

THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM LEXINGTON COUNTY
Court of Common Pleas

James R. Barber, III, Circuit Court Judge

Case No. 2006-CP-32-3221

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S.C. SUPREME COURT

Johnny O. Bennett.....Petitioner,

v.

State of South Carolina Respondent.

APPENDIX

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1 Q. Same general direction?

2 A. Well, I mean, those two buses very well might have
3 been going there to begin with, one of them just had an
4 overload. I don't -- you know.

5 Q. Okay. You testified that you believed that
6 Mr. Bennett had a lot of potential?

7 A. I felt like he could have done a lot better than he
8 was doing, yes, sir.

9 Q. In your capacity at Swansea High School did you do
10 anything to assist and try to direct Mr. Bennett in the right
11 direction?

12 A. There was never any incident where I suspended
13 Johnny or put him in in-school that I didn't conference with
14 him and conference -- or conference with his mom. I mean,
15 that was not hard to do she worked right there in the school.

16 Q. When you referred to conference, you sat down
17 one-on-one --

18 A. Sat down one-on-one with Johnny and explained, went
19 over what the problem was and how we could handle it
20 differently, and try to get him to understand that there are
21 different ways to do that.

22 Q. And at that point in time he appeared to understand
23 what you were saying?

24 A. Well, not necessarily.

25 Q. He didn't appear to understand?

1 A. Well, are you asking for a hundred percent of the
2 time, I can't answer that. I mean, sometimes yes, sometimes
3 no.

4 Q. And yet he would still go and like do the opposite?

5 A. Correct.

6 Q. Did that pose any concerns to you?

7 A. Absolutely.

8 Q. What, if anything, did you do to address those
9 concerns?

10 A. Referred him to guidance on several different
11 occasions and conference with his parent.

12 Q. As far as guidance was concerned in that time
13 frame, what, if any, services did guidance have available in
14 order to address any of these issues?

15 A. They would get into the same type thing that I
16 would with him except probably to eighth grader extent, you
17 know, anger management and decision making.

18 Q. So they would just counsel to him also?

19 A. They were guidance counselors.

20 Q. There were never any services like the Department
21 of Mental Health or anything along those lines that he would
22 have been referred to for any type of evaluations or service?

23 A. I don't know what his parents may or may not have
24 referred him to.

25 Q. But as far as the school is concerned, the school

1 wouldn't have had those resources?

2 A. We did not have a mental health person on campus,
3 no.

4 Q. You stated that you had conferenced with his
5 parents at times?

6 A. Correct.

7 Q. In fact, his mother worked at that school?

8 A. Correct.

9 Q. Was it your opinion that he was spoiled by his
10 mother?

11 A. I think she excused a lot of his behavior.

12 Q. But is your opinion that Mr. Bennett was a bright
13 student?

14 A. Relatively speaking, I felt like he could do better
15 than he was doing.

16 MR. YOUNG: Thank you. That's all the questions I
17 have.

18 MR. MYERS: Come down. We call Mark Dubose.

19 THE COURT: You can step down, and you're free to
20 go.

21 WILLIAM MARK DUBOSE, after having been duly
22 sworn, testified as follows:

23 THE CLERK: State your full name for the record.

24 THE WITNESS: William Mark Dubose.

25 DIRECT EXAMINATION

1 BY MR. MYERS:

2 Q. Mr. Dubose, you have a uniform, who are you
3 employed by?

4 A. South Carolina Department of Natural Resources.

5 Q. How long have you been with them?

6 A. Approximately five and a half years.

7 Q. I want to take you back to March 4th of 1988 and
8 within the town here of Lexington, specifically at the Pizza
9 Hut. Did you have an occasion to be in the vicinity of the
10 Pizza Hut that night?

11 A. Yes, sir, I did.

12 Q. And did anything unusual come to your attention at
13 the Pizza Hut?

14 A. Yes, sir. As I turned into the parking lot off of
15 Columbia, into the parking lot at the Pizza Hut, I observed
16 two white males laying in the parking lot. I believe both of
17 them were laying on their backs. I noticed a large black
18 male standing over one of the victims. He was stomping on
19 the victim's head with his foot.

20 MR. MYERS: Without objection.

21 (WHEREUPON, State's Exhibit No. 4, a Map, was
22 marked and admitted into evidence.)

23 BY MR. MYERS:

24 Q. Step down. I want you to speak loud enough so this
25 lady can hear you.

1 A. (The witness complied.)

2 Q. This area right here that's marked as being the
3 Pizza Hut.

4 A. Yeah.

5 Q. What is this road out here in front?

6 A. Columbia Avenue.

7 Q. And across the street, what is this building across
8 the street?

9 A. Addy Dodge dealership.

10 Q. Now, there is a road that goes down by Pizza Hut;
11 is that correct?

12 A. Yes, sir, it is.

13 Q. And what's across the street?

14 A. The dry cleaner.

15 Q. And do you know what this other thing is next to
16 the dry cleaner?

17 A. Is it Stephano's; is that correct?

18 Q. What about on the opposite side?

19 A. Frank's Car Wash.

20 Q. Now, if you went down the street by the Pizza Hut,
21 what's on down this street?

22 A. You got a SCE&G facility as well as a tire
23 dealership that's behind the car wash.

24 Q. The tire dealership's behind --

25 A. That's correct.

1 Q. Right here is SCE&G?

2 A. Yes, sir.

3 Q. Now, how did you pull into the Pizza Hut that
4 night?

5 A. I was coming down Columbia Avenue from SC-6, the
6 middle school area up there. I turned left into Pizza Hut.
7 At that point in time, the two white males were lying in this
8 general vicinity (indicated).

9 Q. Towards the back of the Pizza Hut building?

10 A. Correct, near the middle of the parking lot but
11 behind the Pizza Hut building itself. The reason I remember
12 that so well is they were kind of blocking the other
13 entrance-exit way onto Kings Street because as I pulled in,
14 as I said earlier, I observed the black male standing over
15 one of them.

16 Q. Where were you pulling into the Pizza Hut?

17 A. I was pulling into Pizza Hut off of Columbia
18 Avenue. As I stated earlier, that's when I immediately
19 observed two white males laying in the parking lot. They
20 were both laying on their back. As best I can remember, both
21 the individuals were laying with their feet pointing towards
22 the car wash, their heads back toward Kings Street. A black
23 male was standing over one of them stomping on his head.

24 At that point, I entered into the parking lot. The
25 black male started going back to a vehicle. I believe it was

1 a small truck, Isuzu, Nissan type truck. It was parked near
2 the dumpsters, which is indicated here.

3 At that point in time, I immediately exited the
4 parking lot onto Kings Street, down into -- I believe it was
5 the SCE&G parking lot. It was either there or the dry
6 cleaners. I can't distinctly remember which one. I believe
7 I pulled into the SCE&G parking lot and turned my vehicle
8 around because at that point in time I didn't know if they
9 were coming after me. I didn't know what was going on. I
10 just wanted to get out of the parking lot, obviously, but I
11 was just kind of seeing what was happening.

12 As I completed my circle, at that time the truck
13 was backing out of the parking lot and then it exited Pizza
14 Hut parking lot turning right onto Columbia Avenue headed
15 back toward SC-6, the direction I had come from.

16 Q. Now, the two white males on the ground, were they
17 moving?

18 A. No, sir, they were motionless, apparently
19 unconscious. There was a good bit of blood lying around both
20 of them. They were obviously injured and were not moving.

21 Q. Now, you would have to -- when you left out and you
22 came in and saw what happened and went out here you had to
23 pretty much drive right by; is that correct?

24 A. Correct. As I was saying earlier, that's one of
25 the reasons I remember where they were laying, because in

1 order for me to exit the parking lot I had to make an effort
2 not to run over them. I mean, they were lying right in the
3 middle of the parking lot. And as I exited, I had to drive
4 around them, which would have put them right outside of my
5 driver's window.

6 Q. The black male, you described him as a fairly large
7 person?

8 A. Yes.

9 Q. Now, you said stomping one of the people or both of
10 them?

11 A. Correct. Correct. One of them -- I observed him
12 stomping on one of the individuals at that time.

13 Q. And what do you mean by stomping? How can you
14 describe it?

15 A. It wasn't as much of a kicking motion as his foot
16 was going up and then coming back down on top of the
17 individual's head (indicated).

18 Q. And could you tell approximately how many times you
19 observed the black male's foot go up --

20 A. It was approximately three or four. Three to four
21 times.

22 Q. Now, let me -- the last thing you said after
23 observing this and parking here, you saw the black male get
24 in a vehicle and they went out and left the parking lot?

25 A. Correct.

1 Q. What did you do after that?

2 A. I, as you can imagine, was pretty well stunned at
3 what I had observed. I pretty quickly thought of the
4 Lexington Town police officer that he used to sit at the
5 Burger King parking lot just on Friday and Saturday nights as
6 a security measure, I guess, and I immediately started going
7 towards Burger King to get him.

8 Q. Now, the Burger King would be back down this way?

9 A. Correct. That's correct. Right on the other side
10 of the road from Addy Dodge dealership on that direction.

11 Q. Did you find a Lexington Town Police officer?

12 A. As I was entering into Burger King he was exiting
13 at a pretty high rate of speed going back towards Pizza Hut,
14 so I assume he had gotten the call over the radio.

15 Q. As you were going to find an officer one passed you
16 headed to the Pizza Hut?

17 A. Correct.

18 Q. Did you have an occasion to go back to the Pizza
19 Hut?

20 A. I did return. At that time, I'm not sure how long
21 I waited, but when I returned the ambulance was already there
22 as well as several law enforcement officials, cars, that sort
23 of thing. I don't believe at that time that I spoke with
24 anyone about what I had seen.

25 Q. An ambulance came to the scene?

1 A. Correct.

2 Q. And did the ambulance take anybody away from the
3 scene?

4 A. I don't recollect actually seeing them load anyone
5 up myself.

6 Q. And did you have an occasion to talk with some
7 officers a day or so later and give them a statement?

8 A. Yes, I did. Chief Mike Roth of the Town of
9 Lexington contacted me a day or two later and I went to the
10 police department and gave a statement about what I seen.

11 Q. What was your occupation at the time in 1988, March
12 the 4th of 1988?

13 A. I would have been a student at Lexington High
14 School.

15 Q. You were a high school student?

16 A. Yes, sir. I would have been 16, I believe.

17 Q. Did you know any of the people involved, either the
18 two white boys lying on the ground or the tall black men?

19 A. No, sir, I did not know any of them.

20 MR. MYERS: Answer any questions they have. Thank
21 you.

22 THE COURT: Cross?

23 CROSS-EXAMINATION

24 BY MR. FLOYD:

25 Q. Mr. Dubose, you were, what, about -- you said 16 at

1 the time?

2 A. I believe I would have been 16, yes.

3 Q. So you pull into the parking lot and see two white
4 males laying in the parking lot?

5 A. Yes.

6 Q. A black male stomping him?

7 A. Yes.

8 Q. You say you saw three to four stomps?

9 A. Correct.

10 Q. Now, you don't know what happened before all that?

11 A. No, sir, I have no idea.

12 Q. And you saw the black male get into a vehicle?

13 A. Correct.

14 Q. Did you see who was in that vehicle?

15 A. I remember seeing, I believe it was two more
16 individuals around the vehicle. I can't state that I
17 actually saw them get into the vehicle or leave in the
18 vehicle. As I was driving through the parking lot there were
19 two more individuals standing up around the pick-up truck.

20 Q. Were there white males?

21 A. Yes.

22 Q. So you saw him get into the vehicle with two white
23 males?

24 A. Correct.

25 Q. And then they left?

1 A. Correct.

2 Q. But you didn't see what went on between all the
3 parties before you got there?

4 A. No, sir. I have no idea what happened before I got
5 there.

6 MR. FLOYD: I have no further questions.

7 MR. MYERS: Come down.

8 THE COURT: Step down.

9 MR. RIDDLE: Rhonda Smith.

10 THE COURT: And, Mr. Dubose, you're free to go,
11 if you want to.

12 RHONDA DELORES SMITH, after having been duly
13 sworn, testified as follows:

14 THE CLERK: Please have a seat. State your full
15 name for the record.

16 THE WITNESS: My name is Rhonda Delores Smith.

17 DIRECT EXAMINATION

18 BY MR. RIDDLE:

19 Q. Where are you employed, Ms. Smith?

20 A. Scana Security.

21 Q. How long have you been working with them?

22 A. About four months.

23 Q. Are you from Lexington?

24 A. Uh-huh.

25 Q. Where did you go to high school?

1 A. Lexington High School.

2 Q. And when did you get out of Lexington High School?

3 A. In '87.

4 Q. Now, in March of 1988, were you living in the
5 Lexington area?

6 A. Uh-huh.

7 Q. And did you on occasion go to eat at the Pizza Hut?

8 A. Yes.

9 Q. On Columbia Avenue?

10 A. Yes.

11 Q. March 4th of 1988, did you go there to eat?

12 A. Yes.

13 Q. Who did you go with?

14 A. My boyfriend.

15 Q. And when you were at the Pizza Hut, where were you
16 all sitting?

17 A. We were sitting on the side facing the -- facing
18 the Frank's Car Wash.

19 Q. Okay.

20 A. Well, no, not that side, I'm sorry. The Frank's
21 Car Wash is on the other side. We were sitting on the side
22 facing --

23 Q. Look at this diagram for me real quick.

24 A. Yeah.

25 Q. Step down, if you would.

1 A. (The witness complied.)

2 Q. Now, there's no microphone here so you got to talk
3 real loud, okay?

4 A. Okay.

5 Q. This is the Pizza Hut here, and Frank's Car Wash.

6 In the Pizza Hut this, of course, is Columbia Avenue, all
7 right. Which side of the Pizza Hut were you on? Were you on
8 this side or this side over here?

9 A. I was on this side (indicated).

10 Q. Okay. The side towards the dry cleaners?

11 A. Right.

12 Q. All right. And you can have a seat now.

13 A. (The witness complied.)

14 Q. And were you sitting at a table or a booth, Rhonda?

15 A. I was sitting at a booth.

16 Q. And was that up along the windows there?

17 A. Uh-huh.

18 Q. On the side of the restaurant?

19 A. Right.

20 Q. Were you facing forward out towards Columbia Avenue
21 or backwards back toward Discount Tire, or in that area?

22 A. Discount Tires, back towards that way.

23 Q. You were facing away from Columbia Avenue?

24 A. Right.

25 Q. And while you were sitting there at that table, did

1 anything outside catch your attention?

2 A. Yes, sir.

3 Q. What did you see outside, Rhonda?

4 A. I saw a black male dragging a white male from the
5 back of the Pizza Hut, and he was dragging him by his hair.

6 Q. When you say dragging now, tell the jury what it is
7 you mean exactly.

8 A. What I mean was he had him by his hair. The guy --
9 the white guy was like on his back, and he was just dragging
10 him along the ground with no effort by the white individual
11 at all, it was strictly by the black male.

12 Q. And when you say by his hair, you talking about he
13 had a fistful of hair pulling it?

14 A. Yes, sir.

15 Q. After you saw the black man -- and answer this for
16 me. Was this guy a big guy or a small guy?

17 A. The black guy was a very big guy.

18 Q. After you saw him drag him, where did he drag him
19 to?

20 A. He dragged him to like almost in front of my window
21 where I was sitting at but it was more or less in front of
22 the door to the Pizza Hut.

23 Q. And once he got him there, what did he do?

24 A. Well, he let him go and then he just proceeded to
25 kneel down and beat him in the face with his fists and kick

1 and stomp him.

2 Q. Well, let me ask you this. You said he was
3 dragging him on the ground?

4 A. Uh-huh.

5 Q. You said that the white guy was not making any
6 effort, was the white guy fighting at that time?

7 A. No, he wasn't doing anything.

8 Q. Was he throwing punches?

9 A. No.

10 Q. Was he moving at all?

11 A. No.

12 Q. Now, when you say he let him go, what position was
13 the white guy in on the ground at that point?

14 A. He was on his back.

15 Q. Just flat on his back?

16 A. Right.

17 Q. Was he moving at all?

18 A. No, sir.

19 Q. Were his arms up, hands up or down?

20 A. No, they were down beside him. Like, wherever the
21 black guy dropped him his hands was just like limp, just down
22 beside him.

23 Q. After he dropped him, you say he knelt down?

24 A. He kind of -- he didn't purposely put his knees on
25 the ground but he kind of knelt to where he could reach him

1 if he punched him.

2 Q. And approximately how many times did he punch this
3 guy?

4 A. About five or six times.

5 Q. With his fist?

6 A. Yes, sir.

7 Q. Could you see from where you were the part of the
8 white guy that was being hit?

9 A. He was hitting him in his face

10 Q. In his face. Now, after he punched him five or six
11 times, what did he do next?

12 A. He started kicking him and stomping him with his
13 feet.

14 Q. Let's talk about the kicking for just a second.
15 When you say kicking, tell the jury what you mean by that.

16 A. When I mean kicking, I mean he was going in a
17 sweeping motion like back and forth, back and forth.

18 Q. How many times approximately do you think the black
19 guy kicked the white guy?

20 A. About three or four times.

21 Q. And what areas of the white guy's body was being
22 kicked?

23 A. His head.

24 Q. His head. After the three or four kicks, what
25 happened next, Rhonda?

1 A. He started stomping him.

2 Q. Okay. And tell the jury what you mean by stomping,
3 if you would.

4 A. Up and down pattern, meaning you lift your foot up,
5 you put your foot down.

6 Q. What part of the white guy was he stomping on?

7 A. His head.

8 Q. His head. Approximately how many times did you see
9 him stomping the white guy's head?

10 A. About three or four times.

11 Q. During all of this time, did you ever see the white
12 guy throw any blow?

13 A. No.

14 Q. Did you ever see the white guy move?

15 A. No.

16 Q. Was the white guy fighting back at all?

17 A. No, sir.

18 Q. Was he incapacitated?

19 A. I would say so, sir.

20 Q. From the time you first saw him throughout the
21 whole incident?

22 A. Yes. He didn't have -- like, he didn't have any
23 being in life at all. Like he was just -- I mean, he was
24 like a doll.

25 Q. All of this took place and the white guy was

1 unconscious the whole time?

2 A. I would say so.

3 Q. After that, what happened then, after the stomping
4 incident?

5 A. After he stomped him for the last time, I would say
6 he -- a truck pulled up beside him, and he jumped into the
7 truck and the truck drove off.

8 Q. Now, did you stay at the Pizza Hut at that time?

9 A. Yeah, I was still there.

10 Q. And I presume the police came?

11 A. Yes, they did.

12 Q. And an ambulance?

13 A. Yes, sir.

14 Q. Were you there during that whole time frame?

15 A. Yes, sir, for part of that time.

16 Q. And the guy that you had seen beaten, did the
17 ambulance transport him?

18 A. Yes.

19 Q. And did you speak with the police on that occasion?

20 A. Yes, sir.

21 Q. And did you inform them of what you had seen at
22 that time?

23 A. Yes, sir.

24 Q. After the police came, I take it you went outside.

25 When you went outside did you see another white guy on the

1 ground as well?

2 A. Yes, sir, towards the back of the Pizza Hut.

3 Q. I'm sorry, say that again?

4 A. Towards the back of the Pizza Hut.

5 Q. There was one kind of near the door of the Pizza
6 Hut?

7 A. Right.

8 Q. And another guy was laying on the ground in the
9 back?

10 A. Yes, sir.

11 Q. Now, had you seen anything as it relates to that
12 second guy?

13 A. No, sir.

14 Q. So you don't know how he got there?

15 A. No, sir.

16 Q. Did the ambulance transport both of those guys?

17 A. Yes, sir.

18 Q. I take it -- was there two ambulances or one?

19 A. I don't remember.

20 Q. You don't remember, all right. But they took both
21 of those individuals away, the ambulance did?

22 A. Yes, sir.

23 MR. RIDDLE: Thank you, Rhonda. Please answer any
24 of their questions.

25 THE COURT: Cross?

CROSS-EXAMINATION

1

2 BY MR. FLOYD:

3 Q. Now, Ms. Smith, you were seated somewhere on the
4 side of the -- this side of the Pizza Hut inside; is that
5 correct?

6 A. Yes, sir.

7 Q. Now, in that Pizza Hut at the time there were no
8 windows looking out the back, were there?

9 A. Of the back of the Pizza Hut, no, sir.

10 Q. The rest rooms were back there, weren't they, or
11 something?

12 A. Yes, sir.

13 Q. And so all that you could see would have been --
14 where were you seated in the Pizza Hut, exactly?

15 A. I was seated, I say two windows from where the door
16 is, where those little slashes, that's where the door is.

17 Q. That's where the door is there where the slash is?

18 A. Yeah, that's where the door -- yes, still at the
19 present time it is still there, but it was maybe about a
20 window or two over.

21 Q. Up this direction?

22 A. Uh-huh.

23 Q. Up this direction. And were the boys laying there
24 where the last witness placed them?

25 A. From where I was sitting at the victim that I'm

1 speaking of was laying approximately right in front of where
2 that little black thing sitting up there is, the door was.

3 Q. Over here?

4 A. Yes, sir, right about there. And the other one, I
5 assume, when I walked out of the door was in the back of the
6 Pizza Hut on the side over there where the telephone -- or
7 closer to behind where the telephone was.

8 Q. Where would the telephone have been?

9 A. Right on the edge. On the edge of the building.

10 Q. I don't know where you're talking about. Can you
11 show me where the telephone is?

12 A. The telephone was right there, on the edge of the
13 building. I don't know if it's still there or not because
14 they remodeled it, but he was sitting somewhere across from
15 this area back there (indicated).

16 Q. But you couldn't see there?

17 A. No, I couldn't see him there until I walked out of
18 the door.

19 Q. And so this diagram there that shows this second
20 person right there, that's wrong?

21 MR. RIDDLE: Objection. He can't pit witnesses
22 against each other.

23 THE COURT: Well, as I understand, he's asking
24 about -- is it on the diagram?

25 MR. FLOYD: Yes, sir, there's a dot here on the

1 diagram where --

2 MR. MYERS: No, sir. No, sir. Nobody has drawn
3 any bodies on the diagram. If Mr. Floyd wants to draw them
4 on there he can, but nobody has drawn a body on the diagram.

5 THE COURT: Well, I haven't seen the diagram. Let
6 me take a look at it.

7 MR. FLOYD: That was my understanding what those
8 two dots there were.

9 MR. MYERS: No, sir. Nobody has drawn anything on
10 the diagram. Mr. Dubose was the first one there and he had
11 no pen, he drew nothing on there --

12 MR. FLOYD: Well --

13 MR. MYERS: Nothing on there indicates a body.

14 THE COURT: Wait, wait. Okay. Well, if there are
15 no drawings on the diagram, if you want to put them on there.

16 MR. FLOYD: No, I don't want to put it on there. I
17 mean, Your Honor, I just want to show you there's two dots
18 there. I assume that's where he was pointing to.

19 THE COURT: There are four dots. Well, there are
20 four dots on the other one.

21 As I understand, Mr. Myers, that's not intended to
22 depict where they were; is that correct?

23 MR. MYERS: He can say whatever those dots are.
24 None of my witnesses put any bodies on those documents. He
25 can say what he wants to about those.

1 MR. FLOYD: Your Honor, it's their exhibit.

2 THE COURT: All right. Wait a minute. He says
3 that the dots aren't intended to, so the jury can understand
4 that the dots aren't intended to depict anything particular.
5 They are subject to whatever interpretation you want to make
6 about them. But why don't you just let her testify as to
7 where she saw them.

8 MR. FLOYD: Well, then I object to this exhibit if
9 it's going to have dots on it that don't mean anything,
10 Judge.

11 THE COURT: Overruled. It's appropriate. Let her
12 just testify as to -- if you want to, let her testify as to
13 what she wants to on it.

14 BY MR. FLOYD:

15 Q. So you say that where you were standing -- you
16 could say where you were seated you could see one male out
17 there; is that correct?

18 A. Yes, sir.

19 Q. And you couldn't see the other male?

20 A. No.

21 Q. Did you see a pick-up truck drive through and go
22 past them?

23 A. I don't recall.

24 Q. You don't recall that. And then when you say once
25 they left you saw the black male get into a vehicle; do you

1 remember what kind of vehicle it was?

2 A. It was a truck.

3 Q. And where was the vehicle when he got into it?

4 A. It pulled up alongside where the victim was laying,
5 where the white guy that he beat was laying, and he got in
6 the truck and then the truck drove off onto Columbia Avenue.

7 Q. Okay. Now, can you point out for me there where he
8 got into the vehicle in relation to the body, to the boys
9 that were on the parking lot?

10 THE COURT: She can step down and do that if she
11 wants to.

12 MR. FLOYD: Yes, sir.

13 A. The victim was laying approximately right about
14 here (indicated). I'll say that's where -- I want to say
15 that that's about where the door is. I'm going to think
16 about this as being a door, okay. The victim was laying
17 right approximately here (indicated).

18 The truck came from back here somewhere
19 (indicated). I don't know if that's where it came from. It
20 was coming from this direction (indicated). And it pulled up
21 right up along in here, the same -- same spot, and the black
22 male jumped in the truck and took off and it went out this
23 way and it went back this direction (indicated).

24 Q. How close did the truck come to the two boys?

25 A. The truck came very close to this victim right here

1 (indicated). It came very close to him. Actually, when he
2 pulled up, he was going so fast that he kind of like -- the
3 truck kind of like passed him just a little bit, and when the
4 black male jumped into the truck, the truck backed up and
5 then they drove off. I don't know if he did it in haste or
6 if he did it on purpose or what.

7 Q. So how close did the truck come to the boys?

8 A. From where I could see it came very close.

9 Q. Very close?

10 A. Very close.

11 Q. Did he hit the boys?

12 A. From where I was sitting I couldn't tell that.

13 Q. Couldn't tell that. And who was driving the truck,
14 could you tell?

15 A. It was a white male.

16 Q. Were any other white males in the truck?

17 A. No.

18 Q. Now, Ms. Smith, you gave some testimony about this
19 at an earlier hearing, didn't you?

20 A. Yes.

21 Q. And at that earlier hearing, didn't you testify
22 that the truck drove over the boys?

23 A. Well, from where I could see, from where I was
24 sitting at and from the way that the window is sitting and
25 from the way that the truck was to me when it backed over it

1 I could not tell if it did or it didn't, but it did back up
2 over the victim, from where I could see. I can't say that
3 the tires actually hit the victim but I know the tail end of
4 the truck was over the victim, from where I could see.

5 Q. Well, that's not what you said last time you
6 testified, is it?

7 A. To my recollection it was.

8 Q. I'm going to show you something and ask if you --

9 MR. MYERS: Page number?

10 THE COURT: Is that a transcript page?

11 MR. FLOYD: Yes, sir.

12 THE COURT: What page number is it?

13 MR. FLOYD: Bottom of 2613, top of 2614.

14 BY MR. FLOYD:

15 Q. At that time, were you not asked, Now, did the
16 black male stay there or did he leave?

17 And could you tell us what your answer was then,
18 starting there and ending up there.

19 A. Can I read it? It says, Oh, shortly thereafter a
20 truck came up beside him and he jumped in the truck, and
21 before the truck pulled off they backed over the guy that was
22 laying on the ground and then they took off.

23 Q. So you testified at that time that they backed over
24 the guy, didn't you?

25 A. Okay, well, if you really listen to what I said, I

1 said the truck backed over the dude. I didn't say the tires
2 jumped over him. I just said that the tail end of the truck
3 went over the guy.

4 Q. Now, that's not what you said earlier, is it?

5 MR. RIDDLE: Objection, Your Honor. She just read,
6 but he can't argue with her.

7 THE COURT: It speaks for itself. Certainly, she
8 can explain what she intended to say by it.

9 BY MR. FLOYD:

10 Q. Now, Ms. Smith, you didn't see then what happened
11 before they got to your window where you were, did you?

12 A. No, sir.

13 MR. FLOYD: Thank you. I have no further
14 questions.

15 MR. MYERS: Thank you. Come down.

16 Sharon Brady, please.

17 THE COURT: One second before you call her.
18 Counsel, let me ask you to come around just a second.

19 If you'd like to stand and stretch while we're
20 doing this, feel free.

21 (WHEREUPON, a bench conference was had off the
22 record.)

23 THE COURT: Ladies and gentlemen, there are about
24 three short witnesses. After those witnesses we're going to
25 go ahead and recess for the day. And the folks on your team

1 already have dinner plans for you, and you should have plenty
2 of time to get there. So don't worry, we're going to take
3 care of you.

4 All right. Call your next witness.

5 MR. MYERS: Sharon Brady.

6 MR. FLOYD: Your Honor, can we approach the bench?

7 THE COURT: Sure

8 (WHEREUPON, a bench conference was had off the
9 record.)

10 SHARON HAYWOOD BRADY, after having been duly
11 sworn, testified as follows:

12 THE CLERK: Have a seat and please state your full
13 name for the record, please.

14 THE WITNESS: Sharon Haywood Brady.

15 THE COURT: What's your last name again, please?

16 THE WITNESS: Brady, B-r-a-d-y.

17 THE COURT: Okay. Thank you.

18 DIRECT EXAMINATION

19 BY MR. MYERS:

20 Q. Mrs. Brady, on March the 4th, 1988, did you have
21 any children that worked at the Pizza Hut in Lexington?

22 A. Yes, Shannon Gilbert.

23 Q. And about how old was Shannon back in March of
24 1988?

25 A. 16.

1 Q. Now, did he come home from work that night, March
2 the 4th?

3 A. No.

4 Q. Did you have to go somewhere to see where he was?

5 A. Yes. I received a call from the Pizza Hut that
6 Shannon had been taken to the Lexington County Hospital and
7 then 15, 20 minutes later after that I received another call
8 from Pizza Hut telling me that he was being taken to the
9 Richland Memorial Hospital because of the trauma -- because
10 of head trauma.

11 Q. Which hospital did you go to?

12 A. The Richland Memorial Hospital.

13 Q. When you got over there, did you see your son?

14 A. Yes.

15 Q. What kind of condition was he in?

16 A. He was very still, very white, breathing very
17 shallow.

18 Q. Was he conscious or unconscious?

19 A. Unconscious.

20 Q. Did you have any difficulty recognizing him?

21 A. Yes.

22 Q. Why did you have difficulty in recognizing him?

23 A. Because of the beatings, the bruises, cuts on his
24 face and head.

25 Q. Now, was he released from the hospital that night?

1 A. No.

2 Q. What was his condition for the next few days at the
3 hospital over at Richland Memorial?

4 A. He was unconscious for 13 days. He was in
5 intensive care, and he was under all the life support
6 systems.

7 Q. March the 4th or the early morning hours of March
8 the 5th, 13 days he was out?

9 A. Yes.

10 Q. What kind of bruises appeared on his body that you
11 noticed?

12 A. He had bruises. It was a real bad lump and cut on
13 this side of his head up in the front (indicated). His eyes
14 were black and swelled up, his nose. Just really, his whole
15 face was swelled, his head.

16 Q. While he was in I. C. U. the first day or two or
17 three, was there a photograph taken of him?

18 A. Yes.

19 Q. Can you identify that?

20 A. Yes, that's my son, Shannon.

21 Q. Does this photograph represent how he looked a day
22 or two later while he was in I. C. U.?

23 A. Yes, sir.

24 MR. MYERS: Your Honor, we offer this into
25 evidence.

1 MR. FLOYD: Your Honor, we would object on the use
2 of the photograph.

3 THE COURT: Let me see the photograph. What
4 grounds is the objection on?

5 MR. MYERS: Can we get it on the record, Your
6 Honor?

7 THE COURT: Yes, sir. Just do it here, okay.

8 (WHEREUPON, the following side-bar was
9 reported.)

10 MR. FLOYD: Your Honor, we object to the use of the
11 photograph because it adds nothing. She's testified as to
12 what she observed. The only purpose of the photograph is to
13 inflame the jury or prejudice the jury to the detriment of
14 the defendant. As you know, we've already objected to this
15 type testimony anyway, and the picture just adds nothing
16 except to inflame or prejudice the jury against the
17 defendant.

18 THE COURT: I understand --

19 MR. MYERS: We submit it for the character and --

20 THE COURT: The photograph is admissible. It's not
21 overly graphic or inflammatory. It fairly depicts and
22 represents the testimony of the witness so it's appropriate
23 to introduce it.

24 (WHEREUPON, State's Exhibit No. 5, a
25 Photograph, was marked and admitted into evidence.)

1 (WHEREUPON, the side-bar was concluded.)

2 BY MR. MYERS:

3 Q. Let me show you State's Exhibit Number 5. When
4 that photograph was taken, has his conditioned improved any
5 since you first saw him at the hospital that first time?

6 A. From -- I'm sorry, I don't understand.

7 Q. Has his facial --

8 A. From the first day?

9 Q. Yes.

10 A. Has it improved as of now?

11 Q. No, no. From the first day you saw him, the first
12 night you said you could hardly recognize him.

13 A. Right.

14 Q. From then until the day this photograph was taken
15 several days later, had anything changed about him?

16 A. No, other than all the apparatus added to him.

17 Q. And could you communicate with him? This is while
18 he was in I. C. U., this photograph?

19 A. Yes, sir. And, no, I could not communicate with
20 him.

21 Q. Now, you said 13 days later he came to?

22 A. Gradually. Enough to where they would move him out
23 of intensive care to a private room.

24 Q. When he was taken out of intensive care, could you
25 communicate with him?

1 A. No, not really, other than to say something to him
2 or say Shannon if you hear me squeeze my hand. You know,
3 that was the only communication.

4 Q. Could he talk?

5 A. No.

6 Q. Was he able to get out of bed or walk?

7 A. No.

8 Q. How long was it that he had to stay in Richland
9 Memorial?

10 A. It was approximately three and a half weeks.

11 Q. Around the end of March?

12 A. Yes, sir.

13 Q. Now, when he was discharged from Richland Memorial,
14 could he walk by himself?

15 A. Yeah, some.

16 Q. Some?

17 A. Uh-huh.

18 Q. Could he talk?

19 A. Yes, some.

20 Q. Where did you take him when he was discharged from
21 Richland Memorial?

22 A. He was at home about five days and then he was
23 taken to the Rebound Head Trauma Center in Lancaster, South
24 Carolina.

25 Q. Why was he taken to -- what did you call it, the

1 Rebound what?

2 A. Rebound Head Trauma Center.

3 Q. Why was he taken to the Head Trauma Center in
4 Lancaster?

5 A. The people at the Richland Memorial Hospital had
6 recommended several facilities that would treat --

7 MR. FLOYD: Your Honor, I would object to this type
8 of hearsay.

9 A. -- this type of head trauma.

10 THE COURT: Ma'am, one second, please. When
11 there's an objection please stop, okay.

12 THE WITNESS: Oh, I'm sorry.

13 THE COURT: What's the objection?

14 MR. FLOYD: Hearsay about --

15 MR. MYERS: I can take care of that.

16 THE COURT: I'm going to overrule the objection.
17 She's only testifying that she did what she did because of
18 what she was told. Go ahead.

19 MR. MYERS:

20 Q. The people at Richland Memorial recommended that or
21 gave you some recommendations to where to take him?

22 A. Yes, and I chose that one in Lancaster.

23 Q. And how long was he in the trauma center in
24 Lancaster?

25 A. Approximately two and a half months.

1 Q. Two and a half months up there?

2 A. Yeah.

3 Q. What was the cost per month?

4 A. About 30 thousand dollars a month.

5 Q. Per month?

6 A. Yes.

7 Q. Going through two and a half months then at that
8 center in Lancaster, where did he go after that?

9 A. He came home after he left Lancaster and they set
10 up a homebound rehabilitation therapy for him, and we also
11 had to hire a tutor because he didn't get home in time enough
12 to -- for the State to set up a tutor for him for school.

13 Q. This happened on March the 4th, and because of it
14 he wasn't able to finish the school year?

15 A. Right, uh-huh.

16 Q. So --

17 A. So that's when the tutor had to come in and bring
18 him up to where he could go into the 12th grade.

19 Q. Now, when he came back home from Lancaster after
20 that two and a half months, did he require more treatment?

21 A. Yes, uh-huh.

22 Q. What type of treatment?

23 A. They still sent a speech therapist, a physical
24 therapist as far as his -- the exercising of his left leg and
25 arm.

