q And that was in 1992?

5 A Yes, sir.

6 Q And what is the current status of those indictments  
7 with your office?

8 A Right now these cases are just voluntarily dismissed  
9 with leave, which is a bookkeeping kind of dismissal. The  
10 cases are still technically active, but they take them out  
11 of our administrative office of the court docket for open  
12 pending cases.

13 Q Okay and when you say "voluntarily dismissed with  
14 leave," was that on the merits, has anything changed as  
15 far as the merits that the Grand Jury found the true bill  
16 on?

17 A No, sir, it is just a voluntary dismissal with leave,  
18 it's just a bookkeeping way of putting cases essentially  
19 on hold.

20 Q Like a contingent docket?

21 A Exactly, because the defendant are in custody here we  
22 didn't want to interfere with the murder cases, we just  
23 put our cases on hold until yours were resolved.

24 Q And there is nothing post this case to prevent you  
25 from bringing this back up, is there?

1 A No, sir, and we intend to do that.

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

3 CROSS EXAMINATION

4 BY MR. SCHUSTERMAN

5 Q Good morning, Ms. Tepper.

6 A Good morning.

7 Q When was Mar-Reece Hughes indicted?

8 A October, I believe it was 1992.

9 Q Was Eric Forney indicted also?

10 A Yes, he was.

11 Q You had indicated that you took a voluntary dismissal  
12 with leave. You know Mr. Forney's case has been prosecuted  
13 already?

14 A Yes, sir.

15 Q Have you prosecuted Mr. Forney?

16 A No, I haven't.

17 Q Is there a reason or that?

18 A Yes.

19 Q May I ask what that reason is?

20 A Sure. I didn't want to prosecute one without the  
21 other. We were just waiting for both defendants to be  
22 tried and/or convicted here before I took any action. It  
23 would be my intent to try them together so I was just  
24 waiting for Mr. Hughes' case to be resolved.

25 Q Where did you establish or how did you establish the



1 facts on those two indictments?

2 A I received -- I'm not sure what you are asking, but I  
3 received information from our investigator she came and  
4 presented the case in our office. I haven't reviewed the  
5 file in some time, obviously, but the Grand Jury  
6 proceedings are closed in North Carolina. I don't know  
7 what she said to the Grand Jurors for them to return a  
8 true bill. We are not entitled to be present.

9 Q Thank you.

10 MR. SCHUSTERMAN: I have no other questions.

11 MR. POPE: Your Honor, again this would be submitted  
12 for the purpose of the clear and convincing standard in  
13 the Lyle evidence that we will be taking up later. At this  
14 time I would ask that this witness be excused.

15 MR. SCHUSTERMAN: Without objection.

16 THE COURT: I appreciate your time. Feel free to  
17 leave.

18 MS. TEPPER: Thank you.

19 THE COURT: And the Indictments are admitted into  
20 evidence --

21 MR. POPE: For this purpose.

22 THE COURT: --- for the purposes stated.

23 (State's Exhibit 1 marked and filed.)

24 MR. POPE: Your Honor, again, the next motion that  
25 would most likely be properly taken up would be the number

1 43 on the list, the Defense Motion to Disqualify our  
2 office. For obvious reasons, if we are disqualified, I  
3 would rather do it before we go through the other fifty  
4 motions. Your Honor, as a proffer on this, my  
5 understanding from State v. Smart is that the defense has  
6 to make some showing more than an allegation. It is not  
7 sufficient just to show that there may be such a situation  
8 as it would bring it into question; they have to show some  
9 specific information, some actual prejudice by my office  
10 hiring Ms. Tucker. Your Honor, for the record to put in  
11 before the defense that proffer, I would have an Affidavit  
12 from Ms. Tucker that was executed in our office when she  
13 came to our office accompanied with the Court's Order  
14 denying intervention. There wasn't a true, full-blown  
15 motion, but the Order Denying Intervention in which I  
16 believe Ms. Brice had requested that the court intervene  
17 in our hiring of Ms. Tucker. Also, for the record, Your  
18 Honor, I will put that Ms. Tucker is no longer employed  
19 with our office and as a representative of the court I  
20 would represent for our office that we have not discussed  
21 this case with Ms. Tucker.

22 I hand up State's Exhibits 2 and 3 to the court, which  
23 again would be your Order denying the request and the  
24 Affidavit of Ms. Tucker.

25 (State's Exhibits 2 and 3 filed.)

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1 THE COURT: For the record I should state that a  
2 former employee of Steven D. Schusterman, Marie Shelton  
3 Tucker, left that employ and went to work for the  
4 Solicitor's Office I believe in the Spring of this year,  
5 1995. There is, I don't think it is a question in the  
6 court's mind or anyone else's that Ms. Tucker did, in  
7 fact, participate and do some work on the Hughes trial --  
8 the Hughes' case on behalf of Mr. Schusterman's Office.  
9 When her employment was imminent or at least apparent or  
10 appeared to be that way, counsel on behalf of Mr. Hughes  
11 asked this court to intervene, in essence, enjoin her  
12 employment or enjoin the Solicitor's employment. The Court  
13 did not do so recognizing in the Order, which is now part  
14 of the record, State's Exhibit 2, that South Carolina does  
15 not have the per se disqualification rule and recognizing  
16 among other things the code of professional  
17 responsibility.

18 Ms. Brice, I will be glad to hear from you. You are  
19 the one who initially raised this issue. I presume you are  
20 going to take it at this time?

21 MS. BRICE: Your Honor, first of all, I would like to  
22 take the testimony of Mr. Hughes as well as our forensic  
23 psychiatrist regarding the contact and communications that  
24 took place with Mr. Hughes and Sheldon Tucker, a  
25 paralegal. Additionally, as the court is aware, Mr.

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1 Hughes has been diagnosed with a very serious mental  
2 illness and it would be our position that the illness  
3 itself affected the -- Ms. Tucker was privy to certainly  
4 confidential information concerning his mental illness,  
5 concerning the facts of the case based on communications  
6 that Ms. Sheldon was privy to by way of contact between  
7 Mr. Schusterman, defendant's counsel, and Mr. Hughes and  
8 we have some concerns about the fact that because he is a  
9 paranoid schizophrenic we believe that that does have an  
10 impact on his case first of all. Second of all, I am not  
11 aware of any code of ethics that paralegals are bound by.  
12 In the Smart case that dealt with an attorney who had at  
13 the most cursory contact with - he was working in a Public  
14 Defender's Office, he had cursory contact, he worked on  
15 Briefs, worked on paper work, but I don't recall that he  
16 ever had a face to face contact with the defendant in that  
17 case and he switched jobs and went to work in the  
18 Solicitor's Office directly on the case. I believe the  
19 Supreme Court for the state held that, first of all, we  
20 had to prove that there was some prejudicial impact, but  
21 also the court noted that the attorney was bound by the  
22 Code of Professional Responsibility and that was the only  
23 confidential communication. I don't know of any Code of  
24 Responsibility that is attributable or the same kind of  
25 standard that would apply to paralegals. For those reasons

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1 I would like at this point in time call Mr. Hughes as my  
2 first witness.

3 THE COURT: All right.

4 MR. POPE: May it please the court, Your Honor, I may  
5 be able to eliminate that. I would be willing to stipulate  
6 on the record and I certainly don't know the specifics of  
7 their conversations, but I would be willing to stipulate  
8 on the record knowing Mr. Schusterman and knowing Ms.  
9 Tucker's involvement with his office that I have no doubt  
10 that whatever was discussed with Mr. Schusterman or Ms.  
11 Tucker, you know, would have gone into detail. I am not  
12 disputing that. In other words, I am saying that I don't  
13 have any doubt that Mr. Hughes may have disclosed intimate  
14 information to Ms. Tucker. Our position is they are not  
15 showing anything that she has imparted to me that  
16 information. Again, I would stipulate that, you know, and  
17 I certainly don't know first hand, but I would stipulate  
18 that he has discussed at length this case with her, I  
19 would not dispute that.

20 THE COURT: Ms. Brice?

21 MS. SCHUSTERMAN: Your Honor, I agree that we probably  
22 would not have to put Mr. Hughes on the stand here because  
23 all the purposes we put him on the stand The State has  
24 stipulated to. The problem that we have is that in the  
25 Smart case clearly when one reads that the court was

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1 relying it was an insurance policy the Code of  
2 Professional Conduct.

3 THE COURT: Let me see a copy of the Smart case. I  
4 have read it, but I haven't refreshed my memory. Would one  
5 of you hand it up so I can peruse it? I will take note  
6 that the Code of Professional Responsibility while it may  
7 not apply to Ms. Tucker, it did apply to her employer and  
8 his entire office, at least all the attorneys in his  
9 office and by virtue of that I believe the Code of  
10 Professional Responsibility does at least come into play.  
11 Whether or not it controlled her, it controlled her  
12 employer.

13 All right, go ahead.

14 MR. SCHUSTERMAN: I understand that it would come into  
15 play, but it would come into play second generation so to  
16 speak. It would only come into play once the Solicitor,  
17 the attorneys in the Solicitor's Office, had that  
18 knowledge and I think that the point the court is making  
19 that once they had that knowledge they then could not use  
20 it because of the Code of Professional Conduct. Well, it  
21 seems to me that the horse is already out of the barn at  
22 that point. Our concern is that we are playing with a  
23 man's life here and I don't think that the insurance  
24 policy of the Code of Professional Conduct comes into play  
25 soon enough, at least by my reading of the Smart case, to

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1 ensure that these confidential communications were, in  
2 fact, not communicated in some way, shape or form.

3 THE COURT: All right, does Smart not stand for the  
4 proposition that counsel for the defense would have to  
5 show actual prejudice?

6 MR. SCHUSTERMAN: I assume that it would be, you know,  
7 other than wiretapping the Solicitor's Office and knowing  
8 the communications that were going on, but I assume that  
9 the court could infer the prejudice by the defendant  
10 taking the stand and informing the court as to the  
11 prejudicial comments, the intimate details of the case  
12 that would relate, there would be no possible way to show  
13 prejudice any other way.

14 THE COURT: There would and that would be to show that  
15 Ms. Tucker communicated that to the Solicitor.

16 MR. SCHUSTERMAN: But, Your Honor, I understand that  
17 that would be in the ideal situation, but it's an  
18 impossible task.

19 THE COURT: Well, no, it's not. All you have to do is  
20 call her, put her on the stand, put her under oath and  
21 examine her. I mean it's very simple. The court would not  
22 predispose that she would not tell the truth under oath.  
23 She signed an Affidavit saying she wasn't going to do it.  
24 I mean it would be very easy to examine that issue. In  
25 fact, this is without a jury, I don't know you could

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1 perhaps call someone from the Solicitor's Office and  
2 inquire of them whether they received this information,  
3 but the most direct way to do it would be to call Ms.  
4 Tucker and examine her under oath as to whether or not she  
5 did, in fact, discuss this case in any degree and, if so,  
6 what degree with anyone in the Solicitor's Office.

7 MR. SCHUSTERMAN: Your Honor, may I ask for a -- I  
8 believe that the Solicitor has handed up to the court a  
9 copy of the Affidavit that Ms. Tucker signed.

10 THE COURT: We will provide you with one.

11 MR. SCHUSTERMAN: I appreciate that, sir.

12 MR. POPE: I apologize. I made you a copy and didn't  
13 give it to you.

14 THE COURT: And the Affidavit is broader: this was not  
15 the only case Mr. Schusterman had in his office I would  
16 presume, but it covers any case pending in which she may  
17 have directly or indirectly participated. So it would  
18 cover not only the Hughes case, but any others.

19 MS. BRICE: Your Honor, in order to protect the record  
20 ---

21 THE COURT: All right, well, let me stop you real  
22 quick before we get too far into this and I am going to  
23 make it go both ways and I'm not being hypertechnical on  
24 this, but it would help the court if we had one person  
25 argue each motion for one side. That's the rules.



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1 MS. BRICE: I'm sorry, Your Honor.

2 THE COURT: No, you started.

3 MS. BRICE: I'm sorry.

4 THE COURT: Don't worry about any rule now.

5 MS. BRICE: I was confused with the last point that  
6 Mr. Schusterman was going to make and so rather explaining  
7 it to me, he was going to make it himself. Your Honor,  
8 this is the first time counsel has seen this Affidavit. We  
9 have not been able to question Ms. Tucker concerning this  
10 Affidavit and certainly if this Affidavit is going to be  
11 submitted for the record as far as evidence, I would think  
12 that we would be able to question her as to the contents  
13 of this Affidavit. For those reasons we would object to it  
14 being offered to prove the point that she did not have  
15 confidential communications. Why should the defense be  
16 put in a position of having to have her appear personally,  
17 but not The State? This is an Affidavit that I have never  
18 seen before this morning and I have no way of questioning  
19 her to verify the contents that she has stated therein.

20 THE COURT: But, of course, The State doesn't have to  
21 prove anything under the Smart case as I understand it and  
22 so they really don't need to put this in. I think it was  
23 just put in to show the situation as it existed when she  
24 was hired that meaning she undertook to state she would  
25 not do this. I have received it and I will note your

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1 objection to the court receiving it. I would certainly  
2 defer an ultimate ruling on this to give counsel for Mr.  
3 Hughes an opportunity to contact Ms. Tucker and discuss  
4 this with her and see if they want to call her as a  
5 witness. Under the evidence that exists now I would deny  
6 the Motion and that's what I am going to -- that's my  
7 ruling on what I have before me now. I will say this that  
8 that window is only open for a while. I'm not saying that  
9 if you contact Ms. Tucker next Wednesday and have her come  
10 in here, but while we are here for this set of motions,  
11 which is today and at least through lunch time tomorrow,  
12 I'm not going to make a final decision. I'm telling you  
13 that my decision will be to deny the motion absent some  
14 other showing by the defendant. I am giving you until  
15 lunch time tomorrow to make any such showing. Ms. Brice,  
16 do you understand that?

17 MS. BRICE: Yes, sir, that's fine. Thank you, sir.

18 MR. POPE: May it please the court, Your Honor, it is  
19 my understanding that Ms. Sheldon now resides in North  
20 Carolina. If one of the defense investigators would like,  
21 whatever forwarding information my office has I will be  
22 glad for them to go down and get that information and for  
23 that matter use our phone to try to attempt to find her.

24 THE COURT: I think Ms. Tucker can be found. I don't  
25 think she's gone off the face of the earth. I think she

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1 can be found.

2 All right, now ---

3 (State's Exhibit 3 filed.)MR. POPE: May it please the  
4 court, Your Honor? The next item was not in the form of a  
5 motion for the defense, but in view of protecting the  
6 record, Your Honor, we have the indictments that The State  
7 -- Mr. Hughes has numerous indictments, the indictments  
8 The State intends to go forward at this time and,  
9 honestly, this will probably address some of the other  
10 motions as far as various pistol charges and things of  
11 that nature. The indictments The State intends to go  
12 forward on at this time are 93GS46-4296 which is The State  
13 versus Mar-Reece Aldean Hughes, count one, murder, count  
14 two, possession of firearm during the commission or  
15 attempt to commit a violent crime; 93GS46-4305 State  
16 versus Mar-Reece Aldean Hughes, armed robbery and  
17 possession of firearm during the commission of a violent  
18 crime; 93GS46-303 The State versus Mar-Reece Aldean  
19 Hughes, possession of a stolen vehicle and indictment  
20 93GS46-4304 The State versus Dwayne Eric Forney and  
21 Mar-Reece Hughes indictment for criminal conspiracy. We  
22 note on the criminal conspiracy indictment, Your Honor,  
23 that we have a certified true copy because as the court  
24 recalls from the last trial the foreman of the jury  
25 actually signed it. I have it attached here too, but

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1 actually signed the verdict on the original copy, so I  
2 have a true copy of that. I would call to the court's  
3 attention, again, there is no motion by the defense, but I  
4 wanted to go ahead and address it that the action of the  
5 Grand Jury was on December 13, 1993, by the Grand Jury  
6 Foreperson, Shirley Neal. In each of those that was  
7 returned there was not a true bill stamp affixed and we  
8 have addressed the issue before this court previously as  
9 to those indictments in general. There were other  
10 indictments that were affected by that, but once that was  
11 discovered I would hand into the record Your Honor's Order  
12 in reference to the indictments when we had a hearing that  
13 dealt with these particular indictments that would have  
14 been affected during the '93 Term and in that particular  
15 incidence I would refer to the section that says "In  
16 regard to 1993 Grand Jury all indictments were true billed  
17 with the exception of three" and it gives the three  
18 indictment numbers none of which were just mentioned. All  
19 of these have no bill on them and the Forelady identified  
20 them. Attached to your Order and pursuant to your order a  
21 transcript of the hearing that was held in which both  
22 Foreladies from the Grand Jury appeared before the court  
23 is also attached. I would move this into the evidence for  
24 the purpose of this hearing.

25 THE COURT: All right. Does the defense have ---

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(State's Exhibit 4 marked and filed.)

MR. POPE: The only other thing I was going to call to the court's attention, which I am sure it has been directed to many times, is State v Martinez and it was heard in Greenville by Your Honor in which relates to this situation.

THE COURT: All right, anything from the defense?

MR. SCHUSTERMAN: Nothing, Your Honor.

THE COURT: I find that the record is such that the indictments in question have in fact -- were in fact returned true bills by the Grand Jury on each on December 13, 1993, by virtue of earlier examination of the matter and the Order earlier entered.

All right. I am going to put these up here so they won't get mixed up.

MR. POPE: May it please the court, Your Honor, pursuant to our conversations with the defense the next proposed, in essence, we could go through the index of motions numerically. The ones that are going to require testimony or that we had planned for tomorrow or for this afternoon we could indicate at that time. Many of the motions overlap, many of them are specific as to some discovery request so that it may end up in discussing it with Ms. Brice that perhaps we agreed that they have items 1 through 4, but not 5 and 6. I would propose and I

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1 propose to the defense if that's the case, as we go  
2 through say there's four different discovery motions, that  
3 we touch on the ones and then we can go back and argue it  
4 once we have kind of passed through it the first time.

5 THE COURT: All right. Does that suit?

6 MR. SCHUSTERMAN: That will be fine. Thank you, Your  
7 Honor.

8 MR. POPE: May it please the court, Your Honor, I'm  
9 just going to go down the list the best I can and  
10 certainly I know the defense will interject if there is  
11 anything different than what I am saying.

12 But the first is a Motion for Identification Hearing  
13 and that would be under Denno. The State's intention would  
14 be to have - this would pertain to the photo line-up. The  
15 State would have the witnesses present this afternoon with  
16 the except of Beth Ann Jayne and Sean McMillan, which are  
17 the two out-of-state witnesses and they will be present  
18 prior to trial but at the beginning when we come back from  
19 Aiken and so we will have that prepared with the officers  
20 and the other identification witnesses at this time.

21 Your Honor, it would be our position that, you know,  
22 some of the identifications are of Mr. Forney, some are of  
23 Mr. Hughes. It would be our position as a general  
24 proposition that they only have standing to object to Mr.  
25 Hughes and thereby I could not bring in the people that

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1 just identify Forney, but, regardless, I will have  
2 everybody who have identified either one present this  
3 afternoon and we will try to put all of them up.

4 Your Honor, as far as the Motion to Suppress  
5 Statements, Number 2, my understanding that is a request  
6 for a Denno hearing by the defense and Mr. Brackett will  
7 have that prepared for this afternoon with the witnesses  
8 that would be required for that.

9 4 and 5 in some ways ---

10 THE COURT: 3 is coupled with 2.

11 MR. SCHUSTERMAN: Your Honor, as it relates to Motion  
12 Number 2, we have some witnesses for Motion Number 2 that  
13 cannot be here until tomorrow. We ask that that Motion be  
14 held over until tomorrow - not this afternoon.

15 THE COURT: Well, we'll hear ---

16 MR. POPE: We'll put what we can up and then ---

17 MR. SCHUSTERMAN: That's fine; and just hold the  
18 Motion open?

19 THE COURT: Some of these witnesses are going to touch  
20 on more than one Motion.

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

22 THE COURT: And so we will take as much of the  
23 testimony as we can along the way. It may be that I can't  
24 rule on the bulk of these until we have heard everyone  
25 sometime tomorrow.

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1 MR. SCHUSTERMAN: And you're absolutely right, Your  
2 Honor, given the nature of these motions and all the  
3 witnesses who are going to be testifying for the defense  
4 there is a lot of overlap. I didn't know how the court  
5 about taking testimony piecemeal, taking testimony today  
6 about Motions 2, 5 and 6 and then tomorrow ---

7 THE COURT: I feel comfortable with that.

8 MR. SCHUSTERMAN: That's fine, Your Honor.

9 MR. POPE: Your Honor, in light of what Mr.  
10 Schusterman is saying, my understanding again if we have  
11 somebody touching on 3, we are going to proffer whatever  
12 testimony we need and then we will go back and deal with  
13 the arguments on those.

14 Your Honor, 2, 3 and 4 all fall in the same.

15 Number 5, Your Honor, is a Motion to Suppress. I would  
16 ask the defense to indicate - they have cited basically  
17 the Fourth, Fifth, Sixth and Fourteenth Amendments, I want  
18 to make sure so we can be prepared - what exactly -- is  
19 this the evidence seized pursuant to an unlawful arrest?  
20 Again, I am just asking for some clarification, so we can  
21 have the witnesses.

22 MS. BRICE: Yes, Your Honor, we are seeking that the  
23 articles that were removed from Mr. Hughes be suppressed  
24 based upon an unlawful arrest.

25 THE COURT: All right.



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1 MS. BRICE: I guess that would come out with the  
2 testimony as far as the identification.

3 THE COURT: I think all of that is pretty well  
4 encompassed with the same people.

5 MR. POPE: I kind of feel like I am the MC, but Mr.  
6 Brackett has a number of these, so I am sit down and shut  
7 up and let him refer to the ones he has.

8 THE COURT: All right.

9 MR. BRACKETT: The next one I think is Number 6,  
10 Motion re: physical and photographic evidence. It appears  
11 that this addresses -- is basically saying -- asking us  
12 not to put in anything in that's not relevant. I need some  
13 clarification on this because I don't know how to prepare  
14 to address it, but, obviously, we are not going to try to  
15 put in anything that is not relevant. I don't know who to  
16 have here.

17 THE COURT: What particular physical evidence are you  
18 addressing?

19 MR. BRACKETT: Number 6, Motion re: physical and  
20 photographic evidence. It just says "To refrain from  
21 introducing into evidence any photographic evidence of the  
22 victim, physical evidence of clothing or any other  
23 photographic or physical evidence not needed to establish  
24 any material element of The State's case." It seems like  
25 that's something that is more addressed to as we go along

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1 as a relevance objection.

2 THE COURT: Yes, those seem to be evidentiary matters  
3 that will be taken up ---

4 MR. SCHUSTERMAN: At the time that this evidence is  
5 attempted to be admitted..

6 MR. BRACKETT: Can we strike that off the list to be  
7 handled in the Motions in the next two days?

8 MR. SCHUSTERMAN: Yes.

9 THE COURT: Yes. That's 5 and 6?

10 MR. POPE: 5 would encompass the ---

11 MR. SCHUSTERMAN: Unlawfulness of the arrest.

12 THE COURT: I have got you, yes, you are right. Just  
13 6. Okay.

14 MR. BRACKETT: The next one is the Motion regarding  
15 admission of photos. Basically, I think this is also  
16 covered in the Code of Professional Responsibility and the  
17 Rules of Evidence that we don't publish something until  
18 it's in evidence. It appears to address that asking the  
19 Solicitor -- asking that the judge "Order the Solicitor's  
20 Office not to elude to, refer to or in any way bring  
21 before the jury any photographs or physical evidence until  
22 such time as a determination has been made by the court as  
23 to whether or not said evidence is admissible in the trial  
24 of this matter." Again, that goes to the same issue. If a  
25 witness is on the stand and I have a piece of evidence

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1 that I want him to identify, are we to excuse the jury ---

2 THE COURT: No, I think you can show - they may not  
3 object to some of it. So you can show it to the witness  
4 and have them ID it, show it to counsel for defendant and  
5 at that point the defendant can say we have a matter to  
6 take up outside the presence or no objection or whatever.

7 MR. BRACKETT: And any reference can be given a  
8 curative charge if they have already heard --

9 THE COURT: Well, I don't want to give any curative  
10 charges if we don't have to ---

11 MR. BRACKETT: I understand.

12 THE COURT: I don't think you will need to. you just  
13 need to tell your witnesses can you identify that.

14 MR. BRACKETT: If I am holding a vest or something in  
15 front of a witness, I can't ---

16 THE COURT: Well, I think photographs are probably  
17 more the concern. A vest is a vest, that's pretty obvious.

18 MR. BRACKETT: We didn't intend to do that anyway. I  
19 certainly wouldn't publish something until Your Honor  
20 moves on its admissibility. To the extent that that is  
21 their request I would agree not to do that.

22 THE COURT: Okay.

23 MR. SCHUSTERMAN: Thank you.

24 MR. BRACKETT: Does that dispose of that issue then,  
25 Number 7?

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1 THE COURT: It appears to.

2 MR. BRACKETT: Motion to prevent introduction of  
3 photos of body of deceased. We concede that in the guilt  
4 phase. Is this something - we will not introduce  
5 photographs of the body in the guilt phase. We agree that  
6 does not have any relevance in the guilt phase. We would,  
7 however, tender an argument in the penalty phase that  
8 certain photographs of the body goes to explain the nature  
9 and the characteristics of the crime and maybe we can  
10 postpone this, if need be if there is a penalty phase, to  
11 postpone this discussion until then. We will concede it  
12 for the purpose of the guilt phase.

13 THE COURT: All right, I think that's the way to  
14 handle that.

15 MR. BRACKETT: Motion to produce chain of custody,  
16 Number 9. We have no - I found no foundation in the law  
17 under Rule 5 nor Brady, which will require The State to  
18 prepare a chain of custody form explaining the chain of  
19 custody. All of that is in evidence in the various forms  
20 that have been disclosed to the defense and we would  
21 dispute their request under this particular Motion as  
22 regards their request for us to prepare a document for  
23 them explaining what the chain of custody is. We don't  
24 think we have to. We are not entitled to share that we are  
25 going to prepare for our own personal use; however, the

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1 Solicitor has informed me that if we do prepare it for our  
2 own list, we will give them a copy and that will probably  
3 be on Monday; however, if we don't prepare one for our own  
4 selves we feel that we should not have to prepare one just  
5 to give to them.

6 THE COURT: All right. Let me hear from the defense.

7 MR. BRACKETT: We still have to prove the chain.

8 THE COURT: Yes, there's no question about that.

9 MR. SCHUSTERMAN: Your Honor, our great concern was  
10 and I think in these Motions the attempt is to streamline  
11 the trial and certainly as the prosecution said they have  
12 an obligation to produce the chain of custody on any piece  
13 of evidence where it is needed. The ability for us to  
14 have that in advance just allows us to better prepare our  
15 defense.

16 MR. BRACKETT: And it makes us more difficult to  
17 prepare our prosecution and there's no requirement under  
18 the law for us to do that.

19 MR. SCHUSTERMAN: And that would be our whole point.

20 THE COURT: Well, I'm not going to require them to  
21 produce any ---

22 MR. SCHUSTERMAN: Thank you.

23 THE COURT: --- chain of custody at this time. They  
24 obviously will have to lay the proper foundation for the  
25 introduction of any physical, photographic, tests and all

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1 of that with the proper chain of custody.

2 MR. SCHUSTERMAN: Thank you, Your Honor.

3 MR. BRACKETT: The next one on the State's List,  
4 Number 10, Motion to suppress the juvenile record. We have  
5 no evidence that there is a juvenile record. Under the  
6 North Carolina law if there was one, it would have been  
7 destroyed by now. We intend to proffer no evidence of any  
8 criminal activity at this time. We can find none.  
9 However, if something comes open, we will put it before  
10 the court at a later time. If somehow something that is --  
11 we have vigorously pursued finding this information and we  
12 have none now. We will, if we find something, come back  
13 to the court at a later time and make a Motion and then  
14 let the court deal with it as it becomes appropriate. But  
15 as it stands right now there is nothing.

16 I believe this has been, the next one, Motion to  
17 Suppress. I have in my notes this has been basically taken  
18 care of. We believe we have given them everything that we  
19 have on at least two occasions throughout the course of  
20 the pretrial litigation we have given them complete  
21 discovery on at least two occasions. We have given them  
22 complete access to the open file of the solicitor's  
23 office, everything absent work product. We have met with  
24 them numerous times to show them the evidence. They have  
25 been allowed to video tape the evidence at the Sheriff's

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1 Department. I have met with their investigators on other  
2 times and have even gone so far as to give them copies of  
3 the photo -- well, not copies, but the original  
4 photographs from our file to allow them to take it and,  
5 you know, go out and have it for several days to do  
6 whatever they needed to do with them. I really feel that  
7 we have done everything and gone above and beyond the  
8 requirements of Rule 5 and given them everything we have  
9 that they are entitled to. I think this has been taken  
10 care of.

11 MS. BRICE: Your Honor, just by way of response. He is  
12 correct everything I have specifically asked for has been  
13 provided to me. They have most graciously provided what I  
14 have asked for. I would more than likely just hold this  
15 Motion open during the course of the trial if there were  
16 evidence that they were going to present certainly that  
17 I've seen for the very first time, then I would want the  
18 Motion to be renewed at that point in time to suppress  
19 that evidence.

20 THE COURT: Very good.

21 MR. BRACKETT: I believe the next few matters Mr. Pope  
22 is familiar with.

23 MR. POPE: May it please the court, Your Honor? Motion  
24 to quash count 2 of indictment 93GS46-4296. This falls in  
25 with Number 12 and Number 13. Your Honor, somewhat grouped

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1 together in that 12 is asking to quash the second count of  
2 the murder indictment, the possession of firearm, under  
3 the view that the statute provides that in a situation  
4 where the only -- if the defendant receives the death  
5 penalty or life without parole that an additional five  
6 years from this penalty would not apply. That's my  
7 understanding of what that particular motion is. Is that  
8 correct?

9 MR. SCHUSTERMAN: That's correct.

10 MR. POPE: Your Honor, in the classification section  
11 and we have dealt with this previously in Forney, one  
12 thing that has changed is in the classification section  
13 now provides crimes, the Section B, which brought in  
14 unless it was classified as a violent crime at the time  
15 and, of course, 1986 was when violent crimes started  
16 becoming classified, that Section B has since been  
17 eliminated. We have done some research and I don't the  
18 defense's position on this and like Simmons where at the  
19 time the defendant was arrested, there was no Section B.  
20 In other words, any violent crime regardless of how old  
21 would have applied for a second offense. There is now no  
22 Section B. So, in other words, at either as they look at  
23 it and evaluating the proper sentence at the time the  
24 defendant was arrested or the time in which we go to trial  
25 his life sentence would mean life. Again, I stood in this



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1 same courtroom with Mr. Forney when we did have a Section  
2 B and argued that it would not mean life. In this  
3 particular situation I submit from what I can find that  
4 the defendant's life sentence would mean life, which again  
5 may lend itself to a Simmons charge during some later  
6 point in the trial.

7 Your Honor, regardless -- even if he does, in fact,  
8 receive a life sentence without parole or the death  
9 penalty, I am referring now to 16-23-490, which is the  
10 section under which the second offense the five year  
11 violent crime statute comes, the possession of firearms  
12 statute, says "This five year sentence does not apply. The  
13 sentence does not apply in cases where the death penalty  
14 or life sentence without parole is imposed for the violent  
15 crime." And, of course, as to the murder very well the  
16 death penalty or a life sentence without parole could be  
17 imposed. But the difference is the sentence does not  
18 apply. The sentence itself. It is much like the example  
19 with kidnapping when you have a kidnapping and a murder  
20 you can try them on both, but if they were convicted of  
21 murder, you couldn't give an additional sentence for the  
22 kidnapping. You were guilty of the sentence, you would be  
23 guilty here, but you would not get any additional five  
24 years stacked on top of the life without parole or the  
25 death penalty sentence.

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1           Your Honor, so in one instance, in the previous case  
2 of Forney, our position has changed somewhat in that we  
3 would agree that life means life in this particular case,  
4 but I still submit under Section 490 that the sentence --  
5 and so this is a sentencing issue, not a trial issue, not  
6 an issue for the jury as far as fact, this is a sentencing  
7 issue as to whether if he was found guilty on all charges  
8 whether you could give him the additional five years. And  
9 I would at that point agree if he got life without parole  
10 or the death penalty you could not give him that  
11 additional five years; however, I submit that in that  
12 charge it would still be a proper charge to go before the  
13 jury.

14           THE COURT: Let me hear from counsel for the defense.

15           MR. SCHUSTERMAN: Your Honor, under the life means  
16 life, life without parole and we delete the five years  
17 where you could no longer give him five years, then why  
18 wouldn't the whole charge be deleted? Why are we trying  
19 somebody if all it does is prejudice my client? There's  
20 nothing that can be done even if he is convicted of it, so  
21 why would we put him on trial for that charge when  
22 regardless of the outcome of it, he's not going to incur  
23 any penalty for it? It would be -- it's logically  
24 impossible for them to find him guilty of the second  
25 section and not the first and if he's guilty of the first,

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1 then the second is irrelevant. So I don't understand why  
2 we don't eliminate that charge completely. The court is  
3 never going to have to address it, all it does is inflame  
4 the jury, just one more charge that has - it has a very  
5 egregious sound to it, the jury will be under the notion  
6 that they are deciding a charge that is going to have some  
7 repercussion on the defendant and it's not going to and I  
8 just think it would almost be -- the issue is almost moot.

9 THE COURT: Any further argument on this? What I am  
10 going to do is I am going to take a look at this.

11 MR. POPE: Your Honor, there is one thing I would  
12 point out again in reference to the last sentence, the  
13 first paragraph in 490, it says "The five year sentence  
14 does not apply."

15 THE COURT: I followed both of your arguments.

16 MR. POPE: Yes, sir.

17 THE COURT: It's just I don't know of any cases on it  
18 either way.

19 MR. SCHUSTERMAN: There aren't. I don't think there  
20 is a case on it or at least in my research. If Mr. Pope  
21 has one, I will be more than glad to look at it.

22 MR. POPE: I can assure you if I had one, I would have  
23 been handing it to you.

24 THE COURT: So, remember, the court is trying to  
25 decide. I could almost may get into the point of the court

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1 having to second guess the Legislature, which the court is  
2 not allowed to do, in that they did not in revamping the  
3 statutory schemes they didn't exclude the offenses for  
4 which you could give a life sentence from that section.  
5 They left it intact. They did not go in and say except  
6 for in cases in which one may receive the sentence of  
7 life. So, you know, the court is bound by what the  
8 Legislature does and it might be that it's a Legislative  
9 issue to make any corrections of that.

10 MR. SCHUSTERMAN: On the other hand, the court would  
11 never try a man for a crime for which there is no  
12 punishment. It's almost --

13 THE COURT: Well, there is a punishment. It just would  
14 be a moot punishment in the event ---

15 MR. SCHUSTERMAN: In this case there is no punishment  
16 because there is no logical chain of events that could  
17 occur where you, Your Honor, would be sentencing Mr.  
18 Hughes for that offense.

19 THE COURT: All right, let me look at the section.  
20 What is the section number again?

21 MR. POPE: 16-23-490.

22 MR. SCHUSTERMAN: 490.

23 THE COURT: Get that. Not right now. (To law clerk.)

24 All right?

25 MR. POPE: If I could, I'd on ask on Number 13, Your

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1 Honor, which is a Motion to elect ---

2 THE COURT: Let me ask one more thing. There is a most  
3 recent amendment to that. Is it reflected in the  
4 Cumulative Supplement or is it out?

5 MR. POPE: It is in the, I believe, the Supplement,  
6 Your Honor. I may have a copy of it.

7 THE COURT: I've got the Code.

8 MR. POPE: I believe it to be in the Supplement. Your  
9 Honor, I had a copy - it cuts off Section B completely,  
10 but that's -- Your Honor, it must be in the Supplement, I  
11 believe. That is the -- 16-160 is the definition.

12 THE COURT: All right, I've got it. All right, go  
13 ahead. I am going to take a look at this.

14 MR. POPE: As to Item 13, I would ask the defense to  
15 clarify to make sure I understand what their Motion is in  
16 asking us to elect between the two count two.

17 THE COURT: That would be if I don't quash it. Wasn't  
18 there a separate indictment on possession of a firearm?

19 MR. POPE: As to these two, Your Honor, it is my  
20 understanding the 296 and 305 basically what it would be  
21 was the armed robbery with the second count possession of  
22 firearm and murder with second count and that's my  
23 understanding.

24 MR. SCHUSTERMAN: What I'm looking at is a Motion I  
25 filed. This was filed when we were going to try it when

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1 Mr. Lewis was co-counsel and I filed a Motion looking for  
2 The State to elect between the unlawful carrying of a  
3 pistol and possession of a pistol by a person convicted of  
4 a crime of violence as being double jeopardy.

5 MR. POPE: Okay, that would be under Number 15, the  
6 Motion to require The State to elect between count 2 of  
7 indictment 4296 and count 2 of indictment 4305. That was  
8 also filed by Mr. Lewis, I believe.

9 THE COURT: Yes, it's the same argument just made  
10 basically.

11 MR. SCHUSTERMAN: Yes, sir, it's the same. Actually  
12 that Motion and Motion Number 15 and Number 13 are  
13 actually the same argument would be made on both of them  
14 that both indictments in each Motion would represent my  
15 client being subjected to double jeopardy because, I mean,  
16 it's the exact same set of facts, same time, same place  
17 and it's, in fact, charging him twice with it or trying  
18 him twice for the same thing.

19 MR. POPE: May it please the court, Your Honor, it is  
20 my understanding and I apologize for not having the  
21 specific case cite but we have that in Blockberger which  
22 looks at the statute itself not the factual circumstances  
23 and each of the cases must require proof that the other  
24 does not. And in the case of 4296, as Mr. Schusterman has  
25 stated earlier, in order for me to get a count 2

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1 conviction I must first prove beyond a reasonable doubt  
2 that Mar-Reece Hughes did with malice aforethought kill  
3 James Brent McCants, so I must prove the murder. On the  
4 4305 I must prove something different from the murder. I  
5 must prove the armed robbery before we can get into the  
6 possession of a firearm charge because it specifically  
7 alleges in the possession of a firearm charge on that one  
8 the charge of armed robbery. And so in each one I must  
9 prove different facts and circumstances so it would not  
10 violate double jeopardy, Your Honor.

11 THE COURT: All right, was there a separate  
12 indictment?

13 MR. POPE: There are some other pistol charges ---

14 THE COURT: That's what I was ---

15 MR. POPE: --- that we will be reaching that I do not  
16 intend to proceed on. That's why I read the ones at the  
17 beginning that we intended to proceed on, so I will  
18 address that. In essence, I'm not conceding their  
19 argument, but I am willing to streamline the case and not  
20 proceed some of the other pistol charges.

21 THE COURT: All right.

22 MR. SCHUSTERMAN: Just for my benefit. In our Motion  
23 to elect count 2 of indictment 93GS46-296 and indictment  
24 number 305, we are talking about possession of a firearm  
25 during the commission of or attempt to commit a violent

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1 crime. This Motion then would be linked to the Motion just  
2 spoken. Is that not correct?

3 MR. POPE: I'm sorry, that is ---

4 MR. SCHUSTERMAN: Isn't that tied to the Motion ---

5 THE COURT: To quash count 2.

6 MR. SCHUSTERMAN: Right, to quash count 2. If we  
7 quash count 2, then this motion is ---

8 MR. POPE: You wouldn't have double jeopardy.

9 MR. SCHUSTERMAN: Well, we wouldn't have double  
10 jeopardy, but we then get back to the argument whether or  
11 not you could have count 2 on the armed robbery indictment  
12 if you were to quash the indictment, count 2 of the murder  
13 indictment. And I think we get into some --

14 THE COURT: With the armed robbery ---

15 MR. POPE: Wouldn't carry death penalty or life  
16 without parole, that's the difference. And the armed  
17 robbery wouldn't carry that.

18 THE COURT: He could receive five additional ---

19 MR. SCHUSTERMAN: He could get five additional if he  
20 were -- I was just looking for a logical sequence; but he  
21 could be acquitted on the murder and convicted of the  
22 armed robbery and get the five additional years. It would  
23 then, obviously, we would at that point if you were to  
24 quash the second count of the murder, I believe at that  
25 point we could then withdraw the Motion that's before you.



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1 That Motion would be removed, there wouldn't be double  
2 jeopardy any more.

3 THE COURT: All right.

4 MR. POPE: Your Honor, the next one will be Number 14,  
5 separate trial, possession of a pistol by person convicted  
6 of a crime of violence, that's indict 4301. We won't  
7 proceed on that at this time, so that would make that one  
8 moot.

9 Likewise, 15, Your Honor, which referenced possession  
10 of a pistol by a person convicted of a violent crime and  
11 indictment 4299 (sic) with carrying a pistol. We won't  
12 proceed on those at this time either.

13 THE COURT: 2499 you are not proceeding on?

14 MR. POPE: 2499 and 4301 we are not proceeding on.

15 THE COURT: Okay.

16 MR. BRACKETT: Your Honor, I have the next series of  
17 Motions and before I went on to Number 16, which is the  
18 Brady Motion, I wanted to go back because I was not  
19 handling this when this issue came up, this suppression  
20 statements. I needed to clarify one point so that I can be  
21 ready this afternoon. The Denno hearings are specifically  
22 focusing on statements made by the defendant to police  
23 officers during the course of interrogation and so forth  
24 to determine the voluntariness of the statement. We have  
25 certain statements that were made by the defendant not

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1 during the course of his interrogation that he might have  
2 made at the Detention Center or that he might have uttered  
3 spontaneously on his way into court, but we would intend  
4 to proffer how they are not subject to the voluntariness  
5 standard and the Miranda standards as expressed in those  
6 cases due to the fact that they were not a result of  
7 interrogation or questioning by law enforcement. They were  
8 not elicited by law enforcement in any way, shape or form  
9 and as a result they are not subject to the Denno hearing.  
10 I wanted to get some clarity perhaps from Mr. Schusterman  
11 and Ms. Brice if that is their understanding of it as well  
12 and also Your Honor so that I can be adequately prepared  
13 this afternoon.

14 MS. BRICE: Your Honor, it is our position that we  
15 would seek suppression of all statements uttered by Mr.  
16 Hughes at any time whether it be in the Detention Center,  
17 whether it be in interrogation. The basis for that is the  
18 uniqueness of this case based upon his mental illness. We  
19 have three physicians that are psychiatrists that are  
20 going to testify that these statements that were made were  
21 part of symptoms of his mental illness, that he did not --  
22 we have a client who is paranoid schizophrenic and part of  
23 that diagnosis, part of the symptoms of that diagnosis, is  
24 rambling, incoherent rambling. And we would offer  
25 testimony by the physicians or the psychiatrists to show

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1       that statements that may have been made by him would not  
2       be reliable.

3           THE COURT:  Would that not be a fact question for the  
4       jury as opposed to a constitutional question?  I mean  
5       there is no constitutional protection for someone making  
6       statements regardless of whether they were reliable,  
7       regardless of whether they were under the influence of  
8       alcohol, drugs, mental incompetency.  There's no  
9       constitutional provision that protects people from making  
10      those statements.  Constitutional protection is from making  
11      statements in particular circumstances, mainly custodial.  
12      So wouldn't the question of whether or not the reliability  
13      of those would be a fact question for the jury to  
14      determine whether or not they had any validity or  
15      reliability as opposed to the court determining whether  
16      they should be admissible or not?

17           MS. BRICE:  Certainly, Your Honor, I agree that we  
18      will be seeking suppression of the statements that were  
19      made during the interrogation, certainly.  But we would  
20      also like to incorporate into that the fact that our  
21      client has mental illness for which statements that he may  
22      have made may not be reliable and, certainly, if that is  
23      to come before the court or come before a jury to pass  
24      upon that judgment themselves as far as the reliability of  
25      that then --

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1 THE COURT: Well, but doesn't also encompassed in that  
2 we charge jurors in civil cases and I presume I will  
3 charge it in this case too, I have not researched it, to  
4 examine expert testimony, which a psychiatrist would be,  
5 they look at the qualifications and they can believe or  
6 disbelieve the expert. So it is a factual situation for  
7 the jury in my thinking as opposed to a legal  
8 constitutional question. I can't suppress things ---

9 MS. BRICE: Right.

10 THE COURT: --- based on their weight ---

11 MS. BRICE: Right.

12 THE COURT: --- or reliability or those factors; I can  
13 only suppress if it violates some constitutional  
14 protection. So, ---

15 MS. BRICE: That's fine; I agree with that, Your  
16 Honor. So, clarification I guess would be is that, yes,  
17 we agree that the suppression would be in reference as to  
18 the relevancy and the reliability of what was taken by the  
19 officers, so we would agree with that.

20 THE COURT: Okay.

21 MR. BRACKETT: And so we will be prepared to go  
22 forward this afternoon. And in addition to that, there  
23 were some spontaneous statements that were made to  
24 officers. I'll have every police officer who is going to  
25 testify.

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1 THE COURT: I think those better be covered.

2 MR. BRACKETT: Yes, I agree.

3 THE COURT: Any time a law enforcement officer is  
4 going to testify to any statement I think we had better  
5 look at it.

6 MR. BRACKETT: Yes, sir, I'll have those.

7 THE COURT: That is no comment on law enforcement,  
8 that's the law ---

9 MR. BRACKETT: Constitutional requirements, yes, sir.

10 THE COURT: Okay.

11 MR. BRACKETT: The next issue would be Number 16,  
12 which would be the Brady motion and The State would submit  
13 that we have provided them with everything under Brady  
14 everything that is required by Brady and the cases that  
15 followed from Brady. As a matter of fact, there's this  
16 Motion and Motion Number 26 really is a corollary of Brady  
17 because we are required to disclose impeaching information  
18 on our witnesses as a product of Brady and the cases that  
19 follow from Brady. If we have any information that would  
20 tend to impeach the credibility of The State's witnesses,  
21 I believe under the case law we are required to turn that  
22 over as well, so these two Motions perhaps can be handled  
23 together. We have given them everything except one matter  
24 we discovered regarding one witness who had written us a  
25 letter and when we pulled his file to prepare to discuss

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1 with him, we found a letter that he had written to us  
2 dated March 4, 1995, that had been placed in his file and  
3 I would turn that over now. Basically, it is  
4 self-explanatory. It is a letter written dated March 4,  
5 1995, written by Richard Waldrop who was then and is now  
6 an inmate in the North Carolina Department of Corrections  
7 and at this time we believe we would be calling him as a  
8 witness and in this letter he expressed his understanding  
9 of certain things which would be impeachable, which would  
10 be something that the defense could use to impeach his  
11 credibility and so I will turn that over now under their  
12 Brady request. Other than that they have gotten everything  
13 else, you know, that Brady or otherwise, so they have  
14 everything that we have. I just had a copy made as well. I  
15 think they have already gotten this, but just out of an  
16 abundance of caution this goes under their discovery  
17 demand. It is an Events Report from the York County  
18 Detention Center that is dated February 13, 1993, and it  
19 details the flooding of the cell by the defendant, which  
20 we would intend to use in the course of the trial in the  
21 penalty phase, if we were to reach that, so I will turn  
22 that over now. I think they already have it, but just in  
23 case they don't I'll go ahead and give that to them now.

24 I believe that disposes of the Brady Motion and he  
25 Motion for Disclosure. All I can do is just tell the court

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1 that I have complied.

2 MS. BRICE: If I could just have the court's  
3 indulgence at this time.

4 Your Honor, just a few things that we still have not  
5 received that we have requested, that being the results of  
6 carbon testing that was taken I believe and it was handled  
7 by SLED in regards to gun powder residue that may have  
8 occurred at the time of arrest. Also, some swabs that were  
9 taken that we reviewed in evidence that the York County  
10 Sheriff's Office had, but we do not have the results of  
11 those tests. Additionally, we have not been provided with  
12 any names of any witnesses who may have heard these  
13 utterances or what these utterances were and, certainly,  
14 we would also seek the Rap Sheets or any impeaching  
15 information concerning these witnesses that may take the  
16 stand as far as these utterances were concerned and we  
17 would also request that the Brady Motion that is filed be  
18 continuing and that the Solicitor's Office provide us with  
19 this information as the trial proceeds and we would  
20 certainly request that if anything comes to their  
21 knowledge during the process of this trial that we readily  
22 receive that information.

23 MR. BRACKETT: I apologize. I didn't get into the Rap  
24 Sheet because that's on the next Motion for Production and  
25 I was going to address it then. A lot of these overlap to

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1 a large extent, so I'm going to get to them one by one.

2 As far as the serology report that they refer to, the  
3 blood swabs, that were taken. There was no report done, no  
4 analysis done, so there was no report to forward.

5 The other matter about the ---

6 THE COURT: You said serology. Are you talking about  
7 the gun powder or--?

8 MR. BRACKETT: No, sir, that would be the atomic  
9 absorption test. Mr. Pope is going to I believe address  
10 that. He knows more about that than I do.

11 MR. POPE: That's the I think what she was calling  
12 carbon test, the atomic absorption test, I was almost  
13 positive it was included in discovery. Also, Mr. Joe  
14 Powell, who will be testifying, the same one that  
15 testified that is in the transcript of last time, I will  
16 have it here and I will triple check; I'm pretty sure you  
17 got it, but there were no positive results of the atomic  
18 absorption came back on anybody. As a matter of fact, I  
19 would have to say I know it's in the discovery. It would  
20 be the report from Trace Evans. The atomic absorption  
21 test was included in that Trace Evans Report.

22 MR. BRACKETT: We could get together maybe afterwards  
23 and show you our Report.

24 That's the Brady Motion and the Motion for Disclosure  
25 of impeaching information, which impeaching information



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1 also includes the Rap Sheets. They will be provided with  
2 copies of Rap Sheets on our civilian witnesses on anybody  
3 we call who has a Rap Sheet, we will give it to them prior  
4 to their cross examination so that they will have it  
5 available to them to use during any cross examination they  
6 intended to do.

7 MR. SCHUSTERMAN: Tangentially I don't know that this  
8 is a separate Motion, but we would also ask for I know  
9 that it is the Solicitor's Office practice to run an NCIC  
10 Report on all prospective jurors and I'm sure they are  
11 going to do it in this case and I would ask that the  
12 defense be provided with a copy of that also.

13 MR. BRACKETT: I've argued in the past that we are not  
14 required to hand that over, but I think we have already  
15 given it to them.

16 MR. POPE: I've got a receipt from where we have  
17 already given it to them, Your Honor. I apologize for  
18 jumping up again, but, again, we can address that and we  
19 can make a list of everything they think they still  
20 haven't gotten and in the interest of time we'll make a  
21 list of everything they think they haven't gotten and we  
22 will either supply it or we will tell you why and they can  
23 have you make us do it.

24 THE COURT: That will clear up one way or the other  
25 you either have it or they will give it to you.

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1 MR. SCHUSTERMAN: Right, and, Your Honor, I want the  
2 court to understand the sheer volume of discovery and some  
3 of these things, I mean, we are talking about finding a  
4 needle in a haystack. There is literally thousands of  
5 pages of discovery and I apologize, you know, if I have  
6 indicated to the court that I don't have them when, in  
7 fact, it's page 1840 and I missed it. I certainly  
8 apologize.

9 MR. BRACKETT: Your Honor, the next matter, that takes  
10 care of the Brady Motion, the next matter there were some  
11 items in the Motion for Production, Item Number 17, it  
12 lists 1, 2, 3, 4. Some of these have not been dealt with.  
13 All information regarding any alleged oral statements made  
14 by the defendant including the contents of the statement  
15 itself, to whom the statement was made, and when the  
16 statement was made. Under Rule 5 we are required to  
17 disclose any written statements or oral statements made to  
18 police officers, any written or taped statements that is  
19 recorded made by the defendant to anybody and any oral  
20 statements that were made to law enforcement or persons  
21 then known by the defendant to be law enforcement during  
22 the course of the interrogation. We have given them all of  
23 that. In addition to that, we have given them every  
24 statement I think that he has made, but I don't want to be  
25 bound by that because we are not required to turn that

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1 over. I think we have given them every oral statement he  
2 has made, but if something should come up later on and  
3 they say we didn't know anything about this oral  
4 statement, I don't want to be bound by that because we are  
5 not required to turn it over the contents of oral  
6 statements that he has made to civilian witnesses or if he  
7 spoke to the janitor at the Detention Center and told him  
8 something. We are not bound to turn that over to them if  
9 there is no report of it, the janitor could present  
10 himself, you know, and say this is what he told me. There  
11 would be no written report by the Sheriff's Department, by  
12 anybody that we know about it, and there is no requirement  
13 under Rule 5 or Brady that we disclose that. So, as I  
14 said, I think we have given them everything, but as a  
15 caveat if we have not and something else comes up, unless  
16 it comes up under Rule 5, we are reserving our rights  
17 under Rule 5 and Brady to present that information and  
18 that evidence at a later time regardless of whether they  
19 have gotten it or not.

20 THE COURT: All right.

21 MR. BRACKETT: So that addresses item 1 of the  
22 Production.

23 As to number 2, a list of witnesses intended to be  
24 called by the Solicitor's Office to testify regarding the  
25 alleged oral statement the same logic applies. We are not

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1 bound to turn over a list of witnesses period much less a  
2 list of witnesses regarding any alleged oral statements.

3 The criminal Rap Sheets on all State's witnesses  
4 including any witnesses intended to be called by regarding  
5 alleged oral statements. To give them all of our Rap  
6 Sheets on everybody we intend to call in advance would be  
7 the same as giving them a list of all our witnesses. If  
8 they have a Rap Sheet, prior to their cross examination,  
9 we will hand it up to them; they are entitled to that  
10 under Brady; however, we might not call somebody and we  
11 might be holding somebody in reply and we don't want to  
12 tell them that. Essentially, I will tell the court that we  
13 will give them the Rap Sheets of any witness that  
14 testifies that has a rap sheet. We will give that to them  
15 prior to cross examination rather than prior to trial.

16 Information regarding any and all promises made,  
17 rewards given or promised, any benefits extended to  
18 State's witnesses. We will give them that. I think that  
19 the letter there references something; however, we are  
20 maintaining that that is true. That's simply a letter he  
21 wrote that that's his understanding. We have made no  
22 promises to our witnesses regarding any rewards.

23 THE COURT: The one you refer to is the witness in  
24 North Carolina?

25 MR. BRACKETT: That's correct.

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1 THE COURT: Just put the name on the record.