1 Q. Why did he need to have his left leg and arm worked
2 on?

3 A. He had a fracture behind the right ear and it
4 affected the left side.

5 Q. Did he have difficulty walking with the left leg?

6 A. Yes, sir.

7 Q. Moving the left arm?

8 A. Uh-huh.

9 Q. Has he recovered from this, Mrs. Brady?

10 A. Pardon?

11 Q. Has he recovered from that beating?

12 A. Not completely. There's still traces from the
13 beating.

14 MR. MYERS: If you would, answer any questions they
15 have for you.

16 THE COURT: Cross?

17 MR. FLOYD: We have no questions, Your Honor.

18 MR. MYERS: We call Shannon Gilbert.

19 SHANNON SYLVAN GILBERT, after having been duly
20 sworn, testified as follows:

21 THE CLERK: Have a seat and state your full name
22 for the record, please.

23 THE WITNESS: Shannon Sylvan [ph] Gilbert.

24 DIRECT EXAMINATION

25 BY MR. MYERS:

1 Q. Shannon, were you working at the Pizza Hut on that
2 March the 4th, 1988?

3 A. Yes.

4 Q. Do you remember much about that night, Shannon,
5 late on?

6 A. No, very little.

7 Q. What do you recall? About what time did you get
8 off work?

9 A. I think I got off work at 10:00 or 10:30, perhaps.

10 Q. Where do you remember going when you were getting
11 off work?

12 A. To use the phone just outside the front door -- the
13 door at the Pizza Hut.

14 Q. And this being -- looking at this diagram right
15 here, this being the Pizza Hut, is the phone back towards the
16 back right here?

17 A. Yes.

18 Q. Do you remember going to that phone?

19 A. Yes.

20 Q. What do you remember about being at the phone?

21 A. I called a friend of mine, a young lady that I knew
22 from school. We were all supposed to get together and see
23 each other that night. And I remember being on the phone and
24 just talking about plans and looking over my shoulder and I
25 asked -- it was a black man that was standing there, if he

1 needed to use the phone. I figured that's the only reason he
2 would be just standing there. And I remember him shaking his
3 head yes. And I told my friend let me go, call me inside the
4 store.

5 Q. Told her what?

6 A. I told her to call me inside the store.

7 Q. The one you were talking with on the phone?

8 A. Right, on the pay phone. I told her call me inside
9 the restaurant, and that's the last I remember.

10 Q. Other than seeing a black man by the phone there by
11 you, do you remember anything else?

12 A. No.

13 Q. What's the next thing that you remember, Shannon?

14 A. Waking up in the hospital.

15 Q. Do you know how many days later that was that you
16 woke up in the hospital?

17 A. About two weeks; 13, 14 days is what I was told.

18 Q. You don't even remember that?

19 A. When I woke up, that's what I was told.

20 Q. Were you able to talk when you came to, two weeks
21 later in the hospital?

22 A. No.

23 Q. Were you able to walk?

24 A. No.

25 Q. How long was it while you were in the hospital that

1 you were able to remember anything, that you realized that?

2 A. I remember from --

3 Q. Anything at all in the hospital.

4 A. I only went by what they told me had happened to
5 me, but it was a long time before I was able to actually
6 remember, like, being on the phone, for example.

7 Q. Was there anybody else, any of your friends working
8 at the Pizza Hut that night were also in the hospital?

9 A. Yes, Aaron McGough. He was in the -- he had been
10 in the hospital as well.

11 Q. And was Aaron, had he been working at the Pizza Hut
12 with you that night also?

13 A. Right. It was his first night, if I remember
14 right.

15 Q. Had you just met him? You all were just friends,
16 or do you remember?

17 A. We were friends for a short time before that.

18 Q. When you were out there talking on the phone, do
19 you remember whether Aaron was near the back?

20 A. Not that I can recall. I think he was inside
21 working still. He had not yet got off work.

22 Q. Do you know how long you stayed at Richland
23 Memorial?

24 A. About three, three and a half weeks.

25 Q. What do you remember about being at Richland

1 Memorial? Do you remember anything about being over there?

2 A. Friends coming up to see me, my family there a lot,
3 just that's about it.

4 Q. You don't remember much else?

5 A. No.

6 Q. When they discharged you from Richland Memorial,
7 had you gotten use back into the hands or anything?

8 A. My left hand was the problem.

9 Q. What was wrong with it?

10 A. And my left leg.

11 Q. What was wrong with your left hand?

12 A. No coordination, no strength as though -- if I
13 remember right, it was just though as I had hardly any use at
14 all, almost no use.

15 Q. What about your left leg?

16 A. The same way. It took me awhile to be able to
17 walk, and I wasn't really steady doing that. So it was hard
18 to do.

19 Q. You went home for a few days?

20 A. Right.

21 Q. And then you went to another facility. Where was
22 that other facility located?

23 A. In Lancaster.

24 Q. And what did they do with you in Lancaster? Do you
25 remember any of that, Shannon, going to that place?

1 A. Yes. Briefly, I stayed overnight. I lived there
2 for about two, two and a half months.

3 Q. Right.

4 A. And we had daily activities. After breakfast we
5 may go to speech therapy or may have went to -- I had to go
6 through learning games to help with memory, to help think
7 straight again, just things like that.

8 Q. Now, why did you need speech therapy?

9 A. I had a really bad slur, like. I don't know how to
10 describe it. It was a really bad slur. I couldn't speak
11 straight.

12 Q. Did you have that slur before the beating?

13 A. No.

14 Q. So they had to work with your speaking up there?

15 A. Right.

16 Q. And what about your left hand?

17 A. Same type. I had to do exercises, games that
18 worked with high, you know, coordination; up, down, left,
19 right, just anything like that to have the coordination
20 better.

21 Q. What about your left leg? What did they have to do
22 with it, Shannon?

23 A. Exercises, same type of thing.

24 Q. While you were up there could you walk with the
25 left leg or was it still giving you problems?

1 A. I could walk, but it still gave me problems.

2 Q. What about your left hand and your left leg; even
3 to date, Shannon, do they still give you problems?

4 A. Not so much like that, but it's still very
5 uncoordinated when it comes to my left hand. The left leg
6 doesn't give me a problem walking. I don't have a problem
7 running, things like that, but I am very uncoordinated with
8 my left hand, picking things up, using it in any way.

9 Q. Now, Shannon, what about your memory?

10 A. I have no short term memory. I can't remember a
11 lot.

12 Q. For example, tell the jury. And I hate to ask you
13 this, but just tell them what that means.

14 A. At home daily, daily things, to remember to do
15 something is a struggle. At work, any job is a struggle to
16 remember something that's very simple, and that may be
17 something at home as simple as to take the trash out or feed
18 the dog, something that is done daily but I have to be
19 reminded and it's frustrating.

20 Q. A couple weeks ago you came to my office and when
21 you went back outside did you remember where you parked the
22 car?

23 A. Oh, yes.

24 Q. Do you have problems sometimes with that,
25 forgetting?

1 A. Nothing like that. It's really minor things,
2 little things that probably most people would take for
3 granted remembering, that's more like what it is. Some days
4 I may remember a lot, other days, totally downhill.

5 Q. Has that affected you with trying -- with your work
6 trying to do a job?

7 A. Oh, yes. Of course, my performance isn't as well,
8 not being able to remember certain tasks.

9 Q. Do you even remember this picture being taken of
10 you?

11 A. I don't remember the picture being taken but I knew
12 it was taken. I saw it afterwards.

13 Q. Saw it afterwards?

14 A. I was shown that picture afterwards.

15 Q. So sometime later on you were shown?

16 A. Right.

17 Q. Do you have any consciousness about being in a
18 hospital; do you know of any dreams or anything? Is that all
19 you remember about the hospital?

20 A. I had a dream. I did have a dream in the hospital.
21 It's the only one I remember, of course. It was -- I
22 remember waking up --

23 MR. FLOYD: Your Honor, I'm going to object to any
24 dream. I don't see how that's relevant.

25 MR. MYERS: He'll bring out the relevance.

1 THE COURT: Overruled.

2 BY MR. MYERS:

3 Q. Go ahead.

4 A. I remember the dream. I woke up and I remember
5 being really afraid. And, of course, there were several in
6 the room. I'm not sure who it was, nurses, maybe my mother.
7 I'm not sure who all was there, but to calm me down. And I
8 remember telling them what it was about. It was -- Indians
9 were chasing me trying to kill me, and the thing that I
10 thought was they were black. And later on -- or after years
11 have gone by I've maybe even thought, well, there might have
12 been a link. You know, that I was remembering something
13 about trying to get away from someone.

14 Q. Shannon, did you come in this courtroom --

15 MR. FLOYD: Your Honor, I renew my motion. I move
16 that it be stricken. That's irrelevant.

17 THE COURT: I'll note the motion. Denied.

18 BY MR. MYERS:

19 Q. Did you come in this courtroom when the person that
20 beat you and Aaron up was sentenced?

21 A. Yes.

22 Q. And was that person Johnny Olandis Bennett, Jr.?

23 A. Yes.

24 Q. Did you even remember him, seeing him in the
25 courtroom? Do you remember him from that night at the Pizza

1 Hut?

2 A. No.

3 Q. And I think that was September 14, 1988.

4 MR. MYERS: Your Honor, on State's Exhibit Number 3
5 we would like to remove some items. First of all, we'd like
6 to move in the sentence that Mr. Bennett received from the
7 Pizza Hut incident.

8 THE COURT: Any objection?

9 MR. FLOYD: What is it?

10 THE COURT: It's a sentence sheet signed by Judge
11 Baggett.

12 MR. FLOYD: No objection to that.

13 THE COURT: All right, without objection.

14 (WHEREUPON, State's Exhibit No. 6, a Sentence
15 Sheet, was marked and admitted into evidence.)

16 MR. MYERS: Your Honor, this relates to the board
17 on the chart, number 3. I'd like to remove that March 8th --
18 March 4th, 1988 assault and battery of a high and aggravated
19 nature at the Pizza Hut parking lot.

20 As it relates to State's Exhibit Number 6,
21 September 14, 1988, Johnny Olandis Bennett, he was sentenced
22 by the Court, the Honorable Julius H. Baggett. He was given
23 a youthful offender sentence for an indeterminate period of
24 time not to exceed 6 years. Affective date of the sentence,
25 9:00 a.m., September 19, 1988. Certified true copy.

1 BY MR. MYERS:

2 Q. You were up in court on that day when Mr. Bennett
3 was sentenced for this Pizza Hut where you and Shannon -- you
4 and Aaron were beaten up; is that correct?

5 A. Right.

6 MR. MYERS: Thank you. Answer any questions they
7 have.

8 THE COURT: Cross?

9 CROSS-EXAMINATION

10 BY MR. FLOYD:

11 Q. Do you recall whether or not you had a fight that
12 night at the Pizza Hut with another white guy?

13 A. I don't remember. I only know what I was told, who
14 all was involved.

15 Q. There were two other white guys involved, weren't
16 there?

17 A. Yes.

18 Q. And then you and Mr. Aaron -- you and Aaron?

19 A. Right.

20 Q. But you don't recall the fight initially between
21 the white guys?

22 A. No.

23 MR. FLOYD: No further questions.

24 MR. MYERS: Thank you. Come down, please.

25 THE COURT: Step down.

1 MR. GRAHAM: Helen McGough.

2 HELEN MCGOUGH, after having been duly sworn,
3 testified as follows:

4 THE COURT: Please have a seat and state your full
5 name for the record, please.

6 MR. FLOYD: Your Honor, please note our objection
7 to this type of testimony, the same objection we made before
8 the earlier testimony and we'd put it all completely on the
9 record --

10 THE COURT: Sure. I'm going to put it on the
11 record in a few minutes.

12 Go ahead, Counsel.

13 DIRECT EXAMINATION

14 BY MR. GRAHAM:

15 Q. Ms. McGough, did you have a son that was working at
16 the Pizza Hut on March 4th, 1988?

17 A. Yes, I did. It was his first night.

18 Q. Aaron?

19 A. Aaron McGough.

20 Q. And that was the Pizza Hut on Columbia Avenue?

21 A. Yes.

22 Q. And how old was Aaron at that time?

23 A. 17.

24 Q. How long had he been working at Pizza Hut?

25 A. First night. He was so excited.

1 Q. Do you remember what time he was supposed to be
2 home?

3 A. He was supposed to get off about 11 o'clock.

4 Q. And about 11 o'clock that night where were you?

5 A. I was waiting for him to get home to hear about his
6 job.

7 Q. And did he show up at 11 o'clock?

8 A. No.

9 Q. Did you get a telephone call that night?

10 A. Yeah. It was probably about quarter after, 20
11 after. The people from Pizza Hut called and said that Aaron
12 had been hurt and that they were taking him to Lexington
13 Hospital. Then about five or ten minutes later I got another
14 phone call and said because of the severity of his
15 injuries --

16 MR. FLOYD: Your Honor, I'm going to object to any
17 hearsay.

18 THE COURT: Sustained.

19 MR. GRAHAM:

20 Q. Based on the second phone call, where did you go,
21 Ms. McGough?

22 A. Richland Memorial Hospital.

23 Q. And did you make it to Richland Memorial before
24 Aaron got there?

25 A. Yeah. We were there when the -- we got there and

1 they said that the ambulance was on the way. And we went in
2 and did all the paperwork and came back outside. And just as
3 we came back outside, the ambulance pulled up.

4 Q. When the ambulance pulled up, what did you see?

5 A. They opened up the back doors and Aaron was in
6 there, and they were trying to get him out but he was
7 fighting and he was saying stop, no. And I called to him,
8 and they told me he couldn't hear me.

9 MR. FLOYD: Your Honor, I'm going to object to
10 hearsay.

11 THE COURT: Sustained.

12 BY MR. GRAHAM:

13 Q. Did you try to speak to your son?

14 A. Yes, but --

15 Q. And did he answer?

16 A. He didn't respond.

17 Q. What did your son look like at that time; did you
18 have a chance to see him?

19 A. If I hadn't of known it was Aaron I wouldn't have
20 been able to tell by his face. His face was just -- it was
21 all cut up. His eyes were just little slits. His nose and
22 his mouth was just -- it was just all one. His forehead was
23 all cut up. And if I hadn't of known it was him I wouldn't
24 have recognized him.

25 Q. Did he have any unusual marks on his forehead?

1 A. Yeah, he had a big U-shape right here on his
2 forehead that you can even see today.

3 Q. After they brought Aaron in where did he go?

4 A. He went straight back to the emergency room.

5 Q. And do you know what kind of doctor treated Aaron
6 that night?

7 A. They brought in a neurologist, they brought in a
8 plastic surgeon. I don't really know who else saw him. I
9 know there were several people who saw him.

10 Q. And how long was Aaron in surgery before you got to
11 see him again?

12 A. A long time, because they brought him in, it was
13 about 12 o'clock and we didn't get to see him -- it was --
14 oh, it was after four. It was probably almost five o'clock
15 by the time we saw him.

16 Q. And when was the next time that you got to see
17 Aaron again?

18 A. Well, it was -- they were taking him up to I. C. U.
19 when we finally got to see him.

20 Q. The intensive care unit?

21 A. Uh-huh. And we rode up in the elevator with him
22 and they kept -- I tried to talk to him and there was no
23 response at all.

24 Q. Was he moving at that time?

25 A. No, he was just very, very still.

1 Q. What did he look like then after he came out of
2 surgery?

3 A. Well, they had already done some stitches on his
4 forehead but you still couldn't -- you couldn't see his eyes
5 or his -- I mean, it was just one big mess, couldn't see.

6 Q. How long did you stay at the hospital with Aaron?

7 A. It was four days before he started to come around,
8 and so I stayed there until I was sure of that.

9 Q. Was he in I. C. U. all that time?

10 A. Yes.

11 Q. Let me show you a photograph here -- or two
12 photographs, actually, and ask you if you can identify this.

13 MR. FLOYD: Your Honor, we also object to the use
14 of these photographs. We think they're just inflammatory and
15 have nothing to do with the testimony. It's already been
16 testified to and they're simply being introduced to try to
17 inflame the passions of the jury.

18 THE COURT: Okay. Again, the photographs are not
19 so graphic or inflammatory as to cause any problems. They
20 are appropriately depictive of the witness's testimony.

21 (WHEREUPON, State's Exhibit No. 7, Set of
22 Photographs, was marked for identification only.)

23 BY MR. GRAHAM:

24 Q. Let me show you State's Exhibit Number 7 and ask if
25 you can identify that.

1 A. That's my son, Aaron. I took those photographs
2 after -- I went home after four days and got the camera and
3 came back. And a lot of the swelling had gone down and you
4 could see his eyes again. And he has a real thin face, and
5 you can tell by that that he still had a lot of swelling, but
6 those are the pictures that I took.

7 Q. Is that a fair representation of how Aaron looked
8 that day when you took the picture?

9 A. That was four days after, yeah.

10 MR. GRAHAM: We'd move that into evidence, Your
11 Honor.

12 THE COURT: Over the objections noted.

13 (WHEREUPON, State's Exhibit No. 7, Set of
14 Photographs, was admitted into evidence.)

15 BY MR. GRAHAM:

16 Q. Has Aaron fully recovered from the beating he took
17 that night?

18 A. Not really, no, sir. His personality has changed.
19 Aaron was a real easy-going kid. He was just real laid-back,
20 nothing bothered him or anything. And now he's real -- he
21 gets frustrated real quick and he's quick to anger. It's
22 just really changed his personality. He has short-term
23 memory loss. I mean, lots of things that he'll forget. He's
24 a plumber, he forgets his tools, forgets his house key,
25 things like that.

1 Q. After Aaron came out of the I. C. U. where he was
2 at for four days, where did he move next to?

3 A. They took him in to a regular room for about a
4 week.

5 Q. After that week, what happened?

6 A. Well, they told me that I could take him home as
7 long as he had somebody with him at all times. So he and I
8 stayed home for the next six weeks.

9 Q. And what condition was he in when he was released?

10 A. He was real weak. We had to watch him real close
11 because of the brain swelling, that there wouldn't be any
12 seizures and so it was --

13 Q. Thank you, Ms. McGough. Please answer any
14 questions that they have for you.

15 A. Yes, sir.

16 THE COURT: Cross?

17 MR. FLOYD: No questions, Your Honor.

18 THE COURT: All right. You can step down. Thank
19 you, ma'am.

20 Ladies and gentlemen, we'll go ahead and recess for
21 the day now. What we'll do is come back in the morning at
22 9:30. I'll ask you to be back at 9:30. Since we went a
23 little bit later this evening, we'll give you a chance after
24 you get back from dinner to kind of relax some and maybe
25 sleep a few minutes in the morning.

1 Remember, it's very, very important that you still
2 not talk about the case. I think the agents are going to get
3 you back to the motel and let you change, if you need to, and
4 then head on to dinner. Have a good evening.

5 I won't give you the charge about the meal and all
6 that anymore. Just remember, if anybody does wish to have a
7 drink or anything you may, but no more than one. Don't get
8 your neighbor's, and you have to pay for it yourself. And if
9 you do want to smoke that's fine but be sure not to smoke
10 around, just whatever the normal rules are. I think you know
11 what those are.

12 With that in mind, we'll see you in the morning at
13 9:30, and I hope you have a good evening.

14 (WHEREUPON, the jury leaves the courtroom at
15 approximately 6:50 p.m.)

16 THE COURT: The jury is secured. Counsel, before
17 we break let me put on the record -- as I indicated, what
18 we'll do is rather that sometimes having to send the jury out
19 and go through long conferences on the record I think it will
20 make it better for the record to let me just put on the
21 record what we did in the bench conferences.

22 I note for the record we had two bench conferences
23 before the jury was sent out this time. We had one
24 conference -- in fact, both of them were just before the
25 testimony of Ms. Brady.

1 The first conference was merely a scheduling
2 conference where I just basically tried to get some idea when
3 we could stop for the day, and Mr. Myers at that time
4 indicated he had three more witnesses he wanted to call. Of
5 course, he called those three and we've been able to recess
6 for the day at this time. Second conference was when defense
7 objected to testimony of Ms. Brady, and the objection was
8 overruled at that time.

9 I want to be sure to note that for the record,
10 Mr. Floyd, so the record is clear that prior to her
11 testimony, prior to her being called you did object to that.
12 The objection was based on relevance as to her being able to
13 testify as to the extent of her son's injuries and the
14 reaction. I ruled that my understanding of the Supreme Court
15 rulings is that that is appropriate to be introduced.

16 Do you need to add anything to that, Mr. Floyd?

17 MR. FLOYD: No, Your Honor. I think just to make
18 clear that what we objected to was any testimony about the
19 extent of the injuries suffered by the boys in the Pizza Hut
20 incident as being inappropriate, victim impact type of
21 information and having nothing to do with the particular
22 crime that Mr. Bennett is on trial for now. And we also
23 alerted the Court that we'd like to renew that motion when
24 they also got into that with the second boy that was --

25 THE COURT: Ms. McGough.

1 MR. FLOYD: With Helen McGough that testified also.

2 THE COURT: Okay. That's correct. It was renewed
3 for Ms. McGough also. And, of course, my ruling was based on
4 my understanding of the rules that in this particular
5 proceeding it is appropriate to allow testimony as to the
6 extent of the beatings that the defendant has alleged to have
7 placed on these two particular young men. So I think it's
8 appropriate for that.

9 MR. FLOYD: Thank you, Your Honor.

10 Also, Your Honor, at this time, we would like to
11 renew the motion we made before we got started with this
12 trial in connection with the make-up of the jury. We would
13 feel like we need to renew the motion because now the State
14 had certainly placed race into this trial when they solicited
15 testimony from the young man up there, Shannon Gilbert, about
16 some dream he had of black Indians chasing him.

17 Your Honor, that was not something that came out in
18 the first trial. Of course, we had a couple black jurors in
19 the first trial. But now we don't have any black jurors so
20 all they're going to do is hit this jury with race, race,
21 race. Because that was not -- there was no importance to
22 that testimony, there was no relevance of that testimony
23 except to inflame a white jury who's chased by black Indians.

24 Your Honor, it is a gross violation of this man's
25 rights to interject race, try to put him to death with race,

1 and that's what they're trying to do. And we renew our
2 motion for a new jury.

3 THE COURT: Noted, and I would deny the motion.
4 Again, as I gathered, the witness testified just to what his
5 impressions were of the dream that he had.

6 Anything else from the State?

7 MR. RIDDLE: Yes, sir, Your Honor. At lunchtime
8 today in compliance with your earlier ruling we received a
9 letter and seen one expert witness report from an individual
10 by the name of James Aiken.

11 I don't know exactly what Mr. Aiken purports to
12 testify to but he essentially gave us a resume. I'm not
13 taking exception to the report itself, Your Honor. The
14 letter that we received from Mr. Young indicates that this is
15 the only expert they intend to call in this case.

16 Frankly, the thing that concerns us is this, Your
17 Honor. There has been some elusions through some of this
18 testimony towards things that would tend to go towards the
19 mental health mitigators, and we have a witness currently who
20 is out of state that we will fly back if that becomes
21 necessary. But based on what they are telling us, they are
22 not intending to offer any expert testimony from the
23 psychiatric, slash, psychologist type arena, we don't feel
24 that we need to fly this witness back.

25 The situation that we don't want to get into --

1 because we're not intending to offer any of that evidence in
2 our chase in chief. The situation I don't want to get into
3 is that relying on this letter we don't bring this witness
4 back and then we get in a situation where, oh, they've
5 changed their mind. And so I just wanted to address with the
6 Court that particular issue.

7 It's our position, given the Court's prior ruling
8 that they needed to turn over any expert witness reports to
9 us, that if they have not, in fact, turned over an expert
10 witness report from any other experts that the testimony of
11 those experts should be excludable. Because clearly it
12 violates the spirit of the Court's ruling if they can at a
13 later point say we have changed our mind and changed our
14 strategy, oh, and by the way, here's a report now.

15 And what will have happened by that point is we
16 will be prevented from adequately replying or responding to
17 any of that testimony because we have relied on this letter
18 dated July 12th saying that's the only expert that they are
19 going to call.

20 THE COURT: Okay. Mr. Floyd, is that correct?

21 MR. FLOYD: Well, Your Honor, it's my understanding
22 that the Court's ruling was that if we were going to produce
23 any new expert or if any experts that we had were going to
24 testify differently than they testified at the prior trial
25 then we had to submit a report.

1 THE COURT: Yes, sir, that was my ruling.

2 MR. FLOYD: So that's the only --

3 THE COURT: Right. I think the fly in the ointment
4 is, as I understand Mr. Riddle is indicating, that they have
5 a letter from Mr. Young saying that that's the only expert
6 you're going to call.

7 Is that correct; did I misinterpret that?

8 MR. RIDDLE: That's exactly what the letter says,
9 Your Honor.

10 THE COURT: Isn't that correct; that's the only
11 expert you're going to call?

12 MR. FLOYD: That's the only new expert.

13 MR. MYERS: I don't want to play games. They
14 didn't put up any psychiatrist, psychologist or anything like
15 that at the last trial.

16 MR. FLOYD: So we're not this time.

17 MR. MYERS: So all I'm saying is I've got people to
18 call in reply. One of them is out of state. I've already
19 got a plane ticket to put him on a plane tomorrow. I'm not
20 going to do that, but if they come up Friday morning and say
21 by the way, we got some woman or some man or somebody going
22 to come in and say the defendant's antisocial, he's
23 histrionic, he's borderline, he's anything to do with mental
24 deficiency in anything, then I would have told my reply
25 witness not come. That's all I want to know.

1 Whether you want me to go ahead and spend the
2 money, I'll tell him to get on the plane tomorrow and come
3 on. But I'd like to kind of avoid that. So that's the issue
4 that boils down to it. It's no trick issue or anything. If
5 they are going to put up an expert -- and they can correct me
6 if I've wrong, they didn't put up that type of expert at the
7 first trial. If I'm wrong about that I'd like to know.

8 THE COURT: Mr. Floyd, is that correct?

9 MR. FLOYD: I don't understand what the problem is,
10 Judge. Your ruling was if we're going to put up any new
11 expert or if we're going to use the same expert to put new
12 testimony up we had to give them a report. We complied.
13 There is the report. There was no -- I don't believe there
14 was any psychiatric testimony last time. So unless we're
15 going to give them a report concerning psychiatric testimony
16 then we would be prohibited by the Court's ruling from doing
17 that.

18 MR. MYERS: Then I submit this to the Court. I do
19 not remember any type of mental health testimony during the
20 last trial. If I am wrong on that I'd like the defense
21 counsel to correct me, number one.

22 Number two, if they intend to offer any type of
23 mental health testimony all I'm asking for is just to let me
24 know so I can get that fellow on the plane tomorrow. It's
25 not a big thing.

1 Number one, if they didn't offer it the last time
2 then we'll agree on that. Number two, we haven't got a
3 report on the new stuff, and all I'm saying is we don't want
4 to be getting a report over here saying by the way, this came
5 in Thursday night, Friday morning, now we're going to do it.

6 So number three is since we agree on all, they're
7 not to put up any mental health expert testimony. One was
8 not called in the first trial, it will not be an issue in
9 this trial. We're going to tell our fellow tonight not to
10 come, and if they try to offer that testimony we're going to
11 ask you to prohibit it based on this hearing right now.

12 THE COURT: Well, Mr. Floyd, do you understand
13 that's what I'll have to do if you attempt to introduce
14 someone like that. Let me be clear at this time. Are you
15 saying that you are not going to put up any mental health
16 experts; is that correct?

17 MR. FLOYD: Your Honor, I'm not trying to be
18 difficult.

19 THE COURT: Sure, I understand.

20 MR. FLOYD: But I don't understand why I got to
21 tell the State what witnesses I'm going to use. I'll comply
22 with your order, and we've given them any new expert right
23 there. That's the new expert.

24 THE COURT: Okay. Well, let me just summarize this
25 and capsule this, if I might, to make sure that my

1 understanding is correct. My understanding is this now. And
2 again, now remember, my ruling was that if you were going to
3 call any expert who did not testify in the last trial then --
4 or any expert who testified but was going to testify as to
5 some new matter, then you would need to give the State a copy
6 of the expert's written report on either of those
7 circumstances.

8 MR. FLOYD: Yes, sir.

9 THE COURT: My understanding is now that what
10 you've given the State does not indicate any mental health
11 expert and that in the previous trial that there was no
12 mental health expert testimony. I can only assume from that
13 then that there will be no mental health expert testimony in
14 the defense case. And I guess the best thing I can tell you
15 is this, that, you know, given the circumstances we're in if
16 you do attempt to call a mental health expert I won't be able
17 to be allow you to do that, understood?

18 MR. FLOYD: Judge, I don't understand why we're
19 having this --

20 MR. MYERS: I want to put this in as a Court's
21 exhibit, and also they've submitted -- and it's not a report
22 it's a biographical sketch by James E. Aiken.

23 THE COURT: Yes, sir.

24 MR. MYERS: So it's not a report. So when he gets
25 ready to testify I'm going to move that he not testify

1 because we haven't seen the report. I don't care about his
2 history. And also he refers in here reviewing some mental
3 health records. He's not a psychiatrist, psychologist. And
4 if he attempts to offer any mental health testimony I'm going
5 to move to --

6 THE COURT: I'm familiar with Dr. Aiken. He's
7 testified in several of my trials.

8 MR. MYERS: But not as mental health.

9 THE COURT: Nothing he's ever testified to has ever
10 given any indication of being a mental health expert. And if
11 he's going to testify, Counsel, you need to go ahead and give
12 the State a copy of his report. I made very clear it's got
13 to be his report, a written report from Dr. Aiken. And I've
14 dealt with Dr. Aiken enough, Dr. Aiken is a very bright man,
15 tremendously qualified. I don't see why Dr. Aiken couldn't
16 get a written report within a day or so notice, frankly.

17 MR. YOUNG: The report that he submitted that I
18 provided to the State, Your Honor, the first portion of that
19 report I believe he numbered them one, two, three, four, on
20 through like that. The first few numbers are his background
21 information. There is a portion on there that outlines
22 information that he reviewed in order to form an opinion.
23 And then there's a paragraph I believe in there that talks
24 about what he is looking to compare what he saw to. Then
25 there's a last paragraph where he formulates his opinion.

1 That is the report that he submitted to us. Once I
2 received it this afternoon after we finished selecting a jury
3 I copied it and forwarded it over to the Solicitor's Office.
4 If they want a more detailed report, I will be glad to give
5 Mr. Aiken a call as soon as I get out of court today and ask
6 him to be more specific.

7 THE COURT: How about go ahead and do that, if you
8 would. That's really what I -- in almost all of these cases
9 I've tried, in literally every circuit that I've tried these
10 cases in this has always been a problem. And it's nobody's
11 fault, because I want to be sure you understand and I'm not
12 picking on you, because it's not your fault. Just there are
13 certain parameters when it comes to the defense case that we
14 always use.

15 However, the fairly recent rulings of the Supreme
16 Court and the rulings of a number of other judges who handle
17 these cases as much as I do have indicated that there is a
18 trend for making the State -- the defense at least produce
19 something about their expert witnesses, because in all
20 truthfulness, it's really not fair to the State to have an
21 expert who's going to come up and testify on some complicated
22 area and not have a written report, and so at least not have
23 some idea of what he's going to testify to.

24 And, of course, it's also not fair to the defense
25 not to have a written report from the State's experts also.

1 I think it's just a two-way thing and it's just fair to both
2 sides to do that.

3 So if you could, Mr. Young, go ahead and contact
4 Dr. Aiken and have him get you a more thorough written
5 report, okay?

6 MR. YOUNG: Your Honor, if I may for the record. I
7 understand Mr. Myers is asking that the copy that I provided
8 to them be made a Court's exhibit. What I forwarded to the
9 Solicitor's Office is an eight-page report. It is 11
10 separate sections. Section one, two, three, four, five, six
11 all are background information on Mr. Aiken. Number seven
12 refers to what he was asked to do. Number eight divulge his
13 compensation rate. Number nine divulge basically his
14 understanding of the South Carolina Department of
15 Corrections. Number ten is a formulation of assumptions and
16 assessment that were made, and 11 is his conclusion. I'd
17 just like to note that for the record.

18 THE COURT: You want to add anything to it,
19 Mr. Myers?

20 MR. MYERS: Well, I can see right now they're going
21 to -- well, I don't know. I just want to get it on the
22 record he's not an expert in mental health issues. So I hope
23 it's not an attempt to try to get any mental health documents
24 or issues in through him.

25 MR. YOUNG: As an officer of the Court, I tell the

1 Court and Mr. Myers that there will be no testimony from
2 Mr. Aiken elicited from the defense dealing with any mental
3 health issues.

4 MR. MYERS: Okay. That's good enough. Can we mark
5 this as a Court's exhibit and get a copy of it?

6 THE COURT: Yes, sir, we can. How about don't mark
7 it yet. Let me do one thing first. I want to ask the
8 defendant if he's in concert with his lawyers on this
9 decision not to call any mental health experts. There's no
10 need to set up a PCR down the line on this. I want to be
11 sure the record is clear.

12 Mr. Bennett, would you stand up just a minute,
13 please.

14 Madam Clerk, would you put him under oath for me.
15 And he's under oath only for purposes of my questions.

16 JOHNNY OLANDIS BENNETT, after having been duly
17 sworn, testified as follows:

18 THE COURT: Mr. Bennett, I'm sure -- you understand
19 that you have, of course, two very fine lawyers who are
20 thoroughly prepared with your case?

21 THE DEFENDANT: Yes, sir.

22 THE COURT: And I assume you had a chance to talk
23 with them about how you would like the case to go; is that
24 correct?

25 THE DEFENDANT: Yes, sir.

1 THE COURT: Now, one thing that I understand is at
2 this point they do not intend to call any mental health
3 experts related to mental health issue; is that your
4 understanding?

5 THE DEFENDANT: No, sir.

6 THE COURT: That's not your understanding?

7 THE DEFENDANT: I mean, we don't plan to call any
8 type of --

9 THE COURT: I'm sorry, I couldn't --

10 THE DEFENDANT: We don't plan to call any witness
11 -- any experts dealing with that issue, mental health.

12 THE COURT: In other words, you're not going to
13 call any mental health witnesses; is that right?

14 THE DEFENDANT: Yes, sir.

15 THE COURT: And are you in agreement with that
16 decision not to call any mental health witnesses?

17 THE DEFENDANT: Yes, sir.

18 THE COURT: Okay. You've had a chance to talk with
19 your lawyers about that?

20 THE DEFENDANT: Yes, sir.

21 THE COURT: Okay. And if they had recommended that
22 and you didn't want to, do you feel like you were free to
23 insist on mental health witnesses if you needed them?

24 THE DEFENDANT: Yes, sir.

25 THE COURT: So, in essence, you agree with the

1 decision not to call mental health experts; is that right?

2 THE DEFENDANT: Yes, sir.

3 THE COURT: All right. I wasn't trying to put you
4 on the spot, Mr. Bennett, but I want to be sure that, you
5 know, you have a right to have a say in this thing, too.

6 THE DEFENDANT: No offense taken.

7 THE COURT: Okay.

8 Anything else on that? I think that issue is
9 resolved, Counsel. Anything else on that?

10 MR. FLOYD: No, Your Honor. We move for a
11 mistrial. I don't think we had to tell that to the State.
12 We said we'd abide by the ruling. Now, if they can't
13 remember whether or not there was any mental health testimony
14 then that's not our problem.

15 And I think it was error for the Court to elicit
16 from the defendant information that the State was trying to
17 get from us, being whether or not we were going to put in any
18 mental health testimony. So we move for a mistrial. We
19 think that was improper.

20 THE COURT: That motion is denied. This Court has
21 made very clear, Mr. Floyd, and we will continue to make very
22 clear that we are not going to conduct trial by ambush. Now,
23 certainly I don't want to do anything that is going to even
24 inconvenience the rights of the defendant much less violate
25 them.

1 However, as I indicated, this has been an area that
2 has been a problem where defense has called expert witnesses
3 without the State knowing who they are, and some of them
4 testify to some extremely complicated areas. And it's only
5 fair to the State, as it's fair to the defense in another
6 case, to be able to at least know who they are and what
7 they're going to testify to.

8 Doesn't mean they have to testify, but at least if
9 they are going to -- you understand, when it comes down to
10 it, you're free not to call them. And I know you're not
11 intending to do this, it sounds like almost when you say that
12 you're bothered by the fact that I asked Mr. Bennett that you
13 understand, with some lawyers I would think that they were
14 playing a little cat and mouse game with me of not being
15 totally honest.

16 I know better than that with you. I've tried Lord
17 knows how many cases with you and never had the slightest
18 reason to doubt your honesty in any way. But you understand
19 the problem with that simply is that it's just fair for both
20 sides to -- at least in terms of expert testimony, to know
21 who's going to come and what they are going to testify about.

22 Now, I can understand as to Dr. Aiken where it
23 wouldn't be much of a problem. It's not a serious problem
24 because Dr. Aiken testified in so many of these cases that
25 unless he comes up with something new I could almost tell you

1 what he's going to testify to. But certainly, I want to be
2 sure in terms of this.

3 And the reason I asked Mr. Bennett this is that --
4 and frankly, I did it to protect you. Because if you make a
5 decision not to call a mental health expert as a strategy
6 decision it's not fair for you -- and if Mr. Bennett concurs
7 in it, it's not fair to you to have him later raise a PCR.

8 And that's why I think it was appropriate to put
9 that issue on the record now so that if he wanted to -- and
10 he could even do it, you know, if you want to let him talk
11 with me privately. I don't mind doing that, out of the
12 presence of everybody else, and arrange to have other -- but
13 the State has witnesses who have also got to arrange
14 transportation too and it's just fair to give them an
15 opportunity to do that.