2 MR. BRACKETT: The March 4, 1995 letter that I  
3 referenced earlier from Richard Waldrop.

4 THE COURT: All right.

5 MR. BRACKETT: And that is the contents of the Motion  
6 for Production.

7 MS. BRICE: In regards to the oral statements and to  
8 the Rap Sheets and as to any oral statements made by my  
9 client we would request those basically to provide him  
10 with effective assistance of counsel. How can we prepare  
11 a case, to prepare his defense, not knowing until the  
12 ninth hour who we are going to call as a witness as to  
13 what statements were made, what's going to be said by  
14 witnesses The State is going to call. Additionally, we  
15 would seek the Rap Sheets also of any doctors that they  
16 intend to call as a witness. These are Rap Sheets that we  
17 are unable to locate, don't know who the doctors are, but,  
18 certainly, if they call these doctors, he has stated that  
19 any witnesses that they intend to call, they will provide  
20 us with a Rap Sheet if there was, in fact, a Rap Sheet and  
21 we would like that also to apply to any experts that they  
22 intend to call as a witness.

23 THE COURT: Well, he said anybody.

24 MR. BRACKETT: Yes, sir, if there is a Rap Sheet to be  
25 given, we will give it to them, but sometimes we can pull

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1 on the NCIC and it says right on the screen "No  
2 identifiable record." And for Doctor Maynard from  
3 Piedmont Medical Center, the Pathologist, I'm sure it will  
4 say "No identifiable record" and we won't have one. We  
5 will, however, say on the record at any point we don't  
6 have a Rap Sheet and if it comes up later that they did  
7 and it was existing at the time of the trial, then,  
8 obviously, we are in trouble, but we will check on  
9 everybody.

10 THE COURT: Back up a minute. When you cite, Ms.  
11 Brice, the requirement that the oral statements be  
12 provided at this time?

13 MS. BRICE: I'm sorry, Your Honor, I do not understand  
14 the question.

15 THE COURT: All right, you state that you have to know  
16 the essence of and the hearer of any oral statements, you  
17 need to know it now as opposed to what you call the ninth  
18 hour during trial. Do you know of any rule or case law  
19 that supports that position?

20 MS. BRICE: Your Honor, I would rely on the fact that  
21 if Mr. Hughes is going to have effective assistance of  
22 counsel, certainly, that's only going to be achieved if I  
23 can provide him with an adequate defense. If I and Mr.  
24 Schusterman are going to be cross examining someone  
25 sitting on the stand concerning an oral statement that was

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1 made, I certainly would like to know in advance who that  
2 person is and under what circumstances did the oral  
3 statement arise. Only in that way am I going to be  
4 effectively able to present the facts or represent Mr.  
5 Hughes. I see no prejudice to The State providing me with  
6 that information. I don't understand there's no burden,  
7 it should not be an effort just to provide us with a list  
8 so we will know who is coming, who is going to be called  
9 as far as these utterances.

10 MR. BRACKETT: Your Honor, ---

11 THE COURT: I am not going to require them to provide  
12 those. During the course of the trial if any statements  
13 come in and you need time, if counsel for the defense  
14 needs time, prior to cross examination to discuss that  
15 with Mr. Hughes, we will certainly allow that. Just  
16 simply, if that arises, just say, Your Honor, prior to  
17 cross examination, may we have a break. You don't have to  
18 say why.

19 MS. BRICE: Thank you, sir.

20 MR. BRACKETT: That's the Motion for Production.

21 Number 18, Discovery demand, in the paperwork my  
22 Number 18 is missing. Just a second.

23 MS. BRICE: Your Honor, I would stipulate that that is  
24 probably a redundant Motion.

25 THE COURT: All right, I don't have it in front of me

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1 verbatim, but I thought it possibly was. Move on to the  
2 next one. We have covered 16 and 17.

3 MR. BRACKETT: A Motion for continuance.

4 MS. BRICE: I withdraw that Motion, Your Honor.

5 MR. BRACKETT: A Motion for in-camera inspection of  
6 the prosecutor's file, Your Honor, we could recess for the  
7 weekend and discuss --

8 THE COURT: In chambers I think the gist of that was  
9 for the court to determine whether or not there had been a  
10 complete compliance with Brady and Rule 5, is that not  
11 correct?

12 MR. SCHUSTERMAN: That's exactly right.

13 THE COURT: And I think as I heard in chambers not  
14 only would I have to examine the prosecution's file to  
15 make that determination, but I would have to examine the  
16 defense file to see what they had and what they did not  
17 have and it has been asserted to the court by officers of  
18 the court that The State has complied with those  
19 requirements, so I am going to deny the Motion. I am not  
20 going to inspect in-camera the prosecution's file.

21 All right, 21.

22 MR. BRACKETT: Your Honor, this is a Motion to require  
23 State Law Enforcement Division to complete analyses and  
24 provide reports. We have given them everything except the  
25 business they have not completed the analysis on the



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1 swabs, however, we can do that. We can ask SLED to do that  
2 if you like. We can go ahead and have that completed and  
3 we can get a report done and we will be glad to comply  
4 with this request today.

5 MR. SCHUSTERMAN: We need at the very least to get  
6 that done.

7 THE COURT: All right, let's get that done then.

8 MR. BRACKETT: The other matter is that there were  
9 some cigarette butts that were recovered from the vehicle,  
10 the stolen vehicle. That is currently being tested and we  
11 will have that report to you just as soon as that's done.  
12 There's saliva being tested for blood type and we will get  
13 that to you just as soon as we get it.

14 MR. SCHUSTERMAN: Thank you. Those are the cigarette  
15 butts that were in the ---

16 MR. BRACKETT: There were like three cigarette butts,  
17 you remember --

18 MR. SCHUSTERMAN: Okay.

19 MR. BRACKETT: We will get that to you as quickly as  
20 we can.

21 MR. POPE: I would note as to the swabs that came in  
22 the second case, so I am going to give first priority on  
23 what would come first, you know what I'm saying, the fact  
24 that the swabs, I mean, the officer that sent them down -  
25 I just want to give them notice that if it's Monday -

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1 MR. SCHUSTERMAN: It won't be a problem, it's the  
2 second case, that's not a problem.

3 MR. BRACKETT: Motion to produce physical evidence and  
4 the results of any testing. I think that was withdrawn.

5 MR. SCHUSTERMAN: That's Motion is withdrawn as it is  
6 redundant to the prior --

7 THE COURT: All right, Mr. Schusterman, you have been  
8 very good about saying I agree and that sort of thing, but  
9 you need to say it a little louder to make sure we get it  
10 on the record.

11 MR. SCHUSTERMAN: I apologize.

12 THE COURT: That's fine.

13 MR. BRACKETT: This Motion for a list of prosecution  
14 witnesses is the same Motion that we have just heard. We  
15 argued that a few minutes ago. Wait a minute, no, I guess  
16 it is just slightly different. A list of witnesses  
17 intended to be called by the Solicitor's Office, testimony  
18 regarding any alleged oral statements. Your Honor, we  
19 will be tendered to the court, obviously, for the jury  
20 qualification purposes a list of witnesses to be called by  
21 The State so that you can recite them for the jurors. We  
22 would again note for the purposes of future restriction we  
23 don't feel we are bound to turn over a witness list to the  
24 defense and if the circumstances should arise and  
25 something else comes up and we need to call some SLED

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1 agent because something unforeseen comes up during the  
2 course of the trial, we don't feel we should be bound by  
3 that as far as this restriction because we turned it over  
4 to the defense and that's all they are expecting. We'll  
5 give it to them, in other words, prior to the calling of  
6 the case on Monday in Aiken; however, we don't feel we  
7 should be bound by that.

8 THE COURT: I understand and I feel that that is  
9 appropriate.

10 MR. SCHUSTERMAN: Thank you.

11 MR. BRACKETT: Thank you. Motion for information  
12 concerning potential State's witnesses.

13 THE COURT: You have already indicated you would give  
14 the Rap Sheets prior to cross examination. What other  
15 information?

16 MR. BRACKETT: They want basically it looks like they  
17 are asking for the curriculum vitae and the various all  
18 the cases they have testified in for our expert witnesses.  
19 I don't know under what Rule we are required to hand over  
20 all that information. We don't have that information  
21 ourselves, all the information, you know, where they went  
22 to school and what articles they may have written or how  
23 many cases they have testified in and that sort of thing.  
24 We don't have it ourselves.

25 THE COURT: I am going to deny that Motion. Those go

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1 to the extent that they would be relevant regarding the  
2 qualifications or expertise of an expert, I'll certainly  
3 allow cross examination on those issues.

4 MR. BRACKETT: Thank you, Your Honor. I beg the  
5 court's indulgence just one moment.

6 Your Honor, in relation to this last Motion and  
7 referring back to the previous Motion, the Rap Sheet issue  
8 regarding our witnesses, it would be - we didn't intend to  
9 run Rap Sheets on our law enforcement witnesses. By the  
10 nature of their very jobs they are not allowed to have  
11 criminal records and be a SLED agent or a deputy sheriff.  
12 They can't have a criminal record and be a deputy sheriff.  
13 It would be unduly burdensome given the number of  
14 witnesses to have a member of our office have to run the  
15 Rap Sheets on all these witnesses.

16 MR. SCHUSTERMAN: Your Honor, the Motion only needs to  
17 go towards non-law enforcement personnel.

18 THE COURT: Lay witnesses.

19 MR. SCHUSTERMAN: Only lay witnesses, yes.

20 MR. BRACKETT: Thank you, Your Honor.

21 THE COURT: And you all are going to do that, you have  
22 already said you would.

23 MR. BRACKETT: Yes, sir.

24 Motion to produce criminal records for State's  
25 witnesses. I think that's been addressed.

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1 MR. SCHUSTERMAN: Yes, it has been addressed, Your  
2 Honor.

3 MR. BRACKETT: Motion for disclosure of impeaching  
4 information. I think that was addressed earlier with the  
5 Brady motion.

6 MR. SCHUSTERMAN: Yes, I believe we did, Your Honor.

7 THE COURT: Yes.

8 MR. BRACKETT: Motion for production of taped  
9 statements. There were no taped statements by any of the  
10 witnesses from this case. There is only one cassette tape,  
11 which I believe they have had an opportunity to hear,  
12 which may come in during the penalty phase. It's a tape  
13 recording taken from a hand held cassette recorder that  
14 was owned by Officer McCants that he carried with him in  
15 his car to report radio traffic. When he was assigned to a  
16 call, he would record that call so that he didn't  
17 constantly have to contact dispatch to get the information  
18 if he forgot the address or something. That tape has been  
19 played for them, they have examined it, so they are  
20 content I imagine, but that would be the only tape that we  
21 have.

22 MR. SCHUSTERMAN: And we have been provided that tape,  
23 Your Honor, to listen to.

24 MR. BRACKETT: Other than the radio dispatch tape. I  
25 think they have been given that as well. That's the 911

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1 call from the civilian; it's actually the emergency, the  
2 mayday, mayday call given by the witness that came upon  
3 the scene. They have also been given access to that and I  
4 think they have heard that tape.

5 MR. SCHUSTERMAN: I'm sorry.

6 MR. BRACKETT: The mayday call, you've heard that  
7 tape.

8 MR. SCHUSTERMAN: I think we have a transcript of it  
9 also, a portion of it.

10 MR. POPE: Yes, also as the court recalls by way of an  
11 exhibit last time rather than have a poster we had a copy  
12 of the typed out transcript that each juror had, but did  
13 not take back and we took them back -- for them to follow  
14 along on the radio. I would again have that and I'll make  
15 sure the defense has a copy of that. Again, we would use  
16 it like an exhibit, not to go to the jury room, you know,  
17 not send it back, just as we did the last time. Again,  
18 I'll make sure they have that exact copy.

19 THE COURT: Any objection to that?

20 MR. SCHUSTERMAN: Yes, sir.

21 THE COURT: You move not to allow them to hand it out?

22 MR. SCHUSTERMAN: That is exactly right, sir. First of  
23 all, it is hearsay. It is an interpretation of a piece of  
24 evidence that the Solicitor's Office has prepared.  
25 Certainly, anybody on that jury who doesn't have good

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1 hearing and is not in good health won't be on the jury. If  
2 they are on the jury, then they can listen to this tape  
3 themselves and if the tape is inaudible, then the  
4 Solicitor's Office or anybody else doesn't have a right to  
5 put words on a piece of paper and say you hear that  
6 garbling, he's really saying help me.

7 THE COURT: To the extent that it is shown to the  
8 court to be accurate, I am going to allow it. I think --  
9 I'm of the school that allows jurors to be given copies of  
10 exhibits to be taken up where I think it will assist them.

11 MR. SCHUSTERMAN: But I guess just for the record I  
12 just say I don't see how jurors are assisted by having a  
13 written transcript of a tape that --

14 THE COURT: I'll listen to the tape and to the  
15 transcript and if I find that they do not comport or that  
16 if it does appear as you call it extrapolation from  
17 garbling any of the words, then I won't allow it. All I  
18 will do is let them listen to it. But if it accurately  
19 reflects what I hear on the tape, then I will allow it to  
20 be distributed to the jury for them to follow along.

21 MR. SCHUSTERMAN: Would it not, Your Honor, then be  
22 unduly prejudicial because the tape would be played once  
23 and would be given as much weight as a jury felt it should  
24 be given based on the length of the tape, the impact of  
25 the tape, but if you give them a piece of paper that they

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are going to hold, ---

THE COURT: They are not going to hold it. They will listen to it and read it over while they are listening to it and then it'll be taken back up.

MR. SCHUSTERMAN: Okay.

THE COURT: This is just to assist in them following the tape. This is not for them to take to the jury room, it is not for them to hold.

MR. SCHUSTERMAN: I understood it wasn't going to the jury room. I got the impression that they were going to be allowed to hold it and ---

THE COURT: I'm also of the school that I do not like the jury to be having pictures and things in their hands because I want them to listen. So I prefer that they not end up with paperwork.

MR. SCHUSTERMAN: Thank you.

MR. BRACKETT: Number 28, Your Honor, Motion concerning witnesses' written statement. I just ask for some clarification on this request. I am not entirely sure.

MS. BRICE: Let me see if I can find the Motion.

May it please the court?

THE COURT: Certainly.

MS. BRICE: The purpose of this Motion was basically Mr. Hughes, I think this will come out probably later when



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1 we start doing the questioning as to the identification of  
2 Mr. Hughes, but when Mr. Hughes gave a statement, I  
3 understand that he gave several different statements and,  
4 certainly, the statement that was finally transcribed and  
5 written was never signed by him and we certainly would not  
6 want that written statement to be introduced into evidence  
7 or referred to. I think the testimony of the officer  
8 taking the statement itself should be sufficient testimony  
9 for the jury to hear without seeing the written statement.

10 THE COURT: Are you all going to proffer that?

11 MR. BRACKETT: Yes, sir, we would the actual written  
12 statement we would proffer that. It was prepared with Mr.  
13 Hughes in the room, shown to him, as a matter of fact,  
14 there are items on the statement that there were notes  
15 made or marks made on the statement and additions made to  
16 the statement at the request of Mr. Hughes, which would go  
17 towards the credibility of the actual statement itself.  
18 The statement was taken basically by a police officer who  
19 was sitting in the same room with Mr. Hughes who typed as  
20 Mr. Hughes talked and allowed Mr. Hughes to review the  
21 statement, make any corrections ---

22 THE COURT: I'll have to reserve the ruling on that  
23 until such time as it is proffered.

24 MR. BRACKETT: That's the extent of this?

25 MS. BRICE: Yes, Your Honor, I was going to say I

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1 think that that would be something that would come out  
2 later when he's questioning the witnesses as far as  
3 statements that were given by Mr. Hughes and, likewise, we  
4 have stated earlier we are going to present some medical  
5 testimony as far as what statements he was saying to the  
6 officer, the reliability of those statements as well.

7 MR. BRACKETT: That would dispose of Item 27, which is  
8 Motion concerning witness' written statement.

9 MR. POPE: May it please the court? Item 29 Motion of  
10 the defense to strike as unconstitutional the death  
11 penalty statute. Justice Ness, among other Chief Justices,  
12 have addressed it. State v Gilbert, State v Shaw, State v  
13 Lindler, all indicate that "This has been Legislatively  
14 approved, that we," talking about The Supreme Court, "have  
15 previously found it to be constitutional ..." Your Honor,  
16 that is to the extent our Supreme Court has said that they  
17 accept it at this point and so I am not prepared to argue  
18 any further.

19 MR. SCHUSTERMAN: One of the issues, Your Honor,  
20 that's tangential that needs to be argued, but I believe,  
21 Your Honor, that it would be more appropriately argued  
22 tomorrow after the Motion to prohibit The State from  
23 introducing evidence of the second alleged murder in  
24 mitigation. I believe at that point argument will be made  
25 that depending on the ruling from that Motion that The

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1 State should be prohibited as unconstitutional based on  
2 the Eighth Amendment and the cases that have come along  
3 talking about the treatment of two defendants in a similar  
4 situation.

5 THE COURT: We will take a look at that.

6 MR. SCHUSTERMAN: Again, in all fairness and openness  
7 to the court, depending on how the court rules on the  
8 Motion tomorrow, there may be what the defense believes to  
9 be a very timely Motion to prohibit The State from  
10 pursuing the death penalty based on this disparate  
11 treatment argument under the Eighth Amendment.

12 THE COURT: Of course, we can get to it then, but are  
13 you say prosecutors treating Mr. Hughes disparately  
14 different than they treated the co-defendant?

15 MR. SCHUSTERMAN: I am saying that Mr. Forney stood  
16 trial and received a life sentence and that The State be  
17 prohibited from seeking the death penalty against Mr.  
18 Hughes when he is in a similar, if not identical,  
19 situation and if this jury were to give the death penalty  
20 to Mr. Hughes, he would be receiving disparate treatment.  
21 That's exactly right.

22 THE COURT: Well, what if this jury were to determine  
23 that Mr. Hughes was the trigger man?

24 MR. SCHUSTERMAN: But, Your Honor, there was no ---

25 THE COURT: And another jury determined that Mr.

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1 Forney was not? We don't know that, but ---

2 MR. SCHUSTERMAN: We don't know that, Your Honor, but  
3 it's my understanding and, again, this is just from my  
4 looking at the evidence and from casual conversation  
5 certainly not attributing any position to anybody that the  
6 position of The State is going to take is to present the  
7 same, if not identical, evidence in guilt as they did in  
8 the Forney trial. So in that regard at best we have equal  
9 culpability, not greater on anyone's part, so for The  
10 State to present the same evidence and for the jury to  
11 give Mr. Hughes the death penalty when Mr. Forney received  
12 a life sentence based on equal culpability, would be  
13 disparate treatment.

14 THE COURT: Well, the fact that the evidence is the  
15 same doesn't mean it would create the same -- relate to  
16 the same degree of culpability. What if sixteen people  
17 had seen defendant A actually shoot someone and watched  
18 defendant B drive the get-away car. Now defendant B is  
19 tried first, the death penalty sought, but the jury lets  
20 him go?

21 MR. SCHUSTERMAN: The difference is that there there  
22 is not equal culpability. There is clearly a difference.  
23 They are not in a similar situation.

24 THE COURT: Well, you said the same evidence equals  
25 culpability and I'm saying it doesn't.

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1           MR. SCHUSTERMAN: But the essence of, I'm sorry I  
2 should have gone one step further, the essence of the  
3 evidence that The State produces is they don't know who  
4 the trigger man is. There was never any evidence presented  
5 in the Forney trial that truly indicates who the trigger  
6 man is.

7           THE COURT: Well, we'll take that up.

8           MR. SCHUSTERMAN: I mean I understand your point  
9 because I must say, Your Honor, that all the cases that I  
10 would cite to you for the disparate treatment talk about  
11 the argument that you just made, but in all of those cases  
12 it was very clear what role each person played and the  
13 courts have clearly said that they are not going to go  
14 behind the jury and say that the jury interprets more  
15 guilt or shooting or participating, that that's within the  
16 jury's province. But here we have truly equal culpability.  
17 There is no theory coming out. If there was a theory  
18 coming out, then The State would be prohibited from  
19 pursuing Mr. Forney as the trigger man and then pursuing  
20 Mr. Hughes as the trigger man. They clearly couldn't do  
21 that under our case law, but they don't have that  
22 situation. They have at best presented the evidence and  
23 let the jury infer from it or reach its own conclusions.  
24 In that concept there is equal culpability. They are going  
25 to present the same evidence with Mr. Hughes potentially

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1 getting a harsher penalty in what the courts have said is  
2 a similar universe similar situation.

3 THE COURT: If, in fact, this jury were to give the  
4 death penalty in this case, isn't the court required, the  
5 judge, to make a proportional review and make certain  
6 findings regarding the appropriateness?

7 MR. SCHUSTERMAN: Absolutely; that's clearly true, but  
8 what the court has gone on to say further is that - I want  
9 to put this delicately - that they are not going - the  
10 court is not going to go behind your decision on a  
11 proportional review, so I'm trying to put the cart before  
12 the horse and not even put His Honor in that position  
13 where I believe that clearly if he does receive the death  
14 penalty that the court should reduce it down to a life  
15 sentence, but before we can get to that point, I believe  
16 that the court shouldn't allow The State to pursue a death  
17 penalty because if they were to give him the death  
18 penalty, the court would be obligated to have a  
19 proportional review and to find that life is appropriate  
20 based on the conduct of the two parties.

21 THE COURT: Well, is this not maybe another situation  
22 where the Legislature has spoken and the Legislature has  
23 said that that is a matter for the trial judge to take  
24 care of post-trial as opposed to pre-trial on a Motion of  
25 this type?

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1       MR. SCHUSTERMAN: You could certainly make that  
2 argument; I certainly concede that.

3       THE COURT: You are not conceding it's correct; you  
4 are conceding the argument ---

5       MR. SCHUSTERMAN: I'm conceding the argument; I'm  
6 conceding the Legislature -- right.

7       THE COURT: All right, well, I'm not going to -- I'm  
8 not sure that Motion is actually before me now; we are  
9 kind of drifting in and out.

10       MR. SCHUSTERMAN: I just wanted to make the court  
11 aware. I'm sorry.

12       THE COURT: No, I brought it up and we have got a lot  
13 of things to cover in this.

14       MR. POPE: Your Honor, that Motion we are getting  
15 close to it, it is probably 31 and 32, I believe. Your  
16 Honor, I can address Mr. Schusterman's argument or I can  
17 go back to 30 whichever.

18       THE COURT: Just go on back and we will get back in  
19 line. The Motion to strike as unconstitutional 16-3-20 I  
20 am going to deny that Motion. I am going to find the  
21 argument by The State is correct; I find that this passes  
22 constitutional muster by Appellate level courts and so I  
23 deny the motion.

24       MR. POPE: If it please the court, Your Honor? 30 is  
25 Motion to prevent introduction of evidence in aggravation

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1 or required to make a more definite statement. To begin  
2 with, Your Honor, under Plath and Gaskins the evidence of  
3 aggravation that was noted is the same one that was done  
4 for Mr. Forney. I, first, call the court's attention on  
5 12-13 of '93 The State served a Notice of Intent to Seek  
6 the Death Penalty under the statutory aggravating  
7 circumstances, which, of course, is not the same as the  
8 evidence in aggravation. At that time the defendant was  
9 also arraigned on the charges. Then, Your Honor, on  
10 January 20 of '94 I sent to Mr. Schusterman and then Mr.  
11 Hazelden, who was Mr. Hughes' attorney, our Notice of  
12 Evidence in Aggravation, which includes "any and all  
13 evidence relating to the killing of James Brent McCants,  
14 any and all evidence relating to armed robbery of James  
15 Brent McCants, any and all evidence relating to prior bad  
16 acts and other evidence relating to defendant's character  
17 occurring at any time prior to the conclusion of the case,  
18 any and all evidence concerning victim impact, evidence  
19 relating to James Brent McCants' personal characteristics  
20 and the emotional impact of murder on Mr. McCants' family,  
21 friends and any and all evidence relating to James Brent  
22 McCants' status as a local law enforcement officer." Your  
23 Honor, subsequent to that I sent a letter to Mr.  
24 Schusterman on April 27th further clarifying that and I  
25 recently sent a letter on August 28th. Again, even though



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1 the court previously ruled and the case law indicates that  
2 my initial notice -- the whole purpose of noticing  
3 evidence in aggravation is just that, give them notice of  
4 what The State intends to put forward. Of course, in  
5 Gaskins and Plath they have both said you don't have to  
6 itemize and inventory every single piece of evidence that  
7 you go through, but, again, I want to make crystal clear  
8 and in writing as the statute requires what it is that we  
9 intend to go forward on, so I sent another letter to Mr.  
10 Schusterman on August 28th and in that letter in part, it  
11 has been filed with the court in this case, Your Honor, it  
12 says, "Subsequently by letter of April 27th I indicated  
13 that the evidence relating to prior bad acts and character  
14 will also include any and all actions of the defendant  
15 during any incarcerating including, but not limited to,  
16 the murder and the assault committed in the York County  
17 Detention Center on or about April 12, 1993. I want to  
18 again call your attention to language in the January 20,  
19 1994 notice of The State we intend to use any and all  
20 evidence relating to prior bad acts and other evidence  
21 relating to the defendant's character occurring at any  
22 time prior to the conclusion of the case. To further  
23 clarify, it is The State's intention to introduce as  
24 evidence in the penalty phase of the trial any actions by  
25 the defendant before or during the trial that reflect on

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1 the penalty decision." Again, we have had an open file,  
2 discovery wise. I have that I would like to add this and  
3 give the defense a copy after lunch, we intend -- I have a  
4 discovery receipt that was the things that were given to  
5 Ms. Brice as to the second murder, as to the North  
6 Carolina jail records, South Carolina jail records, all  
7 the things that we intend to introduce and I would make  
8 that as an attachment and as an additional written notice  
9 that I will provide to them, which, in essence, is the  
10 discovery receipt to them. Again, Your Honor, I want to  
11 call to the defense's attention and I feel like I have  
12 done so by this letter that anything that Mr. Hughes has  
13 done or will do at any time in the past and he is in the  
14 best position to tell them, you know, earlier we talked  
15 about discovery, he knows what he has said and what he has  
16 not said and, certainly, any witnesses can be crossed in  
17 that regard, but any statements he has made in the jail in  
18 regards to any bad acts, anything we have we have giving a  
19 written notice that we intend to use it, whether it is on  
20 his character, or future dangerousness, or any of these  
21 things. The purpose is to give them notice. We gave it in  
22 the first instance and we have further clarified it and  
23 refined it again. The case law does not require us to do  
24 this as we have said in so many other instances, but,  
25 again, in an abundance of caution we have given them that.

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1 We intend to give a witness list Monday. Again, it is  
2 something we don't have to do to again them them notice  
3 because we are not trial by ambush, we are to give them  
4 notice of what's coming up. Again, what we are trying to  
5 project is the issue of if he does something that they  
6 know about that we discover or that he does in the interim  
7 that we are now giving them notice that we do it, if he  
8 does something the day after trial states, we have given  
9 them written notice that we intend to use it if it  
10 reflects on his character or on his future dangerousness.

11 Your Honor, again, I would indicate to you that I had  
12 gotten a response from Ms. Brice that this kind of falls  
13 in as far as that evidence and I told them that I would  
14 not provide under Anderson v Leake I would not provide  
15 prison records, medical records, mental records that are  
16 equally available to the defense. Again, I indicated and  
17 it's like the chain evidence and everything else, if I  
18 have it, I am going to give it to them. There are things  
19 that aren't equally accessible that if I can have it  
20 knowing that the court is burdened when they have to send  
21 off to get something, if I have it, I am providing it. I  
22 continue to provide it. What again I'm trying to do is  
23 provide as much notice to the defense now that anything  
24 wrong that Mar-Reece Hughes has done and I've given it to  
25 them in writing we intend to use if we find out, if we get

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1 to that stage. And that would be The State's position on  
2 that particular motion.

3 THE COURT: Anything from the defense?

4 MS. BRICE: Yes, Your Honor, in response. Certainly I  
5 admit that anything they have written out I have indexed  
6 myself, any information that they have provided to me by  
7 way of prior criminal records, I'm not sure exactly what  
8 right now, there was some North Carolina records  
9 certainly, I cannot recall exactly what was on the list  
10 that they provided to me, but I did catalog that and, in  
11 fact, everything that they said on that list that they  
12 were going to provide to me, in fact, they did. What I am  
13 concerned about, Your Honor, is the fact that any records  
14 that they say that I have equal access to that's not  
15 necessarily true. As far as this statement in court that  
16 they could not find any juvenile records they certainly  
17 would have more advantageous situation in that a lot of  
18 these law enforcement facilities are much more receptive  
19 to dealing with The State than they are the defense and,  
20 certainly, the items that I have, I do have some of the  
21 items, but anything that they may present during the  
22 course of the trial that I may not actually have or it may  
23 not be complete I certainly would like to look at them.  
24 The prior motions that we have already stated is based  
25 upon the fact that a lot of times I think they are not as

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1 complete the defense may access as opposed to what The  
2 State may receive from these institutions. I cannot  
3 adequately prepare my case unless I know -- what they are  
4 saying is they are aware of the fact that I did my job  
5 when I gathered this information, but the information that  
6 I have gathered is equal to the information that they have  
7 gathered. Well, I won't know that until I'm sitting here  
8 in the courtroom and they introduce that evidence. I can  
9 say the information that they have provided to me to my  
10 knowledge is complete because they have provided it to me,  
11 but any information that they have not provided to me and  
12 the relying on my own investigation skills to access it, I  
13 don't know whether or not it's complete because I have not  
14 seen what they have or what they are being accessed to.

15 Also, as far as Solicitor's Pope statement as far as  
16 Mr. Hughes can equally provide me with information as far  
17 as utterances or statements that he made while he was  
18 incarcerated in York County or statements that may come up  
19 during the course of the trial that they may attempt to  
20 use against him or any other evidence that they may intend  
21 to bring forth during the course of the trial certainly in  
22 aggravation they are arguing that he can provide me with  
23 that information. Your Honor, I am dealing with someone  
24 who was psychotic and based upon testimony that will come  
25 out it is going to show that he could not actually

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1 participate in his defense for several months, therefore,  
2 as well as the diagnosis that will come out there are  
3 memory lapses that Mr. Hughes has. Certainly, he may not  
4 recall making statements to particular witnesses and for  
5 them to say I can equally access the information they are  
6 going to present to the court by just simply talking to my  
7 client that is not necessarily true based upon his mental  
8 illness.

9 THE COURT: I understand. I think on this one and the  
10 other one I might have to just kind of go through as we go  
11 through the trial if anything comes up, deal with it then  
12 because I can't anticipate that they have not given you  
13 what they say they have given you. And as far as having  
14 equal access, it would seem to me in some instances you  
15 would have equal access and perhaps some you would not and  
16 as to such things as a juvenile record I think that your  
17 client could assist you in whether or not there is a  
18 juvenile record. So as to this issue it appears to me that  
19 The State has indicated he has given you the things that  
20 he's required and has gone beyond and given to you what it  
21 has with some exceptions, which have already been noted.  
22 And the only thing the court can do at this posture is to  
23 see what happens during the trial and if any of this  
24 becomes an issue, I can deal with it then.

25 MS. BRICE: I agree, Your Honor. Thank you, sir.

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1 THE COURT: Thank you.

2 MR. POPE: May it please the court, Your Honor, I want  
3 to make it clear too that items such as juvenile records  
4 and Rap Sheets from other discovery rules we are required  
5 to give them to them, so when I say that things are  
6 equally available, as I've said and I think it will be  
7 clear everything that we have got we have given them.  
8 Much like Mr. Brackett did on the witness list or anything  
9 else, just because we are conceding it, we are not wanting  
10 to give up our rights as far as the rules of law at some  
11 later point. But everything we've got, we're giving them  
12 and will continue to do so.

13 Your Honor, after lunch as an attachment that I will  
14 put in the file I will turn in a list of the discovery  
15 material that was provided for the penalty phase and I'll  
16 have the defense review that and also we incorporate as  
17 far as our Notice of Evidence in Aggravation the witness  
18 list to the extent it does give them notice that these  
19 various individuals that may have given statements. Of  
20 course, it will be an extensive witness list, but that  
21 will give them additional notice and I will incorporate  
22 that -- move to incorporate that when it is tendered  
23 Monday.

24 THE COURT: All right.

25 MR. POPE: Your Honor, the next one will be Motion to

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1 restrict aggravating circumstances and if I understand,  
2 that was one that Mr. Schusterman had filed with Mr. Lewis  
3 again and I think the crux of that is that you are saying  
4 that the murder did not occur during the commission of an  
5 armed robbery. That would be the Motion to restrict  
6 aggravating circumstances.

7 MR. SCHUSTERMAN: This motion is that the aggravating  
8 circumstances -- well, one of the aggravating circumstance  
9 that the prosecutor is bringing forward is an armed  
10 robbery, a murder while in the commission of an armed  
11 robbery. And in reviewing the evidence, it is apparent  
12 that if a robbery did occur, it did not occur while in the  
13 commission of the murder, that these were two separate  
14 events, this was not, for instance, a stick-up, this was  
15 not a robbery that escalated into murder, that everything  
16 that I have gone over in the evidence as well as the  
17 testimony from the prior trial that any items that may  
18 have been taken from Mr. McCants' body were not taken in  
19 connection with the murder and thus they are two separate  
20 acts and separate events and I believe that if we are  
21 going back to Columbia, back to the Legislature, the  
22 intent with the aggravating circumstance is it was  
23 supposed to be a robbery that escalated, that where a  
24 murder was committed while in the commission of an armed  
25 robbery and that I don't think from the evidence as I



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1 understand it from the testimony from the prior trial as  
2 well as the evidence that I have that that is what  
3 occurred here and, thus, it would not be an armed robbery  
4 -- murder committed while in the commission of an armed  
5 robbery.

6 THE COURT: I am going to deny the Motion. I am going  
7 to allow that to be used as an aggravating circumstance.

8 MR. SCHUSTERMAN: Thank you, Your Honor.

9 MR. POPE: Your Honor, the next motion would be one I  
10 think Mr. Schusterman has already argued, Number 32,  
11 Motion to require The State to withdraw intent to seek the  
12 death penalty. 32 and 33 are, in essence, operate  
13 together. Your Honor, I point out that as the court has  
14 eluded to Mr. Schusterman mentioned after a death penalty  
15 trial and the jury comes back, the court then reviews not  
16 to find out the proportionality, but to find out if it is  
17 the subject of passion or prejudice or it is a proper  
18 verdict based on the circumstances.

19 MR. SCHUSTERMAN: I don't think that's a correct  
20 statement. I believe that case is saying that the court  
21 does have a proportional review. I think that a  
22 proportional in all the disparate cases I believe that  
23 they all allow for the court not only to make a  
24 determination as to sympathy or prejudice, but also to  
25 make a proportional review.

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1 MR. POPE: Section 16-3-25 addresses the Supreme Court  
2 looking at a proportional review. Your Honor, in the  
3 Supreme Court's review, and I do agree that the court has  
4 reviewed it, I am saying that your role at one time  
5 because you are sitting there looking at the case you just  
6 tried, you are not looking at the universe and the death  
7 penalty cases. When it gets to the Supreme Court, they  
8 review proportionality. I call the court's attention to  
9 State v Copeland, a 1982 case, cited 300 SE2d 63. In  
10 Copeland, Your Honor, the Supreme Court, Section 29 said  
11 and they are talking about certain similar cases in which  
12 to compare. Copeland was one of the first ones after we  
13 came back and had the death penalty again and they were  
14 talking about the universe to look at it in comparable for  
15 proportionality review. They said, "In our view, the  
16 search for 'similar cases' can only begin with an actual  
17 conviction and sentence of death rendered by a trier of  
18 fact in accordance with 16-3-20 of the Code. We consider  
19 such findings by the trial court to be a threshold  
20 requirement for comparative study and indeed the only  
21 foundation of 'similarity' consonant with our role as an  
22 appellate court." And so that particular case,  
23 unfortunately, Your Honor, the first case did result in a  
24 death penalty verdict and so when the Supreme Court looked  
25 at that in view of proportionality, they would not look at

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1 that case, because the first thing they are going to do as  
2 a threshold is look at the verdict. So Mr. Forney's  
3 trial, again, unfortunately, did not result in one that  
4 they would compare for like circumstances to determine if  
5 that was appropriate. For that reason, I would request  
6 that the court decline this Motion at this time. That  
7 would be something that would be properly taken up in the  
8 Supreme Court.

9 THE COURT: Well, I have indicated and I don't know if  
10 I have actually ruled on this or not, but I will not  
11 restrict The State from seeking the death penalty. I will  
12 and I think that those are matters to review post-trial.

13 MR. POPE: May it please the court, Your Honor? This  
14 33 I addressed briefly goes to the Motion to restrict The  
15 State from trying the defendant as principal actor. It  
16 says "In the previous trial Forney was convicted to a  
17 sentence of life. The jury made facts and a determination  
18 that Forney was ..." certainly, we don't know what exact  
19 facts and determination they made as far as the hand or  
20 one, accomplice liability, the non-trigger man issue, they  
21 cited Enmund v Florida and, again, I would cite Longworth  
22 to say that the death penalty can be appropriate for a  
23 non-trigger man. And again, we are not holding one or the  
24 other, I feel like we should have a Motion that the  
25 defense -- to keep them from anticipating what we are

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1 going to do. But in that regard, Your Honor, I think that  
2 falls into that same motion.

3 MR. SCHUSTERMAN: For clarification, the court in  
4 denying the Motion for The State to be prevented from  
5 seeking the death penalty, is the court also saying that  
6 the court doesn't feel that upon, if a death sentence were  
7 given, that the court doesn't feel that it has a right of  
8 proportional review?

9 THE COURT: Well, I am going to look into that and the  
10 court can determine that at the time if that occurs. But  
11 it is my thinking and I will have to look back that it  
12 does require the Supreme Court, but I was trying to thumb  
13 through and see what all was cataloged, if anything,  
14 regarding the post-trial review by the trial judge.

15 MR. SCHUSTERMAN: One of the things that can recall  
16 from the Copeland case was it appeared the concern the  
17 court had, and I certainly encourage the court if it  
18 hasn't read Copeland to read it, not to look to my  
19 interpretation, but it appeared that in Copeland the court  
20 was somewhat concerned about one trial judge being, as Mr.  
21 Pope says, looking at the universe of death penalty cases.  
22 Here we have a unique situation in that you were the  
23 presiding judge for both trials, so if there was anybody  
24 that was uniquely capable of determining proportional  
25 review, it would seem to the defense that it would be the

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1 trial judge who heard both cases. No one would be sitting  
2 in a better position.

3 THE COURT: Well, again, I think that is something  
4 that we can look at when that actually arises, if it does.

5 MR. SCHUSTERMAN: Thank you, sir.

6 THE COURT: All right.

7 MR. POPE: Your Honor, Number 34 is a Motion the court  
8 is going to have to address where they moved to prevent  
9 you from asking leading questions. My research indicates  
10 that the way voir dire is handled the scope and inquiries  
11 are exclusively in your discretion and that you make a  
12 determination of how best to move forward.

13 THE COURT: Yes, and I'm not going to restrict - the  
14 court is not going to restrict - it's not going to let the  
15 defense, in essence, help tailor it, so voir dire I think  
16 the case law is clear as to what qualification of a juror  
17 must exist and possess and what would cause a juror not to  
18 be qualified to sit in a death penalty case. And I think  
19 that the court's right, if not duty, is to make an  
20 appropriate determination and the court will ask such  
21 questions it deems proper. I understand that the concern  
22 of the counsel for the defense would be, in essence,  
23 trying to convince a juror to change their views or to  
24 come around to a certain view point and this court does  
25 not intend to do that, but rather examine the jurors as to

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1 their abilities to sit as a fair and impartial juror on a  
2 case of this type. So I am going to deny -- that's  
3 another hard one to kind of address until the question is  
4 asked as to whether or not the defense finds it  
5 objectionable. So I think I will leave the door open for -  
6 we are going to have a panel situation and I think that  
7 would create a situation where if the defense feels I, as  
8 the trial judge, have crossed the boundary of what the  
9 trial judge should do, that certainly can be raised as to  
10 a particular juror at that particular time. I, of course,  
11 wouldn't be offended, but I would think since there will  
12 be a time lapse between when the jurors are determined to  
13 be qualified and when we actually draw the jury, if it is  
14 brought to the court's attention that the court may have  
15 overstepped its bounds so to speak, then the court could  
16 at least address it then and say, well, you are right,  
17 maybe I shouldn't have asked that and call that juror back  
18 in and exclude that juror or corrective action can be  
19 taken.

20 (Pause).

21 I wasn't paying attention, but I was trying to look at  
22 16-3-25 to make sure and it appears in paragraph C that it  
23 sets forth in 3, subparagraph 3 talks about "Excessive or  
24 disproportionate penalty is not restricted to the Supreme  
25 Court." It's in the - it actually uses court with a

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1 little c and we don't talk about our Supreme Court with a  
2 little c, but I think it means whatever court is doing the  
3 posttrial review. There is a separate paragraph D that  
4 deals with the Supreme Court and it appears to me that C  
5 deals with -- well, no, I'm sorry, I'm wrong. That  
6 doesn't deal -- that doesn't deal with the Supreme Court,  
7 I'm wrong. All right, let's go back to the Motions then;  
8 I'll have to look some more.

9 MR. POPE: Your Honor, I think the next Motion would  
10 be Number 35 Motion to prohibit State from inquiring into  
11 jury beliefs as to capital punishment and to require the  
12 Solicitor to exercise peremptory challenge.

13 MS. BRICE: Your Honor, I would withdraw that one.

14 THE COURT: All right.

15 36?

16 MR. POPE: 35 and 36, Your Honor, if I am getting the  
17 numbers right pretty much go hand in hand. That's a Motion  
18 prohibiting me from excluding jurors based on scruples  
19 against capital punishment, in other words, if I  
20 understand correctly if somebody that you qualified as  
21 death penalty qualified, but then we chose to strike, they  
22 are saying we couldn't strike because somebody said or one  
23 was more reluctant than the other. And I think that  
24 doesn't -- you could strike for cause on the court's part,  
25 but it does allow a discretion to strike.

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1 THE COURT: Well, I think the filter there is the  
2 court. I don't think the court can find someone qualified  
3 and then say, well, they are qualified, but The State  
4 can't seat them. So I deny that Motion.

5 MR. POPE: Your Honor, the ---

6 THE COURT: Do you all want to take a short break. We  
7 have been at it for about an hour and a half. Well, tell  
8 me about what time the Aiken people are going to be here.

9 MR. BRACKETT: I'm not sure. Are you all from Aiken?

10 THE COURT: Do you want to take a short break and then  
11 let's deal with the jurors so they can get on back down  
12 the road to Aiken? Let's do it that way, all right.

13 (Recess.)

14 We have the representatives from the Clerk of Court's  
15 office from Aiken County and we will go through the jury  
16 list concerning those who have asked to be excused. I will  
17 state in advance that one thing that we will have come in  
18 I would anticipate that came up in the other death penalty  
19 case I have been involved in where jurors were going to be  
20 sequestered for a period of time were to have to handle  
21 situations involving parents of children under the age of  
22 seven who, in fact, have jobs. Now the Statute does not  
23 address the work outside the home concept. That's one that  
24 I added and I think some other judges use it too on the  
25 basis that the theory for not applying individuals in that



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1 capacity to serve as jurors does not comply with one  
2 that's already in place that works. The situation then  
3 becomes though one where you take a mother away from a  
4 small child for a two week period of time where the  
5 Statute may, in fact, give that person protection from  
6 being included. What's The State's thoughts on that, if  
7 any? I haven't had it to come up; I just anticipate it.

8 MR. POPE: Your Honor, I think without belaboring it  
9 you may address it on a per case basis. You know, some  
10 people who have children that would, in essence, have that  
11 right don't exercise it. However, I think if someone, you  
12 know, has the request or desire not to serve, The State  
13 has no opposition to them being excused. We have no  
14 opposition to that.

15 THE COURT: In that category.

16 MR. POPE: In that category, yes, sir. Not everybody  
17 who doesn't want to serve.

18 THE COURT: We are talking about that category. Let  
19 me hear from the defense.

20 MR. SCHUSTERMAN: Your Honor, my only position would  
21 be that it's going to be very difficult to derive at a  
22 uniform or blanket policy. I think that it's going to have  
23 to be a situation, in my opinion, that those people that  
24 fall into that category should be required to appear on  
25 Monday. I think that they need to be questioned

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1 individually. I don't think that anybody who has young  
2 children and a job should be summarily dismissed.

3 THE COURT: Well, I'm trying to look at the statute,  
4 I'm not sure it doesn't give them that right whether they  
5 work or not. I mean that's a little -- let me pull the  
6 Statute real quick. All right, the section as amended in  
7 1986 provides that "Any woman having a child under seven"  
8 - it might be constitutional because it just applies to a  
9 woman, but "Any woman having a child under seven years of  
10 age, meaning, she has legal custody and the duty of care  
11 who desire to be excused from jury duty shall furnish an  
12 Affidavit to the Clerk of Court stating she is unable to  
13 provide adequate care for her child while performing jury  
14 duty and 'shall' be excused from such duty." It's  
15 interesting that that took the place, basically, that's  
16 14-7-860 and 14-7-890, which require that a woman in that  
17 situation must present the facts to the presiding judge in  
18 open court and her responsibility of custody and care  
19 should be a prime factor in the considering the  
20 advisability of granting the request. The Legislature  
21 have in its wisdom decided that women in that particular  
22 situation can exercise that right by filing an Affidavit  
23 and they shall be excused. So if they follow that  
24 procedure, Madam Clerk, if they fall within that category  
25 if they have a child under the age of seven and file an

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1 Affidavit asking to be excused, it will be granted.

2 MR. POPE: Likewise, Your Honor, if they haven't filed  
3 the Affidavit, but make that request Monday, it will be  
4 granted also based on the Statute?

5 THE COURT: Well, yes, I mean the Affidavit is just  
6 the easier way to do it.

7 MR. POPE: Yes, sir.

8 MR. SCHUSTERMAN: Are we saying that someone who has a  
9 child under seven who has custody and duty of care, but  
10 still has full time employment that that will still come  
11 under the statute?

12 THE COURT: That's what the statute says. The statute  
13 says "shall." "Shall be excused" if they ask.

14 MR. SCHUSTERMAN: Would the duty of care imply that  
15 they are caring for the child, not having day care care  
16 for the child?

17 THE COURT: Well, there's a difference and I find that  
18 when -- maybe some fathers that are in that situation, but  
19 the Legislature has not quite gone that far and, of  
20 course, the court will have to deal with it on a case by  
21 case basis, but I take judicial notice that a child under  
22 seven even though they are in day care during the day  
23 needs some adult with them for the over night period of  
24 time even if they have a job outside the home, I mean,  
25 that's eight hours and you still have sixteen hours in

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1 which the child needs care. So I will follow the statute.

2 MR. SCHUSTERMAN: Thank you, Your Honor.

3 THE COURT: All right.

4 Now, let's just go through those who have asked for  
5 say they fall into a disqualifying category or have asked  
6 to be excused.

7 DEPUTY CLERK LEANN MIXSON: Juror number 2 Marcia  
8 Allen had previously asked to be excused on the first time  
9 we met due to work situation. I received a letter from her  
10 director stating that her project is still on-going and  
11 she is needed at the job. She is currently involved in a  
12 Hundred Thousand Dollar software purchase and it takes  
13 place during the month of September. She is still asking  
14 to be excused.

15 THE COURT: The State's position?

16 MR. POPE: Your Honor, we don't want anybody that  
17 doesn't want to serve, but by the same token I think these  
18 types may be the ones that you have to address by seeing  
19 them and hearing them.

20 MR. SCHUSTERMAN: This may be one of the two times  
21 during this trial that the defense would concur with The  
22 State.

23 THE COURT: I agree with you. Have her come in on  
24 Tuesday -- Monday, I'm sorry, Monday. Have her come in on  
25 Monday and will address it then.

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1 THE CLERK: Yes, sir.

2 Juror Number 13 William Hubert Baker. He is asking to  
3 be excused for medical reasons. His medical background,  
4 obviously, has not changed since the first time we  
5 discussed it. He has cardiac problems and he is following  
6 up with a doctor in Aiken and he does not feel emotionally  
7 stable to sit on a murder case.

8 THE COURT: Does he have anything from the doctor?

9 THE CLERK: I have that somewhere.

10 THE COURT: Can you find it? Do you think you have it  
11 with you?

12 THE CLERK: I have a letter from Doctor David Cundy  
13 dated March 1, '95, that states he's writing in reference  
14 to William Baker who has received a letter regarding jury  
15 duty. Apparently, he has possibly been rescheduled for  
16 the month of April. This notice is to inform you that he  
17 has recently left the hospital following a myocardial  
18 infarction and it would be my recommendation that his jury  
19 service be delayed.

20 THE COURT: I think we are going to have to ask him to  
21 get an updated doctor's excuse, doctor's statement, and to  
22 report on Monday and we will look at it.

23 THE CLERK: Yes, sir.

24 Juror Number 22 Brian Besson. He owns his own  
25 business. He is a one-person business and has clients

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1 depending on him to produce design drawings in a timely  
2 matter. He currently has several projects under  
3 construction that demands his daily inspection and  
4 supervision. He is asking to be excused based on work  
5 related problems.

6 THE COURT: He will have to come in on Monday.

7 THE CLERK: Juror Number 40 Constaldo Bush. The last  
8 time we met he was in Baferain (phonetically). He is not  
9 back yet. He will not be back until March of 1996.

10 THE COURT: He will not have to report on Monday. I  
11 find that he is out of the country and that he will be  
12 excused.

13 THE CLERK: Juror Number 53 Sue Clark. I have a letter  
14 from her supervisor and her. She is an ecology laboratory  
15 specialist at the University of Georgia. Let me review  
16 this real quick. Her supervisor states that Doctor Clark  
17 is an assistant research ecologist for the University of  
18 Georgia, which has an up or out policy for its faculty  
19 members. Under this policy the assistant level faculty are  
20 required to aggressively publish in the scientific  
21 literature in their field or they are released from  
22 employment in that position. Doctor Clark has made  
23 commitments to her peers to participate in a professional  
24 meeting entitled Migration '95 scheduled for September  
25 10th through the 16 in Saint-Malo France. Her

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1 participation includes three presentations and submission  
2 of three manuscripts. If Doctor Clark does not attend the  
3 meeting, her contributions are disqualified. Consequently,  
4 if Doctor Clark does not participate in this meeting, her  
5 continued employment at the University and her career are  
6 jeopardized. Ms. Clark is asking to be excused based on  
7 that reason, the fact that she will be leaving for France  
8 tomorrow.

9 THE COURT: What say The State?

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

11 THE COURT: All right.

12 MR. POPE: Your Honor, we really don't take any  
13 position. I guess my concern is to have her come Monday  
14 and explain fully thereby precludes her from doing what it  
15 is. You know, if we could hear her out further, you could  
16 have her stand in front of you, but understanding is she  
17 is supposed to leave ---

18 THE CLERK: Yes.

19 MR. POPE: Tomorrow.

20 THE CLERK: She is leaving for Frances tomorrow.

21 MR. POPE: I don't have an opposition to her being  
22 excused.

23 THE COURT: All right.

24 MR. SCHUSTERMAN: The defense doesn't have an  
25 opposition.

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1 THE COURT: Let's transfer her and if you all have  
2 another term, maybe you can work her in when she comes  
3 back. Can you do that?

4 THE CLERK: Yes, sir.

5 THE COURT: She will be transferred.

6 THE CLERK: Thank you. Juror Number 58 Delores T.  
7 Compton. She was available up until this present term. Her  
8 daughter died unexpectedly in July in Richmond, Virginia.  
9 Throughout the month of September her daughter had a two  
10 year old child that her and her husband are taking care of  
11 and finishing up her estate. She is presently in Richmond,  
12 Virginia and will not be back until sometime in October.  
13 She asked to be excused.

14 THE COURT: What is The State's position?

15 MR. POPE: She may fall under the child exemption. I  
16 realize it's a little unique, but in that situation it  
17 sounds like she may fall in that area taking care of the  
18 two year old.

19 MR. SCHUSTERMAN: The defense has no objection.

20 THE COURT: All right, I am going to excuse her.

21 THE CLERK: Juror number 66 Evelyn Day. She stated  
22 that she doesn't feel mentally or physically able to judge  
23 anyone's guilt or innocence. She has medical reasons that  
24 she had asked to be excused for last time. Her doctor  
25 wrote a letter in January just stating that she was



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1 currently under his care and did not feel it was in her  
2 best interest to serve. I believe I had talked to her and  
3 told her we needed an up-dated letter.

4 THE COURT: We need an up-date and have her appear  
5 also, so if you can get an up-date and have her appear on  
6 Monday, we will deal with that.

7 THE CLERK: Okay. Juror Number 69 Robert Donelow. I  
8 have the letter from his doctor. He just mailed it with  
9 this last questionnaire we got, but it is dated January  
10 16, 1995. It says, "Mr. Donelow has been a patient of the  
11 University Hospital Speech and Hearing Clinic for the past  
12 three years. Hearing evaluations conducted at the clinic  
13 has shown that Mr. Donelow has a moderate to severe  
14 hearing loss with both ears. He has been fitted with  
15 hearing aids for both ears which has been only marginal  
16 successful in improving his speech and understanding  
17 ability. Even with the hearing aids in place, Mr. Donelow  
18 experiences difficulty in hearing speech particularly in  
19 demanding listening environment." And I cannot read that  
20 doctor's signature.

21 THE COURT: All right, what does The State say?

22 MR. POPE: Your Honor, before we proceed I would ask  
23 Madam Clerk how many jurors do we now have coming in  
24 Monday, the reason being like this situation we might very  
25 well say he can be excused, but if we get tight numbers

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1 wise, we may have to keep some of the borderlines like  
2 people that were out of town.

3 THE CLERK: Off the top of my head I am not real sure  
4 right now. I can give you a count.

5 THE COURT: Can you do a quick count for me?

6 THE CLERK: Yes, sir.

7 I have approximate 144 jurors.

8 MR. POPE: Thank you. Your Honor, I think due to the  
9 doctor's excuse if this juror is going to have trouble  
10 hearing, then it may be one that the court wants to call  
11 to address how severe, sometimes a doctor's excuse route  
12 doesn't always play out to what the court may hear. I will  
13 leave that to the court's discretion.

14 MR. SCHUSTERMAN: The defense will go along with  
15 anything the court chooses to do.

16 THE COURT: Let's have him come in and we will talk to  
17 him on Monday. You might suggest or let him know that if  
18 he wants to get another up-dated doctor's statement, it  
19 may be of help.