16 MR. FLOYD: Well, I understand that, Your Honor,
17 but we stand here and we say we're abiding by Your Honor's
18 ruling, and we've given them anything that's required by Your
19 Honor's ruling. Now they want somebody to tell them we're
20 not going to have mental health testimony.

21 Now, I don't have to tell them that. I'm telling
22 them we'll abide by the rule. And so we think it's improper
23 that when we won't give them the information for the Court
24 then to make the defendant give them the information.

25 Now, I can understand wanting to protect us from

1 PCR with him, do that in private. But it's improper, I
2 think, for the Court to intervene, to give the Solicitor the
3 information they're seeking when we as lawyers don't want to
4 just tell them that directly. We'd move for a mistrial.

5 THE COURT: Let me tell you my interpretation of
6 that, okay. And as I understood this, basically, considering
7 the reports that you've given to the State -- and again, my
8 summary was this, and I think you agreed with it a moment
9 ago. My understanding was that you at this point have not
10 given them any reports from any mental health experts?

11 MR. FLOYD: That's correct, Your Honor.

12 THE COURT: In the previous trial there were no
13 experts who testified to mental health issues?

14 MR. FLOYD: That's correct.

15 THE COURT: So it is a logical assumption based on
16 that that you're not going to call mental health testimony?

17 MR. FLOYD: We agree. But they wanted me to tell
18 them, I don't have to tell them. And I don't think it's
19 right for the Court then to make the defendant tell them
20 that.

21 THE COURT: Well, what I was doing is just having
22 the defendant verify that he wasn't wanting -- what I was
23 going to do, frankly, was this. If he wanted to talk about
24 the issue and do it privately I'd do it. If he wanted to go
25 back in chambers and insist that you call somebody I was

1 going to give him a chance to do that if he wanted to.

2 But the key still is that the State's got to have a
3 -- you know, they've told us very clearly, Mr. Myers has held
4 nothing back in terms of this witness that he says if you
5 call mental health testimony he's got a witness he's going to
6 call on rebuttal, and he just wanted to know. That the
7 witness is going to be basically unavailable at some point
8 and he wanted to be able to have him available. So he was
9 being very open about it, too.

10 So certainly, I think maybe we just had different
11 interpretations of it, but all I'm trying to do is be sure --
12 frankly, I was trying to keep you from being out on a limb on
13 that issue, that was all. There's just no need to create PCR
14 issues if we see them coming, if we can avoid them.

15 Okay. Anything else on that then?

16 MR. FLOYD: Not from us, Your Honor.

17 THE COURT: Anything else from the State?

18 MR. RIDDLE: No, sir.

19 THE COURT: All right. Counsel, I'll see all of
20 you in the morning at 9:30.

21 (WHEREUPON, Court's Exhibit Numbers 1 and 2
22 were marked and made a part of the record.)

23 (WHEREUPON, the trial of this case was
24 recessed for the day.)

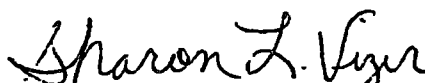
25 ** END OF VOLUME III **

C E R T I F I C A T E

I, Sharon L. Vizer, Official Court Reporter for the
11th Judicial Circuit of the State of South Carolina, do
hereby certify that the foregoing is a true, accurate and
complete transcript of record of all the proceedings had and
the evidence introduced in the trial of the captioned case in
Circuit Court on the 12th day of June 2000.

I do further certify that I am neither of kin,
counsel nor have an interest to any party hereto.

May 19, 2004



SHARON L. VIZER

CIRCUIT COURT REPORTER

STATE OF SOUTH CAROLINA) IN THE COURT OF GENERAL SESSIONS
COUNTY OF LEXINGTON) 11TH JUDICIAL CIRCUIT

THE STATE) TRANSCRIPT OF RECORD
-VS-) 93-GS-32-2354
JOHNNY O. BENNETT,) ** VOLUME IV **
DEFENDANT.)

JULY 13, 2000

LEXINGTON, SOUTH CAROLINA

B E F O R E:

THE HONORABLE MARC H. WESTBROOK, JUDGE.

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

DONNIE MYERS, SOLICITOR

DAYTON RIDDLE, DEPUTY SOLICITOR

SHAWN GRAHAM, ASSISTANT SOLICITOR

ATTORNEYS FOR THE STATE

WAYNE FLOYD, ESQUIRE

HERVERY YOUNG, ASSISTANT PUBLIC DEFENDER

ATTORNEYS FOR THE DEFENDANT

SHARON L. VIZER

CIRCUIT COURT REPORTER

I N D E X

(SW) - DENOTES STATE'S WITNESS

(DW) - DENOTES DEFENSE WITNESS

(IC) - DENOTES IN CAMERA

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CROSS-EXAMINATION BY MR. YOUNG -1073

SANDRA KEY (SW):

DIRECT EXAMINATION BY MR. GRAHAM -1076

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1	- LETTER ABOUT DR. AIKEN AND REPORT	-1056	
2	- WITNESS LIST	-1056	
3	- 911 TAPE	-1816	
4	- INVESTIGATION REPORT	-1817	
5	- NOTE FROM JURY REQUESTING AN EASEL	-2142	
6	- NOTE FROM JURY	-2147	
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1	- CERTIFICATE		-1104
2	- STATEMENT	-1252	
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5	- CLIMATOLOGY DATA		-1829
6	- OWENS STEEL APPLICATION		-1829
7	- PHOTOGRAPH		-2027
8	- PHOTOGRAPH		-2027
9	- PHOTOGRAPH		-2027
10	- PHOTOGRAPH		-2027
11	- PHOTOGRAPH		-2027
12	- PHOTOGRAPH		-2027
13	- DIPLOMA CERTIFICATE		-2027
14	- HOSPICE CERTIFICATE		-2027

E X H I B I T S

NO.	DESCRIPTION	ID.	EV.
<u>FOR THE STATE:</u>			
1 -	SUMMARY CHART		--925
2 -	SUMMARY CHART		--952
3 -	SUMMARY CHART		--962
4 -	MAP		--987
5 -	LARGE PHOTOGRAPH		-1015
6 -	SENTENCE SHEET		-1029
7 -	LARGE PHOTOGRAPHS (2)	-1035	-1036
8 -	DOCUMENT - EXTENSION LETTER		-1089
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15 -	PILLOW		-1138
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21 -	FLOOR MAT		-1141
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NO.	DESCRIPTION	ID.	EV.
<u>FOR THE STATE:</u>			
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24	- COPY OF CHECK		-1172
25	- COPY OF CHECKS		-1177
26	- CAMERA		-1233
27	- STATEMENT/RECEIPT		-1242
28	- BENCH WARRANT		-1272
29	- MAP		-1290
30	- MAP		-1298
31	- STATEMENT		-1304
32	- AUDIOTAPE		-1309
33	- HANDWRITTEN STATEMENT		-1317
34	- STATEMENT		-1321
35	- AUDIOTAPE		-1321
36	- MESSAGE/NOTE		-1328
37	- MESSAGE/NOTE		-1328
38	- PHOTOGRAPH		-1443
39	- PHOTOGRAPH		-1443
40	- PHOTOGRAPH		-1448
41	- PHOTOGRAPH		-1448
42	- PHOTOGRAPH		-1448
43	- FINGERPRINT CARD		-1454
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E X H I B I T S

NO.	DESCRIPTION	ID.	EV.
<u>FOR THE STATE:</u>			
45 -	PHOTOGRAPH		-1458
46 -	PHOTOGRAPH		-1458
47 -	PHOTOGRAPH		-1458
48 -	PHOTOGRAPH		-1458
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60 -	MEMO NOTICE/LETTER		-1559
61 -	MEMO NOTICE/LETTER		-1560
62 -	LETTER		-1564
63 -	STATEMENT		-1626
64 -	REQUEST LETTER		-1628
65 -	REQUEST LETTER		-1632
66 -	REQUEST LETTER		-1644

E X H I B I T S

NO.	DESCRIPTION	ID.	EV.
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67	REQUEST LETTER		-1648
68	LETTER		-1660
69	LETTER		-1660
70	LETTER		-1662
71	LETTER		-1663
72	PHOTOGRAPH		-1668
73	PHOTOGRAPH		-1668
74	PHOTOGRAPH		-1668
75	PHOTOGRAPH		-1683
76	PHOTOGRAPH		-1683
77	PHOTOGRAPH		-1683
78	PHOTOGRAPH		-1683
79	PHOTOGRAPH		-1683
80	PHOTOGRAPH		-1683
81	PHOTOGRAPH		-1683
82	PHOTOGRAPH		-1683
83	CHART/DIAGRAM OF WOUNDS		-1714
84	AUTOPSY DIAGRAM		-1716
85	PHOTOGRAPH		-1741
86	AWARD		-1745
87	CERTIFICATE		-1745
88	PHOTOGRAPH		-1748

E X H I B I T S

NO.	DESCRIPTION	ID.	EV.
<u>FOR THE STATE:</u>			
89	- PHOTOGRAPH		-1748
90	- BOOKING PHOTOGRAPH		-2004

Thursday, July 13, 2000.

THE COURT: We have all parties and attorneys and we're ready to bring the jury in?

Is the State ready?

MR. MYERS: Yes, sir.

THE COURT: The defense?

MR. FLOYD: Yes, Your Honor.

THE COURT: All right. Let's bring them in.

(WHEREUPON, the jury entered the courtroom at approximately 9:43 a.m.)

THE COURT: All parties and attorneys are in the courtroom and all jurors have returned. I hope you had a good evening last night, jurors.

By the way, one thing about the evidence too, ladies and gentlemen, you've been seeing some evidence that's been introduced, at the end of the trial you'll have all that with you. That's going to go in the jury room with you. I know you haven't had a chance to look at much of it, but once you're deliberating, you'll have everything with you.

Okay. Mr. Solicitor, you ready to call your next witness?

MR. RIDDLE: The State calls Mary Felder Rice, Your Honor.

THE COURT: As she's coming, let me note for the record that Agent Jacobs indicates to me that everything went

1 well with the jury last night. So apparently, they are all
2 well fed and content.

3 MARY LOUISE FELDER RICE, after having been duly
4 sworn, testified as follows:

5 DIRECT EXAMINATION

6 BY MR. RIDDLE:

7 Q. Morning.

8 A. Good morning.

9 Q. Can you tell the jury who you are, please, ma'am.

10 A. My name is Mary Louise Felder Rice.

11 Q. And, Ms. Rice, where are you employed?

12 A. I'm employed with Lexington School District Four.

13 Q. Swansea area?

14 A. Swansea, South Carolina.

15 Q. How long have you been in the Swansea District?

16 A. I have been employed in the Lexington School
17 District Four for 21 years.

18 Q. And have you always been at the high school there?

19 A. No, I have -- I worked at the Swansea High School
20 for 15 years and I went on to be principal of two middle
21 schools, And now I'm the director of adult education.

22 Q. You were principal or assistant principal at the
23 high school during the time when Mr. Bennett was a student
24 there?

25 A. Yes, I was.

1 Q. And do you remember this incident, if you'll look at
2 that board, the incident from 1987 where he refused to get off
3 the bus?

4 A. Yes.

5 Q. And do you recall him being expelled later on that
6 year?

7 A. Yes, sir.

8 Q. As a result of that on September the 14th?

9 A. Yes.

10 Q. Now, we heard some testimony yesterday, Ms. Felder
11 Rice, about an assault which took place March 4th, 1988; do
12 you recall that?

13 A. Yes.

14 Q. Now, Mr. Bennett reenrolled at Swansea High School
15 during the '88, '89 school year, did he not?

16 A. Yes, he did.

17 Q. And you were the assistant principal then?

18 A. Yes, I was.

19 Q. Now, we know that on September 14th, 1988, he was
20 convicted for that assault from the Pizza Hut, correct?

21 A. Yes, to my knowledge.

22 Q. When does school start normally?

23 A. School usually begins mid-August. I don't want to
24 specify a particular date, but mid-August.

25 Q. Mid-August?

1 A. Yeah, around the 20th.

2 Q. Now, during that '88, '89 school year, did you have
3 an occasion where you had to impose discipline on Mr. Bennett?

4 A. Yes, I did.

5 Q. And when was that occasion?

6 A. On September 2nd.

7 Q. And what was that for?

8 A. For disruptive behavior in class, constantly talking
9 out loud and just not doing what the teacher asked him to do.

10 Q. Now, the discipline that you imposed was what?

11 A. I suspended Johnny for five days.

12 Q. And that was on September the 2nd of 1988?

13 A. September 2nd, yes.

14 Q. Now, before you suspended him at that time, was he
15 given a chance to do something other than be suspended by the
16 school?

17 A. Yes, he was. The teacher assigned him
18 recompensatory work in lieu of being suspended. She gave him
19 one page of, more or less, research to do, and he had one day
20 to do that and if he failed to turn that in it doubled to two
21 days [sic] the second day.

22 Q. Two pages the second day?

23 A. Yes, uh-huh. Then if he didn't turn it in on that
24 second day, it doubled on the third day. And if it was not
25 turned in on the third day, she would write a referral, and

1 that's what she did.

2 Q. So he was given three opportunities to take some
3 corrective measures before you had to deal with him then?

4 A. Yes, that is correct.

5 Q. And he failed to do that?

6 A. Yes.

7 Q. Now, let me ask you this. This is Swansea High
8 School, 11th grade, September 2nd, 1988, disrupting class,
9 failing to comply with discipline, suspended for five days?

10 A. Yes, that's correct.

11 Q. That's correct.

12 Now, Ms. Felder Rice, you indicated that you were
13 principal there for a good portion of the time that
14 Mr. Bennett was a student there?

15 A. Assistant principal, yes.

16 Q. Assistant, I'm sorry. During that time, did you get
17 to know Mr. Bennett?

18 A. Yes, I knew him.

19 Q. And were you able to form any impressions of
20 Mr. Bennett based on your observations and your knowledge of
21 Mr. Bennett?

22 A. Yes.

23 Q. Tell the jury about Mr. Bennett, please, ma'am.

24 A. Johnny was, more or less, -- he intimidated other
25 students. Whenever -- he, more or less, did what he wanted to

1 do. I mean, when you'd talk to him and ask him to do
2 something, if he wanted to, he did it; if not, you couldn't
3 make him do it.

4 Q. Did he have respect for the students and the
5 teachers and the administration there?

6 A. No, very little at all. From time to time -- you
7 know, students were, more or less, frightened to approach him,
8 you know, because of fear what would happen, of retaliation.

9 Q. Did he respect other people's rights?

10 A. In my opinion, no.

11 Q. He was going to do what he wanted to do?

12 A. He wanted to do what he wanted to do, and that was
13 it.

14 Q. Now, September the 2nd, 1988, you imposed that
15 discipline at that time?

16 A. Yes, I did.

17 Q. And then 12 days later is when he was convicted of
18 that charge and went to the Department of Corrections?

19 A. Yes.

20 MR. RIDDLE: Thank you. Please answer any of their
21 questions.

22 THE COURT: Cross?

23 CROSS-EXAMINATION

24 BY MR. YOUNG:

25 Q. Ms. Felder Rice, you stated that when Mr. Bennett

1 was initially sanctioned for this disrupting class, it was for
2 him talking in class?

3 A. Disruptive behavior, not doing what the teacher
4 asked him to do.

5 Q. And in this incident, was he violent towards any
6 students or any teachers?

7 A. That was not a part of the referral. Teachers have
8 rules in the classroom listed and they are clearly stated so.

9 Q. And this sanction initially was to do a one-page
10 report, I believe you said?

11 A. Yes, a recompensatory report.

12 Q. After that one day was up, did the teacher or
13 yourself ever talk with him to find out why he didn't do the
14 report?

15 A. It was the teacher -- he was supposed to report to
16 the teacher and he did not.

17 Q. Do you know whether or not that teacher was able to
18 ascertain why he did not complete the report?

19 A. No, not to my knowledge.

20 Q. How about after the second day?

21 A. Well, he was given that opportunity to do that and
22 he didn't.

23 Q. But do you know whether or not the teacher was able
24 to find out why he wasn't able to do that report?

25 A. No.

1 Q. Ultimately, after the report was not prepared he was
2 suspended, correct?

3 A. A referral was written and I did, indeed, suspend
4 him, yes.

5 Q. During this time in '88, '89 school year, I believe
6 you stated you were the assistant principal --

7 A. Yes, I was --

8 Q. -- at that time?

9 A. -- I was one of them, yes.

10 Q. You noticed a behavior problem in Mr. Bennett?

11 A. I noted the amount of referrals that came across my
12 desk. I did not deal with all the referrals, I dealt with
13 some of them.

14 Q. Did you counsel with Mr. Bennett?

15 A. Yes, I did.

16 Q. Did you refer Mr. Bennett to any type of programs or
17 services offered by the school?

18 A. I referred him to our guidance counselor.

19 Q. Do you know of your own knowledge whether or not the
20 guidance counselor referred Mr. Bennett to any type of
21 programs available?

22 A. Not to my knowledge.

23 MR. YOUNG: Thank you, that's all questions I have.

24 MR. RIDDLE: Nothing further, Your Honor.

25 THE COURT: Thank you, ma'am. You're free to go, if

1 you'd like.

2 MR. GRAHAM: Sandra Key.

3 SANDRA KEY, after having been duly sworn,
4 testified as follows:

5 DIRECT EXAMINATION

6 BY MR. GRAHAM:

7 Q. Ms. Key, where are you employed?

8 A. South Carolina Department of Corrections, Trenton
9 Correctional Institution.

10 Q. And how long have you been working with the
11 Department of Corrections?

12 A. Approximately 11 and a half years.

13 Q. And you were working with the Department of
14 Corrections in December of 1988?

15 A. Yes, sir.

16 Q. And where were you working at that time? Where were
17 you working at that time?

18 A. Aiken Youth Correction Center.

19 Q. And what were your job duties at the Aiken Youth
20 Correctional Center?

21 A. I was a dorm officer, maintain custody and control
22 and safety of the inmates.

23 Q. And do you remember whether you had an incident
24 involving Johnny Bennett on December 10th, 1988?

25 A. Yes, sir, there was an incident.

1 Q. Before we get into that, could you describe the
2 housing facility for Johnny Bennett and the inmates that were
3 with him at that facility.

4 A. Okay. It was a dorm-type facility, open bay. You
5 had like a hallway, and the beds were lined up, open access.

6 Q. And where were the bathrooms in relation to these?

7 A. Okay. You had the A section. You had to go to the
8 latrine to get to the B section, what's called the B section.
9 The front section you come in, the latrine, and then the B
10 section in the back. They had 48 inmates on each side.

11 Q. So there was housing section with 48 inmates, a rest
12 room, passage through there and another housing section with
13 another 48 inmates?

14 A. That's correct, sir.

15 Q. Can you tell the jury what happened on December
16 10th, 1988.

17 A. Okay. There was an incident whereas Johnny Bennett,
18 along with several other inmates, they basically interfered
19 with my duties to keep me from making my checks by asking for
20 Tylenols, use the phone, other types of incidents. And after
21 an investigation, it was determined that a group of black
22 inmates and white inmates had been fighting.

23 MR. YOUNG: Objection, Your Honor. I object to the
24 use of the specific races of the inmates. It's irrelevant.

25 THE COURT: Overruled. I think she referred to

1 black and white.

2 THE WITNESS: I did.

3 BY MR. GRAHAM:

4 Q. When you talk about checking on the inmates, what
5 are your job responsibilities as far as that?

6 A. I was supposed to make checks every 30 minutes, what
7 they call security on the whole area.

8 Q. And which section were you in when you were making
9 the security check when Mr. Bennett stopped you?

10 A. The A section.

11 Q. And what did he do to interfere with your duties
12 there?

13 A. He basically got in my path and insisted that he had
14 to have his Tylenols at that time, you know, prevented me from
15 going to the back to make my check.

16 Q. At some point did you actually try to go through the
17 rest room area into the other section?

18 A. Yes.

19 Q. And what happened at that point?

20 A. At that time, that's when I saw inmate -- I think it
21 was Roger Bryan, he was sitting on a stall, and then another
22 inmate, Darrell Epps, was in a stall, and Johnny Bennett was
23 hiding in the stall, the same stall that the other inmate was
24 in.

25 Q. Prior to getting in there, at some point, did Johnny

1 Bennett block your path?

2 A. Yes, sir, he did.

3 Q. Could you describe to the jury that situation.

4 A. I did a few minutes ago. He, you know, basically
5 blocked my path. I was getting ready to go to the back and he
6 insisted that he had to have his Tylenol then. He said, I
7 want them right now.

8 Q. When you made it back to the bathroom and you found
9 Johnny Bennett and the other inmates there, did you notice any
10 cuts or bruises or marks on one of the inmates?

11 A. Well, he don't want me to say white, but the
12 particular inmate that had the bruises was white. He had a
13 cut over his left eye, if I'm not mistaken. And I asked him
14 what was wrong and he --

15 MR. FLOYD: Your Honor, we object again. It's the
16 Solicitor's Office, once more, inserting race into this case,
17 and race is not relevant.

18 THE COURT: Overruled.

19 BY MR. GRAHAM:

20 Q. What charges were brought against Mr. Bennett as a
21 result of this incident?

22 A. As a result of their investigation and everything,
23 Inmate Bennett was charged with assault and battery, insight
24 in creating a disturbance and interfering with the duties of
25 inner-person.

1 Q. Let me read this statement to you here and see if
2 it's correct or not. December 10th, 1988, assault and
3 battery, disrupting institutional operations and interfering
4 with the duties of an officer?

5 A. Yes, sir.

6 MR. GRAHAM: At this time, Your Honor, I would
7 uncover that on the board.

8 THE COURT: Okay.

9 BY MR. GRAHAM:

10 Q. Did Johnny Bennett stay in the Aiken facility on
11 that day?

12 A. No, sir. Mr. Bennett, along with two other inmates,
13 were transferred to Broad River Correctional Institution for
14 lockup.

15 Q. And when you say lockup, what is lockup?

16 A. That's where they're in the cell, individual cells.

17 Q. So another statement, let me read this to you and
18 see if it's correct. On December 10th, 1988, transferred to
19 Broad River Correctional lockup; is that an accurate
20 statement?

21 A. Yes, sir.

22 MR. GRAHAM: I would uncover that, Your Honor.

23 Please answer any questions the defense has,

24 Ms. Key.

25 THE COURT: Cross?

CROSS-EXAMINATION

1

2 BY MR. YOUNG:

3 Q. Ms. Key, how many inmates were involved in this
4 incident?

5 A. A total of nine.

6 Q. Who started this incident?

7 A. Who started it?

8 Q. Yes, ma'am.

9 A. Sir, I don't know that information.

10 Q. You cannot tell us today that Johnny Bennett started
11 this incident?

12 A. No, I can't tell you that because I didn't observe
13 it. If you notice, I said after investigation was conducted.

14 Q. So you don't even know whether or not from your own
15 personal knowledge whether Mr. Bennett actually was involved
16 in the altercation, do you?

17 A. According to the investigation, they took
18 statements, and I think it was determined that he was, in
19 fact, involved.

20 Q. From your own personal knowledge, you cannot testify
21 today that Mr. Bennett was involved in the altercation, can
22 you?

23 A. In the altercation?

24 Q. Yes, ma'am.

25 A. I didn't see him, you know, involved in the

1 altercation, however, he did interfere with my duties.

2 Q. You testified that Mr. Bennett and at least one
3 other inmate were transferred to Broad River Correctional
4 Institution, correct?

5 A. I testified that Mr. Bennett, along with two other
6 inmates, were transferred.

7 Q. So three of them were transferred, correct?

8 A. Yes, sir.

9 Q. A number of these persons were put on what you call
10 lockdown, correct?

11 A. Yes, sir.

12 Q. At Aiken facility, there are only certain spaces
13 available, certain number of spaces available for lockdown,
14 correct?

15 A. Correct.

16 Q. And with all of these people being involved, some
17 people had to be transferred to another facility, correct?

18 A. Well, they kept two inmates at Aiken. Like you
19 said, we only have facility that we can house four, however,
20 the two individuals that was placed in that lockup was placed
21 on protective custody.

22 Q. So the facility was concerned to try to break apart
23 the whole group, correct?

24 A. Yes, sir.

25 Q. So they could have very well have sent the two

1 inmates who were on protective custody to Broad River for
2 their protection and leave the other ones at Aiken or vice
3 versa, correct?

4 A. I would think so, but they chose to do otherwise.

5 Q. When you testified that Mr. Bennett interfered with
6 your duties that day --

7 A. Yes, sir.

8 Q. I believe you testified that the only thing he did
9 was block your path and ask for medication, correct?

10 A. Stated he had to have them right then.

11 Q. Stated he had to have medication right then,
12 correct?

13 A. Yes.

14 Q. Never did physically touch you or anything, did he?

15 A. No, he didn't touch me. He just blocked my path, as
16 I said earlier.

17 Q. One last question. Was Mr. Bennett the only inmate
18 that was written up for these sanctions of assault and
19 battery, disrupting institution operations?

20 A. No.

21 Q. Or was everyone dealt with?

22 A. Everyone was dealt with according to the
23 infractions.

24 MR. YOUNG: Thank you, I have no further questions.

25 THE COURT: Any redirect?

1 MR. GRAHAM: No, Your Honor.

2 THE COURT: You may step down. Thank you.

3 MR. RIDDLE: The State calls Sammy Brown to the
4 stand.

5 THE COURT: Wait a minute, Counsel. You're free to
6 go, if you'd like to.

7 SAMMY BROWN, after having been duly sworn,
8 testified as follows:

9 DIRECT EXAMINATION

10 BY MR. RIDDLE:

11 Q. Morning, Ms. Brown.

12 A. Good morning.

13 Q. Tell this jury where you are employed.

14 A. I'm working in Washington, D.C., for the U. S.
15 Justice Department. I'm on an intergovernmental loan from the
16 State of South Carolina with the National Institute of
17 Corrections Prisons Division.

18 Q. You're actually working with the Justice Department?

19 A. That is correct.

20 Q. You're technically, I guess, a South Carolina
21 Department of Corrections employee, SCDC employee?

22 A. Right, the Justice Department is paying the State of
23 South Carolina for my services.

24 Q. So, basically, the state government has loaned you
25 to the federal government?

1 A. That is correct, there's a formal agreement.

2 Q. Now, you work for SCDC; is that correct?

3 A. That's correct.

4 Q. How long have you been working with SCDC?

5 A. I began my career with the South Carolina Department
6 of Corrections in 1971, where I worked continuously until I
7 left for Washington in 1998.

8 Q. In 1990 -- excuse me 1988, Ms. Brown, what was your
9 job with the South Carolina Department of Corrections?

10 A. At that time, I was director of classification and I
11 also supervised the Youthful Offender Program.

12 Q. You were in charge of the whole YOA or Youthful
13 Offender Program for the entire state?

14 A. That is correct, for the Department of Corrections
15 portion.

16 Q. Now, on September 14th of 1998, Mr. Bennett was
17 convicted of assault and battery of a high and aggravated
18 nature and he got a youthful offender sentence not to exceed
19 six years. Would he have fallen under your supervision?

20 A. Yes.

21 Q. When somebody gets a sentence like that, Ms. Brown,
22 do they go straight to Aiken youth camp or would they go to
23 another location first?

24 A. All inmates received in the Department are processed
25 initially through our Reception and Evaluation Center.

1 Q. And in 1988, where was that located?

2 A. I don't have the record, but I would think that it
3 would be the Columbia reception center at Broad River
4 Correctional Institution.

5 Q. That's right over on Broad River Road?

6 A. Right. I'd have to check to verify that.

7 Q. Regardless, he went to one of the reception and
8 evaluation centers?

9 A. Yes.

10 Q. And then was transferred to Aiken?

11 A. Right.

12 Q. Approximately how long does that reception and
13 evaluation process take?

14 A. It can go from 7 to 30 days, normally.

15 Q. By December the 10th, Mr. Bennett had been
16 transferred to the Aiken youth correctional facility?

17 A. Yes.

18 Q. And on December 10th, there was an incident which
19 Ms. Key just testified to. As a result of that incident, do
20 y'all have a body of individuals known as an Adjustment
21 Committee?

22 A. Yes, sir, disciplinaries are referred to the
23 Adjustment Committee.

24 Q. Explain to the jury what an Adjustment Committee is
25 and what they do.

1 A. It's an official board that looks at a charge of a
2 rules violation. They determine the facts in the case and
3 make a ruling as to whether that charge applied. So he was
4 convicted as a result of the Adjustment Committee's decision.

5 Q. Now, after the Adjustment Committee meets, is it up
6 to you to impose the sanction on those individuals that fall
7 under the youthful offender sentence?

8 A. As chair of the Youthful Offender Review Board, all
9 of those documents were referred to me, and I did review and
10 make the final determination on disciplinary charges.

11 Q. So you reviewed what the Adjustment Committee had
12 found?

13 A. Right.

14 Q. And as a result of your review, did you take some
15 disciplinary action against Mr. Bennett?

16 A. Yes. Under his indeterminate sentence he was given
17 an initial projected release date. Based on his disciplinary
18 problems that period was extended. So I was making the final
19 decision on the extension.

20 Q. Now, Mr. Bennett was originally brought in on an
21 ABHAN or assault and battery of a high and aggravated nature
22 conviction; is that correct?

23 A. His criminal charge?

24 Q. Yes, ma'am. And I'm talking about the September
25 14th sentence, ma'am.

1 A. Yes.

2 Q. The standard -- y'all have standard guidelines based
3 on the charges; is that correct?

4 A. Right.

5 Q. And, pretty much, the standard guideline for that
6 charge is about 13 months; isn't that correct?

7 A. That would be the standard guideline, but it would
8 be referred to the Youthful Offender Review Board for a final
9 determination.

10 Q. Now, in September of 1988, he comes in with a
11 projected release date of roughly 13 months after that?

12 A. Correct.

13 Q. As a result of the actions on December the 10th and
14 the convictions by the Adjustment Committee, you took some
15 action?

16 A. Right. On behalf of the Youthful Offender Review
17 Board, we extended that an additional seven months.

18 Q. And is this the document which you sent out in
19 reference to that?

20 A. That is correct.

21 Q. And that bears your signature?

22 A. Yes, that's correct.

23 MR. RIDDLE: Your Honor, we'd offer this into
24 evidence.

25 THE COURT: Any objection?

1 MR. YOUNG: No objections.

2 THE COURT: Without objection.

3 (WHEREUPON, State's Exhibit No. 8, an Extension
4 Letter, was marked and admitted into evidence.)

5 BY MR. RIDDLE:

6 Q. What do you call this, an extension document?

7 A. An extension letter.

8 Q. Now, referring to State's Exhibit Number 8, you sent
9 out this extension letter?

10 A. Yes.

11 Q. Could you publish that or read that letter to the
12 jury at this time.

13 A. Yes. This is in reference to Johnny Bennett, SCDC
14 Number 152659Y, currently assigned at that time to Broad River
15 Reception and Evaluation Center. The charging institution,
16 Aiken Youth Correction Center. This notice with copies to the
17 appropriate officials extends your appearance before the
18 Youthful Offender Review Board seven months. This is a result
19 of your being found guilty by the Aiken Youth Correction
20 Center Adjustment Committee on February the 6th, 1989, of
21 assault and battery, extended three months; creating a
22 disruption of institutional operations, extended three months;
23 interfering with the duties of any person, extended one month.
24 And it goes on to say that barring further infractions you'll
25 be reviewed in March 1990 for a tentative release in April of

1 1990. And I signed that on behalf of the Youthful Offender
2 Review Board.

3 Q. So as a result of the Aiken incident, basically his
4 13-month sentence went to a 20-month sentence?

5 A. That's correct.

6 Q. Let me show you this and I want to ask you if this
7 information is correct. February 15th, 1989, sentence
8 extended seven months for Aiken infractions, assault and
9 battery, three months; disrupting institutional operations,
10 three months; interfering with the duties of an officer, one
11 month; total sentence extension seven months.

12 A. That's correct.

13 MR. RIDDLE: Your Honor, we have an addition to the
14 chart here. This would be the first line on the next page. I
15 believe this will be State's Exhibit Number 9.

16 THE COURT: Okay. Any objection?

17 MR. YOUNG: No objection, Your Honor.

18 (WHEREUPON, State's Exhibit No. 9, a Summary
19 Chart, was marked and admitted into evidence.)

20 MR. RIDDLE: Thank you, Ms. Brown. Please answer
21 any defense's questions.

22 THE COURT: Cross?

23 CROSS-EXAMINATION

24 BY MR. YOUNG:

25 Q. Ms. Brown, you testified that there's an Adjustment

1 Committee who reviews all disciplinary matters?

2 A. Not all disciplinary matters, there's a standard
3 procedure and agency policy that distinguishes what's referred
4 to an Adjustment Committee and a process for doing that.

5 Q. But an incident of this sort would have been
6 referred to them?

7 A. Yes.

8 Q. Could you tell the jury what, if any,
9 recommendations or sanctions was done to the other inmates?

10 A. I have not reviewed the records of the other inmates
11 to be able to give you that information today.

12 Q. Mr. Bennett was not the only person involved in this
13 incident?

14 A. I wouldn't know that without looking at the
15 disciplinary report.

16 Q. You would not have, in essence, investigated the
17 matter on your own, would you?

18 A. I would have reviewed all of the disciplinary
19 documentation. It would automatically be referred to our
20 office, but that was some years ago and I haven't looked at
21 the disciplinary reports recently.

22 Q. You would not have talked with any of the inmates in
23 your review?

24 A. My role was not to investigate the charge. Once the
25 Adjustment Committee processed that and made a determination

1 then the information was referred to our office.

2 Q. And at that point in time, you would review that
3 information and make your -- take your action on it?

4 A. I wouldn't do that without having the entire record
5 in front of me, without having access to his caseworker or
6 institutional information that might have been needed to make
7 a determination. And there were supervisors that worked for
8 me that had some responsibility. So I didn't make an
9 arbitrary decision. I made an informed decision based on the
10 record.

11 Q. And you based your decision totally on the record,
12 correct?

13 A. On all of the official documents.

14 Q. And you cannot tell us what the other eight, seven
15 inmates that were involved in this incident what, if anything,
16 was done to them, correct?

17 A. If they were sentenced under the Youthful Offender
18 Act, the documentation would have been referred to my office
19 in the same procedure. These documents here don't tell me
20 anything about who else was involved.

21 MR. YOUNG: Thank you, that's all I have.

22 THE COURT: Any redirect?

23 MR. RIDDLE: No, sir.

24 Thank you, Ms. Brown.

25 May she be excused, Your Honor?

1 THE COURT: Yes, ma'am, you can step down. You're
2 free to go. Thank you.

3 MR. GRAHAM: Mary Joyce Shealy.

4 MARY JOYCE SHEALY, after having been duly sworn,
5 testified as follows:

6 DIRECT EXAMINATION

7 BY MR. GRAHAM:

8 Q. Ms. Shealy, you are a retired educator; is that
9 correct?

10 A. Yes, sir.

11 Q. How long were you an educator?

12 A. 33 and a half years.

13 Q. And could you tell the jury the various jobs that
14 you had.

15 A. I started out teaching for 15 years, and then I went
16 as an adult community education coordinator, and in the last
17 nine years, I was a principal at the correctional
18 institutions.

19 Q. And where were you during the years of 1989 and
20 1990?

21 A. I was at the Broad River Correctional Institution.

22 Q. And what did you do at the Broad River Correctional
23 Institution?

24 A. I was the principal of their school.

25 Q. And what were your job duties or responsibilities

1 there?

2 A. To make sure that the school -- that students were
3 enrolled in school, youthful offenders that did not have a
4 high school diploma went to school, and make sure that the
5 school run properly and that we could give the inmates some
6 training and, hopefully, that they would not come back.

7 Q. As far as youthful offenders, who was required to go
8 to school?

9 A. The youthful offenders that were supposed to go to
10 school were those that did not have a high school diploma.

11 Q. Now, if an inmate is in lockup would he be in
12 school?

13 A. No, sir.

14 Q. So Johnny Bennett would have come to your school
15 after he got out of lockup; would that be correct?

16 A. Yes, sir.

17 Q. And as principal, would you be in charge of
18 disciplinary matters at the school?

19 A. Yes, sir.

20 Q. And do you remember if Johnny Bennett was a student
21 at your school?

22 A. Yes, he was.

23 Q. Now, I believe you have different levels of
24 education when people come in; is that correct?

25 A. The Department of Corrections is a lot different

1 from the public schools. At Broad River, we had four levels
2 of education. We had level one, two, three and four. Level
3 one was zero, those people that could not read, some could not
4 write, to 3.9. Level two was 4.0 to 5.9. Level three was 6.0
5 to 7.9. And Level four was 8.0 until they got their GED.

6 Q. When you say 8.0, what does that translate into?

7 A. That was our eighth grade level.

8 Q. And do you remember what level Johnny Bennett came
9 in at?

10 A. He was on the fourth level.

11 Q. And that's the highest level you have?

12 A. That's the highest level, yes, sir.

13 Q. And the purpose of that is to work towards your GED?

14 A. Right, to get a GED.

15 Q. Do you remember whether you had an occasion to be
16 involved in a disciplinary matter with Johnny Bennett on May
17 1st, 1989?