20 THE CLERK: Yes, sir. Juror Number 82 Delois Gaddy. I  
21 have received a letter from her stating "Dear Ms. Mixson,  
22 I have been summoned for jury duty on Monday, September  
23 11th. I will be starting school at Aiken Technical College  
24 on Friday, August 25th. My tuition and fees are being paid  
25 by the JPTA, a scholarship for dislocated workers. Under

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1 this scholarship I am not allowed to miss too many days. I  
2 have one class on Monday, Wednesday and Friday mornings."  
3 She is also registering at Augusta College on September  
4 12th for her Bachelor Degree classes. She sent some copies  
5 of the JPTA forms also. She is asking to be excused based  
6 on the fact she is a full time student.

7 THE COURT: I think full time students are entitled to  
8 automatic deferment to the summer time, so she will be  
9 granted her request.

10 THE CLERK: Juror number 87 Patricia L. Goad. This is  
11 in reference to question number 41 on the most recent  
12 questionnaire. She is just stating she is not certain that  
13 she can feel comfortable with the death penalty. "If I am  
14 convinced that a person is guilty of a crime, then I  
15 certainly desire that the person be punished and removed  
16 from living among law abiding citizens." She also  
17 disagrees with the theory that all criminals can be  
18 rehabilitated to live decent lives, thus I am more  
19 inclined towards punishment of life without parole. She  
20 said she has no objections to serving on a murder case,  
21 however, she is the only secretary-receptionist in her  
22 office and she is afraid it may cause a hardship on her  
23 employer to be gone for a length of time.

24 THE COURT: Have her report.

25 MR. POPE: May it please the court? Madam Clerk, you

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1 referred to a question number? I'm not sure I ---

2 THE CLERK: Question number 41.

3 MR. POPE: Okay, thank you, ma'am.

4 THE CLERK: You are welcome. Juror number 106 Eileen  
5 Hartman. She has asked not to be sequestered if she has  
6 to be so she can attend the Dental Board that she has been  
7 working on for a year. Her Dental Hygiene Board for her  
8 licensing in the State of South Carolina will be on  
9 September 17 and it is important that she attend that.

10 THE COURT: All right, let's have her report.

11 THE CLERK: Okay.

12 MR. SCHUSTERMAN: Madam Clerk, what juror number was  
13 that?

14 THE CLERK: 106.

15 MR. SCHUSTERMAN: Thank you.

16 THE CLERK: And here are those just asking to be  
17 excused for the fact that they have small children and  
18 they don't work.

19 THE COURT: All right, if they do and if they file an  
20 appropriate Affidavit, they will be excused.

21 THE CLERK: Yes, sir.

22 Juror Number 163 Alvin Nace. This is one that I  
23 spent a little bit of time trying to track down some  
24 information on. I believe when I sent the letters out for  
25 them to come in -- I'm sorry, for them not to come in and

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1       come in on April 17, he has a Power of Attorney that wrote  
2       back to me stating that "As Mr. Nace's Power of Attorney  
3       and Social Security Payee, he gets a mental disability and  
4       has a prior felony conviction in Truewell County, Ohio. He  
5       has no driver's license or transportation. If the court  
6       still wants to use him as a juror, please contact Mr.  
7       Roger L. Crockett and he will have a way to get him here."  
8       I had some paperwork and I must have left it on my desk in  
9       reference to Mr. ---

10       THE COURT: Let me see that.

11       THE CLERK: I'm sorry, here it is.

12       THE COURT: Okay. Anything from The State?

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

14       THE COURT: Anything from the defense?

15       MR. SCHUSTERMAN: No, sir.

16       THE COURT: All right, I have been provided the  
17       statement. He is on Social Security, Physician's Medical  
18       Officer's statement regarding patient's capability to  
19       manage his benefits, Doctor Robert Worrel, it looks like,  
20       of Wagner found that he was not able to manage his  
21       benefits. He has been described as depressed, mental  
22       capacity probably secondary to use of cocaine, saying it  
23       is clear that he is a user of coke and he also has a  
24       sentence from Niles, Ohio, Judge Thomas Townley, it  
25       appears that he was convicted of and placed on probation

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1 for stealing and cashing his father's pension check. I  
2 don't know what sort of sentence he received other than  
3 with his probation if he violated it, he would have to  
4 serve an additional 170 days. Of course, that's less than  
5 a year and I don't know whether this would be a felony.  
6 Over here it says that he also has a record for receiving  
7 stolen property and criminal trespassing.

8 What is The State's position?

9 MR. POPE: Your Honor, as far as the record that might  
10 be something to address. I think the issue is his mental  
11 capacity. I don't have all the documentation that you  
12 have, but I think there is some issue as to his mental  
13 capacity to serve because of whatever mental condition he  
14 may have. He has a power of attorney. I don't think he is  
15 qualified.

16 MR. SCHUSTERMAN: It would appear to me, Your Honor,  
17 he may could get pass the mental situation, but under the  
18 new Rules of Evidence, well, dealing with jury  
19 qualification I don't think he would qualify that way  
20 either. So it seems to me it would probably be best to  
21 dismiss him.

22 THE COURT: That's what I am going to do. I know from  
23 the past personal experience of representing Social  
24 Security individuals if they are found unable to handle  
25 their own benefits, they have a rather extremely severe

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1 problem. All right.

2 THE CLERK: Juror number 164 Herlinda Nadal. She just  
3 recently opened her own business. It's eight weeks old.  
4 She owns Best Bagels in Town in Aiken and she gets to work  
5 at 4:00 AM in the morning, they make their own bagels. She  
6 states that she is not able to leave the shop because she  
7 does not have someone to cover for her and she is afraid  
8 that if she has to close her business or leave the other  
9 person there by themselves for a period of time that her  
10 business could go under.

11 THE COURT: Just have her report. I will talk to her  
12 in person. All right, next?

13 THE CLERK: This was was stuck out of place. This is  
14 in reference to Juror number 94 Wilbert Griffin. He mailed  
15 a letter to me stating he had asked to be excused before  
16 for some medical problems and he states he received our  
17 notice today concerning the above date for court. There  
18 has been no change in his condition since he last wrote.  
19 Other than that he has contracted another illness that is  
20 pretty serious in his case. He has acquired acid reflux in  
21 his esophagus that causes large amounts of gas to  
22 accumulate in that area and make noises that are very  
23 disturbing to him or people that are near him or around  
24 him. Consequently, he states this is very embarrassing and  
25 can annoying to himself and others. He still has his leg

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1 and back problems that keep him from sitting long periods  
2 of time and he states that in March of '95 Doctor Meeks  
3 wrote us a letter. I believe I have that. Doctor Meeks  
4 states "This is to certify that the above patient of mine  
5 is not able to sit for more than ten minutes at a time,  
6 has numbness in his legs and pain in his back and he asked  
7 that he be excused from jury duty."

8 THE COURT: Let's just ask that he up-date that. If  
9 that is still the case, he will be excused, but I think we  
10 need a current assessment.

11 THE CLERK: Juror number 196 Gregory Rucker he has  
12 asked to be excused. He is extremely busy at his job and  
13 does not want his projects to be interrupted. That does  
14 not really fall into a classification. He stated that he  
15 was very busy on his job and did not want his project to  
16 be interrupted.

17 THE COURT: He will have to stay.

18 THE CLERK: Juror number 205 has asked to be  
19 transferred from this term. He started a new job with a  
20 new employer on August 28 and he is afraid if he misses  
21 work, he will lose that position.

22 THE COURT: He will have to come in.

23 THE CLERK: Charles Tudor had stated that he also has  
24 work related problems that he feels he doesn't have the  
25 spare time to sit on a jury, but he will be more than



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1 happy at a later date.

2 THE COURT: All right, he will have to come in.

3 MR. POPE: What juror?

4 MR. SCHUSTERMAN: What juror number is that?

5 THE CLERK: Juror number 226.

6 Juror number 233 Carol Wagner has accepted a job  
7 offer in Michigan and expects to be leaving in the next  
8 week or so.

9 THE COURT: Have her come in.

10 THE CLERK: And number 249 James Youngblood brought me  
11 a thing from the hospital yesterday from the Carolina  
12 Orthopedic Association. Doctor Carl D. Moore has asked for  
13 him to be excused from jury duty because he cannot sit for  
14 long periods of time due to something joint bursa and some  
15 type of arthritis it looks like. This was yesterday.

16 THE COURT: Let me see it.

17 The State?

18 MR. POPE: Your Honor, that may be one, again, I don't  
19 have anything in my file as far as his medical situation.  
20 I will leave it to the court's discretion, but, again, I  
21 don't have anything to indicate what the doctor has said.

22 THE COURT: The defense?

23 MR. SCHUSTERMAN: We take the same position.

24 THE COURT: All right, let's have him come in.

25 THE CLERK: That's all that I have. I gave copies of

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1 the new questionnaire to everyone. That's all that I have  
2 received as of five o'clock yesterday afternoon. It  
3 doesn't mean my desk is not snowed over right now. I will  
4 tomorrow to get the rest of those ready for y'all on  
5 Monday morning.

6 THE COURT: What times are the jurors to come in?

7 THE CLERK: I think 9:00. Just one second. Ten  
8 o'clock.

9 THE COURT: I will be there no later than 9:30  
10 probably even earlier and I guess counsel will be there  
11 around 9:30 too and we can take a look at any last minute  
12 ones. Let's all plan to be in there no later than 9:30  
13 and we can start looking at the jury and doing what we  
14 have to do at 10:00.

15 THE CLERK: Yes, sir, Your Honor, I believe I was  
16 supposed to ask you one more question in reference to the  
17 sequestering of the jurors. Are you going to do it when  
18 you get the ones that will be leaving to come up here or  
19 when you reach a certain number to choose from?

20 THE COURT: Well, I think what we have decided to do  
21 and I am going to ask The State and the defense to correct  
22 me if this is not what we decided to do we are going to  
23 draw panels, we are going to have them come back in panels  
24 and we will draw a jury probably Wednesday, we hope  
25 Wednesday morning, but at the latest Wednesday afternoon.

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1 Those who are in fact qualified we will tell them to  
2 report back at a certain time or to call in to know when  
3 to report back, but we will not sequester them.

4 Is that not what we decided?

5 MR. POPE: That is our understanding.

6 MR. SCHUSTERMAN: That is our understanding too, Your  
7 Honor.

8 THE COURT: So really there will be no sequestration  
9 in Aiken. I guess what we plan to do when we get them  
10 drawn on Wednesday is to bring them here to start  
11 sequestration Wednesday.

12 THE CLERK: That's all that I have.

13 THE COURT: While we have got the Clerk here is there  
14 anything else?

15 MR. POPE: Your Honor, if we could get a copy of the  
16 Clerk's list the one that has been marked off, is that  
17 possible?

18 THE CLERK: The ones that I did just now?

19 MR. POPE: No, ma'am ---

20 THE CLERK: This whole thing?

21 MR. POPE: Yes, ma'am, would that be possible if I had  
22 one of our staff to make copies for The State and the  
23 defense.

24 THE CLERK: Yes, you can have it now or I can have one  
25 on Monday a more up-dated one on Monday morning.

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1 MR. POPE: That will be fine.

2 THE COURT: Anything from the defense?

3 MR. SCHUSTERMAN: Would it be possible if I could  
4 have, I know the list won't be updated, if I could have a  
5 copy of that list today. We have some work to do on that.

6 THE COURT: Why don't you just do that. We will have  
7 an updated one on Monday. Why don't you get the  
8 Solicitor's Office, if you could, to make them and the  
9 defense. I don't need one at this time.

10 All right, we will let you all once you get your list  
11 back return to Aiken. We look forward to seeing you  
12 Monday. Thank you all for coming up.

13 I have ten 'til one. I am going to suggest we break  
14 for lunch until two. That's just a little over an hour.

15 MR. POPE: Yes, sir, Your Honor, before we leave I  
16 have one thing I mentioned earlier, the list of discovery  
17 materials that I intended to both provide and -- we have  
18 provided to the defense, but wanted to provide a copy of a  
19 list that we gave Ms. Brice as it applies to the evidence  
20 in aggravation. I have already shown this to Ms. Brice and  
21 I will put it into evidence.

22 THE COURT: All right. Anything from the defense  
23 before we break for lunch?

24 MS. BRICE: Nothing, Your Honor. We do have that list  
25 but whether or not I have everything, basically, it's a

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1 needle in a haystack that we brought up earlier.

2 THE COURT: I understand. You got what you say you  
3 got, but you don't know if you got all they got.

4 MS. BRICE: Yes, sir.

5 MR. SCHUSTERMAN: Right.

6 THE COURT: We will be in recess then until two  
7 o'clock.

8 (Recess)

9 MR. POPE: May it please the court, Your Honor? Your  
10 Honor, at this time we have a number of witnesses as to  
11 item one, the identification issue. These particular  
12 witnesses at this point is going to be Officer Duke who  
13 created the line-up and also showed them to Beth Ann Jayne  
14 and Sean McMillan and Michelle Ayers. We are going to have  
15 Officer Herring who showed the line-up to Tim Sanders and  
16 to Crystal Ayers -- I'm sorry, to Michelle Ayers. And I  
17 would have these officers available. Beth Ann Jayne and  
18 Sean McMillan we will have them available, those are the  
19 out-of-state witnesses. We would also have the other  
20 citizen witnesses available either later today as time  
21 permits or tomorrow to fill in the other testimony.

22 At this time, Your Honor, The State would call Harold  
23 Duke to the stand.

24 THE COURT: Mr. Schusterman has something plus I would  
25 like the record show that Mr. Hughes is present with.

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1 counsel.

2 MR. SCHUSTERMAN: Thank you, Your Honor. Your Honor,  
3 prior to taking testimony there was a motion down the line  
4 in the late thirties or early forties a Motion to  
5 sequester the witnesses. I would ask to hear that Motion  
6 at this time.

7 THE COURT: I'll grant that.

8 MR. POPE: Yes, sir, and I would ask that it be  
9 reciprocal as to any witnesses they would intend to tender  
10 that they not be allowed to sit and listen.

11 THE COURT: All right, that Motion is granted also.

12 MR. POPE: I ask that you all step out into the hall.

13 THE COURT: We discussed this, I believe, in Chambers  
14 and I am going to relieve from the Sequestration Order, of  
15 course, at least one member of law enforcement to assist  
16 with the prosecution and, in addition, of course, Mr.  
17 Hughes will obviously be present and I believe Doctor  
18 Dupree be allowed to remain in the courtroom also.

19 MR. POPE: Okay, Your Honor, for the purpose of this  
20 Motion we have no objection to that. We may want to be  
21 heard as far as Doctor Dupree at some later time.

22 As the court recalls, this was a joint investigation  
23 in the previous case we had representatives from SLED and  
24 the City of Rock Hill and we request they be allowed to  
25 remain.

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1 THE COURT: All right, that will be fine.

2 MR. SCHUSTERMAN: Your Honor, just so that the defense  
3 adheres to your ruling. Are we only taking up the ID  
4 hearing. We talked about there being overlapping Motions  
5 and multiple witnesses.

6 MR. POPE: I intended at this point to put up the law  
7 enforcement witnesses as far as the photo identification,  
8 to put up the law enforcement witnesses as far as any  
9 arrest situation, any statement that flowed to law  
10 enforcement officers. That would be where we are heading  
11 now. Your Honor, honestly, as far as the citizens, there  
12 may be some need to do them as we can tomorrow or as we  
13 are able to get them in, but that's the testimony we are  
14 looking at now.

15 THE COURT: I think the answer is I think when a  
16 witness takes the stand their testimony will be exhausted  
17 to the extent of any Motions that are pending.

18 MR. SCHUSTERMAN: All right. And, Your Honor, let me  
19 tell the court then that it is conceivable, if not likely,  
20 that Doctor Dupree will be called if there's going to be  
21 testimony beyond the identification. Doctor Dupree will be  
22 taking the stand, so Mr. Pope said he wanted to be heard  
23 on that issue if it came up and I am informing the court  
24 that it is going to come up.

25 MR. POPE: Your Honor, at this point the issue I was

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1 referring to was a situation where they had requested she  
2 remain seated by Mr. Hughes during the trial and I think  
3 that can be addressed later. As far as the purposes of the  
4 hearing, I have no problem with her.

5 THE COURT: And I think what we discussed was that we  
6 would allow Doctor Dupree to remain at least, and I'm not  
7 cutting off any further argument, during the trial because  
8 of the possibility of any testimony regarding penalty  
9 phase, if that happens, but she not sit directly at  
10 counsel table, that she be present, but that she would sit  
11 other than at the counsel table.

12 MR. POPE: I think that would address my concern, Your  
13 Honor, would be, one, as far as her remaining, again I  
14 don't have any problem. I have had other cases where the  
15 defense ask the witness, said, well, you've been here and  
16 you've heard when, in essence, it heads toward pitting,  
17 but it is not actually pitting because, of course, it is  
18 the defense's testimony and that's the danger I am looking  
19 to avoid of having her be able to say -- well, like all  
20 these other witnesses, I've sat here through everything  
21 and now based on that, I am saying this. And that would be  
22 that issue, Your Honor.

23 THE COURT: I understand. As I have said for the  
24 purposes of the hearing there is no need for her to sit  
25 anywhere other than where she is right now, but during the



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1 trial I would require she be seated somewhere else in the  
2 courtroom. All right.

3 MR. POPE: The State would call Harold Dukes to the  
4 stand, Your Honor.

5 THE COURT: Please come around and be sworn, please,  
6 sir.

7 MR. POPE: Your Honor, I would also call to the  
8 court's attention. I brought it to the court reporter's  
9 attention as well that these are the actual items of  
10 evidence from the previous trial. I would like to call the  
11 court's attention and the defense as far as any confusion  
12 that these have a number of exhibit markers and I think we  
13 have discussed the possibility of a different color or  
14 something so it wouldn't cause any confusion.  
15  
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HAROLD C. DUKE

DIRECT

1 HAROLD C. DUKE, being duly sworn,  
2 testified as follows:

3 DIRECT EXAMINATION

4 BY MR. POPE

5 Q Mr. Duke, if you would, state your name and occupation  
6 for the record, please, sir.

7 A Harold C. Duke, Police Officer with the City of Rock  
8 Hill, currently a lieutenant assigned to the Detective  
9 Division.

10 Q How long have you been employed with the City of Rock  
11 Hill?

12 A Almost twenty years.

13 Q And as a part of your employment did you have the  
14 opportunity to make photo lineups of the defendant and his  
15 codefendant, Mr. Forney, as a result of the investigation  
16 of the killing of Brent McCants?

17 A I did.

18 Q Could you explain how the lineups were made, what you  
19 physically do, if you could explain to the court what you  
20 do to create these lineups?

21 A We have a video mug shot system at the Police  
22 Department which stores all the arrest photographs of  
23 people who were booked through our facilities since the  
24 purpose of that machines. As a result of storing those  
25 photographs we request certain pictures that would match

1 criteria that we enter into the computer such as race,  
2 sex, hair color and so forth.

3 Q Okay and then when you do that, are there various  
4 means that a witness can view it on a monitor or a print  
5 out or are there various means?

6 A Yes, the machine as we call it stores these  
7 photographs. The photographs can be called up onto a color  
8 video monitor. They can also be printed on an 8-1/2 x 11  
9 color printer, also a 3 x 5 color printer or a gray scale  
10 printer, which would be similar to a Xerox printout.

11 Q I am going to show you two documents that are  
12 printouts and ask if you could take a look at this and  
13 identify those,  
14 please, sir.

15 A These were two separate photographic lineups that were  
16 compiled by myself.

17 Q And what --and as a result how ---

18 A This was as a result and investigation of the homicide  
19 of Deputy Brent McCants and each photo spread one include  
20 Mar-Reece Hughes and the other Mr. Forney.

21 MR. POPE: Mr. Schusterman?

22 MR. SCHUSTERMAN: No objection.

23 MR. POPE: I ask that these be marked.

24 (State's Exhibits 6, 7, 8 and 9 marked and filed.)

25 Q I show you what has been marked State's Exhibit 6 and

1 7. Would you describe to the court exactly how you  
2 derived these and how you created them.

3 A I entered certain criteria into the computer for  
4 individuals that we want to conduct a lineup, the race,  
5 sex, hair color, hair length and age range. From that  
6 data that I entered the computer gave me numerous  
7 photographs from which to select and make lineups.

8 Q Okay, when you make a lineup, the computer gives you a  
9 range of photos and then do you actually pick those or  
10 does the computer randomly pick the photos?

11 A As I recall, back on these dates, there were some 3900  
12 photographs in the machine. After entering the search  
13 data, it brought it down to a selection I would have a  
14 selection from 328 in which to compile the lineup.

15 Q In essence, the computer does what you use to do  
16 totally by hand of going to get the box of like photos and  
17 sorting them out?

18 A By hand and by comparison trying to make similar folks  
19 in the lineup.

20 Q Now State's Exhibit 6 in preparing that lineup, who is  
21 the defendant in that lineup?

22 A Mar-Reece Hughes.

23 Q And again, in preparing that lineup Mr. Forney is not  
24 on that particular lineup, is that correct?

25 A No, he's not.

1 Q In preparing that lineup you took a photo of Mr.  
2 Hughes and then matched it with others, is that correct?

3 A Yes.

4 Q Okay. Likewise, State's Exhibit 7 in the case of Mr.  
5 Forney, did you do the same thing?

6 A Yes, it would be the same.

7 Q Mr. Duke, Mr. McCants was killed into the early  
8 morning, did you have an opportunity to show those lineups  
9 to two college students from Charlotte in reference to an  
10 armed robbery that occurred there?

11 A Yes, sir, I did.

12 Q In showing those I believe they were shown to Sean  
13 McMillan and Beth Ann Jayne, is that correct?

14 A Yes.

15 Q Could you tell the court when you showed it to Mr.  
16 McMillan and Ms. James, you showed them lineups  
17 independent of one another, I mean, they are not sitting  
18 there together and pick out ---

19 A No, they were shown the lineups separately.

20 Q How were they allowed to view those lineups? I know  
21 you have a color printout now. How were they allowed to  
22 view those lineups?

23 A The retrieval station, we call it, is located in the  
24 Detective Division. At that time whichever person is  
25 going to view the lineup I will speak to them before them

1 being admitted to where the machine is and tell them that  
2 I am going to show them a set of six photographs of folks  
3 who all are similar, but I ask that they look at them  
4 carefully and select any one that they may have seen which  
5 was involved in this in Charlotte earlier that night.

6 Q Did you tell them that the person that's involved in  
7 this is going to be one of the six people?

8 A No.

9 Q Do you indicate who they are to pick out or anything  
10 of that nature?

11 A No, sir.

12 Q And, again, they were viewing them at different  
13 intervals.

14 A Separate.

15 Q They are viewing a computer screen that represents  
16 what State's Exhibit 6 and 7 show, is that correct?

17 A Yes.

18 Q Once you have the identification do you also have the  
19 means of printing out a black and white copy ---

20 A That's right.

21 Q --- of that printout. I will show you State's Exhibit  
22 8 and ask if you can identify that for the court, please.

23 A This is a gray scale printout of the lineup which was  
24 shown to the witnesses independently, of course, on the  
25 color monitor of the mug shot machine.

1 Q And that was shown -- is there an indication that you  
2 required them or asked to make if they were able to  
3 identify?

4 A Yes, if they are able to identify someone, we ask that  
5 they put their name and initials over that person -- the  
6 photograph of that person -- and also the time.

7 Q Okay, and Mr. McMillan and Miss Jayne were each shown  
8 both the photo lineup of Mr. Forney and the photo lineup  
9 of Mr. Hughes, is that correct?

10 A Yes.

11 Q As reflected on State's Exhibit 8, I believe? That  
12 was Mr. McMillan, is that correct?

13 A Yes.

14 Q And he was able to pick someone out?

15 A Yes.

16 Q And who was that?

17 A Mr. Forney.

18 Q And he designated on there?

19 A Yes, he did.

20 Q So he was shown a picture of Mr. Hughes, but was not  
21 able to pick him out, is that correct?

22 A That's correct.

23 Q I'll show you State's Exhibit 9. See if you can  
24 identify that for the court, please.

25 A This is a gray scale printout or representation of the

1 lineup shown on the computer screen including Mr. Hughes.  
2 This particular lineup was initialed "B.J." meaning Beth  
3 Jayne as a positive identification at 3:45 AM on the 26th  
4 day of September, 1992.

5 Q And, again, she was shown the picture of both Mr.  
6 Forney and the one you have in your hand of Mr. Hughes, is  
7 that correct?

8 A Yes, she was shown both of them.

9 Q She did not identify Mr. Forney from the lineup, is  
10 that correct?

11 A No, sir.

12 Q Just Mr. Hughes?

13 A Yes, sir.

14 Q All right, Mr. Duke, as to both Mr. McMillan and Miss  
15 Jayne, you had indicated I believe 3:25 and 3:45 in the  
16 morning. Did you in any way indicate who they were to  
17 pick out or there was even anyone to pick out in the  
18 picture?

19 A No, sir.

20 Q You were questioning them as far as these pictures as  
21 to the incident that occurred in North Carolina  
22 concerning the armed robbery, is that correct?

23 A That's correct.

24 MR. POPE: Your Honor, just for the purposes of this  
25 hearing I refer to everything State's Exhibit for



1 Identification; we would move and continue to move them  
2 into evidence for the purposes of this hearing.

3 THE COURT: All right.

4 Q We ask you, Mr. Duke, as to Miss Jayne and Mr.  
5 McMillan you were present when they viewed the computer  
6 screen, is that correct?

7 A Yes, sir.

8 Q And they signed over the picture -- you told them to  
9 sign over the picture they indicated, is that correct?

10 A Yes, they pointed out the individual and then I showed  
11 them the gray scale printouts so they would sign over the  
12 photograph that corresponded to the one they picked off  
13 the screen.

14 Q At any time did either one of them in either one of  
15 the photo lineups pick another picture or another  
16 individual as the one that had robbed them or the ones  
17 that had robbed them in Charlotte that night?

18 A No, sir.

19 Q As part of your duties in showing the photo lineups,  
20 the following day did you have an opportunity to show the  
21 same photo lineups to a Crystal Ayers following the  
22 afternoon reference of individuals being seen at the  
23 Galleria Cinema?

24 A Yes, I did.

25 Q I'll show you what has been marked State's Exhibit 10

1 and 11 and ask you if you can identify those.

2 A These again are gray scale printouts of the lineups  
3 shown to the witnesses in this case. Exhibit number 10 is  
4 initialed CA on 9-26-92 at 1:04 PM and has my signature.

5 Q Who did she ---

6 A In this case it would be Crystal Ayers, a witness from  
7 the Galleria Cinema, and she indicated a positive  
8 identification of Mr. Forney.

9 In State's 11, State's Exhibit 11, another lineup gray  
10 scale printout bearing Mr. Hughes' photograph, a positive  
11 identification again by Crystal Ayers on 9-26-92 at 1:00  
12 PM. That also bears my signature. This in regard to  
13 suspicious persons at the Galleria Cinema on the evening  
14 of the 25th.

15 MR. POPE: Your Honor, again for the purposes of this  
16 hearing, we move State's Exhibit 10 and 11 into evidence.

17 THE COURT: Without objection?

18 MR. SCHUSTERMAN: Without objection.

19 THE COURT: It will be received.

20 (State's Exhibit 10 and 11 marked and filed.)

21 Q Mr. Duke, to make clear for the court, for example,  
22 Miss Ayers, you created two totally separate photo lineups  
23 each containing six pictures, is that correct? A total of  
24 twelve pictures?

25 A Yes, six ---

1 Q Well, actually five, plus the defendants?

2 A Right. Two lineups containing six photographs each.  
3 In the first lineup as I'll call it, which may or may not  
4 have been exactly the first, but one containing the  
5 photograph of Mr. Forney and then the other a photograph  
6 of Mr. Hughes.

7 Q And so when you showed these lineups to Beth Ann Jayne  
8 or Sean McMillan or Crystal Ayers, you showed one lineup  
9 of six people and then you showed another, is that  
10 correct?

11 A Right.

12 Q Now as to Miss Crystal Ayers, you showed her, again  
13 you said the first lineup, you showed her a lineup and I  
14 guess by the time the first one would be State's Exhibit  
15 11, you showed her the lineup containing Mr. Hughes and  
16 she indicated Mr. Hughes, is that correct?

17 A Yes.

18 Q And then you showed her State's Exhibit 10, which  
19 would contain Mr. Forney, and she indicated Mr. Forney, is  
20 that correct?

21 A That's correct.

22 Q Did you in any way indicate who she should pick in  
23 regards to the activities at the Galleria Cinema the night  
24 before?

25 A No, sir.

1 Q Did you tell her that the lineup she was about to see  
2 would contain the person or persons at the Galleria the  
3 night before?

4 A No, sir.

5 Q At any time in viewing the lineup -- each of the  
6 lineups separately, did she ever indicate anybody else on  
7 a given lineup?

8 A No, sir.

9 Q Okay. Was she clear on her identification, in other  
10 words, was there any coaxing by you, again, I know you  
11 said you didn't suggest, but any coaxing as to who to pick  
12 or anything of that nature?

13 A No, sir, there was no coaxing by myself or anyone else  
14 none whatever.

15 Q Did you also have an opportunity to provide copies of  
16 the lineups for use by Les Herring in showing to other  
17 witnesses?

18 A Yes, several were printed off at one time as I recall.

19 Q And, again, you had indicated there could be gray  
20 scale and there also could be a smaller picture, is that  
21 correct?

22 A Yes.

23 Q And when you said several were created, copies were  
24 created, is that correct?

25 A That's right, several copies were.

1 Q As far as a photo lineup containing Mr. Hughes, the  
2 actual lineup, there was only one created?

3 A Yes.

4 Q Likewise with Mr. Forney as far as photo lineups go,  
5 only one was created?

6 A Yes.

7 Q Did any of the witnesses that you had contact with,  
8 Sean

9 McMillan, Beth Ann Jayne, Crystal Ayers, that had made  
10 designations on the gray scale, did any of them ever  
11 indicate anybody else other than the ones that are  
12 designated?

13 A No.

14 Q Realizing again that you said these three individuals  
15 viewed the pictures from the computer screen are State's  
16 Exhibit 6 and 7 is this the same condition, again  
17 realizing that we are talking about a computer screen, but  
18 is this the same condition in the order and appearance  
19 that the pictures on the screen had that's State's Exhibit  
20 6 and 7?

21 A Yes.

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

23 Q Mr. Duke, if you would answer any questions the  
24 defense may have.

25 CROSS EXAMINATION

1 BY MR. SCHUSTERMAN

2 Q Mr. Duke, did you have any of a role in the  
3 investigation of the killing of Brent McCants other than  
4 making this lineup?

5 A I was assisting in the supervision of the  
6 investigation, but I had no actual first hand work on the  
7 investigation.

8 Q Do you recall when you first had to produce a lineup?  
9 Was it that evening, the evening of the killing?

10 A It was -- yes, well, the homicide happened sometime  
11 after 10:00 PM and we worked from that point on.

12 Q Do you recall when you created that lineup?

13 A It would have been sometime in the early morning hours  
14 of the 26th as I recall.

15 Q And this is computer generated you indicated?

16 A Yes.

17 Q What the person who is asked to identify a defendant  
18 is looking at I assume they were not looking at this  
19 actual page; they were actually looking at a video  
20 monitor, were they not?

21 A Yes.

22 Q Is it possible for you to produce a lineup of either  
23 more or less than six people?

24 A All we have ever used is six photographs in a lineup.  
25 There may be capabilities in the machine to display more

1       than six photographs on the screen at one time.

2       Q    When you create a lineup, you indicated that you put  
3       in this information, the race, hair color, eye color  
4       possibly, and then within a five year span a birth date it  
5       will give you selections and you have 328 to choose from?

6       A    Yes.

7       Q    The choice of the five that you decide to put on each  
8       one, is that your choice?

9       A    Yes.

10      Q    Or is that done random by computer?

11      A    That's my choice.

12      Q    And what are you looking for when you choose 5 out of  
13      328?   What makes you choose one person over another?

14      A    Folks that have the similar general appearance as a  
15      person that is suspected.

16      Q    Do the pictures just come up on the screen one at a  
17      time and you press yes or no on a key board?   How does it  
18      work in terms of your actually choosing somebody?

19      A    Normally the way I would choose would be the  
20      photographs come up I denote the photograph number and  
21      then when I am ready to compile it when I have five  
22      photographs selected in addition to my one individual that  
23      I know, I go back and put those numbers in and it displays  
24      those six photographs on the screen.

25      Q    Does each photograph come up on the video monitor

1 separately? When you decide -- you have 328 choices and  
2 now you want to begin looking at them to decide which five  
3 you are going to use, five plus the defendant, which five  
4 you are going to choose, do they come up one at a time or  
5 do they come up in groups of eight or ten?

6 A They come up initially in groups of six and then go  
7 from there.

8 Q When they come up, do they come up like this -- I  
9 mean, not who is here, but do they come up three across in  
10 this basic position?

11 A Yes.

12 Q In the same size?

13 A Yes.

14 Q If you decide from the first three and we are talking  
15 hypothetically, if you decide from the first screen that  
16 this gentleman in the lower left is going to be one of the  
17 people you want to keep, what do you do? Do you hit a  
18 button?

19 A There should be a number corresponding to this  
20 photograph. You write the number down and then I type in  
21 that number for each photograph I have selected and then  
22 it will bring six photographs up on the screen.

23 Q And when you finally have six numbers written down or  
24 five numbers written down, I'm sorry, when you have five  
25 numbers written down, at that point do you go to each box



1 and just punch in that number and then it will  
2 automatically bring that photograph up? Is that how it  
3 works?

4 A Generally, it throws them up at random.

5 Q It throws them up at random.

6 A Yes.

7 Q You have no control over the positioning of the  
8 pictures, is that what you are saying?

9 A No, that's not what I am saying. I am sorry. You are  
10 talking in terms of the actual compiling of the six  
11 selected photographs?

12 Q That's correct.

13 A It will change position each time. You can set them  
14 where you want, if you wanted to.

15 Q What I am saying is that the fact that this gentleman  
16 is in the lower right hand corner that's your decision,  
17 you put it there.

18 A Yes. It would be the same as me doing a photographic  
19 spread for a photo lineup of photographs in a binder or  
20 folder. I would set those photographs, you know, slide  
21 them in the folder in position. The only difference is  
22 that this is done on a video screen.

23 Q How did you get the pictures of Mr. Hughes and Mr.  
24 Forney? Were they already in your system?

25 A When I went to compile the photographic lineups, those

1 photographs were in our system, yes.

2 Q You do this somewhat regularly, do you not, video  
3 lineups?

4 A Not very -- not at all, no.

5 Q Well, to your knowledge were Mr. Hughes and Mr.  
6 Forney's picture in the system prior to that evening?

7 A So your question is was their photograph in the system  
8 prior to when this incident happened?

9 Q That's correct.

10 A Not to my knowledge.

11 Q Prior to that?

12 A No, sir.

13 Q Did you take the picture?

14 A No.

15 Q Do you know who did?

16 A No, sir.

17 Q How were the pictures taken? Is it a regular still --  
18 is it a Polaroid ---

19 A It's taken off of a video camera.

20 Q They all have -- all the pictures seem to have a  
21 similar background. Is that because all of the pictures  
22 are taken using one background?

23 A They are all taken in front of a back drop, which is  
24 in the booking area of the Police Department.

25 Q In terms of the clothing that they are wearing, do you

1 look for pictures that have some bearing to the  
2 description of what they were wearing on a particular  
3 incident?

4 A No.

5 Q That has no bearing whatsoever?

6 A No, just physical, just the face.

7 Q Do you recall whose lineup you did first, Mr. Forney's  
8 or Mr. Hughes?

9 A I can't recall at this time.

10 Q Is it just coincidence that Mr. Forney and Mr. Hughes  
11 you placed them both in the upper right hand corner on a  
12 photo lineup, put them in the same position?

13 A Yes.

14 Q Just coincidence?

15 A Yes.

16 Q Am I correct in that when you were preparing a lineup  
17 for Mr. Forney and for Mr. Hughes that no one else was  
18 present -- I'll rephrase that -- no one was asked to  
19 identify.

20 A No witnesses?

21 Q No witnesses.

22 A Were present? You are asking when ---

23 Q That's what I am asking. When you are creating it?

24 A That's right, no witnesses were present.

25 Q But once you brought people into a room to do an

1 identification, once you brought a witness in and asked  
2 them to identify the two lineups, did you do them one  
3 right after another?

4 A Fairly soon, yes, right after each other. They had no  
5 contact with each other after reviewing the screen the  
6 first time.

7 Q No, I'm saying that if you asked me to come in and you  
8 show me two lineups, would you have shown me Mr. Hughes'  
9 lineup and then Mr. Forney's lineup right after that to  
10 see if I could identify both?

11 A To the best of my recollection we would have shown,  
12 for instance, we would have shown Mr. Forney's lineup to  
13 you and another witness and then shown the second lineup  
14 and the other witness, in other words, we would leave it  
15 on the screen.

16 Q Let me show you what has been marked - I assume we are  
17 operating under the yellow stickers -

18 MR. POPE: The yellow.

19 Q -- State's Exhibit 10 and 11. Those are the  
20 identifications that were made by -- is that Crystal  
21 Ayers?

22 A That's right.

23 Q And they were made at one o'clock and 1:04, so I  
24 assume you showed the picture -- who came first on that,  
25 was it Mr. Hughes or Mr. Forney?

1 A Mr. Hughes.

2 Q So you showed her the screen with Mr. Hughes on it at  
3 one o'clock and she identified it and then four minutes  
4 later you put up another screen. Did she stay in the room  
5 for that four minute period?

6 A I would not have allowed her to view while I was  
7 redoing the screen.

8 Q And she comes back in and four minutes later she picks  
9 out Mr. Forney.

10 A Yes.

11 Q And is it your testimony that the fact that they were  
12 both in the upper right hand corner that you didn't feel  
13 to be suggestive?

14 A No, sir.

15 Q Is it a common practice to your knowledge of taking  
16 pictures of defendants wearing their prison blues?

17 A We don't issue prison blues at the City Jail or the  
18 Rock Hill Police Department, so I couldn't answer that  
19 whether it is a common practice or not.

20 Q I'm sorry. To your knowledge -- to a lay person that  
21 looks like Mr. Hughes is wearing a prison top, is that not  
22 correct?

23 A I can't answer for a lay person. To me it looks like  
24 a hospital top.

25 Q Is that -- are you familiar with the shirts that are

1 issues by York County to prisoners?

2 A I've seen them wear the orange shirts.

3 Q You never saw them wear blue?

4 A Not that I recall.

5 Q Could you please describe again to me the difference  
6 between -- is this produced by a printer?

7 A Yes, a color printer.

8 Q Are these merely Xeroxes of this?

9 A No, we have three printers on the machine, one is a  
10 color printer for the 8-1/2 x 11, one's a color printer  
11 for 3 x 5 photograph and one is what we call a gray scale  
12 printer, which prints in black and white such as this.

13 Q What questions do you ask a witness when they come in  
14 other than telling them if they recognize anybody -- is  
15 there any other briefing you give them prior to them  
16 picking somebody out?

17 A Prior to showing them I will tell a witness I am about  
18 to show them a set of six photographs on a computer  
19 screen, I want them to view this set of photographs  
20 carefully, take their time, don't be in a rush, don't be  
21 nervous, there's nothing to be nervous about, but take  
22 their time and look at the screen and see if you recognize  
23 anyone on the screen in relation to whatever the incident  
24 was.

25 Q And in relation to Crystal Ayers what did you tell her

1 in relation to what?

2 A In relation to suspicious person or persons at the  
3 Galleria Cinema the night before.

4 Q And from that she chose Mr. Forney and Mr. Hughes?

5 A Yes.

6 Q Where did you derive your information in terms of the  
7 physical characteristics of Mr. Forney and Mr. Hughes?  
8 Did you have an incident report in front of you or did  
9 someone tell you what they looked like?

10 A I saw their photographs.

11 Q And based on that photograph you estimated their age  
12 by their photograph?

13 A In terms of birth year and so on?

14 Q Right.

15 A I would have gotten that information either from a  
16 booking slip or information gathered from interviewing the  
17 individual that someone else would have conducted.

18 MR. SCHUSTERMAN: The court's indulgence.

19 Q Beth Ann Jayne and Sean McMillan identify Mr. Hughes  
20 and Mr. Forney that evening about 3:25 in the morning. Why  
21 was there a delay until Crystal Ayers could come in at one  
22 o'clock?

23 A As I recall they couldn't locate her. She had gotten  
24 off from work and to the best of my recollection I don't  
25 think she could be located at that time of the morning.

1 Q Are the photographs that you keep in the computer are  
2 they confidential?

3 A Yes.

4 Q The media wouldn't have access to them?

5 A At times the media may have access to arrest  
6 photographs after the folks are charged.

7 Q After they are charged.

8 A Yes.

9 Q So given the notoriety behind this particular case it  
10 is possible that this photograph was obtained by the media  
11 that evening?

12 A No.

13 Q When would the media be able to---

14 A To my knowledge it was -- as I recall, there were no  
15 photographs given out to the media that evening or that  
16 following day. I would say a day or two after the  
17 incident.

18 Q My last question. The practice of taking these  
19 photographs is that usually done at the time of arrest, at  
20 time of booking, or does it come later on?

21 A When the suspect or person is brought into the jail  
22 facility at the Police Department.

23 Q Is it done fairly early on?

24 A Yes.

25 Q I notice when you look at the original of Mr. Hughes'



1 lineup it appears that all five of the other five people  
2 in the lineup are wearing street clothes. Would it be  
3 somewhat unusual for someone to have already changed into  
4 some type of prison or detention center clothing prior to  
5 the taking of the picture?

6 A Yes, because like I say our City Jail where this  
7 photograph was taken does not issue any type of jail  
8 clothes.

9 Q Thank you.

10 MR. SCHUSTERMAN: I have no further questions of this  
11 witness.

12 REDIRECT EXAMINATION

13 BY MR. POPE

14 Q First, Mr. Schusterman had asked you about various  
15 witnesses you had coming back and forth and IDing. Do you  
16 allow the witnesses to communicate? In other words, when  
17 Beth Ann Jayne and Sean McMillan comes in and makes an  
18 identification, do you allow him to go back and tell Beth  
19 Ann Jayne, look, I just picked number three?

20 A No, sir, they would be kept separate.

21 Q Okay. And also on these pictures Mr. Schusterman has  
22 made several references to the jail. It's my  
23 understanding there's no designation of any type in these  
24 exhibits that would indicate that they are mug shots such  
25 as the numbers that are held up or anything of that nature

1 that would indicate that, is that correct?

2 A No.

3 Q Did you, in fact, in any way indicate to any of these  
4 people here's a bunch of mug shots of arrested people I  
5 want you to take a look at?

6 A No, sir, we really don't ever mention where the  
7 photographs are obtained, just we are showing sets of  
8 photographs.

9 Q Thank you, sir.

10 RECROSS EXAMINATION

11 BY MR. SCHUSTERMAN

12 Q Just one brief question specifically as it relates to  
13 Crystal Ayers. If you have the ability to move pictures,  
14 why in a four minute span of time would you not take the  
15 position of the defendant and move it to another position  
16 to eliminate the risk at all that the person would pick  
17 out somebody that that would be the first place they would  
18 look out, because that's what they picked out was the  
19 first person whether it was Mr. Forney or Mr. Hughes? Why  
20 did you put it in the same position four minutes a part?

21 A I guess you would say it didn't enter my mind that  
22 they would make reference to the same position to be the  
23 position to pick.

24 Q Thank you.

25 THE COURT: You may step down.

1                   LESLIE R. HERRING, being duly sworn,  
2 testified as follows:

3 DIRECT EXAMINATION

4 BY MR. POPE

5 Q May it please the court, Mr. Herring, please state  
6 your name and occupation for the court, please.

7 A My name is Leslie R. Herring. I am a detective with  
8 the Rock Hill Police Department.

9 Q And did you have an opportunity -- how long have you  
10 been with the Police Department?

11 A Almost seventeen years.

12 Q Okay. Did you have an opportunity back on September  
13 25th, 26th to assist in the investigation involved Brent  
14 McCant's death?

15 A I did.

16 Q As part of that did you have the opportunity to obtain  
17 access to photo lineups that have been designated State's  
18 Exhibits 6 and 7, again realizing that they would actually  
19 be on a computer screen?

20 A Yes, sir, I did.

21 Q My understanding is that the configuration of the  
22 photo lineups would remain consistent once you receive --  
23 you don't change them around or put the pictures anywhere  
24 different or anything of that nature, is that correct?

25 A That's correct.

1 Q As part of that job did you have the opportunity to  
2 show Tim Sanders I believe Mr. Sanders, in fact, viewed a  
3 smaller printout version off the screen of Mr. Forney's  
4 photo lineup, is that correct?

5 A That is correct, yes, sir.

6 Q I'll show you what has been marked State's Exhibit 12  
7 for identification and ask if you will look and describe  
8 that.

9 A Yes, sir, that is the photo lineup that was shown to  
10 Tim Sanders.

11 Q You did not actually show Mr. Sanders the same  
12 computer screens that the court has heard about as far as  
13 the big pictures. You showed him the smaller version, is  
14 that correct?

15 A That is correct. This is the versions that I showed  
16 him.

17 Q Okay. And subsequent to that you then made a copy of  
18 the I believe you call it the gray scale picture and had  
19 him to identify anybody that he may have picked, is that  
20 correct?

21 A That is correct. That's just a bigger picture of the  
22 smaller one you have in your hand.

23 Q You got him to make a copy of it or is this a copy of  
24 the gray scale?

25 A That is a copy of the gray scale. That's what he

1 signed or initialed, the gray scale itself.

2 Q That is State's Exhibit 13?

3 A That is correct, yes.

4 MR. SCHUSTERMAN: No objection, Your Honor.

5 THE COURT: It will be received.

6 (State's Exhibit 12 and 13 marked and filed.)

7 Q You showed this to Mr. Sanders, I believe, we keep  
8 saying the night, it actually goes into the morning hours  
9 of the 26th, is that correct?

10 A Yes, sir, that is correct.

11 Q And was Mr. Sanders able to pick out anybody in that  
12 lineup?

13 A He did. He picked out Defendant Forney in this  
14 lineup.

15 Q Okay, did you have it designated somehow?

16 A Yes, sir, over the defendant's picture I had him put  
17 his name and put the date and time that he identified the  
18 person.

19 Q Did you suggest anybody or who he should pick out in  
20 the photos?

21 A No, sir, in no way.

22 Q Did you indicate the photos would contain somebody  
23 that he may have encountered -- I believe this was in  
24 relation to people he had seen at the Holiday Inn that  
25 night, is that correct?

1 A That is correct.

2 Q Did you tell him that one of the people at the Holiday  
3 Inn may be in this picture or anything of that nature?

4 A I don't remember telling him that, no, sir.

5 Q Maybe I am not making -- my question is you tell him  
6 here is a set of pictures, one of the guys we are looking  
7 for is in this photo? Did you tell him anything like  
8 that?

9 A I don't remember telling him anything like that. I  
10 indicated this was a lineup a possible suspect, if he  
11 could identify anybody in that photo lineup.

12 Q Just answer my question. Did you suggest who he  
13 should pick out or even if there was anybody to pick out?

14 A No, not at all.

15 Q Okay, the following day did you have an opportunity to  
16 show the computer screen lineup again to Michelle Ayers  
17 the afternoon of the 26th in reference to the incident at  
18 the Galleria Cinema?

19 A That's correct, yes, sir.

20 Q I show you what has been marked State's Exhibit 14 and  
21 ask if you can identify that.

22 A Yes, sir, this is the gray scale printout from the  
23 computer screen that Michelle Ayers initialed and put the  
24 date and time on it which she identified it.

25 MR. POPE: Okay, I believe this is State's 14. Your

1 Honor, I move this in for purposes of this.

2 MR. SCHUSTERMAN: Without objection.

3 THE COURT: It will be received without objection.

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

5 Q So, again, in showing Michelle Ayers the pictures, my  
6 same question, you didn't indicate who she should pick or  
7 anything of that nature, is that correct?

8 A No, sir, I did not.

9 Q As far as you show in the lineup, both Mr. Sanders and  
10 Michelle Ayers picked out Mr. Forney. You don't have any  
11 identification by them of Mr. Hughes, is that correct?

12 A That is correct.

13 Q Okay and did either one of them pick anybody else from  
14 the photo lineup you showed them or did they only pick  
15 one.

16 A No, they only picked one individual out, Defendant  
17 Forney.

18 Q Did you allow them to compare notes with any other  
19 witnesses or any other officers in order to determine who  
20 to pick?

21 A No, sir.

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

23 Answer any questions Mr. Schusterman or Ms. Brice may  
24 have.

25 CROSS EXAMINATION

1 BY MR. SCHUSTERMAN

2 Q Mr. Herring, am I to understand that at no time that  
3 evening or this is the next day that you showed anybody a  
4 lineup with Mr. Hughes' picture on it? You were only  
5 working with Mr. Forney's picture?

6 A I can't remember showing Defendant Hughes' picture in  
7 a lineup to anyone.

8 Q Why did Mr. Duke show these witnesses the pictures on  
9 a computer screen, but you just took a printout and,  
10 obviously, -- did you go out into the field, is that what  
11 you did?

12 A No, actually, I showed Michelle Ayers the computer  
13 screen and she identified from the computer screen that  
14 afternoon of the 26th. Tim Sanders was at the police  
15 station in the early morning hours of the 26th and we had  
16 several detectives and other investigators that were  
17 working in the office and I just took the printout and  
18 showed it to Mr. Sanders in a separate office while the  
19 investigators in the case were working.

20 Q Were either Michelle Ayers or Tim Sanders shown a  
21 photo lineup of Mr. Hughes -- with Mr. Hughes in it?

22 A I don't remember.

23 Q So you can say if they were they were not able to pick  
24 out Mr. Hughes.

25 A That's correct.



1 Q There was no positive identification of Mr. Hughes by  
2 Mr. Sanders or Miss Ayers.

3 A That's correct.

4 Q Does one have to be certified to use that computer  
5 that generates these photo lineups?

6 A Not to my knowledge.

7 Q Do you have to be trained or is it fairly simple as  
8 anybody can use it?

9 A After training anybody can use it after you become  
10 familiar with it.

11 Q Is there a reason why Crystal Ayers at one o'clock and  
12 1:04 were in front of that screen and were making  
13 identifications with Mr. Duke, but twelve minutes later at  
14 1:16 you were in front of that screen? Why did you switch  
15 positions? Do you recall?

16 A I didn't switch positions with anyone. At the time  
17 that I showed the lineup there was nobody in the office  
18 there, so that's when I -- I didn't switch positions with  
19 anyone. I don't understand the question.

20 Q I'm sorry, let me ask. Michelle Ayers when she made a  
21 positive identification of Mr. Forney, did she make it off  
22 the video screen or did you just give her a gray scale?

23 A Off the video.

24 Q How many video screens are there?

25 A One.

1 Q There's only one.

2 A Yes.

3 Q So you had no idea that approximately ten minutes  
4 before someone else was in front of the video screen?

5 A No, sir, I have no knowledge of that.

6 Q If a witness doesn't make a positive identification,  
7 is that not indicated somewhere? Would you not have  
8 another one of those gray slide sheets that would indicate  
9 that at 1:17 Michelle Ayers was unable to identify Mr.  
10 Hughes or nothing is recorded at that point?

11 A At that point nothing is recorded by me.

12 Q Did you take any notes on that on what you did that  
13 evening?

14 A Not that I recall.

15 Q Thank you.

16 MR. SCHUSTERMAN: I have no further questions.

17 MR. POPE: Your Honor, as to these issues I request  
18 this witness be excused.

19 THE COURT: Appreciate the time. You may be excused.

20 MR. POPE: Your Honor, the only reason I keep saying  
21 "as to these issues" my understanding of the new Rules is  
22 people subject to recall has changed a little bit; it's  
23 always been in the court's discretion, but they have  
24 refined it a little bit, so as far as I know there is no  
25 issue to come up, but the only reason I keep saying that

TIMOTHY SANDERS                      DIRECT

1        is if something came up in the hearing, we could bring  
2        them back if need be.

3                THE COURT: All right.

4                MR. POPE: Your Honor, one of my citizen witnesses I  
5        wanted to step out and check. It would be Ms. Ayers, Mr.  
6        Sanders, and that whole line of witnesses. I would like to  
7        check to see if they are present yet. If I could have just  
8        a brief recess? If not, we will be prepared to go forward  
9        with the other witnesses.

10              THE COURT: Well, you want to take about five minutes?

11              MR. POPE: Yes, sir, that will be fine.

12              THE COURT: All right, let's take about a five minute  
13        break.

14              (Recess.)

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

16              THE COURT: Yes, sir.

17              MR. POPE: The State will call Tim Sanders to the  
18        stand, please.

19              THE COURT: Come around and be sworn, please, sir.

20                      TIMOTHY SANDERS, being duly sworn,  
21        testified as follows:

22        DIRECT EXAMINATION

23        BY MR. POPE:

24        Q    Mr. Sanders, if you would, state your name, and  
25        remember to speak up, state your name for the court,

1 please.

2 A Timothy Sanders.

3 Q Mr. Sanders, how old are you?

4 A Twenty-eight.

5 Q And you live here in Rock Hill, York County, is that  
6 right?

7 A Yes, sir.

8 Q And, Mr. Sanders, you work out at the Galleria Mall?

9 A Yes, sir.

10 Q Mr. Sanders, I want to take you back to September 25th  
11 of 1992. Do you recall that day?

12 A Yes, sir.

13 Q Did you have an opportunity back then to be in the  
14 parking lot at Celebrations out at the Holiday Inn?

15 A Yes, sir.

16 Q Okay and that evening you were out there visiting a  
17 friend who works there, is that correct?

18 A That's right.

19 Q Mr. Sanders, back at that time were you also a  
20 volunteer fireman?

21 A Yes, I was.

22 Q And as a result of that did you have radio equipment  
23 or some type of scanner in your vehicle?

24 A Yes, sir.

25 Q Could you relate to the court what that was, what you

1 had, what it allowed you to hear?

2 A It was a fire scanner and you could hear various  
3 emergency calls through the radio itself.

4 Q Okay and when you say various calls, would you tell  
5 the court what you mean, what kind of calls? I mean, is  
6 it just fire calls or can you hear other agencies too?

7 A Yes, emergency officials.

8 Q Does that include law enforcement and ambulance and  
9 everything?

10 A Absolutely.

11 Q And were you in a habit to listening to that scanner  
12 in your vehicle?

13 A Yes, sir.

14 Q Again, I'll take you back to the evening of the 25th  
15 when you were at Celebrations. Did you have an  
16 opportunity to be sitting in your vehicle listening to  
17 that scanner?