18 A. Yes, sir. YOA's are required to go to school, and
19 we -- and Johnny did not, he had poor attendance. And
20 therefore, we had to -- usually, we try to work with the
21 inmates, and the first time around we'd usually give them a
22 reprimand. And this is what we did with Johnny because of
23 poor attendance in school.

24 Q. When you say a reprimand, what does that mean?

25 A. We call them in, we talk to them, we send the

1 information to their caseworker to tell them that, you know,
2 the next time they miss too many days that we will send the
3 information to the YOA office and ask for an extension, ask
4 for a one-month extension of their time.

5 Q. In addition to the reprimand, was he suspended at
6 that time?

7 A. No, sir, not at that time.

8 Q. Do you have the records up there with you?

9 A. Yes, sir.

10 Q. Do you have one with a reported suspension date of
11 May 1st, 1989?

12 A. May 1st, 1989, yes, sir.

13 Q. And if you read --

14 A. This is the reprimand. Johnny Bennett, SCDC
15 152659Y, was suspended from school on 5-1-89 for a period of
16 three days because of the following reasons: Unexcused
17 absences on 4-7, 4-18, 4-24 -- 4-28. This student is to
18 return to school on Friday, 5-5. And this was sent to the
19 classification records in the central office and we asked that
20 it -- we recommended a reprimand.

21 Q. And did you sit down and explain this to
22 Mr. Bennett?

23 A. I did or either my guidance counselor.

24 Q. So would this be a correct statement then that on
25 May 1st, 1989, unexcused absences, suspended three days and

1 reprimanded?

2 A. Yes, sir.

3 MR. GRAHAM: I would uncover that at this time, Your
4 Honor.

5 Q. And did you have another occasion to discipline
6 Johnny Bennett in June of that year?

7 A. Yes, sir, on 6-6-89, he was suspended for three days
8 and we recommended a one-month extension to the YOA office for
9 a disciplinary action, and he was disturbing class.

10 Q. And what was that for?

11 A. It was disturbing class.

12 Q. And you said a one-month sentence extension, what
13 does that mean?

14 A. That means that we would recommend that he be
15 extended one month to his regular sentence.

16 Q. So it would be an additional one month in the time
17 that he was already going to serve?

18 A. Yes, sir.

19 Q. So would the statement June 6th, 1989, disturbing
20 class, suspended three days and one-month sentence extension
21 be correct?

22 A. Yes, sir.

23 MR. GRAHAM: Then I would uncover that, Your Honor.

24 Q. And did you have another incident in June of that
25 year?

1 A. Yes, sir, June the 19th, 1989.

2 Q. And what happened on that time?

3 A. He left class without permission, and we suspended
4 him from school for five days but did not ask for an
5 extension. He was supposed to -- left class to go to the
6 library to get a book, but went to the movie room to watch a
7 movie instead.

8 Q. That was on June 19th --

9 A. No, I'm sorry. I'm sorry. That was on 6-19. This
10 was for this.

11 Q. He left class without permission June 19th?

12 A. Right. And we suspended, but did not extend him.

13 Q. How many days did you suspend him for?

14 A. Five.

15 Q. So the statement June 19th, 1989, left class without
16 permission, suspended five days is accurate?

17 A. Yes, sir.

18 Q. And did you have another occasion in August of that
19 year for disciplinary --

20 A. Yes, sir, August the 23rd, 1989, this is another
21 disciplinary, left class to go to the library to get a book
22 and went to the movie room instead. And we asked for an
23 extension of one month.

24 Q. And was he also suspended in addition to that, too?

25 A. Was he extended? We asked for an extension. Yes,

1 he did get one-month extension.

2 Q. And was he suspended from school at that time, too?

3 A. My records do not show that.

4 Q. Do you have that in your documents before you?

5 A. Yes, I do.

6 Q. And --

7 A. Yes, it is, I'm sorry, three days.

8 Q. So he received a three-day suspension?

9 A. He did, right.

10 Q. So then the statement August 23rd, 1989, left class

11 under false pretence, suspended three days and one-month

12 sentence extension is accurate?

13 A. Yes, sir.

14 Q. And did you have another incident in October of that
15 year?

16 A. On October 7th, 1989, we decided that we would lock
17 Johnny Bennett up for a weekend because the extensions were
18 not doing any good. And he was free -- when we extended him
19 he was free to walk the yard, but then we took his weekends
20 away. And that's weekend when they could visit -- then they
21 could visit with family if it was their visiting weekend. So
22 we put him on deadlock, which means locking him up in his room
23 for the weekend.

24 Q. And he can't leave during that time?

25 A. No.

1 Q. And what was that punishment for?

2 A. Unexcused absences.

3 Q. And why did you choose lockdown over suspension?

4 A. Because suspension was not doing any good, and we
5 tried to work with the inmates and keep them in school.

6 Q. So would the statement October 2nd, 1989, repeatedly
7 cutting class, lockdown three days be accurate?

8 A. Yes, sir. That was a weekend lockup.

9 Q. And did you have another incident in January of
10 1990?

11 A. Yes, sir. Again, for missing school. We gave him
12 two lockdowns, back-to-back weekends, the weekend of January
13 the 27th and February 3rd and -- for missing school.

14 Q. So would the statement January 27th, 1990,
15 repeatedly cutting class, lockdown six days be accurate?

16 A. Yes, sir.

17 Q. Do you remember whether Mr. Bennett graduated?

18 A. No, sir. We give what we call the pre-GED test, and
19 Mr. Bennett took the pre-GED test twice. The first time, he
20 scored 222 and 226. The State of South Carolina says the
21 passing score for GED is 225. But we found with working with
22 inmates and dealing with them that if our scores were 222,
23 226, usually they would not pass. So we made our rules 235.
24 Usually, if they score 235 on our pretest, they could pass the
25 GED test. No, sir, he never took the GED test.

1 Q. And how long did you work with inmates in the school
2 setting of the Department of Corrections?

3 A. I was with -- in the school setting at the
4 Department of Corrections for nine years. I was at Kirkland,
5 then at Broad River.

6 Q. And do you have an opinion on how Johnny Bennett
7 compared to the other inmates that you dealt with?

8 A. He was an intelligent young man. But you've got to
9 remember, this is Department of Corrections and an awful lot
10 of them resent authority. But a lot of them come to do their
11 time and they leave.

12 MR. GRAHAM: Please answer any questions the defense
13 has.

14 THE COURT: Cross?

15 CROSS-EXAMINATION

16 BY MR. YOUNG:

17 Q. Ms. Shealy, this school was in the Department of
18 Corrections, correct?

19 A. Yes, sir. Yes, sir..

20 Q. So the students were incarcerated?

21 A. Yes, sir.

22 Q. Do your reports indicate on May 1st, 1989; June
23 19th, 1989; October 2nd, 1989; and January 27th, 1990, which
24 guard was sent to Mr. Bennett's cell to find out why he wasn't
25 in class?

1 A. I have no idea.

2 Q. Do you know if anybody ever went to Mr. Bennett's
3 cell or dorm to find out why he wasn't in class?

4 A. No, sir.

5 Q. During the time that Mr. Bennett was in your school,
6 he never was written up for fighting or anything along those
7 lines?

8 A. No, sir.

9 Q. You're stating that your school is set up on level
10 one, two, three and four?

11 A. Right.

12 Q. A level four student, what was the equivalence of
13 that student?

14 A. Eight grade and above.

15 Q. Eighth grade and above?

16 A. Yes, right.

17 Q. Did you have any information as to how much
18 education Mr. Bennett had?

19 A. No. We test them and see where they score on our
20 test and that's determines the level that we put them in.

21 Q. So your test determine --

22 A. The level, right.

23 Q. -- whether they get one, two, three or four?

24 A. Right.

25 Q. Mr. Bennett was classified on your highest level,

1 correct?

2 A. Right.

3 Q. You testified that Mr. Bennett took the pre-GED test
4 twice?

5 A. Right.

6 Q. Scored 222 once, 226 the second time?

7 A. Correct.

8 Q. The Department's policy or your school's policy was
9 that before you give them the GED test the student has to
10 score at least a 235?

11 A. Yes, sir.

12 Q. However, the State's level is 225?

13 A. Yes, sir.

14 Q. And each time that he took -- well, the two times
15 that he took the pre-GED test he scored higher, correct?

16 A. Yes, sir.

17 Q. But he was never given the opportunity for even a
18 third test or even taking the GED test, correct?

19 A. No, sir.

20 Q. In your school, not only do you all teach, you know,
21 the basic courses, math and reading and things of that, but
22 you also offer seminars and things for the students, correct?

23 A. No, sir.

24 Q. You do not offer any type of skill-building
25 seminars?

1 A. Yeah, those are classes.

2 Q. Those are classes?

3 A. That's a class. We offered at Broad River, auto
4 mechanics and auto body.

5 Q. Mr. Bennett -- well, what occurs when a student
6 graduates from your school, is that when they take the GED?

7 A. That's when they take the GED.

8 Q. But Mr. Bennett was never given the GED, correct?

9 A. No, sir.

10 Q. I show you -- do you recognize that? Don't tell me
11 what it is yet.

12 A. Yes, sir.

13 MR. YOUNG: Your Honor, I've shown this exhibit to
14 the State. We would move it in as Defense Number 1.

15 THE COURT: Any objection?

16 MR. GRAHAM: No objection, Your Honor.

17 THE COURT: Without objection.

18 (WHEREUPON, Defendant's Exhibit No. 1, a Document,
19 was marked and admitted into evidence.)

20 BY MR. YOUNG:

21 Q. Ms. Shealy, at the bottom of this document, is your
22 signature?

23 A. Yes, sir.

24 Q. As the principal of the school?

25 A. Yes, sir.

1 Q. And could you tell the jury what this document is.

2 A. This is a seminar, that was a one-day seminar by
3 Sister Mary Powell on attitudes and employment skills. And it
4 was done through one of the teachers.

5 Q. Okay. And this is the certificate showing that --

6 A. That he attended.

7 Q. -- he participated in that program, correct?

8 A. Yes, sir.

9 MR. YOUNG: Thank you, Ms. Shealy. That's all the
10 questions I have.

11 THE COURT: Any redirect?

12 MR. GRAHAM: No, Your Honor.

13 THE COURT: Thank you, ma'am. You can step down,
14 and you're free to go, if you'd like to.

15 MR. GRAHAM: Jody Gallman.

16 JODY GALLMAN, after having been duly sworn,
17 testified as follows:

18 DIRECT EXAMINATION

19 BY MR. GRAHAM:

20 Q. Ms. Gallman, where do you work?

21 A. I work for the South Carolina Department of
22 Probation, Parole and Pardon Services.

23 Q. And how long have you worked there?

24 A. I've been there since 1988 officially, but in
25 criminal justice since 1981.

1 Q. And what do you currently do?

2 A. I'm the agent in charge of the Richland County
3 office.

4 Q. And what were you doing in 1990?

5 A. In 1990, I was a YOA agent, which is a youthful
6 offender agent.

7 Q. And in that position, did you have the occasion to
8 go to the Department of Corrections to counsel individuals
9 before they were released?

10 A. I gave them parole instructions.

11 Q. Let me ask you if you can identify that.

12 A. This is a certificate of release. This is given to
13 every offender -- well, Department of Corrections calls them
14 inmates, but to every inmate that has satisfied their sentence
15 and they're eligible for release.

16 Q. And who is that certificate for?

17 A. This is for Johnny Bennett.

18 Q. And does that say when he was released from the
19 Department of Corrections?

20 A. Yes, June 28th, 1990.

21 Q. So the statement June 28th, 1990, released on parole
22 would be accurate?

23 A. Yes.

24 Q. Now, when someone is released on parole, are
25 conditions attached to their parole?

1 A. Yes.

2 Q. And I believe the second page on there has the
3 conditions; is that true?

4 A. That's correct.

5 Q. And part of your job would have been going over
6 those conditions with an individual before they were released?

7 A. Yes.

8 Q. And did you go over those conditions with Johnny
9 Bennett?

10 A. I did.

11 Q. And did Johnny Bennett sign that document?

12 A. He did.

13 Q. What's the date on that document?

14 A. On June 22nd, 1990, I gave him parole instructions.

15 Q. So you would have gone over that prior to him
16 actually being let out?

17 A. That's correct.

18 Q. And can you read to the jury what condition number
19 five is?

20 A. Number five says I shall refrain from the violation
21 of any federal, state or municipal penal law.

22 Q. And you would have gone over that with Mr. Bennett?

23 A. That's correct.

24 Q. And what about number six?

25 A. Number six says I shall maintain or actively pursue

1 gainful employment unless engaged in some other program
2 approved by my supervisor.

3 Q. And did you explain to Mr. Bennett what would happen
4 to him or what could happen to him if he violated any of these
5 conditions?

6 A. Yes, I did.

7 Q. And what would you have told him?

8 A. Any violation of any condition -- he had 12 listed
9 -- at this particular time, there were 12 for youthful
10 offenders. And if you violate any of these conditions then
11 you're subject to any sanctions that your agent deems
12 appropriate. And if you violate, especially number five,
13 which had to do with violation of the state law, then you
14 could be returned to the Department of Corrections.

15 MR. GRAHAM: Your Honor, at this time, I'd like to
16 introduce that document.

17 THE COURT: Any objection?

18 MR. YOUNG: No objection, Your Honor.

19 (WHEREUPON, State's Exhibit No. 10, a Release
20 Document, was marked and admitted into evidence.)

21 MR. GRAHAM: Thank you, Ms. Gallman. If you would
22 answer any questions the defense has.

23 MR. YOUNG: I have no questions, Your Honor.

24 THE COURT: You can step down. Thank you, ma'am.

25 MR. MYERS: Thomas Stillinger.

1 THOMAS STILLINGER, after having been duly sworn,
2 testified as follows:

3 DIRECT EXAMINATION

4 BY MR. MYERS:

5 Q. State your name for the jury, please.

6 A. Thomas Stillinger.

7 Q. And where are you from?

8 A. Where am I from? I'm Swansea -- well, I live in
9 Neeses, but I got a business in Swansea.

10 Q. And what kind of business do you have?

11 A. I have a convenience store, gas station.

12 Q. And is that referred to as Stillinger's store?

13 A. Stillinger's Gas, yeah.

14 Q. And how long have you had a business down in the
15 Swansea area?

16 A. 21 years.

17 MR. MYERS: Without objection, a map of the Swansea
18 area, Your Honor.

19 (WHEREUPON, State's Exhibit No. 11, a Map, was
20 marked and admitted into evidence.)

21 Q. Can you see that map, Tommy?

22 A. I can see it.

23 Q. The Town of Swansea, this is the main road coming
24 through Swansea?

25 A. Yes, sir.

- 1 Q. What's that main road?
- 2 A. 321.
- 3 Q. And going up to the top, this heads back towards --
- 4 A. Towards Columbia, yeah.
- 5 Q. 321, the road coming through Swansea?
- 6 A. Yeah.
- 7 Q. And up top, that takes you into Columbia?
- 8 A. Yes, sir.
- 9 Q. Cayce, West Columbia?
- 10 A. Yeah.
- 11 Q. Go on down to the bottom on 321, where does that go?
- 12 A. That goes toward North, Neeses.
- 13 Q. Now, let me ask you about this blue line here, this
- 14 road?
- 15 A. That's Number 6.
- 16 Q. And Number 6, where does that go?
- 17 A. That goes to Lexington.
- 18 Q. This road here, this blue road?
- 19 A. That goes toward St. Matthews.
- 20 Q. And is that still?
- 21 A. That's Number 6.
- 22 Q. So 6 comes here and then goes toward St. Matthews?
- 23 A. Yes, sir.
- 24 Q. Now, right here, what is that right there?
- 25 A. That's where I'm located, right there on 495 Church

1 Street, that's 692.

2 Q. And is your store right on the main highway, 321,
3 coming through Swansea?

4 A. Yeah, right on the main road.

5 Q. The road that runs right to the side of your
6 station?

7 A. That's 692.

8 Q. 692. And where does this road go here?

9 A. That goes back out to 178. You can go towards
10 Orangeburg -- or go 178 and go to Orangeburg or you can go
11 back to North.

12 Q. And did you have a store right here at this location
13 back in 1990?

14 A. Yes, sir.

15 Q. Back at that time, what kind of school was on down
16 the road going past your store there?

17 A. The high school.

18 Q. And then what is this right here?

19 A. That's the new high school over there.

20 Q. So the old high school, which is a middle school
21 now, then the new high school is right here?

22 A. Yeah.

23 Q. Also there is 321 on Highway 6 going back towards
24 Lexington there was a bank right along in here; do you
25 remember that bank being there?

1 A. Yes, sir.

2 Q. Did you ever do business at that bank?

3 A. Yes, sir.

4 Q. What was it called back then? They've changed names
5 several times.

6 A. Could have been First Union. I don't know what the
7 bank is, they've changed three times.

8 Q. Okay. You can have a seat there.

9 A. (The witness complied).

10 Q. Now, I want to refer you back to October the 23rd of
11 1990 at a gas station there. You can refer to that document.
12 Did you have an occasion to obtain an arrest warrant for
13 someone?

14 A. Yes, sir.

15 Q. And who did you obtain the arrest warrant for?

16 A. Johnny Bennett.

17 Q. And why on October the 23rd of 1990 did you obtain
18 an arrest warrant against Johnny Bennett?

19 A. He stole some gas. Had a can and stole some gas,
20 and he filled up with the gas and left the store. And I run
21 after him to try to catch him, but he got away. And I went
22 back to the store and it was a customer there said it was
23 Johnny Bennett that got the gas. So I signed a warrant on
24 Johnny Bennett.

25 Q. And what do you mean you ran after him and tried to

1 catch him?

2 A. Well, I was there -- I had a cashier -- I was there
3 at the time, and the boy pumped the gas. And I looked out and
4 I couldn't see exactly who it was. And I went out and asked
5 him, I said, where did that boy go that pumped the gas in the
6 can, and they said he went behind the store, down through the
7 back of the store through the woods. So I jumped in my pickup
8 and went around to try to head him off crossing the street
9 down there and he ran and got -- ran into a house, behind a
10 house, And I didn't go after him no further. I turned around
11 and came back.

12 Q. He went into a house or behind a house?

13 A. Behind it. He went into a person's yard with a
14 house. And then -- he didn't go into the house, he went
15 around behind the house. And then I didn't go behind it.

16 Q. And did you go down to Judge Shockley's office, the
17 magistrate there in Swansea, to get a warrant?

18 A. Yes.

19 MR. MYERS: Your Honor, we have another chart on
20 activity we'd like to mark as a State's Exhibit.

21 (WHEREUPON, State's Exhibit No. 12, a Chart, was
22 marked and admitted into evidence.)

23 Q. Tommy, is this correct; October the 23rd of 1990,
24 petty larceny, stealing gas by Johnny Bennett from the
25 Stillinger store?

1 A. Yes.

2 MR. MYERS: Thank you. If you would, answer any
3 questions they have..

4 THE COURT: Cross?

5 MR. FLOYD: Thank you, Your Honor.

6 CROSS EXAMINATION

7 BY MR. FLOYD:

8 Q. Good morning, Mr. Stillinger.

9 A. Good morning.

10 Q. My name is Wayne Floyd. I represent Johnny Bennett.

11 A. Yes, sir.

12 Q. So, Mr. Stillinger, you don't know to your own
13 personal knowledge who took that gas and put it in the can and
14 ran, do you?

15 A. Well, I knew who took the gas. I mean, I couldn't
16 call his name, but he come in the store all the time. Floyd
17 Hall was there and I said, What's the boy's name that got the
18 gas. And he said, Johnny Bennett.

19 Q. But you didn't know him?

20 A. Not by name.

21 Q. Somebody else had to tell you that?

22 A. Not by name, no, sir.

23 Q. And at your store at that time, did you have video
24 cameras inside?

25 A. No, sir.

1 Q. Did you have a telephone inside?

2 A. Yes, sir.

3 Q. Did Rebecca Dixon work for you?

4 A. She might have been working at that time, yes, sir.

5 I know Nancy Surefield was there at the store when it

6 happened. It happened that morning.

7 Q. And she didn't see who it was either, did she?

8 A. No, sir. When you cut the pumps on you just look up
9 and you see somebody pumping gas. You can't really tell who
10 it is until they come in the store.

11 Q. And Rebecca Dixon was working for you around that
12 time?

13 A. She worked on second shift, yes, sir. She run the
14 night --

15 Q. Run the night shift?

16 A. Run the night shift. And Nancy Surefield was on the
17 first shift.

18 Q. So neither you nor her could identify the person?

19 A. Well, no, we -- all we can tell was a man getting
20 gas in a can. And when he didn't come in, we went out to see
21 where he went and he was gone. Floyd Hall was standing there
22 and said it was Johnny Bennett that got the gas.

23 MR. FLOYD: Thank you.

24 THE COURT: Any redirect?

25 MR. MYERS: Come down, please.

1 No, sir.

2 THE COURT: All right. You can step down. You're
3 free to go, if you want to, Mr. Stillinger.

4 MR. MYERS: Mark Jones.

5 THE COURT: We're going to take a break at this
6 point, Solicitor?

7 MR. MYERS: All right, sir.

8 THE COURT: Ladies and gentlemen, we'll take a short
9 break at this point, give you a chance to move around a little
10 bit and get something to eat or drink, if you need to. I will
11 ask you to be sure to remember not to talk about the case.

12 Ms. Locklair, let me ask you if you'll serve as the
13 forelady of the jury, please, ma'am, okay. You won't have to
14 do anything right now. I'll tell you when it's time to do
15 something, okay. Thank you.

16 Just go with the bailiffs, please.

17 (WHEREUPON, the jury leaves the courtroom at
18 approximately 10:48 a.m.)

19 THE COURT: The jury is secured, Counsel. We'll
20 take a short break.

21 (WHEREUPON, a brief recess was taken.)

22 THE COURT: Counsel, the jury is going to eat in
23 today. The jury van is having some problems, so what we'll do
24 is just take about an hour for lunch. And I anticipate that's
25 going to be a little after 12:00 because the -- Agent Jacobs

1 tells me that the people doing -- preparing the meal have to
2 have it around 12:00 or so, they don't want to go too far into
3 the lunch hour. So I would anticipate probably 12:15 or
4 something like that.

5 What she'll do is let me know when it's here, we'll
6 take a lunch break at that point for an hour or so. You might
7 want to -- at that time, if some of you want to go somewhere
8 and get lunch, but if you want to arrange to have lunch
9 brought to you, that will be okay, too. Anyway, just kind of
10 get ready for that.

11 All right, let's bring the jury in.

12 (WHEREUPON, the jury enters the courtroom at
13 approximately 11:15 a.m.)

14 THE COURT: All parties and attorneys are in the
15 courtroom and all jurors have returned.

16 Madam Forelady, have you sufficiently recovered?
17 You looked like you were surprised a minute ago. I know we
18 threw everybody off coming back in. But don't worry,
19 actually, you can sit anywhere you want to, except the
20 forelady, she's got to sit there. And the alternate has to
21 sit there. But other than that, everybody can sit where you
22 want to.

23 Call your next witness, please.

24 MR. MYERS: Deputy Mark Jones.

25 MARK JONES, after having been duly sworn,

1 testified as follows:

2 DIRECT EXAMINATION

3 BY MR. MYERS:

4 Q. Could you introduce yourself to the jury, please.

5 A. Mark Jones.

6 Q. And how long have you been with the Sheriff's

7 Department?

8 A. July 25th will be 13 years.

9 Q. Back in 1990, were you employed with the Sheriff's
10 Department at that time?

11 A. Yes, sir.

12 Q. And what part of the county were you basically
13 assigned to?

14 A. South end of Lexington County.

15 Q. And the south end includes what towns?

16 A. Gaston, Swansea, Pelion, Fairview,
17 Batesburg-Leesville area.

18 MR. MYERS: Now, Your Honor, I want to refer to this
19 November, December 1990 calender. I think the Court will take
20 judicial notice of it, but we'd like to go ahead and mark it
21 as an exhibit.

22 THE COURT: Certainly. Any objection?

23 MR. YOUNG: No objection.

24 THE COURT: All right. Go ahead and mark it, Madam
25 Court Reporter.

1 (WHEREUPON, State's Exhibit No. 13, a Calender,
2 was marked and admitted into evidence.)

3 BY MR. MYERS:

4 Q. The latter part of November, the week after
5 Thanksgiving, Monday, November 26th, Tuesday, November 27th,
6 Wednesday, November the 28th, during those days and for that
7 week, as a matter of fact, were you working with Lexington
8 County Sheriff's Department around the Swansea area?

9 A. Yes, sir.

10 Q. And during that week, did you have occasion to go to
11 the home of Mr. and Mrs. Smith or to meet with Mr. and
12 Mrs. Paul Smith?

13 A. Yes, sir, I did.

14 Q. And what was the purpose of meeting with either
15 Mr. Paul Smith or Mrs. Annie Ruth Smith?

16 A. I got dispatched to that residence referencing a
17 missing person report.

18 Q. And who was missing?

19 A. It was Benton Smith.

20 Q. And who was Benton Smith?

21 A. He was the adult that was missing from an address in
22 the Gaston area.

23 Q. And how was Mr. Paul Smith and Mrs. Annie Ruth
24 Smith, how were they related to Benton Smith?

25 A. That's his parents.

1 Q. And Mr. Paul, he's the gentleman right here with the
2 burgundy shirt on seated right here?

3 A. Yes, sir, he is.

4 Q. Now, where was Benton last seen by his parents?

5 A. He was last seen, according to Mr. Smith, leaving
6 his residence heading toward Swansea.

7 MR. FLOYD: Your Honor, we're going to object to any
8 hearsay.

9 Q. Here's a report --

10 THE COURT: Sustained.

11 Q. And about when did you take this report?

12 A. It was on the -- took the report on the 28th, being
13 Wednesday, probably between 3:00 and 4:00 that afternoon.

14 Q. So that would have been Wednesday, right here, the
15 28th?

16 A. Yes, sir.

17 Q. Was he missing on Wednesday or was he missing on
18 Tuesday the --

19 MR. FLOYD: Your Honor, I object if he's trying to
20 get the hearsay in --

21 MR. MYERS: A report is admissible, that's under the
22 United States Supreme Court. An officer takes action because
23 of certain reports.

24 THE COURT: Is he taking that information from a
25 report?

1 MR. MYERS: Yes, sir.

2 THE COURT: Okay.

3 MR. FLOYD: Your Honor, that doesn't get around the
4 hearsay --

5 THE COURT: Let me see the report.

6 MR. MYERS: I think it's the United States Supreme
7 Court called Hayden that resolves that issue, Your Honor.

8 THE COURT: Yes, sir. Counsel, this is a report
9 prepared by the officer. At least his name is on it.

10 Is that you that prepared it?

11 THE WITNESS: Yes, sir.

12 THE COURT: And I realize it may involve some
13 hearsay, but it does reflect the report that he was taking --
14 given at the time. I think it's admissible for those
15 purposes.

16 MR. FLOYD: Okay.

17 THE COURT: Only to show what he was doing.

18 MR. FLOYD: So anything on the reports is going to
19 be admissible?

20 THE COURT: Sir?

21 MR. FLOYD: Anything on reports is admissible then?

22 THE COURT: Well, on this particular report, since
23 he prepared the report and it reflects what he did at this
24 particular time, yes, sir. And others may if they can -- you
25 know, there may be other reasons for others to get in to.

1 Go ahead.

2 BY MR. MYERS:

3 Q. Was Benton Smith, was he first missing on Wednesday
4 or missing on Tuesday?

5 A. Tuesday.

6 Q. Did you start looking for him on Wednesday?

7 A. Yes, sir, I did.

8 Q. And what else were you looking for as a result of
9 taking this report?

10 A. Well, I was looking for the car that the -- the
11 description that the deceased's father gave me.

12 Q. What type of car was it?

13 A. It was a 1980 Toyota Corolla, four-door, dark blue
14 in color.

15 Q. Dark blue in color?

16 A. Yes, sir.

17 Q. Now, you were looking for Benton Smith and you were
18 looking for that vehicle; is that correct?

19 A. Yes, sir.

20 Q. At any time, did you locate that vehicle?

21 A. Yes, sir, I did.

22 Q. And when did you locate the vehicle?

23 A. Approximately between 10:30 and 11:00 Wednesday,
24 being December the 28th.

25 Q. So the same day on Wednesday; is that right?

1 A. Yes, sir.

2 Q. And where did you locate it?

3 A. I located it behind Swansea High School near the
4 cafeteria area.

5 Q. Now, I'm going to refer to State's Exhibit Number
6 11, which is a map of the Swansea area. It's already been
7 referred to as 321 coming down through Swansea.

8 A. Yes, sir.

9 Q. Highway 6 going back toward Lexington, Stillinger's
10 Gas Station. It's got several schools here. If you would,
11 show the jury which school you located this vehicle.

12 A. I located the car at Swansea High School
13 (indicated).

14 Q. And of the three schools, that's the one that's
15 marked high school and the one in the middle; is that correct?

16 A. That's correct, sir.

17 Q. Now, I want to show you this photograph and ask you
18 if you can identify it.

19 A. Yes, sir, I can.

20 Q. What does that photograph depict?

21 A. That is the car the missing adult was driving at the
22 time he was missing.

23 Q. And is this the car that you located that Wednesday
24 night behind the Swansea High School?

25 A. Yes, sir.

1 Q. Now, this picture wasn't taken at the high school,
2 it was taken later on, but this is the same car?

3 A. That is correct, sir.

4 MR. MYERS: We offer this into evidence, Your Honor.

5 THE COURT: Any objection?

6 MR. YOUNG: No objection, Your Honor.

7 THE COURT: All right. Without objection.

8 (WHEREUPON, State's Exhibit No. 14, a Photograph,
9 was marked and admitted into evidence.)

10 BY MR. MYERS:

11 Q. Now, that vehicle -- and the vehicle was how many
12 doors?

13 A. Four-door.

14 Q. And what color?

15 A. Blue.

16 Q. When you found it behind the Swansea High School,
17 was it locked or unlocked?

18 A. It was locked.

19 Q. Were the windows up or down?

20 A. Up.

21 Q. Could you get inside of the vehicle?

22 A. No, sir.

23 Q. Did you attempt to look inside?

24 A. Yes, sir, I did.

25 Q. You notice anything at all inside?

1 A. Nothing unusual, what I could tell. To the best of
2 my recollection, was like I saw some chicken boxes in there
3 and other miscellaneous items, but nothing that really stands
4 out at the time when I was looking in the car.

5 Q. Now, you said you found it back here by the school?

6 A. Yes, sir.

7 Q. Tell the jury where around the school that you found
8 it, how was it parked.

9 A. It was located, again, I could say, behind the
10 Swansea High School near the cafeteria area and it was facing
11 in toward the cafeteria, with the front of the car. And,
12 again, it was locked, it was nighttime, again, between 10:30,
13 11:00. So I took my flashlight out and looked around and
14 followed everything, but it was there by itself, nobody was
15 around it.

16 Q. Did you know Benton Smith?

17 A. Vaguely. I met him a couple times, but that's
18 pretty much the extent of it.

19 Q. At this time, did you know Johnny Bennett?

20 A. Heard of him, but actually never really met him.

21 Q. Do you know his parents, Johnny Bennett's parents?

22 A. Yes, sir.

23 Q. Where does his mother work or where did she work at
24 that time?

25 A. She's at one of the schools. To the best of my

1 recollection, she was at the middle school.

2 Q. And what was her job?

3 A. She worked in the cafeteria.

4 Q. And where was this car found at the school?

5 A. It was at Swansea High School cafeteria.

6 Q. Parked outside the cafeteria?

7 A. Yes, sir.

8 Q. Now, what did you do when you found this car on that
9 Wednesday evening?

10 A. When I found the car, I'm pretty sure I thought I
11 had it, but what I did is went and got Mr. Smith.

12 Q. Mr. Smith out here?

13 A. Yes, sir. I went to his house that night to verify,
14 indeed, that was his car. Because I had the report, but I
15 wanted to make sure myself. And, you know, I wanted to go
16 tell Mr. Smith, hey, I did find your son's car.

17 Q. Did you and Mr. Smith go back up to the school where
18 the car was parked?

19 A. Yes, sir, we did.

20 Q. Were y'all able to get inside?

21 A. No, sir. I asked Mr. Smith did he have a key, and
22 he advised me at the time he does not have another key to the
23 car.

24 Q. And did he verify that was his son's missing car?

25 A. Yes, sir, he did.

1 Q. And what was done with the car then?

2 A. At that time, Mr. Smith asked me could he take the
3 car home. And I advised him, well, since you don't have a key
4 to the car, you can go ahead and take it home because I don't
5 know what we got at the time of the situation. And he went
6 ahead the next day and took the car home. But, again, I
7 advised him if you don't have a key, don't attempt to go in
8 the car until we figure out what we got.

9 Q. You allowed him to take the car home, but not to
10 mess with the inside?

11 A. Exactly.

12 Q. Take it away, to get it away from the school?

13 A. Yes, sir.

14 Q. And you still on that Wednesday, even after the car
15 was found and even the next day, you still looking for Benton
16 Smith?

17 A. Yes, sir.

18 Q. And did you find Benton Smith on Wednesday?

19 A. No, sir, I didn't.

20 Q. Do you find him on Thursday?

21 A. No, sir, I didn't.

22 Q. You helping other officers look for him?

23 A. Yes, sir. By the fact of knowing the family and
24 stuff, I took it upon myself to also look a little more in
25 detail in hopes of finding Mr. Smith.

1 Q. Were you with the officers when they found Benton
2 Smith's body late Saturday night, Sunday morning?

3 A. No, sir, I wasn't.

4 Q. Is this correct, Deputy? Deputy Jones finds
5 Mr. Smith's locked car about 10:30, 11:00 p.m., and that would
6 have been on Wednesday, November the 28th?

7 A. That's correct, sir.

8 MR. MYERS: Your Honor, we would like to attach this
9 to State's Exhibit Number 13 on that date.

10 THE COURT: Any objection?

11 MR. YOUNG: No objections.

12 MR. MYERS: If you would, answer any questions they
13 have.

14 THE COURT: Cross?

15 CROSS-EXAMINATION

16 BY MR. YOUNG:

17 Q. Officer Jones, this automobile was found somewhere
18 between 10:00 and 11:00 Wednesday night?

19 A. 10:30, 11:00, that's correct.

20 Q. Okay. And it was relatively dark out there?

21 A. It was dark, it was nighttime.

22 Q. How close to the school was this car parked?

23 A. I'd say from the back of the school, probably --
24 from distance to the cafeteria, I'd say anywhere from three to
25 five feet, something like that.

1 Q. This school was at least for people who were from
2 the Swansea area. This school is in a pretty opened-out area;
3 would you agree?

4 A. To some degree.

5 Q. Okay. I mean, it is off of the main road, right?

6 A. Well, it's off of Highway 6.

7 Q. It's off of Highway 6, correct?

8 A. That's correct.

9 Q. But once you get to the area, you can see the school
10 within a block, correct?

11 A. Correct.

12 Q. Where this car was located near the cafeteria,
13 anyone going by the school, passing that back area where the
14 cafeteria is could have seen that automobile?

15 A. Yes, sir.

16 Q. I believe it's your testimony that when you located
17 it that you did not see anyone near the car or around the car
18 in that area?

19 A. That's correct.

20 Q. And did you make any type of search of the area?

21 A. No, sir, not of the area.

22 Q. Okay. Your general search was immediately around
23 the automobile itself?

24 A. That's correct. I did go up there to the cafeteria
25 door at that the time, knocked to see if anybody was around,

1 but that's pretty much the extent. Because like I say, it was
2 10:30, 11:00. I didn't see any lights on or anything, but I
3 just said, well, I'll just take a chance and did go up to the
4 building.

5 Q. There's a couple of lights out there in the parking
6 lot area where the trucks come, correct?

7 A. Back in the back where the shop is located next to
8 the cafeteria, that's correct.

9 Q. So there was some light out in that area, correct?

10 A. It was dimly lit, but you did have some light.

11 Q. When you drove up into that area when you found the
12 automobile, you were driving a county issued patrol car?

13 A. That's correct, sir.

14 Q. Marked car?

15 A. Yes, sir.

16 Q. And you utilized a flood light to assist you, give
17 you more light?

18 A. Yes, sir. I did shine on it, that's correct.

19 Q. When you located this automobile, did you touch the
20 doors in order to see if it was unlocked?

21 A. Well, I looked at the lock first and I noticed all
22 of them were down. And I did take the inside of my finger up
23 under the -- if you go inside up under the handle, I did try
24 to pull out on it, but nothing came open.

25 Q. This was a -- what type of car was it?

1 A. It was a Toyota Corolla.

2 Q. And then, during your search -- it was a 1980 or
3 '81?

4 A. 1980.

5 Q. 1980. And during your search, you shined the
6 flashlight inside the interior?

7 A. Yes, sir.

8 Q. Was there anything unusual about the interior of the
9 car?

10 A. Not that I could tell. I mean, I could tell it was
11 kind of dirty. Like I said, some kind of chicken box and some
12 food on the seat, but that's pretty much the extent of it.

13 Q. At the time that you found this automobile you were
14 aware that Mr. Smith had been reported missing, correct?

15 A. Yes, sir, by taking the report. That's correct.

16 Q. And I believe you testified that when you talked
17 with his father about taking possession of the automobile that
18 you advised him that you didn't know what you had, correct?

19 A. Right, exactly, as far as any foul play or anything
20 like that. You know, we've taken plenty of reports where cars
21 have been missing or whatever, I mean, a person is missing,
22 but they turn up back the next day or that night. And I was
23 relatively new on the road.

24 Q. At the point -- at that point in time, 1990, you
25 would have been approximately three, four years on the force?

1 A. Well, in the jail -- I had like five, almost six
2 years in jail and just a couple years maybe on the road.

3 Q. Okay. But at that time, you were the road deputy at
4 that point in time?

5 A. Yes, sir.

6 Q. At the point in time that you initially found the
7 automobile and decided that you were going to go back to get
8 Mr. Smith to verify it, did you call anyone else from law
9 enforcement to come and stand near that automobile while you
10 go and talk with Mr. Smith?

11 A. No, sir, not at that time.

12 Q. Did you call anyone in law enforcement to go by
13 Mr. Smith's home and bring him to the high school?

14 A. No, sir, I didn't.

15 Q. Mr. Smith followed you to the high school in his own
16 automobile?

17 A. Best of my recollection, yes, sir.

18 Q. This automobile was released to Mr. Smith?

19 A. Yes, sir.

20 Q. And to the best of your knowledge, Mr. Smith held
21 this automobile on his property?

22 A. To the best of my knowledge, that's correct.

23 Q. In his driveway or somewhere near his home?

24 A. I don't know where he put it at, to be honest with
25 you.

1 Q. Okay. And that was the extent of your involvement
2 with the automobile?

3 A. That's correct, sir.

4 MR. YOUNG: Thank you. I have no further questions.

5 MR. MYERS: Thank you, come down, please.

6 We Call Melvin Harrison.

7 THE COURT: Deputy Jones, you're free to go, if
8 you'd like.

9 MELVIN HARRISON, after having been duly sworn,
10 testified as follows:

11 DIRECT EXAMINATION

12 BY MR. MYERS:

13 Q. Tell the jury your name, please.

14 A. Melvin Harrison.

15 Q. Melvin, let me ask you this. How are you related to
16 the Smith family?

17 A. I am Benton Smith's brother-in-law.

18 Q. And how are you Benton Smith's brother-in-law, who
19 are you married to?

20 A. I'm married to his oldest sister.

21 Q. And what's her name?

22 A. Cynthia.

23 Q. And is this Cynthia right here with the black
24 sweater on?

25 A. That's her.

1 Q. She's Benton's sister, is that right?

2 A. Yes, sir.

3 Q. So Mr. Paul Smith is your father-in-law?

4 A. Yes, sir.

5 Q. Your wife's father?

6 A. Yes, sir.

7 Q. Ms. Annie Ruth Smith is their mother?

8 A. That's right.

9 Q. Now, when Benton started to come missing in November

10 1990, where were you living at that time?

11 A. Right next door in a mobile home.

12 Q. Right next door to who?

13 A. To my in-laws.

14 Q. Next door to Mr. and Mrs. Smith?

15 A. Yes, sir.

16 Q. Who did Benton live with?

17 A. He lived with his parents, my in-laws.

18 Q. He lived with his parents. You and Cynthia lived

19 right next door to them?

20 A. Yes, sir.

21 Q. Far off or pretty close?

22 A. Within the same fence.

23 Q. Within the same fence?

24 A. Right next door.

25 Q. Now, let me ask you, if I could, I want to take you

1 back to the Monday after Thanksgiving. That's right here,
2 Monday, November the 26th. Do you recall being with Benton
3 that day?

4 A. Yes, sir, I do.

5 Q. Did you and Benton have an occasion to go anywhere
6 together?

7 A. Well, that Monday -- both of us was unemployed at
8 the time because the place that I worked sold out and we was
9 on unemployment. So our checks didn't come in --

10 Q. Your unemployment checks?

11 A. Yes, our checks didn't come in that Monday. So we
12 went together in my car up to the unemployment office to see
13 what happened to our checks.

14 Q. Who did, you and who?

15 A. Myself and Benton.

16 Q. And you went over to Columbia to see about your
17 unemployment checks?

18 A. Yes, sir.

19 Q. Benton was with you?

20 A. Yes, sir.

21 Q. Y'all riding together?

22 A. Yes, sir.

23 Q. And then you come back, you're with Benton when you
24 come back?

25 A. Yes, sir.

1 Q. Now, I want to show you State's Exhibit Number 14.

2 Do you recognize this little blue car?

3 A. Yes, sir, I do.

4 Q. And who was driving that car at this time?

5 A. During the period of --

6 Q. Yeah.

7 A. My brother-in-law, Benton, was driving it.

8 Q. Had you been in that car?

9 A. Have I ever been in it?

10 Q. Yes.

11 A. Yes, sir, I've ridden in it before.

12 Q. You were in it just before he disappeared?

13 A. No, sir.

14 Q. Now, you were talking with Benton a good bit on
15 Monday. Would he keep things in that blue car, various items
16 and everything?

17 A. Yes, sir, he did.

18 Q. Now, I want to ask you, was Benton kind of funny
19 about his possessions?

20 A. Yes, sir. He was very particular about his special
21 items that he would buy for himself. He was very possessive
22 about them. He wouldn't lend them out to anyone.

23 Q. What about his car?

24 A. Oh, he definitely wouldn't lend his car out to
25 anyone.

1 Q. What about the things in his car?

2 A. Things that he put in that car was special to him,
3 so he wouldn't let anyone have them.

4 Q. Was Benton the type of person that would leave home
5 for several days?

6 A. Oh, no, sir. No, sir. No, he didn't.

7 Q. What was his habits about coming home?

8 A. Well, we have a saying for it, we call him -- he was
9 a momma's boy, so to speak. He would -- it was very easy to
10 predict him because he would never stay out past 12:00, not
11 unless he had to work when he was working. You can set your
12 clock by him, really. We always knew that he was going to be
13 home before 12:00. He just wouldn't do it.

14 Q. Now, I want to ask you about some of these items
15 that he was very possessive of that he had in his car. You
16 ever see any type of pillows that he had in there?

17 A. Yes, sir.

18 Q. Do you remember what, if anything, was on those
19 pillows?

20 A. It's been a good while. It's hard for me to
21 remember exactly what was on them, but I remember them being
22 in the car, the pillows.

23 Q. You saw them in there?

24 A. Yes, sir.

25 Q. I'm going to hand you these two things and ask you

1 if you can identify these two.

2 A. Those were the pillows, yes, sir.

3 Q. And the last time you saw those, they were in
4 Benton's car?

5 A. Yes, sir.

6 MR. MYERS: We offer these into evidence, Your
7 Honor.

8 THE COURT: Any objection?

9 MR. YOUNG: No objections.

10 THE COURT: All right. Without objection.

11 (WHEREUPON, State's Exhibit Numbers 15 and 16,
12 Pillows, were marked and admitted into evidence.)

13 BY MR. MYERS:

14 Q. 15 and 16, did he keep these in the front seat or in
15 the back?

16 A. Normally, he had them in the back.

17 Q. Do you recall any kind of drinking glasses that he
18 had?

19 A. He had these little small drinking glasses. I don't
20 know where he got them, but he had them.

21 Q. Can you identify these two?

22 A. Yes, sir, those are the ones.

23 MR. MYERS: We offer these in evidence, Your Honor.

24 THE COURT: Any objection?

25 MR. FLOYD: No objection, Your Honor.

1 (WHEREUPON, State's Exhibit Numbers 17 and 18,
2 drinking glasses, were marked and admitted into evidence.)

3 BY MR. MYERS:

4 Q. 17 and 18, these little drinking glasses, would
5 these be kept in the front or the back or what?

6 A. He also kept those in the back.

7 Q. In the back seat?

8 A. Yeah.

9 Q. Do you recall any type of glasses that you wear on
10 your head that he had?

11 A. Yes, sir, I do.

12 Q. Was there anything unusual about those glasses?

13 A. Yes, sir, when I first saw him, he said they were
14 for like --

15 MR. FLOYD: Your Honor, I object to any hearsay.

16 MR. MYERS: Okay.

17 Q. Anything unusual?

18 A. When I first saw them, I liked them because of the
19 make up of them was different, kind of like spy glasses, so to
20 speak.

21 Q. Can you identify these?

22 A. Yes, sir, those are the ones.

23 Q. These are the ones?

24 A. Yes, sir.

25 MR. MYERS: Offer these into evidence, Your Honor.

1 THE COURT: Any objection?

2 MR. YOUNG: No objections.

3 (WHEREUPON, State's Exhibit No. 19, a Pair of
4 Glasses, was marked and admitted into evidence.)

5 BY MR. MYERS:

6 Q. 19, these are the ones you're talking about, and
7 actually at the end there's some kind of little lights on the
8 end?

9 A. Yes, sir.

10 Q. Do you recall any type of camera that he had in his
11 car?

12 A. Yes, sir, I do.

13 Q. Can you identify this? Is that similar to the one
14 he had?

15 A. Yes, sir.

16 MR. MYERS: Offer this into evidence, Your Honor.

17 MR. FLOYD: Your Honor, that appears to be a
18 standard type of camera, unless he can identify it
19 specifically --

20 MR. MYERS: We'll put it in with somebody else.

21 THE COURT: Okay.

22 BY MR. MYERS:

23 Q. Do you recall anything about the floor mats?

24 A. Yes, sir, I do.

25 Q. Now, those floor mats weren't just ordinary floor

1 mats, were they?

2 A. No, sir.

3 Q. How were they distinctive?

4 A. Because they had his name on them.

5 Q. Can you identify these floor mats with the name
6 Benton on them?

7 A. Yes, sir, those are the ones.

8 Q. These be the ones from the car?

9 A. Yes, sir.

10 MR. MYERS: Offer these into evidence, Your Honor.

11 THE COURT: Objection?

12 MR. YOUNG: No objections.

13 (WHEREUPON, State's Exhibit Numbers 20 and 21,
14 Floor Mats, were marked and admitted into evidence.)

15 BY MR. MYERS:

16 Q. 20 and 21, these floor mats with his name on them,
17 last time you saw them they were in this little blue car?

18 A. Yes, sir.

19 Q. Did he have any kind of sign or anything on the
20 dashboard of his car that you recall?

21 A. I can't really remember if he had a sign or anything
22 on the dashboard.

23 Q. Did he have any kind of case that he kept his keys
24 in?

25 A. He used to have this, something like a shaving kit

1 case that he had.

2 Q. Do you recognize this?

3 A. Yes, sir, that's the case.

4 Q. Something he had like that?

5 A. Yes, sir..

6 MR. MYERS: Offer this in evidence, Your Honor.

7 MR. YOUNG: No objections.

8 (WHEREUPON, State's Exhibit No. 22, a Shaving
9 case, was marked and admitted into evidence.)

10 BY MR. MYERS:

11 Q. Now, did he have any kind of key case with keys
12 hanging off of it, too, that you remember?

13 A. I'm not really familiar exactly what kind of key
14 case or chain that he had.

15 Q. Okay. Now, do you know whether he carried a wallet
16 around with him?

17 A. He used to have a wallet, yes.

18 Q. Do you know whether or not that he had any type of
19 book in his car that you and he would read sometimes together?

20 A. Yes, sir.

21 Q. And what kind of book was that?

22 A. It was the Bible.

23 Q. It was a Bible?

24 A. Yes, sir.

25 Q. And he would have that in his car, too?

1 A. Yes, sir.

2 Q. What about any equipment for his radio, anything for
3 sound or stuff like that?

4 A. He had some speakers, some nice speakers in the
5 back.

6 Q. Some radio speakers?

7 A. Yes, sir.

8 Q. What about any kind of other equipment, detectors or
9 radar things?

10 A. He had a little -- what do you call the thing that
11 detects police?

12 Q. Checks speed?

13 A. Yes.

14 Q. Radar detectors?

15 A. Yeah, that's what they're called.

16 Q. Now, did he also have some kind of walking stick
17 that he carried around?

18 A. Yes, sir, he did.

19 Q. Anything unusual about that walking stick?

20 A. Yes, sir. It had a duck head, gold duck head on it
21 like the pillows, that same duck head on it.

22 Q. Can you recognize this?

23 A. Yes, sir.

24 MR. MYERS: Offer this in evidence, Your Honor.

25 THE COURT: Any objection?

1 MR. FLOYD: No objection, Your Honor.

2 (WHEREUPON, State's Exhibit No. 23, a cane, was
3 marked and admitted into evidence.)

4 BY MR. MYERS:

5 Q. Now, let me ask you this. This little blue car,
6 that really wasn't his car, was it, somebody else owned the
7 car?

8 A. No, sir.

9 Q. Who owned the car?

10 A. His mother.

11 Q. Mrs. Annie Ruth Smith?

12 A. Yes, sir.

13 Q. And prior to him driving the little blue car around,
14 was there another car one of his relatives had that he was
15 driving around, one of his brother's car?

16 A. It was a Corvette.

17 Q. What color was that?

18 A. White.

19 Q. So he used to drive around in a white Corvette that
20 his brother had?

21 A. Yes, sir.

22 Q. But then he started driving around in this little
23 blue car?

24 A. Yes, sir.

25 Q. Now, that was his mother's car and not his?

1 A. Yes, sir.

2 Q. On that Monday, y'all were talking about going over
3 to get your unemployment check and everything -- and don't
4 tell me what he said, but you and Benton, y'all talked a good
5 bit going back and forth over there; is that right?

6 A. Yes, sir.

7 Q. About the future plans he had and stuff like that?

8 A. Yes, sir.

9 Q. And do you recall any money being in his shaving
10 kit?

11 A. Yes, sir, he had money.

12 Q. And was it just a couple of dollars in his shaving
13 kit or a large amount?

14 A. I didn't know exactly how much he had, but --

15 MR. FLOYD: Your Honor, we're going to object. The
16 fact that he might have had money in his shaving kit on
17 November 24th has no relevance to this case.

18 MR. MYERS: It's not November the 24th, it's Monday,
19 November the 26th, a day before he was missing. It will
20 become relevant.

21 THE COURT: Overruled, it's close enough in time.

22 BY MR. MYERS:

23 Q. You couldn't tell exactly how much money he had in
24 his shaving kit?

25 A. No, sir.

1 Q. But was it a small amount or was it a wad?

2 A. It was a wad.

3 Q. Had a lot of money?

4 A. Yes, sir.

5 Q. Is this a fair statement, that Smith, meaning Benton

6 Smith, had a wad of money in a black shaving kit that he kept

7 in his car on that Monday?

8 A. Yes, sir.

9 MR. MYERS: We'd like to put this on the board, Your

10 Honor, on Monday, November the 26th.

11 THE COURT: Any objection?

12 MR. YOUNG: No objection, Your Honor.

13 Q. Now, let me ask you, on Tuesday, you were still

14 living right within the same fenced-in yard as Mr. and

15 Mrs. Smith and Benton; is that right?

16 A. Yes, sir.

17 Q. Tuesday morning, what comes in the mail?

18 A. Our checks.

19 Q. Your checks come in the mail?

20 A. Yes, sir.

21 Q. You get yours?

22 A. Yes, sir.

23 Q. Benton get his?

24 A. Yes, sir.

25 MR. FLOYD: Your Honor, I object. How would he know

1 that without that being hearsay? We move that it be stricken.

2 Q. Do you know that you got your check?

3 A. Yes, sir.

4 Q. Do you know that Benton's check came, too?

5 A. Yes, sir, I do.

6 MR. FLOYD: Your Honor, that could not be known
7 except by hearsay.

8 THE COURT: All right. Okay.

9 Mr. Solicitor, lay a foundation. Ask him how he got
10 the check.

11 Q. How do you know your check came in the mail?

12 A. Because I received my check in the mail. I took it
13 out of the mail.

14 Q. You took the checks out of the mailbox?

15 A. Yes, sir.

16 MR. FLOYD: He said he took his check or he took --

17 MR. MYERS: He can cross-examine him. Now, he's
18 trying to cross-examine my witness while I'm questioning him.

19 THE COURT: I understand. Well, let him answer the
20 questions how he knows that Mr. Smith's check came.

21 Go ahead, Mr. Witness.

22 A. I know that my brother-in-law's check came because I
23 saw it. It came right to the house.

24 THE COURT: Okay.

25 Go ahead.

1 MR. MYERS: Thank you, Your Honor.

2 Q. Now, you were there Tuesday morning?

3 A. Yes, sir.

4 Q. Your brother-in-law, Benton Smith, was there?

5 A. Yes, sir.

6 Q. Did Benton leave the house that Tuesday?

7 A. Yes, he did.

8 Q. What car was he driving when he left?

9 A. The little blue Toyota.

10 Q. Anybody leave the house in the car with him?

11 A. To my knowledge, did anyone leave the house with
12 him? I was inside, I knew that he left, but as far as seeing
13 anybody getting in the car with him, I didn't actually see
14 anyone get in the car with him.

15 Q. Was Mr. Paul Smith, your father-in-law, there that
16 morning when Benton Smith left?

17 A. Yes, he was.

18 Q. Now, after that Tuesday morning, did you ever see
19 Benton Smith alive again?

20 A. No, sir.

21 Q. During that day, on Tuesday, did you ever become
22 involved with your father-in-law in looking to find where
23 Benton was?

24 A. Yes, sir.

25 Q. Did you find him on Tuesday?

1 A. No, sir.

2 Q. Did you find his car on Tuesday?

3 A. No, sir.

4 Q. What about Wednesday morning, you with your
5 father-in-law looking for Benton on Wednesday morning?

6 A. Yes, sir.

7 Q. Now, I want to ask you this, Melvin, if I could.
8 Wednesday night, it's been testified that Benton's little blue
9 car was found at the high school. Did you ever go up to the
10 high school to see Benton's car?

11 A. Not that night, but that next morning my
12 father-in-law and I had went up.

13 Q. The next morning, which would have been Thursday
14 morning?

15 A. Yes, sir.

16 Q. And why did you go with your father-in-law up there?

17 A. Well, we went to retrieve the car, but first, we
18 decided to wait and see if anyone could come back and get it.

19 Q. So y'all kind of hid out seeing if somebody would
20 come back to it?

21 A. Yes, sir.

22 Q. No one came to it?

23 A. No.

24 Q. Then after watching it for awhile, you helped your
25 father-in-law move the car?

1 A. Yes, sir, I did.

2 Q. Where did y'all take it?

3 A. We took the back street, kind of, from the
4 schoolhouse so that we would avoid traffic because we couldn't
5 get inside the car.

6 Q. Why?

7 A. It was locked and my father-in-law didn't have a
8 key. So we took it the back way so we wouldn't be in the
9 traffic because it was hard to steer, and he had a rig-up that
10 he made so he could connect to his truck and pull it home.

11 Q. Now, taking the car home, once y'all got it home,
12 did you see this cane inside the car?

13 A. No, sir.

14 Q. That was Benton's cane he usually kept in the car?

15 A. Yes, sir.

16 Q. Did you see those pillows inside the car?

17 A. No, sir.

18 Q. Did you see those red spy glasses with the lights on
19 them inside the car?

20 A. No, sir.

21 Q. Did you see those little short drink glasses?

22 A. No, sir.

23 Q. Did you see these mats with Benton's name on them --

24 A. No, sir.

25 Q. -- inside the car? Did you see those radio

1 speakers?

2 A. No, sir.

3 Q. Did you see that radar detector in the car?

4 A. No, sir.

5 Q. Did you see the camera that Benton normally kept in
6 his car?

7 A. No, sir.

8 Q. Did you see this shaving kit with the wad of money
9 inside?

10 A. No, sir.

11 Q. Did you see the Bible in the car?

12 A. No, sir.

13 Q. Now, you had an occasion to go down to Orangeburg
14 with your father-in-law, too; is that right?

15 A. Yes, sir.

16 Q. Who were you looking for in Orangeburg?

17 A. We were looking for my brother-in-law, really,
18 because we had gotten information, a lot of searching had been
19 going on up to this period.

20 Q. Still hadn't found him?

21 A. No, sir, they hadn't found him.

22 Q. Getting information, did you all go down there
23 looking for two girls?

24 A. Yes, sir.

25 Q. And did you go to two girls' house?

1 A. Yes, sir, we did.

2 Q. Were they staying in the same house or different
3 houses?

4 A. They were in different houses.

5 Q. And the first house you went to, did you go in with
6 your father-in-law?

7 A. Yes, sir, I did.

8 Q. Did he talk with that girl there?

9 A. Yes, sir.

10 Q. While they were taking, did the girl and your
11 father-in-law at a time there began crying with each other?

12 A. Yes, they did.

13 Q. And then from that house, did you have an occasion
14 to go to a second girl's house?

15 A. Yes, sir, we did.

16 Q. And at that second girl's house, did y'all find any
17 of Benton's belongings that had been in his car?

18 A. Yes, sir.

19 Q. What?

20 A. We saw the pillows and the glasses.

21 Q. You saw the two pillows with the duck head on them?

22 A. Yes, sir.

23 Q. And the two little shot glasses?

24 A. Yes, sir.

25 Q. Did Mr. -- you or Mr. Smith take the pillows? Did

1 she give you the pillows or do you recall?

2 A. I can't remember exactly when we received the
3 pillows.

4 Q. Mr. Smith did the talking with them?

5 A. Yes, sir.

6 Q. But you remember seeing those two shot glasses and
7 those two pillows down at the girl's house?

8 A. Yes, sir, I did.

9 MR. FLOYD: Your Honor, we have a matter of law that
10 we need to take up with you.

11 THE COURT: Okay.

12 Ladies and gentlemen, let me ask you to step to the
13 jury room for just a moment. While you're there, be sure not
14 to talk about the case.

15 (WHEREUPON, the jury leaves the courtroom at
16 approximately 12:00 p.m.)

17 THE COURT: All right. The jury is secured,
18 Mr. Floyd.

19 MR. FLOYD: Thank you, Your Honor. We respectfully
20 move for a mistrial or, alternatively, for a new trial on the
21 issue of guilt on the grounds that the State is presenting
22 different testimony than was presented at the previous trial.
23 So on one of those occasions, the State has presented false
24 testimony. In the initial trial in this matter a Mr. Paul
25 Smith testified, and I'm referring to page 1379 of the

1 transcript. Paul Smith, being the father of Mr. Benton Smith.
2 Mr. Paul Smith testified that he went to Orangeburg with
3 Walter Dibble and Larry Smith, not with Melvin Harrison.

4 Now, today, in this trial, this man, Mr. Melvin
5 Harrison, is getting up and he's testifying that he went down
6 there with Paul Smith. So on one of these occasions, the
7 State has produced -- and I'm not saying they're doing it
8 purposely, but the State has produced through witnesses false
9 testimony. And, accordingly, we move for a mistrial or we'd
10 move for a new trial if the false testimony was in the first
11 case.

12 THE COURT: Motion denied.

13 MR. FLOYD: We have the transcript if you'd like to
14 review it.

15 THE COURT: I wouldn't need to see the transcript.
16 Obviously, that's an issue regarding the evidence. That's the
17 thing you can certainly cross-examine on if you want to, but
18 that's not a ground for a mistrial. Denied.

19 Did you want to put anything on the record about it,
20 Mr. Myers?

21 MR. MYERS: Mr. Paul Smith will testify and he can
22 cross-examine him.

23 THE COURT: Okay.

24 We ready to bring the jury back in?

25 MR. FLOYD: Yes, sir.

1 (WHEREUPON, the jury enters the courtroom at
2 approximately 12:02 p.m.)

3 THE COURT: All right. All parties and attorneys
4 are in the courtroom and all jurors are back.

5 Go ahead.

6 BY MR. MYERS:

7 Q. Now, I'd like to ask you, if I could, Mr. Harrison,
8 coming back from Orangeburg with your father-in-law, did you
9 also have an occasion to be with your father-in-law at the
10 Stillinger's Gas Station when Mr. Smith confronted Johnny
11 Bennett?

12 A. Yes, sir, I was.

13 Q. Now, what, if anything, did Johnny Bennett have in
14 his hands when Mr. Smith confronted Johnny Bennett at
15 Stillinger's that day?

16 A. He was standing there with that cane in his hand.

17 Q. Johnny Bennett had this cane in his hand?

18 A. Yes, sir.

19 Q. Was it in this length or condition when Johnny
20 Bennett had it that day?

21 A. Yes, sir.

22 Q. Now, the last time you had seen this cane earlier on
23 Monday in Benton's car, was it short?

24 A. No, sir.

25 Q. What was the difference?

1 A. It was half longer than that.

2 Q. Pardon?

3 A. It was at least half the length longer.

4 Q. It was at least half this length longer?

5 A. Yes, sir.

6 Q. Such as you could walk with it on the ground?

7 A. Yes, sir.

8 Q. And before seeing Johnny Bennett with the cane,
9 where was it the last time you had seen it, in whose car?

10 A. In the blue Toyota.

11 Q. Benton's car?

12 A. Yes, sir.

13 Q. And longer?

14 A. Yes, sir.

15 Q. I think it was on this Thursday that you were with
16 Mr. Smith and Johnny Bennett had this in his hand?

17 A. Yes, sir.

18 Q. Did Mr. Smith go up and say something to Johnny
19 Bennett?

20 A. Yes, sir, he did.

21 Q. What did Mr. Smith say to Johnny Bennett?

22 A. First he asked him had he seen his son, Benton.

23 Q. And what did Johnny Bennett say?

24 A. His reply was, I haven't seen him and, frankly, I
25 don't give a damn.

1 Q. Mr. Smith asked him where Benton was?

2 A. Yes, sir.

3 Q. And what did Johnny Bennett say when Mr. Smith asked

4 Johnny Bennett where is my son?

5 A. He said he don't know where he's at and he don't

6 give a damn where he's at.

7 Q. He made that statement to Mr. Smith holding Benton's
8 cane?

9 A. Yes, sir.

10 Q. Is this a fair statement; on that Thursday at
11 Stillinger's, Johnny Bennett tells Mr. Smith don't know where
12 his son was and don't give a damn where he is?

13 A. Yes, sir.

14 MR. MYERS: We move to put this on the board, Your
15 Honor.

16 THE COURT: Any objection?

17 MR. FLOYD: No objection, Your Honor.

18 BY MR. MYERS:

19 Q. Did Johnny Bennett tell Mr. Smith where his son,
20 Benton, was there at Stillinger's?

21 A. No, sir, he didn't.

22 Q. Now, y'all looked for Benton on Thursday. Did you
23 find him?

24 A. No, sir.

25 Q. Y'all looked for Benton on Friday. Did you find

1 him?

2 A. No, sir.

3 Q. Did y'all look for him on Saturday, and did you find
4 him?

5 A. We didn't.

6 Q. Did you find him?

7 A. No, sir, we did not find him.

8 Q. Did some police officers come to the home late
9 Saturday night or early Sunday morning?

10 A. Yes, sir, they did.

11 Q. Was Benton's body located?

12 A. Yes, sir.

13 Q. Now, early on Sunday morning, would be December the
14 2nd, did some family members have to go to the morgue at the
15 Lexington Hospital to identify Benton's body?

16 A. Yes, sir.

17 Q. Were you one of them?

18 A. Yes, sir, I was.

19 Q. Was Mr. Smith with you, Mr. Paul Smith, did he go to
20 the hospital with you?

21 A. It was myself, my father-in-law and his
22 brother-in-law.

23 Q. His brother-in-law?

24 A. Yes.

25 Q. Melvin, did you have to go in and look at Benton's

1 body?

2 A. Yes, sir.

3 Q. Did you have to identify him?

4 A. Yes, sir.

5 Q. After seeing Benton, would you let your
6 father-in-law come in and look at him, too?

7 A. No, sir.

8 Q. Why?

9 A. He wouldn't have been able to stand it. He was
10 messed up pretty bad.

11 Q. How did Mr. Smith have to identify his son?

12 A. On the videotape.

13 Q. How did the videotape work?

14 A. They had a TV out in the area. And they came in and
15 put the tape in, and he saw him right there.

16 Q. But he could see his body on the videotape?

17 A. Yes, sir.

18 Q. But y'all wouldn't let him go in and see the body?

19 A. No.

20 Q. Is this right; family members, including you,
21 identify Smith's body at the morgue?

22 A. Yes, sir.

23 MR. MYERS: Your Honor, we move to put this on
24 December the 2nd, Sunday, on the calender exhibit.

25 THE COURT: Any objection?

1 MR. FLOYD: No objection, Your Honor.

2 MR. MYERS: Thank you, Melvin. Answer any questions
3 they have.

4 THE COURT: Cross?

5 MR. FLOYD: Thank you, Your Honor.

6 MR. MYERS: Your Honor, before he starts, I do have
7 one more question. I'm sorry.

8 THE COURT: All right.

9 MR. MYERS: Just one question.

10 THE COURT: That's all right.

11 Q. How tall are you?

12 A. Five-seven.

13 Q. Benton about the same size as you?

14 A. He's a little taller.

15 Q. By how much?

16 A. About five-seven and a half.

17 MR. MYERS: Thank you.

18 CROSS-EXAMINATION

19 BY MR. FLOYD:

20 Q. Mr. Harrison, what time did y'all go to the
21 unemployment office that morning?

22 A. Well, we tried to get there as early as possible, it
23 was around about nine, because, you know, a lot of people go
24 there.

25 Q. And then what time did you leave the unemployment

1 office?

2 A. It took us about maybe an hour, hour and a half.

3 Q. When you left the unemployment office, where did you
4 go then?

5 A. We came back home.

6 Q. Then what -- did y'all separate then or what did
7 y'all do then?

8 A. Yes, sir.

9 Q. Did you see Benton any more that Monday?

10 A. Later that afternoon.

11 Q. About what time?

12 A. Might have been about three or four, because we
13 normally exercise together sometime.

14 Q. Pardon?

15 A. About three or four, because we would work out
16 together sometime.

17 Q. Then did he leave again or do you know?

18 A. I don't really know.

19 Q. And did he go somewhere in his car between the time
20 you saw him at about ten or so until about three or four?

21 A. On that afternoon, on that Monday afternoon?

22 Q. From that Monday morning when y'all separated until
23 you next saw him again later that afternoon, did he go
24 somewhere in his car?

25 A. I'm not sure. I don't remember that.

1 Q. You don't remember. He could have?

2 A. Yes, sir, he could have.

3 Q. And then when you saw him about three or four, how
4 long were y'all together at that time?

5 A. About two hours for the workout that we usually do.

6 Q. Is that at the house?

7 A. Yes, sir, right in the yard.

8 Q. And then did he leave you then?

9 A. Well, I went about my business, so I don't know
10 exactly what he did.

11 Q. But he could have left?

12 A. Yes, he could have.

13 Q. Now, you talked about this shaving kit. Where was
14 it in the car?

15 A. He would keep it up front with him.

16 Q. And where did he have it that day in the car?

17 A. Well, he would, like, take it in and out with him.
18 Whenever he would get in the car he would take it and put it
19 in the car with him, whenever he get out.

20 Q. And when he left the car, he would take it out?

21 A. Yes.

22 Q. So on that morning of November the 26th.

23 A. Yes.

24 Q. He had his shaving kit in the car with him when you
25 were in the car?

1 A. Yeah, but we were in my car.

2 Q. Oh, you were in your car?

3 A. Yeah, he was in my car.

4 Q. So he had the shaving kit with you in your car?

5 A. Yes, sir.

6 Q. And he was holding the shaving kit and showed you
7 his money?

8 A. No, sir, he didn't just open it and showed it to me.

9 Q. Well, how do you know what was in it then?

10 A. Because we was talking about buying a car. And I
11 asked him, well, you don't have no money to buy a car. He
12 said, Yes, I do, and he showed it to me.

13 Q. He showed you the money in the shaving kit?

14 A. Yes, sir.

15 Q. But y'all were in your car that morning?

16 A. Yes, sir.

17 Q. And then, I assume, when you came back home he took
18 the shaving kit out of your car and went in the house with it?

19 A. Yes, sir.

20 Q. And you don't know what happened to the shaving kit
21 after that, do you?

22 A. No, sir.

23 Q. You don't know whether he went in his house, took
24 the money out of the shaving kit and put it up, do you?

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

1 Q. You don't know whether when y'all separated on that
2 Monday if he didn't go somewhere in his car and do something
3 with the money?

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

5 Q. Now, did he tell you where he got that bundle of
6 money?

7 A. No, sir, I didn't ask him.

8 Q. Well, he wasn't working at the time, was he?

9 A. He had just been unemployed. He used to work at the
10 Lexington Hospital. I think that's the one.

11 Q. But he had been unemployed for several weeks, hadn't
12 he?

13 A. Yes, sir, but he had no responsibilities somewhat.
14 You know, he always saved his money. He wasn't the type that
15 went through his money.

16 Q. Now, where does your mail come? At that time, where
17 did you receive your mail?

18 A. 932-A Cassidy Road.

19 Q. You have a different mailbox than Benton's family?

20 A. Right. Right in the same little -- right by each
21 other. It was 932 and 932-A, within the same box there.

22 Q. Pardon?

23 A. Within the same little box, right next door. You
24 know, right by each other.

25 Q. Were they separate mailboxes or the same mailbox?

1 A. It's made up into the same mailbox somewhat. You
2 would have to see it.

3 Q. Did it each have a different opening?

4 A. Yeah, but it was within the same container.

5 Q. Same container, different openings?

6 A. Yes, sir. Yes, sir.

7 Q. So your mail, for example, would be in one portion
8 of the box with its own door?

9 A. Yes, sir. Yes, sir.

10 Q. And then Benton and his family's mail would come in
11 a separate portion of the box with its own opening or door.
12 So when you went to get your check, did you get your check?

13 A. No, I didn't -- I never got the mail myself. I
14 don't go out -- I never went out to the mailbox to get the
15 mail. It will always be either my wife or my mother-in-law
16 get the mail and give us our mail.

17 Q. Okay. So who got you your unemployment check that
18 day?

19 A. I got it from Benton, because I guess they gave him
20 both of them and he gave me mine and he had his.

21 Q. So Benton gave you your check?

22 A. Yes, sir.

23 Q. And when did he give you your check?

24 A. I don't exactly remember what time of morning it
25 was.

1 Q. Did he come out of his house over to your house and
2 hand you your check?

3 A. Yes, sir, he came to the door.

4 Q. So he still had his unemployment check in his hand?

5 A. To my recollection.

6 Q. So you're saying somebody took both unemployment
7 checks, took them in, gave them to Benton, then he walks
8 across over to your house with both his check and your check,
9 gives you your check and shows you his?

10 A. Well, I asked him did his check come too, and he
11 showed me his check.

12 Q. Well, you didn't say that awhile ago?

13 A. Yeah.

14 Q. You didn't say that a while ago, did you?

15 A. No, sir.

16 Q. Mr. Harrison, when you went down to Stillinger's
17 that particular day --

18 A. Yes, sir.

19 Q. -- were you there when -- did you see Louise Bennett
20 come up?

21 A. No, sir.

22 Q. You didn't see Louise come up?

23 A. No, sir.

24 MR. FLOYD: Nothing further, Your Honor.

25 REDIRECT EXAMINATION

1 BY MR. MYERS:

2 Q. Melvin, you told Mr. Floyd that Benton said he was
3 going to buy a car with that wad of money?

4 A. Yes, sir.

5 Q. Did he bring a new car home on Monday?

6 A. No, sir.

7 Q. Did he bring a new car home on Tuesday morning
8 before he became missing?

9 A. No, sir.

10 MR. MYERS: Thank you. No more questions.

11 THE COURT: Anything else, Mr. Floyd?

12 RE CROSS-EXAMINATION

13 BY MR. FLOYD:

14 Q. Well, you never saw that money or that shaving kit
15 after Monday morning, did you?

16 A. Excuse me?

17 Q. You never saw the money or the shaving kit after
18 Monday morning, did you?

19 A. No, sir.

20 Q. And the shaving kit was removed from your vehicle
21 Monday morning and taken inside Benton's house by himself,
22 wasn't it?

23 A. Yes, after we got back from the unemployment office.

24 MR. FLOYD: No further questions.

25 THE COURT: You can step down. Thank you, sir. And

1 you're free to go, if you'd like to.

2 MR. RIDDLE: Susan Hair.

3 SUSAN HAIR, after having been duly sworn,
4 testified as follows:

5 DIRECT EXAMINATION

6 BY MR. RIDDLE:

7 Q. Ms. Hair, where are you employed?

8 A. The South Carolina Employment Security Commission.

9 Q. And where is that office located?

10 A. 1550 Gadsden Street in Columbia?

11 Q. In Columbia?

12 A. Right.

13 Q. That's kind of down in the Vista area of Columbia?

14 A. Yes, sir.

15 Q. How long have you been working with the Employment
16 Security Commission?

17 A. 24 years.

18 Q. So you were working there back in 1990?

19 A. Yes, I was.

20 Q. Have your job duties changed between 1990 and today?

21 A. Yes, in 1997, I took another job.

22 Q. Back in 1990, what was your job then?

23 A. I was an accountant, and I was in charge of the
24 reconciliation unit, the supervisor.

25 Q. Tell us all what that means.

1 A. We were responsible for all of the unemployment
2 checks. Once they were issued, they came back to us, we
3 reconciled those checks and we also were responsible for
4 maintaining those documents.