18 A That's correct; that was one of the frequencies I was  
19 listening to.

20 Q I'm sorry; when you said that's one of the  
21 frequencies, are you referring to the Sheriff's  
22 Department? Is that correct?

23 A Yes, sir.

24 Q And could you relate to the court what you heard over  
25 your scanner at that time that caught your attention?

1 Could you tell the judge?

2 A I'm sorry?

3 Q If you could tell the judge that night when you were  
4 listening to your scanner what you heard that drew your  
5 attention as far as this particular case.

6 A At that time I heard a York County Sheriff's Deputy.

7 Q Okay and who was that deputy?

8 A Brent McCants.

9 Q And you had had the opportunity to meet Mr. McCants in  
10 the past, is that correct?

11 A That's correct.

12 Q You knew him to see him, is that correct?

13 A Yes, sir.

14 Q You knew his voice?

15 A Absolutely.

16 Q Tell the judge what Mr. McCants was doing that you  
17 heard over the radio.

18 A First of all he was on Dave Lyle and he made a traffic  
19 stop.

20 Q All right and so you were listening to him in regards  
21 to that traffic stop, is that correct?

22 A Yes, sir, and after he stopped the vehicle there was  
23 information given out.

24 Q Okay, if you could, tell the judge what information  
25 was given out.

1 A A tag number on the vehicle.

2 Q And, again, at this time you were in the parking lot  
3 at Celebrations at the Holiday Inn, is that correct?

4 A Yes, sir, on North Cherry Road.

5 Q I'll show you State's Exhibit 15 and ask if you could  
6 orient yourself with the Holiday Inn. Indicate to the  
7 court where you were at as far as the Holiday Inn. If  
8 this is the Holiday Inn and here is Cherry Road down here.  
9 I apologize, if I could reference another exhibit, I'm  
10 sorry, State's Exhibit 17. Orient yourself with this being  
11 the Mall, the interstate, and up here - could you tell the  
12 court where you were at in relationship to this diagram.  
13 You can step down and speak up so the court reporter can  
14 hear you.

15 A Here is the Holiday Inn. I was away from the business  
16 itself, but you could see the nightclub and the Holiday  
17 Inn. I still had, you know, visibility, in that area.

18 Q And you were just sitting there and you heard a call  
19 about a stop on Dave Lyle Boulevard, is that correct?

20 A That's correct.

21 Q You may have a seat. Okay and once you heard Mr.  
22 McCants make the stop and give the tag number what, if  
23 anything, did you hear unusual then over the radio, if you  
24 would tell the court.

25 A There was a female voice also came over the airway.

1 Q And do you recall the gist of what she said?

2 A Mayday, mayday, officer down, been shot.

3 Q And did she indicate where it was and what officer?

4 A Not the officer, but I knew exactly who it was.

5 Q I mean she indicated -- I'm sorry, not the officer,  
6 but the location. She communicated Dave Lyle Boulevard?

7 A Yes, sir.

8 Q And once you heard that information what did you do  
9 then?

10 A I acted, you know, expeditiously and just went there  
11 as close as I could.

12 Q Again, I know, Mr. Sanders, I know you realize that  
13 Judge Hayes has heard this before, but for this record you  
14 need to go through everything again. I know that you are  
15 aware -- he is hearing it all new, just like we are  
16 hearing it new for the first time again. So when you say  
17 you acted expeditiously when you heard a call from Dave  
18 Lyle, what did you do as far as staying or leaving the  
19 Holiday Inn?

20 A I wanted to help particularly.

21 Q And with you wanting to help, what did you do?

22 A I went down on Cel-River onto Springdale Road.

23 Q Could you indicate and we don't need for you to step  
24 down, if you could indicate - I'm sorry, you will probably  
25 have to, if you could step down and indicate for the judge



1 roughly the route that you took in leaving the Holiday  
2 Inn.

3 A I was parked away from the business. I went out  
4 through the Convenience Store down to Cel-River Road.  
5 Actually, it's the back way without taking the interstate.  
6 I wanted to go on the back roads, so that's exactly what I  
7 did.

8 Q Of course, it goes off the map, but you are heading  
9 down the Cel-River, Red River Road?

10 A Red River Road onto Springdale.

11 Q And did you come out up at Dave Lyle?

12 A Yes, sir.

13 Q You can have a seat, Mr. Sanders. Once you came out  
14 at Dave Lyle here where Mr. McCants' car, what did you  
15 see? If you can tell the judge what you saw as you were  
16 stopped at the light there at the Galleria Mall.

17 A Numerous emergency officials with blue and red lights.

18 Q And that would have been where Mr. McCants' car was?

19 A Yes.

20 Q So at that point you had said you left the parking lot  
21 to see if you could go there and help, is that correct?

22 A Yes, sir.

23 Q At that point upon seeing all of those cars what did  
24 you do then?

25 A As I was meditating I wanted to go down there.

1 Q Okay and you say you wanted to go down to the scene?

2 A Yes.

3 Q Did you choose to go all the way to the car?

4 A No.

5 Q Tell the court what you did as opposed to going down  
6 to where Mr. McCants' car and all the emergency cars were.

7 A I was at the traffic light and, again, I wanted to go  
8 down there and I decided not to and I went up the  
9 interstate.

10 Q So you would have gone back up the interstate back  
11 towards the Holiday Inn?

12 A Yes, sir.

13 Q And tell the court and you say you decided not to,  
14 when you went up the interstate, what was your purpose?  
15 Why were you going up the interstate?

16 A Because of the amount of traffic at the scene, you  
17 know, it would have been beneficial, so I wanted to go  
18 back up the interstate.

19 Q And you say you wanted to go -- okay, you wanted to  
20 help and you are not going to the scene to help ---

21 A That's right.

22 Q --- so you went back up the interstate.

23 A Yes.

24 Q You said you wanted to help. What were you doing to  
25 help by going back up the interstate? What were you going

1 to do?

2 A Searching.

3 Q What were you searching for?

4 A The vehicle.

5 Q Did you have a description of that vehicle?

6 A Yes, sir.

7 Q Did you have the tag for that vehicle?

8 A Absolutely.

9 Q Do you recall what you were looking for?

10 A A gray Buick with a New York tag.

11 Q Do you recall the tag number?

12 A EMF 313.

13 Q And so after you went up the interstate -- and you got  
14 that information from the scanner also, is that correct?

15 A Yes, sir.

16 Q After you went back up the interstate, where did you  
17 get off?

18 A At the Fort Mill exit, which is Exit 82B.

19 Q And what did you get off or, what did you decide to do  
20 as far as searching?

21 A Search all the hotels in that area and that was one of  
22 the ones I began first.

23 Q Did anybody in law enforcement say, Tim, go search for  
24 that vehicle?

25 A No, sir.

1 Q Okay, you choose to do that?

2 A Absolutely.

3 Q Okay and what was your purpose? Why were you searching  
4 the hotels? What were you looking for?

5 A The suspect vehicle.

6 Q And that was the same tag and car that you just  
7 related?

8 A Yes.

9 Q Okay, what was the first motel that you went to?

10 A The Holiday Inn.

11 Q Is that the same Holiday Inn you told the court a  
12 minute ago that you had been sitting in the parking lot?

13 A Yes, sir.

14 Q After you pulled off the ramp going into the parking  
15 lot, when you were looking for the vehicle, tell the court  
16 what was your degree of attention? What were you doing as  
17 far as searching or not searching? Could you relate that  
18 to the court?

19 A I'm sorry?

20 Q Do I need to explain?

21 A Yes, sir.

22 Q Okay, when you turned in off the interstate and you  
23 are going in to the Holiday in, what are you doing there,  
24 you are looking for that vehicle, is that correct?

25 A And perhaps the individuals.

1 Q Could you tell the judge what happened when you turned  
2 into the Holiday Inn what, if anything, you saw when you  
3 first turned into the parking lot?

4 A Yes, sir.

5 Q If you could, tell the judge what you saw.

6 A The moment that I turned into the parking lot I saw  
7 two black males.

8 Q Okay, do you recall any description of those black  
9 males?

10 A Yes, sir.

11 Q Could you relate that to the court, please?

12 A I described the two black males that night wearing  
13 dark dark clothing, ball cap, perhaps a New York style,  
14 that's what I stated, taking big steps.

15 Q When you say big steps, what do you mean, were they  
16 running, walking? What does that mean?

17 A Just taking big steps more than a person should.

18 Q When you turned into the parking lot, do you recall  
19 what position your headlights were on?

20 A I put my lights on high beam because of the search.

21 Q Okay, because of the search and when you say the  
22 search, you are talking about you searching?

23 A Yes.

24 Q As part of the search what was your attention to your  
25 surroundings? Were you looking sharp or were you just

1 casually looking or could you relate to the court what  
2 your attention to your surroundings were?

3 A I was looking very sharply at the area that I was in.

4 Q And could you relate to the court when you say you saw  
5 the two individuals tell the court, take your time, and  
6 describe to the court what the parking lot was like when  
7 you turned in and where you first saw them. And I'll show  
8 you this, if this will assist you, State's Exhibit 15. I'd  
9 ask if you want to step down and if you would indicate to  
10 the court where you were at. You can orient yourself to  
11 this, be sure the judge can see, where you were at when  
12 you first saw the two individuals when you turned in off  
13 of Cherry Road.

14 A Right in this area right here.

15 THE COURT: You will have to speak up a little bit.

16 A At the intersection going out of the parking lot.

17 Q And if you could tell the judge when your vehicle was  
18 at this intersection, which way were your lights pointed?

19 A My light were pointed straight at the shrubbery and as  
20 I was coming off of Cherry Road, I turned in and there's a  
21 group of shrubbery at the corner of a parking lot where  
22 there's also a utility light.

23 Q There are lights in that parking lot?

24 A Yes, sir.

25 Q And you said your high lights were on too, is that

1 correct?

2 A I had my high beam lights on as I was turning in right  
3 here going into the parking lot of the night club.

4 Q And if you could indicate and be sure the judge can  
5 see if you could indicate where the two individuals you  
6 saw were.

7 A Right here at the corner there was a grass area right  
8 - this is a grass area and that's where I saw the  
9 individuals where the shrubbery was located.

10 Q And which way were they headed?

11 A To this Convenience Store right here.

12 Q And while you are down, if you could show the judge  
13 once you saw them in your head lights where did you go  
14 driving wise? What did you do?

15 A I continued on entering into the parking lot as I was  
16 turning in right here I begin to slow my vehicle down and  
17 scanned each parking car space at the business.

18 Q Were you still looking for the car you described to  
19 the judge?

20 A Yes, also listening to the traffic over the radio.

21 Q Was there a lot of traffic at that time?

22 A Yes, there was.

23 Q Would you show the judge where you went as far as in  
24 the parking lot looking for the vehicle?

25 A I took the first parking row.

1 Q Okay, where you just indicated?

2 A Yes, sir.

3 Q You can have a seat, Mr. Sanders. Mr. Sanders, once  
4 you went down that first row and started down the first  
5 row of cars looking for the vehicle, did you have an  
6 opportunity to see the individuals again?

7 A Yes.

8 Q And could you tell the court where you saw them at  
9 that time?

10 A They was headed toward the Convenience Store and I  
11 looked back and said in my mind there's two black males  
12 and I didn't think nothing about it, but I continued to  
13 scan the parking lot as I was continuously doing.

14 Q You say you saw them when you first came in and you  
15 were searching at that time and you looked back and saw  
16 them as you are pulling on down looking for tag numbers?

17 A Yes.

18 Q Is that correct?

19 A Yes, sir.

20 Q Mr. Sanders, did you have the opportunity to locate  
21 the vehicle the one you referred to as the suspect vehicle  
22 EMF 313? Did you locate that?

23 A Yes, sir.

24 Q And could you relate to the court where you located  
25 that?



1 A That first parking space at the Celebrations right  
2 beside the Holiday Inn.

3 Q When you say first parking space, are you talking  
4 about the row?

5 A The first row as I entered the parking lot.

6 MR. POPE: Your Honor, again, we are going toward  
7 photo ID identification of the defendant. Of course, Mr.  
8 Sanders just identified Mr. Forney as far as the photo  
9 line-up as Mr. Herring testified. Also he identified the  
10 vehicle. Again, we may have a position on their standing  
11 to object to the vehicle, but while we have him present,  
12 I'll go ahead and deal with the photos as far as the  
13 vehicle.

14 (State's Exhibits 18, 19, 20 and 21 marked).

15 Q Mr. Sanders, as you went down that row ultimately did  
16 you locate the vehicle, the EMF 313?

17 A Yes, sir.

18 Q Mr. Sanders, I'll show you State's Exhibit 18, 19, 20  
19 and 21 and with exception of the police tape that is now  
20 around it I would ask you is this the condition of the  
21 vehicle as you observed it that night in the parking lot?

22 A Yes, sir.

23 Q Mr. Sanders, once you identified that vehicle what, if  
24 anything, did you do as far as getting the tag number or  
25 notifying law enforcement or anything of that nature?

1 A The minute I saw the vehicle I wanted to make, you  
2 know, positively sure and so I stopped and got out and,  
3 you know, just looked.

4 Q You say you wanted to make sure it was the same  
5 vehicle that matched the description and had the tag?

6 A Yes, sir.

7 Q Okay, so you got out and physically looked at it?

8 A Looked at it and wrote down the tag number.

9 Q And then did you have an opportunity to go back up to  
10 the store and make the phone call to 911?

11 A Yes, sir.

12 Q And at that time I believe Officer Ketchel came out,  
13 one of the officers came, and met you there, is that  
14 correct?

15 A Yes, sir.

16 Q Did you indicate to them where the car was?

17 A Absolutely.

18 Q Mr. Sanders, at the time you were pulling into the  
19 parking lot when you saw the black males, you said you  
20 were searching, was your vehicle moving fast or slow?

21 A Slow.

22 Q Okay, I think you have already said you had your  
23 bright lights on. The parking lot itself, you talked about  
24 there were street lights, what was the lighting in the  
25 parking lot?

1 A It was a well lit area.

2 Q Did you have -- you said that you saw the men taking  
3 the big steps when you pulled in.

4 A Yes.

5 Q And then you would have made a right and then a left  
6 turn to go down into that parking lot, is that correct?

7 A Yes, sir, a right and then a left going down to the  
8 parking lot.

9 Q And when you made the left, that's when you saw them  
10 back over to your left side out toward the store, is that  
11 correct?

12 A Absolutely, yes.

13 Q Did you have the opportunity to focus on these  
14 individuals when they were in the bright lights or when  
15 you were looking over your shoulder?

16 A Between that first parking road, middle ways, I took  
17 another look to see where they were headed for safety.

18 Q Okay, Mr. Sanders, after law enforcement showed up and  
19 you indicated to them where the car was and I think  
20 Officer Ketchel and Officer Maggart you showed them where  
21 the car was, you had an opportunity to go down and talk  
22 with Mr. Herring downtown, is that correct?

23 A Yes, sir.

24 Q This would have been earlier in the next morning  
25 hours?

1 A Yes, sir.

2 (State's Exhibits 12 and 13 marked.)

3 Q I believe you had an opportunity to look at a picture  
4 photo line-up of Mr. Forney, which is State's Exhibit 12  
5 and a copy of that that you signed as State's Exhibit 13 I  
6 would ask if you would look at those and see if you  
7 recognize those.

8 A Yes, sir.

9 Q State's Exhibit 12, which is the small picture, is  
10 that the one Mr. Herring showed you?

11 A Yes, sir.

12 Q State's Exhibit 13 is that your signature?

13 A Absolutely.

14 Q And were you asked to put your signature by anybody  
15 that you identified in the picture?

16 A No, sir.

17 Q I'm sorry, on the identification of Mr. Forney, were  
18 you asked -- they asked you to sign it?

19 A Yes, absolutely.

20 Q Did anybody tell you from law enforcement who to pick  
21 out of the photographs?

22 A No, sir.

23 Q Did they suggest who you ought to pick out for those  
24 photographs?

25 A No, sir.

1 Q Did you pick out Mr. Forney based on seeing him that  
2 night at the Holiday Inn?

3 A Yes, sir.

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

5 Q Mr. Sanders, please answer any questions the defense  
6 counsel may have.

7 CROSS EXAMINATION

8 BY MS. BRICE

9 Q Mr. Sanders, my name is Chris Brice. I am one of the  
10 attorneys representing Mr. Schusterman -- excuse me, I am  
11 one of the attorneys along with Mr. Schusterman who is  
12 representing Mr. Hughes. Your testimony was that you were  
13 at the Holiday Inn parking lot, is that correct, about  
14 eleven o'clock when you first heard the call come in?

15 A Yes, ma'am.

16 Q What were you doing at the Holiday Inn?

17 A I was just sitting in the vehicle.

18 Q Was anyone with you?

19 A No, ma'am.

20 Q Were you on duty -- what was the reason that you were  
21 at the Holiday Inn parking lot?

22 A I was just out hanging out.

23 Q And you weren't there with anybody?

24 A There's a friend that works there, he's a security  
25 officer.

1 Q How long had you been at the Holiday Inn?

2 A Not that long.

3 Q Approximately how long?

4 A I don't recall.

5 Q Was it ten minutes, five minutes, a half of an hour,  
6 two hours?

7 A I don't recall.

8 THE COURT: You will have to raise your voice up a  
9 little more, Mr. Sanders.

10 A It was just brief.

11 Q And were you there to see this friend who is an  
12 employee at the Holiday Inn?

13 A No, ma'am, I stop there occasionally and knowing that  
14 he was doing his job I didn't bother him or anything that  
15 night.

16 Q So you were just driving around and decided to stop at  
17 the Holiday Inn and sit in your car for no apparent  
18 reason?

19 A Yes, ma'am.

20 Q Do you do that often?

21 A Yes, ma'am.

22 Q You just drive around places in York County and sit in  
23 the parking lot?

24 A Yes, ma'am.

25 Q And you don't recall how long you were sitting in the

1 parking lot of the Holiday Inn?

2 A A short period.

3 Q Do you recall where else you were that evening?

4 A On North Cherry Road.

5 Q What were you doing on North Cherry Road?

6 A Cruising.

7 Q Cruising? Was anybody with you?

8 A No, ma'am.

9 Q Was the Holiday Day Inn stop the only stop that you  
10 made that evening?

11 A I was stopped at other places on Cherry Road.

12 Q Other motels?

13 A That's the only one.

14 Q And do I understand you correctly that when you say  
15 the reason you stopped at this Holiday Inn was because a  
16 friend of yours worked there?

17 A Yes.

18 Q But you never say him?

19 A That night he was working.

20 Q So you did see him.

21 A I didn't speak with him.

22 Q Did you see him?

23 A Yes, I knew he was working because he was patrolling  
24 the area.

25 Q So you were sitting in your car, you saw him - did you

1 wave at him?

2 A Oh, no.

3 Q Okay. And there was no purpose of your being at the  
4 Holiday Inn other than you were just cruising around.

5 A That's correct.

6 Q And your testimony was that you had a scanner. Was it  
7 a scanner that you had on the side of your side or one  
8 that you had in your car? Describe the type of scanner  
9 that you had.

10 A It's a fire scanner.

11 Q How big is it? Do you carry it around? Could you  
12 describe it for me?

13 A This one mounts in the vehicle.

14 Q It mounts in your vehicle.

15 A Yes, ma'am.

16 Q Where in your vehicle is it mounted?

17 A Underneath the dash.

18 Q And is there a certain frequency that you have to have  
19 it turned to?

20 A Yes, you have to program it.

21 Q And what is the program on this frequency?

22 A 39-10.

23 Q And off this frequency what is it you can listen to?  
24 Is it everything, all the police? Tell me what you can  
25 listen to on that frequency.



1 A 39-10 would be one of the fire channels that I  
2 normally would monitor as a volunteer fire fighter.

3 Q Does it also pick up other than just fire, I guess,  
4 calls or fire? Does it also pick up other transmissions?

5 A Yes.

6 Q And what other transmissions does it pick up?

7 A Emergency preparedness.

8 Q Anything else?

9 A Rescue.

10 Q Anything else?

11 A That's it.

12 Q How was it that you picked up Brent McCants' call on  
13 this frequency if it only picks up emergency frequencies  
14 and fire?

15 A I also had it programmed for other frequencies as  
16 well.

17 Q How many frequencies were you listening to  
18 simultaneously?

19 A I would say one, there's a repeater frequency that I  
20 had used that night.

21 Q On the frequency I think your testimony was on this  
22 particular frequency only emergency transmissions and fire  
23 transmissions, EMS transmissions came in. My question to  
24 you is how did Brent McCants' transmission come in on that  
25 frequency?

1 A There was another frequency also I had.

2 Q So you are going to change your testimony now saying  
3 that you were also listening to other frequencies?

4 Explain it to me, Mr. Sanders.

5 A (No response.)

6 Q Please explain to me how you were listening to the  
7 frequency that Mr. McCants was talking on.

8 A I stated I also had it on other frequencies.

9 Q How many frequencies do you have on your scanner?

10 A I would say that you at least can have more than one  
11 or two frequencies and that night that was one of the  
12 frequencies I was monitoring, you know, for the volunteer  
13 fire department, fire is 39-10.

14 Q Let me go back to my original question of you then. My  
15 question to you was what frequency were you listening to  
16 that evening?

17 A Is the number what you are asking?

18 Q No, sir. What frequency were you listening to that  
19 evening on your scanner?

20 A Police.

21 Q How many frequencies were you listening to on your  
22 scanner that evening, Mr. Sanders?

23 A It was at least two.

24 Q So, in fact, you are changing your testimony now to  
25 say that you were listening to the one with the fire and

1 the emergency and you were also listening to the one about  
2 the police, is that correct?

3 A No, ma'am.

4 Q Explain it to me, Mr. Sanders, so I can understand.

5 A I stated there were at least two. On this scanner that  
6 I have you can also program it for one and there's a  
7 repeater also involved to allow other transmissions to  
8 come just based on programming the right frequency. So  
9 that would still leave me with two to monitor although  
10 there may be some other activity that comes over that  
11 particular frequency because it's a repeat.

12 Q And so it's my understanding you were kind of  
13 switching -- all I am trying to understand is were you  
14 switching back from band to band or were they all coming  
15 from the same channel?

16 A Except one and that's 39-10. You would be able to hear  
17 just the emergency frequency that I have is 39-10. That's  
18 the one that I normally would monitor. Any other frequency  
19 has to be programmed, you know. I am testifying that I had  
20 two that I was interested in listening to that night.

21 Q Okay and on your scanner what you are telling me is  
22 that you have the, I think, the 31-10, you are referring  
23 to as far as the fire, and then you have another one  
24 programmed ---

25 A 39-10.

1 Q 39-10. And then you have another one that you can pick  
2 up police that you have programmed, is that correct?

3 A Yes, if it is programmed, correct.

4 Q That evening were you switching back and forth, back  
5 and forth between the police and the fire to listen to  
6 both bands just to see what was going on? You tell me what  
7 you were doing.

8 A This scanner you can just turn it on and the channel  
9 that you have programmed it automatically picks up the  
10 communications.

11 Q So you can listen to everything off of one channel,  
12 everything is coming in at the same time and you can sit  
13 there and you can listen to everything coming in at one  
14 time?

15 A Yes, ma'am.

16 Q Okay. And that evening as you were sitting at the  
17 Holiday Inn, were you listening to the scanner at other  
18 places other than just the Holiday Inn? You said you had  
19 made several other stops? Did you have it on the whole  
20 time that evening?

21 A Yes, ma'am.

22 Q And when you were in the Holiday Inn parking lot, you  
23 heard a call, and it came through and exactly what did it  
24 say?

25 A I heard a York County Sheriff's Deputy.

1 Q Uh-huh and what did he say?

2 A On that frequency.

3 Q Yes, sir. And what did he say?

4 A That he had a - there was a traffic stop and he gave  
5 that information out and I picked up what he had stated.

6 Q And is it common practice for you to usually write  
7 down these numbers or pick up things like you did on this  
8 particular evening?

9 A I guess as a volunteer fire fighter you want to  
10 memorize things as much as possible without having to be  
11 writing; of course, that is sometimes hard to do.

12 Q Right. Did you write it down on this occasion or did  
13 you do it by memory?

14 A When I first heard it, it was by memory.

15 Q And let me go back, your testimony is you heard an  
16 officer come over the frequency basically making a traffic  
17 stop.

18 A Yes, ma'am.

19 Q And then what happened?

20 A He gave that information out based on the car that he  
21 had stopped and gave a tag number.

22 Q And then what did you do?

23 A I heard it.

24 Q And what did you do then? Anything?

25 A I just sat waiting and waiting.

1 Q And then what did you hear or what did you do?

2 A As I was waiting, I was waiting for a response.

3 Q What do you mean a response?

4 A That he was okay.

5 Q And what did you hear?

6 A Later on there was a female voice that came over the  
7 airway.

8 Q And how long of a period of time transpired between  
9 the time that you received the actual -- between the time  
10 you heard the actual stop and the time then that you heard  
11 the woman's voice?

12 A I want to be honest; I would say a minute and a half,  
13 perhaps two minutes.

14 Q When you heard the woman's voice, then what did you  
15 do?

16 A I took off in my vehicle.

17 Q And I think you testified to the solicitor, if I  
18 recall correctly, okay, can you show me where Dave Lyle  
19 Boulevard is on this map?

20 A Yes, ma'am, right here.

21 Q Okay and I believe this right here is what is  
22 designated as the Holiday Inn. Can you tell me where you  
23 were parked in that parking lot?

24 A Away from the business, this would be the business,  
25 right beside the Holiday Inn would be Celebrations, the

1 night club, ---

2 Q Okay.

3 A --- and this indicates there's a parking space and I  
4 was nearby the grass area.

5 Q Okay and I think your previous testimony was - which  
6 way did you leave and come down this road here or did you  
7 come around and go around the little Convenience Store?  
8 Which way did you leave?

9 A The Convenience Store, between the Furniture World and  
10 the Chevron Station.

11 Q Which way did you leave? Did you come across this way  
12 behind the Convenience Store and the Furniture World or  
13 did you come around back on Cherry Road and around?

14 A I went between it.

15 Q Between it?

16 A Yes, ma'am.

17 Q And then you go on Cel-river this way, is that  
18 correct?

19 A Yes, ma'am.

20 Q Okay, your testimony was that you came down Cel-river  
21 Road this way, is that correct?

22 A Yes, ma'am.

23 Q Is that a faster way to get there?

24 A No, ma'am.

25 Q It's not?

1 A No, ma'am.

2 Q How come you went that way?

3 A I wanted to first start out on the back roads.

4 Q Why?

5 A When I was leaving the parking lot, there was  
6 numerous, you know, communications on that other frequency  
7 that I just mentioned.

8 Q What communications?

9 A Through the York County Sheriff's Department  
10 frequency.

11 Q What were they saying?

12 A First of all, the female knowing that --

13 Q I'm sorry, Mr. Sanders, you can take your seat.

14 A (Witness complied.)

15 Q You testified that when you were leaving you were  
16 still listening to the radio?

17 A Yes, ma'am.

18 Q And you heard other transmissions coming in, is that  
19 correct?

20 A Yes, ma'am, the first one was the female.

21 Q And what was she saying?

22 A She stated Mayday, Mayday, officer shot.

23 Q And then who did you hear next?

24 A Other deputies.

25 Q And what were they saying?



1 A There were saying they copy, they copy, that  
2 information and headed towards Dave Lyle.

3 Q Did you recall hearing them say anything else?

4 A Yes.

5 Q What?

6 A The vehicle description as I was traveling on  
7 Cel-river/ Red River Road.

8 Q Did you know what the vehicle's description was prior  
9 to that?

10 A Yes.

11 Q And how did you know the vehicle's description prior  
12 to what the officers were radioing back and forth?

13 A Because they was traveling as fast as they could get  
14 to the scene and quickly gave that information out and as  
15 I was traveling I was still receiving that information.

16 Q Mr. Sanders, you might not have understood my  
17 question. My question was when you were leaving the  
18 Holiday Inn, did you know what type of vehicle you were  
19 looking for?

20 A Yes.

21 Q And how did you come by that knowledge?

22 A Through the radio, the scanner.

23 Q And whose transmission did you gain that knowledge  
24 from?

25 A The deputies.

1 Q And what were they saying?

2 A They just gave the information out on the vehicle, the  
3 tag and the description of it.

4 Q What other information did they give out over the  
5 scanner other than a description of the vehicle? Did they  
6 give any description as to suspects?

7 A They were black.

8 Q Did they say how many?

9 A I don't recall.

10 Q Now this was while you first received the transmission  
11 while you were sitting in the Holiday Inn parking lot and  
12 you were making your way out, is that correct?

13 A Yes, ma'am.

14 Q And while you were making your way out of the Holiday  
15 Inn and you were coming around, this was when you heard  
16 the information about the car and the suspects being two  
17 black males, is that correct?

18 A Yes, ma'am.

19 Q So when you left and you were coming around -- Mr.  
20 Sanders, when you left here and you were coming around the  
21 Cel-river Road, you already knew the make of the vehicle,  
22 is that correct, and that there were two black male  
23 suspects when you were heading on your way down to Dave  
24 Lyle Boulevard, is that correct? Is that right?

25 A No, ma'am. I heard it on Cel-river Road. I didn't take

1 Dave Lyle until I got off Cel-river on to Red River and  
2 then Springdale and then Springdale onto Dave Lyle.

3 Q My question to you, sir, when you left the Holiday Inn  
4 parking lot, you knew that it was a Buick Century and you  
5 knew that it was two black males that you need to be  
6 looking for, is that correct?

7 A I mainly went by the tag number.

8 Q My question to you did you know about the make of the  
9 vehicle and did you know that the suspects were two black  
10 males?

11 A Yes, the vehicle was given out over the radio.

12 Q So when you were heading down to Dave Lyle to see if  
13 they needed any assistance, you knew that the suspects  
14 were two black males and that the vehicle was a Buick  
15 Century, is that correct?

16 A Based on the information that was given out over the  
17 radio.

18 Q How long did it take you to reach Dave Lyle Boulevard  
19 from the Holiday Inn?

20 A More than ten minutes because it was a long stretch.

21 Q And in route to Dave Lyle did you encounter any other  
22 police officers, sirens?

23 A Yes, ma'am.

24 Q How many, can you recall?

25 A I at least passed two or they passed me.

1 Q I was going to say, you passed a police officer?  
2 Okay. So you came down and from which area, you can't tell  
3 from this map, I don't believe. Which road did you come  
4 into from where Dave Lyle was?

5 A Springdale Extension.

6 Q Can you tell from looking at this Mr. Sanders, I think  
7 this is Dave Lyle Boulevard right here, is it here where  
8 you came in across from the Galleria, is that right?

9 A It was the old entrance before the new entrance that's  
10 there now.

11 Q Was it up in this area or was it down in this area?

12 A It was up in this area.

13 Q So it was in the area ---

14 A It was up near the Mall.

15 Q So it was up near the Mall.

16 A Yes, ma'am.

17 Q Okay. And when you came out, is the traffic light that  
18 you referred to in your direct testimony, which traffic  
19 light was that?

20 A It was the one beside Hardee's.

21 Q Was the Hardee's there then?

22 A I don't recall if Hardee's was there then.

23 Q Is that the second traffic light, really the first  
24 traffic light off 77 or is it the second traffic light off  
25 77?

1 A That would be the second traffic light off Springdale  
2 on Dave Lyle.

3 Q Okay, so going towards 77 it was the second traffic  
4 light?

5 A Yes, ma'am.

6 Q And I believe your testimony was that when you were at  
7 that traffic light you observed the scene, is that  
8 correct?

9 A Yes, ma'am, you could see the emergency officials  
10 lights, et cetera.

11 Q Was the scanner in your vehicle still on?

12 A Absolutely.

13 Q Okay and what transmissions, if any, were made by EMS  
14 at that time?

15 A Just on the York County frequency it was a lot of  
16 communication. I just took whatever information that was  
17 already given out before and memorized it and that was it.

18 Q Was there any information over the frequency that you  
19 were listening to concerning the condition of Brent  
20 McCants at that time?

21 A I would say yes.

22 Q Okay and was there any other information, I'm talking  
23 about the time you are sitting at the traffic light, okay,  
24 and I assume you were listening and picking up information  
25 as you go along, is that correct, is that not your

1 statement? You are just sitting there kind of just  
2 listening to the frequency, listening to everything that  
3 was coming across, is that right, or you were no longer  
4 listening?

5 A I'm still listening.

6 Q Did any other information come across the scanner  
7 frequency relating to the suspects?

8 A Yes.

9 Q What other information came across?

10 A Just the same vehicle information repeating it over  
11 and over.

12 Q Any type of description coming across the scanner as  
13 to the route that they were leaving the scene, any  
14 information coming across the scanner in regards to that?

15 A Just two black males.

16 Q Sir, there was no indication as to which way on Dave  
17 Lyle Boulevard they went?

18 A I don't recall.

19 Q Do you recall any communication as to the fact they  
20 may have gotten on to Interstate 77?

21 A No, ma'am.

22 Q Do you recall any description coming over the  
23 frequency in regards to any further description as to  
24 perhaps what the suspects were wearing?

25 A I don't recall.

1 Q That's fine; I don't want you to try to make up  
2 anything; I just want you to tell me what you recall.

3 Okay, so you are at the traffic light and I assume you  
4 see all of the flashing lights and everybody up at the  
5 scene and did you decide to go by the scene or what did  
6 you decide to do after that point?

7 A I was at the stop light and I observed the emergency  
8 lights and when the light was green I wanted to go down  
9 there.

10 Q Okay, did you drive by the scene?

11 A No, ma'am.

12 Q Were there barricades set up at that point in time?  
13 Why did you not go by the scene?

14 A Looking at all the lights that was present it wouldn't  
15 have done me any good to go down there ---

16 Q Right.

17 A --- first of all.

18 Q Sir, after seeing that you really couldn't be of any  
19 assistance at the scene, what did you decide to do?

20 A Go up Interstate 77 northbound.

21 Q Why?

22 A I wanted to help.

23 Q Why did you decide to go up Interstate 77 northbound?  
24 Why not continue maybe continue, it was only ten minutes  
25 after the shooting, why did you decide not to maybe drive

1 up and down Dave Lyle to see if you saw any Buicks or go  
2 back around the road that you had come looking for a Buick  
3 Century? Why did you decide to go up Dave Lyle -- I mean  
4 Interstate 77?

5 A Because of the traffic that was down there and I  
6 couldn't probably go through it as quick as as I wanted to  
7 continue, you know, what I was searching for.

8 Q I don't mean to put words in your mouth, but was it  
9 just easier for you to go up 77 northbound? I mean you  
10 just tell me. I don't want to put words in your mouth.

11 A It was easier to go up Interstate 77, which I would be  
12 headed northbound, instead of going through the incident  
13 that had took place.

14 Q Okay and what made you decide to get back off at the  
15 exit, I think you said in your testimony it was 82B? Is  
16 that correct?

17 A Yes, ma'am.

18 Q What made you decide to get off at that exit? Why  
19 would you not continue to go north? You knew it had a New  
20 York tag, what made you get of in Rock Hill? Why did you  
21 not think that they may have continued to go up the  
22 interstate and get out of the State of South Carolina?

23 A Based on I continued to listen to the scanner itself I  
24 felt it was best for me to stay in the Rock Hill area.

25 Q Why?



1 A Because it occurred in Rock Hill.

2 Q I believe your testimony earlier was that you wanted  
3 to conduct a search of your own. You got in your mind that  
4 you wanted to conduct your own search, is that correct?

5 A Basically.

6 Q And you had the radio transmission and you knew the  
7 make of the car, you knew it was two black male suspects  
8 and you knew that it was an out-of-state tag, right?

9 A Yes.

10 Q And you would do whatever you could to help find this  
11 vehicle. I'm just curious as to why you thought that they  
12 would stay in Rock Hill and not go out of state?

13 A On listening to the radio and that particular search  
14 demanded an expeditious procedure.

15 Q I guess that goes back to my question you wanted to do  
16 an expeditious search why did you think that they were not  
17 still on the interstate? Why did you think that they were  
18 staying in Rock Hill? It seems to me that if you wanted  
19 to conduct a quick search you may have gotten on that  
20 interstate and started zooming up that interstate. What  
21 made you get off on, I mean, did you have a feeling or  
22 tell me, describe it to me.

23 A Yes, speaking of myself, knowing Brent and I drove  
24 very fast up the interstate and I just got off at the  
25 first exit.

1 Q And you testified that you had stopped at other  
2 establishments before you had stopped at the Holiday Inn,  
3 is that right or did I misunderstand that?

4 A No, that was the first one that I stopped.

5 Q Why did you go back to the Holiday Inn?

6 A I guess me, you know, driving by myself and I was just  
7 pondering, and I said I'll just check all the nearby  
8 hotels. I just landed right at the Holiday Inn.

9 Q Did you need gas? Was there any particular reason you  
10 went back to your original starting point? Was there any  
11 particular reason why you went back to the Holiday Inn?

12 A No, ma'am, no special reason.

13 Q Okay, so you get back to the Holiday Inn and you come  
14 to, this is State's Exhibit 15, you come back into the  
15 Holiday Inn and show me exactly how you came in to the  
16 Holiday Inn.

17 A I am getting off of the exit ramp here and I went down  
18 to the next road to get off and that would be entering the  
19 side street to the Holiday Inn.

20 Q So you came -- you were on northbound 77, you came  
21 down the exit ramp here ---

22 A Yes, ma'am.

23 Q --- and you came around right here, is that correct?

24 A I just got off right here and kept on going straight.

25 Q Okay and your testimony was I think that there were

1            red tips in here and red tips in here?

2            A    There was some shrubbery at the corner of the parking  
3            lot.

4            Q    Right here?

5            A    Yes, ma'am.

6            Q    And I think you said a utility light was right here?

7            A    There was a utility light.

8            Q    Do you recall any other lighting in this area?

9            A    I can only recall the one that I saw that was right at  
10           the corner of the red tips.

11           Q    And I believe your testimony was that when you pulled  
12           in here you observed two black males, is that correct?

13           A    Yes, ma'am.

14           Q    How were they dressed?

15           A    Dark colored clothing. One had a ball cap, I described  
16           it as a New York style.

17           Q    What do you mean "New York style"?

18           A    It was a multi-colored type hat.

19           Q    Do you mean it was like a red, a green, a blue, and a  
20           green -- what kind of hat?

21           A    It had the shape of a ball cap itself. The color it  
22           was a multi-colored type hat, it had different colors in  
23           it.

24           Q    Why do you attribute the words "New York style" cap?  
25           I mean I don't understand that. Did it have New York

1 Yankees on the front? Tell me, I don't understand.

2 A Looking at that material I've seen that, you know,  
3 before.

4 Q What sets a "New York style" hat apart from a South  
5 Carolina hat?

6 A You don't hardly see it around here.

7 Q When you say "New York style" hat, are you talking  
8 about a baseball team? I'm sorry, I just don't understand.  
9 You'll have to explain it to me.

10 A The colors of the cap itself.

11 Q The colors for whom? The State?

12 A The ball cap, the features of it.

13 Q What kind of colors are a South Carolina hat?

14 A I've seen solid colors.

15 Q But a New York style is multi-color?

16 A Cultural type with various colors in it.

17 Q What colors would a Georgia hat be?

18 A (No response.)

19 Q Are they the same as South Carolina?

20 A It would be just a plain, regular ball cap. The colors  
21 might appear to be different, but they ain't  
22 multi-colored.

23 Q When you saw the two black males walking, okay, you  
24 stated that they were wearing dark clothing.

25 A That's all I saw.

1 Q What was the weather like that night? Was it raining  
2 or was it clear?

3 A It was clear.

4 Q And was it hot or cold?

5 A I would say hot.

6 Q What were you wearing that night?

7 A Blue jeans.

8 Q What kind of upper body gear were you wearing?

9 A A short sleeved shirt.

10 Q You were wearing a short sleeved shirt. What type of  
11 sleeve length were the suspects wearing that you observed?

12 A I don't recall the type.

13 Q Do you remember if they were wearing Rugby shirts,  
14 dress shirts, sweat shirt, short baseball, you remember  
15 specifically it was a New York style cap, what kind of  
16 sleeves were they wearing?

17 A A sweat shirt, a warm-up type shirt.

18 Q Okay, to your recollection they were both wearing dark  
19 colored sweat shirts?

20 A One that I saw and I know that I saw a warm-up type  
21 jacket.

22 Q Okay and do you recall one of them wearing a white or  
23 light colored shirt?

24 A No, ma'am.

25 Q You know you saw one with a sweat shirt type gear on,

1 is that correct?

2 A Absolutely.

3 Q But the other one you are not sure about, you just  
4 know it was dark colored, is that correct?

5 A Yes, ma'am.

6 Q And were either of the suspects wearing shorts or were  
7 they both wearing pants like you?

8 A Sweat type clothing.

9 Q So they had long pants on. They weren't wearing  
10 shorts?

11 A No, ma'am.

12 Q When you saw them and you observed them, how were they  
13 walking?

14 A Taking big steps.

15 Q Were they running?

16 A No.

17 Q Can you demonstrate for me how they were walking?

18 A (Witness demonstrated) Just like when getting down off  
19 the stand here, ---

20 Q Okay.

21 A --- you notice the wide, you know, movement that I  
22 took, just like this right here walking very fast.

23 Q They were taking large steps. And were they walking  
24 together in unison or was one walking faster than the  
25 other?

1 A One was walking faster than the other.

2 Q Was one leaving the other one behind or were they  
3 clearly still walking together?

4 A It was like one was leaving the other one behind and  
5 when they were coming in the parking lot one wanted to  
6 catch up. I was looking for a vehicle and I just looked  
7 very quickly and glanced.

8 Q Was one walking maybe six feet ahead of the other or  
9 three feet ahead of the other, or a pretty fair distance  
10 between the two at this point or could you tell if they  
11 were still together?

12 A I can remember they were still together, but as I was  
13 coming into the parking lot, it looked like one was I am  
14 going to say just one big step just away from the other.

15 Q Were they talking?

16 A No, I don't recall, but I would say that my glass was  
17 rolled up.

18 Q I'm sorry, sir. you just glanced when you rolled up -  
19 okay, sir. So you went back into the Holiday Inn parking  
20 lot?

21 A Yes.

22 Q And what did you observe at that time?

23 A Just looking at the parking rows because the  
24 information I gathered I was just mainly concentrating on  
25 the vehicle.

1 Q And how -- did you find a vehicle?

2 A Yes, ma'am.

3 Q And how long was it after you got into the parking lot  
4 that you located that vehicle?

5 A Very brief.

6 Q Was it a matter of minutes or a matter of seconds?

7 A Seconds.

8 Q Okay, I am going to refer back to State's 15. I  
9 understand that you came in in this direction, is that  
10 right, Mr. Sanders?

11 A Yes, ma'am.

12 Q Were you coming here or here? Which opening?

13 A It would be this entrance ---

14 Q Okay.

15 A --- that's close to the first parking row.

16 Q And exactly where did you see the suspect?

17 A There's a group of shrubbery in this vicinity and  
18 that's where I saw them right there.

19 Q So they weren't in this area.

20 A No, ma'am.

21 Q They were more so in the area directly in front of  
22 Carolina Furniture World.

23 A No, ma'am.

24 Q Okay, I'm sorry.

25 A I saw them where the shrubbery is displayed at and



1 where's there's a huge light shining.

2 Q Okay, so they were right here on this corner then.

3 A Yes, ma'am.

4 Q And you were pulling in around here and they were  
5 right here on this corner.

6 A Yes, ma'am.

7 Q You came around here and where did you go from there?  
8 You came into the parking lot, where did you go? Did you  
9 go around to the front first, I think there is a front  
10 parking lot here?

11 A Yes, there is. I went to the first parking row and  
12 went straight back down.

13 Q Did you go to the front of the Holiday ---

14 A No, ma'am.

15 Q You did not go to the front. Which way did you go?

16 A To this first row (indicating).

17 Q And proceeded down this way?

18 A Very slowly.

19 Q Okay, and you didn't decide to go down this way, you  
20 kept going, or were you making a turn when you saw them?  
21 Tell me what happened.

22 A As I was getting to the end of it I came up on the  
23 suspect vehicle.

24 Q So you were coming back around this way or -- tell me  
25 how you were going.

1 A That's where I turned around at.

2 Q Show me exactly, use your pen, if you would, show me  
3 where you went.

4 A My vehicle was traveling straight in the parking space  
5 itself as I was going to turn in and park my vehicle.

6 Q You were going to park your car.

7 A Yes. Okay, but I was just going straight and the  
8 moment I saw the vehicle I just stopped my vehicle and  
9 waited for a second.

10 Q Okay, and what did you do after you saw the vehicle?

11 A I got out.

12 Q You parked your car.

13 A No.

14 Q You didn't park your car?

15 A (Indicating)

16 THE COURT: You have to answer with words, Mr.  
17 Sanders.

18 Q Did you leave it running?

19 A Yes, ma'am.

20 Q And had it engaged in park I assume, right?

21 A No, ma'am. It was in neutral and I had the hand brakes  
22 on.

23 Q Okay.

24 A It's a straight drive.

25 Q Okay. So you left your car in neutral, you left it

1 running and you got out of your vehicle.

2 A Yes, ma'am.

3 Q And what did you do then?

4 A I looked at the vehicle very carefully.

5 Q Did you look inside of it?

6 A Yes, ma'am.

7 Q Did you kind of go up to the window and peek inside?

8 How did you do it?

9 A Yes, ma'am.

10 Q And did you touch the vehicle?

11 A No, ma'am.

12 Q So when you peeked inside you didn't put your fingers  
13 on the glass or anything or anywhere on the vehicle?

14 A No, ma'am.

15 Q And after you saw the car what did you do?

16 A I stood back to look at the color of the vehicle  
17 because it was dark out there at the end of the parking  
18 lot.

19 Q Okay, and how long did you stand and look at the  
20 vehicle?

21 A I think it was thirty seconds.

22 Q Okay and how long was it -- what made you think that  
23 that was the vehicle?

24 A Based on listening continuously to the scanner and  
25 everything that I acknowledged what was given out and I

1 stood back away from the vehicle and I said to myself it  
2 has a New York tag and, of course, I had a flashlight and  
3 that's when I got back in the vehicle.

4 Q Okay, you got back in your car?

5 A In my vehicle.

6 Q Okay and then what did you do?

7 A I said I'd better write down the tag number.

8 Q Okay and then what did you do?

9 A I turned around as quickly as possible and raced,  
10 drove fast, to the nearby pay phone.

11 Q Where was the pay phone?

12 A There was a pay phone at the Chevron Station, which is  
13 the Quick C.

14 Q Right around here?

15 A Yes, ma'am, it is a Quick C.

16 Q Right here?

17 A Yes, ma'am.

18 Q Are these little dots right here does that indicate a  
19 telephone, those three small dots?

20 A Yes, ma'am.

21 Q Okay, approximately how much time went by from the  
22 time that you rounded that corner until the time that you  
23 ID'ed that vehicle?

24 A I was moving very fast and I know I wouldn't have  
25 taken over five minutes. I know it was at least less than

1 three minutes.

2 Q Probably three minutes?

3 A Probably less than three minutes.

4 Q Okay, probably less than that?

5 A Yes, because it's not that far.

6 Q All right, so if you really think about how much time  
7 it could have been as far as a minute maybe or is that too  
8 quick?

9 A I can remember writing down the tag number and after I  
10 did that I went to the nearby pay phone maybe a minute and  
11 a half.

12 Q Okay. When you went back to the Quick C, when you took  
13 your car say about a minute and a half after you rounded  
14 the corner and you saw the suspects, you rounded the  
15 corner and in about a minute and a half later you were at  
16 the pay telephone, is that about right?

17 A Yes, ma'am.

18 Q Do you recall seeing the suspects anywhere in that  
19 area when you got to the pay telephone?

20 A Yes, ma'am.

21 Q Where were they?

22 A There was two times. One time that I am thinking when  
23 I was moving along the parking lot, I looked back and saw  
24 them walking to the Chevron Station. The other time when I  
25 was leaving the parking space after discovering the

1 vehicle and writing down the tag number I looked up and  
2 they were at the Chevron Station in the airconditioner  
3 area of the business.

4 Q They were inside the Chevron Station together?

5 A No, ma'am, walking towards it.

6 Q Okay, I want to go back over your testimony just one  
7 more time. You came in around the corner, you saw them  
8 standing approximately here, is that correct, the first  
9 time?

10 A Yes, ma'am.

11 Q You came around here and you saw the suspects again.  
12 Where were they approximately?

13 A They was headed towards the Chevron Station about half  
14 way.

15 Q And they were still together?

16 A Absolutely.

17 Q And you testified one was walking faster than the  
18 other, is that not so anymore?

19 A One was in ahead of the other one.

20 Q Okay, so they really -- one was walking like this --  
21 one was walking a little bit ahead of the other?

22 A Yes.

23 Q They were headed in the same direction, but they were  
24 not together walking side by side.

25 A They was together side by side going to the ---

1 Q Which was it? Were they walking one ahead of the other  
2 or were they walking side by side?

3 A Going towards the Quick C itself they were together.

4 Q Okay, so here at the corner one is ahead of the other  
5 and one meets up with the other one?

6 A Yes, at the shrubbery.

7 Q Okay, and then what happened? When is the next time  
8 you observed them?

9 A Half way in the parking lot of the Celebrations.

10 Q Okay, and where did you see them at that point?

11 A I got down to the end; I just got out of my vehicle  
12 and just start writing looking at the vehicle itself.

13 Q And when you were writing the number down, the tag  
14 number, you said you looked for them again.

15 A Yes, I remember leaving the parking lot and I looked  
16 up and they were just about gone.

17 Q They were headed this way?

18 A Yes, ma'am, and there was an airconditioner behind the  
19 building and I could just get a little glimpse of them;  
20 that was it.

21 Q So they were off behind the Quick C Mart here and they  
22 were together.

23 A Yes, ma'am.

24 Q And they were side by side underneath the  
25 airconditioner.

1 A Yes, ma'am.

2 Q Right here.

3 A Yes, ma'am.

4 Q You write down the tag number and you zip it on around  
5 and you go right here.

6 A Yes, ma'am.

7 Q Where were they when you got right here?

8 A That was it.

9 Q So you don't know which direction they went in.

10 A No.

11 Q And did you see them arguing with each other, talking  
12 with each other, looking at each other?

13 A All I can advise is that they were together.

14 Q Okay, so here they were walking one in front of the  
15 other. Right here they were together. And here they were  
16 together.

17 A Going to the business they was together.

18 Q So you only saw them apart in this area right here  
19 your initial sight of them they were apart.

20 A Turning into the parking lot and as I said there were  
21 two black males. I glanced and I said to myself that's  
22 just normal, you know, so I continued looking for the  
23 suspect vehicle.

24 Q Okay. What made you think that they were together if  
25 one was ahead of the other? Is that because you saw them



1 together up here?

2 A Yes, ma'am.

3 Q And were the two that you saw here still in dark  
4 clothes?

5 A Yes.

6 Q When you were making the telephone call, your  
7 testimony is that they were at that Food Mart, that  
8 Chevron Food Mart, when you are standing calling in the  
9 tag number, they were just a few feet from you at that  
10 point.

11 A I don't recall seeing them then right at that time.

12 Q When exactly did you see them at the Chevron Station?

13 A As I was ---

14 Q Pulling in? ---

15 A --- turning out of the parking lot; they was gone.

16 Q And you don't know if they separated or if they were  
17 still together at that point because you didn't see them,  
18 right?

19 A I'm saying they was gone as I was headed towards the  
20 pay phone. I didn't see them in sight.

21 Q Okay, so when you were right here, you saw them  
22 underneath the airconditioner at Chevron?

23 A Walking right by it ---

24 Q Okay, ---

25 A --- headed in that direction.

1 Q So by the time you got to the pay phone, they were no  
2 longer there or were they there?

3 A I did not see them.

4 Q That Chevron Station is a very well lit area?

5 A Absolutely.

6 Q Okay, and it's not too far distance from where that  
7 car was parked to the Chevron Station and it is a very  
8 well lit area, is that an accurate station?

9 A It's a well lited area.

10 Q And you were standing at the back of the car and you  
11 saw two black males a couple of yards up in the distance  
12 together?

13 A Together headed in that direction towards the  
14 airconditioner unit because right beside of the Chevron  
15 Station itself there's a furniture store. That's the last  
16 time I saw them.

17 Q And one of those persons that you saw that evening was  
18 the photograph that you id'ed right here, is that correct?

19 A Yes, ma'am.

20 Q This man right here.

21 A Absolutely.

22 Q Okay. But in this well lit area you could not  
23 identify the other suspect; you could not make an  
24 identification of the other suspect, is that correct?

25 A Of the other suspect? Just one of them.

1 Q You only made one ID, is that correct?

2 A When I came into the parking lot, I could see the one  
3 that I signature on this exhibit.

4 Q Okay, and that area was very well lit, correct?

5 A Yes.

6 Q So you don't have any problems saying that you know  
7 that was that person, is that correct? You have no  
8 question that the person you saw underneath those lights  
9 was this fellow right here?

10 A The same clothing that I saw that night.

11 Q You have no question in your mind that the person you  
12 saw that night was Mr. Forney, is that correct?

13 A That's the one that I picked based on what I had seen.

14 Q Are you sure that's who you saw that night?

15 A And the ---

16 Q You can hold that if you want to. Are you sure that  
17 that's the person that you saw that night?

18 A That was one of them.

19 Q Okay, and, again, it was a very well lit area and you  
20 are sure, you have no question that was one of the  
21 suspects, is that correct? You need to answer yes or no.

22 A Yes, this is one of the subjects that I saw that  
23 night.

24 Q And you have no doubt in your mind that that was one  
25 of them?

1 MR. POPE: Your Honor, this has been asked and  
2 answered several times.

3 MS. BRICE: I withdraw that. Thank you.

4 Q And you don't know who the other suspect was? You made  
5 no identification of the other suspect.

6 A Just dark colored clothing.

7 Q Just dark colored clothing is all you remember, is  
8 that correct?

9 A Yes.

10 Q Mr. Sanders, just one other question. What was the  
11 name of your friend who you went to see that night at the  
12 Holiday Inn?

13 A I never got his name.

14 Q You don't know who the friend was that you went to see  
15 that night?

16 A No, ma'am.

17 Q He was a security officer at the Holiday Inn back in  
18 1992?

19 A That is correct.

20 Q You don't know what his first name was?

21 MR. POPE: Your Honor, I object to this. It has been  
22 answered and he says he doesn't recall his name and  
23 doesn't know it.

24 THE COURT: I will let her go over it one more time.

25 Q You don't recall the first name?

1 A No, I've seen him there before, I can't recall his  
2 name.

3 Q That's fine. Thank you, Mr. Sanders. I appreciate your  
4 time.

5 REDIRECT EXAMINATION

6 BY MR. POPE

7 Q Mr. Sanders, two quick questions. You told the court  
8 that you were moving fast in your truck. That was after  
9 you found the tag, is that correct, when you went to use  
10 the phone?

11 A Yes.

12 Q And Ms. Brice has asked you about the two people you  
13 saw being apart, you remember when you saw them behind the  
14 red tips and they were apart when they were walking  
15 together? Could you tell me how far apart you are talking  
16 about?

17 A This distance that we're apart now.

18 MR. POPE: Your Honor, for the record I would say  
19 approximately three feet.

20 THE COURT: Mr. Schusterman, do you agree that that's  
21 three feet?

22 MR. SCHUSTERMAN: Yes, sir, between three and four  
23 feet.

24 MR. POPE: No further questions.

25 THE COURT: Ms. Brice?

1 MS. BRICE: No further questions, Your Honor.

2 THE COURT: You may step down.

3 MR. POPE: Your Honor, I would ask that this witness  
4 be excused.

5 THE COURT: Step down. I appreciate your time. You are  
6 free to leave.

7 MR. POPE: I beg the court's indulgence. We have a  
8 number of witnesses. We have tried to get some feel for  
9 how long - I know we have a lot of matters, we are  
10 probably half way through the other stuff. We are prepared  
11 to go forward as long as you want to and, honestly, we  
12 would prefer to.

13 THE COURT: I'd say let's go to at least six or so and  
14 then --

15 MR. POPE: See where we stand?

16 THE COURT: Yes.

17 MR. POPE: Okay, Your Honor, beg your court's  
18 indulgence. Mr. Brackett has the next witness. I am going  
19 to go and some of the witnesses have appeared and we  
20 wouldn't reach them in that time frame and I want to  
21 release them and make some other arrangements while Mr.  
22 Brackett takes over.

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

24 THE CLERK: Raise your right hand and place your left  
25 hand on the Bible, please.

BROADUS LEE STRAIN      DIRECT

1                    BROADUS LEE STRAIN, being duly sworn,  
2 testified as follows:

3 DIRECT EXAMINATION

4 BY MR. BRACKETT

5 Q    Mr. Strain, would you please state your full name and  
6 spell it for the court reporter?

7 A    Broadus Lee Strain, B-r-o-a-d-u-s   L-e-e   S-t-r-a-i-n.

8 Q    Where are you employed?

9 A    York County Detention Center.

10 Q    And in what capacity are you employed at the Detention  
11 Center?

12 A    I am a Sergeant.

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

14 A    About five years.

15 Q    Since about 1990?

16 A    '91.

17 Q    Since '91. And you were employed there in February,  
18 1993?

19 A    Yes, sir.

20 Q    And in what capacity were you employed there then?

21 A    I was a team leader.

22 Q    That was back when it was over in the old Detention  
23 Center on Cherry Road?

24 A    Yes, sir.

25 Q    I ask you, sir, if you can identify the man seated

1 over here in the stripped shirt at counsel table?

2 A Mar-Reece Hughes.

3 Q Do you know him?

4 A Yes.

5 Q How do you know him?

6 A He's an inmate over at the County Detention Center.

7 Q He is now?

8 A Yes, sir.

9 Q And was he back in February of 1993?

10 A Yes, sir.

11 Q And do you recall that period of time when he was  
12 incarcerated there?

13 A Yes, sir.

14 Q Do you recall an incident that occurred in February of  
15 1993 with Mr. Hughes?

16 A Yes, sir.

17 Q And can you relate to us were you working when that  
18 incident occurred?

19 A Yes, sir.

20 Q Can you relate to us what that incident was just  
21 briefly?

22 A Yes, sir.

23 MS. BRICE: Your Honor, I don't mean to interrupt at  
24 all, but I'm just not sure. I thought we were doing  
25 statements. I thought this was testimony that we were



1      going to get into tomorrow.

2            MR. BRACKETT: No, no, this is for a statement, Your  
3 Honor. We are not getting into that. I know what you are  
4 ---

5            MS. BRICE: Thank you, Kevin.

6            MR. BRACKETT: No problem.

7      Q      This is regarding the flooding of the jail cell.

8      A      Yes, sir.

9      Q      Would you relate to us what happened?

10     A      Yes, ---

11     Q      When was this about the middle of February?

12     A      Yes, sir.

13     Q      Describe what happened with Mr. Hughes in his cell.

14     A      We were working day shift and as I was coming back  
15 from a regular check I had some inmates ask me could they  
16 talk to me and one of the inmates said he was wanting to  
17 talk to me, but he wanted to talk to me outside in the  
18 hallway. So I took him outside in the hallway and he  
19 stated that ---

20     Q      Was that Michael Quinn?

21     A      Michael Quinn.

22     Q      Okay, you can't tell us hearsay stuff, do you  
23 understand, you telling us what some other person said.  
24 I'll get to that perhaps at another time, but right now  
25 what I am concerned with is just the incident focusing

1      with Mr. Hughes in his cell.

2      A    Okay, I moved those three inmates to A Block because  
3      of what he told me and at the time we moved them up front  
4      I could hear the commodes flushing in front side C.

5      Q    Is that where Mr. Hughes was?

6      A    Yes, sir. What happened is he stuck a cup down into  
7      the toilet and flushed it over and over and flooded his  
8      cell. Okay, in the jail most of the time when you hear  
9      them flush it two or three times and keep on and keep on  
10     you know they are flooding it. So I went back to the back  
11     and Mar-Reece had a cup in the toilet and the whole cell  
12     area was flooded with water. So he stated I was going to  
13     move him also. He said, "You are going to move me, white  
14     boy" and that's when I said, "Yes, I am." So I went and  
15     got another officer. We went in and unlocked the cell and  
16     brought him out, took him up front and put him in the  
17     holding cell.

18     Q    Was he in the holding cell?

19     A    Yes, sir.

20     Q    Could you describe the holding cell that he was in?

21     A    It's a cell we keep up front. It was up front and it  
22     was used for inmates that gave us problems and we need to  
23     watch them where we would have better control as far as  
24     being able to watch them and keep an eye on them.

25     Q    They would be under your direct supervision?

1 A Yes, sir.

2 Q Can you hear what's going on in that cell?

3 A Yes, sir, the window was broke out into that door and  
4 you could hear everything that anybody would say in that  
5 cell.

6 Q Okay. Did Mr. Hughes make any statements in the time  
7 that you got him from his cell into the holding cell?

8 A As we was transporting him to the holding cell, he  
9 didn't.

10 Q Once he got into the cell did he say anything?

11 A Once he got in the cell I was going to the back to get  
12 the area cleaned up an we heard him kicking the shower  
13 stall in the holding cell, just kicking it pretty hard, so  
14 we had to restrain him as far as being able to keep the  
15 shower stall and tearing the room up, so we put leg irons  
16 on him and pretty well controlled him as far as hurting  
17 himself or hurting anybody that was up front.

18 Q Did you hear him make any statements at that time?

19 A Yes, sir, after we got everything cleaned up and we  
20 was up front, that's where we book in people, and he was  
21 making statements. There's a vent in the holding cell  
22 that goes into A Block and we could hear him making  
23 statements to Bobby Holmes, another inmate in A Block.

24 Q Bobby Holmes was in there?

25 A Yes.

1 Q And you heard Mr. Hughes making statements to Mr.  
2 Holmes?

3 A Yes, sir, I heard Mr. Hughes -- Bobby asked him was he  
4 all right and he said yeah he was all right and he asked  
5 him did we hurt him or anything and he said "Nah, they  
6 didn't hurt me or nothing" and then he started making  
7 statements to Bobby Holmes that when he gets down the road  
8 he was going -- he knew some people that could get him a  
9 gun to the cell where he could kill him another white boy.

10 Q He said "another white boy"?

11 A Yes.

12 Q Did he say anything else that you know of?

13 A He was making some racist remarks as far as being in  
14 the cell by himself and me and another officer was up  
15 front, you know, doing our job and everything and you  
16 could hear him because he was kind of like hollering to  
17 him what all he was saying.

18 Q Sgt. Strain, are you absolutely sure you heard him say  
19 "another" not "a"?

20 A No, sir, he said "another white boy."

21 Q Now at any time that you were dealing with Mr. Hughes  
22 from the moment that you went to the flooded cell to  
23 respond to that to the time that you got him, I guess,  
24 locked up with the leg irons and so forth in the holding  
25 cell, did you question him in any way?

1 A No, sir.

2 Q Did you do anything to provoke a response from him?

3 A No, sir.

4 Q Did you do anything to elicit any kind of information  
5 from him regarding his pending charges?

6 A No, sir.

7 Q And the statements he made in the holding cell weren't  
8 even directed at you, were they?

9 A No, sir, he was talking to Bobby Holmes.

10 Q And they were not made as a result of anything you  
11 did?

12 A No, sir.

13 Q Thank you. Answer any questions Mr. Schusterman or Ms.  
14 Brice may have.

15 CROSS EXAMINATION

16 BY MR. SCHUSTERMAN

17 MR. SCHUSTERMAN: May it please the court?

18 Q Mr. Strain, how long have you been with the York  
19 County Detention Center?

20 A Around five years.

21 Q When this occurred you had been there for two years?

22 A Yes, sir.

23 Q This was at the old County Detention Center?

24 A Yes, sir.

25 Q And this occurred in February of 1993?

1 A Yes, sir.

2 Q When Mr. Hughes flooded the cell, how many people were  
3 in that cell block?

4 A I really can't remember how many was in there.

5 Q Was he in there by himself?

6 A When I went back there, he was standing over the top  
7 of the commode with the cup in it with his hands still in  
8 the commode flushing it.

9 Q So you saw him doing that.

10 A I saw him physically doing it, yes, sir.

11 Q Now you moved other prisoners out of that cell and  
12 moved him last?

13 A No, sir, the cell block next to him was the ones that  
14 I moved. They was the ones that made the complaint about  
15 Mr. Hughes.

16 Q When did you decide to move Mr. Hughes?

17 A When he flooded it.

18 Q That's when you moved him into the holding cell?

19 A Yes, sir.

20 Q How then did he have contact with Bobby Holmes?

21 A Bobby Holmes was in A Block and that is the housing  
22 unit over from the holding cell. See A Block was here and  
23 the holding cell was here. There's a vent between the  
24 holding cell and the A Block and it's got little holes in  
25 it and he was talking -- he was on his bed, but he could

1      talk through the vent to Bobby Holmes.

2      Q    Is that fairly common? Has that been done before?

3      A    Yes, sir.

4      Q    Was he the only person in the holding cell?

5      A    Yes, sir.

6      Q    And how many people were in A Block?

7      A    At that time I really can't remember how many was in  
8      there.

9      Q    For somebody who has never been inside A Block is it  
10     ten people?

11     A    Usually we kept anywhere from eighteen to twenty-five,  
12     twenty-six people.

13     Q    Okay. When the door to the holding cell and the door  
14     to A Block are closed, can you see the inmates?

15     A    Yes, sir, if the flaps are open, yes.

16     Q    Were the flaps open that particular day?

17     A    The flap was open on the holding cell and A Block.

18     Q    How do you know it was Bobby Holmes who he was talking  
19     to?

20     A    Because I could hear him, you know, talk to Bobby  
21     Holmes. I mean, I know Bobby Holmes. He was housed there  
22     for a long time and I could actually hear Bobby Holmes  
23     talk to him and I heard names.

24     Q    And you heard Mar-Reece talking?

25     A    Yes, sir.

1      Q    You never saw him talking, but you heard his voice?

2      A    I'd come by and check in there and I could see him  
3      talking.

4      Q    When you heard that statement that was made, what did  
5      you do?

6      A    It kind of shocked me at first and I talked to another  
7      officer and said, "We might need to keep an eye on this  
8      man" and I called Chief Mann and let him know we did move  
9      three inmates and we did move him up front and he stated  
10     "Leave him up front and keep an eye on him."

11     Q    Why did you keep an eye on him, what was your concern?

12     A    Well, at the time he was very -- he was kicking the  
13     shower, you know, he acted like he was going to hurt  
14     himself or maybe an officer if the officer went in there  
15     without him being restrained.

16     Q    You had a concern about it?

17     A    Yes, sir, I had a concern that he might hurt an  
18     officer or another inmate, yes, sir.

19     Q    Do you feel like he wasn't in control?

20     A    He knew what he was doing, yes, sir.

21     Q    He knew what he was doing?

22     A    Yes, sir.

23     Q    And what do you base that on?

24     A    Well, when you work in a jail atmosphere, when a man  
25     floods, he wants to be moved and most of the time when he



1        floods, he would put water all over the entire block and  
2        normally have to move him.

3        Q    You say he was in control, but yet you said at the  
4        same time you believed that he was a possible threat to  
5        himself.

6        A    To himself or another officer.

7        Q    Or another officer?

8        A    Or another inmate.

9        Q    Did you make any documentation, Mr. Strain, where it  
10       indicated that he made these statements?

11       A    We documented on the flooding and we told Chief Mann  
12       about the TV that was broke and I told him about inmates  
13       that made the request to be moved because of what they  
14       told me.

15       Q    What about the statement that he was going to get  
16       himself another white boy?

17       A    Yes, sir, I told Chief Mann that.

18       Q    Did you write it down somewhere?

19       A    No, sir.

20       Q    Is there no policy to write a statement down?

21       A    At the time we didn't ---

22       Q    You didn't think much of it?

23       A    No, no. We always take that serious. I went directly  
24       to my chief and he handles -- any time we think something  
25       is racially motivated or gang related or anything like

1      that, we go directly to the chief and talk to him  
2      directly.

3      Q    So it is the chief's responsibility?

4      A    Chief Mann would tell us what to do.

5      Q    And what did Chief Mann tell you when you told him he  
6      made that statement?

7      A    He told us to keep an eye on him in the holding cell  
8      and keep him in the holding area for the weekend until he  
9      comes in Monday.

10     Q    But he never said write that down or make a full  
11     report, Mr. Strain, we need to have that document?

12     A    No.

13     Q    That was never done?

14     A    No, sir.

15            MR. SCHUSTERMAN: The court's indulgence.

16     Q    Did you work at the Detention Center from February  
17     through April of that year of '93?

18     A    I worked there at the main jail and over at the annex.  
19     We was rotating.

20     Q    You conveyed to Mr. Mann that it was your concern not  
21     only that he might be a harm to himself, but you also  
22     thought based on that statement that there might be racial  
23     overtones to it.

24            MR. BRACKETT: Your Honor, I am going to object. We  
25     are limited in this just to the admissibility of the

1 statement, the voluntariness of it, if that is a question,  
2 or whether it was spontaneous. I think we are going  
3 outside that. This might be good cross examination if the  
4 statement is allowed in, but for the purposes of  
5 admissibility, I think we are going afield.

6 THE COURT: Well, I'll let him go -- ask the question

7 --- MR. SCHUSTERMAN: It's not important, Your Honor, I  
8 will withdraw the statement. Thank you, Mr. Strain.

9 THE COURT: Anything further?

10 MR. BRACKETT: Just one brief point for clarification.

11 REDIRECT EXAMINATION

12 BY MR. BRACKETT

13 Q Mr. Schusterman asked you if you had ever made a  
14 report from your position as a jailer on a statement that  
15 he made and you indicated no. Did you ever discuss this  
16 with anybody at the Rock Hill Police Department or another  
17 law enforcement officer with regards to the pending  
18 charges against him?

19 A Yes, sir, I did talk to a Rock Hill police officer  
20 that came over to the lobby area and he came over and  
21 talked to me and T. J. Bailey.

22 Q Did you explain to him what you had heard, give him a  
23 detailed report of the incident?

24 A Yes, sir.

25 Q And did you include the statements that had been made?

1 A Yes, sir. This was not our documentation. It was Rock  
2 Hill City's.

3 Q Thank you very much

4 MR. SCHUSTERMAN: Nothing further, Your Honor.

5 THE COURT: You may step down.

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

7 THE COURT: You may be excused. Appreciate your  
8 testimony.

9 All right, next.

RANDY CLINTON

DIRECT

1                   RANDY O'NEIL CLINTON, 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 name for the court reporter?

7 A Randy O'Neil Clinton C-l-i-n-t-o-n.

8 Q Where are you employed, sir?

9 A York County Sheriff's Department.

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

11 A I am a Deputy II also a canine handler for the  
12 Sheriff's Department.

13 Q How long have you been doing the canines?

14 A For approximately eight years.

15 Q What kind of work do you do with the canines?

16 A I work narcotic detection with the drug dogs plus  
17 tracking armed suspects, house breakin suspects, anything  
18 that the suspect left on foot.

19 Q And were you doing this back in 1992 September?

20 A Yes, I was.

21 Q Were you working the evening hours of September 25th  
22 and the early morning hours of September 26th of 1992?

23 A Yes, sir.

24 Q And what was that in response to?

25 A In reference to a deputy getting killed.

RANDY CLINTON

DIRECT

1 Q And where were you deployed in the early morning hours  
2 around two to two-thirty on September 26, 1992?

3 A I was at Wilkerson Road off of Celriver. It's off of  
4 Cherry Road.

5 Q Were you working the dogs that night?

6 A Yes, sir, I was assisting a SLED agent with the blood  
7 hound.

8 Q A SLED blood hound?

9 A Yes, sir.

10 Q And I guess you were working the dog?

11 A Assisting with the dogs, yes, sir.

12 Q Assisting him with the dog, okay.

13 A Yes, sir.

14 Q At any time that evening did the dog pick up a scent?

15 Q Yes, sir.

16 Q Can you describe -- I show you what has been marked as  
17 State's Exhibit 15 and ask if you can identify the area  
18 depicted on this.

19 A This is Celriver Road. This is Wilkerson Road.

20 Q Wilkerson Road and Celriver Road.

21 A Yes, sir.

22 Q All right, about two-thirty in the morning on  
23 September 26, 1992, can you tell us approximately where  
24 you were with the SLED dog?

25 A When the dog picked up the track, we were

1 approximately right in here (indicating).

2 Q Okay. What do you do when you have got a dog that has  
3 hit on a scent?

4 A Okay, when a dog hits on a scent, the dog with give an  
5 alert indicating to the handler ---

6 Q Is that a type of bark?

7 A He will either give a bark or he will start pulling  
8 real hard.

9 Q Each dog has its own characteristics?

10 A Yes.

11 Q And this dog gave an alert?

12 A Yes, sir.

13 Q And what do you do when that happens?

14 A When the dog gives an alert it's got the track, we  
15 will go on and proceed behind the dog on a leash and  
16 follow the dog, let the dog lead us to where she is going  
17 to.

18 Q And did you do that that evening?

19 A Yes, sir.

20 Q All right and on your journey through the woods here  
21 following the dog, did you discover anything?

22 A Yes, sir. SLED Agent Powell stated that he had a pair  
23 of socks. At the point he stated he had a pair of socks,  
24 I shined my light to the left and found the subject hiding  
25 behind the log.

RANDY CLINTON

DIRECT

1 Q Okay, now prior to this, had you been in communication  
2 with I guess you would say commanding officer, Lieutenant  
3 or whoever was coordinating the activities out there?

4 A Yes.

5 Q And through your communications with the various  
6 officers in charge and everybody that was searching did  
7 you have a description of the subject you were looking  
8 for?

9 A Yes, sir.

10 Q And what was that description?

11 A A black male with a dark colored jacket on. That's the  
12 only thing I can recall.

13 Q Okay, do you recall having the name of the subject?

14 A Mar-Reece Hughes.

15 Q You knew that name before you found him?

16 A Yes, sir, the first suspect advised us of that.

17 Q Okay and did you have an approximate location of where  
18 he was expected to be at?

19 A Yes.

20 Q And that was in that area there?

21 A Yes, sir.

22 Q All right, now you heard Freddie Powell say "I found  
23 his socks"?

24 A Yes, sir.

25 Q And you had a flashlight?



1 A Yes, sir.

2 Q Were you the only two out there?

3 A No, sir, it was myself, Freddie Powell and Lt. Brent  
4 Mabry with the Sheriff's Department and at that point I  
5 don't know who else; it was some more behind us.

6 Q How many officers would you say were out in that  
7 general area searching that night at that time?

8 A In the woods or on the parameter?

9 Q On the parameter and in the woods?

10 A Over three hundred on the parameter.

11 Q Okay, there were a lot of law enforcement there?

12 A Yes, sir.

13 Q In the immediate patch of woods that you were at with  
14 the dog Missy, wasn't it?

15 A Yes.

16 Q The immediate area that you were in, that little patch  
17 of woods, the section of woods that you were at with Missy  
18 and Freddie Powell and Lt. Mabry, how many officers were  
19 around there?

20 A At that time I was focusing I was looking for one  
21 suspect and I cannot recall. I know there were other  
22 officers behind us, but I don't know the distance they  
23 were behind us, but I know they were back there because I  
24 could hear their radio transmissions that they were  
25 receiving.

1 Q Was it dark out there?

2 A Yes, sir.

3 Q Did you have your flashlight?

4 A Yes, sir.

5 Q The area was not illuminated except for your  
6 flashlight?

7 A Yes, sir.

8 Q Were you nervous?

9 A Yes, sir.

10 Q When you wielded that flashlight around, was the  
11 person that you found to your left or to your right?

12 A Once I shined my light back to my left it would be to  
13 my left.

14 Q All right, how far away was that person located from  
15 where you were standing when you first saw him?

16 A From here to your bench.

17 Q That distance right there?

18 A Yes, sir.

19 Q And what did you do then?

20 A I told him to get his hands up and he got his hands up  
21 to this point right here.

22 Q Were you approaching him at that time?

23 A Yes, sir, I was.

24 Q And when you got to him, were his hands in plain view?

25 A I could see both his hands, yes.

1 Q When you saw him with his hands up like that, did you  
2 recognize him to be the person that you were looking for?

3 A Yes, sir, with the dark coat on.

4 Q Did he fit the description?

5 A Yes, sir, he did.

6 Q So you were going over to do further investigation?

7 A Yes, sir, I placed one handcuff on him and he snatched  
8 loose from me and took his right hand and stuck it back  
9 underneath his chest.

10 Q Okay. Could you step off of there for just a second?

11 A (Witness complied.)

12 Q Now suppose I am the individual that you arrested that  
13 night ---

14 A Yes, sir.

15 Q --- was he laying flat out on the ground?

16 A Yes, sir, he was lying there and he was looking back  
17 at me like this when the light was hitting him in the  
18 eyes.

19 Q And was his stomach on the ground?

20 A Yes, sir. You could see just a portion of his shoulder  
21 here because he was twisted back. I would get on the floor  
22 and show you.

23 Q No, that's all right. Now when you told him to put  
24 his hands up, did he put his hands up?

25 A Yes, sir.

RANDY CLINTON

DIRECT

1 Q And you approached him?

2 A Yes, sir, and I grabbed his left arm and placed one  
3 handcuff there.

4 Q Okay.

5 A At that point the subject snatched loose from me, took  
6 his right hand and stuck it back underneath his chest and  
7 I am reaching back for his left hand again when another  
8 officer came and assisted me.

9 Q Did you know who that was at that time?

10 A No, sir.

11 Q Did you later find out who that was?

12 A Yes, sir.

13 Q Who was that?

14 A Buddy Devinney.

15 Q Okay. Now at that point when the other officer came  
16 in, did you assist any further in the arrest?

17 A Once Officer Devinney come in, at that time once I  
18 located the subject behind the log I hollered "Freeze,  
19 show me your hands," the officers behind us heard it, they  
20 were coming also and at that point once Buddy Devinney  
21 grabbed him and come up with both hands, when he came out  
22 with the left hand, he still hand the handcuff on his  
23 hand. At that point another officer -- several other  
24 officers got to him at that point. At that point, I  
25 turned around and praised the dog for the good job that

1 the dog had did.

2 Q Okay, go ahead and have a seat if you would, sir.

3 A (Witness complied.)

4 Q When he jerked his hand away, you say he made a motion  
5 with his right hand?

6 A Yes, sir, stuck it underneath his chest.

7 Q Underneath here?

8 A Yes, sir.

9 Q And he was wearing a jacket?

10 A Yes, sir.

11 Q Could you see where his hand were going?

12 A No, sir, all I know it went under -- the way he was  
13 laying it went underneath him just like right here  
14 (indicating).

15 Q And where did his left hand go?

16 A His left hand went down.

17 Q All right, at that point Larry Devinney - Buddy  
18 Devinney came?

19 A Buddy Devinney, yes, sir.

20 Q And you withdrew?

21 A Yes, sir, once that Larry -- Buddy Devinney got to him  
22 and pulled his arm out and hand the handcuff and several  
23 more officers got to him, they finished handcuffing him. I  
24 never got but one handcuff on him.

25 Q At that point when Buddy got there, the other officers

1 were arriving as well?

2 A Yes, sir.

3 Q And they got him under control?

4 A Yes, sir.

5 Q And he was eventually taken out of the woods?

6 A Yes, sir.

7 Q Okay, was that the extent of your involvement?

8 A Yes, sir, as I say, when I handcuffed him and got one  
9 hand, once I reached for the hand the second time and had  
10 the arm this portion right here (indicating), Buddy

11 Devinney came and grabbed him and several other officers  
12 did at that point and the put the handcuff on. I turned  
13 around and patted the dog up for a good job that she did.

14 Q Okay, based on your description that you received of  
15 the individual you were looking for and the facts and  
16 circumstances that were surrounding your finding Mr.  
17 Hughes out in the woods, when you first saw Mr. Hughes,  
18 did you have any questions whether or not it was your man  
19 or not?

20 A No, sir.

21 Q The dog led you there?

22 A Yes, sir.

23 Q And he fit the description?

24 A Yes, sir.

25 Q You were involved in later searching and recovering

RANDY CLINTON

DIRECT

1 some other items, isn't that true?

2 A Yes, sir.

3 Q Okay. How long did that whole scenario take?

4 A Sir, it probably didn't take fifteen seconds or less.  
5 It was (indicating) just that quick.

6 Q Thank you very much, sir. Please answer any questions  
7 Mr. Schusterman may have for you.

8 MR. SCHUSTERMAN: May it please the court?

9 CROSS EXAMINATION

10 BY MR. SCHUSTERMAN

11 Q Mr. Clinton, when exactly did you get involved? Was  
12 it solely for the purpose of doing the tracking with the  
13 dogs?

14 A Yes.

15 Q Were you on duty at that time or were you called in  
16 because of this emergency?

17 A I was called in. I hadn't been home but about thirty  
18 minutes from an armed robbery at Days Inn on CaroWinds  
19 Boulevard and I hadn't been back home but about twenty to  
20 thirty minutes at the time this happened.

21 Q Where did you meet up with the other two officers, I  
22 think he said it was Powell and Lt. Mabry?

23 A They was at the location of the car at that point.

24 Q Can you come on down here?

25 A (Witness complied)

1 Q Approximately what time did you -- I assume you met at  
2 the Holiday Inn?

3 A Well, the parking lot beside the Holiday Inn. The car  
4 was parked here and we met right here at Furniture World  
5 right there at that point.

6 Q This is Furniture World?

7 A Okay this would be the parking lot and this is  
8 Furniture World up here, yes, sir.

9 Q Where did you meet up?

10 A Right here, sir (indicating).

11 Q And it was just the three of you?

12 A No, sir.

13 Q There were other officers.

14 A Yes, sir.

15 Q At that point you decided -- a decision was made to  
16 use the dogs to track the suspects.

17 A The suspects were seen leaving the vehicle.

18 Q And tell me what you did.

19 A At that point we came in here -- I came and assisted  
20 SLED. We cut the area what we call cutting the area. We  
21 cut it back and forth, back and forth. If we know we had  
22 his track right here and it ended, we will do a complete  
23 circle. If he is tracked here, we do a complete circle  
24 and we are going to pick him up in that circle unless he  
25 has gotten in a vehicle or his feet left the ground at



1       that point, do you understand what I am saying?

2       Q    Yes, sir.  So you began starting here you began  
3       cutting an area, is that what you did?

4       A    Yes.

5       Q    And was it next to Carolina Furniture World you  
6       started walking backwards and forwards, is that what you  
7       did?

8       A    As we starting cutting in this area here, we are  
9       coming down, we are coming down to Celriver, which would  
10      be Wilkerson Road.  At that point the first suspect was  
11      caught on Celriver Road in front of the plant here.

12      Q    Mr. Forney?

13      A    Mr. Forney, yes, sir.

14      Q    And he was caught here, is that correct?

15      A    In front of the driveway of this plant.

16      Q    Okay.  And what happened then?  You didn't participate  
17      in apprehending Mr. Forney?

18      A    No, sir, I did not.  I had nothing to do with that.

19      Q    Once he was apprehended I think I understood from your  
20      direct examination that information was communicated to  
21      you.

22      A    Yes.

23      Q    Who communicated that to you?

24      A    The communication would have been from our dispatchers  
25      stating the description of the suspect, which we did have

1 the name of the second suspect we were looking for, which  
2 was Mar-Reece Hughes.

3 Q How did you get the name?

4 A From the first suspect.

5 Q He actually -- he told the name.

6 A He told the investigator. It came over the air.

7 Q When you received that communication from dispatch,  
8 where were you located at the time?

9 A Right in here.

10 Q These are woods in here, aren't they?

11 A Yes, sir. You have got a portion of woods from the  
12 corner of Wilkerson Road and you have got woods for a  
13 little piece and you have got a clearing, you know, like a  
14 tree line, a yard, and you have got I think it is a house  
15 and a trailer there and then you have got another set of  
16 woods over here and you have got grass in between. So  
17 what I am saying you have got one patch of woods and then  
18 you have got a clearing and a yard and then you have got  
19 another patch of woods.

20 Q I know this may be a ridiculous question, but you  
21 started over here where you first met and you ended up  
22 down here. Was it because you picked up a scent?

23 A No, sir, we're cutting it. This is not -- on this map  
24 it shows farther, but it's not but a short distance.

25 Q Oh, okay, all right.

1 A It's not way over here.

2 Q So actually it's a lot shorter.

3 A Yes, I would say seventy-five yards at the most.

4 Q So at this point you were just cutting you hadn't  
5 picked up a scent.

6 A No, sir.

7 Q Once you received the communication, what happened  
8 after you got his name and a description? Did you  
9 continue to keep cutting the area?

10 A We kept cutting the area. When we got to this point  
11 right in here, we come down and we come back out on  
12 Wilkerson Road right there at the edge of Wilkerson Road  
13 and the dog hit the track right there and went back into  
14 the woods. When the dog went back into the woods, SLED  
15 Agent Powell stated "I've got a pair of socks here" and  
16 when he said, "I have got a pair of socks," I shined my  
17 light to the left and found Mr. Hughes hiding behind a  
18 log.

19 Q So the pair of socks were right there?

20 A Yes.

21 Q Next to Mr. Hughes or very close to him?

22 A I would say the socks were no farther from here to the  
23 corner of the desk right there from Mr. Hughes. He was  
24 laying this way and the socks and shoes were approximately  
25 this far from him.

1 Q I assume he was barefoot at the time?

2 A Yes, sir.

3 Q Now you were cutting the area and you say that -- had  
4 the dog cut through this wooded area, woods or grass area,  
5 and then when he hit Wilkerson, he caught the scent and he  
6 came back here?

7 A We were cutting it. When I say "cutting it," it's  
8 like a zig zag and got to this point right here and the  
9 radio communication come over the air that a subject was  
10 spotted also running through a yard, that's once Forney,  
11 the first suspect was apprehended.

12 Q So Forney was running through the woods.

13 A Through the yard. So that's what brought us to this  
14 point here and we were cutting it more into here working  
15 in here and when we were working in here, we picked up a  
16 track and the track led to Mr. Hughes hiding behind a log.

17 Q So the reality is that while you were cutting from the  
18 time you actually caught a scent it was very quick until  
19 you found Mr. Hughes. It was not a long track. Several  
20 feet.

21 A That's right. Here from the desk. The road here and  
22 the patrol car was right there it was no farther than this  
23 distance right here from where he was at from the road  
24 hiding behind a log.

25 Q Are you the person who took him out of the woods?

1 A No, sir.

2 Q All you did was handcuff him with one hand and he  
3 slipped out.

4 A I put one handcuff on his left hand, he snatched loose  
5 from me and at that point I grabbed control of his left  
6 hand again and Officer Devinney got to him, pulled his  
7 arms out and Officer Devinney and several other officers  
8 got there. I did not put on the second handcuff.

9 Q All right, I think you in answering Mr. Brackett's  
10 question you said that this didn't take more than fifteen  
11 seconds, is that correct?

12 A Yes, sir.

13 Q Tell me what the transmission was from the dispatcher  
14 as to the person's clothing, if you had a description.

15 A The only thing I remember was a dark coat, a dark  
16 colored coat and I heard the name Mar-Reece Hughes, the  
17 pants and all I cannot advise you of.

18 Q Do you remember when you shined -- you were the first  
19 person to see Mr. Hughes that night.

20 A Yes.

21 Q When you shined the flashlight on him, what was he  
22 wearing?

23 A A dark colored coat and that's all, you know, I can  
24 remember.

25 Q You just remember a dark coat.

1 A I focused on his hands and his upper body. I wasn't  
2 worried about his feet.

3 Q Was he wearing that shirt that evening? Was that the  
4 top he was wearing?

5 A Sir, the only thing I seen was the coat. I did not  
6 see underneath the coat.

7 Q You don't know what he was wearing underneath.

8 A No, sir.

9 Q Does that top, that shirt, look familiar to you? What  
10 does it look like he is wearing to you?

11 A It looks like a Detention Center shirt.

12 MR. SCHUSTERMAN: No further questions.

13 Q Thank you very much, Mr. Clinton.

14 MR. BRACKETT: Nothing further.

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

16 We appreciate your time.

17 MR. CLINTON: Thank you.

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JAMES SCOTT ROCKHOLT DIRECT

JAMES SCOTT ROCKHOLT, being duly sworn,  
testified as follows:

DIRECT EXAMINATION

BY MR. BRACKETT

Q Would you state your full name and spell your last?

A James Scott Rockholt R-o-c-k-h-o-l-t.

Q And where are you employed?

A Rock Hill Police Department.

Q How long have you been with the Rock Hill Police  
Department?

A Seven years.

Q And in what capacity are you employed?

A Now I am a master patrol officer assigned to a  
supervisor assigned to night shift.

Q And what were you doing back in 1992?

A I was a special investigator assigned to the burglary  
division.

Q Were you working on the evening of September 25th and  
early morning hours of September 26th?

A Yes, sir.

Q What were you doing that night? What was your  
assignment?

A I was assigned to the burglary division and I was  
told they arrested a second subject and his name was  
Mar-Reece Hughes and I was told to sit in the interview

JAMES SCOTT ROCKHOLT DIRECT

1 room and wait until they could interview him.

2 Q Where was the interview room located?

3 A It's located inside the burglary division inside the  
4 police department.

5 Q And who gave you instructions to go to the interview  
6 room and wait?

7 A Captain Charles Cabaniss.

8 Q Was he your supervising officer at that time?

9 A Yes, he was.

10 Q And still is?

11 A Yes.

12 Q Did Captain Cabaniss give you any instructions  
13 regarding interrogation or interviewing of Mr. Hughes?

14 A No, sir, he just told me to sit and wait until they  
15 could interview him.

16 Q You were not told to interview or interrogate him in  
17 any way?

18 A Just sit in there so he could interview him.

19 Q At some point was Mr. Hughes brought into the room?

20 A Yes, he was.

21 Q And who brought him in?

22 A The patrol brought him in.

23 Q And what did he do -- do you see Mr. Hughes in the  
24 courtroom today?

25 A Yes, sir.



JAMES SCOTT ROCKHOLT DIRECT

1 Q Can you point him out for us?  
2 A (Indicating.)  
3 Q This individual right here in the striped shirt?  
4 A Yes.  
5 Q Was anyone else in the room after the patrol left?  
6 A No.  
7 Q What did Mr. Hughes do when he entered the room?  
8 A He walked in and he sat in a chair in front of me and  
9 put his hands inside his face and said, "I'm guilty, I'm  
10 guilty." That's all he said.  
11 Q Did you say anything to him prior to that?  
12 A No..  
13 Q Did you say anything to him after that?  
14 A No, just as soon as he said that Charles Cabaniss  
15 came in and Bruce Bryant with SLED and I left the room.  
16 Q Now at any time at any point in time did you do  
17 anything to elicit any information from him?  
18 A No, I was just told to sit.  
19 Q Okay. Do you recognize Mr. Hughes in this lineup  
20 here?  
21 A I do.  
22 Q Can you point to him?  
23 A (Indicating.)  
24 Q This man right here in the upper right hand corner?  
25 A Uh-huh.

JAMES SCOTT ROCKHOLT DIRECT

1 Q Is that substantially how Mr. Hughes looked ---

2 A Yes.

3 Q --- at the time he came in the room? Was he wearing  
4 that shirt?

5 A Yes.

6 Q Do you know how he got that shirt?

7 A No, sir.

8 Q Were you there when he ---

9 A No, sir, I was just told to just sit in that room  
10 until they could interview him.

11 Q Do you know where that shirt came from?

12 A I can't tell you.

13 Q Do you know what kind of shirt that is?

14 A Not really.

15 Q Okay. Did you have any other contact or involvement  
16 in this case, Mr. Rockholt?

17 A No, sir.

18 Q Okay. Thank you very much. Please answer any  
19 questions that Ms. Brice may have.

20 CROSS EXAMINATION

21 BY MS. BRICE

22 Q Mr. Rockholt, my name is Chris Brice.

23 A Yes, ma'am.

24 Q I think your testimony -- I will ask just a few short  
25 questions.

JAMES SCOTT ROCKHOLT    CROSS

1            A    Yes, ma'am.

2            Q    Your testimony was that he just walked into the room  
3            or did you escort him into the room?

4            A    I was told he was coming in. I was also told by  
5            Captain Charles Cabaniss to sit in the room and sit with  
6            him until they could interview him. I was in the room  
7            first.

8            Q    What was he wearing at that time?

9            A    I know he was wearing a shirt, but I can't recall the  
10           pants.

11           Q    Did he have a dark jacket on?

12           A    No.

13           Q    Did he have dark clothes on?

14           A    No.

15           Q    You said he walked into the room, ---

16           A    I walked into the room. Shortly after I got into the  
17           room they came in and as soon as he sat down it wasn't it  
18           was just a real short time thirty seconds or later I was  
19           told to, you know, the Captain came in and they started  
20           interviewing him.

21           Q    Was he escorted into the room by anybody?

22           A    The patrol brought him to the door.

23           Q    And then he just walked in?

24           A    Right.

25           Q    And he was in there more than thirty seconds and what

JAMES SCOTT ROCKHOLT     CROSS

1        did he have his head down --

2        A    He went in and he sat down in the chair and put his  
3        hands inside his head and that's what he said.

4        Q    And your testimony is you didn't elicit any  
5        statements from him?

6        A    That's correct. I didn't say a word to him.

7        Q    So you don't know if he was saying I'm guilty, I'm  
8        guilty because I just committed an armed robbery?

9        A    I don't know.

10       Q    You have no idea what he was saying he was guilty he  
11       was guilty about, just that he was making those  
12       statements?

13       A    That's all he said.

14       Q    And you did put that in writing, is that right,  
15       Officer Rockholt?

16       A    Yes, ma'am.

17       MS. BRICE: Those are all the questions I have.

18       MR. BRACKETT: Nothing further. I ask that this  
19       witness be excused.

20       THE COURT: You may step down. Thank you. I  
21       appreciate your coming.

22       MR. SCHUSTERMAN: May I ask the Solicitor's Office  
23       when they put somebody up just tell us for what purpose  
24       they are putting up. We are jumping around. We are  
25       waiting for the testimony to be elicited so we can then

JAMES SCOTT ROCKHOLT      CROSS

1            run through our discovery material.

2            MR. BRACKETT:    Another statement.

3            MR. SCHUSTERMAN:    Another statement.

4            MR. BRACKETT:    Yes.

5                            MARK HENRY KITTS, being duly sworn,  
6            testified as follows:

7            DIRECT EXAMINATION

8            BY MR. BRACKETT

9            Q    State your full name and spell your last for the  
10            court reporter.

11            A    Mark Henry Kitts, last name is K-i-t-t-s.

12            Q    And, sir, where are you employed?

13            A    I am employed by Nationwide Insurance assigned to the  
14            Special Investigative Unit.

15            Q    How long have you been employed with Nationwide?

16            A    For a month.

17            Q    For a month?    Last month where were you employed?

18            A    Rock Hill Police Department.

19            Q    How long were you with them?

20            A    Eleven years.

21            Q    Okay, were you working with them in September, 1992?

22            A    I was.

23            Q    Do you know the individual seated over here in the  
24            striped shirt?

25            A    Yes, I do.

1 Q All right, who is that?

2 A That is Mr. Hughes, is that correct?

3 Q Do you recall an incident involving Mr. Hughes and a  
4 deputy with the Sheriff's Department, Brent McCants back  
5 in September of 1992?

6 A I do.

7 Q Were you involved in any way in the investigation  
8 that took place that night?

9 A No, I was out of town when the incident occurred.

10 Q Did you have an occasion later to accompany Mr.  
11 Hughes to the courthouse over in the City of York?

12 A Correct at the old courthouse.

13 Q At a later date?

14 A Yes.

15 Q Okay, do you recall what date that was?

16 A No, sir, I do not.

17 Q Was it within a week of his arrest or a month or a  
18 year?

19 A Soon after the arrest.

20 Q What was your assignment that particular day?

21 A I was assigned with other officers to assist in  
22 transporting the two defendants to the courthouse for the  
23 purpose of a bond hearing.

24 Q Who was the other defendant?

25 A Mr. Forney.

1 Q Okay, do you recall upon arrival at the courthouse  
2 was there any person present outside the courthouse?

3 A There were members of the media and other bystanders  
4 outside the court building.

5 Q Did you hear Mr. Hughes make any statements  
6 whatsoever as you were escorting him to the building?

7 A I did.

8 Q And was his statement a spontaneous one or was it in  
9 response to a question? Can you describe the  
10 circumstances?

11 A The best I recall it was a response to a question  
12 from somebody in the crowd.

13 Q What was his statement?

14 A His statement was that he didn't know why he was down  
15 here, he was in Charlotte and the Rock Hill Police picked  
16 him up and brought him back to Rock Hill and he didn't  
17 know what he was involved with; he was set up.

18 Q Was this in response to a question that was asked by  
19 law enforcement or by the media?

20 A Somebody in the media crowd.

21 Q Did you do anything or any other law enforcement  
22 officer who might have been present at that time or did  
23 any other officer do anything to elicit that response  
24 from Mr. Hughes?

25 A No, we did not.

1 Q Did you do anything to provoke it?

2 A No, I did not.

3 Q Thank you very much. Please answer any questions  
4 that Mr. Schusterman may have.

5 CROSS EXAMINATION

6 BY MR. SCHUSTERMAN

7 Q Mr. Kitts, am I to understand that you were in charge  
8 of transporting Mar-Reece to the courthouse in York?

9 A I was one of several officers that was assigned. Mr.  
10 Hughes was walking in front of me at this time.

11 Q And a representative of the media asked him a  
12 question?

13 A As to who the person was I do not know, there were  
14 several medias; it was my assumption it was a media  
15 representative.

16 Q And in response to that Mr. Hughes answered that he  
17 was in Charlotte when this happened?

18 A Correct.

19 Q And that he was being set up by the Rock Hill Police  
20 Department did he say?

21 A Correct.

22 Q And that was the extent of what he said?

23 A That's correct.

24 Q He never repeated that again in your presence?

25 A No.



1 Q Thank you.

2 MR. BRACKETT: No further questions and I ask that  
3 this witness be excused.

4 THE COURT: You may step down. You are free to leave  
5 if you so desire.

6 LARRY P. DEVINNEY, being duly sworn,  
7 testified as follows:

8 DIRECT EXAMINATION

9 BY MR. BRACKETT

10 Q Would you please state your full name and spell your  
11 last for the court reporter.

12 A Larry P. Devinney D-e-v-i-n-n-e-y.

13 Q Where are you employed?

14 A The York County Sheriff's Department.

15 Q How long have you been with the Sheriff's Department?

16 A I have been with the Sheriff's Department about ten  
17 months.

18 Q And prior to that where were you employed?

19 A Previously I worked as a police officer with the city  
20 of Rock Hill for sixteen and a half years.

21 Q Your service with the Rock Hill Police Department  
22 covered a period around September of 1992?

23 A That's correct.

24 Q And were you working in the evening hours of  
25 September 25, 1992 and the early morning hours of

1 September 26, 1992?

2 A Yes, sir, the early evening hours I was working over  
3 time duty at a High School football game and later on I  
4 was paged in as a member of the Department Swat Team.

5 Q The SWAT Team was activated that evening?

6 A Yes, sir.

7 Q Why?

8 A A York County Deputy had been shot within the City  
9 limits of Rock Hill.

10 Q Where did that incident occur?

11 A On Dave Lyle Boulevard in the City of Rock Hill.

12 Q And what were your responsibilities as a member of  
13 the SWAT Team?

14 A My responsibilities were to call into dispatch, which  
15 I did, and I was advised of why the Team was being  
16 activated. I was to report to an area near the Holiday  
17 Inn, which is on Cherry Road about -- it's about a mile  
18 distance from the Dave Lyle Boulevard area where the  
19 incident occurred.

20 Q You go by the nickname Buddy, don't you?

21 A Yes.

22 Q Okay. If you would, sir, take a look at State's  
23 Exhibit 15. Could you tell us what that is? Do you  
24 recognize the area depicted on that map?

25 A Yes, sir, this area is where we were told to respond

LARRY DEVINNEY

DIRECT

1 to initially, North Cherry Road - Celriver Road area.

2 Q All right, how long were you out there? What time  
3 did you arrive there?

4 A I was activated at about 10:30 PM. I arrived there at  
5 10:35.

6 Q All right, now where were you deployed at  
7 approximately 2:30 in the morning of September 26, 1992?

8 A By that time with the use of tracking dogs and  
9 helicopters we were deployed into an area - I was  
10 assigned to an area off Wilkerson Road into a wood line  
11 out of sight of just normal eye sight.

12 Q Is this Wilkerson Road right here?

13 A Yes, sir.

14 Q Can you point approximately roughly where you were?

15 A My position was approximately this area here.

16 Q All right. Now what, if anything, and this is at  
17 2:30 in the morning?

18 A Yes, sir.

19 Q Were you involved in the apprehension of the  
20 defendant that night?

21 A Yes, I was.

22 Q Can you describe the events immediately leading up to  
23 his apprehension?

24 A Okay, from my radio I could receive transmissions  
25 from the helicopter that was hovering over this area.

1 They have a device which can detect heat being from a  
2 human or animal or whatever source, heat in a wooded  
3 area. They could determine there was an object in this  
4 area that we had surrounded. The dogs were following a  
5 trail from towards the Celriver-Holiday Inn area. From  
6 where I was being positioned in the wooded area, I could  
7 not use any light devices to give away my location.

8 Q Were you in a wooded area or on the outside.

9 A I was inside the woodline about maybe a foot inside  
10 the woods so if a car came by they wouldn't see me. If  
11 anybody would walk up the roadway they wouldn't see me.

12 Q Okay. What was your job inside the woodline? Were  
13 you in a stationary position?

14 A Yes, I was in a stationary position watching for any  
15 movement that would be coming from the area of the  
16 tracking team.

17 Q What, if anything, did you observe or hear at that  
18 time?

19 A I could first hear the dogs barking from the tracking  
20 team and, of course, they had flashlights, you know,  
21 scanning the area to give them sight in this wooded area.  
22 It was very dark that night. It was over in the morning.  
23 No street lights in this area, so there wouldn't be any  
24 lights in there. There was no light from this helicopter  
25 shining down to give them light. The officers with the

1 tracking team had flashlights.

2 Q Did you see any flashlights in the woods ahead of  
3 you?

4 A Ahead where the dogs were tracking there were  
5 flashlights. It was about twenty yards into the woods  
6 from the roadway I could see movement from like a  
7 silhouette around a log. There was about a foot high log  
8 lying in the woods and I could see movement into the  
9 lights of the officers with the tracking team.

10 Q Okay, did you hear anybody say anything?

11 A Yes, sir. About, I mean, this was ---

12 Q What did you hear?

13 A This was all simultaneous. By the time I saw the  
14 moment they apparently saw the same movement, shouted  
15 police officer freeze.

16 Q What did you do then?

17 A At that time I was closer to this person than I felt  
18 like they were. The person that was lying on the ground  
19 at this log started to crawl away from the direction of  
20 the dogs barking and the officers' commands. I ran on  
21 into the woods to get to this person.

22 Q Could you see what was going on very well or was this  
23 all happening in the dark and it was happening real fast?

24 A Okay, it was dark, but once the lights hit the log  
25 and this individual, they never cut them off, so I could

1 see everything and know that I was approaching someone  
2 that I had information had shot one police officer. Of  
3 course, I was running fast, but I could see, the lights  
4 never came off of him. There was one officer that had  
5 reached this individual first, had his left arm up to his  
6 side and as I got this distance from him probably from  
7 you to me he jerked away from the officer that was  
8 putting a handcuff on him from what I could hear at that  
9 point and jerked and put both arms underneath his body.

10 Q What did you do then?

11 A I dove on the individual and I reached underneath  
12 him. He was wearing a jacket, a work type jacket and as I  
13 reached under him, I was laying on his back and I told  
14 him to be still I was a police officer.

15 Q Where were his hands at the time?

16 A They were still underneath him.

17 Q Like this?

18 A Yes, sir.

19 Q Was he laying on his belly?

20 A Yes, sir.

21 Q His hands were concealed from your view?

22 A Yes, sir.

23 Q And underneath his body?

24 A Yes, sir.

25 Q And you were on top of him on his back?

1 A Yes, sir.

2 Q What did you do then?

3 A When I told him I was a police officer to be still,  
4 he shouted back to me over his shoulder, "I didn't shoot  
5 anybody" and I knew he had knowledge of it or was  
6 involved and as I ripped his hands from under him, this  
7 happened quick, and within fifteen seconds from the time  
8 that he jerked from this officer and that happened so  
9 quick there were officers from the dog team apparently  
10 probably a dozen they were there and all assisted in  
11 handcuffing him.

12 Q Now you got the handcuffs on him. Were you involved  
13 in escorting him out of the woods?

14 A Yes, sir.

15 Q And placed him in a vehicle?

16 A Yes, sir.

17 Q Did you ride back with him to the Law Center?

18 A Yes, sir, he was placed in the passenger rear seat of  
19 a Rock Hill marked unit. I got in the back seat with  
20 him, a Rock Hill City officer drove and a York County  
21 Deputy got in the front seat passenger side.

22 Q Who was the York County deputy?

23 A Now Lt. Allen Brandon.

24 Q And did you read his rights to him?

25 A Yes, sir.

1 Q Okay, whose card did you use to read off of?

2 A It was a Rights card from Lt. Brandon.

3 Q Okay, you don't have that card with you, do you?

4 A No, sir, I have a Rights card.

5 Q Can you recall if you told the defendant that he had  
6 the right to remain silent?

7 A Yes, I did.

8 Q Do you recall telling him if he did make a statement  
9 it could be used against him?

10 A Yes, sir, I did.

11 Q Did you tell him that he had the right to an  
12 attorney?

13 A Yes, sir.

14 Q Did you inform him that if he couldn't afford one,  
15 one would be provided for him by the court?

16 A Yes, sir.

17 Q Did you tell him he had a right to stop answering  
18 questions at any time?

19 A Yes, sir.

20 Q Did you ask him if he understood these rights?

21 A Yes, sir.

22 Q Okay and did he answer that he understood them?

23 A Yes, sir.

24 Q Did he make any other statements or did you just take  
25 him straight to the Law Center after that?



1 A I basically on the way to the Police Department I  
2 talked to him and told him that I wasn't going to be  
3 asking him any questions, that it was over with, to calm  
4 down because there would be other people talking with  
5 him.

6 Q Was he visibly hurt that you could see?

7 A He was bleeding from a cut over his left eye and I  
8 think on his bottom lip.

9 Q Now had that gotten on his clothing at all?

10 A Yes, sir.

11 Q When you got to the police station, what, if  
12 anything, did you do about that?

13 A I stayed with him into the police department when we  
14 went into the rear door immediately to the left goes into  
15 the holding area of the Rock Hill Police Department. I  
16 took him in there, took him to a rest room - shower room.  
17 I retrieved some clothing that's kept in the holding area  
18 and it's clothing it's not for issue, but for purposes  
19 like if individuals come in that have soiled their  
20 clothing or torn - some people gets arrested that is  
21 wearing very little clothing - this is old, uniform type  
22 things. There are some shirts kept there that are issued  
23 by the York County Detention Center because we have had  
24 inmates from the Detention Center and if they become  
25 soiled, they are changed out with this, but it's not

1 Department or City issue type stuff.

2 Q Is this clothing you have for ---

3 A Old uniform type things of that nature.

4 Q Did you relieve Mr. Hughes of his clothing?

5 A Yes, I knew from experience since he did have blood  
6 stains on his clothing I needed to obtain that for  
7 evidence, which I did myself. In this rest room I gave  
8 him this other clothing, shirt and pants, the pants were  
9 old police uniform pants that had no markings. Like I  
10 say they are not issue, but they would suffice for what I  
11 needed them for. I gave him a shirt and pants and his  
12 jacket, shirt, and pants I did retrieve and place into an  
13 evidence bag and signed it off.

14 Q Did he have a chance to clean himself up during this  
15 time period?

16 A Yes, sir.

17 Q Did he clean himself up?

18 A Yes, sir. He had mud on his hands, both hands front  
19 and back, and blood that was on his face by this time had  
20 begun to dry and I allowed him to wash up after I got the  
21 clothing.

22 Q Now what did you -- was he booked in during this  
23 time?

24 A Yes, sir.

25 Q Were you present when he was booked in?

1 A Yes, sir.

2 Q And what were your instructions to do with him after  
3 he had washed up and booked in? What were you told to do  
4 with him?

5 A After the booking process, I was instructed to take  
6 him up a hallway about thirty yards from the booking area  
7 into a Detective Division where he would be interviewed.