5 Q. Now, a check gets issued, then it gets mailed out;
6 is that correct?

7 A. Yes.

8 Q. And then it gets cashed?

9 A. Yes.

10 Q. And then after the banks have handled it, is that
11 when it comes back to you?

12 A. Yes. Our servicing bank, at that time, it was
13 NationsBank, would return all of the checks, the actual
14 original documents back to our agency, and it would come
15 directly to my unit. When we got those checks back, we would
16 immediately microfilm the checks. We would maintain the
17 original documents for three years. And then after that
18 period, we would refer to everything on microfilm. We would
19 also store those original documents and just maintain the
20 microfilm in our office.

21 Q. Now, let me refer you to this calender, if I could.
22 Those checks, do they go out weekly, monthly, bi-weekly, how
23 do they work?

24 A. Daily.

25 Q. They go out daily?

1 A. Yes.

2 Q. But, I mean, if I was to be drawing unemployment,
3 would you be sending me a check every day?

4 A. No, I'm sorry, those are on a weekly basis.

5 Q. Weekly?

6 A. Paid weekly.

7 Q. So if you were drawing unemployment, then you would
8 basically get a check once a week?

9 A. Exactly.

10 Q. All right. Now, this week here, November the 26th,
11 the week of November 26th, what was just before that week?
12 What was the week of November, I guess the 19th through the
13 23rd?

14 A. During that week, we had a holiday.

15 Q. That was Thanksgiving?

16 A. Yes, Thanksgiving holiday.

17 Q. And Thanksgiving is on Thursday; is that correct?

18 A. Yes, it is. We also had a holiday on the Friday,
19 immediately following Monday.

20 Q. So the 22nd of November and the 23rd of November of
21 1990 would have been holidays?

22 A. Yes.

23 Q. Now, unemployment checks, when y'all print those
24 checks, is there a particular day of the week that you print
25 them on?

1 A. Well, they are printed on different days. We do
2 have certain days that we print certain checks.

3 Q. Let me refer you specifically then to Mr. Benton
4 Smith. Do you know what day of the week his check was printed
5 on?

6 A. Yes, it was printed -- actually issued on the 21st,
7 had an issue date of the 21st.

8 Q. And that would have been Wednesday of the previous
9 week?

10 A. Yes, it would have been. They're printed at night,
11 usually around midnight, and held until the following working
12 day and then held out.

13 Q. Now, Wednesday the 21st was the day before the
14 Thursday and Friday Thanksgiving holidays; is that correct?

15 A. Yes, it is.

16 Q. So when would Mr. Smith's check for Wednesday, the
17 21st, have been mailed?

18 A. It would have been mailed on Monday the 26th.

19 Q. Monday the 26th?

20 A. Yes.

21 Q. Now, you indicated that when those checks come back
22 to you they're microfilmed?

23 A. Yes, they are.

24 Q. And did our office ask you to retrieve a check and
25 make a copy of the check from that microfilm?

1 A. Yes, you did.

2 Q. And these are documents that y'all keep in the
3 ordinary course of your business; is that correct?

4 A. That's exactly right.

5 Q. Let me show you this and ask you if you recognize
6 what that is.

7 A. Yes, it is. It's a copy of an unemployment check,
8 and it is certified and notarized to be an actual copy of the
9 original check.

10 Q. And is that your signature on that document?

11 A. Yes, it is.

12 Q. All right. And on the back side of that document,
13 would that be the back of the check?

14 A. Yes, it is.

15 MR. RIDDLE: Your Honor, I'd offer this into
16 evidence.

17 THE COURT: Any objection?

18 MR. FLOYD: No objection, Your Honor.

19 THE COURT: All right. Without objection.

20 (WHEREUPON, State's Exhibit No. 24, a Document,
21 was marked and admitted into evidence.)

22 BY MR. RIDDLE:

23 Q. Step down, please, ma'am, if you would.

24 A. (The witness complied.)

25 Q. Now, this up here, who is Mr. Larson?

1 A. He is the division director of the unemployment
2 insurance.

3 Q. So he certified that this was a true and correct
4 copy, right?

5 A. Yes, he did.

6 Q. And this is you that signed as the notary?

7 A. Exactly.

8 Q. Now, this check here, is this the check that was
9 issued to Benton Smith on the 21st of November of 1990?

10 A. Yes, it is.

11 Q. And that date appears in the upper left-hand corner
12 of the check?

13 A. Yes, it does.

14 Q. And that check would have been mailed out on the
15 26th; is that correct?

16 A. Yes, it is.

17 Q. And how much was that check payable for?

18 A. 147 dollars.

19 Q. And looking at the back of this check -- and this is
20 the back that y'all have on record; is that right?

21 A. Yes, it is.

22 Q. Can you read on the back of this check when that
23 check was cashed?

24 A. November 27th, 1999 -- 1990.

25 Q. 1990?

1 A. Yes.

2 Q. And can you read on this stamp here where that was
3 cashed?

4 A. Yes, Republic National Bank.

5 MR. RIDDLE: Thank you, Ms. Hair. Please answer any
6 of their questions.

7 THE COURT: Cross?

8 MR. YOUNG: No questions, Your Honor.

9 THE COURT: Thank you. You can step down.

10 MR. RIDDLE: May she be excused, Your Honor?

11 THE COURT: Certainly. You're free to go.

12 MR. RIDDLE: Tracy Farrington.

13 TRACY FARRINGTON, after having been duly sworn
14 testified as follows:

15 THE CLERK: Have a seat and state your full name for
16 the record.

17 THE WITNESS: Tracy Farrington.

18 DIRECT EXAMINATION

19 BY MR. RIDDLE:

20 Q. Ms. Farrington, where are you employed?

21 A. C. F. Technology Center at Carolina First.

22 Q. Carolina First?

23 A. Uh-huh.

24 Q. What do you do with them?

25 A. We process internet banking and deal with the

1 branch's problems.

2 Q. And Carolina First Bank, did they buy out some other
3 banks around here awhile back?

4 A. Yeah, we were formally known as Republic National.

5 Q. Republic National Bank?

6 A. Uh-huh.

7 Q. And that's what the bank was in 1990; is that
8 correct?

9 A. That's correct.

10 Q. Do you know about when Carolina First bought that
11 bank out?

12 A. No, it's been so long ago.

13 Q. You used to work for Republic National Bank?

14 A. That's correct.

15 Q. Were you doing kind of the same job back in 1990 as
16 you're doing now?

17 A. No. No. I was at a branch and I actually was a
18 custodian of records.

19 Q. And is there a process that banks go through called
20 proofing and encoding?

21 A. Uh-huh. Each check that is printed is printed for a
22 dollar amount and it's not always going to be that same dollar
23 amount, so it actually has to run through proof to be encoded
24 so it will know how to read that dollar amount.

25 Q. And when you encode it, is that where you put the

1 characters on the bottom of the check?

2 A. That's correct.

3 Q. And that puts the dollar amount on the particular
4 check?

5 A. That's correct.

6 Q. What else do y'all do when you proof and encode a
7 check?

8 A. Well, they actually have to be run through so they
9 can meet the Fed house and then go back to, like, the
10 Employment Commission so that they can reconcile their
11 records.

12 Q. And did we ask you to pull some records from
13 Republic National Bank?

14 A. Yes, you did.

15 Q. Now, this is kind of an old copy. Let me ask you if
16 you recognize this document.

17 A. Oh, yes. Yes, I do.

18 Q. And is that some document taken from the microfilm
19 at Republic National Bank?

20 A. That's correct.

21 Q. Now, y'all don't actually keep these checks, do you?

22 A. No, they're put on film. You just can't store them
23 like that.

24 Q. Right. But, I mean, a check written by the
25 Employment Security Commission and cashed at your bank, you

1 wouldn't keep anyway?

2 A. No, we have to give it back to them.

3 Q. So that your bank can be paid for the money that
4 you've cashed out?

5 A. Exactly, uh-huh.

6 Q. Step down here, if you would, please.

7 MR. RIDDLE: And, Your Honor, at this time, I would
8 offer this into evidence, I believe without objection.

9 MR. YOUNG: No objection.

10 (WHEREUPON, State's Exhibit No. 25, a Document,
11 was admitted into evidence.)

12 BY MR. RIDDLE:

13 Q. Now, I'm going to refer to State's Exhibit Number
14 15, which is a copy. Have I asked you to compare what appears
15 on State's Exhibit Number -- excuse me, State's Exhibit Number
16 24 with what's on State's Exhibit Number 25?

17 A. Uh-huh.

18 Q. And are those the same two checks?

19 A. Yes.

20 Q. And it has the same check number in the upper
21 right-hand corner?

22 A. That's correct.

23 Q. And the same dollar amount?

24 A. Uh-huh.

25 Q. Everything, same paid Benton Smith?

1 A. Yeah.

2 Q. Hold onto this one for me, if you would. The check
3 number that we're referring to is this number here up in the
4 upper right-hand corner?

5 A. Uh-huh.

6 Q. And that's the same as on your exhibit there?

7 A. Exactly.

8 Q. State's 25?

9 A. Uh-huh.

10 Q. And the payee, Benton Smith, that's the same; is
11 that correct?

12 A. That's correct.

13 Q. Now, when you say you encode it, you're the one that
14 put the 147 down at the bottom of the check?

15 A. Right.

16 Q. And that's so the machines can clear the check?

17 A. Yes, so it can read it for that dollar amount, and
18 plus place it with the Fed numbers.

19 Q. Which are all these numbers along the bottom side?

20 A. Yes, ABA and account number.

21 Q. Now, on your document, your document has some
22 numbers on that as well that are on the microfilm; is that
23 correct?

24 A. Uh-huh.

25 Q. Can you tell us what the 331 is?

1 A. That's our Julian date, that's our actual true date
2 that we keep processing because the audit machine that the
3 tellers use are manual machines that they key in, so this is
4 just a proof of the date that it actually came in.

5 Q. Okay. Now, a Julian date, explain to the jury
6 exactly how that -- that's a calendar system; is that right?

7 A. Yeah, it's -- to keep from changing, it's an
8 automatic system that flips over day-by-day. And what
9 happens, January has 31 days in it, so instead of being
10 February the 1st it goes to 32 days, then that would be
11 February the 1st, and then 33. It's just consecutive up to
12 365 days, except for, like, this year it would be 366 because
13 of Leap Year.

14 Q. So what it does in then, a Julian date just
15 consecutively number the days 1 through 365?

16 A. Yes.

17 Q. And did we ask you to check and see what day 331 was
18 in 1990?

19 A. Yes, it was November the 27th of 1990.

20 Q. And that would be that Tuesday on the calender
21 there?

22 A. That's correct.

23 Q. So this check, which appears in State's Exhibit
24 Number 24 and 25, was cashed at Republic National Bank?

25 A. That's correct.

1 Q. And do you know which branch it was cashed at?

2 A. Yes, at the Swansea office.

3 Q. And let me show you State's Exhibit Number 11. And
4 step down one more time. I'm sorry.

5 A. (The witness complied.)

6 Q. Do you see the bank that's located -- the Swansea
7 branch?

8 A. Yes, Carolina First.

9 Q. Right here --

10 A. Well, it was Republic National then.

11 Q. It's Carolina First today?

12 A. Right.

13 Q. And that's located right in downtown Swansea?

14 A. Well, yeah, about a block off of Main Street.

15 Q. This check was cashed on November the 27th of 1990?

16 A. That's correct.

17 MR. RIDDLE: Thank you. Please answer any of the
18 defense's questions.

19 THE COURT: Cross?

20 CROSS-EXAMINATION

21 BY MR. YOUNG:

22 Q. Ms. Hair [sic], you were familiar with Mr. Smith?

23 A. No, I was not.

24 Q. Did you --

25 A. I mean, I knew him as a customer coming in there and

1 cashing, but not personally.

2 Q. Right. Right. You knew him as a customer --

3 A. Yes, I did.

4 Q. -- of Republic National Bank, correct?

5 A. That's correct.

6 Q. Is there anything on this document up here that

7 indicates what time this check was cashed?

8 A. Yes, it does.

9 Q. Could you tell the jury what time?

10 A. I don't know if you can read it on this one because
11 this is such -- no, I'm going to need the other copy. Oh,
12 here it is. Right down here at the bottom. When they come in
13 to cash a check, the teller actually has to validate this
14 check because she has to run an offset ticket to make it
15 balance, so it puts the validation on here. So it tells you
16 that Teller One did it at Republic National, Swansea office,
17 that's what the RNSW is.

18 Q. What time was this check cashed?

19 A. At 11:56.

20 Q. A.m.?

21 A. A.m.

22 Q. Okay. With Mr. Smith being a regular customer at
23 the bank, was there anything unusual about him going into this
24 branch to cash this check?

25 A. Oh, no, he came in there all the time.

1 MR. YOUNG: Thank you. I have no further questions.

2 THE COURT: Any redirect?

3 MR. MYERS: Pamela Herlong.

4 THE COURT: You can step down. And you're free to
5 go, if you'd like to, Ms. Farrington.

6 PAMELA HERLONG, after having being duly sworn,
7 testified as follows:

8 THE CLERK: Have a seat and state your full name for
9 the record.

10 THE WITNESS: Pamela Herlong.

11 DIRECT EXAMINATION

12 BY MR. MYERS:

13 Q. Ms. Herlong, back in November of 1990, where were
14 you employed?

15 A. Republic National Bank.

16 Q. You still employed with the bank now?

17 A. Yes, I am.

18 Q. And what's the bank now?

19 A. Carolina First.

20 Q. Now, what branch were you working at in 1990?

21 A. The Swansea branch.

22 Q. And is that the branch that's located on this map,
23 Number 11, right here off 321 and Highway 6?

24 A. Yes, sir.

25 Q. What branch are you employed at now?

1 A. Swansea office.

2 Q. Now, back on November the 27th of 1990, that lady
3 just testified that Teller Number 1 cashed this check. Who
4 was Teller Number 1?

5 A. I was at the time.

6 Q. And referring to State's Number 15 -- could you come
7 down here, please.

8 A. (The witness complied).

9 Q. Is there anywhere on this check that you can show
10 where you were Teller Number 1?

11 A. Yes, sir. It's the first three numbers and then 001
12 for Teller Number 1.

13 Q. Come down here and show the other members of the
14 jury.

15 A. 001 is the teller number.

16 Q. And then right after that 001, which is your number,
17 there's some letters RNSW, what does that mean?

18 A. That would be Republic National, SW, Swansea.

19 Q. And then the next number says 1156. What does that
20 mean?

21 A. That is the time.

22 Q. 11:56 a.m.?

23 A. A.m.

24 Q. And then right next to that is 112890, what's that?

25 A. That is the date.

1 Q. Is that the correct date?

2 A. No, sir, it was not.

3 Q. What was the correct date?

4 A. 11-27.

5 Q. Why does it say 11-28 on there?

6 A. We are responsible for putting in our own dates, and
7 at that time the wrong date was entered.

8 Q. So the wrong date was entered in this information as
9 to 11-28, but the correct date, which would be the Julian
10 date, was 331?

11 A. That is correct.

12 Q. Which is November the 27th on that Tuesday?

13 A. Yes, sir.

14 Q. I'm going to ask you to hold this a little bit.

15 That check made payable to Benton Smith; is this correct?

16 A. That is correct.

17 Q. That check was cashed at 11:56 a.m.?

18 A. Yes, sir.

19 Q. And that would have been Tuesday, November the 27th?

20 A. Yes, sir.

21 MR. MYERS: Your Honor, we move to put this on the
22 calender exhibit, check cashed 11:56 a.m.

23 THE COURT: Any objection?

24 MR. YOUNG: No objection.

25 THE COURT: All right.

1 BY MR. MYERS:

2 Q. Now, did you know Mr. Benton Smith?

3 A. I knew his face and his name.

4 Q. How did you know him?

5 A. We went to school together. He was a couple grades
6 ahead of me, but I remember him from school.

7 Q. Did he do business at the bank?

8 A. He did.

9 Q. Now, back in 1990, some officers came to the bank to
10 ask about the check and talked with you and things of that
11 nature?

12 A. Uh-huh.

13 Q. And do you recall whether Benton came into the bank
14 or whether he came through the drive-through?

15 A. He came through the drive-through.

16 Q. And you were working the drive-through?

17 A. Yes.

18 Q. Was it Benton Smith that presented that check to
19 you?

20 A. Yes, it was.

21 Q. To be cashed?

22 A. Yes, it was.

23 Q. How do you know that?

24 A. I knew him. I knew his face. I knew that was him
25 that I was cashing the check for.

1 Q. So you knew him, you knew his face, you went to
2 school with him, he was a customer?

3 A. Right.

4 Q. His name was on the check?

5 A. Right.

6 Q. With his name on the check and you knowing him, had
7 it not been him, would you have cashed it?

8 A. No, we would not have.

9 Q. He was in the driver's side, which is right next to
10 the window?

11 A. Right.

12 Q. And do you recall whether somebody was in the
13 passenger side?

14 A. Whether they were on the passenger side or not, I
15 don't know. There was someone with him, but I do not know who
16 it was.

17 Q. Somebody else was in the car, but you don't know who
18 it was?

19 A. Right.

20 MR. MYERS: Thank you. Answer any questions.

21 THE COURT: Cross?

22 CROSS-EXAMINATION

23 BY MR. YOUNG:

24 Q. Ms. Herlong, you stated that you knew Mr. Smith by
25 face, correct?

1 A. Correct.

2 Q. He was in school a few years ahead of you?

3 A. Right.

4 Q. And you knew that when he came to the bank on this
5 day that he was the one who cashed that check?

6 A. That's right.

7 Q. Had it not been him, you would not have cashed it?

8 A. That's right.

9 Q. You stated that you saw someone else in the
10 automobile with him, correct?

11 A. Right.

12 Q. And you don't remember whether that person was in
13 the passenger seat or where else they were in the car?

14 A. That's right, I don't remember that.

15 Q. You also know Johnny Bennett, correct?

16 A. That's right.

17 Q. You all went to school together?

18 A. Yes, sir.

19 Q. Did you see Johnny Bennett in that car that day?

20 A. No, sir, I could not say that for sure.

21 MR. YOUNG: Thank you. That's all questions I have
22 -- one second, Your Honor.

23 Q. In fact, Ms. Herlong, did you not tell law
24 enforcement that the person you saw in the automobile was a
25 Tom Terry Hall?

1 A. I told them I thought it might have been Tom Terry
2 Hall. Again, I was not sure who was with him.

3 MR. YOUNG: Thank you.

4 REDIRECT EXAMINATION

5 BY MR. MYERS:

6 Q. And you can't tell whether the other person in that
7 car was Tom Terry Hall, Tom Mix or Johnny Bennett or anybody
8 else because you just can't tell who that person was?

9 A. That's correct, I can't tell.

10 Q. And you've said that previously to them, haven't
11 you?

12 A. Yes, sir.

13 MR. MYERS: Thank you.

14 RECROSS-EXAMINATION

15 BY MR. YOUNG:

16 Q. You know Mr. Bennett by face?

17 A. I do.

18 Q. But you cannot identify him as being the person in
19 that automobile?

20 A. That's right.

21 MR. YOUNG: Thank you.

22 No further questions, Your Honor.

23 FURTHER REDIRECT EXAMINATION

24 BY MR. MYERS:

25 Q. It could have been, you just can't tell, you don't

1 remember?

2 A. At the drive-through it's difficult to see,
3 especially passengers or anyone in the back or wherever they
4 may be in the car, other than the driver.

5 MR. MYERS: Thank you.

6 THE COURT: Anything else, Mr. Young?

7 MR. YOUNG: No further questions, Your Honor.

8 THE COURT: You can step down. You're free to go,
9 if you'd like.

10 MR. MYERS: You want to give us some guidance of
11 where we're going now?

12 THE COURT: I had understood from the sequestration
13 team that lunch was going to be here shortly after 12:00. As
14 you know, it's now about 12:45, and apparently it's not here
15 yet. What I was trying to do was just go ahead and keep on
16 going until the lunch gets here. Is that okay, do you have
17 people to do that with?

18 MR. MYERS: Yes, sir.

19 THE COURT: Jurors, is that okay, just push on until
20 lunch? I assume at any point they're going to tell me it's
21 here.

22 Okay. Continue on.

23 MR. MYERS: You want us to go ahead or wait?

24 THE COURT: Go ahead and call your next witness.

25 MR. MYERS: Pamela Gonsalves.

1 PAMELA GONSALVES, after having been duly sworn,
2 testified as follows:

3 THE CLERK: Have a seat up there, please, ma'am,
4 then please state your name on the record.

5 DIRECT EXAMINATION

6 BY MR. MYERS:

7 Q. Would you state your name for the jury, please,
8 ma'am.

9 A. My name is Pamela Deonie Gonsalves.

10 Q. Now, Ms. Gonsalves, where do you live?

11 A. At the present time I live 1653 Southland Drive,
12 Orangeburg, South Carolina.

13 Q. And how long have you lived in Orangeburg?

14 A. It's been about five, six years now.

15 Q. And then prior to that, back in 1990, at that time,
16 you were down in Orangeburg?

17 A. Yes, sir.

18 Q. And back in 1990, did you have any sisters that
19 lived in Orangeburg?

20 A. Yes, I did.

21 Q. And what were your sisters' names?

22 A. My older sister, Cassandra Hawkins; and my youngest
23 sister, Bonita Gonsalves.

24 Q. Now, I want to talk with you a little bit back
25 around 1990, right after Thanksgiving. A week or so after

1 that, some officers came down and talked with you, didn't
2 they?

3 A. Pardon me?

4 Q. Some police officers came down and talked with you
5 about certain things around Swansea; is that right?

6 A. Yes.

7 Q. As a matter of fact, this gentleman right here,
8 Detective Hamer, was one of them; is that right?

9 A. Yes.

10 Q. About Johnny Bennett?

11 A. Yes.

12 Q. Did you know Johnny Bennett?

13 A. Yes.

14 Q. And how did you know Johnny Bennett?

15 A. Through my sister, Bonita.

16 Q. What was the relationship with Bonita and Johnny
17 Bennett?

18 A. A relationship, boyfriend and girlfriend.

19 Q. Did Johnny Bennett come to Orangeburg and come to
20 your house?

21 A. Occasionally, yes?

22 Q. Would he come over to Bonita's house when you were
23 there?

24 A. Yes, he did.

25 Q. Normally, when Johnny Bennett would come down to

1 Orangeburg, how would he come down, what type of vehicle?

2 A. In a Trans Am with Walter Dibble.

3 Q. With who?

4 A. Walter Dibble.

5 Q. Normally, did Johnny Bennett come down in his own
6 vehicle by himself?

7 A. Tuesday, he did.

8 Q. Before Tuesday?

9 A. Before, no. No, sir. No.

10 Q. Now, you say about that Tuesday, you saw Johnny
11 Bennett in Orangeburg on Tuesday, and what kind of car was he
12 in?

13 A. A blue car, a little blue car.

14 Q. I hand you what's been marked State's Exhibit 14,
15 and ask you, does that look like the little blue car?

16 A. Yes, it does.

17 Q. Was anybody -- where did you see him in Orangeburg?

18 A. He came to my house.

19 Q. Your house?

20 A. Yes.

21 Q. Was anybody in that car with him?

22 A. No, sir.

23 Q. He was by himself?

24 A. By himself.

25 Q. Was it daylight or dark when he came there?

1 A. Daylight.

2 Q. Was it morning or afternoon?

3 A. Afternoon.

4 Q. Now, when he came down on that Tuesday, did you have
5 an occasion to look in that car?

6 A. Yes, I did.

7 Q. What's the first thing you remember about seeing
8 something on the inside of that car?

9 A. The no smoking sign.

10 Q. Tell the jury about the no smoking sign.

11 A. It was on the passenger side on the dashboard. The
12 reason why I recognized it because I smoke cigarettes and
13 that's the first thing I recognized.

14 Q. What else did you notice in the car?

15 A. Two pillows with ducks on it in the back seat, the
16 interior in the car --

17 Q. Let me stop you right there. I'm showing you 15 and
18 16, these two pillows.

19 A. Yes.

20 Q. These were the two pillows in the car?

21 A. Yes, they are.

22 Q. What else did you notice in the car?

23 A. The floor mats.

24 Q. What about the floor mats?

25 A. They had Benton on it.

1 Q. Like this?

2 A. Yes. Those are the those, yeah.

3 Q. Did you notice any type of equipment that was used
4 with the radio, any kind of audio, video, amplified speakers
5 or anything like that?

6 A. Speakers?

7 Q. Yeah.

8 A. Yes.

9 Q. And where were the speakers, do you recall?

10 A. I don't recall.

11 Q. One or two?

12 A. I don't recall.

13 Q. But there was some speakers that were not normally
14 in the car, but extra speakers in the car?

15 A. No, I don't remember that.

16 Q. Now, when he came on that Tuesday, he came to your
17 house?

18 A. Yes.

19 Q. And what, if anything, was unusual about his face or
20 his eyes?

21 A. He had a bandage over his right eye, the eyebrow.
22 Right up like in here (indicated).

23 Q. And what, if anything, was unusual about his hands?

24 A. He had a bandage wrapped around his hand, his left
25 hand.

1 Q. Did you ask him about his eye and his hand?

2 A. Yes, I did.

3 Q. And what did he say?

4 A. He was having a fight with his brother, Gucci.

5 Q. And did you ask him about that car with these things
6 in it?

7 A. Yes, I did.

8 Q. And what did he say about the car?

9 A. He didn't say anything about it. He didn't respond.

10 Q. Now, on that Tuesday, did you stay at your house
11 with Johnny Bennett or did he go somewhere else with you on
12 that Tuesday?

13 A. Yes, we did.

14 Q. Where did you go?

15 A. Over to Bonita's house, my younger sister.

16 Q. And how did you get from your house over to Bonita's
17 house?

18 A. The car, in the blue car.

19 Q. In that little blue car?

20 A. Yes, sir.

21 Q. Staying over at Bonita's house -- did you have any
22 children at that time?

23 A. Yes, I did.

24 Q. Boy or girl?

25 A. Girl.

1 Q. Was Johnny Bennett, was he doing something with your
2 daughter that day or take her anywhere?

3 A. Yes, he took my daughter to get a hot dog, took her
4 out to the store to get her a hot dog and brought her back.

5 Q. Now, did you stay over there with Johnny Bennett at
6 Bonita's house or did you leave or what happened?

7 A. I stayed for awhile.

8 Q. And then what happened?

9 A. And he told me that he's going to make a telephone
10 call and he never came back, and I got tired of waiting and I
11 went home.

12 Q. Now, what time was it he came down to Orangeburg,
13 your house? You said afternoon, 5:00, 5:30?

14 A. About 5:00, 5:30, yes.

15 Q. Is this correct; on that Tuesday, Johnny Bennett is
16 in Orangeburg in this little blue car about 5:00 to 5:30 with
17 the two pillows, speakers, floor mats and no smoking sign?

18 A. Yes, as far as I recognize them to be, yes.

19 MR. MYERS: We move to put this on the calender
20 exhibit, Tuesday, November the 27th, Your Honor.

21 THE COURT: Any objection?

22 MR. FLOYD: No, Your Honor.

23 BY MR. MYERS:

24 Q. And is this correct; Bennett's eye and hands were
25 bandaged.

1 A. Yes.

2 MR. MYERS: Move to put this on, Your Honor, for
3 Tuesday.

4 THE COURT: Any objection?

5 MR. FLOYD: No objection, Your Honor.

6 BY MR. MYERS:

7 Q. Now, you said that you left Bonita's and you went
8 back home?

9 A. Yes.

10 Q. Did Johnny Bennett take you back home or you walk
11 home or how did you get back home?

12 A. He did not take me home. As far as I can remember,
13 I probably caught a ride home, but I know he didn't take me
14 home.

15 Q. But he didn't take you home?

16 A. No, sir.

17 Q. Now, what about Wednesday, the next day, you see
18 Johnny Bennett back in Orangeburg?

19 A. Yes, I did.

20 Q. What was he driving?

21 A. The same blue car.

22 Q. The same little blue car. And that day, where did
23 you first see him, was it at your house or Bonita's house?

24 A. My house.

25 Q. Did he help you fix up or do anything at your house?

1 A. Yes, he helped me paint my front room.

2 Q. Helped you do what?

3 A. Paint my front room walls, paint the front walls.

4 Q. And in painting the front room, did he take off his
5 shirt?

6 A. Yes, he did.

7 Q. What did you notice about his chest?

8 A. Scratches going across his chest.

9 Q. Did you ask him how he got those scratches?

10 A. Yes, I did.

11 Q. What did he say?

12 A. Fighting with his brother, Gucci.

13 Q. Fighting with his brother, Gucci?

14 A. Yes, sir.

15 Q. Now, did there come a time that day that you and
16 Johnny Bennett and Bonita got together again?

17 A. Yes.

18 Q. And was that at your house or at Bonita's house?

19 A. My house.

20 Q. So Bonita was coming over to your house; is that
21 right?

22 A. Yes. Yes.

23 Q. And while Bonita is there, did she do anything about
24 the car or you see her get anything out of the car?

25 A. She got the cane out of the car, the back seat.

1 Q. What cane?

2 A. That cane, but it wasn't broken.

3 Q. I'm handing you this cane, it is Number 23. You
4 said it wasn't broken at that time?

5 A. No, it wasn't broken.

6 Q. It was a long cane?

7 A. It was a long one, yes.

8 Q. And you saw that?

9 A. I saw the cane, yes.

10 Q. And where did Bonita get the cane from?

11 A. Out the back seat.

12 Q. Out the back seat?

13 A. Yes.

14 Q. Of this blue car?

15 A. Yes, that blue car.

16 Q. And who was driving the blue car on this Wednesday?

17 A. Johnny Bennett.

18 Q. What else did you see in the car that day other than
19 the cane, did you see any kind of drinking glasses or
20 anything?

21 A. Not in the car.

22 Q. Where was that?

23 A. In the trunk on the left-hand side, it was two
24 glasses. And one of them had a piece of aluminum foil over
25 the top of them, and I thought to myself, well, they must have

1 been smoking last night because --

2 MR. FLOYD: Your Honor, I object. I move for a
3 mistrial.

4 THE COURT: Denied.

5 Q. Go ahead.

6 MR. FLOYD: I move it be stricken, and she be
7 instructed not to testify accordingly.

8 THE COURT: I'll move to strike that from the
9 record.

10 Ladies and gentlemen of the jury, disregard that
11 comment.

12 But we'll strike it from the record. The motion is
13 denied. I'll put more on the record later about it.

14 Go ahead, Mr. Myers.

15 BY MR. MYERS:

16 Q. You saw a glass, and describe that glass for jury,
17 was it two, one?

18 A. It was two glasses that I seen.

19 Q. And describe them for me.

20 A. As far as I remember, they was small, they looked
21 like shot glasses. And one of them had a piece of aluminum
22 foil over the top of it.

23 Q. Look like that?

24 A. No.

25 Q. You say it had aluminum foil on it?

1 A. No, they looked like shot glasses to me.

2 Q. Now, where was the cane, was it in the trunk or the
3 back?

4 A. The back seat of the car.

5 Q. Of the car. Now, let me ask you this. Also, from
6 that car when Johnny Bennett came back down on that Wednesday,
7 you'd seen some radio speakers the day before, on Tuesday.

8 A. Uh-huh.

9 Q. Were those radio speakers in there on Wednesday?

10 A. No, they weren't. I noticed --

11 Q. Radio speakers?

12 A. I noticed that they were missing out of the car,
13 because where the speakers were in there was just a hole there
14 in the car.

15 Q. So there was a hole in there where the speakers had
16 gone?

17 A. Yes, where the speakers were at.

18 Q. Now, what about any kind of a radar detector in the
19 car; did you see anything like a radar detector?

20 A. Yes, I did.

21 Q. Tell the jury about the radar detector.

22 A. My sister -- well, they were playing and the radar
23 detector -- excuse me. Bonita had took the radar detector
24 from Johnny out of his hand because I wanted it. And he was
25 talking about selling it to me, but I didn't give him any

1 money for it. But Bonita took it and snatched it out of his
2 hand. She gave it to me anyway and I took it, and I sold it.

3 Q. What was Johnny Bennett wanting to do with that
4 radar detector for you, was he wanting to give it to you?

5 A. He wasn't -- no, he wanted to sell it to me.

6 Q. He wanted to sell it to you?

7 A. Yes.

8 Q. But Bonita just got it and gave it to you?

9 A. Yeah, Bonita snatched it out of his hand and she
10 gave it to me.

11 Q. So you ended up with the radar detector out of the
12 car and you sold it later on?

13 A. Yes, I did.

14 Q. Now, let me ask you this. On that Wednesday, is
15 this correct, that that brass eagle head cane was in the car
16 with Johnny Bennett?

17 A. Yes, sir.

18 Q. When he was driving Smith's car?

19 A. In the back seat, yes.

20 MR. MYERS: Your Honor, we move to put this on the
21 calender exhibit.

22 THE COURT: Any objection?

23 MR. FLOYD: I'm sorry, Your Honor, I missed that. I
24 couldn't hear him.

25 THE COURT: He moved to put that on the calendar.

1 MR. FLOYD: Which was what?

2 THE COURT: What's been referred to the brass head
3 cane, as I recall.

4 MR. MYERS: This brass eagle head cane in the car
5 with Johnny Bennett.

6 MR. FLOYD: No objection.

7 BY MR. MYERS:

8 Q. Is this correct, that on that Wednesday Bennett was
9 in Smith's car and the speakers were now missing?

10 A. Yes, it is.

11 MR. MYERS: Move to put that on the calendar.

12 THE COURT: Any objection?

13 MR. FLOYD: No objection.

14 Q. Is this right; Pamela gets the radar detector?

15 A. Yes, it is.

16 MR. MYERS: Your Honor, we move to put this on the
17 exhibit.

18 THE COURT: Any objection?

19 MR. FLOYD: No objection.

20 Q. And is this right; on that Wednesday, scratches on
21 Bennett's chest?

22 A. Yes, it is.

23 MR. MYERS: We move to put that on the exhibit, Your
24 Honor.

25 THE COURT: Any objection?

1 MR. FLOYD: No objection.

2 BY MR. MYERS:

3 Q. Now, did you all stay at your house there, you and
4 Bonita and Johnny, or did y'all go somewhere on that
5 Wednesday? Did y'all go shopping or anything, did he take you
6 somewhere?

7 A. I don't remember.

8 Q. Was there ever a time that you and Bonita, her
9 daughter and Johnny Bennett went to the Prince of Orange Mall?

10 A. I don't remember.

11 Q. Let me take you to Thursday morning. Do you
12 remember before daybreak an older gentleman coming to your
13 house?

14 A. Yes, sir, I remember that.

15 Q. Is this the gentleman here that came to your house?

16 A. Yes, it is.

17 Q. Did you tell him anything about that blue car?

18 A. Yes, I did.

19 Q. And who had been driving it?

20 A. Yes, sir, I did.

21 Q. He was wanting to find his son?

22 A. Yes, sir.

23 Q. You and he started crying together about it?

24 A. Yes, sir.

25 Q. Had you ever known a fellow named Benton Smith?

1 A. No, sir.

2 Q. You ever seen a fellow named Benton Smith?

3 A. No, sir.

4 Q. Was that the first time you had ever heard about
5 Benton Smith was when this gentleman came to your house?

6 A. Yes, sir.

7 Q. Now, you helped Mr. Smith go over to Bonita's then?

8 A. No, sir.

9 Q. You tell him where Bonita's was --

10 A. Yes.

11 Q. -- so he could talk with her?

12 A. I told him where she lived at.

13 Q. He was describing some of these things here?

14 A. Yeah. I described what was in the car and how the
15 car looked and what I seen in the car.

16 Q. And that's when you all started crying when you were
17 describing all this?

18 A. Yes, sir.

19 Q. What did Johnny Bennett say he was doing with all of
20 Benton's stuff?

21 A. He didn't say. He didn't say. And it didn't really
22 phase me about the floor mats because his name was Bennett
23 and, you know, I never thought.

24 Q. So the Benton and Bennett, you didn't -- that kind
25 of ran together?

1 A. I never gave it a second thought.

2 Q. And I think then that -- let me ask you a question.

3 Did you ever see Johnny Bennett any more after this Wednesday,
4 did you ever see him?

5 A. No.

6 Q. And some officers then came on down later on and got
7 a statement from you and you told them what you knew?

8 A. Yes.

9 MR. MYERS: Thank you, ma'am. Answer any questions
10 they have.

11 THE COURT: Cross?

12 MR. MYERS: I've got one more before he starts, Your
13 Honor. I have to keep up with these stickers.

14 Q. That gentleman back there, Mr. Smith, Mr. Smith
15 comes to Pamela's house; was that daylight or dark when he
16 came there that morning?