8 Q Okay and who did you leave him with?

9 A I left him in the presence of Investigator Rockholt.

10 Q And was that your involvement in this case?

11 A Yes, sir.

12 MR. BRACKETT: I beg the court's indulgence one  
13 moment.

14 Q Officer Devinney, at any point in time from the time  
15 you arrested him until the time you left him with Mr.  
16 Rockholt did Mr. Hughes assert his rights and ask for an  
17 attorney, ask that an attorney be appointed for him or  
18 anything like

19 A No, he didn't.

20 Q Thank you, sir. Please answer any questions Ms.  
21 Brice may have.

22 CROSS EXAMINATION

23 BY MS. BRICE

24 Q At the time -- you said you were in on the arrest of  
25 Mr. Hughes, is that correct?

1 A Yes, ma'am.

2 Q Were you also in on the arrest of any point of Mr.  
3 Forney?

4 A No, ma'am.

5 Q Do you know on this map approximately where Mr.  
6 Forney was apprehended? If you want, you can come down  
7 and point it out.

8 A To my understanding Mr. Forney was first scene this  
9 is the first entrance to which was BASF behind the  
10 Celanese Fibers on -- Celanese is on Cherry Road, this is  
11 Celriver Road, this is the first entrance to BASF at that  
12 time. This is a heavily wooded area here and as the  
13 officers approached him he ran right into this area from  
14 the edge of the roadway and was apprehended a short  
15 distance into the woodline.

16 Q Okay, so Mr. Forney was apprehended in this area  
17 here?

18 A To my understanding.

19 Q Okay and on this map, State's Exhibit Number 15,  
20 where approximately was Mr. Hughes apprehended?

21 A It was in this area around here. I know of the  
22 houses that are on Wilkerson Road and I know that it's in  
23 a wooded area between some. I'm not sure of how accurate  
24 this is or what those are.

25 Q Thank you very much. That is a pretty dark area, is

1 it not?

2 A Yes, ma'am.

3 Q There are no street lights out there?

4 A None to my recollection.

5 Q Specifically, in the area where you apprehended Mr.  
6 Hughes there aren't any street lights in that particular  
7 area?

8 A No, ma'am.

9 Q But there is a house directly if I were facing into  
10 the woods there is a house right here on the right hand  
11 side?

12 A A brick house.

13 Q All right, not too far away as a matter of fact?

14 A Right.

15 Q And then to the left of the house is where it's  
16 pretty densely wooded, is that correct?

17 A Yes, ma'am.

18 Q If I were standing on the road right here, how far  
19 did you -- was Mr. Hughes lying behind the log?

20 A You are standing where I was at that time.

21 Q Okay, on the side of the road? If I were standing on  
22 the side of the road, ---

23 A There's about six or eight feet and that's where the  
24 bushes and such start.

25 Q Right.

1 A I was just inside the wooded line. From me to where  
2 he was lying behind the log was probably the distance  
3 from as now to about Mrs. McCants, about twenty yards.

4 Q Okay and were you in the proximity of Randy Clinton  
5 with the dogs?

6 A Randy Clinton was with the dog team. He was beyond  
7 Mr. Hughes. Mr. Hughes was almost between us.

8 Q Okay. And there were several of you in the area at  
9 the time and I believe you all were kind of talking back  
10 and forth to one another or is that an inaccurate  
11 statement?

12 A No, I was lying down in the woodline by myself and I  
13 was a good distance from -- the area was surrounded, but  
14 it wasn't like we were holding hands distance from each  
15 other, it was, you know, we were probably ten yards space  
16 between us and I was in the woodline lying there.

17 Q And to your recollection who was the first person  
18 that basically had contact with Mr. Hughes?

19 A Later on I found out it was Randy Clinton. At the  
20 time I didn't know who it was. I knew he was a police  
21 officer because of the boots and the camouflage clothing  
22 that I could see in the light, but I didn't know who it  
23 was.

24 Q Were you wearing street clothes at the time or were  
25 you wearing uniforms?

1 A At that time I was like half and half. I was still  
2 in a navy blue police uniform, but as part of SWAT  
3 equipment it's like a flax vest and it was black, but it  
4 had markings "Police" front and back, the sleeves were  
5 cut off and you could see the police patches for  
6 identification, but the word "Police" is on the front in  
7 big bold letters and on the back for identification.

8 Q What was said or what did you hear at the time they  
9 apprehended Mr. Hughes to your recollection?

10 A The only thing that I remember word wise was when  
11 they first from the directions of the dog team directed  
12 the person that was lying on the ground to "Freeze,  
13 Police Officers." At that point he began moving in a  
14 prone position crawling away from their direction and  
15 that was when I began running into the direction of the  
16 individual on the ground. Whoever was standing at him I  
17 didn't hear anything other than the rattling of the  
18 handcuffs when he jerked away and went down. I never  
19 lost momentum as I ran into the woods and saw this  
20 struggle; I dove on him and I just screamed at him "Be  
21 still, I'm a police officer."

22 Q When you -- I'm not familiar with police procedure or  
23 anything, was there a particular reason you were on the  
24 ground? Was it to get a better vantage point as to what  
25 was going on in the woods? What would be the purpose of

1           you like being crouched down on the ground?

2           A    I was on the ground laying down; I would be able to  
3           see any movement inside the wooded area from the lights  
4           over at the Celriver Plant. I wouldn't be able to be  
5           seen, but I could see any movement like silhouette in the  
6           light giving me an advantage.

7           Q    Okay. And that assisted you in seeing movement  
8           behind the log? Would that be accurate?

9           A    I would not have been able to see if without the  
10          flashlight.

11          Q    Okay. And you assisted in bringing Mr. Hughes out of  
12          the woods, is that correct?

13          A    Yes, ma'am.

14          Q    And what was he wearing on his feet?

15          A    When we brought him out of the woods, nothing.

16          Q    Why?

17          A    I could speculate.

18               MR. BRACKETT: Your Honor, I would object.

19               THE COURT: I sustain the objection.

20          Q    Did you not find it odd that he did not have shoes  
21          on?

22          A    With my experience, no, I don't find it odd.

23          Q    At the time you brought him out of the woods he did  
24          not have any shoes on his feet?

25          A    No, ma'am.



1 Q Did someone carry his shoes and socks out of the  
2 woods?

3 A Yes, ma'am.

4 Q What happened next?

5 A After he was arrested completely handcuffed and stood  
6 up, we walked him out of the woods back in the direction  
7 that I came out of -- that I went into because that was  
8 the nearest way out of the woods. That is where the  
9 nearest vehicle was so we could transport him away from  
10 the area.

11 Q In the vehicle Mr. Hughes made the utterance that he  
12 didn't shoot anybody, is that correct, or did it happen  
13 before?

14 A That was when I was on the ground with him that he  
15 said "I didn't shoot anybody."

16 Q And once you were in the car that's when he was given  
17 his Miranda Warnings?

18 A Yes, ma'am, from me.

19 Q Right. And how long have you been employed with the  
20 Sheriff's Office?

21 A The Sheriff's Department about ten months.

22 Q And you were employed at that time by whom?

23 A City of Rock Hill.

24 Q And how long had you been employed by the City of  
25 Rock Hill?

1 A At that time?

2 Q Uh-huh.

3 A About fourteen years.

4 Q And in your fifteen years of experience have you ever  
5 given someone Miranda Rights where you did not think that  
6 they understood what you were telling them?

7 A Any time I have ever given anyone any Miranda Rights  
8 I would always be assured myself especially if I was  
9 going to question them I'd make sure that they did  
10 understand their rights. After I read him his rights, I  
11 asked him several times if he understood them.

12 Q My question was has anyone in your experience on the  
13 police force have you ever given Miranda Rights to  
14 anybody that you felt like I don't think they understood  
15 it. Has that ever happened to you?

16 A No, ma'am, that I can recall.

17 Q When you went to -- as I understand it you went to  
18 the Rock Hill Police Department, is that correct?

19 A Yes, ma'am.

20 Q I know that you testified that Mr. Hughes was changed  
21 at that time because of blood, et cetera.

22 A Yes, ma'am.

23 Q Did you change?

24 A No, ma'am.

25 Q So you still had on that kind of SWAT outfit that you

1 were talking about?

2 A The body armor I had taken off in the car.

3 Q What did you have on at this time?

4 A A uniform.

5 Q And in your experience with the Police Department  
6 were you not -- did you not have concerns about changing  
7 his clothes when there would be possible identification  
8 of Mr. Hughes?

9 A Identification?

10 Q Let me back up a minute. Your testimony was that you  
11 changed Mr. Hughes' clothes because you wanted to  
12 preserve evidence of blood.

13 A Yes, ma'am.

14 Q Okay, his change of clothes, I assume, took place  
15 prior to his mug shot photograph?

16 A Yes, ma'am.

17 Q Were you not concerned that you were tampering with  
18 evidence doing that because people may not be able to  
19 identify him in the clothing that he was in?

20 A I was concerned about the blood on his clothing being  
21 that of Deputy McCants and that's what I wanted to  
22 preserve as soon as possible.

23 Q Even if it meant that someone could not identify him  
24 as the potential shooter?

25 A I didn't change his appearance.

1 Q But you changed his clothes.

2 A Yes, ma'am.

3 Q And you changed his clothes from something that was  
4 extremely dark to something that was extremely light.

5 A I gave him the only thing that was available at the  
6 time.

7 Q My question was that you changed him from something  
8 that was extremely dark to something that was extremely  
9 light in color.

10 A It wasn't extreme. The shirt was about a medium  
11 blue. The jacket that he was wearing was about a royal to  
12 a navy blue. It's still blue, just a lighter shade.

13 Q Well, like a baby blue.

14 A Not that light.

15 Q Is this the shirt that you changed him into?

16 A Yes, ma'am.

17 Q And that's a light blue shirt, is that correct?

18 A I would say medium; if you want to say light.

19 Q And you said that this was just a shirt that way  
20 lying around that you would put someone in it if they had  
21 soiled their clothes or had something that was ripped?

22 A Yes, ma'am.

23 Q At the time that this shirt was used was this not  
24 also a prison uniform the same color with a V neck that  
25 was issued to inmates?

THE STATE VS HUGHES

1 A It is the same type

2 MS. BRICE: Nothing further.

3 MR. BRACKETT: Nothing further from this witness.

4 THE COURT: You may step down and be excused. We  
5 appreciate your time.

6 MR. DEVINNEY: Yes, sir.

7 THE COURT: All right, it is six o'clock. What does  
8 the schedule look like for tomorrow? Can we complete  
9 everything else tomorrow?

10 MR. POPE: Your Honor, I hope so. Sometimes we move  
11 extremely fast and sometimes extremely slow. Your Honor,  
12 I don't know if it is worth the while, it may be time well  
13 spent if we can take a few minutes on the second half of  
14 the Motions. A lot of them I don't think will even be an  
15 issue. Certainly we can do it in the morning. We are just  
16 about half way through with them, but if the court feels  
17 we should adjourn, we can do it in the morning.

18 THE COURT: Oh, no, we can handle it. Well, let's go  
19 twenty minutes or so.

20 MR. POPE: Your Honor, it may not even take that long.

21 The next Motion where we left off is Defense Motion  
22 36.

23 THE COURT: I thought we had ruled on 36. Is that what  
24 you are saying the last one we did?

25 MR. POPE: Yes, sir.

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1 All right, the next one is Motion Number 37 for  
2 prosecution not to mention the legal significance of the  
3 aggravating circumstances during voir dire or during the  
4 guilt phase of the trial. As I understand that Motion and  
5 certainly the defense can clarify it I won't say anywhere  
6 during the trial you need to bring back these aggravating  
7 circumstances so we can go to a penalty phase. I think  
8 that would be improper on my part to do so and I would not  
9 intend to any in way mention the legal significance of the  
10 armed robbery of Deputy McCants from the standpoint of  
11 putting us into a death penalty context, which is what I  
12 deem that to be.

13 THE COURT: Is that correct, Ms. Brice?

14 MS. BRICE: I beg the court's indulgence, Your Honor.  
15 I am trying to find the Motions in my file.

16 MR. POPE: The injection of the question of potential  
17 later use of conviction or crimes which constitute  
18 aggravating circumstances and improperly obtain the jury's  
19 consideration of guilt of the defendant of the crimes at  
20 trial, and, again, I would not intend to do that.

21 MR. SCHUSTERMAN: With the court's indulgence, Your  
22 Honor.

23 MS. BRICE: If he is stipulating he is not going to  
24 make the statements, then, Your Honor, there will be no  
25 problem.

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1 MR. POPE: I think it is improper to do so, certainly,  
2 they can object and I think the court would stop me right  
3 then, but I don't intend to do that.

4 Number 38 Prohibit testimony regarding the suffering  
5 of the victim. I would submit that would fall under pain.  
6 I don't know if the defense has something different to  
7 argue. There is no case law cited. I would submit pain in  
8 those cases for the court's consideration. If that is  
9 something different, then we need - that The State needs  
10 to address, certainly we will do so.

11 THE COURT: Let me hear from the defense on that.

12 MS. BRICE: Your Honor, I would say that any testimony  
13 that would come as far as the suffering of Brent McCants  
14 would be speculative. He was from my accounts of the  
15 records he was not conscious at the time that anyone  
16 attended to him, so how would anyone know what he suffered  
17 at the time. I think the case law is clear that victim's  
18 impact evidence can come in, but I don't see how they are  
19 going to present evidence as to his pain and suffering.

20 MR. POPE: Your Honor, and, of course, certainly, it  
21 would be admissible in the guilt phase, it would in the  
22 penalty phase I think that goes again to the nature of the  
23 crime and if I could have a doctor or someone say that  
24 certain bullets traveled in certain paths and caused  
25 certain damage and what the logical inference from that is

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1 based on their expert opinion, I would ---

2 THE COURT: We will defer that until such testimony  
3 has surfaced.

4 MR. POPE: Your Honor, as far as the Motion in limine  
5 to prohibit Solicitor from anticipating defense position,  
6 again, as best as I can understand what they are asking  
7 for from reading that, I don't think -- it would be our  
8 position that I wouldn't be prohibited from saying what we  
9 anticipate they will say; however, I always have to make  
10 clear as the court does that they don't have to put up  
11 anything, that we bear the burden of proof and our  
12 standard means of handling that has always been that we  
13 emphasize that and the court instructs that there is  
14 nothing they have to show, that we have do it. But I would  
15 request not to be limited.

16 THE COURT: Well, I am not going to limit the  
17 Solicitor, but the Solicitor has already indicated an  
18 awareness of burden shifting and those sort of things and  
19 if that pops up, counsel for defense, of course, will  
20 object at the appropriate time and get a ruling. There  
21 can't be any burden shifting and I think the Solicitor is  
22 aware of that.

23 MR. POPE: Yes, sir.

24 Your Honor, the next before you will be Motion to  
25 restrict Solicitor's actions. As I understand it is me



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1 talking to Mr. --

2 THE COURT: Approaching the defense table, that sort  
3 of thing?

4 MS. BRICE: Yes, sir.

5 THE COURT: Well, I ---

6 MS. BRICE: We do not want the Solicitor to come up  
7 and confront Mr. Hughes as basically taking a position of  
8 badgering or causing him maybe to have an outburst in the  
9 courtroom.

10 THE COURT: Well, again, I am going to have to wait  
11 and see what happens. If that appears to be eminent or if  
12 we get into a situation where the concern is apparent,  
13 again, make a Motion and we will deal with it then.

14 MS. BRICE: Thank you, sir.

15 MR. POPE: As to the Motion to restrict the  
16 solicitor's argument again goes to and this may be  
17 premature also. It goes into all the different things that  
18 I should not argue to the jury some of which I will agree  
19 not to. Obviously, I'm bound if I argue something  
20 improperly in addition to all the other consideration,  
21 I'll be dealing with it when it comes back, Your Honor, so  
22 as to the list of arguments I shouldn't make, I am aware  
23 of the case law. Also, again, I don't know how the court  
24 could review my closing before I do it to the extent ---

25 THE COURT: I will treat that as the others, if he

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1 trods on ground he should not, counsel for the defense can  
2 object. I know the reason we have motions in limine is to  
3 keep counsel from having to object during a trial, but  
4 when you get into general things or even try to break up  
5 such things as argument into specific argument, the case  
6 law says where the boundary lines are. I can't anticipate  
7 that it is going to be crossed. There may be some things  
8 that you will object to that the case law is not clear one  
9 way or the other, there may be no case law, but I'm just  
10 going to have to leave that up to counsel for defense to  
11 raise during those periods of time, during argument.

12 MR. POPE: Your Honor, again, I think as far as the  
13 deterrent effect, again, I think that would fall into that  
14 same area. That would be Number 40.

15 THE COURT: Right.

16 43 is under advisement.

17 MR. POPE: 44 would be the Blair hearing. It is my  
18 understanding that on some of their testimony we had had  
19 Doctor Morgan coming today, it my understanding defense  
20 need him for tomorrow, so we just held off of a Blair  
21 hearing. When they have him here tomorrow, then we will  
22 hear the Blair issue.

23 MR. SCHUSTERMAN: That is correct, Your Honor.

24 MR. POPE: The next one, Your Honor, Number 45 is a  
25 Motion to permit defendant to act as his own co-counsel.

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1 Again, this may be something, considering the lateness of  
2 the hour, that the court may want to address more fully  
3 tomorrow. Your Honor, I think from the case law that we  
4 have researched, certainly, he has a right to act as his  
5 co-counsel. I think one thing that is important if he  
6 chooses to do so, just as if he was waiving his right to  
7 counsel and to proceed pro se, all of the questions and  
8 the admonitions and all the things that the court is  
9 required to do to make sure that he understands the perils  
10 of self-representation. I feel like this is somewhat of a  
11 unique situation that's being interjected. I would  
12 request, and that's why I am saying it may take a little  
13 longer, that we go into that or I say "we," the court goes  
14 into that to make sure that again the defendant  
15 understands what he gains and what he gives up by himself  
16 becoming involved even though it wouldn't be as big a  
17 situation pro se. Again, from my reading the case law and  
18 from my understanding the way the court would conduct the  
19 case, if he would choose to direct a witness, then he  
20 would be the one to cross that witness. And by virtue of  
21 that even though certainly he would still be entitled to  
22 his addressing the jury at the appropriate time given in  
23 the statute, in essence, by him choosing to direct or  
24 cross a certain witness, he has forgone the opportunity  
25 for his counsel to do it. I think that is something we

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1 need to address on intelligent waiver.

2 THE COURT: Okay, I -- Ms. Brice?

3 MS. BRICE: Go ahead, Your Honor, I just wanted to be  
4 heard.

5 THE COURT: Okay, well, let me hear from you.

6 MS. BRICE: He was citing a case and I'm not familiar  
7 with what he --

8 THE COURT: I am going to ask you to give us both  
9 copies of or at least the citations of the cases, so we  
10 can look at those.

11 MR. POPE: Do you want me to put them on the record  
12 now, Your Honor?

13 THE COURT: Yes, sir.

14 MR. POPE: It is State v Cash, which is 419 SE2d 811,  
15 South Carolina Court of Appeals; State v Bateman, 373 SE2d  
16 470; and, of course, the defense has cited Faretta v  
17 California in their Motion. Again, as far as Faretta I  
18 agree that he has the right to represent him and I'll also  
19 say these cases there are no cases that I have found that  
20 deal with as much as the co-counsel issue as cases that  
21 deal with pro se or moving forward. Your Honor, we also  
22 have a number of cases Mr. Brackett handed up that I have  
23 not had the opportunity to review including Graves v State  
24 and State v Cooper, but we do have copies and this is  
25 always a scary thing when the prosecutor hands up a case

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1 that he has not had an opportunity to review, but Ms.  
2 Jefferson has provided these as being an addition to these  
3 and I will hand this over and I will have the copies of  
4 the Cooper and Graves.

5 May it please the court, Your Honor? The next one will  
6 be 46 Motion for juror questionnaire the court has already  
7 sent out. There may be some things I know the defense  
8 wants to put on the record.

9 THE COURT: Yes, questionnaires have been sent out.  
10 This matter was reviewed earlier. There were some  
11 questions that were requested by counsel for defendant. If  
12 they have not already done so, I am going to invite them  
13 to make a copy of the proposal so that they will have a  
14 record of what was needed by the court for purposes of  
15 appeal.

16 MR. POPE: Your Honor, I think it was attached to  
17 their Motion. Of course, The State's objection to some of  
18 the questions goes to the whole line of cases of Smarr and  
19 South and all the cases as far as not staking out a juror  
20 and not creating a juror profile; however, we certainly  
21 realize that is in the court's discretion.

22 State's Exhibit 47 (sic), Your Honor, as to police  
23 investigation. I think we have addressed that issue  
24 previously.

25 THE COURT: In chambers that was discussed and I

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1 indicated I was denying the Motion. I think The State has  
2 a right to do it as well as counsel for defendant.

3 MR. POPE: Again I will note, Your Honor, that the  
4 defense has been provided with copies of juror rap sheets.

5 Motion to sequester witnesses, Your Honor, we have  
6 addressed that. One concern I would bring up is that it  
7 said "both from the court and from each other." The two  
8 things I would say I would request that it be reciprocal.  
9 That is our standard procedure. The other is I will  
10 instruct the jurors (sic) The State's position is it is  
11 not practical if we have fifty witnesses or thirty  
12 witnesses or whatever to have thirty different places;  
13 however, I am well aware of the danger to The State as far  
14 as a mistrial in a situation in which the jurors (sic) do  
15 -- I mean when the witnesses do speak to each other and I  
16 will try to keep that --

17 THE COURT: Well, I understand. And what I am going to  
18 do I am changing my practice on this. Again, with a case  
19 like this it is not practical as it would be on a half of  
20 a day or a day long case where all the witnesses are there  
21 at one time for me to bring them all in the courtroom and  
22 give them a speech, guidelines. What I am going to do is  
23 draft an Order for this case that I am going to instruct  
24 each side give to their witnesses as they appear and that  
25 Order is going to instruct them to not discuss the case.

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1 Mr. White will help me draw it, he is taking notes, but  
2 not to discuss the case, not discuss it factually,  
3 procedurally, i.e, what questions were asked, was cross  
4 examination heated, I want to make it very clear and make  
5 it a Court Order so that if anybody violates it, they will  
6 not only perhaps be precluded from testifying for whoever  
7 has them here, but be in contempt of court.

8 MR. POPE: Your Honor, my understanding too is the way  
9 we left that particular Motion is if there were some issue  
10 that comes up such as the defense talking about an expert  
11 being present, you know, for various testimony, we will  
12 address those as need be?

13 THE COURT: Oh, yes.

14 MR. POPE: Your Honor, as far as verbatim recording  
15 the record of all procedures. I understand that Motion. We  
16 have no objection. I don't know why we would object to  
17 that.

18 The Motion to bailiff.

19 THE COURT: I am going to consider that. I don't need  
20 any arguments on that. I have some concerns about it. I  
21 understand it possibly was done in other situations, but I  
22 will take that - I don't think I need any arguments on  
23 that. I know what the Motion is and I will take that into  
24 consideration and rule before we get the jury impaneled.

25 MR. POPE: Your Honor, the next Motion 49 would be the

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1 Motion as far as the exclusion of the evidence  
2 particularly as it relates to the second murder and my  
3 understanding is there would be some testimony regarding  
4 that and, certainly, we would have argument available for  
5 that when the court is ready to hear that.

6 Again, my one concern is one issue that may be  
7 worthwhile be it tomorrow or at sometime to make  
8 preliminary argument as far as that to determine, in  
9 essence, how far we go with the witnesses. You know,  
10 again, I know you can't give an anticipatory ruling, but,  
11 you know, our position may preclude spending a day on  
12 witnesses. Of course, very well the defense's may not,  
13 but, again, it may be worth it to hear, you know, at some  
14 juncture prior to going through twenty witnesses to hear  
15 that, Your Honor.

16 Finally, the last Motion ---

17 THE COURT: I'm not ignoring counsel for the  
18 defendant. He's covering these pretty quickly. If you have  
19 anything, please chime in, I mean, but the bottom line on  
20 a lot of these is that we can't deal with them until --

21 MS. BRICE: Okay. I am going to go ahead and just  
22 respond to that by saying I am just going to hand at this  
23 time and provide the Solicitor's office a copy of my Brief  
24 in regards to my position and that will at least set forth  
25 a little bit about what our argument is going to be and



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1 perhaps in light of what the Solicitor has said, maybe it  
2 will cut down on some of the presentation of witnesses  
3 tomorrow.

4 THE COURT: All right.

5 MR. POPE: Your Honor, the final one would be as to  
6 the Lyle testimony. I just again for the court's  
7 information the two primary Lyle witnesses with the  
8 exception, of course, the clear and convincing evidence we  
9 put in as far as the indictment would be the two  
10 out-of-state witnesses that would be here when we return  
11 from Aiken. If the court requests, our argument is not  
12 going to change at least on the anticipated testimony of  
13 those witnesses and, again, the testimony I believe would  
14 be consistent with what the defense has from the previous  
15 transcript. Again I understand we need to tender if the  
16 court would like us to be prepared to argue that Motion  
17 tomorrow, then certainly we will be prepared to do so.

18 THE COURT: Why don't you be prepared on that and we  
19 will go ahead understanding that we won't have all the  
20 proffer until we have the two out-of-state witnesses.

21 MR. POPE: Yes, sir. Your Honor, the only other issue  
22 I have other than the ones we will have to address  
23 tomorrow that we have gone through is we had filed a  
24 reciprocal discovery and Ms. Brice has responded. We asked  
25 for written notice of alibi as to the murder of Brent

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1 McCants and she has indicated there will be no alibi  
2 defense. As to insanity in the murder of Brent McCants,  
3 they have indicated there would be no insanity defense.  
4 Again, she was clear as far as insanity which she may save  
5 that for some other issue in the second phase if, in fact,  
6 there is. In fairness to her she did communicate that and,  
7 of course, we will be heard on that at the appropriate  
8 time. My understanding also is that the defense has some  
9 reciprocal discovery evidence that Ms. Brice would have  
10 available and, you know, we can make arrangements to do  
11 that.

12 MS. BRICE: Yes, Your Honor, that is exactly true and  
13 I stipulated the fact that the circumstances surrounding  
14 Brent McCants' death we are not using an insanity defense.  
15 However, whatever happens as far as your ruling tomorrow  
16 on the remaining Motions for suppression of the other two  
17 indictments that are before the court certainly if that  
18 issue does come in that we will be presenting an insanity  
19 defense based upon those two indictments.

20 THE COURT: Which two indictments?

21 MS. BRICE: The second murder and the assault.

22 THE COURT: Okay, all right.

23 MR. POPE: It's not the ---

24 THE COURT: I understood; I -- because we had the  
25 Motions and those sort of things -- I thought that was the

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1 case, but I understand. I understand.

2 MS. BRICE: And also, Your Honor, I want to make the  
3 record clear that while we are not presenting an insanity  
4 defense for Mr. Hughes on the murder of Brent McCants, we  
5 are using a mental illness defense for issues of mental  
6 illness are going to be brought up through presentation of  
7 the defense's case.

8 THE COURT: But as I understood those would not deal  
9 with culpability, but rather with statements and  
10 voluntariness and those sort of issues.

11 MS. BRICE: Correct, Your Honor.

12 THE COURT: All right. I apologize for keeping  
13 everybody so late. If I can see counsel for two seconds in  
14 chambers and we will call it quits for today and will  
15 start back at 9:00 in the morning.

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17 THE COURT: Is The State ready to proceed?

18 MR. POPE: The State is ready?

19 THE COURT: Ms. Brice, is the defense prepared to go  
20 forward?

21 MS. BRICE: Yes, Your Honor, one issue that I would  
22 like to go back to that we addressed yesterday that was in  
23 regards to a Motion to disqualify the Solicitor's Office  
24 in regards to Sheldon Tucker I believe that you have  
25 already ruled on that.

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1 THE COURT: Well, I deferred until I said around noon  
2 today to give the defense the opportunity if they wished  
3 to contact Ms. Tucker to obtain any further information  
4 from her or have her present to testify.

5 MS. BRICE: Your Honor, to preserve our concerns our  
6 client basically he's concerned about the conflict of  
7 interest between Sheldon Tucker and the Solicitor's Office  
8 and to preserve those concerns I would like to proffer  
9 testimony of Mr. Hughes solely in regards to that issue as  
10 well as testimony of Doctor Dupree.

11 THE COURT: We will certainly allow that. I do -- Mr.  
12 Hughes, do you hear me?

13 MR. HUGHES: Yes, sir.

14 THE COURT: I just want to tell you, I think you and I  
15 have spoken before and I think I have pretty much said  
16 this to you before, but you remember now that you have the  
17 right to remain silent, that anything you say at any time  
18 could possibly be used against you in regards to these  
19 charges. You have the right to remain silent, that is, you  
20 don't have to testify, you don't have to make any  
21 statements, you don't have to answer any questions I ask  
22 you or anybody else regarding this. You have an absolute,  
23 constitutional right, it's your right, it's not your  
24 attorneys', it's not the Solicitor's, it's not mine, it's  
25 not any of your consultants or your medical providers or

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1 anybody like that. Do you understand all of that?

2 MR. HUGHES: Yes, sir.

3 THE COURT: All right, well, I want you to be aware of  
4 that because in the event you do testify even though it  
5 has to do with a particular issue, perhaps what you say  
6 could be used against you at a later time because once you  
7 have said it, you have said it and this particular context  
8 would be under oath in addition to just being a statement  
9 by you, but you don't have to say a thing and no one can  
10 make you say a thing. If you wish, you can. Do you  
11 understand that?

12 MR. HUGHES: Yes, sir.

13 THE COURT: Okay. Have you explained all of that to  
14 him, Ms. Brice?

15 MS. BRICE: Yes, sir.

16 THE COURT: All right. Is that correct?

17 MR. HUGHES: Yes, sir.

18 THE COURT: All right, thank you.

19 All right, do you want to make a proffer at this  
20 time?

21 MS. BRICE: Yes, sir.

22 MR. POPE: If it please the court, Your Honor? It is  
23 my understanding that the doctor will be here and Mr.  
24 Hughes will be here. I have got two State's witnesses that  
25 need to go back to work ---

MICHELLE AYERS

DIRECT

1 THE COURT: Okay, why don't we do that first. That's  
2 certainly a reasonable request.

3 MR. POPE: Thank you, sir.

4 The State would call Michelle Ayers.

5 MICHELLE AYERS, being duly sworn,  
6 testified as follows:

7 DIRECT EXAMINATION

8 BY MR. POPE

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

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

12 Q State it for the court again, please, ma'am.

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

14 Q Okay, Ms. Ayers, where are you employed now?

15 A TLC Day Care Center.

16 Q Where were you employed back on September 25th, 1992?

17 A Rock Hill Cinemas.

18 Q And is that out at the Galleria Mall?

19 A Right.

20 Q I'll show you State's Exhibit 16, if you would take a  
21 second to get kind of oriented with this being 77 and this  
22 being Dave Lyle, and if you could indicate to the judge  
23 where the Galleria Cinemas are.

24 A Show him?

25 Q Yes, you can show the judge, please, ma'am.

1 A (Witness complied.)

2 Q I am going to take you back to September 25th, 1992,  
3 were you working that evening?

4 A Yes, sir.

5 Q And why do you recall that evening in addition to this  
6 event that occurred at the Galleria, anything unusual that  
7 happened that night surrounding this case that reminds you  
8 of that night?

9 A Besides the men coming in?

10 Q Yes.

11 A I don't understand your question.

12 Q Do you recall this night being the night that Brent  
13 McCants was killed?

14 A Right.

15 Q And so that night you said two men came in. What were  
16 you doing prior to the two men coming in?

17 A Cleaning up the concession stand.

18 Q Okay and could you describe to the judge briefly the  
19 area where the concession stand is as far as the theaters,  
20 as far as the lighting and all of that? Could you  
21 describe that?

22 A All right, if you was to walk in the double doors,  
23 straight on out is the concession stand and then there's a  
24 wall and you go pass the wall and you go to the left or  
25 the right to the movies. And upstairs is video games.

1 Q So the area where the concession stand is is kind of a  
2 lobby like area?

3 A Right.

4 Q Behind the concession stand the movies are in a row  
5 down the hall both ways, is that right?

6 A Right, yes, sir.

7 Q Okay. Could you tell the judge what kind of lighting  
8 was in that area?

9 A About like this I believe.

10 Q Relate to the judge if you could what you recall as  
11 far as the two individuals coming in that night. If you  
12 could tell him what you recall.

13 A Well, I was back there cleaning up and the movies had  
14 already begun and we had really stopped selling tickets.  
15 Two black males came in and they wandered around a little  
16 bit and then they come out.

17 Q And do you recall, when you say "wandered around a  
18 little bit," what do you mean?

19 A Well, they hung around the lobby for a minute and then  
20 they walked back I guess went to the movies, I don't know  
21 what they did back there in the hallway, and then about  
22 twenty minutes later they came back out and they walked  
23 out the door.

24 Q Did you all allow them to go back to the theater, ---

25 A Right.



1 Q ---I mean, they hadn't bought tickets or anything.

2 A I don't believe so.

3 Q Okay and then when was the time you would have gotten  
4 your best look at them?

5 A It was after ten.

6 Q Okay. Okay, this was after ten when this occurred?

7 A Right.

8 Q When while they were inside, you know you said they  
9 came in the lobby and then they walked down the back hall,  
10 when -- where -- were you back behind the counter cleaning  
11 up?

12 A Right; when they were coming out.

13 Q Coming out from the ---

14 A From the movies ---

15 Q --- theater?

16 A Right.

17 Q Okay and did you give a description to law  
18 enforcement? I believe law enforcement contacted you the  
19 next day, is that right?

20 A Right; the following morning, I believe.

21 Q Okay, approximately when they were coming out how  
22 close to them were you? Do I need to move backward or  
23 forward?

24 A About right there. They weren't too far because of the  
25 little bit of space from the concession from the strips

1       they have, you know, to line people up?

2       Q     Right.

3       A     And there is little space.

4       Q     So that's where they passed back through?

5       A     Right.

6       Q     Okay. How long did they stay in there approximately?

7       A     About twenty minutes I guess.

8       Q     And so then the next day law enforcement called you  
9       and you had the opportunity - I believe your sister  
10      Crystal worked there too?

11      A     Right.

12      Q     And you all both had the opportunity to go down to the  
13      Rock Hill City and identify photos?

14      A     Uh-huh.

15      Q     And you talked to Les Herring with the Police  
16      Department and did he give you the opportunity to look at  
17      a computer ---

18      A     A computer screen.

19      Q     --- screen and some pictures?

20      A     Yes.

21      Q     Now when you -- I show you first State's Exhibit 7 and  
22      ask you to look at that a second and tell me if that  
23      appears to be the same pictures that you looked at that  
24      day.

25      A     Yes, sir.

1 Q And did Mr. Herring tell you who to pick or even if  
2 anybody was there to pick or what did he ask you to do?

3 A He just asked me to look at a screen and see if I  
4 recognized anybody.

5 Q Okay, did you see one of the individuals that was  
6 there that night?

7 A I did.

8 Q Okay, I show you State's Exhibit 14 and ask if you  
9 could identify that for me.

10 A That's the one.

11 Q And there is some writing there. Could you tell the  
12 court what that is?

13 A My initials M.A., the time was 1:16 PM and the date is  
14 9/26/92.

15 Q Okay and at 1:16 when you signed it you signed it to  
16 designate that was who you saw that night?

17 A Yes, sir.

18 Q You never picked anybody else on this other than the  
19 one you indicate, is that correct?

20 A Right.

21 Q And I believe of all the photo line-ups you saw this,  
22 which is Mr. Forney, was the only one you were able to  
23 identify out of the two, is that correct?

24 A Yes, sir.

25 Q All right. Thank you, ma'am. Answer any questions the

1 defense may have.

2 CROSS EXAMINATION

3 BY MR. SCHUSTERMAN

4 MR. SCHUSTERMAN: May it please the court?

5 Q Ms. Ayers, you said that the two gentlemen came in at  
6 approximately 10 or 10:15?

7 A Around ten, yes.

8 Q And how long did they stay?

9 A About twenty minutes.

10 Q You, obviously, had an opportunity to look at them to  
11 view them.

12 A Yes, sir.

13 Q And you could only -- you were able to readily  
14 identify this gentleman?

15 A Right; he was the one to me, you know what I may  
16 saying, they were walking together and he was the one  
17 closest to me.

18 Q Where was the other gentleman?

19 A Beside him. I didn't really look at him too hard, I  
20 just looked up and I saw I think Mr. Hughes, is that his  
21 name?

22 Q There must have been some reason though that one of  
23 the gentleman had your attention but the other one did  
24 not. Can you tell me why?

25 A Not really. They were coming out laughing, just

1       having fun or whatever and I looked up and he was the one  
2       looking at me laughing and so I guess that's why, I don't  
3       know.

4       Q     But you said they were in there for twenty minutes?

5       A     About twenty minutes.

6       Q     Did you have any interaction with them, did you talk  
7       to them?

8       A     No, I did not.

9       Q     And you said that even though you didn't talk to them  
10      and they were standing what appeared to be very close to  
11      one another ---

12      A     They weren't standing there; they were walking.

13      Q     Were they walking side by side?

14      A     Right.

15      Q     And yet you were able to identify one, but not  
16      identify the other?

17      A     Right.

18      Q     In your presence did either of the two gentlemen speak  
19      to anybody in the movie theater?

20      A     No, there wasn't nobody in the lobby; there was only  
21      me.

22      Q     You were the only person in the lobby?

23      A     Well, me in the concession, there was me and I think  
24      somebody else, I can't remember, Greg, I think, but there  
25      weren't nobody in the lobby.

CRYSTAL AYERS

DIRECT

1 Q To your knowledge there was no conversation?

2 A Not between us, no.

3 Q Was there conversation between the two gentlemen and  
4 anybody in your presence?

5 A No, just two gentlemen, that's it.

6 MR. SCHUSTERMAN: No further questions. Thank you.

7 Q Thank you, Ms. Ayers. I appreciate your time.

8 THE COURT: Redirect?

9 MR. POPE: I ask that this witness be excused.

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

11 MR. POPE: Crystal Ayers.

12 CRYSTAL AYERS, being duly sworn, testified

13 as follows:

14 DIRECT EXAMINATION

15 BY MR. POPE

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

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

19 Q And, Ms. Ayers, whom are you employed by now?

20 A Now?

21 Q Yes.

22 A The Cracker Barrel.

23 Q Okay, back on September 25th of 1992 where were you  
24 working?

25 A At the Galleria Mall Cinemas.

1 Q And what was your job there at the Cinemas?

2 A I worked concession.

3 Q And do you recall any individuals coming in? Well,  
4 first, let me ask you, back on September 25th is there  
5 something that occurred outside away from the Galleria  
6 that brings your memory back to the 25th, that night?

7 A Yes.

8 Q And what's that?

9 A The shooting of an officer.

10 Q So you were aware that happened the next day? You  
11 were contacted by law enforcement the next day, is that  
12 correct?

13 A Right.

14 Q And you were contacted in reference to two individuals  
15 coming into the theater the night Brent McCants was  
16 killed?

17 A Yes, sir.

18 Q Okay; and did law enforcement talk to you the night  
19 Brent McCants was killed?

20 A No, the next day.

21 Q And they contacted you at your business or residence?

22 A Right.

23 Q If you could, relate to the court what occurred as far  
24 as anyone coming in or anything unusual that evening at  
25 the Galleria.

1 A What happened that night?

2 Q Yes, ma'am, if you could relate it to the court,  
3 please, ma'am.

4 A About 10:00 or 10:15 two black males walked in, well,  
5 they walked to the box -- well, they walked inside and  
6 asked if the box office was closed and I told them, "Yes."  
7 They walked back out. Then a few minutes later they came  
8 back in. Well, the first time they came in, they wanted  
9 to know if we had a drink machine. I told them, "No" and  
10 they left. And then they came back in and asked if the box  
11 office was closed and I said, "Yes, but go ahead and watch  
12 a movie." They walked around looking through movie  
13 theaters.

14 Q So at that point the movies had all started?

15 A The movies had all started, yes.

16 Q So you let them -- basically, the box office was  
17 closed, you let them go on it.

18 A I let them go on in, right.

19 Q And what did they do?

20 A They walked looking through opening the doors looking  
21 and just walking back and forth and then they walked out.

22 Q Okay, you said you had a conversation with them about  
23 a drink machine and about whether the box office was  
24 closed?

25 A Right.



1 Q How close were you to them?

2 A They'd be, if this was the concession stand, if you  
3 were back just a little bit further.

4 Q Okay.

5 A About right there.

6 Q You were face up looking at both of them?

7 A Yes.

8 Q Were they side by side or was one behind the other or  
9 how were they standing?

10 A I would say one was like where you are and one was  
11 over just a little bit.

12 Q That area around the concession stand, what was the  
13 lighting around that area?

14 A It's well lit.

15 Q The first time they came and asked about the drink  
16 machine, did they come up to the concession stand like you  
17 described?

18 A Yes.

19 Q And then they went back out?

20 A They went back outside.

21 Q And then they came in and asked about the box office?

22 A Yes.

23 Q Okay, and again they came back?

24 A They came right back up.

25 Q Okay, that's when you told them they could go ahead

1 and watch a movie?

2 A Yes.

3 Q What did they do then?

4 A They then walked around. The movie theaters are behind  
5 the concession and they walked around and just walked up  
6 and down the aisle looking through movies.

7 Q Do you know one way or the other whether they went  
8 into a movie?

9 A I don't know if they did; I just know they opened the  
10 doors.

11 Q Do you know how long they stayed there at the theater?

12 A Between ten and fifteen minutes.

13 Q You say between ten and fifteen minutes. About what  
14 time was it when they came in?

15 A Between 10:00 and 10:15.

16 Q You say ten or fifteen, they would have left there  
17 sometime around 10:15 or 10:30?

18 A Yes.

19 Q Can you describe the individuals that night that you  
20 saw, the basic description?

21 A Not as far as clothing, but two black males.

22 Q Okay. And then the next day you went to the police  
23 station and you were given an opportunity to look at photo  
24 line-ups?

25 A Uh-huh.

1 Q Let me ask you first that night did anyone, that night  
2 at the Cinema your sister that's previously been here did  
3 anyone tell you who to pick out as far as the line-up or  
4 anything of that nature?

5 A No.

6 Q Did anyone suggest or point out in any way that this  
7 is the person you saw at the Cinema last night?

8 A No.

9 Q So you say you went the next day around one o'clock  
10 down to the City Police Station, is that correct?

11 A Uh-huh.

12 Q And I believe Detective Duke showed you, it was  
13 actually a computer screen?

14 A A computer screen.

15 Q And I believe he showed you one computer screen and  
16 then had you step out and then he fixed another one and  
17 had you see another one, is that correct?

18 A Correct.

19 Q Okay. I'll show you first what's been marked State's  
20 Exhibit 6 and State's Exhibit 11 and I'd ask if you could  
21 look at those and tell me if you could identify them.

22 A Identify them as what I saw?

23 Q Yes, ma'am.

24 A Yes.

25 Q And, of course, again, as far as State's Exhibit 6

1 that was actually on the computer screen, is that correct?

2 A Correct.

3 Q And State's Exhibit 11 that was the printout that you  
4 signed?

5 A Yes, sir.

6 Q Or I say signed, is that your initials?

7 A Those are my initials.

8 Q Okay, and you initialed to indicate the one that you  
9 had picked?

10 A Right.

11 Q And which one did you pick?

12 A The top right.

13 Q And what time would that have been?

14 A One o'clock.

15 Q So that was the first one that you saw?

16 A Yes.

17 Q And then State's Exhibit 7 and 10 I'd ask if you would  
18 look and again identify that, was that the second photo  
19 line-up that you looked at?

20 A Yes, sir.

21 Q And did you pick someone out on that one?

22 A Yes, sir.

23 Q And who did you pick out?

24 A The top right one.

25 Q And did you initial?

1 A I did.

2 Q Okay, and that was at what time?

3 A 1:04.

4 Q Okay, and that would be State's Exhibit 10. The  
5 photos you said no one told you who to pick out or whether  
6 to pick out anybody. What did they ask you to do?

7 A Just to see if any of those people looked like the  
8 people that came in the movie theater the night before.

9 Q The identification, the first, for the record State's  
10 Exhibit 6, State's Exhibit 11, you identified Mr. Hughes,  
11 what did you base that identification on?

12 A Just seeing him the night before, the face, seeing his  
13 face.

14 Q Seeing his face? Did you in any way base it on what  
15 clothing he did or didn't have on?

16 A I believe he was the one with the sweat shirt, the red  
17 sweat shirt, but more his face.

18 Q So you identified first Mr. Hughes -- maybe I should  
19 show you State's Exhibit 6 -- you identified by looking at  
20 his face as the face you had seen the night before?

21 A Yes.

22 Q And likewise State's Exhibit 7 you identified Mr.  
23 Forney the same way?

24 A Right.

25 Q Okay, State's Exhibit 6, Mr. Hughes, I'll ask if you

1 would look in the courtroom and see if you see the man  
2 that you saw that night?

3 A I do.

4 Q And could you identify him for us?

5 A Right there (indicating).

6 Q Could you describe what he is wearing?

7 A A striped shirt.

8 Q And was this man one of the men that you saw there at  
9 the Cinemas that night?

10 A Yes.

11 Q Is that why you identified him in these pictures?

12 A Right.

13 Q And as to each line-up, the first line-up Mr. Hughes,  
14 you only picked one person out of this line-up?

15 A Right.

16 Q Likewise on the line-up for Mr. Forney you only picked  
17 one?

18 A Right.

19 Q Law enforcement didn't tell you who to pick?

20 A No.

21 Q Did you pick either one of them because of their  
22 placement -- because they happened to be in the right hand  
23 corner?

24 A No.

25 Q And no one or did anyone discuss with you or anything

1 outside the presence of law enforcement as to who to pick  
2 or even if there would be anybody?

3 A No.

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

5 Q Ms. Ayers, if you would, answer any question the  
6 defense may have.

7 CROSS EXAMINATION

8 BY MR. SCHUSTERMAN

9 Q Ms. Ayers, do you recall that you also had an  
10 interview with an Officer John Thickens that day on the  
11 26th of September?

12 A The day after?

13 Q The day after.

14 A The day after at the police station; I don't remember  
15 the name.

16 Q You remember that?

17 A I remember talking to one.

18 Q Did you have that interview before or after you picked  
19 out the line-up?

20 A You are talking about what had happened or --

21 Q Yes, what had happened.

22 A I am sure it was before.

23 Q You are sure it was before. Do you recall telling  
24 Officer Thickens that the two gentlemen who came into the  
25 movie theater you were not threatened by them?

- 1 A I was not threatened, no.
- 2 Q They didn't try to steal or get anything?
- 3 A No.
- 4 Q That's correct?
- 5 A That's correct.
- 6 Q And they were only there for about fifteen minutes?
- 7 A Yes.
- 8 Q You didn't think anything of that that night?
- 9 A Not really, no.
- 10 Q When were you made aware or when were you first
- 11 contacted and led to believe that these gentlemen may have
- 12 been involved in something more than just visiting a movie
- 13 theater?
- 14 A The same night another black man had come in and told
- 15 us to call 911 an officer had been shot. That's when it
- 16 crossed my mind and then the next morning we were
- 17 contacted.
- 18 Q Who were you first contacted by?
- 19 A The police station.
- 20 Q Did they ask you to come down or did they come and
- 21 meet you at your home or at the movie theater?
- 22 A They asked us to come down.
- 23 Q And did you, in fact, go down?
- 24 A I did.
- 25 Q All right; and I assume that's when you had this



1 interview?

2 A Yes.

3 Q You then were shown a photo line-up?

4 A On a computer screen.

5 Q On a computer screen.

6 A Right.

7 Q Were you shown the line-up by the same person who did  
8 the interview with you?

9 A I can't remember.

10 Q When you were shown the line-up, were you alone in a  
11 room with the officer?

12 A It was just me and him.

13 Q Just the two of you?

14 A Just two of us.

15 Q And when you walked in were there already six pictures  
16 on the screen?

17 A I don't think so; I think he brought it up.

18 Q He brought it up.

19 A He brought it up I think.

20 Q And he asked you if you recognized any of these?

21 A Right.

22 Q And you indicated that you recognized the man in the  
23 top right hand corner.

24 A Right.

25 Q And this was, in fact, the first line-up you were

1 shown, correct?

2 A Yes.

3 Q This was the first line-up. Was Mr. Hughes wearing  
4 the same shirt when you saw him at the movie theater?

5 A I can't remember the clothes.

6 Q You don't remember the clothes?

7 A No.

8 Q After you identified you said the man in the top right  
9 hand corner as being one of the gentleman, what did the  
10 officer do at that point?

11 A He then I think he printed it out and that's when I  
12 initialed it.

13 Q And then what did he do?

14 A I can't remember. I remember doing the second line-up.

15 Q Did you leave the room ---

16 A No.

17 Q --- before the second line-up came in?

18 A No.

19 Q You stayed in the room?

20 A We just stayed in the room.

21 Q And did you watch him remove the video line-up from  
22 the screen and bring up a new one?

23 A I believe that's what he did, but I can't tell you.

24 Q And then you looked at the second line-up, and I  
25 believe State's Exhibit 7 will be the second line-up that

1 you saw?

2 A Yes.

3 Q All right. And once again you chose the top right hand  
4 corner?

5 A Right.

6 Q Were there any suggestions made to you as to who to  
7 pick?

8 A No.

9 Q And you chose the top right hand corner the first  
10 time?

11 A Right.

12 Q Without any doubt?

13 A No doubt.

14 Q Do you recall when you were asked to come here to  
15 testify in the Forney trial, Mr. Forney's trial?

16 A Uh-huh.

17 Q Do you recall, Ms. Ayers, that you were asked by Mr.  
18 Giese, who isn't here, he was another attorney for the  
19 prosecution, speaking about the one o'clock line-up, that  
20 was the first line-up you saw ---

21 A Yes.

22 Q --- and the question was: "Which photo did you pick  
23 out of that line-up?" And your answer was: "The top left  
24 one."

25 A That was my answer?

1 Q Yes; I'll let you see it.

2 A Well, it was the same line-up, right?

3 Q At the top of the page.

4 A I don't recall saying that, but that's what I said.

5 Q Is it possible that you chose the top left one and  
6 then you corrected yourself or someone helped you correct  
7 yourself?

8 A No one helped me, no. I mean I was nervous; I'm  
9 nervous now.

10 Q So you just misspoke?

11 A I probably just -- right.

12 Q Was there a time as you can recall when you were  
13 looking at the line-up that with either of the line-ups  
14 that you had trouble identifying the person ---

15 A No.

16 Q --- and you were torn maybe between two people?

17 A No.

18 Q Never?

19 A No.

20 Q So it was just a case where you misspoke?

21 A Yes, sir.

22 Q Ms. Ayers, were either of the gentlemen that night  
23 wearing a baseball cap?

24 A I can't remember that either.

25 Q You don't remember?

1 A I don't remember.

2 Q Thank you, Ms. Ayers, I have no other questions.

3 MR. POPE: No further questions. I ask that this  
4 witness be excused.

5 THE COURT: You may step down. We appreciate your  
6 time. Thank you.

7 MS. AYERS: Thank you.

8 THE COURT: Ms. Brice, do you want to do the proffer  
9 now?

10 MS. BRICE: Can I have one moment to speak to Mr.  
11 Hughes?

12 THE COURT: Let me just for the record. Mr. Hughes,  
13 listen, if you don't mind. I did not discuss with you when  
14 I talked to you about your rights to remain silent and  
15 your right to testify if you wished, the fact if you have  
16 a record of crimes in your past involving moral turpitude,  
17 which is a crime involving a violation of society's  
18 standards, that could be called to my attention regarding  
19 your credibility, that is, to show that you would be  
20 perhaps untruthful because you have in the past committed  
21 such an offense. I did not tell you that at that time. I  
22 am telling you that now. And one reason I did not tell  
23 you that at that time was we didn't have a jury here to  
24 listen to the testimony, but rather I, as the trial judge,  
25 and quite frankly I have through working on this case for

1 two years some knowledge - I don't have extensive  
2 knowledge or specific knowledge of your background, but I  
3 do have some knowledge and awareness of your past and so  
4 that's why I did not tell you that, but I do want to  
5 remind you they could call that to my attention, the  
6 Solicitor could, if you testify, they could call to my  
7 attention your past record, if any, regarding the matter  
8 of your truthfulness. Do you understand that too?

9 MR. HUGHES: Yes, sir.

10 THE COURT: Have you explained that to him too, Ms.  
11 Brice?

12 MS. BRICE: Yes, sir.

13 THE COURT: Okay, all right, you may go ahead.

14 MS. BRICE: Thank you, Your Honor. Before that I would  
15 like to have just one moment to speak to my client and ---

16 THE COURT: We'll take a short break, but go ahead,  
17 let's finish.

18 MR. BRICE: I would also like to make the record clear  
19 that why I may be presenting testimony by Mr. Hughes at  
20 this time may not necessarily mean that we will be  
21 presenting evidence or testimony from Mr. Hughes in the  
22 guilt phase of the case.

23 THE COURT: I understand that and the court is  
24 allowing -- this is a proffer. I have already ruled that  
25 the absence of showing by Ms. Tucker or some actual

1 communication which would constitute actual prejudice I am  
2 going to deny the motion regarding the recusal of the  
3 Solicitor and so this is for a limited purpose. The court  
4 is accepting it for a limited purpose and with the  
5 understanding it is for a limited purpose.

6 MS. BRICE: Thank you, Your Honor.

7 THE COURT: We will give you a couple of minutes. We  
8 will be at ease for a couple of minutes. Could I put the  
9 burden on you to let me know when you are ready?

10 MS. BRICE: Certainly. It will only be one moment.

11 THE COURT: Okay.

12 (Recess.)

13 Ms. Brice, are you ready to proceed?

14 MS. BRICE: Yes, Your Honor. The decision of the  
15 defense is that we will probably only at this time call  
16 Doctor Dupree.

17 THE COURT: All right. Come around and be sworn,  
18 please, ma'am. Good to see you again.

19 DAFFERLIN BARNARD DUPREE, being duly  
20 sworn, testified as follows:

21 DIRECT EXAMINATION

22 BY MS. BRICE

23 Q Doctor Dupree, would you please state your full name?

24 A Dafferlin Barnard Dupree, D-a-f-f-e-r-l-i-n  
25 B-a-r-n-a-r-d - D-u-p-r-e-e.

1 Q Doctor Dupree, what is your address?

2 A 18 Bluebill Court, Columbia, South Carolina.

3 Q Could you please describe for me your educational  
4 background?

5 A I received my Bachelor's Degree from Boston University  
6 in 1976. I subsequently received my Doctor in Medicine  
7 Degree from Georgetown University in Washington D.C. After  
8 that time ---

9 MR. POPE: May it please the court, Your Honor? Not to  
10 interrupt the doctor, but for purposes of this hearing I  
11 would stipulate any qualifications that need be.