17 A. It was dark.

18 Q. So it was very early on that Thursday morning?

19 A. Uh-huh.

20 MR. MYERS: We move to put this on the calender,
21 Your Honor. Mr. Smith comes to Pamela's house, that would be
22 early Thursday morning, November the 29th.

23 THE COURT: Any objection?

24 MR. FLOYD: No objection, Your Honor.

25 MR. MYERS: Thank you.

CROSS-EXAMINATION

1

2 BY MR. FLOYD:

3 Q. Ms. Gonsalves, my name is Wayne Floyd.

4 Ms. Gonsalves, weren't you convicted of distribution of drugs
5 other than crack cocaine on September 2nd, 1997?

6 A. September 2nd?

7 Q. Yes.

8 A. It wasn't September 2nd, it was more in July.

9 Q. So you say you were convicted, but it was in July?

10 A. I wasn't convicted. I didn't serve any prison time,
11 I served jail time.

12 Q. Did you go into court and plead guilty?

13 A. Yes, I did.

14 Q. So you have a conviction for distribution, selling
15 drugs other than crack cocaine, and your record shows a court
16 date of September 2nd, 1997?

17 A. Yes, I did.

18 Q. Were you also convicted on that same --

19 MR. MYERS: No, sir. No, sir. Now, I gave him this
20 information, and he knows what the law is and he knows what
21 he's fixing to bring out is not admissible.

22 THE COURT: Yes, sir.

23 Yes, sir, Mr. Floyd, only matters that are
24 admissible can be brought in.

25 MR. FLOYD: I believe this is admissible.

1 THE COURT: Approach. Come around to the side

2 (WHEREUPON, a bench conference was had.)

3 THE COURT: Ladies and gentlemen of the jury, the
4 record indicates only one conviction. What they were talking
5 about was actually the same one, just was printed twice, and
6 that was simply a mistake.

7 Let me be sure and tell you that evidence of a prior
8 conviction such as this can come in only, only now, for
9 purposes of -- as it affects the credibility of a witness; and
10 it's for you to consider whether or not that affects the
11 credibility of this witness. Now, you may consider that it
12 does or you may consider that it does not or to any degree in
13 between. But it's up to you to determine whether you feel
14 this affects her credibility or not.

15 Go ahead.

16 BY MR. FLOYD:

17 Q. Now, you mentioned that you saw Johnny in Orangeburg
18 about -- was it five o'clock or so Tuesday afternoon?

19 A. Yes, sir, it was.

20 Q. Now, it wasn't unusual for Johnny to come down to
21 Orangeburg in different vehicles, was it?

22 A. Pardon me?

23 Q. It wasn't unusual for Johnny to come down to
24 Orangeburg with different vehicles, was it?

25 A. Yes, it was.

1 Q. He was never there in different vehicles?

2 A. Not to my knowledge.

3 Q. Not to your knowledge?

4 A. No, sir.

5 Q. Now, this vehicle, did you look at the vehicle that
6 day?

7 A. Yes, I did.

8 Q. Did you look inside the vehicle?

9 A. Yes, I did.

10 Q. Did you look inside the trunk that day?

11 A. No, sir.

12 Q. You just looked inside the regular -- the inside of
13 the interior of the vehicle?

14 A. Yes, sir.

15 Q. See anything unusual other than what you've already
16 described?

17 A. Nothing unusual besides what I described.

18 Q. Did you see any blood inside the vehicle?

19 A. No, sir.

20 Q. And on that day, you said that he had a small
21 Band-Aid on his eyebrow; is that correct?

22 A. Yes, sir.

23 Q. And that would be a regular-sized Band-Aid?

24 A. The small kind.

25 Q. The small kind. And you said you saw a gauze

1 wrapped around -- did you say left or right hand?

2 A. Left hand.

3 Q. Around his left hand?

4 A. Yes, sir.

5 Q. Now, the next day -- the time you saw him was

6 Wednesday; is that correct?

7 A. Yes, sir.

8 Q. And about what time was it Wednesday?

9 A. Around two o'clock.

10 Q. And that's in the afternoon?

11 A. Yes.

12 Q. And on this day, did you look inside the trunk of
13 the vehicle?

14 A. Tuesday, yes.

15 Q. Pardon?

16 A. Excuse me, Wednesday, yes, I did.

17 Q. Wednesday, yes?

18 A. Yes, excuse me.

19 Q. And you didn't see any blood in the vehicle then,
20 did you?

21 A. No, I didn't.

22 Q. No body in the vehicle?

23 A. No, I didn't.

24 Q. Now, on that day, I believe you said that he helped
25 you paint your ceiling?

1 A. The walls.

2 Q. Was it the walls?

3 A. Yes, sir.

4 Q. And isn't it true that on Wednesday he didn't have a
5 Band-Aid on his eye?

6 A. Not that I remember, he didn't.

7 Q. And he didn't have a bandage on his hand, did he?

8 A. Not that I remember, he didn't.

9 Q. But you say you recall some scratches?

10 A. Yes, sir, I did.

11 Q. And where were they located?

12 A. Across his chest.

13 Q. How many scratches were there?

14 A. Three.

15 Q. How long were they?

16 A. From here to like about right there (indicated).

17 Q. And how far apart were they?

18 A. I don't know, maybe about an inch, half of -- I
19 don't know (indicated).

20 Q. And these -- are you saying that anybody that would
21 have seen him would have noticed those scratches?

22 A. Yes, they would have.

23 Q. And you think they were deep enough to have still
24 been there the next day?

25 A. Yes, they would have been there the next day.

1 Q. Now, do you know somebody named Gucci or was
2 nicknamed Gucci at the time?

3 A. Yes, I did.

4 Q. Who was that?

5 A. To my knowledge, his brother.

6 Q. You see anybody else in the courtroom that came down
7 with Paul Smith that morning?

8 A. I know Walter Dibble, but I don't see him here.

9 Q. On Wednesday, did you see -- you didn't see anything
10 unusual about his eye or his hand, did you?

11 A. I didn't notice Wednesday anything.

12 Q. But you watched him while he was painting your wall
13 or ceiling?

14 A. Yes.

15 MR. FLOYD: Thank you. No further questions.

16 THE COURT: Any redirect?

17 MR. MYERS: No further questions.

18 THE COURT: You can step down, and you're free to
19 go, if you'd like to.

20 Ladies and gentlemen, we'll go ahead and take a
21 lunch break. I'm sorry it took so long. Apparently, the
22 place we got the food from just didn't get it as quickly as we
23 thought they were going to. We'll be sure that doesn't happen
24 again, I promise you. What we'll do is we'll take a lunch
25 break until about 2:15. It's about between 10, 15 after 1:00

1 now. We'll just be back here at 2:15.

2 Now, during the lunch break, of course, you'll be in
3 the jury room, but if you want to get out and smoke or walk
4 around or something, you can do it, but just be sure let one
5 of the bailiffs or the team members go with you. Remember,
6 though, we don't talk about the case.

7 (WHEREUPON, the jury leaves the courtroom at
8 approximately 1:11 p.m.)

9 THE COURT: The jury is secure. Let me put on the
10 record one thing. You made a motion for a mistrial,
11 Mr. Floyd?

12 MR. FLOYD: Yes, Your Honor.

13 THE COURT: I understand the witness' testimony was
14 that she saw something in tinfoil and she said she thought to
15 herself somebody must have been smoking dope. I think that's
16 what she said.

17 MR. FLOYD: Words to that affect. I don't know if
18 she said dope or crack. I thought she said they were smoking
19 crack or assumed they were smoking crack, some kind of words
20 like that.

21 MR. MYERS: I think her words were I thought to
22 myself they must have been smoking something last night.

23 THE COURT: Right. Well, either way, I can check
24 and see. And I imagine the inference would have been some
25 sort of drugs or something. But I denied it, I did find that

1 was harmless. The witness actually just was not an expert,
2 obviously, in that area. She simply just testified that was
3 her reaction. And, of course, I instructed the jury to
4 disregard it and I think that was sufficient.

5 MR. FLOYD: Well, Your Honor, our concern is that
6 she may well be an expert in that area. She's got a record
7 for distribution of drugs and she's telling the jury that was
8 drug paraphernalia there, and I think they think she is an
9 expert with her experience.

10 THE COURT: Well, I would note that you're the one
11 that brought that out, though, about her prior experience with
12 drugs. I understand you were doing it under Rule 609, but you
13 brought it out.

14 MR. FLOYD: Well, I agree, Your Honor, but that's
15 what makes it even worse. I mean, I had to bring it out, I
16 had no choice. Do I let them think she has credibility or do
17 I attack her credibility?

18 THE COURT: Oh, I understand. I understand. But I
19 think the caution to the jury was sufficient.

20 MR. FLOYD: Thank you.

21 THE COURT: All right.

22 MR. MYERS: What time do we come back?

23 THE COURT: 2:15.

24 (WHEREUPON, a lunch break was taken.)

25 THE COURT: All right. Counsel, anything before we

1 bring the jury back?

2 MR. RIDDLE: Yes, sir. Your Honor, the next witness
3 is going to be a lady by the name of Bonita Gonsalves, Pamela
4 Gonsalves' sister. Mr. Floyd, as I understand, has previously
5 been provided a rap sheet on Ms. Gonsalves. Her only prior
6 conviction, Your Honor, is from January of 1995 -- or at least
7 that was when the sentence was imposed. I'm not sure when the
8 conviction was. It was a federal case because it happened in
9 the District of Columbia, and I don't know if they have
10 deferred sentencing there, but around about January of '95 she
11 pled guilty to possession of cocaine. I just wanted to settle
12 the record on that issue. That's her only prior conviction.
13 We don't dispute that that's admissable, but I think that's
14 all that they should be allowed to bring up.

15 THE COURT: Mr. Floyd?

16 MR. FLOYD: If that's what the rap sheet says, I
17 haven't seen any kind of updated rap sheet on her.

18 MR. RIDDLE: You were not provided an update?

19 I'm sorry, Your Honor, I thought Solicitor Myers had
20 previously given it to them.

21 [PAUSE.]

22 THE COURT: Have you looked it over?

23 MR. FLOYD: Yes, Your Honor. It appears that's
24 correct.

25 THE COURT: All right. Are we ready?

1 MR. RIDDLE: We're ready.

2 THE COURT: All right. Let's bring the jury in.

3 (WHEREUPON, the jury enters the courtroom at
4 approximately 2:30 p.m.)

5 THE COURT: All parties and attorneys are in the
6 courtroom and all jurors have returned. I hope everybody had
7 a good lunch, a chance to get around and move around a little
8 bit.

9 All right. Call your next witness, please.

10 MR. RIDDLE: The State calls Bonita Gonsalves,
11 please.

12 BONITA JULIE GONSALVES, after having been duly
13 sworn, testified as follows:

14 DIRECT EXAMINATION

15 BY MR. RIDDLE:

16 Q. Tell us your name, please, ma'am.

17 A. Bonita Julie Gonsalves.

18 Q. And where do you live?

19 A. Washington D. C.

20 Q. How long have you been living in the D. C. area?

21 A. Just about all my life.

22 Q. You have a prior conviction for possession of
23 cocaine?

24 A. Yes, sir.

25 Q. And that happened around '94, '95?

1 A. Yes, sir.

2 Q. Ms. Gonsalves, you lived in Orangeburg for a portion
3 of your life, did you not?

4 A. Yes, sir.

5 Q. Can you tell the jury approximately when you moved
6 to Orangeburg?

7 A. About ten years ago.

8 Q. Ten years ago?

9 A. (Nodded).

10 Q. Were you living in Orangeburg in 1990?

11 A. Yes.

12 Q. Yes?

13 A. Yes, sir.

14 Q. I'm sorry, I just couldn't hear you. Speak just a
15 little bit louder for me, okay?

16 A. Okay.

17 Q. Tell the jury how you came to move from D. C. down
18 to Orangeburg. What was the connection there for you?

19 A. I have two sisters here.

20 Q. Two sisters?

21 A. Two sisters and nieces and nephews.

22 Q. As a matter of fact, Pamela, that just testified, is
23 your sister; is that right?

24 A. Yes, sir.

25 Q. And you have another sister, Cassandra, that lives

1 in Orangeburg?

2 A. Cassandra, yes.

3 Q. Now, do you know approximately when you moved to
4 Orangeburg?

5 A. Around in August.

6 Q. Of 1990?

7 A. Yes.

8 Q. And did you meet Mr. Bennett once you moved down
9 here?

10 A. Yes.

11 Q. And where did you meet Mr. Bennett?

12 A. At a club.

13 Q. At a club?

14 A. Uh-huh.

15 Q. And do you know approximately when that was?

16 A. Around August, September.

17 Q. So you hadn't been here long?

18 A. No.

19 Q. Now, after you met Mr. Bennett, did you start seeing
20 him?

21 A. Yes, sir.

22 Q. And do you know whether or not he was living in
23 Orangeburg at the time?

24 A. No, he wasn't.

25 Q. Do you know where he was living?

1 A. In Swansea.

2 Q. In Swansea. Now, when you would see Mr. Bennett,
3 where would you normally see him?

4 A. He would come down to my house.

5 Q. To Orangeburg?

6 A. To Orangeburg.

7 Q. Now, let me ask you this, Bonita. Did you know
8 Benton Smith?

9 A. No, sir.

10 Q. Had you ever even met Benton Smith?

11 A. No, sir.

12 Q. Now, during the time that you were seeing Johnny
13 Bennett, did he have a car of his own?

14 A. No.

15 Q. He did not?

16 A. No, sir.

17 Q. How would he get to Orangeburg?

18 A. Normally, somebody else drove him or he was driving
19 somebody else's car, or sometimes I would go to Swansea and he
20 would be in my Jeep?

21 Q. You had a car at the time?

22 A. I had a car then.

23 Q. So he'd either catch a ride with somebody?

24 A. Uh-huh.

25 Q. Or he would borrow a car from somebody?

1 A. Uh-huh.

2 Q. Or you would have to go get him?

3 A. Sometimes. Well, he would come down in somebody
4 else car and then sometimes we drove back to Swansea. I
5 remember we drove back to Swansea in my car and I met his
6 family, his mom and stuff.

7 Q. Now, give the jury some idea about how often you saw
8 Johnny Bennett while you were seeing him.

9 A. Just about every day.

10 Q. Now, look at this calender behind you, if you will.
11 Can you see that from where you are?

12 A. No.

13 Q. You can't see what's on there?

14 A. Uh-uh.

15 Q. This is the week of November the 26th, okay, right
16 here.

17 A. Uh-huh.

18 Q. That's Monday, November 26th. All right. The week
19 just prior to that, was there a holiday that week?

20 A. Thanksgiving.

21 Q. Thanksgiving?

22 A. Uh-huh.

23 Q. And that would have been on Thursday, right?

24 A. Uh-huh.

25 Q. Okay. Now, you and Mr. Bennett had had some

1 discussions about the Thanksgiving holidays; had you not?

2 A. Yes.

3 Q. And what did you want to do for Thanksgiving that
4 year?

5 A. I wanted to drive down back to D. C. to see my mom
6 and the rest of my family, my other sister. And I had asked
7 Johnny to give me the money, the gas money and stuff, and he
8 said he would give it to me.

9 Q. Were you working at the time?

10 A. No.

11 Q. So he had promised to give you some money?

12 A. Yes.

13 Q. Did he ever give you that money?

14 A. No.

15 Q. How did you react to that?

16 A. I got upset.

17 Q. Now, did that argument about money, did that kind of
18 carry on over past Thanksgiving?

19 A. Yes.

20 Q. Now, let's talk about that next week, the week of
21 the 26th, if I can for just a minute, okay?

22 A. Uh-huh.

23 Q. Let me start with this Monday, Bonita, right here,
24 Monday the 26th.

25 A. Uh-huh.

1 Q. Do you remember whether or not you saw Mr. Bennett
2 on that day?

3 A. I can't remember if I seen him that day, but I went
4 to Swansea that night looking for him.

5 Q. And did you find him that night in Swansea?

6 A. No. No.

7 Q. Now, Tuesday, that would be the 27th, right?

8 A. Uh-huh.

9 Q. Did you see Mr. Bennett on Tuesday, the 27th?

10 A. Yes, sir.

11 Q. And the first time you saw him, was it morning,
12 afternoon, night?

13 A. Early afternoon.

14 Q. In the afternoon?

15 A. It was in the afternoon.

16 Q. And whereabouts did you see him?

17 A. He had dropped my sister off at my house, my sister,
18 Pam. He drove down and dropped my sister off.

19 Q. So the first time you saw Mr. Bennett, he was with
20 your sister, Pam?

21 A. Yes, sir.

22 Q. And that was at your house?

23 A. Yes, sir.

24 Q. And did he stay at your house long on that occasion?

25 A. No, sir.

1 Q. About how long? Can you tell the jury roughly how
2 long he stayed?

3 A. He just dropped her off, really. He said he would
4 be back.

5 Q. Said he would be back?

6 A. Uh-huh.

7 Q. And did he come back later on that evening?

8 A. Yes, sir.

9 Q. Now, Bonita, what car was he driving, what kind of
10 car was it?

11 A. A little blue car.

12 Q. A little blue one? Let me show you what's been
13 marked as State's Exhibit Number 14. Do you recognize that?

14 A. That's the little blue car.

15 Q. That's the one he was driving?

16 A. Uh-huh.

17 Q. And he drove -- he brought Pam over there?

18 A. Yeah.

19 Q. Now, the first time he came over there, Bonita, did
20 you get in that car that first time?

21 A. Not the first time.

22 Q. And then he just stayed a few minutes and left?

23 A. Yes.

24 Q. You say he came back a second time?

25 A. Yes, sir.

1 Q. And you know about what time it was he came back the
2 second time?

3 A. It was in the early evening about 7:00, 7:30, 8:00,
4 somewhere between there.

5 Q. And what car was he driving then?

6 A. That little blue car.

7 Q. That same little blue car that I just showed you?

8 A. Uh-huh.

9 Q. Now, was anybody with him at that time?

10 A. No.

11 Q. Was Pam still at your house?

12 A. No.

13 Q. What had happened to her?

14 A. She left.

15 Q. She had left?

16 A. Because he said he was coming right back and it took
17 awhile before he got back, so she had left.

18 Q. She -- I'm sorry, I didn't hear the last --

19 A. It took awhile before he got back, so she had left.

20 Q. Now, when he came back that second time, did he come
21 in your house?

22 A. More than likely.

23 Q. Did you notice anything about him at that time?

24 A. Yeah.

25 Q. What did you notice about him?

1 A. His hand was bandaged.

2 Q. His hand was bandaged?

3 A. His hand was bandaged up, and he had a bandage on
4 his eye.

5 Q. And that was on Tuesday?

6 A. Tuesday.

7 Q. So right here where it says on the calender,
8 Bennett's eye and hand bandaged on Tuesday, that's correct?

9 A. Yes, sir.

10 Q. Now, you and he had a discussion that day, didn't
11 you?

12 A. Yes, sir.

13 Q. And did y'all talk about money?

14 A. The same money he said he was going to give me.

15 Q. And did you ask him to do anything for you that was
16 kind of connected to the money? Did you ask him to take you
17 anywhere?

18 A. Take me to the phone booth.

19 Q. Okay. Who --

20 A. Because he said he couldn't give me the money, he
21 paid his sister's rent.

22 Q. And who were you going to call?

23 A. My mom.

24 Q. In D. C.?

25 A. In D. C.

1 Q. And what were you going to tell her?

2 A. That I didn't get the money, that I wasn't going to
3 come.

4 Q. And did you ride in the car on that night?

5 A. Yes, sir.

6 Q. Do you remember anything about that car?

7 A. Yeah, the no smoking sign was the first thing that
8 hit me, because I smoke. So that's the no smoking sign and
9 then the car mat thing.

10 Q. What do you remember about the car mats, Bonita?

11 A. The name Benton.

12 Q. Let me show you this. You recognize this, State's
13 Number 21?

14 A. That was on the floor.

15 Q. That was on the floor in the car?

16 A. Uh-huh.

17 Q. That was on Tuesday the 27th?

18 A. Yes, sir.

19 Q. Did you notice anything else about the car at that
20 time?

21 A. Not really.

22 Q. After you went to the pay phone, how long did
23 Mr. Bennett stay after that?

24 A. Not long, he left.

25 Q. He left?

1 A. Yeah. I mean, we talked about -- argued some more
2 about the money, then he left.

3 Q. I'm sorry, you've just got to speak a little louder.

4 A. We argued some more about the money, then he left.

5 Q. Now, before that day, the 27th, had you ever seen
6 Mr. Bennett driving that little blue car?

7 A. No, sir.

8 Q. That's the first time you saw him drive it?

9 A. Yes, sir.

10 Q. Let's talk about Wednesday, okay, the 28th, right
11 here. Did you see Mr. Bennett on that day?

12 A. Yes, sir.

13 Q. And where did you see him?

14 A. At my house.

15 Q. At your house?

16 A. Yeah.

17 Q. Was he by himself or with somebody else?

18 A. He was by himself when he came, then he picked me
19 up.

20 Q. And he picked you up?

21 A. Uh-huh, and my daughter.

22 Q. What kind of vehicle was he driving?

23 A. That little blue car.

24 Q. That same little blue car in State's Number 14?

25 A. Uh-huh.

1 Q. When he picked you up, did he pick anybody else up
2 there at your house?

3 A. My daughter.

4 Q. Your daughter, okay. And how old is she or was she
5 in 1990?

6 A. She was just born. She was about six, seven months
7 then.

8 Q. A baby?

9 A. Uh-huh.

10 Q. And where all did y'all go that day?

11 A. Prince Orange Mall, went to State College, went to
12 my sister, Pam's house, went to my sister, Cassandra's house,
13 went out to get something to eat.

14 Q. Let's talk about some of those things, okay. You
15 said you went to the Prince of Orange Mall?

16 A. Yeah.

17 Q. That's a mall down in Orangeburg?

18 A. Yes, sir.

19 Q. What did y'all do there at the Prince of Orange
20 Mall?

21 A. He bought my daughter a doll baby and a little white
22 fur coat.

23 Q. Mr. Bennett bought your daughter a doll and a coat?

24 A. Uh-huh.

25 Q. Who paid for that?

1 A. Johnny did.

2 Q. You said you went to South Carolina State; is that
3 what you said?

4 A. Yeah, he went there, too. He was looking for
5 somebody.

6 Q. I'm sorry?

7 A. He was looking for somebody.

8 Q. And did y'all talk with anybody while you were at
9 South Carolina State?

10 A. You know, I'm not real sure about that. I think we
11 did locate him. It was some guy on -- I think he was on the
12 basketball team.

13 Q. Do you remember anything about what that guy looked
14 like?

15 A. He was just real tall.

16 Q. He was tall, okay. And y'all talked to him?

17 A. No, he talked to him.

18 Q. Do you know or remember if he was in the car with
19 you?

20 A. I'm not real sure about that.

21 Q. Okay. Now, you say you went to Pam's house that
22 day?

23 A. We went to my sister's, Pam's house.

24 Q. What did y'all do over at Pam's house?

25 A. Paint.

1 Q. Painted?

2 A. Uh-huh.

3 Q. Who was painting?

4 A. All of us was painting a little bit.

5 Q. You painted some?

6 A. And Johnny.

7 Q. Pam was painting?

8 A. Yeah.

9 Q. Did you notice anything about Johnny Bennett while
10 he was painting?

11 A. When he took his shirt off.

12 Q. What did you see?

13 A. He had a scratch on his chest, scratches on his
14 chest up in this area (indicated).

15 Q. On the upper chest area?

16 A. Yeah.

17 Q. Now, after y'all finished painting, did there come a
18 time where y'all were looking in that car?

19 A. Uh-huh.

20 Q. And do you recall whether or not there was a radar
21 detector in that car?

22 A. Yes.

23 Q. There was?

24 A. I gave it to my sister.

25 Q. You gave it to your sister?

1 A. Yeah.

2 Q. How did you get the radar detector?

3 A. Johnny gave it to me.

4 Q. Johnny gave it to you?

5 A. Uh-huh.

6 Q. What was he trying to do with that radar detector?

7 A. I'm not sure. My sister said she wanted it, so I
8 gave it to her.

9 Q. So you just took it from Johnny and gave it to her?

10 A. Well, he gave it to me. I didn't take it.

11 Q. Okay. Now, was there a cane in that car as well?

12 A. In the trunk.

13 Q. In the trunk of the car? Let me show you State's
14 Number 23. Do you recognize this?

15 A. Yeah, but like I said before, it was much longer.

16 Q. Used to be longer?

17 A. Much longer than that.

18 Q. That was in the trunk of that little --

19 A. Yeah.

20 Q. Of this little blue car here?

21 A. Uh-huh.

22 Q. Do you remember what happened to that cane that day?

23 A. I was just playing with him with it. We were
24 playing.

25 Q. Did it go back in the car?

1 A. I'm pretty sure it did because I didn't keep it, and
2 my sister didn't keep it.

3 Q. Now, were there any other things in the car?

4 A. Uh-huh, a lot of things.

5 Q. A lot of things?

6 A. A camera, them pillows, that case that had two
7 little wine glasses.

8 Q. Stop right there. Let's talk about them one at a
9 time, okay?

10 A. Okay.

11 Q. You said a camera?

12 A. Uh-huh.

13 Q. Did you get a camera from out of that car that day?

14 A. Uh-huh.

15 Q. How did you get that the camera?

16 A. Johnny gave it to me.

17 Q. Johnny Bennett gave you a camera?

18 A. Uh-huh.

19 Q. Does this look like that camera?

20 A. It look like it.

21 MR. RIDDLE: Your Honor, I'd offer this into
22 evidence.

23 THE COURT: Any objection?

24 MR. FLOYD: Your Honor, I don't think it's proper to
25 say it looks like it. I mean, if she can positively identify

1 it, then that's one thing, but not that it looks like it could
2 be the camera. I don't think that's sufficient to identify
3 it.

4 THE COURT: Overruled. She's identified the camera
5 as appearing to be the same camera that she saw. That's
6 enough to get it in.

7 Ladies and gentlemen of the jury, obviously, it's up
8 to you to determine this particular evidence and determine
9 what weight or credibility to give to it.

10 Go ahead.

11 (WHEREUPON, State's Exhibit No. 26, a Camera, was
12 marked and admitted into evidence.)

13 BY MR. RIDDLE:

14 Q. Johnny Bennett gave you this camera that day?

15 A. Yes, sir.

16 Q. Now, you said something about some pillows; is that
17 right?

18 A. Yes, sir, those right there.

19 Q. These pillows right there?

20 A. Uh-huh.

21 Q. State's Exhibit Number 15 and State's Number 16?

22 A. Those pillows.

23 Q. He gave you these?

24 A. Uh-huh.

25 Q. Now, you said something about some glasses?

1 A. Two little wine glasses. They was real little.

2 Q. Is that one of them?

3 A. Yeah. Uh-huh. There was another one.

4 Q. There was another one?

5 A. There was two of them.

6 Q. Two of them. This one is broken now. Is that it?

7 A. Uh-huh.

8 Q. Okay. He gave you both of those. Now, did he give
9 you -- when he gave you those, did you put those in anything?

10 A. In that case.

11 Q. What all went in this case right here, State's 22?

12 A. The camera and the glasses.

13 Q. The camera and the glasses you put in the case?

14 A. (Nodded).

15 Q. What did you do with these items on that Wednesday?

16 A. Took them in my house.

17 Q. Took them home with you?

18 A. Uh-huh.

19 Q. Did you ask Mr. Bennett about giving all this stuff
20 away?

21 A. I don't remember at this moment, but I'm pretty sure
22 I did.

23 Q. Now, let me ask you this. On this calender,
24 Wednesday, the 28th, it says Pamela gets radar detector; is
25 that correct?

1 A. Yes, sir.

2 Q. And it says scratches on Bennett's chest; is that
3 correct?

4 A. Yes.

5 Q. And it says Smith's brass eagle head cane in car
6 with Bennett; is that correct?

7 A. Yes.

8 Q. Let me show you one other thing, Bonita. Tell me if
9 this is correct. Bennett gives Bonita a camera, two drink
10 glasses, two pillows and black shaving kit?

11 A. Yes.

12 Q. And that's on the 28th, a Wednesday?

13 A. Yes.

14 THE COURT: Any objection to that?

15 MR. FLOYD: No objection.

16 THE COURT: All right, good.

17 Q. Now, after Mr. Bennett left on Wednesday, what did
18 you do?

19 A. That evening, I went out. Later on that night, I
20 went out.

21 Q. You went out?

22 A. Uh-huh.

23 Q. Do you know about how late you stayed out?

24 A. All night.

25 Q. All night?

1 A. (Nodded).

2 Q. You got home then early Thursday morning?

3 A. Early Thursday morning.

4 Q. When you got home, what happened then?

5 A. I seen this man and somebody, this guy, standing in
6 my door. This older man and a younger guy standing in my
7 door.

8 Q. All right. Is this the man you saw right here in
9 the burgundy shirt?

10 A. Right there with the glasses on.

11 Q. With the glasses on. Is this the gentleman that was
12 there knocking on your door that Thursday morning?

13 A. Yes, sir.

14 Q. Now, Bonita, that Thursday morning, did you talk
15 with Mr. Smith?

16 A. Yes, sir.

17 Q. What all did y'all talk about?

18 A. He was asking me about that car, his son. This guy,
19 he said it was his son.

20 Q. Okay.

21 A. And I was telling him I didn't know nothing about
22 his son. Then he asked me did I know Johnny, and I told him I
23 knew Johnny.

24 Q. He asked you about this car?

25 A. The car.

1 Q. State's Exhibit Number 14?

2 A. Had I seen his son in that car.

3 Q. Did he describe this car to you?

4 A. He said -- he described it. And I was like, yeah,
5 I've seen it before.

6 Q. You told him you had seen the car?

7 A. Uh-huh. I told him I ain't never seen his son in
8 it.

9 Q. You never saw his son?

10 A. Uh-uh.

11 Q. Now, did there come a time, Bonita, that you gave
12 Mr. Smith any items?

13 A. Them pillows.

14 Q. These two pillows right here?

15 A. Uh-huh.

16 Q. You gave those to Mr. Smith?

17 A. He said they was his sons.

18 Q. And that was on Thursday?

19 A. Thursday.

20 Q. Let me show you this, Bonita, and ask you if this
21 was correct. Bonita gives two pillows to Mr. Smith?

22 A. Yes.

23 Q. So Mr. Smith -- on this calender, Mr. Smith has come
24 to Pamela's house?

25 A. Uh-uh.

1 Q. Well, you don't know about that.

2 A. No.

3 Q. Never mind.

4 THE COURT: Any objection, Counsel?

5 MR. YOUNG: No objection.

6 THE COURT: Okay.

7 BY MR. RIDDLE:

8 Q. Bonita gives two pillows to Mr. Smith and that's on
9 Thursday?

10 A. Uh-huh.

11 Q. Now, did you see Mr. Bennett on that Thursday?

12 A. Yes.

13 Q. Where did you see him?

14 A. At my house.

15 Q. He came to your house Thursday?

16 A. Yes.

17 Q. Now, on Thursday, the 29th, was Mr. Bennett driving
18 this little blue car?

19 A. No.

20 Q. What kind of car was he in then; do you know?

21 A. He was in a big car.

22 Q. It was a big car?

23 A. Uh-huh.

24 Q. It wasn't this car?

25 A. No.

1 Q. And did you talk to Mr. Bennett at that time?

2 A. Yes.

3 Q. And what did y'all talk about? Did y'all talk about
4 Mr. Smith coming to see you?

5 A. Yes.

6 Q. Did you ask Mr. Bennett about that?

7 A. I wanted to know why that man came to my house, why
8 he told me -- looking for his son. Why he came to me looking
9 for his son and where was his son at, where was his boy at.

10 Q. And when you talked to Mr. Bennett about that, did
11 he get upset?

12 A. Yeah. He just kept telling me that boy was all
13 right. He said he all right.

14 Q. Where did he tell you he was?

15 A. Back in Swansea.

16 Q. What did Mr. Bennett want you to do on that
17 Thursday?

18 A. He wanted me to go somewhere with him.

19 Q. And did you go?

20 A. Uh-uh.

21 Q. How come?

22 A. Something wasn't right. Something just didn't feel
23 right.

24 Q. So you didn't go?

25 A. No.

1 Q. Did Mr. Bennett end up leaving?

2 A. Yes.

3 Q. Now, Thursday, November 29th, was that the last time
4 you saw Mr. Bennett before he was arrested?

5 A. Yes, sir.

6 Q. Let me show you this. Bennett in Orangeburg in
7 different car?

8 A. On Thursday.

9 Q. That was Thursday, the 29th, right?

10 A. Yes.

11 THE COURT: Again, any objection, Counsel?

12 MR. FLOYD: No objection.

13 Q. Now, that next week, Bonita, this first week, the
14 week of the 26th, you talked to Mr. Bennett, you talked with
15 Mr. Smith?

16 A. Yes, sir.

17 Q. You got those items from the car?

18 A. Yes.

19 Q. This next week, did some officers from the Lexington
20 County Sheriff's Department come see you?

21 A. Yes, sir.

22 Q. And was the first day on that Monday, December the
23 3rd?

24 A. Yes, sir.

25 Q. Was Mr. Freddie Hamer, Officer Hamer right here, one

1 of those two officers who came to see you?

2 A. Yes, sir.

3 Q. And did you talk to Mr. Hamer on the 3rd?

4 A. Yes.

5 Q. And at that time, did you give anything to Detective
6 Hamer and the other officer that was with him?

7 A. Yes, sir.

8 Q. What did you give him?

9 A. The glasses, the camera and that case.

10 Q. State's Exhibit Number 26, the camera, you give him
11 that?

12 A. Yes, sir.

13 Q. State's Exhibit Numbers 18 and 17, the two drinking
14 glasses, you give him that?

15 A. Yes, sir.

16 Q. State's Exhibit Number 22, this case, did you give
17 him that?

18 A. Yes, sir.

19 Q. Did you pack it back up the same way it was packed
20 before?

21 A. I put the camera and the glasses in it.

22 Q. So you put the camera and glasses in that and just
23 gave the whole thing to Mr. Hamer?

24 A. Yes, sir.

25 Q. Now, when they took that item from you, did they

1 give you a receipt for those items?

2 A. I signed statement.

3 Q. Let me show you this and ask if you recognize what
4 it is.

5 A. That's my signature.

6 Q. That's your signature?

7 A. That's my signature.

8 Q. And that's a receipt for the property?

9 A. That is a receipt.

10 Q. And it lists those items that we just talked about?

11 A. Yes, sir.

12 MR. RIDDLE: Your Honor, I'd offer this into
13 evidence.

14 THE COURT: Any objection?

15 MR. FLOYD: No objection, Your Honor.

16 (WHEREUPON, State's Exhibit No. 27, a Property
17 Receipt, was marked and admitted into evidence.)

18 MR. RIDDLE: Your Honor, I'd like to publish this.

19 THE COURT: Okay.

20 MR. RIDDLE: It's a form entitled Lexington County
21 Sheriff's Department, Lexington, South Carolina, James R.
22 Metts, Sheriff, release form, released to Detective Charlie
23 Jones and Detective Fred Hamer; address, Lexington County
24 Sheriff's Department; telephone number, 359-8230. Description
25 of article. Number one, Polaroid Sun 600 camera; number two,

1 small wine glasses -- or, excuse me, two small wine glasses;
2 and then one black leather case. And then it says Officer
3 Jones and Hamer, signed Bonita Gonsalves.

4 BY MR. RIDDLE:

5 Q. Now, you released those items to Detective Hamer on
6 Monday, December THE 3rd; is that correct?

7 A. Yes, sir.

8 Q. I ask you if this is correct; Bonita gives officers
9 camera, two drink glasses and black shaving kit?

10 A. Yes, sir.

11 MR. RIDDLE: Your Honor, I'd like to put this on
12 December the 3rd?

13 THE COURT: Any objection?

14 MR. FLOYD: No objection.

15 THE COURT: All right. Counsel, what I'll do,
16 instead of asking you each time, if you want to just object,
17 you can. Otherwise, I'll assume he's doing it without
18 objection. Okay?

19 MR. FLOYD: Okay.

20 THE COURT: I'm sure you get tired of me pestering
21 you about that.

22 MR. FLOYD: That's okay, Your Honor. That's fine,
23 if you want to do it that way.

24 MR. RIDDLE: Beg the Court's indulgence for one
25 moment.

1 BY MR. RIDDLE:

2 Q. Just a few more. On that Monday, the 3rd, the same
3 day you gave them the camera and the glasses and the shaving
4 kit, did you give a statement to the police?