12 THE COURT: You may proceed. I find that she is  
13 qualified and it is agreed upon by counsel.

14 MS. BRICE: Thank you.

15 Q Doctor Dupree, are you retained by the defense as a  
16 physician on this case?

17 A Yes, I am.

18 Q And in what capacity?

19 A As a treating physician and originally as an evaluator  
20 of Mr. Hughes' competency to stand trial.

21 Q And in that capacity have you had occasion to meet  
22 with Mr. Hughes as well as meeting with his attorney and  
23 persons who have been working on the defense case?

24 A Yes, I have.

25 Q And did you, in fact, have contact with Sheldon



1 Tucker?

2 A Yes, I did.

3 Q And can you describe your contact with her?

4 A My contact with Ms. Tucker occurred through  
5 evaluations and appointments that were conducted at Hall  
6 Institute as we were trying to assess Mr. Hughes'  
7 competency and as Mr. Schusterman would meet with Mr.  
8 Hughes, Ms. Tucker would often accompany him.

9 Q Okay and did you participate in confidential  
10 communications with Mr. Hughes and his attorneys while Ms.  
11 Tucker was present?

12 A Yes, I did.

13 Q And are you aware of the relationship that was  
14 established between Mr. Hughes and Ms. Tucker?

15 A Yes, I am.

16 Q Could you describe that relationship for me?

17 A Mr. Hughes came to trust Ms. Tucker, which was  
18 extremely unusual, because the diagnosis of paranoid  
19 schizophrenia one of the basic problems he has is trusting  
20 people. So for him to be able to come to trust someone is  
21 extremely unusual. He wrote her letters and sent her  
22 pictures that he drew because he felt close to her and  
23 friendly with her. He was very disappointed when she left  
24 Mr. Schusterman's employment.

25 Q Do you have concerns based upon his diagnosis as to

1 the effects her leaving the employment of the defense and  
2 then becoming employed by the Solicitor's office?

3 A I have rather serious concerns because one of the  
4 ongoing themes has been his distrust and paranoia as a  
5 result of his illness, so the fact that someone he worked  
6 with for this extended period of time subsequently leaves  
7 and then works in the Solicitor's office is certainly  
8 because of his illness could be a factor in terms of  
9 either not trusting or causing him some decompensation  
10 with other members of his legal team or others in general.

11 Q So you believe that based upon his illness that it  
12 could have prevented him from perhaps trusting someone  
13 else on his own defense team?

14 A Yes, I do.

15 Q And do you also believe that based upon his diagnosis  
16 that it could also prevent him from maybe providing us  
17 with information for fear that we may violate that trust?

18 A Well, one of the things that a paranoid person will do  
19 is that if trust is violated, then they subsequently  
20 withdraw and you essentially have to start all over again  
21 to try and build that trust back up, so that would be a  
22 serious concern.

23 Q So not only do you have concern about the fact that he  
24 may have felt that there was a violation of a confidential  
25 communication, but also based upon the fact that he may

1 have some difficulty now in working with his own attorneys  
2 because of a lack of trust?

3 A Yes.

4 MS. BRICE: That's all the questions I have.

5 CROSS EXAMINATION

6 BY MR. POPE

7 Q Doctor, if I understand correctly, you are saying  
8 because Ms. Tucker left the employment of Mr. Schusterman  
9 and became employed with the Solicitor's Office the  
10 defendant has problems trusting his team now?

11 A I am saying that because of his illness he is paranoid  
12 schizophrenic, which is a very serious mental illness,  
13 and, of course, the name for this type of schizophrenic is  
14 because that's the primary symptom, that someone who he  
15 has come close to, which is very difficult for him, if  
16 they now leave that close relationship, which she has  
17 done, and works with someone who he is obviously aware is  
18 in an adversarial relationship, then it would possibly  
19 cause him to have some distrust for other members of his  
20 defense team. This is Mr. Hughes' thinking now ---

21 Q Right.

22 A --- keep in mind that his thinking is not rational  
23 thinking because of his mental illness.

24 Q Okay and so if someone -- you say he became to trust  
25 her and there's other people there that he has begun to

1 trust too?

2 A It has taken quite a while because of his illness. Now  
3 that he is on medication, been on the treatment, he has  
4 become more trustworthy, but there's still a certain  
5 amount because in this illness residually he will always  
6 be paranoid at different times in his life.

7 Q Okay and you were retained by the defense as an  
8 independent expert, is that correct?

9 A That's correct.

10 Q And, of course, you advertise as an independent  
11 expert?

12 A That's correct.

13 Q And so you do work for the defense; you could do work  
14 for the prosecution, is that correct?

15 A That's correct.

16 Q Is the fact that Mr. Hughes is feeling like this does  
17 that prohibit you from taking on other cases? Is this the  
18 only case you are handling?

19 A No, I have other cases.

20 Q So, certainly, you can very well take on a case from a  
21 law enforcement standpoint?

22 A That's correct.

23 Q Would that not work any detriment to him also?

24 A Well, that would not attack upon his particular case.

25 Q And why would that not be? He has certainly given you

1 confidences, is that correct?

2 A Right, but I'm not working with anyone that he would  
3 perceive as being adversarial to him in his particular  
4 case.

5 Q So if I had another case, a mental case, and your  
6 services are available, I could not hire you to evaluate  
7 somebody for me?

8 A He would not perceive that as affecting his case. Do  
9 you understand my point?

10 Q Yes, ma'am, I believe I do. Do you have any specific  
11 incidences to your knowledge that Ms. Tucker has ever  
12 betrayed any trust that has been placed with her?

13 A No, I don't.

14 Q Okay. Did you discuss this situation with Mr.  
15 Schusterman prior to them releasing Ms. Tucker?

16 A No, I did not.

17 Q And so, again, what you are saying is it may not be an  
18 actual conflict, but rather a perceived conflict by the  
19 defendant, is that correct?

20 A I am saying that with his diagnosis, it is highly  
21 likely within a reasonable medical certainty.

22 Q That what?

23 A That his feelings of distrust would come about as a  
24 result of Ms. Tucker's leaving.

25 Q And the fact that Ms. Tucker left and came to the

1 prosecution is the root of that distrust?

2 A Yes.

3 Q And so regardless of whether she did or did not -  
4 there would be no remedy for it, is that correct? In  
5 other words, the fact she came to our office would be  
6 enough in and of itself, is that correct?

7 A That's correct.

8 Q And, again, that would be true and I go back to the  
9 example I used if you come to work for my office on a  
10 particular case, another case, by the same token Ms.  
11 Tucker had never worked on this case from my office, ---

12 A Yes.

13 Q --- but yet that somehow is different?

14 A That's a different relationship though in his  
15 perception. Once again his perception you have to keep in  
16 mind your perception is assumed rational.

17 Q Right. And so you agree then there is an irrational  
18 perception by the defendant that Ms. Tucker's coming to my  
19 office ---

20 A The nature of his illness gives him irrational  
21 thought.

22 Q And what you are saying is that by that very token  
23 that this is an irrational perception that Ms. Tucker has  
24 somehow caused a conflict with our office handling the  
25 case?

DAFFERLIN BARNARD DUPREE REDIRECT RECROSS

1 A But whether it is rational or not, it is his  
2 perception; it is what he believes and feels.

3 Q He believes. But again and I'm not splitting hairs,  
4 there is no actual prejudice, it is just what he believes?

5 A I have no proof of prejudice.

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

7 Q Thank you, ma'am.

8 REDIRECT EXAMINATION

9 BY MS. BRICE

10 Q I need to ask one quick question. Doctor Dupree,  
11 again, would you say that while you may not be able to  
12 show or pinpoint prejudice between what Sheldon may or may  
13 not have done as far as divulging information to the  
14 Solicitor's office, can you state as to what type of  
15 prejudice or would it have prejudiced him as far as his  
16 own relationship with his attorneys as far as the trust  
17 factor?

18 A Because of his mental illness I would say yes.

19 Q Thank you.

20 RECROSS EXAMINATION

21 BY MR. POPE

22 Q Ma'am, you say it has, in fact, done that, is that  
23 what you are saying?

24 A I am saying that within a reasonable degree of medical  
25 certainty it is highly likely.

1 Q It is highly likely and, again, I'm not splitting  
2 hairs with you, but you don't have any specifics to say  
3 because of Sheldon Tucker going with the Solicitor's  
4 Office this has happened or his has happened or --

5 A I have no proof of prejudice.

6 Q Okay and so, certainly, whatever damage you perceive  
7 to be done is already done, is that correct?

8 A That's correct.

9 Q So whether I then take this entire file and give it to  
10 another attorney with the Attorney General's Office that  
11 the damage has already been done as far his trust factor,  
12 is that correct?

13 A That's correct.

14 Q Thank you, ma'am.

15 THE COURT: You may step down. Thank you.

16 MS. BRICE: Your Honor, in regards to that Motion I  
17 just wanted to make it clear for the record that,  
18 basically, there are several elements behind why we are  
19 making that Motion, but not solely based upon the fact  
20 that we feel that Mr. Hughes is prejudiced by Ms. Tucker  
21 leaving the defense counsel's office to go to work for the  
22 Solicitor's office. That is just one element. Another  
23 element being that we feel that the attorney-client  
24 relationship has been affected by -- that this trust  
25 relationship that he feels now that, basically, he has had



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1 several attorneys who have left him, the knowledge that  
2 Sheldon Tucker also left where he established a trust  
3 relationship with her only to work for The State has  
4 affected his trust relationship with the defense counsel  
5 and we would suggest that that has also prejudiced him.  
6 Thank you.

7 THE COURT: Does the defense plan on presenting any  
8 other evidence on this issue?

9 MS. BRICE: No, sir.

10 THE COURT: The Motion to recuse and dismiss the  
11 Solicitor's Office in the case is again denied as I did  
12 subject to further proffer. That Motion is denied.

13 Ms. Brice? Ms. Brice?

14 MS. BRICE: I'm sorry, Your Honor.

15 THE COURT: The Motion is denied.

16 MS. BRICE: Thank you.

17 MR. POPE: May it please the court, Your Honor? I  
18 stated this before when we dealt with this Motion I just  
19 wanted to put on the record; I may not have made it clear  
20 before that I represent for my office and for Mr.  
21 Brackett, as an officer of the court, we, nor my office,  
22 has received any information. This would be to supplement  
23 the Affidavit that we have received no information from  
24 Ms. Tucker in reference to this case.

25 MR. BRACKETT: And for the record I would join in that

THE STATE VS HUGHES

1 representation on my own personal behalf. I have not  
2 received any information either, Your Honor.

3 MR. POPE: Are you ready to call your next witness,  
4 Mr. Solicitor? Do you have more witnesses?

5 MR. POPE: Yes, sir.  
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CHARLES CABANISS

DIRECT

1 MR. BRACKETT: The State would call Charles Cabaniss.

2 THE COURT: Please come around and be sworn, please.

3 CHARLES T. CABANISS, being duly sworn,  
4 testified as follows:

5 DIRECT EXAMINATION

6 BY MR. BRACKETT

7 Q Sir, would you state your full name and spell your  
8 last for the court reporter?

9 A Charles T. Cabaniss - C-a-b-a-n-i-s-s.

10 Q Where are you employed?

11 A City of Rock Hill Police Department.

12 Q And what capacity are you employed there?

13 A Captain. Captain of the Operations Division at this  
14 time.

15 Q Were you employed there in 1992 in September?

16 A Yes, sir, I was. I was Captain of the Detective  
17 Division.

18 Q Okay, did you have an occasion to be involved in the  
19 investigation of the murder of Sheriff's Deputy Brent  
20 McCants?

21 A Yes, sir, I did.

22 Q And did that occur within the city limits the murder?

23 A That's correct.

24 Q What was your involvement in the investigation?

25 A I was the supervisor in charge of the incident and the

1 investigation for the Rock Hill Police Department.

2 Q Were you actually on the scene where the incident took  
3 place?

4 A That is correct. We were on duty on another  
5 assignment that night and I arrived at the scene before  
6 Officer McCants was removed by EMS.

7 Q Were representatives of other agencies present?

8 A Yes, sir, there were.

9 Q Were there representatives of the York County  
10 Sheriff's Department?

11 A That's correct.

12 Q Who was the ranking officer on the scene for the  
13 Sheriff's Department?

14 A Officer Bohan and Officer Taylor, Deputy Bohan and  
15 Deputy Taylor.

16 Q Are you familiar with an agreement that was in  
17 existence at that time between the Sheriff's Department  
18 and the Rock Hill Police Department regarding reciprocal  
19 use of resources in emergency situations?

20 A Yes, sir, I am.

21 MR. BRACKETT: Your Honor, this is an item that was  
22 marked State's Exhibit 14 from the previous trial of State  
23 vs Forney. I ask that it be marked as an exhibit for the  
24 purposes of this hearing.

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

1 Q I show you what has been marked as State's Exhibit 22  
2 and ask if you can identify that document.

3 A Yes, this is a copy of a SWAT Reciprocal Agreement  
4 between the York County Sheriff's Department and the City  
5 of Rock Hill Police Department.

6 Q What, basically, do the terms of that Agreement  
7 specify?

8 A This Agreement pursuant to Section 23-1-210 of the  
9 1976 Code of Laws of South Carolina it is agreed that  
10 these Departments may transfer certain newly appointed  
11 commissioned law enforcement officers for a temporary  
12 period of time to participate in SWAT training and perform  
13 SWAT duties in either York County or the City of Rock  
14 Hill.

15 Q Who would activate the SWAT team for the Rock Hill  
16 Police Department?

17 A That night I would be the ranking official.

18 Q Did you, in fact, activate the SWAT team?

19 A Yes, sir, I did.

20 Q Do you know an individual Larry "Buddy" Devinney?

21 A Yes, sir, I do.

22 Q Where did he work at that time?

23 A He was employed with the Rock Hill Police Department  
24 and a SWAT team member that night.

25 Q So he would have been activated as well?

1 A Yes, he was.

2 MR. BRACKETT: I move this in evidence for the  
3 purposes of this hearing.

4 MR. SCHUSTERMAN: Without objection.

5 THE COURT: Without objection.

6 Q Did you have occasion without saying what Lt. Bohan or  
7 Lt. Taylor might have said did you have an occasion to  
8 discuss this Reciprocal Agreement with the ranking  
9 officers of the Sheriff's Department that evening?

10 A I don't recall specifically discussing the Agreement,  
11 but we did discuss jointly investigating the crime and  
12 calling all of the resources available to both of our  
13 Departments to assist.

14 Q Was it agreed that all the resources available would  
15 participate in all facets of the investigation?

16 A Yes, sir, that's correct.

17 Q Including your SWAT team?

18 A That's correct.

19 Q Of which Mr. Devinney was a member?

20 A Yes, sir.

21 Q Were any individuals apprehended and charged in  
22 relation to the murder of Deputy McCants that evening?

23 A Yes, sir, shortly after midnight Mr. Eric Forney was  
24 arrested and approximately two and a half hours later Mr.  
25 Hughes was arrested.

1 Q Turning your attention solely to the arrest and  
2 subsequent dealings with Mr. Hughes, do you see him in the  
3 courtroom?

4 A Yes, sir, Defendant Mar-Reece Hughes is sitting behind  
5 the defense table there in the white stripped shirt.

6 MR. BRACKETT: Let the witness reflect that the  
7 witness has identified the defendant Mar-Reece Hughes.

8 Q Did you have an occasion to speak with Mr. Hughes that  
9 night?

10 A Yes, sir, II did.

11 Q Approximately what time did you first make contact  
12 with Mr. Hughes?

13 A I met the transporting patrol unit in which Mr. Hughes  
14 was being transported to the Rock Hill Law Center. Deputy  
15 Brandon and Officer Devinney were in that vehicle along  
16 with another officer. I met them at the rear of the Law  
17 Center when they removed Mr. Hughes from the vehicle.  
18 They took him into our holding area at that time and some  
19 time later maybe twenty or thirty minutes later SLED Agent  
20 Bryant and myself went into the interview room where Mr.  
21 Hughes was sitting and began an interview at that time.

22 Q Who was in the interview room with him when you  
23 entered it?

24 A Investigator Scott Rockholt.

25 Q Did he participate in the interview?

1 A No, sir, when Mr. Hughes was brought from the holding  
2 area to the interview room, Investigator Rockholt was  
3 assigned to set with him there in the interview room until  
4 Agent Bryant and myself came in.

5 Q He was relieved at the time you and Agent Bryant  
6 entered the interview room?

7 A Correct.

8 Q Did you at that time apprise the defendant of his  
9 constitutional rights?

10 A Yes, sir, we did.

11 Q How did you do that?

12 A From a Miranda Rights card that I still have.

13 Q Is that the same card that you used that evening?

14 A This is the same card, a little worn, a little  
15 tattered,  
16 but, yes, sir, it's the same card.

17 Q Okay, can you read the rights that you read to Mr.  
18 Hughes that night upon first entering the interview room?

19 A I read him, "He had the right to remain silent,  
20 anything that you say can and will be used against you in  
21 a court of law, you have the right to talk to a lawyer and  
22 have him present with you while you are being questioned.  
23 If you cannot afford to hire a lawyer, one will be  
24 appointed to represent you before any questioning if you  
25 wish. You can decide at any time to exercise these rights



1 and not to answer any questions or make any statements."  
2 Then I asked him, "Do you understand each of these rights  
3 that I explained to you? He acknowledged that he did. I  
4 then asked him, "Having these rights in mind, do you wish  
5 to talk to us now?"

6 Q And did he indicate he wished to talk to you?

7 A Yes, sir, he did and he did talk to us.

8 Q Did he affirmatively waive his rights?

9 A That's correct, yes, sir.

10 Q Did he appear to understand the rights that you had  
11 just read to him?

12 A Yes, sir, he fully understood all the rights.

13 Q During the entire course of your conversation with him  
14 that evening and through the entire interview process at  
15 any point did he ever ask for an attorney?

16 A No, sir, he did not.

17 Q At any point did he ever appear to wish to stop  
18 talking or assert his right to remain silent?

19 A No, sir, he did not.

20 Q Throughout the entire conversation, did he appear to  
21 have an understanding of what was going on and did he  
22 appear to be oriented as to where he was and who he was  
23 with and what the purpose of his being there was?

24 A He seemed to be in complete self-control, conscious of  
25 his environment, he was not in an emotionally distressed

1 mental state, and did not appear to be under the influence  
2 of any intoxicating alcohol or drugs or any other agents.

3 Q Starting at the beginning, Captain Cabaniss, can you  
4 tell us did you ask him what he actually knew about this  
5 incident?

6 A That is correct.

7 Q What was his initial report to you regarding his  
8 knowledge of his incident?

9 A For the first several minutes in the room he was  
10 trying to tell Agent Bryant and myself a concocted story.  
11 During the interview of Mr. Hughes -- we had previously  
12 interviewed the other defendant, Mr. Forney, and this was  
13 some several hours after he murdered the police officer,  
14 the incident itself, we had a basic knowledge, we did have  
15 some investigative facts which we knew were true and the  
16 story Mr. Hughes was originally telling us we knew was  
17 completely false. He stated that he was picked up by Mr.  
18 Forney on the Interstate in Charlotte and had been  
19 dropped off at the Holiday Inn Motel and shortly before  
20 his arrest, Mr. Forney had came back to the motel.

21 Q The implication being that he knew nothing of any  
22 murder of any individual?

23 A That is correct.

24 Q Now you stated that you had previously interviewed Mr.  
25 Forney ---

1 A Yes, sir.

2 Q --- had you also interviewed or had others' interview  
3 and relating information to you other witnesses who were  
4 on the scene?

5 A That is correct.

6 Q So you were privy to information already about the  
7 incident?

8 A Yes, sir, I was.

9 Q As the interview progressed, did you divulge to Mr.  
10 Hughes information that you already had in your  
11 possession?

12 A Yes, sir, we did. To convince him that we knew he was  
13 lying to us we did divulge certain facts which we knew  
14 were true which would make him know that we knew what the  
15 truth was.

16 Q Were you aware at that time that he had gone to the  
17 Mini-Cinemas at the Galleria Mall?

18 A Yes, sir, we were.

19 Q Did you inform him of that fact?

20 A Yes, sir, we did.

21 Q And what, if anything, did he do after you apprised  
22 him of that fact?

23 A Sometime during the interview, I don't remember  
24 exactly when, but he did finally admit to going into the  
25 Cinema and stated they were going in there with the

1 intention to rob the Cinema.

2 Q Did he tell you that they actually accomplished a  
3 robbery?

4 A No, sir, he stated they did not because the girl let  
5 them in free that they did not go through with the  
6 robbery. The girl did not charge them and appeared to be  
7 intimidated so they did not go forward with the robbery.

8 Q At that point did he abandon the story about the  
9 Holiday Inn to some extent being left there and Forney  
10 coming back?

11 A At some point during the interview, Mr. Brackett, Mr.  
12 Hughes requested to talk with a friend by phone, a Lt.  
13 Perry, who was a correctional guard at a Correctional  
14 Institute in North Carolina. At approximately, I believe,  
15 3:55 AM he finished his conversation with Lt. Perry and I  
16 talked to Lt. Perry at that time. I believe Mr. Hughes  
17 became more truthful after that conversation with Lt.  
18 Perry. I don't specifically remember if he admitted to  
19 being at the Galleria Cinema before or after that  
20 conversation with Lt. Perry.

21 Q He was the one who requested to speak to Lt. Perry?

22 A Correct.

23 Q Is an individual who is being held for investigative  
24 purposes or under arrest typically allowed to make a phone  
25 call?

1 A I would say it would not be typical. It is an  
2 investigative tool that if the interrogating or  
3 interviewing officer feels that it may help the interview,  
4 it is permissible. There is a phone there in the  
5 interview room and Agent Bryant and myself -- I believe I  
6 dialed the number -- Mr. Hughes provided me with a number,  
7 and I dialed the number and got Lt. Perry on the phone  
8 after which time I let Mr. Hughes talk to Lt. Perry.

9 Q But it was Mr. Hughes' request to speak to Lt. Perry?

10 A Yes, sir.

11 Q And he provided you with a number?

12 A That's correct.

13 Q Did he at any point say that he would not go forward  
14 speaking to you until he had an opportunity to talk to  
15 him?

16 A No, sir.

17 Q He asked for it and you gave it to him.

18 A That's correct.

19 Q After speaking with Lt. Perry, did you continue the  
20 interview with Mr. Hughes?

21 A That's correct. I spoke with Lt. Perry myself on the  
22 phone and then I continued the interview with Mr. Hughes.

23 Q Now what was Mr. Hughes saying at that point?

24 A Mr. Hughes was stating that Lt. Perry had told him to  
25 tell the truth and that he was going to.

1 Q All right, and at some point then he gave you the  
2 story about going to the Galleria or he admitted he had  
3 been at the Galleria?

4 A He did not become completely truthful at that time and  
5 we confronted him with some other facts in which after a  
6 substantial period of time we did get what we believed a  
7 somewhat partly truthful account of the evening from Mr.  
8 Hughes.

9 Q And did you reduce that statement to writing?

10 A Yes, sir, we did. We first did it by taking notes and  
11 talking and then when we got ready to reduce it to  
12 writing, I got a City of Rock Hill Rights Form,  
13 Defendant's Statement Form. I read him his rights again  
14 from the Statement form. I placed it in the typewriter  
15 and then I typed it as he went back over with me and Agent  
16 Bryant.

17 Q Do you have that form with you here in the courtroom?

18 A Yes, sir, it's in my notebook.

19 Q Is this yours?

20 A Yes, sir.

21 Q This is the actual form that you typed up that  
22 evening?

23 A Yes, sir, it is.

24 Q Did you read him the rights again listed at the top of  
25 the form?

1 A That's correct from the form.

2 Q And did you read him the Waiver section there as well?

3 A Yes, sir.

4 Q Did he waive his rights again?

5 A Yes, sir, he did.

6 Q Did you then begin typing the form?

7 A That's correct.

8 Q And were you typing it as he was telling you?

9 A That's correct.

10 Q It was like a question and answer format you would  
11 write it down?

12 A We were having him go through it again and as he went  
13 through it again I was typing and we would ask questions  
14 and I would type his responses to our questions.

15 Q Now at any point did he ask you to make any  
16 corrections to anything you typed?

17 A When we got through with his statement, I again read  
18 it to him, read it along with him, and the second sentence  
19 where I had typed he had told us and I had typed that  
20 "Eric Forney had had an idea to rob someone in Charlotte"  
21 he did not want to put down in writing that Eric Forney  
22 had the idea and he wanted to remove that from the  
23 statement, so I marked through it with my pen. We  
24 continued to read through it all the way and he said it  
25 was true, but he didn't want to sign it. We asked him why

1 did he not want to sign it if it was true and he said  
2 because he wasn't sure about the exact details in the  
3 statement and he didn't want to sign something. At that  
4 time I typed in there this last sentence, last paragraph,  
5 "I'm not exactly sure about all the details in this  
6 statement, but they are true to the best of my memory."  
7 After typing that in there, Mr. Hughes still refused to  
8 sign the statement.

9 Q Did you pressure him in any way to sign the statement?

10 A No, sir, after I typed that last sentence in there, I  
11 don't believe Agent Bryant, myself, and Officer Hudgens  
12 was also in the interview room, I don't believe we  
13 contemplated with Mr. Hughes signing the statement over a  
14 minute or two. We did not wait long at all once he refused  
15 to sign it.

16 Q But what is contained in there is the substance of the  
17 statements that he made to you that evening?

18 A It's not all the entire, but, yes, sir, it is the  
19 substance.

20 Q At one point --

21 MR. BRACKETT: Your Honor, if I may have this marked  
22 for the purposes of this hearing as a State's Exhibit.

23 THE COURT: I would also suggest that you have the  
24 card which he read from earlier or a copy thereof marked  
25 as an exhibit.



1 Does the defense object to a copy?

2 MR. SCHUSTERMAN: For the purposes of this hearing?

3 THE COURT: Yes.

4 MR. SCHUSTERMAN: I have no objection.

5 THE COURT: A copy of the card as opposed to the  
6 original card.

7 MR. SCHUSTERMAN: Without objection.

8 MR. CABANISS: We can put the original if you want to,  
9 Your Honor.

10 THE COURT: All right.

11 (State's Exhibit 23 and 24 marked and filed.)

12 MR. BRACKETT: This is a three page document, it's not  
13 stapled. I ask that it be joined together, the first page  
14 starts the interview, the second page concludes the  
15 interview and the third page is where the defendant would  
16 have signed, but refused to and it was signed by Captain  
17 Cabaniss.

18 Madam Clerk, if you would staple it.

19 MR. BRACKETT: You are out of staples.

20 Q Captain, referring your attention during the interview  
21 process did he discuss the events that actually surrounded  
22 the murder of Deputy McCants?

23 A Yes, sir, he did.

24 Q And what did he initially tell you he was doing during  
25 the murder?

1 A Sitting in the right front seat of the vehicle.

2 Q Did he tell you in his initial statement, his initial  
3 story, that he ever got out of the vehicle?

4 A No, sir, he stated he stayed in the vehicle. He  
5 stated he never got out of the vehicle originally.

6 Q And did he ever have occasion to change that?

7 A Yes, sir, when we confronted him with the information  
8 that we had from eyewitnesses there at the scene that two  
9 black male subjects were seen over the body of the deputy,  
10 tugging on his belt, tugging around his waist line, two  
11 black males run from the deputy's body back to the  
12 vehicle, when we confronted him with that several times  
13 and finally convinced that we did have good credible  
14 information that was what happened, he at that time did  
15 make a statement that, yes, he was out of the vehicle and,  
16 yes, in fact, he was over the top of Deputy McCants as he  
17 lay there on the side of the road, but he added that the  
18 only reason he was there was to check his pulse.

19 Q Did he during the interview process discuss how he and  
20 Mr. Forney had come into possession of that vehicle?

21 A He stated that it was Mr. Forney's idea to carjack,  
22 rob a couple of their belongings and vehicle at a  
23 restaurant in Charlotte. He finally came around with that  
24 story. It was not the initial story, but he finally admit  
25 that they did rob the couple in Charlotte of the vehicle

1 and possessions.

2 Q And did he discuss who drove the vehicle away from the  
3 robbery location in Charlotte?

4 A Yes, sir, he did. He stated Mr. Forney was driving  
5 the vehicle.

6 Q Did he discuss who drove the vehicle throughout the  
7 evening?

8 A Throughout the evening he maintained and was very  
9 adamant of the fact that he never drove the vehicle. I  
10 asked him that specific question several times and he  
11 maintained throughout and even after the interview was  
12 over that he never drove the vehicle, that he was always  
13 on the passenger side.

14 Q At any point did he discuss -- you had the weapon in  
15 your possession at this time, the suspected murder weapon?

16 A That's correct.

17 Q Did you have occasion to discuss that with him?

18 A Yes, sir, I did.

19 Q And did you ask him who that weapon belonged to?

20 A Yes, I did. He stated that Mr. Forney -- he had met  
21 Mr. Forney earlier that evening shortly before they robbed  
22 the couple in Charlotte of the vehicle. He said that Mr.  
23 Forney had the gun when they met that night and that the  
24 gun belonged to Mr. Forney and Mr. Forney was in  
25 possession of the gun throughout the entire evening.

1 Q At any point in your interview with him, did you have  
2 any understanding or impression or belief that Mr. Hughes  
3 was under any form of psychiatric distress or  
4 psychological turmoil?

5 A No, sir, none whatsoever.

6 Q At any point in the course of your interrogation of  
7 the defendant did you, Agent Bryant, Captain Hudgens in  
8 any way threaten the defendant?

9 A No, sir, I did not.

10 Q Did you intimidate him in any way?

11 A No, sir.

12 Q Did you coerce him in any way?

13 A No, sir.

14 Q Did anyone in the room engage in any of those  
15 activities?

16 A No one throughout the night did, no, sir.

17 Q Did you mention or raise the specter of the death  
18 penalty in an attempt to coerce a plea -- coerce a  
19 confession?

20 A No, sir, I didn't.

21 MR. BRACKETT: Court's indulgence for one moment.

22 Q And during the course of your interview his Rights  
23 were read to him on two occasions?

24 A By me on two occasions, yes, sir.

25 Q And he appeared to understand those Rights both times?

1 A That is correct.

2 Q And he affirmatively waived those Rights on both  
3 occasions?

4 A That's right.

5 Q Thank you very much, Captain Cabaniss. Please answer  
6 any questions by the defense.

7 CROSS EXAMINATION

8 BY MR. SCHUSTERMAN

9 MR. SCHUSTERMAN: May it please the court?

10 Q Mr. Cabaniss, as I understand once you arrived on the  
11 scene, you acted as the coordinator of the manhunt?

12 A That would be a fair acronym, yes, sir.

13 Q I assume since your testimony was you arrived shortly  
14 after the incident, in fact, while Mr. McCants was still  
15 at the scene, do you remember approximately what time it  
16 was when you arrived there?

17 A 10:40, 10:45 PM.

18 Q To the best of your knowledge, approximately what  
19 time was Mr. Forney arrested?

20 A Around midnight. I was still at the scene when he was  
21 arrested. He was brought back by the scene and I rode  
22 with him into the Law Center.

23 Q All right. At that time when you had Mr. Forney -- I  
24 assume when you went back to the Law Center you mean the  
25 Rock Hill Law Center.

1 A Yes, sir.

2 Q When you back to the Law Center, did you at that time  
3 begin the interrogation of Mr. Forney?

4 A Shortly thereafter, yes, sir.

5 Q To your knowledge was Mr. Forney interrogated prior to  
6 his ride to the Law Center where you interrogated him? To  
7 your knowledge had anyone done an interview with Mr.  
8 Forney prior to the opportunity you had?

9 A No one had.

10 Q No one had.

11 A That's correct.

12 Q You are very sure of that?

13 A Very sure.

14 Q What was the substance of what Mr. Forney said?

15 A Mr. Forney also started out telling a story that we  
16 later found to be completely untrue and then he after  
17 quite a while of interview and interrogation by Agent  
18 Bryant and myself he did give us an account of the night's  
19 events which were somewhat factually consistent with what  
20 our investigation was revealing.

21 Q At this point when he's giving this statement or you  
22 are talking to him the investigation is all of maybe an  
23 hour and a half or two hours old at this point?

24 A That's correct. In the initial statement of talking  
25 to Mr. Forney the initial interview and interrogation was

1 to try and find the identity of the second individual and  
2 to arrest him.

3 Q That was the primary purpose at that point of talking  
4 to Mr. Forney?

5 A Mr. Forney, originally when arrested, gave us the  
6 wrong names to the best of my knowledge and we got the  
7 right name out of him and the name of Mr. Hughes.

8 Q I'm sorry. Mr. Forney gave you a wrong name for  
9 himself?

10 A That's correct.

11 Q At what point -- at some point in the interview you  
12 say Mr. Forney gave you the name of Mar-Reece Hughes?

13 A Before Mr. Hughes was arrested, that's correct.

14 Q And in the Forney interview was it again just you and  
15 Agent Bryant?

16 A That's correct.

17 Q When you arrested or when Mr. Hughes was apprehended,  
18 were you still at the Law Center or were you back out at  
19 the scene?

20 A I'm not sure. I've tried to remember that myself, but  
21 I'm sorry, we got through interviewing Mr. Forney shortly  
22 after 2:00, 2:05, 2:10. Mr. Hughes was arrested at 2:30.  
23 I was not present at his arrest, but I'm not sure if I was  
24 still at the Law Center or had maybe, in fact, got in my  
25 vehicle and was headed out to assist in the manhunt.

1 Q Now you indicate that Mr. Hughes had his Rights read  
2 to him.

3 A That's correct.

4 Q Reading off the card.

5 A I read to him off of my card and again off the  
6 statement sheet.

7 Q The first time you read it to him, if I understand  
8 chronologically, the first time you read his Rights it  
9 came off that little card, the South Carolina Law  
10 Enforcement card.

11 A That's correct.

12 Q You then began you and Agent Bryant began talking to  
13 Mr. Hughes.

14 A That's right.

15 Q At some point I take it -- let me back up a little  
16 bit. At approximately what time would you say this  
17 interrogation this interview with Mr. Hughes began with  
18 you and Agent Bryant?

19 A Approximately 3:00 AM, maybe a little after.

20 Q And if I understand from your statement here, from the  
21 statement that you allege Mr. Hughes made, that it was  
22 concluded at 4:52 that morning.

23 A That's correct.

24 Q And I take it the statement was the last thing that  
25 was done that morning. This was a culmination of Mr.



1 Hughes' interview.

2 A That's correct.

3 Q So the interview lasted an hour and forty-five  
4 minutes to two hours in that area?

5 A That's correct, with a couple of breaks in between,  
6 short breaks were made. I would step out of the room and  
7 Agent Bryant may step out of the room and then with the  
8 phone call break.

9 Q Is there a reason why number one you didn't tape  
10 record the interview?

11 A It's not common procedure at the Rock Hill Department  
12 in my twenty-two years to tape record it. I see no need  
13 to tape record. That would be the only reason I could  
14 give.

15 Q When you say "no reason to," would you not agree that  
16 if Mr. Hughes doesn't sign the statement indicating he  
17 didn't make the statement that you would have a verbatim  
18 record of what was said? Wouldn't that be far more  
19 accurate than you transcribing his words?

20 A You could possibly assume that conjecture from this  
21 instance, but at the time I had to make a decision, myself  
22 and Agent Bryant, I never contemplated recording it and I  
23 would still make that decision today.

24 Q Question number two. You indicate that you before you  
25 began typing the statement that you read him his Rights,

1 Mr. Hughes' Rights, again.

2 A From the statement, yes, sir.

3 Q Is there a reason why they are not signed at the top  
4 of the statement? I assume that the purpose, and, please,  
5 correct me if I am wrong, but I assume the purpose is that  
6 you have an understanding that I've read it to him and  
7 somebody witnesses it?

8 A You can assume -- the way I have always taken my  
9 statements, it was in the typewriter, I put it in the  
10 typewriter and I read it from the typewriter and I have  
11 him sign it all at the same time. I don't like read it to  
12 him, have it sign it, bring it back, put it in the  
13 typewriter, read the Waiver, take it out, have him sign  
14 it, bring it back, type it, take it out and have him sign  
15 again. I've always just had them sign all three at the  
16 same time.

17 Q Well, I understand what you are saying, but would you  
18 not agree that a prerequisite to someone taking a  
19 voluntary statement is to make a knowing and voluntary  
20 waiver of their Rights?

21 A I would agree that he should and did make a voluntary  
22 waiver of his Rights. I do not agree that I need to have  
23 him sign it before I actually type it. The Waiver is more  
24 important in my opinion than the signing.

25 Q Now I assume that you just merely asked him questions,

1 for instance, that beginning paragraph where you get some  
2 for lack of a term biographical data on it that he tells  
3 you his name and you type it. You ask him a question, my  
4 name is and you put his name in there, you know, what is  
5 your address?

6 A That's correct and there again we had already been  
7 taking notes and went over the story at least once with  
8 Mr. Hughes and as he went over it this last time that's  
9 when I typed it.

10 Q And you say that after you type everything in and he  
11 reviewed it, the only change he made on it was he wanted  
12 that one sentence penned out?

13 A That was the first change. The second one is that he  
14 gave a reason that he did not want to sign it because he  
15 wasn't sure of the exact details, so I added that last  
16 sentence there.

17 Q And that would be that final sentence that you wrote.

18 A Correct.

19 Q Are you aware that Mr. Hughes' first name is not  
20 spelled M-a-u-r-i-c-e?

21 A No, sir, I'm not.

22 Q You're not?

23 A No, sir, I've seen it spelled both ways since that  
24 night.

25 Q And I assume he just said my name is Mar-Reece and you

1 assumed it was M-a-u-r-i-c-e that spelling?

2 A That's correct and he never corrected ---

3 Q He never corrected it?

4 A No, sir.

5 Q Is it not true that when you had your interview with  
6 Mr. Hughes that one of the methods you used to show him  
7 that you were aware of the facts was that you showed Mr.  
8 Hughes or read to him the statement that Mr. Forney had  
9 made?

10 A We made him aware of Mr. Forney's statement and Mr.  
11 Forney's implication of Mr. Hughes. I cannot remember  
12 specifically if I actually showed or handed to him Mr.  
13 Forney's statement, but I did definitely -- we did  
14 definitely tell him the basics of what Mr. Forney had told  
15 us.

16 Q Now I would assume that the reason that -- this is a  
17 very short statement, about a page long if you add it all  
18 up, that this was the culmination of a fairly long  
19 interview and I believe you had indicated on direct  
20 examination that for various times during the interview  
21 Mr. Hughes was saying things that you knew based on the  
22 investigation was not true.

23 A That's correct.

24 Q And I assume that the reason that you finally took  
25 down this statement as opposed to any of the other

1 statements that Mr. Hughes made was because you believed  
2 that this was as close to the truth as you were going to  
3 get?

4 A Exactly true.

5 Q Let me ask you. In that hour and a half how many  
6 different "stories" would you say that Mr. Hughes had  
7 attempted to put forward to you and Agent Bryant?

8 A It wasn't that many completely different stores, it's  
9 just that he kept adding a little bit to, in other words,  
10 he never admitted -- he never denied being in Rock Hill,  
11 he denied at first being in the vehicle when the officer  
12 was shot and denied being in the vehicle at the Cinemas.  
13 Then he admitted to being in the vehicle at the Cinemas  
14 and then he admitted to being in the vehicle when the  
15 officer was shot. Then he admitted finally to being out  
16 over the top of the officer's body. There was probably no  
17 different sets of versions, completely different, just  
18 that each time he would be more truthful.

19 Q But I assume that since -- are you a supervisor for I  
20 believe it was Officer Rockholt who was here? Does he  
21 report to you?

22 A Not directly, but he ---

23 Q He would be under you?

24 A That's correct.

25 Q Were you made aware sometime that evening of a

1 statement that he made where he put his head in his hands  
2 and said, "I'm guilty, I'm guilty"?

3 A Yes, sir, I was.

4 Q Were you aware of that statement that night when you  
5 began talking to him?

6 A Yes, sir.

7 Q But yet is it not true that after he made that  
8 statement "I'm guilty, I'm guilty," but before he gave his  
9 account that he had indicated that he wasn't even there?

10 A That's correct.

11 Q So you would agree that there were different versions  
12 of the story, he was changing his perspective on the case,  
13 from "I'm guilty, I'm guilty," I wasn't even there, to I  
14 was there, but I didn't get out of the car?

15 A I would agree that he changed and added to his story  
16 several times.

17 Q Well, didn't he also delete, didn't he start out as I  
18 understood from you that he wasn't even there, that he had  
19 been dropped off at the Holiday Inn?

20 A Correct.

21 Q Do you have -- you had indicated that while you didn't  
22 take statements on all the other things that he said that  
23 night you indicated that you or Agent Bryant were taking  
24 notes that night.

25 A That's correct.

1 Q Do you have those notes?

2 A I do not have -- I did not make any notes and I do not  
3 have Agent Bryant's notes.

4 Q So to your knowledge when you refer to notes you meant  
5 Agent Bryant was taking notes that night?

6 A I believe he was, yes, sir.

7 Q Now did you do the typing of the statement or Agent  
8 Bryant?

9 A I did.

10 Q You did.

11 A Yes, sir.

12 Q And was this a product of Mr. Hughes telling the story  
13 and you had the notes and then you transcribed it or were  
14 you typing as he was talking?

15 A When that statement was typed, I was typing as he  
16 talked.

17 Q He dictated the statement to you?

18 A Not verbatim. We had went over the story before and  
19 he would leave something out that we thought we needed in  
20 the statement or we would ask him a question and he would  
21 respond and I would type it.

22 MR. SCHUSTERMAN: With the court's indulgence?

23 THE COURT: Certainly.

24 Q Is it not true, Mr. Cabaniss, that in Eric Forney's  
25 statement he, Mr. Forney, basically takes the same

1 position that Mr. Hughes does?

2 A There are some similarities, yes, sir.

3 Q Two quick questions, Mr. Cabaniss. Is it not true  
4 that in Mr. Forney's statement that Mr. Forney alleges  
5 that he was the passenger and that Mr. Hughes was the  
6 driver?

7 A They both indicated they were not the driver, they  
8 were not the shooter, and they were the passenger, which  
9 is not uncommon when two individuals commit a crime.  
10 During the interview process they make themselves the  
11 lesser culpable individuals.

12 Q But, just specifically, as it was to Mr. Forney, Mr.  
13 Forney put himself in the passenger seat with Mr. Hughes  
14 as the driver, is that a correct statement?

15 A Yes, sir.

16 Q Okay. Now if I may just ask you another question  
17 regarding the statement Mar-Reece Hughes made. Would you  
18 be good enough to look at this letter and tell me if you  
19 recall it being delivered? It indicates it was hand  
20 delivered. If you would, review it for me.

21 A What's the question again, I have read it.

22 Q Are you familiar with that letter?

23 A I can't say that I am. I have seen several letters  
24 similar to it. I can't say I am familiar with this  
25 specific one. I get them all the time.



1 Q Okay, let me switch letters. This is the same letter.  
2 This has a note on the bottom. Is this your handwriting  
3 on the bottom?

4 A Yes, sir.

5 Q Would you please indicate to the court the substance  
6 of the letter, who it is from, and your response?

7 A The letter is from Gerald Smith. It says, "Please do  
8 not interrogate or question Mr. Hughes in any manner  
9 concerning charges against him. Mr. Hughes has exercised  
10 his Fifth and Sixth Amendment Rights and does not want any  
11 contact of any kind with any law enforcement agencies. No  
12 law enforcement agency or their representatives to attempt  
13 to question or interrogate Mr. Hughes in any manner. Mr.  
14 Hughes does not wish to make any statements or have any  
15 contact with law enforcement without his attorney present.  
16 Please contact me if you have any questions."

17 On the bottom of it in my writing it states, "Hughes  
18 sent word he wanted to see me. One of my officers is  
19 with" - it says "now." Call me at your earliest  
20 convenience and discuss the details. Thanks and my  
21 initials.

22 Q Okay and I believe the letter is dated the 23rd of  
23 December, 1992.

24 A That's correct, when it was typed.

25 Q Would you please tell me what officer he was with and

1       what statements he may have made to that officer?

2       A    I don't recall which officer, if any. To the best of  
3       my knowledge there were no statements made.

4           MR. BRACKETT: Your Honor, I am not sure what the  
5       relevance of this is. That was dated December 23, '92.  
6       All the statements we are discussing here were made in  
7       September of 1992, some three months before that letter  
8       was written. We haven't proffered any statements nor are  
9       we aware of any statements that were made after that time.  
10      We don't intend to use any in evidence. I'm not sure  
11      whether or not he intends to use this in regards to the  
12      voluntariness of the statements that's made on September  
13      26th.

14           MR. SCHUSTERMAN: I have a letter, Your Honor, that  
15      indicates my client made a statement, which is potentially  
16      exculpatory, which we have not been provided and I would  
17      like to know.

18           THE COURT: I'll let him cross.

19           MR. SCHUSTERMAN: Thank you, sir.

20      Q    It is apparent, Mr. Cabaniss, from the letter and your  
21      note that there was some interaction between one of your  
22      officers and Mr. Hughes that day based, as you indicate,  
23      Mr. Hughes' initiative.

24      A    That's correct.

25      Q    But there's no record or no recollection of him ever

1 giving any type statement in that meeting?

2 A There was no statement given or there would be a  
3 record of it. So it would be my best assumption there was  
4 no statement.

5 Q Then let me ask you, ---

6 A I do not recall any further conversation with Mr.  
7 Smith to discuss the details. I don't recall that at all.

8 Q So at this point we have no idea why Mr. Hughes had a  
9 decision that he wanted to speak to you. We don't know  
10 why he did.

11 A That's correct.

12 Q But to your knowledge there was no statement made that  
13 day ---

14 A That's correct.

15 Q --- or as a by-product a day later from this  
16 encounter?

17 A I'm relatively sure there was no statement..

18 Q Mr. Cabaniss, who did you send this note to? Did you  
19 mail it back to Mr. Smith?

20 A No, sir, I did not mail it back to Mr. Smith.

21 Q Did you fax it?

22 A I do not believe so. It was probably stuck in our  
23 file. I don't know if it ever got back to Mr. Smith. I  
24 don't recall.

25 MR. SCHUSTERMAN: Your Honor, we would like to make

BRUCE BRYANT DIRECT

1 this document a part of the record.

2 MR. BRACKETT: I don't know the relevance of it. We  
3 have already said there are no statements.

4 THE COURT: Over objection of counsel for The State I  
5 am  
6 going to admit it.

7 (Defendant's Exhibit 1 marked and filed.)

8 MR. BRACKETT: Your Honor, I don't know if I formerly  
9 moved the statement Mr. Hughes made and the Rights card  
10 that belonged to Captain Cabaniss into evidence. I will  
11 do so at this time.

12 THE COURT: Ms. Brice, without objection?

13 MS. BRICE: Without objection for the purposes of this  
14 hearing.

15 THE COURT: It will be received.

16 MR. BRACKETT: Thank you, Your Honor. I ask that this  
17 witness be excused.

18 THE COURT: I appreciate your time. You may be  
19 excused.

20 MR. CABANISS: Thank you.

21 MR. BRACKETT: The State would call Agent Bruce Bryant  
22 to the stand.

23 BRUCE BRYANT, being duly sworn, testified  
24 as follows:  
25

BRUCE BRYANT

DIRECT

1 DIRECT EXAMINATION

2 BY MR. BRACKETT

3 Q Sir, would you state your full name for the record and  
4 spell your last.

5 A Bruce Bryant B-r-y-a-n-t.

6 Q Where are you employed, Agent Bryant?

7 A State Law Enforcement Division.

8 Q In what capacity are you with the State Law  
9 Enforcement Division?

10 A Senior Agent.

11 Q How long have you been with SLED?

12 A I have been with SLED nine years.

13 Q How long have you been in law enforcement?

14 A Twenty-four.

15 Q Were you present during the interview of Mar-Reece  
16 Hughes on the evening or the early morning hours of  
17 September 26, 1992?

18 A I was.

19 Q Were you present with Captain Charles Cabaniss when  
20 that interview took place?

21 A That's correct.

22 Q Were you present when Captain Cabaniss read the  
23 Miranda Warnings to the defendant?

24 A Yes, I was.

25

1 Q Did you hear him read those?

2 A Yes, I did.

3 Q Were you present when the defendant responded to those  
4 Miranda Warnings?

5 A Yes, I was.

6 Q Did the defendant at any time after the Miranda  
7 Warnings were read or at any time during the evening  
8 request the services of an attorney?

9 A No, he did not.

10 Q Did the defendant after the warnings were read or at  
11 any time during the evening ever wish or assert that he  
12 wished to maintain his Fifth Amendments Rights to be  
13 silent and not speak?

14 A He did not.

15 Q At any time did the defendant indicate that he wished  
16 to stop answering questions?

17 A No, he didn't.

18 Q Did the defendant appear to understand his Rights when  
19 they were read?

20 A Yes, he did.

21 Q Throughout the entire process of interviewing Mr.  
22 Hughes that evening did the defendant at any time appear  
23 confused, disoriented, psychologically disturbed or  
24 distressed in any way?

25 A No, sir, he did not.

BRUCE BRYANT

DIRECT

1 Q Did he appear intoxicated?

2 A No, he did not.

3 Q Did he appear to you in your experience as a law  
4 enforcement officer to be under the influence of any type  
5 of narcotic drug or stimulant or any type of controlled  
6 substance of any sort that would affect his ability to  
7 understand what was going on?

8 A No, he did not.

9 Q Did the defendant -- have you had an opportunity  
10 previously to review the statements that are contained in  
11 State's Exhibit 23?

12 A Yes, I have.

13 Q Have you reviewed that document?

14 A Yes, sir.

15 Q Are those the statements that you heard the defendant  
16 make that evening?

17 A Yes, sir.

18 Q Did you hear the defendant initially say that he was  
19 dropped off at the Holiday Inn as Mr. Cabaniss was saying?

20 A That's correct, that's the first story he started  
21 telling us.

22 Q And did you hear him amend his story as the evening  
23 went on?

24 A Yes, sir, he did.

25 Q And you heard the final substance of that statement as

1 it was related to Captain Cabaniss while he was typing it?

2 A Yes, sir, I did.

3 Q Are those the words of the defendant?

4 A Yes, sir.

5 Q Was the --- Oh, I'm sorry.

6 A This is basically the final story that he gave us.

7 Q Did you hear the defendant relate the details of the  
8 theft of the vehicle up in North Carolina?

9 A Yes, I did.

10 Q Did the defendant indicate that he was involved in  
11 that?

12 A Yes, he did.

13 Q Did the defendant at any time indicate that he was  
14 driving the car?

15 A No, sir, he denied driving it.

16 Q Did the defendant ever admit the ownership of the  
17 supposed murder weapon?

18 A No, sir, he didn't.

19 Q Was the defendant afforded the opportunity to read  
20 over that statement?

21 A Yes, sir, he was.

22 Q Was he afforded the opportunity to make any  
23 corrections of that statement?

24 A That's correct and as a result that's the reason  
25 there's a line drawn through one sentence of it.



1 Q Was he afforded the opportunity to make additions to  
2 the statement?

3 A Yes, he was.

4 Q Did he, in fact, make any additions?

5 A Yes, sir, there was an addition made like the last  
6 paragraph I believe and that's when he decided not to sign  
7 the statement because he wanted to change one part in it  
8 and we offered to change it, but then when we added that  
9 at the end he still said, "No, I don't want to sign it."

10 Q What was the sentence that you added at the end?

11 A He said -- on this statement he said "I'm not exactly  
12 sure about all the details in this statement" was what he  
13 was saying was the reason he didn't -- the last sentence  
14 says, "I'm not exactly sure about all the details in this  
15 statement, but they are true to the best of my memory" and  
16 after that was added, he still refused to sign it.

17 Q He initially orally stated that as the reason he  
18 wouldn't sign?

19 A It was because of this sentence the sentence that is  
20 marked out that he had an idea to rob someone at the  
21 Spotlight a couple of blocks up the street near a  
22 restaurant and he was indicating that that was Forney's  
23 idea and he was saying that he didn't whether that was  
24 Forney's idea or his idea.

25 Q Okay, in short then, Agent Bryant, he was given a full

BRUCE BRYANT

DIRECT

1 and fair opportunity to participate in the making of that  
2 statement, make whatever corrections he wanted to, and  
3 that was his statement as he related it to you and Captain  
4 Cabaniss?

5 A Yes, sir.

6 Q You were present when he refused to sign his  
7 statement?

8 A Yes, I was.

9 Q Were you present when Captain Cabaniss read the Rights  
10 to him off the top of the statement there for the second  
11 time that evening in your presence?

12 A Yes, sir.

13 Q Were you present when he waived that again?

14 A Yes, sir, I was.

15 Q At any time when you were present in the room, did you  
16 or Captain Cabaniss, Captain Hudgens or any other officer  
17 at any time in your presence threaten, intimidate, coerce,  
18 or badger or in any way cause the defendant to make that  
19 statement against his will?

20 A No, sir.

21 Q Were any tactics used that would have caused the  
22 defendant discomfort or to cause him to want to make a  
23 statement?

24 A No, sir.

25 Q Thank you very much, Agent Bryant. Please answer any

BRUCE BRYANT

CROSS

1 question counsel for defense may have.

2 CROSS EXAMINATION

3 BY MR. SCHUSTERMAN

4 Q Agent Bryant, was it only you and Mr. Cabaniss who  
5 were present during the questioning of Mr. Forney and Mr.  
6 Hughes?

7 A Mr. Forney was myself and Captain Cabaniss. On Mr.  
8 Hughes Robbie Hudgens of the York County Sheriff's  
9 Department was also present.

10 Q You have been sitting in the courtroom this morning,  
11 have you not?

12 A Yes, sir.

13 Q It was eluded to prior testimony that this final  
14 statement was a product of not only what Mr. Hughes said  
15 at the time Mr. Cabaniss was typing but also note taking  
16 that had gone on for the past hour and forty-five minutes  
17 or so.

18 A Yes, sir.

19 Q Do you have those notes that Mr. Cabaniss referred to?

20 A That he referred to to take this statement?

21 Q Yes.

22 A I have my notes. Captain Cabaniss didn't use my notes  
23 to type his statement up.

24 Q Whose notes did he use?

25 A He used what I assume what notes he took and also

1 during the course of talking with the defendant he was  
2 typing at the same time he was talking, but he didn't take  
3 my notes from me and use my notes to type this up.

4 Q And it was only the two of you in the room?

5 A No, sir, there were three of us. Captain Robbie  
6 Hudgens was also present.

7 Q Officer I thought Captain Hudgens was in during the  
8 Forney ---

9 A No, sir.

10 Q Just he was in with Hughes.

11 A In with Hughes.

12 Q Okay. How was Mr. Hughes dressed when you interviewed  
13 him?

14 A I have no idea. I can't recall. I can maybe go back  
15 in my notes and find out.

16 Q Was he wearing shoes at the time during this  
17 interview?

18 A Mr. Schusterman, I have no idea. I don't know.

19 Q Agent Bryant, would you be good enough to provide me  
20 with a copy of the notes that you took that night from the  
21 interview?

22 MR. BRACKETT: Your Honor, I would object. Unless the  
23 witness uses the notes to refresh his recollection during  
24 testimony that I am required to be turned over. He will  
25 probably use them in the course of the trial. I don't

1 know whether he will or not when the jury is empaneled and  
2 we will be glad to turn them over then. It's not that we  
3 are afraid and are hiding them, but that's one of our  
4 rights. He's not required to turn those notes over unless  
5 he used them during the course of his testimony. I would  
6 object to his being forced to turn them over.

7 MR. SCHUSTERMAN: As I understand it, the notes were  
8 used throughout the -- the notes were taken throughout the  
9 interrogation that culminated in this statement being  
10 made. So if we are going to discuss the voluntariness of  
11 the statement, the competency, the accuracy of the  
12 statement, which is not ---

13 THE COURT: I am going to require him to provide  
14 those.

15 MR. SCHUSTERMAN: Thank you.

16 MR. BRACKETT: We will get those at the next break,  
17 Your Honor, unless you want them now for cross  
18 examination.

19 MR. SCHUSTERMAN: I don't need them for cross  
20 examination.

21 Your Honor, the only thing I would do is I would  
22 reserve the right to recall Agent Bryant after ---

23 THE COURT: That will be granted.

24 MR. SCHUSTERMAN: Thank you.

25 MR. BRACKETT: No further questions.

1 THE COURT: You may step down.

2 MR. BRACKETT: That would be the last witness for The  
3 State on the issue of statements made by the defendant  
4 during the course of the interview and, also, the  
5 statements that were made to law enforcement personnel  
6 during the course of the evening and the subsequent  
7 incident in February reported by Sgt. Strain yesterday  
8 afternoon.

9 THE COURT: Ms. Brice, Mr. Schusterman, do you have  
10 any witnesses on this issue?

11 MR. SCHUSTERMAN: Yes, sir, Your Honor, we would have  
12 several witnesses on this matter, if we may have just a  
13 brief recess while we line up our witnesses.

14 THE COURT: We will take a short break.

15 MR. SCHUSTERMAN: Thank you, sir.

16 (Recess.)

17 MS. BRICE: We call Doctor Dupree.

18 THE COURT: I believe you have already been sworn. You  
19 are still under oath.

20 DAFFERLIN BARNARD DUPREE, having  
21 previously been sworn, testified as follows:

22 DIRECT EXAMINATION

23 BY MS. BRICE

24 MS. BRICE: Will The State stipulate as to the  
25 qualifications of Doctor Dupree for the purposes of this

1 hearing?

2 MR. POPE: Yes, we will.

3 Q Doctor Dupree, please explain what paranoid  
4 schizophrenia is.

5 A Schizophrenia is a major mental illness that consists  
6 of symptoms that include auditory and visual  
7 hallucinations, a disorder in a person's thinking,  
8 disorder in a person's social interaction and ability to  
9 function normally. At various times they can exhibit  
10 symptoms of inability to understand that their environment  
11 is real or a better way to say that is they are out of  
12 touch with reality as a lay person might say. This  
13 disorder also consists of a disorder in their physical  
14 understanding of their environment so that they often have  
15 misperceptions. They might see something that you and I  
16 would see one way and they would see it another way in  
17 this perception. And paranoid schizophrenia specifically  
18 is predominated by feelings of paranoia, fear,  
19 guardedness, distrust of people around them and their  
20 environment.

21 Q And can you explain for the court the progression of  
22 this type of illness?

23 A Generally, this illness has its beginning in the late  
24 teens - early twenties and the average age is in the  
25 mid-twenties. Paranoid schizophrenia sometimes has a later

onset than most so it would put it in the twenty-five to twenty-eight age range. Generally, it starts off with mild symptoms. A person may not be able to sleep for periods of time, they may not eat as well as they have or stop eating. Often times they will go on fasts for no reason at all that anyone can understand. They will withdraw socially from previous activities. If they are at school, they will start showing decreased ability to function in school and work and family situations. That is call the prodromal period. During that period they are not in the active phase, but they are moving towards many times the active phase of the illness. In the active phase they may become what we call acutely psychotic and, generally, but not always, they will hear voices, they will see things, their thinking becomes extremely disorganized and behavior can become extremely disorganized during that period. If that period is treated, then they subsequently can go into what is called a residual phase where they will then have some symptoms left over, but are stabilized and generally can function higher than they have been in the active phase of illness. Now it is different for different individuals. There's no set way that it's done. Some people will stay in a prodromal period for months or weeks or years and then move into the active phase. Some people will have several



1 prodromal periods before they move into the active phase.  
2 Some people stay in a prodromal period.

3 Q And if you are in this prodromal stage, what behavior  
4 would you exhibit?

5 A May I read to you from the DSMIV, is that permitted?

6 THE COURT: That will be fine.

7 A Okay. The DSMIV is the manual that psychiatrists use  
8 for diagnosis and reference and it is our guideline and I  
9 am reading from page 274 and I'll explain as we go along.  
10 "Characteristic symptoms of schizophrenia include a range  
11 of cognitive and emotional dysfunctions that include  
12 perception," and that's what I meant by distorting your  
13 environment, "inferential thinking" being that as people  
14 talk to you and we often make inferences and we can detect  
15 body language of people and we can pick up certain clues,  
16 they are not able to do that as we would, "language and  
17 communication, behavioral monitoring, affect," meaning how  
18 I relate to you or appear to relate to you, "fluency,"  
19 that's speech, "and productivity of thought and speech,  
20 hedonic capacity," meaning my ability to do for myself  
21 positive things, "volition," which is goal directive  
22 behavior, "drive and attention." So essentially what that  
23 is saying is schizophrenia affects all areas of a person's  
24 personality, character and behavior.

25 In the prodromal period, moving on to page 276, "less

1 severe disorganized thinking or speech may occur during  
2 the prodromal and residual period of schizophrenia." So  
3 that you may be in a prodromal period, you may not appear  
4 acutely psychotic because the symptoms are there, but they  
5 are less apparent.

6 Q And as far as a person who is in this prodromal stage,  
7 if you would just relate to me on my terms how that would  
8 affect the thought and speech content.

9 A A person with prodromal phase in terms of their  
10 thought would have less organized thought, but unless you  
11 spend a specific amount of time with them asking them  
12 specific questions and are trained to detect that, you  
13 would not necessarily detect those thought processes. For  
14 example, may I give an example?

15 Q Yes.

16 A You asked me do I understand what today is and I can  
17 just give you a yes or no answer, that's one thing. During  
18 a prodromal phase of an illness and you just ask me a  
19 closed end question, that appears that I understand, but  
20 if you let me talk openly and let me go on for an extended  
21 period of time, then at some point you may see some change  
22 in a thought process.

23 Q How would this change in the thought process manifest  
24 itself? How would you see it or hear it?

25 A Well, if you were trained as a psychiatrist or

1 psychologist, then you would see that the person would  
2 often make contradictory statements about statements they  
3 had made previously; they might become what's called  
4 circumstantial where they go from subject to subject; they  
5 may not remember what they told you previously. They may  
6 what we call get loose associations. An example of that is  
7 if I say, would you please sit in a chair and I say to  
8 you, yes, I'll sit in a chair because chairs are furniture  
9 and we have furniture in this court and the court means  
10 that we are going to have law. Do you see what I am  
11 saying? You move from thought to thought to thought.

12 Q And do you have an opinion to a reasonable degree of  
13 medical certainty as to whether or not Mr. Hughes could  
14 have intelligently and voluntarily waived his Miranda  
15 Warnings and give in an intelligent statement?

16 A Yes, I do have an opinion.

17 Q And what is that opinion?

18 A My opinion is that he was not able to do so.

19 Q And that is based on what?

20 A That is based on the review of documents from his  
21 social history, information obtained from his family or  
22 behaviors that were observed prior to this offense and  
23 information in terms of the diagnosis of schizophrenia  
24 looking at his IQ. When he was subsequently admitted to  
25 Hall Institute approximately two months after this

1 offense, they documented his IQ as 77, which placed him in  
2 a borderline intellectual functioning level. This was a  
3 drop of thirty points, a significant drop, from age  
4 eighteen when he was tested. So clearly there is a level  
5 of deterioration over the years that can only be explained  
6 by his mental illness.

7 Q And so what you are saying if I understand it  
8 correctly is that this deterioration that you saw as far  
9 as his IQ as well as speaking with members of his family  
10 prior to the charges of the murder of Brent McCants as  
11 well as the documents you have and the testimony that you  
12 have heard, you believe or is it your belief that he was  
13 in a prodromal stage at that time?

14 A That is my opinion.

15 Q That's all the questions I have. Thank you, Doctor  
16 Dupree.

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

18 THE COURT: Certainly.

19 CROSS EXAMINATION

20 BY MR. POPE

21 Q Doctor, I apologize. I must just be missing --  
22 prodromal section you talk about on 276, where --

23 A Look on there on the second -- page 276?

24 Q Yes, ma'am.

25 A That last sentence in the first paragraph.

1 Q And prodromal, what does that mean? Is that ---

2 A Prodromal is pre-psychotic.

3 Q So you are not saying he was psychotic at time he  
4 killed Brent McCants?

5 A At the time he killed Brent McCants?

6 Q Yes, ma'am.

7 A Am I saying that he killed Brent McCants? I'm sorry,  
8 could you rephrase the question.

9 Q I will. You are not saying he was psychotic at the  
10 time of the incident that he is charged with?

11 A I'm saying that he was in a pre-psychotic phase, which  
12 is prodromal.

13 Q Now as far as schizophrenia, I mean, different mental  
14 illness come on different ways, some cycle and some begin  
15 and progress - schizophrenia how does that --

16 A It's a gradual onset.

17 Q Okay, does it get worse and then get better?

18 A It waxes and wains, that's correct, Mr. Pope.

19 Q Okay. And so when you made your evaluation -- let me  
20 ask you you had previously submitted an evaluation at the  
21 request of the defense on July 27, 1994 ---

22 A That's correct.

23 Q --- I believe around July. That's when you were first  
24 retained in this case?

25 A That's correct.

1 Q And I notice in there you didn't make any findings  
2 other than his condition as of July 27th - I say as of  
3 July -- as of that time period in your report, is that  
4 correct?

5 A I don't understand your question, Mr. Pope.

6 Q You didn't make any findings -- you focused on your  
7 report to Mr. Schusterman and the defense on July 27th as  
8 to what Mar-Reece Hughes' condition was on July 27th or  
9 during that time period, is that correct?

10 A At the time of the report I was focusing on his  
11 ability to assist Mr. Schusterman, but if you will notice  
12 on Axis 1 on my diagnosis where it says psychotic disorder  
13 NOS, rule out schizophrenical disorder, I was well aware  
14 that he at that time was having psychotic symptoms. There  
15 was not enough information in terms of the family history  
16 and records then to make the final diagnosis of  
17 schizophrenia, but it was a working diagnosis.

18 Q Okay, at that time in July, --

19 A In July of '94.

20 Q --- of '94 you felt there may be some schizophrenia,  
21 some psychotic disorder at that time?

22 A That's correct.

23 Q And now you come today and you say you feel that it  
24 went all the way back to the time that he is charged with  
25 these crimes, is that correct?

1 A That's correct because part of the ability in making a  
2 diagnosis is going back to look at the person's behavior  
3 and you have to have information to give you that so that  
4 you can then put that together with the picture. You can't  
5 make the diagnosis in a small area of knowledge, you need  
6 medical records, you need observations from other people,  
7 you need a full family history and at that time I did not  
8 know that he had five people in the family with  
9 schizophrenia, which also makes him highly likely in terms  
10 of the congenital aspects of that illness.

11 Q Okay, And have you since -- you have had this  
12 opportunity to look at all this.

13 A Yes.

14 Q And have you formed a report, a written report, that  
15 you provided to the court?

16 A No, I have not provided a written report.

17 Q Is there a reason you haven't provided a written  
18 report similar to the one you provided previously?

19 A Mr. Schusterman did not request a written report.

20 Q My understanding when you came into this case on July  
21 27th, you were obtained by the defense, the issue again as  
22 you said a minute ago was competency, is that correct?

23 A That's correct.

24 Q And you have since worked with people from the State  
25 Hospital as far as assisting Mr. Hughes in regaining his

1 competency to stand trial, is that correct?

2 A As part of Judge Hayes' Order I have.

3 Q That's correct. And so as far as and I realize I am  
4 getting into another subject, but while you are  
5 testifying, as far as competency today, you are not here  
6 to say he is not competent to stand trial today.

7 A I am not.

8 Q Okay. So in your expert opinion he is competent to  
9 stand trial as we are here today.

10 A Yes.

11 Q Okay. And as far as an evaluation of criminal  
12 responsibility and capacity to conform and all of those  
13 things as to this case you don't have any report on that,  
14 is that correct?

15 A There is a report issued by Doctor Kohanski that was a  
16 joint report.

17 Q Now was that as to competency? I'm sorry, could you  
18 refer me to --

19 A Competency for today?

20 Q I'm sorry. You said there is a report by Doctor  
21 Kohanski?

22 A You had asked about criminal responsibility.

23 Q Yes, ma'am.

24 A Okay.

25 Q And you said there is a report?



1 A By Doctor Kohanski.

2 Q And could you refer me to the date of that report?

3 A Okay. We are talking about the first offense, Mr.  
4 Pope?

5 Q Yes, ma'am.

6 A Okay, Doctor McKee originally saw him at William S.  
7 Hall Psychiatric Institute and found him responsible in  
8 November -- I am sorry, December of 1992. Doctor Kohanski  
9 subsequently went back and reviewed that information and  
10 issued a report I believe that's December 14th, 1994.

11 Q Is this the same document?

12 A Yes.

13 Q And you have reviewed both I believe you said Doctor  
14 McKee, that's the Doctor McKee that is a psychiatrist ---

15 A Connie McKee.

16 Q Okay, and you reviewed both of those reports, the  
17 report of Doctor McKee in doing the evaluation and this  
18 report of Doctor Kohanski that Doctor Morgan, is that  
19 correct?

20 A Yes, I did.

21 Q Okay. I'd ask you to take a look at, first, the one I  
22 believe you had referred me to, the December 14th, ---

23 A Yes.

24 Q --- I'd ask if you would look and see if that is, in  
25 fact, the report that you referred to.

1 A Yes.

2 Your Honor, this would be State's Exhibit 25, it was  
3 a report involving criminal responsibility and capacity to  
4 conform from The State Hospital.

5 MS. BRICE: I have no objection.

6 THE COURT: It will be received.

7 (State's Exhibit 25 marked and filed.)

8 Q Again, I will show you what I presume would be State's  
9 Exhibit 26 and ask if you will review that if that is the  
10 report from Doctor McKee that you talked about.

11 A Yes, it is.

12 MS. BRICE: Without objection, Your Honor.

13 THE COURT: Without objection, it be received.

14 (State's Exhibit 26 marked and filed.)

15 MS. BRICE: Subject to cross examination, of course,  
16 Your Honor.

17 MS. POPE: Your Honor, this is their witness.

18 MS. BRICE: With other witnesses, Your Honor, with  
19 Doctor Morgan, the person who wrote the report.

20 MR. POPE: Yes.

21 Q Doctor, you talked about all the information you  
22 relied on, of course, in addition to those reports you  
23 consulted with those doctors, is that correct?

24 A Yes.

25 Q Likewise, did you review the assessments at Gilliam

1       Psychiatric Hospital in making your determination?

2       A     Yes, I did.

3       Q     I will show you State's Exhibit 27 and 28. Look at  
4       these and tell me if you recognize them.

5           MS. BRICE: Your Honor, I am not sure -- I realize we  
6       will be taking testimony in regards to competency. I am  
7       curious to understand where we are basically going with  
8       this to prove the voluntariness of the statement that was  
9       given by Mr. Hughes.

10       THE COURT: Well, I ---

11       MS. BRICE: Her testimony right now is being offered  
12       in conjunction with the voluntariness of the statement.  
13       I'm going to call her later in regards to the competency  
14       of Mr. Hughes in regards to the other charges.

15       THE COURT: I am going to allow the Solicitor to go  
16       forward with this line of questioning.

17       Q     Ma'am, State's Exhibit 27 and 28 that was the two that  
18       you reviewed also?

19       A     Yes.

20       MS. BRICE: Your Honor, I have no objection to the  
21       evidence provided that I have the opportunity to cross  
22       examine Doctor Kimball and Doctor Johnson regarding those  
23       findings.

24       MR. POPE: Again, Your Honor, the defense has put up a  
25       witness who is testifying that this is the basis of her

1 testimony and then, certainly, if they choose to bring the  
2 other doctors, they can, but she is saying that's how she  
3 is telling you what her opinion --

4 THE COURT: I understand. I am not going to require  
5 The State to put those witnesses up and you can certainly  
6 cross examine them if they are presented.

7 MS. BRICE: But he is admitting to evidence their  
8 findings, Your Honor.

9 THE COURT: That she is saying she relied on as an  
10 expert. Is that my understanding?

11 DOCTOR DUPREE: That that was part of the information  
12 that I relied on.

13 THE COURT: I think the rules regarding the use of --  
14 I think it is appropriate and proper for examination of a  
15 witness to use and introduce into evidence those things  
16 upon which that witness says they relied in whole or in  
17 part in reaching their conclusions.

18 MS. BRICE: Yes, sir.

19 THE COURT: Even if it is hearsay.

20 MS. BRICE: And, Your Honor, but I understand  
21 correctly I would assume that that is just for the  
22 purposes of this examination, is that correct?

23 THE COURT: Well, everything we are doing now is for  
24 the purposes of this hearing.

25 MS. BRICE: Right.

1 THE COURT: And for the purpose of her testimony  
2 regarding this issue.

3 MS. BRICE: Okay. Thank you, sir, I understand.

4 (State's Exhibits 27 and 28 marked.)

5 Q Doctor, I apologize. I realize that there are numerous  
6 documents ---

7 A Yes, sir.

8 Q --- in this case. Doctor, again to make clear my  
9 basis for asking you all of this when you first did your  
10 evaluation you didn't have as much information as you now  
11 have been able to look at from other experts and family  
12 members and various things you used to make your decision.

13 A That's correct.

14 Q Did you also have the opportunity to rely on the  
15 doctor's report from the State Hospital issued August 1,  
16 1994?

17 A Yes, I did.

18 MR. POPE: State's Exhibit 29.

19 MS. BRICE: I have no objection, Your Honor.

20 THE COURT: All right, it be received.

21 (State's Exhibit 29 marked and filed.)

22 Q Hopefully, finally, Doctor, I show you this report  
23 from the State Hospital dated November 16 of Doctor  
24 Kohanski, which this is the one that we discussed the  
25 competency, but references the previous one that you had

1 discussed.

2 A Yes.

3 Q And you relied on that also?

4 A Yes.

5 MS. BRICE: No objection, Your Honor.

6 (State's Exhibit 30 marked and filed.)

7 THE COURT: It be received.

8 MR. POPE: State's 30.

9 Q Doctor, the documentation that we have just gone  
10 through involves an assessment of basically three  
11 different things, is that correct, in various reports? It  
12 would be competency, criminal responsibility and the  
13 guilty but mentally ill ---

14 A Capacity to conform.

15 Q --- capacity, is that correct?

16 A Yes.

17 Q So you were involved or in some things you were  
18 involved by actually signing various things such as  
19 competency?

20 A That's correct.

21 Q And as to the issue of competency, and I'm just trying  
22 to keep a separate issue, competency is how one is doing  
23 today, is that correct?

24 A That is correct.

25 Q Okay, criminal responsibility or capacity to conform

1 goes back to how they were doing at the time, is that  
2 correct?

3 A That's correct.

4 Q Okay, in determining the time, of course,  
5 unfortunately, doctors can't be there, you know, when a  
6 crime takes place, so what you do is you try to research  
7 and gather as much information as you can to go back on,  
8 is that correct?

9 A That's correct.

10 Q As far as Mr. Hughes the night of the 25th and morning  
11 of the 26th, which is the focus of Ms. Brice's  
12 questioning, what witnesses did you talk to in making a  
13 determination of his capacity that evening?

14 A I spent -- the evening or any events prior to that  
15 time?

16 Q Yes, ma'am, this crime basically.

17 A I spoke with his family, at least five members of his  
18 family who were able to give information between the time  
19 prior to this incident. I reviewed all the medical records  
20 that were available from North Carolina in terms of dating  
21 back over the years when he was treated by a psychologist  
22 in North Carolina. I reviewed his statements that he had  
23 given at various times to various individuals as well and  
24 conducted several clinical interviews with him.

25 Q So you talked to his family, you reviewed the records,

1 these and other actual records, I realize these are  
2 reports, you reviewed a number of records, is that  
3 correct?

4 A Right, excuse me, I also interviewed Mr. Patton, who  
5 was in the cell block.

6 Q In the cell block and, again, the cell block now goes  
7 to the second murder, is that correct, when he's charged  
8 with cutting Mr. Williamson.

9 A Right, in terms of establishing prodromal symptoms.

10 Q Prodromal, again, is pre, is that correct?

11 A Pre.

12 Q Okay. So you were establishing pre-schizophrenia  
13 symptoms --

14 A I'm trying to establish a course of his illness, you  
15 put all of this together and try to establish a course of  
16 his illness.

17 Q Is your testimony, Doctor, to make sure I understand,  
18 and realizing you don't have a report on this issue, is  
19 your testimony that he did not have the capacity to  
20 conform his conduct the night of Brent McCants' death?

21 A No, that's not my testimony. I'm only saying I believe  
22 he had a prodromal symptom and he was in a prodromal phase  
23 at that time, but it's not my opinion that he did not have  
24 the ability to conform his conduct.

25 Q Let me ask you this. I'm not sure I understand what I



1 am fixing to say so I'll try and say it slowly.

2 Prodromal, pre-schizophrenic, can one be prodromal yet  
3 never enter into schizophrenia?

4 A It can happen. That is extremely rare.

5 Q Okay, I guess, so, according to your diagnosis, he was  
6 later schizophrenic at the time of the jail murder. If he  
7 had not turned out to be schizophrenic at the time of the  
8 jail murder, would your diagnosis still be the same that  
9 he would still be prodromal back then?

10 A His diagnosis would be the same regardless of, you  
11 know, what happened. It's we are looking at his behaviors  
12 that's what makes the diagnosis.

13 Q So the fact that he does or doesn't cut someone or  
14 does or does not commit a crime doesn't play a part?

15 A Whether he commits a crime or not, he is still  
16 schizophrenic. Do you understand what I am --

17 Q No, ma'am.

18 A People who don't commit crimes can be schizophrenic  
19 and people who commit crimes can be schizophrenic.

20 Q But one of the actions you look at to determine  
21 whether he is schizophrenic is the crimes that he commits?

22 A That's something you take into consideration, but you  
23 can still be schizophrenic -- you asked me whether he  
24 could be schizophrenic without that crime.

25 Q So as far as the night, again and I realize that you

1 are talking about two murders, the night that Mr. McCants  
2 was killed and the next day as far as the statement, when  
3 we talk about the capacity to conform, that is knowing  
4 right from wrong or making -- let me be sure I get it  
5 right -- the capacity to conform is not having any mental  
6 illness that prevents you from being able to conform your  
7 conduct to the requirements of the law, is that correct?

8 A That's correct.

9 Q And he did not have a mental illness that would have  
10 kept him from conforming his conduct to the requirements  
11 of the law, is that correct?

12 A It is my opinion that he was in a prodromal stage, but  
13 at that time it's my opinion that he was able to conform  
14 his conduct with the requirements of the law.

15 Q Okay, and then the McNaughten standard is just  
16 basically being able to know right from wrong.

17 A To differentiate.

18 Q To differentiate. And in your opinion he was able to  
19 differentiate that night, is that correct?

20 A That's my opinion.

21 Q Your testimony is because he is in a pre-stage of what  
22 ultimately in your opinion became schizophrenia that he  
23 was not able to ---

24 A Voluntarily and intelligently waive his rights to make  
25 those statements.

1 Q Okay. If he is not voluntarily able to waive those  
2 rights -- in essence, you are saying he's not in control?

3 A No, that's not the same thing.

4 Q I'm sorry, I don't want to put words in your mouth.

5 A I understand that. And a person who is in a prodromal  
6 phase that they can have disorganized thinking and that  
7 does not mean they can't differentiate right from wrong,  
8 but they have disorganized thinking. The officers aren't  
9 mental health specialists so they would not know what  
10 symptoms or how to elicit that. If they asked him a closed  
11 question he could say yes or no to, do you understand,  
12 they are not able to elicit those symptoms and even  
13 sometimes mental health counselors because the symptoms  
14 may be at a low -- they may not be able to elicit those  
15 symptoms. According to the DSMIV they are less severe than  
16 in the acute phase. By the time they get to the acute  
17 phase, you obviously can see the behaviors and the  
18 disorganized thinking.

19 Q So, again, going back they are not symptoms of the  
20 nature -- they are not symptoms of the nature that would  
21 have him lose control or lose -- going back to the  
22 capacity to conform --

23 A Okay.

24 Q -- They are not symptoms of such nature that he can't  
25 control himself or control his conduct, is that correct?

1 A Once again, he was able to conform his conduct that  
2 night.

3 Q And, again, -- I understand that. But, again, to  
4 conform his conduct is the ability to make choices.

5 A Yes.

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

7 Q Doctor, I think you have already touched on this, the  
8 prodromal stage is such that a layman very well may not be  
9 able to notice the symptoms and any experts would not be  
10 able to notice the symptoms, is that correct?

11 A That's correct.

12 Q Thank you.

13 REDIRECT EXAMINATION

14 BY MS. BRICE

15 Q The purpose of this testimony that we are going into  
16 right now is in regards to the statement that Mr. Hughes  
17 made on the night of the 25th and morning of the 26th.

18 MR. POPE: May it please the court? I don't mean to  
19 interrupt Ms. Brice, but while we have got the doctor  
20 present and she is on the stand, if we do have a  
21 competency issues, I realize -- the reason I was going  
22 into some competency was as it applied to this issue, but  
23 if we have got both issues, I would request that we go  
24 ahead and get them on the record if possible.

25 MS. BRICE: Your Honor, may we approach the bench,

1 please?

2 (Bench conference off the record.)

3 Q Doctor Dupree, again, what we are talking about is the  
4 understanding of Mr. Hughes in making a voluntary and  
5 intelligent statement to the police officers whether or  
6 not he knowingly and intelligently understood the  
7 importance of those statements and whether or not he  
8 knowingly or intelligently waived his right to counsel on  
9 that evening. Now, is there a difference in the standard  
10 between whether or not you understand a statement that you  
11 are giving, your competency at that time and the standard  
12 between whether or not you are criminally responsible of  
13 an act?

14 A Yes.

15 Q Can you describe the difference?

16 A There is a lower standard when you talk about people  
17 being in a prodromal phase and in being able to  
18 voluntarily and intelligently waive their rights as  
19 opposed to criminal responsibilities and capacity to  
20 conform your conduct.

21 Q Okay. And taking into account that lower standard of  
22 competency and the knowledge that Mr. Hughes was more than  
23 likely in a prodromal ---

24 A Phase.

25 Q --- phase, exactly, do you have an opinion as to

1       whether or not that statement was competently, knowingly  
2       and intelligently made?

3       A    It is my opinion that it was not.

4       Q    And based upon the fact that Mr. Hughes told one  
5       officer that made an utterance that he was guilty "I'm  
6       guilty" without being asked any questions and one moment  
7       testimony stating that he stated that he did not kill  
8       Officer McCants, the fact that Mr. Hughes when he was  
9       arrested did not have his shoes and socks on at the time  
10      he was arrested, at the time that he was speaking with  
11      Officer Cabaniss or Captain Cabaniss giving his statement,  
12      I believe it was his testimony that the interrogation  
13      lasted for some period of time, over an hour at the least,  
14      and at that time gave various accounts of the situation,  
15      how does this knowledge come to play with what you are  
16      stating?

17     A    That knowledge in addition to the information I  
18     received that Mr. Hughes also was acting in a confused  
19     manner, according to the family member, and making  
20     statements that appeared to be delusional, in addition to  
21     the information from medical records that he had periods  
22     of paranoia where he requested segregation on his own  
23     leads me to believe the opinion that I stated previously.

24     Q    That he was not competent when he gave his statement.

25     A    That's correct.

1 Q Thank you.

2 RECROSS EXAMINATION

3 BY MR. POPE

4 Q Doctor, in your experience it is not uncommon for a  
5 defendant to give different stories when they are  
6 arrested, is that correct?

7 A That is correct.

8 Q And the thing about being segregated, again, that was  
9 after you became involved in the case, is that correct?

10 A The period when those medical records, that  
11 information from --

12 Q Okay, you are saying that was from medical records.

13 A Yes, from medical records.

14 Q Okay, but he was wanting to be segregated or something  
15 and, again, I know we keep talking about two different  
16 murders, but this was sometime post-statement, post ---

17 A Pre-statement. This is years as we are looking at his  
18 behavior.

19 Q Okay, I apologize. This is the North Carolina Prison  
20 records where he wanted to be segregated while he was  
21 still up there.

22 A That's correct.

23 Q Thank you, ma'am.

24 THE COURT: You may step down.

25 You want to call your next witness?

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1 MS. BRICE: Yes, Your Honor, I call Doctor Donald  
2 Morgan.

3 THE COURT: All right.

4 DONALD WILLIAM MORGAN, being duly sworn,  
5 testified as follows:

6 DIRECT EXAMINATION

7 BY MS. BRICE

8 MS. BRICE: Would The State stipulate as to the fact  
9 that Doctor Morgan is an expert in the field of forensic  
10 psychiatry?

11 MR. POPE: Yes.

12 THE COURT: Thank you.

13 Q Doctor Morgan, would you please state your name for  
14 the record.

15 A Donald William Morgan.

16 Q And what is your address?

17 A Route 1, Box 194-M, Blackstock, South Carolina.

18 Q Doctor Morgan, if you would, please relate to the  
19 court your association involving Mar-Reece Hughes.

20 A Mr. Hughes was admitted to the William S. Hall  
21 Psychiatric Institute for a forensic evaluation in 1992.  
22 He was under the care of Doctor Connie McKee and I was her  
23 direct supervisor. I was very peripherally involved at  
24 that time. Earlier last year we had another request for  
25 re-evaluation of his competency and criminal



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1 responsibility at which time Doctor Geoff McKee and I saw  
2 Mr. Hughes for about forty-five minutes and reported to  
3 the court that we believed him to be competent.

4 Q Okay and at that time, when was that, do you recall?

5 A I can look it up, but I don't recall. Do you want me  
6 to look it up?

7 Q Yes, sir.

8 A That was on the 1st of August, 1994.

9 Q Who was present at that hearing - at that conference?

10 A Doctor McKee and myself.

11 Q Was there anyone else present?

12 A No.

13 Q And as a result of that consultation, what was your  
14 opinion?

15 A Our opinion at that time was that he was competent to  
16 stand trial.

17 Q Did you file a report?

18 A Yes, we did.

19 Q Doctor Morgan, based upon your contact with Mar-Reece  
20 at that time can you tell me what findings you rendered?

21 A We at that time felt that he was competent to stand  
22 trial; however, we were aware of the fact that he had been  
23 seen by a private forensic psychiatrist. We were aware of  
24 her opinion, so on the recommendations we said, "Since  
25 there is an apparent serious discrepancy between the

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1 evaluation of the psychiatrist obtained by the defense and  
2 by the repeated evaluation at William S. Hall Psychiatric  
3 Institute, we recommend that a joint evaluation of Mr.  
4 Hughes be accomplished immediately prior to the conducting  
5 of a hearing before the court can adjudicate the matter."

6 Q And did that joint conference take place?

7 A Yes, it did.

8 Q And who was present at that joint conference, do you  
9 recall?

10 A There was Mr. Pope, Mr. Schusterman, another defense  
11 lawyer whose name I cannot recall, myself, Doctor Connie  
12 McKee, Doctor John DeWitt, Doctor Barnard-Dupree, and  
13 Doctor Kohanski. There were several policemen there also.

14 Q Thank you. What was the outcome of that conference?

15 A The outcome of that conference was that I changed my  
16 opinion, namely, that he was not competent. During that  
17 period of time he was loose, rambling, extremely  
18 suspicious, somewhat grandiose and really presented a very  
19 different picture to us than what he had presented to  
20 Doctor McKee and myself only a few days before then. The  
21 reason for that I feel is that Doctor McKee and I asked  
22 him very structured questions about the court, the court  
23 system, and how the court operated, what his charges were  
24 and he would give us specific answers, which were correct  
25 answers. What happened on that evaluation is the doctors

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1 asked him open-ended questions and then his thought  
2 disorder, his suspiciousness and his grandiosity came up.

3 Q And to a lay person, such as myself, would it be  
4 difficult for me in speaking with someone with the present  
5 illness that Mr. Hughes has to recognize that type of  
6 illness?

7 A No, that's one of the -- the evaluation that Doctor  
8 McKee and I did was just wrong, I mean, we just didn't do  
9 it right and Mr. Hughes is a safekeeper and the  
10 correctional officers recognized how ill he was, the  
11 consulting psychiatrists at Broad River recognized how ill  
12 he was and Mr. Hughes did not want to tell us he was ill  
13 and when we structured the interview he was able to cover  
14 up his illness.

15 Q Can you describe that a little bit more for me? What  
16 do you mean by "Mr. Hughes" ---

17 A For example, I knew -- if I had known he was in the  
18 Gilliam Psychiatric Center after he started his cell on  
19 fire. When we questioned him specifically about that, he  
20 told us that that was wrong, that he didn't set his cell  
21 on fire, that he was trying to heat some water and it got  
22 away from him. Well, that seemed reasonable, how he had  
23 matches is a different issue. When we asked him about his  
24 symptoms that Doctor Dupree in her report made he  
25 responded that "If you treat someone like a dog, people

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1 are going to act like a dog and that you can train them to  
2 act any way you want them to act," so he was explaining  
3 away the very symptoms we should have picked up on.

4 Q When you made the finding that he was not competent,  
5 was this when he began treatment at William S. Hall?

6 A He was ordered to William S. Hall shortly thereafter  
7 and Doctor Kohanski and I took care of him at that time.  
8 Actually, there was a period of time he was admitted on  
9 September 8, 1994. There is a period of time between the  
10 hearing and when he actually got hospitalized.

11 Q Okay. And you stated that Doctor Kohanski and  
12 yourself were treating Mr. Hughes?

13 A Yes.

14 Q And, in fact, you have trained Doctor Kohanski as well  
15 as trained Doctor Dupree, is that correct?

16 A Yes, both of them have been my fellows.

17 Q Okay and in the course of your treatment of Mr.  
18 Hughes, did you reach a conclusion as to his mental  
19 condition?

20 A Yes, initially, Mr. Hughes was extremely defensive,  
21 did not talk to us about his symptoms, and he was  
22 rambling, irritable, his thoughts did not follow any  
23 logical order, he was extremely suspicious, he was  
24 suspicious of myself and of Doctor Kohanski and I think  
25 other people that were in the unit. So we had to have

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1 people with him twenty-four hours a day. In fact, we had  
2 two security people with him twenty-four hours a day  
3 through his entire hospitalization. Doctor Kohanski and I  
4 saw him frequently. She saw him almost daily and I saw him  
5 at least twice a week. I participated in any of the formal  
6 evaluations either of Mar-Reece alone or Mar-Reece and his  
7 attorneys.

8 Q And did you also review the medical findings of other  
9 doctors as well? Did you look at the Gilliam records?

10 A Yes.

11 Q And are you familiar with this in-take assessment  
12 filed by Doctor Johnson - I'll let you look at that.

13 A I saw this and I reviewed this.

14 Q And did you also review this discharge summary also at  
15 Gilliam?

16 A Yes.

17 Q And even based upon your review of those documents as  
18 well as other documents that you had in your possession  
19 did you make a diagnosis?

20 A Yes, I'm convinced that Mr. Hughes suffers from  
21 schizophrenia, paranoid type, and he is currently in  
22 remission, partial remission at least, from our evaluation  
23 of this morning and from our repeated evaluations. He was  
24 brought to us each month by court order so that we could  
25 administer his medicine and follow his clinical course, so

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1 I have really followed him ever since September -- well,  
2 August, really.

3 Q Do you concur -- so, essentially, you do concur then  
4 with the diagnosis of Doctor Dupree?

5 A Her first diagnosis was psychosis not otherwise  
6 specified. I think she agrees, we all agree, that he has  
7 schizophrenia paranoid type now.

8 Q And can you define for me what paranoid schizophrenia  
9 is?

10 A Well, schizophrenia is a major mental illness, which  
11 is principally a disorder of thought so that one's  
12 thinking does not come in a logical fashion. Symptoms are  
13 hallucinations and delusions and we have knowledge and,  
14 actually, in the Gilliam record they talked about his  
15 hallucinations and clearly he had a system of numbers and  
16 colors of which was a part of his illness and a way of  
17 thinking about things.

18 Q What is prodromal stage?

19 A Prodromal stage is the period prior to the acute  
20 psychotic symptoms and that can be years, it can be very  
21 brief. It can be just days. In some cases less than a  
22 day.

23 Q And Mr. Hughes, as you testified, is currently being  
24 treated by medication, is that correct?

25 A That's correct.

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1 Q What type of medication?

2 A He gets Haldol Deconoate 200 milligrams once a month.

3 Q And, in fact, today you administered an injection to  
4 him, is that correct?

5 A That's correct. Either I have done that myself or one  
6 of the nurses has done that under my direct supervision.

7 Q Did the occasion occur that the William S. Hall  
8 Institute was asked to make a finding in regards to Mr.  
9 Hughes' criminal responsibility in regards to the murder  
10 of Mr. Williamson and the assault on Mr. Gorth?

11 A Yes.

12 Q And what was your role in rendering an opinion or  
13 making a finding on that?

14 A I worked with Doctor Kohanski, I review all the  
15 information as part of her training. I reviewed this  
16 independently of her. And then we got together and she  
17 actually wrote the report, which I corrected and she  
18 re-wrote so that report is as much my report as is her  
19 report.

20 Q And what was the conclusion within that report?

21 A The conclusion in that report was at the time of that  
22 offense we believe that he was suffering from a psychotic  
23 condition to the extent that he did not appreciate the  
24 wrongfulness of his behavior.

25 MS. BRICE: I beg the court's indulgence for one

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1 moment.

2 THE COURT: At this time I am going to ask you, if you  
3 would, so the record will be complete to identify the lady  
4 you are consulting with by name.

5 MS. BRICE: I'm sorry, Your Honor. My legal consultant  
6 present today in the courtroom is Jennifer Kneece Shealy  
7 of Columbia.

8 THE COURT: I know her, but I wanted the record to  
9 reflect that she is present today and that you have  
10 consulted with her.

11 MS. BRICE: Yes, sir, I have.

12 Q Doctor Morgan, is that the report that you and Doctor  
13 Kohanski wrote together in order to give your opinion or  
14 conclusion as to Mr. Hughes' criminal responsibility?

15 A This cover letter is -- that doesn't belong there.

16 Q Thank you, sir.

17 A Yes, this is the report that we sent to the court on  
18 April 4th of this year.

19 Q And does that report set forth your conclusions  
20 concerning his criminal responsibility at the time of the  
21 offense on Mr. Gorth and the death of Mr. Williamson?

22 A Yes, it does.

23 Q And what was your conclusion?

24 A We believed from interviewing him, reviewing our  
25 records from his prior admission, his prior two



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1 admissions, a great deal of information provided us by the  
2 Solicitor's Office that he was so ill at the time of that  
3 offense that he did not appreciate the wrongfulness of his  
4 behavior.

5 MS. BRICE: If I could, I would like to offer these  
6 into evidence.

7 MR. POPE: No objection, Your Honor.

8 THE COURT: Be received.

9 (Defendant's Exhibits 2 marked and filed.)

10 Q Doctor Morgan, is an insanity conclusion the norm at  
11 William S. Hall?

12 A Do you mean of all the evaluations that we do?

13 Q Yes, sir.

14 A How many people are not responsible?

15 Q Yes, sir.

16 A Well, we do in excess of 800 evaluations a year and of  
17 those 800 evaluations we find between 18 and 20 people who  
18 meet the standard for not being responsible for their  
19 behavior due to mental illness.

20 Q In your experience with someone who has been concluded  
21 not to be competent at the time of a crime or not to be  
22 criminally responsible, would you describe how a typical  
23 case is handled when that type of determination is made?

24 A Well, there's a number of ways that they are handled  
25 depending upon the notoriety of the case, depending upon

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1 the Solicitor and the defense attorneys. Most of the  
2 cases, the vast majority of the cases, the Solicitor and  
3 the defense attorney meet with us, review our findings,  
4 question us about that, and then there's a bench trial in  
5 which the Solicitor puts up the facts, but doesn't contest  
6 our findings. There are other instances when we submit  
7 such a report and the Solicitor simply chooses not to call  
8 the case, so that the individual stays in the hospital in  
9 the pre-trial section. And then there is an occasion that  
10 is seen in front of a jury, but that is very rare and we  
11 have had occasions of a bench trial, but, again, that is  
12 quite rare in which they are contested.

13 Q And as far as the outcome, what is usually the outcome  
14 of these cases in your experience?

15 MR. POPE: Your Honor, I object to this --

16 THE COURT: I sustain your objection.

17 MS. BRICE: Okay.

18 Q In your opinion, Doctor Morgan, was Mar-Reece Hughes'  
19 character on the night of the murder of Mr. Williamson and  
20 the assault on Mr. Gorth, were those indications of his  
21 true character or were those indications of a character  
22 based upon psychotic episode?

23 A Well, I believe at that time he was psychotic and that  
24 his behavior was under the influence of his psychosis and  
25 you have to separate out of mental illness from character,

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1 that is to say, some people when they are mentally ill,  
2 particularly paranoid people, bipolar people, or manic, do  
3 extremely bizarre and often irrational and sometimes very  
4 aggressive things. But when they are, and, you have to  
5 separate that from their general character, not that  
6 people with major mental illness can't have a bad  
7 character, obviously, they can have a bad character, but  
8 when they are under the influence of their illness, it's  
9 their illness that is directing their behavior, not their  
10 underlying character structure.

11 Q In your opinion, was the character of Mr. Hughes on  
12 that evening was that a reliable indication of his  
13 character?

14 A His behavior on that evening really does not speak to  
15 his character at all because it was in our opinion he was  
16 frankly psychotic.

17 Q And you testified that Mr. Hughes is now under  
18 medication to assist in controlling that mental illness,  
19 is that correct?

20 A That is correct.

21 Q Are you aware of any violent tendencies that he has  
22 exhibited since he has been properly medicated?

23 A I'm not aware of any at all. From my contact with the  
24 correctional officers either when they bring him to us or  
25 when we go out to see him, I'm not aware of any outbursts,

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1 in fact, they seem to get along quite well with Mar-Reece.

2 MS. BRICE: That's all the questions I have.

3 Q Thank you, Doctor Morgan.

4 THE COURT: Solicitor?

5 CROSS EXAMINATION

6 BY MR. POPE

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

8 Q Doctor, how long have you been with the State  
9 Hospital?

10 A I'm not with the State Hospital.

11 Q I'm sorry, with the William S. Hall Institute?

12 A Fifteen years.

13 Q Okay. And pursuant to the Orders of the court at  
14 various times you and/or your staff you supervise have  
15 done evaluations of the defendant, is that correct?

16 A Yes.

17 Q I know there has been a number of -- I'll show you --

18 MR. POPE: Your Honor, for the ease of the court  
19 reporter I have various Orders under which the William S.  
20 Hall has done evaluations and I am going to identify them,  
21 but then we can group them as one group.

22 Q First, I have an Order from Judge Rushing. That was an  
23 Order for evaluation and then an Amended Order that  
24 changed some of the final language. Do you recognize  
25 those?

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1 A I think these Orders led to his first hospitalization.

2 Q And that would have been with Doctor Constance McKee?

3 A Correct.

4 Q Now this next Order would have been the Order that  
5 came after the finding that the defendant was not  
6 competent in which you and Doctor Dupree started your work  
7 together on regaining competency, is that correct?

8 A Yes, sir.

9 Q Finally, these last two, I believe, were an Order for  
10 evaluation of competency and an Order -- I apologize, I  
11 have got them somewhat out of order -- Order for  
12 evaluation of competency which was the one that you and  
13 Doctor Geoff McKee would have done near the end of July  
14 and the beginning of August.

15 A My August 1st, yes, sir.

16 Q And, finally, I think you were asked again to make an  
17 evaluation as far as criminal responsibility, McNaughten,  
18 again, even though Doctor Constance McKee, who has since  
19 left had done, you were asked to do it again by that  
20 Order, is that correct?

21 A That's right.

22 Q Okay, thank you.

23 MS. BRICE: I have no objection, Your Honor.

24 (State's Exhibit 31 marked and filed.)

25 Q Part of your duties at William S. Hall you were under

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1 Court Order to do various evaluations in this case, is  
2 that correct?

3 A Yes and to treat.

4 Q Yes. That would be State's Exhibit 31.

5 Doctor I realize that basically with your testimony we  
6 are touching on really three different issues. One is the  
7 competency to stand trial today, one would be the question  
8 that defense has brought up as far as the voluntariness  
9 factor at the time of the first murder of Brent McCants  
10 ---

11 A Voluntary? You mean, criminal responsibility?

12 MS. BRICE: Your Honor, we are not offering him as far  
13 as the voluntariness of the statement.

14 THE COURT: I didn't think I heard the question  
15 concerning that.

16 MR. POPE: I wanted to make sure I understood.

17 Q Let me go first to competency. Doctor, as to  
18 competency, my understanding from your testimony that  
19 yourself, Doctor Constance McKee had originally done an  
20 evaluation back shortly after this occurred in which the  
21 defendant was found to be competent?

22 A Yes, sir.

23 Q And, again, competency is something that you look at  
24 on the day of trial.

25 A Yes, sir.

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1 Q And then you and Doctor Geoff McKee did an evaluation  
2 on August 1st and I believe these are in the record that  
3 you found him to be competent. That was the one you said  
4 that you all asked the short questions that you said you  
5 made a mistake on.

6 A Structured questions, yes, sir.

7 Q And then when we came to the hearing here, there was a  
8 time with all the doctors that you have indicated in which  
9 the defendant was found not competent to stand trial?

10 A Yes, sir.

11 Q Then subsequently your office issued a report, State's  
12 Exhibit 30, that, in essence, says that the defendant, at  
13 least at this time of November, had regained competency/

14 A Yes, that's right.

15 Q And you have had an opportunity to evaluate the  
16 defendant today or spend time with him?

17 A This morning, yes, sir.

18 Q Okay and based on that and your other research and  
19 various evaluations you have done is the defendant  
20 competent to stand trial today?

21 A Yes, he is.

22 Q Could you relate to the court what competency means,  
23 what we are actually discussing?

24 A We are discussing his mental ability in spite of his  
25 illness to cooperate with his attorneys, to understand the

1 charges against him, to have trust in his attorneys, which  
2 has been a major problem, to be able to control himself  
3 appropriately in the courtroom, to follow testimony and to  
4 testify if that's thought to be appropriate, to be able to  
5 tell his attorneys if he sees discrepancies on other  
6 witnesses, to be able to help his attorneys challenge  
7 other witnesses.

8 Q And you had evaluated him previously and as of today  
9 as to those various factors, his understanding of what is  
10 going on and everybody's role?

11 A Yes.

12 Q And he understands that at this time?

13 A Yes.

14 Q Doctor, I now call your attention to the evaluation  
15 that was done by Doctor Constance McKee, this first  
16 evaluation, and as far as what we call the McNaughten  
17 standard or the knowing legal or moral right from legal  
18 and moral wrong, you made a determination of the defendant  
19 or you and your office did as of the night that Brent  
20 McCants was killed, is that correct?

21 A That's correct.

22 Q And as far as what is called criminal responsibility,  
23 what was the result of that determination?

24 A Both Doctor McKee, Doctor Constance McKee, at that  
25 time and myself personally now after re-evaluation



1 continue to believe given all the information that Mr.  
2 Hughes was not suffering with a mental disorder to the  
3 point that he didn't know what he was doing and that he  
4 did not know what he was doing was wrong. This is  
5 reinforced, I might add, by my seeing him a month or so  
6 ago along with his attorneys in which he described the  
7 really relevant information about the night of this  
8 shooting, which is very different from the way he  
9 describes what happened at a later problem.

10 Q In the jail situation.

11 A Yes, sir.

12 Q Okay, so as far as his description of the events  
13 surrounding the first murder, the deputy's murder, he was  
14 able to relate those to you?

15 A Yes and to cooperate with his attorney in relating and  
16 working, yes, sir.

17 Q Okay and then, for the court's understanding, the  
18 capacity to conform is a second thing you look at. Even  
19 though you may know right from wrong having the ability to  
20 conform your conduct, is that correct?

21 A Yes.

22 Q Okay and the capacity or lack of capacity comes from a  
23 major mental illness or a mental illness that would make  
24 you not be able to conform your conduct?

25 A Correct.

1 Q All right, both in your evaluation with Doctor  
2 Constance McKee and your evaluation that you did  
3 subsequently by Order of the Court where you reviewed the  
4 criminal responsibility again, what was your determination  
5 so far as the defendant's capacity to conform on the first  
6 murder?

7 A I, given all the information that we have, which  
8 includes a description, incidents reports, all that  
9 information, we do not think that he could not conform his  
10 behavior to the requirements of law. He had the capacity  
11 to conform his behavior to the requirements of law.

12 Q Okay, and, Doctor, now coming up to the present and,  
13 again, I am now going to the second murder. In that  
14 particular situation through the various evaluations, and  
15 I know there have been a number of both yourself and  
16 Doctor Dupree and various people in your office, you now  
17 are of the joint opinion that he has schizophrenia?

18 A Yes, sir.

19 Q And that schizophrenia manifests itself sometime after  
20 the first murder, is that correct?

21 A Looking back at those records, hindsight is always  
22 much better, looking back at the hospitalization in '92  
23 with Doctor McKee he had some prodromal symptoms, namely,  
24 he would have times when he wouldn't talk with anyone, he  
25 refused to come out of his room, he wouldn't shower, now

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1 he said to the nursing staff and to Doctor McKee that as  
2 long as he was going to go to prison, he didn't have to  
3 follow any rules, all right? He also ---

4 Q Would you repeat that?

5 A Back in 1992.

6 Q The first evaluation.

7 A Right. He also refused to take any psychological tests  
8 which would tap psychotic symptoms, in other words, he  
9 took the tests that had to do with his cognitive  
10 functioning, but when we asked him to take the MMPI, which  
11 gets the other symptoms more closely, he refused to do  
12 that. Now in hindsight that probably was he was having  
13 prodromal to the episode of schizophrenia, the acute  
14 episode of schizophrenia, that happened some time later,  
15 in fact, he was seen by the Mental Health Center after he  
16 left our hospital and the person in the Mental Health  
17 Center describes him as being paranoid and irritable, but  
18 not having hallucinations and delusions.

19 Q That would have been after he left Hall before the  
20 second ---

21 A Correct, right, it was in January of '93.

22 Q Doctor, the things, and you talked about hindsight,  
23 the things that you used to evaluate you gather as much  
24 information as you can from all sources, is that correct?

25 A Yes, sir.

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1 Q And on the 1992 evaluation you and Doctor McKee said  
2 there was no evidence of any major mental illness at that  
3 time.

4 A That's correct.

5 Q And I believe in your reports and I know we keep  
6 talking about Doctor McKee, there is Geoff McKee and  
7 Constance McKee, ---

8 A Right.

9 Q --- that was pretty much the same position. I think  
10 you said bipolar disorder.

11 A That was a mistake. Bipolar disorder, that's an error.

12 Q Okay, the bipolar parts in error or the whole report?

13 A No, the bipolar is an error, we had never considered  
14 him to have a bipolar illness.

15 Q And that goes back, that's the report you said is  
16 wrong.

17 A Yes.

18 Q So back in 1992 it was adjustment disorder.

19 A Correct.

20 Q Could you tell the court what adjustment disorder is?

21 A Adjustment disorder is in response to an external  
22 easily defined stressor such as being charged with murder  
23 and it is an illness that is an over response so that you  
24 are not functioning as you normally one if that stressor  
25 were removed.

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1 Q And that was your diagnosis at that time?

2 A Right.

3 Q And since Doctor Dupree came on board post -- she just  
4 come in August, and after spending more time, you now feel  
5 it is schizophrenia, is that correct?

6 A Yes, that really doesn't have much to do with Doctor  
7 Dupree, it really has to do with several months of  
8 hospitalization and getting to see his psychosis more  
9 clearly.

10 Q And so as far as the jail incident then, in evaluating  
11 that, you named a number of things you took into  
12 consideration. Could you relate to the court what you took  
13 into consideration as far as the jail incident?

14 A In between there was the information from the Mental  
15 Health Center since they did see him and then there's a  
16 large number of statements from jail personnel as well as  
17 other inmates and the summation of that that you provided  
18 me, your office provided me.

19 Q You are talking about the ---

20 A Yes, all that you provided me, yes, sir.

21 Q Did you talk to any of the individual witnesses from  
22 there at the jail?

23 A No, I did not do that.

24 Q Doctor, you and Doctor Kohanski prepared this second  
25 report, is that correct?

1 A Right.

2 Q Ms. Brice has asked you about the normalcy of the  
3 various things that happen when you determine somebody is  
4 insane. Were you with the Department when T. B. Smith was  
5 diagnosed as having a delusional disorder, T. B. Smith in  
6 I believe it was Edgefield County?

7 A No.

8 Q Okay, you are aware that there are cases where your  
9 department makes the diagnosis of lack of capacity and  
10 jurors still find people guilty, is that correct?

11 A I don't think a jury has ever found anyone not  
12 responsible. The only cases I have been associated in  
13 front of a jury was the Rimert case where it was our firm  
14 belief that the individual was not responsible, but the  
15 jury found him guilty but mentally ill.

16 Q T. B. Smith is the murder case, again, the same  
17 situation, in other words, what you are saying is just  
18 because you all make your professional opinion, it is just  
19 that.

20 A It is just an opinion, absolutely.

21 Q And the jury, of course, is free to accept or reject  
22 as they would choose.

23 A Absolutely.

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

25 Q Doctor, again, you said that you used the SLED file