5 A. Yes.

6 Q. And how long was that statement?

7 A. About a page.

8 Q. Was it like a page and a half maybe?

9 A. A page, page and a half, something like that.

10 Q. And on December the 6th, did Detective Hamer come
11 back and speak with you again on that Thursday?

12 A. Yes.

13 Q. You gave him a statement on that day, too?

14 A. Yes.

15 Q. And that was like a page long?

16 A. Yes.

17 MR. RIDDLE: Thank you. Please answer any of the
18 defense's questions.

19 CROSS-EXAMINATION

20 BY MR. FLOYD:

21 Q. Good afternoon, Ms. Gonsalves. My name is Wayne
22 Floyd.

23 A. Good afternoon, Mr. Floyd.

24 Q. Ms. Gonsalves, you testified that Monday you didn't
25 see Johnny that you recall?

1 A. That I recall.

2 Q. But you went to Swansea that day?

3 A. That evening.

4 Q. That evening?

5 A. Yes, sir.

6 Q. You didn't find him there, did he?

7 A. No, sir.

8 Q. And what did you do that night in Swansea?

9 A. Either was his cousin or his brother or someone, I
10 took drugs. His brother or cousin gave my drugs. I got high.

11 Q. And what kind of drugs did you take Monday night?

12 A. Crack cocaine.

13 Q. And how long were you there on Monday night doing
14 crack cocaine?

15 A. I left that night.

16 Q. So does that affect your memory doing that crack
17 cocaine like that?

18 A. No.

19 Q. It doesn't?

20 A. No.

21 Q. You seem to have a remarkable memory from ten years.

22 MR. RIDDLE: Objection to the commentary, Your

23 Honor. That's a question?

24 MR. FLOYD: I'll withdraw that comment.

25 THE COURT: He's withdrawing it. Sustained.

1 BY MR. FLOYD:

2 Q. So then Tuesday morning, is that when you see Johnny
3 next?

4 A. Yes -- well, afternoon.

5 Q. Pardon?

6 A. It was about in the afternoon.

7 Q. Afternoon?

8 A. Yeah.

9 Q. Well, what's your best memory, when did you see him
10 Tuesday?

11 A. About three. Around three o'clock, when he brought
12 my sister over.

13 Q. Three o'clock?

14 A. Yeah, around that time.

15 Q. And where were you?

16 A. In the house.

17 Q. And who was he with?

18 A. My sister. My sister, Pamela.

19 Q. You didn't see him very much that day, did you?

20 A. No.

21 Q. What's the total time you saw him on Tuesday?

22 A. About half an hour, 40 minutes, something like that.

23 Q. Did you get anything out of the car on Tuesday?

24 A. No, sir.

25 Q. So when's the next time you saw him?

1 A. Tuesday night.

2 Q. Did you get anything out of the car then?

3 A. No, sir.

4 Q. How long did you see him Tuesday night?

5 A. Not long. Long enough to go to the phone booth and
6 back. Then we went back to my house and we talked a little
7 bit, then he left.

8 Q. You were still upset with him about he wouldn't give
9 you money?

10 A. Yes.

11 Q. And he didn't give you any money that night either,
12 did he?

13 A. No, sir.

14 Q. Now, Wednesday what time did you see him?

15 A. He came over Wednesday morning.

16 Q. About what time was that?

17 A. About maybe nine, ten, around that time.

18 Q. Did he give you any money then?

19 A. No.

20 Q. Did you take some items from the car then?

21 A. He gave me some items -- not then, not right when he
22 came to the house.

23 Q. He didn't give them to you then?

24 A. Not right then.

25 Q. How long were you with him then?

1 A. About an hour, two hours, something like that.

2 Q. Did he leave or did the two of you leave together?

3 A. We left together, three of us left together.

4 Q. Who was that?

5 A. My daughter.

6 Q. And your daughter. And where did y'all go then?

7 A. To the mall.

8 Q. And when did y'all get back from the mall?

9 A. We went to my sister's house. We went a lot of
10 places that day.

11 Q. All right. Let's --

12 A. We went to my sister's, Pam's house. We helped her
13 paint. We went to the mall. We went to State College. We
14 went to my sister's, Cassandra's house. We went back to my
15 house.

16 Q. And what time did you get back to your house?

17 A. In the evening, late evening.

18 Q. When did you get these items from the car?

19 A. When we was at Pam's house.

20 Q. What time was that?

21 A. I don't remember exactly what time.

22 Q. So you took the items at Pam's house?

23 A. Yeah.

24 Q. Did you leave them at Pam's house?

25 A. No, sir, I took mines home.

1 Q. You took them home?

2 A. Home.

3 Q. When you got the items -- well, did you go to Pam's
4 house -- did you go from the Prince of Orange Mall to Pam's
5 house, was that your next stop?

6 A. I'm not exactly sure of the order in the stops that
7 we made, but I think we went to Pam's house, and then to the
8 mall. Like I said, I'm not sure about the order. I know we
9 went to them places, though. I remember going to the mall.

10 Q. So you know you went to either the mall or Pam's
11 house first?

12 A. Yeah.

13 Q. And you know that at Pam's house is when you took
14 possession of the items?

15 A. Yes.

16 Q. And when you took possession of these items, where
17 did you place them?

18 A. They probably still in the car.

19 Q. And did you have --

20 A. Until I got home.

21 Q. Until you got home?

22 A. Yeah.

23 Q. Did you then put them in this little case and put
24 them somewhere in the car?

25 A. Hmm, I'm not sure. I don't remember.

1 Q. You don't remember?

2 A. No. I remember at one point I did put them in the
3 case, I brought them in my house, because I took them out the
4 case and put them up.

5 Q. So you remember that you saw in the car the case,
6 the camera, the mats?

7 A. Uh-huh.

8 Q. And the glasses?

9 A. And the pillows. And the pillows.

10 Q. And the pillows. You remember seeing all those
11 things in the car?

12 A. Yeah, I got them.

13 Q. Okay. Did you also go -- you say you went to South
14 Carolina State?

15 A. Yes, sir.

16 Q. Was your daughter with you then?

17 A. Yes, sir.

18 Q. And you said Johnny went in to see somebody?

19 A. He was looking for somebody.

20 Q. Looking for somebody. But did that person ever come
21 in the car?

22 A. A tall guy came to the car.

23 Q. Did he get in the car?

24 A. I'm not sure. I don't think so. I know he was
25 talking to us.

1 Q. You don't remember a tall guy getting in the car?

2 A. I'm not sure. I don't remember.

3 Q. This was some basketball player?

4 A. I assumed he was on the team, if my memory serves me
5 correctly.

6 Q. So you can't remember whether or not a, let's say
7 six-foot-six, six-foot-five guy was in the car, but you can
8 remember the pillows?

9 A. Yeah, because I took them out the car and took them
10 in my house. I didn't take no six something foot guy in my
11 house.

12 Q. You can't remember whether he ever got in the car
13 with you?

14 A. I remember Johnny looking for him and talking to a
15 tall guy. I don't recall if he got in the car or not, no.

16 Q. You don't recall?

17 A. No.

18 Q. You gave a statement to the police the next week,
19 didn't you?

20 A. On the 3rd.

21 MR. FLOYD: Your Honor, I'd like to have these
22 marked first.

23 MR. RIDDLE: Your Honor, if I could find out which
24 date he's referring to?

25 MR. FLOYD: Your Honor, I'm going to show them to

1 him.

2 (WHEREUPON, Defendant's Exhibit Numbers 2 through
3 4, Statements, were marked for identification only.)

4 BY MR. FLOYD:

5 Q. Bonita, I'm going to show you this document marked
6 as Defendant's Exhibit Number 3. And I'll ask you if you can
7 recognize that document.

8 MR. RIDDLE: Which number?

9 MR. FLOYD: Three.

10 A. Yeah, that's my signature.

11 Q. Is that a statement you gave to the Lexington County
12 Sheriff's Department?

13 A. To Mr. Hamer.

14 Q. To Mr. Hamer?

15 A. That one right there.

16 Q. The gentleman right there?

17 A. Uh-huh.

18 Q. Now, I'm going to ask you if you can identify what's
19 marked as Defendant's Exhibit 4.

20 A. Yeah, there's my signature.

21 Q. In fact, you've got a copy of them right there,
22 don't you?

23 A. Uh-huh.

24 Q. Now, since you've got a copy there, I'll ask you to
25 look at them. Now, you gave these statements, and will you

1 agree with me, that one of them is given December the 3rd of
2 1990?

3 A. Yes, sir..

4 Q. One of them was given December the 6th --

5 A. Yes, sir.

6 Q. -- of 1990? Do you agree with me?

7 A. Yes, sir.

8 Q. Now, would you review those statements for me, and
9 would you please tell me whether or not you say anything in
10 those statements about ever seeing any bandages on Johnny
11 Bennett.

12 A. No.

13 Q. Pardon?

14 A. No, sir.

15 Q. I ask you now to review those statements and tell me
16 if you ever said anything in either one of those statements
17 about seeing any scratches on Johnny Bennett.

18 A. No, sir.

19 Q. Now, at the time you gave those statements, did the
20 investigator, Mr. Hamer, advise you that they suspected Johnny
21 Bennett in the murder of Benton Smith?

22 A. No, not that I remember.

23 Q. You don't remember?

24 A. No.

25 Q. But you don't say anything in there about any

1 scratches?

2 A. No.

3 Q. You don't say anything in there about any bandages,
4 do you?

5 A. No.

6 Q. Now, I'm going to show you something. I'm not sure
7 if you can -- can you identify this document?

8 A. That's my handwriting.

9 Q. That's your handwriting?

10 A. Uh-huh.

11 Q. And what kind of form is that written, is that one
12 of the Sheriff's Department forms?

13 A. This ain't none of my signatures on this.

14 Q. I know, it doesn't have a signature on it, that's
15 what I'm asking you?

16 A. This is on the same form as the ones my signature is
17 on.

18 Q. And is it in your handwriting?

19 A. Yes.

20 Q. Is it dated?

21 A. Yes.

22 Q. What's it dated?

23 A. December the 3rd.

24 Q. And in that handwritten statement there, do you say
25 anything about any bandages on Johnny Bennett?

1 A. No.

2 Q. Do you say anything about any Band-Aids on Johnny
3 Bennett?

4 A. No.

5 Q. Do you say anything about any scratches on Johnny
6 Bennett?

7 A. No.

8 Q. Now, these scratches that you say that you saw,
9 where were they?

10 A. On the scratches?

11 Q. Yeah.

12 A. On his chest.

13 Q. And how long were they?

14 A. I'm not sure how long they were.

15 Q. You don't remember how long they were?

16 A. No, I do not remember.

17 Q. How many were there?

18 A. I'm not sure how many there were. I know they was
19 one there.

20 Q. How far apart with they?

21 A. I don't know, I didn't measure. They were on there.
22 His hand was wrapped in a bandage, was on his eye. I didn't
23 make that up. I didn't just imagine it.

24 Q. So when you went to South Carolina State; do you
25 remember that?

1 A. Yes.

2 Q. When you went to South Carolina State, did he have
3 the bandages on his eye?

4 A. I'm not sure if he still had it on there that day.

5 Q. Oh, when did you see him, what day did you see him?

6 A. I seen him Tuesday and I seen him Wednesday.

7 Q. What day did you go to South Carolina State?

8 A. Wednesday.

9 Q. So if you saw him on Wednesday, that means when you
10 went to South Carolina State, did Johnny have a Band-Aid on
11 his eye?

12 A. I'm pretty sure he still did.

13 Q. Did he have a bandage on his hand?

14 A. Yes.

15 Q. Did he have scratches on his chest?

16 A. Yeah, he still had them. I seen them Wednesday.

17 Q. Now, you say that -- oh, by the way, on the Tuesday
18 night, Johnny didn't stay down there with you, did he?

19 A. No.

20 Q. On this Tuesday night, did you do drugs?

21 A. No.

22 Q. Now, Wednesday night, you stayed out all night?

23 A. Yes.

24 Q. You weren't with Johnny, were you?

25 A. No.

1 Q. Did you do drugs Wednesday night?

2 A. No.

3 Q. So you come back Thursday morning and you see

4 Mr. Smith?

5 A. Yes.

6 Q. And how many people were with Mr. Smith?

7 A. One.

8 Q. One. Did you recognize the one person that was with
9 him?

10 A. I'd recognize him. I don't remember who he was. At
11 that moment, I'd recognized him.

12 Q. Would you recognize him now?

13 A. No.

14 Q. Can you describe him?

15 A. No, I don't remember who he was.

16 MR. FLOYD: Thank you. I have no further questions.

17 THE COURT: Any redirect?

18 MR. RIDDLE: Yes, sir.

19 I'd like to see the Number 4 that was marked for
20 identification, please.

21 REDIRECT EXAMINATION

22 BY MR. RIDDLE:

23 Q. Is this the document that Mr. Floyd showed you?

24 A. Yes.

25 Q. That's your statement to the police on December the

1 3rd?

2 A. Uh-huh.

3 Q. The last line on the first page there, Bonita, read
4 that, please, ma'am. What does that day?

5 A. November 28th, he gave me a Polaroid 600, two wine
6 glasses, two pillows. I noticed his hand was wrapped November
7 27th.

8 Q. Night?

9 A. Night.

10 Q. November 27th night --

11 A. Night.

12 Q. You noticed his hand was wrapped?

13 A. Yes, sir.

14 Q. That's right here, the Tuesday; is that right?

15 A. Yes, sir.

16 MR. RIDDLE: Thank you. No further questions.

17 THE COURT: Recross?

18 RECROSS-EXAMINATION

19 BY MR. FLOYD:

20 Q. Did you say anything in there about a Band-Aid on
21 his eye?

22 MR. RIDDLE: Asked and answered.

23 THE COURT: Overruled. I'll allow that.

24 A. No, I don't have anything on here about a Band-Aid
25 on his eye.

1 Q. Huh?

2 A. Not on his eye, no.

3 Q. Don't have anything in there about the scratches
4 either, do you?

5 A. No, I got them on his hand.

6 MR. FLOYD: Thank you.

7 THE COURT: Thank you, ma'am. Ms. Gonsalves, you're
8 free to go, if you want to.

9 MR. MYERS: Jackie Robinson.

10 JACKIE ROBINSON, after having been duly sworn,
11 testified as follows:

12 DIRECT EXAMINATION

13 BY MR. MYERS:

14 Q. Mr. Robinson, what's your present occupation?

15 A. Professional basketball player.

16 Q. And did you just finish playing basketball?

17 A. Yes, sir, I just got back last week. I've been home
18 a week now.

19 Q. Where did you go to college?

20 A. South Carolina State.

21 Q. And where are you from?

22 A. I'm from Swansea.

23 Q. Mr. Robinson, you know Johnny Bennett?

24 A. Yes, sir.

25 Q. How long have you known Johnny Bennett?

1 A. Basically, all our lives. We grew up together,
2 basically.

3 Q. And y'all friends all your life; I saw you talking
4 with him this morning during the break?

5 A. Yes, sir.

6 Q. What about Benton Smith?

7 A. Friend, also relative. He's my cousin.

8 Q. So you're related to Benton, too?

9 A. Right.

10 Q. Now, while you were at South Carolina State, were
11 there in November of 1990 when Benton was missing?

12 A. Yes, sir.

13 Q. Now, Johnny Bennett would come down to see you at
14 South Carolina State and saw you while you were down there?

15 A. Yes, sir.

16 Q. Do you remember that day he came to see you in a
17 little blue car?

18 A. Yes, sir.

19 Q. Do you know if anyone was with him?

20 A. Yes, sir, a young lady.

21 Q. And what did Mr. Bennett try to do that day when he
22 came to see you at South Carolina State?

23 A. Well, we rode around for a few, and he asked did I
24 want to buy a camera. He asked did I want to buy a camera.

25 Q. And what did you tell him?

1 A. Well, jokingly, I asked where did he get the camera
2 from. And his reply -- he replied that I didn't need to know
3 all of that. So that was basically the end of the
4 conversation. I asked him where he got the camera from. He
5 just said I didn't need to know all that.

6 Q. Did you notice any type of walking cane in that car?

7 A. Yes, sir.

8 Q. And kind of describe the walking cane to the jury.

9 A. The cane, it was an eagle. In my interpretation, it
10 was an eagle, a cane with an eagle on it. I want to say a
11 gold-looking eagle.

12 Q. When you saw the cane, was it a short cane or a long
13 cane?

14 A. No, sir, it was a walking cane.

15 Q. Long cane?

16 A. Yeah, right.

17 Q. Now, did you go with him anywhere that night or
18 anything, or that was pretty much it?

19 A. No, sir, that afternoon. I'm going to give
20 approximate time, maybe like 20 to 30 minutes at the most that
21 we were together.

22 Q. At the time when you were in that blue car, nothing
23 about it was unusual as far as you were concerned; is that
24 right?

25 A. No, sir.

1 Q. And I think this was on a Wednesday?

2 A. Right. Right.

3 Q. Now, after he left, later on that day or Thursday or
4 Friday, did you have occasion to talk with your mother back in
5 Swansea or a cousin back in Swansea?

6 A. Yes, sir.

7 Q. And as a result of that conversation, did that blue
8 car then stand out in your mind?

9 A. Not at first, no. When I talked to my mother, at
10 first, when she was talking to me about it, she was under the
11 impression about the Corvette, the white Corvette. It wasn't
12 until later on that particular night I called my cousin,
13 Torrace Smith, and we were talking about it, and I asked him
14 did he know anything about Benton being missing or whatever.
15 And on that particular night was when he asked me -- I want to
16 say it was Thursday. I want to say it was Thursday that I
17 talked to Torrace. And on that particular day or night, he
18 asked -- he told me there was a blue car that had been
19 missing.

20 Q. Everybody is looking for your cousin, Benton, and
21 the blue car he was in?

22 A. Right.

23 Q. Now, you said something about that blue car didn't
24 strike you because you were thinking about a white Corvette.
25 The last time you had been around Benton, he was driving a

1 white Corvette?

2 A. Well, no, it didn't strike me at the time because I
3 had no idea about Benton even being missing.

4 Q. You didn't know he was missing?

5 A. Like I said, I was off at school and really didn't
6 even talk to too many people in Swansea, even though it was 30
7 minutes away. So it really didn't strike me at all in
8 relating to the car that evening. Benton didn't even come up.

9 Q. On Wednesday, you didn't know Benton was missing or
10 what kind of car he was in?

11 A. Right, exactly.

12 Q. It was only after you talked to your mother and your
13 cousin things started clicking together?

14 A. Right.

15 Q. And after you told mother about this, what did she
16 do?

17 A. She immediately wanted me to come home and talk to
18 the investigator.

19 Q. Did she come to Orangeburg and get you?

20 A. Yes, sir.

21 Q. And bring you back to Swansea?

22 A. Yes, sir.

23 Q. And you talked with police then?

24 A. Yes, sir.

25 Q. Tell them what you seen?

1 A. Yes, sir.

2 Q. As a matter of fact, you gave the police a
3 statement, I think, then; is that right?

4 A. Yes, sir.

5 Q. And what kind of camera was Johnny trying to sell
6 you?

7 A. A Polaroid camera.

8 Q. Polaroid 600?

9 A. Like I said, for me to sit here and say that's
10 exactly the camera, I would be lying because I can only go on
11 -- I can't even recall from back then. But I know for a fact
12 that he held the camera up and wanted me to -- asked did I
13 want to buy a camera. That's all I can say.

14 Q. Now, tell the jury about this State's 14, this
15 little blue car.

16 A. Yes, sir, that's the car that we went in.

17 Q. And what do you know about that little blue car?

18 A. I know it's the Smith's. I've always called it
19 Benton's car.

20 Q. Why?

21 A. Because he mostly drove it.

22 Q. Had you ever been in that car?

23 A. Yes, sir.

24 Q. Before with Johnny Bennett?

25 A. Well, I've been in there with Benton, and even that

1 day with Johnny.

2 Q. But prior to being in that car with Johnny, prior to
3 that time, you'd been in that car with Benton?

4 A. Right.

5 Q. And is that the same car that Johnny Bennett had
6 down there on that Wednesday?

7 A. Yes, sir.

8 Q. Is this right; Johnny Bennett tries to sell camera
9 to Jackie Robinson, and that cane was in Benton's car?

10 A. Right. Yes, sir.

11 MR. MYERS: Your Honor, we'd put this on the
12 calender, State's Exhibit 13.

13 MR. FLOYD: Your Honor, we would object because on
14 this particular one, Mr. Robinson cannot identify that camera.

15 MR. MYERS: It doesn't describe a camera. It just
16 says Bennett trying to sell camera.

17 THE COURT: I think he just said tries to sell him a
18 camera. Overruled.

19 MR. FLOYD: Then it's irrelevant unless it's this
20 camera.

21 THE COURT: Overruled. That's a circumstantial
22 issue for the jury to decide.

23 BY MR. MYERS:

24 Q. Now, you knew Benton?

25 A. Yes, sir.

1 Q. You knew Benton's -- his position about what he
2 owned and his car, his possessions?

3 A. Yes, sir.

4 Q. What was it?

5 A. Benton, I guess, to know him you -- he pretty much,
6 what was his was his, basically. Yeah. To know him, I would
7 say what was his was his, basically. That's the best way I
8 can put it.

9 Q. He wouldn't let other people use his things?

10 A. No. No.

11 Q. How tall are you?

12 A. How tall am I? Six-eight.

13 Q. Johnny is about what six-six, six-seven?

14 A. Six-six. I think about six-six, six-five.

15 Q. About Three hundred pounds?

16 A. (Nodded).

17 MR. MYERS: Thank you. Answer any questions they
18 have.

19 THE COURT: Cross?

20 CROSS-EXAMINATION

21 BY MR. FLOYD:

22 Q. Good afternoon, Jackie.

23 A. How you doing?

24 Q. This day at South Carolina State, did Johnny come
25 find you in the dorm, or how did y'all hook up?

1 A. I want to say that he came to the dorm, yeah. The
2 day hall. As a matter of fact, the day hall.

3 Q. The hall?

4 A. Right, that's where I was staying at the time.

5 Q. And you saw him there up close?

6 A. Right.

7 Q. And I assume y'all must have walked outside
8 together?

9 A. Right.

10 Q. And then took a ride in the car?

11 A. Yes, sir.

12 Q. Where did you sit in the car?

13 A. In the back seat.

14 Q. And when you say back seat, directly behind -- was
15 Johnny driving?

16 A. Yes, sir.

17 Q. You were directly behind him or to the other side?

18 A. I was on the passenger side.

19 Q. So y'all could kind of make some eye contact?

20 A. Right.

21 Q. And when he walked in the dorm, did you see him
22 walking up to you and so forth?

23 A. Yeah. Well, I was in my room.

24 Q. You were in your room. Did Johnny have any
25 Band-Aids on his eye?

1 A. No, sir, none that I can recall.

2 Q. Did Johnny have any kind of a wrapping on his hand,
3 gauze wrapping?

4 A. No, sir, none that I can recall.

5 Q. Did you see any scratches on Johnny?

6 A. No, sir.

7 Q. You've known Johnny a long time, haven't you?

8 A. Right.

9 Q. Was the lady that was just up here, was she the one
10 that was in the car?

11 A. To be honest, I can't really say. It's a bad habit
12 I have. I can't really say.

13 Q. Was there any little child with her?

14 A. Not that I can recall.

15 Q. But no question, no Band-Aid on Johnny's eye?

16 A. No, sir.

17 Q. No wrapping on his hand?

18 A. No, sir.

19 Q. And you saw no scratches?

20 A. No, sir.

21 MR. FLOYD: Thank you.

22 MR. MYERS: Thank you, come down.

23 Freddie Hamer.

24 THE COURT: Mr. Robinson, you're free to go, if you
25 want to.

1 FREDERICK R. HAMER, after having been duly sworn,
2 testified as follows:

3 DIRECT EXAMINATION

4 BY MR. MYERS:

5 Q. Mr. Hamer, would you introduce yourself to the jury,
6 please.

7 A. Frederick R. Hamer, H-a-m-e-r.

8 Q. By whom are you employed?

9 A. Lexington County Sheriff's Department.

10 Q. How long have you been in law enforcement?

11 A. 15, going on 16 years.

12 Q. And in what position?

13 A. Investigative division.

14 Q. And, Detective --

15 THE COURT: Let me ask, is this witness going to be
16 awhile you think?

17 MR. MYERS: Yes, sir.

18 THE COURT: Why don't we take a break at this point,
19 okay, before we get started with him. I notice we've been
20 going a little bit over an hour.

21 Ladies and gentlemen, we'll take a short break, give
22 you a chance to move around, get some refreshments. Just
23 don't talk about the case.

24 (WHEREUPON, the jury leaves the courtroom at
25 approximately 3:30 p.m.)

1 THE COURT: All right. We'll stand in recess,
2 Counsel.

3 (WHEREUPON, a brief recess was taken.)

4 THE COURT: All parties and attorneys are here,
5 except for Mr. Riddle. Is he going to join us?

6 MR. MYERS: He's on his way.

7 THE COURT: Bailiffs, bring the jury in.

8 (WHEREUPON, the jury enters the courtroom at
9 approximately 3:55 p.m.)

10 THE COURT: All parties and attorneys are in the
11 courtroom and all jurors have returned.

12 Call your next witness, Solicitor -- all right, I
13 believe Officer Hamer is right here. Okay. Go ahead.

14 BY MR. MYERS:

15 Q. Now, Mr. Hamer, were you one of the officers
16 assigned to the case of finding Benton Smith?

17 A. Yes, sir, I was.

18 Q. About when did you get involved in the case?

19 A. I received it that Wednesday, would have probably
20 been that Thursday morning.

21 Q. And Thursday right up here?

22 A. Yes, sir.

23 Q. Working Thursday and then from then on?

24 A. Yes, sir.

25 Q. And, of course, you met with Mr. Smith and his

1 family and talked with them?

2 A. Yes, sir.

3 Q. And by Thursday, Benton's car had already been
4 found?

5 A. Yes, sir, that is correct.

6 Q. Now, when did you first become involved with Johnny
7 Bennett concerning this?

8 A. I first became involved with the defendant,
9 Mr. Bennett, on Friday afternoon, that Friday afternoon, which
10 would have been the 30th.

11 Q. And how did you become involved with him on Friday?

12 A. After I had met with the father, the victim's
13 father, I had received some information and I went to the
14 judge's office and picked up a bench warrant. And from that
15 point, contacting other officers, went to the defendant's
16 residence along with other officers.

17 Q. Now, bench warrant is the same thing as an arrest
18 warrant?

19 A. Yes, sir, that's correct.

20 Q. And where did you get that warrant from?

21 A. From Judge Shockley's office down in Swansea.

22 Q. And who was that warrant for?

23 A. The defendant, Johnny Bennett.

24 Q. And is this the bench warrant?

25 A. Yes, sir, that's correct.

1 Q. And that authorizes law enforcement to arrest
2 Mr. Bennett?

3 A. Yes, sir, that's correct.

4 Q. To arrest him for what?

5 A. For he had failed to appear in court, and therefore,
6 the judge had issued a bench warrant for his absence.

7 Q. And what was he to have supposed to appear in court
8 for?

9 A. He was supposed to appear for a petty larceny, the
10 stealing of some gas from Stillinger's Station.

11 Q. And when he didn't appear in court, they went ahead
12 and tried him?

13 A. Yes, sir, that's correct.

14 Q. And the judge sentenced him?

15 A. Yes, sir.

16 MR. MYERS: Your Honor, we offer this into evidence.

17 THE COURT: Any objection?

18 MR. FLOYD: No objection, Your Honor.

19 THE COURT: Without objection.

20 (WHEREUPON, State's Exhibit No. 28, a Bench

21 Warrant, was marked and admitted into evidence.)

22 BY MR. MYERS:

23 Q. Now, Number 28, the bench warrant, Johnny Bennett,
24 Junior, 171, Jasper Sutton Road, Happy Town, Gaston, South
25 Carolina?

1 A. Yes, sir.

2 Q. The defendant failed to appear for trial on November
3 the 29th, 1990, at 2:30 p.m., tried in absence, found guilty
4 on warrant C865213, petty larceny, 30 days or 237 dollars,
5 signed by Judge Shockley.

6 A. Yes, sir.

7 Q. Is that right?

8 A. Yes, sir, that's correct.

9 Q. Now, on State's Exhibit Number 12, would this be
10 correct right here; Johnny Bennett was tried in his absence,
11 found guilty of petty larceny, sentenced to 30 days or 237
12 dollars. This bench warrant was issued for Bennett's arrest
13 for failure to appear in court?

14 A. Yes, sir, that's correct.

15 Q. Now, that would have been on Thursday, is that
16 right, and you got the bench warrant on Friday?

17 A. Yes, sir. That would have been on Thursday. I
18 picked up the warrant on Friday.

19 Q. Now, when you got that bench warrant on Friday, did
20 you find Johnny Bennett?

21 A. Yes, sir, that's correct.

22 Q. Where did you find him?

23 A. He was at home.

24 Q. And where does he live?

25 A. On a Jasper Sutton, Jasper Sutton Road.

1 Q. The address on that bench warrant?

2 A. That's correct, the address on that bench warrant.

3 Q. And when you arrested him on that bench warrant on a
4 Friday, is this right; Bennett arrested for failure to appear
5 in court?

6 A. Yes, sir, that's correct.

7 Q. And you did that Friday, November the 30th?

8 A. Yes, sir.

9 MR. MYERS: Your Honor, we'd move to put this on the
10 calender chart; Bennett arrested for failure to appear in
11 court.

12 THE COURT: Okay, without objection.

13 BY MR. MYERS:

14 Q. Where did you take him when you arrested him?

15 A. Took him to Lexington County Sheriff's Department.

16 Q. And when you got him down to the Sheriff's
17 Department what, if any, rights did you advise him of?

18 A. I advised him of his Miranda rights with the Miranda
19 rights form that we use.

20 Q. And what are those rights that you advised him of?

21 A. That he had a right to remain silent and not make
22 any statement at all. That any statement he made could be
23 used against him in a court of law. That he had a right to
24 have an attorney present any time during questioning. If he
25 could not afford an attorney that he could apply to the courts

1 to have one to represent him. That if he chose to speak with
2 me without an attorney being present, he may stop at any time
3 and request for one..

4 Q. Now, did he want an attorney?

5 A. No, sir.

6 Q. Did he tell you that he wanted to remain silent?

7 A. No, sir.

8 Q. Did you threaten him in any way?

9 A. No, sir.

10 Q. Did you do anything to intimidate him or force him
11 to give up these rights?

12 A. No, sir.

13 Q. Did he agree to talk with you?

14 A. Yes, sir, he agreed.

15 Q. And did you talk with him any relating to the
16 disappearance of Benton Smith?

17 A. Yes, sir, I did.

18 Q. Did he agree to talk with you?

19 A. Yes, sir, he did.

20 Q. Did he appear to know what he was doing?

21 A. Yes, sir.

22 Q. Did he ask you to explain those rights to him again
23 in any way?

24 A. No, sir.

25 Q. Did he freely and voluntarily give up those rights

1 or waive those rights?

2 A. Yes, sir, he did.

3 Q. Was he cooperative and wanted to talk with you?

4 A. Yes, sir.

5 Q. What did he tell you about anything he knew about
6 Benton Smith?

7 THE COURT: Counsel, let me give the jury an
8 instruction on this, okay.

9 Ladies and gentlemen, at this time, this witness is
10 preparing to talk about a statement that he alleges was given
11 to him by Mr. Bennett. Now, it's up to the Court to decide
12 whether a statement such as this is admissible, but it, of
13 course, is up to you, the jury, to make the determination as
14 to how much weight to give to it.

15 Now, what you have to do as the jury is you have to
16 determine basically two or three things. First thing you have
17 to do is determine if the statement was, in fact, made and, of
18 course, the State must prove to you beyond a reasonable doubt
19 that Mr. Bennett did make the statement that is alleged to
20 have been made. If you find that the -- of course, if you
21 find that the statement was not made, then you should give it
22 no weight whatsoever.

23 But if you find that it was made, you should next
24 determine whether or not it was given by Mr. Bennett
25 voluntarily and intelligently. In other words, if he was made

1 aware of his rights and that even understanding his rights, if
2 he went ahead and still gave the statement. So that's the
3 second determination that you make as to whether or not he
4 gave the statement voluntarily and intelligently.

5 And, again, if you find that he did not, then you
6 would not give the statement any weight. But if you find that
7 he did, then the next thing you would do is you would simply
8 determine how much weight and credibility to give to it. All
9 those are the determinations to be made by you.

10 So those are the three things that you would
11 consider. First, did he make the statement; second, if so,
12 did he make it voluntarily and intelligently knowing his
13 rights, in essence, waiving his rights when he did so; and
14 third, if so, then how much weight and credibility do you give
15 to it. Again, those are determinations to be made by you.

16 Solicitor?

17 MR. FLOYD: Your Honor, may we just approach just a
18 moment?

19 THE COURT: Sure.

20 (WHEREUPON, a bench conference was had.)

21 BY MR. MYERS:

22 Q. Mr. Hamer, on that Friday, November the 30th, after
23 you informed Mr. Bennett of his rights and he gave up his
24 rights to talk to you, what did he say he knew about the
25 disappearance of Bennett Smith?

1 A. He stated that he had been with him earlier that
2 Tuesday, that he had rode to Swansea with the victim,
3 Mr. Smith. That they had went to the bank. After they left
4 the bank, he stated that they went to West Columbia, Columbia
5 where they went job hunting. That they filled out some
6 applications and that they took some with them. After coming
7 back out of Columbia, they had, I think, stopped and grabbed
8 something at either McDonald's or somewhere.

9 From there, they hit interstate I-26 and headed down
10 to Orangeburg. That they went to -- maybe even went to the
11 college, but they went to see some girls, and then they came
12 back later that evening. That the victim, Mr. Smith, had
13 either dropped him off at home or under the tree, but I think
14 he had stated that he had dropped him off at home and that the
15 victim had said something about he was going back to Swansea.
16 And that was the last that he had seen him on that Tuesday.

17 Q. Now, you said that Mr. Bennett told you that Benton
18 dropped him off at home or under the tree. Tell the jury what
19 under the tree means.

20 A. Yes. There's a place in Swansea by Stillinger's
21 Gas, that Mr. Stillinger owns that service station there,
22 there used to be a tree under there right there, a tree there
23 right there on the corner that, you know, a few people would
24 stand there, would tend to hang out there under the tree right
25 there on that corner. And it was a normal place that people

1 would catch a ride or get dropped off.

2 Q. Did he tell you that he knew what happened to
3 Benton?

4 A. He stated that he did not know anything about what
5 had happened to Benton. He kind of indicated that Benton may
6 have been somewhere with some of the young ladies or something
7 that they had met in Orangeburg or something. He didn't feel
8 like that Benton was missing or anything, that he was just
9 somewhere with some young ladies and the family didn't know.

10 Q. Is this a fair statement; Mr. Bennett says he does
11 not know what happened to Benton?

12 A. Yes, sir, that's correct: That's fair.

13 MR. MYERS: Your Honor, we put this on the calender
14 exhibit for Friday, November 30th, Bennett does not know what
15 happened to Smith.

16 THE COURT: Same objection?

17 MR. FLOYD: Yes, sir.

18 THE COURT: All right.

19 BY MR. MYERS:

20 Q. Now, also, on State's Exhibit Number 12, is this a
21 fair statement right here, that on November the 30th that you
22 arrested Johnny Bennett on that bench warrant?

23 A. Yes, sir, that's correct.

24 Q. And that's when he talked with you?

25 A. Yes, sir.

1 Q. Was he placed in jail that Friday night?

2 A. Yes, sir, he was.

3 Q. And before you left talking with him on that Friday,
4 did you ask him for his cooperation?

5 A. Yes, sir, that's correct, I did, that if any
6 information he could obtain or in any way he could help us to
7 get any information as to Benton's whereabouts.

8 Q. And what did he say?

9 A. He agreed to help us. He said that he would, once
10 he was released.

11 Q. Did he tell you he would try to help you?

12 A. Yes, sir, he did.

13 Q. The next day, now, is going to be Saturday --

14 A. Yes, sir.

15 Q. -- December 1st. Did you have an occasion to go by
16 the courtroom over there at the jail or at the jail to see
17 whether or not he had gotten the bench warrant, either paid
18 the fine or decided to serve the 30 days or was being
19 released? Did you go check on that?

20 A. Yes, sir, we did.

21 Q. And where did you see him?

22 A. Met him in the lobby right outside the courtroom.

23 He was with his dad. Detective Jones and myself met with him,
24 and we talked with him in the lobby right outside the
25 courtroom where bonds are held at on the weekend?

1 Q. Now, tell the jury who Detective Jones is.

2 A. Detective Jones was also assigned to the
3 investigative division. He's now retired. I had asked for
4 his assistance on this case. Being that we both were coming
5 up on a weekend duty, so I asked him to work along with me on
6 it.

7 Q. Detective Jones has since retired?

8 A. Yes, sir, that's correct.

9 Q. And I think last week he had some colon surgery?

10 A. Yes, sir, that's correct.

11 Q. Now, when you talked with Mr. Bennett at the jail
12 over there, was he getting out or what the situation was?

13 A. He had already been bonded out. They were getting
14 ready to leave. I guess -- they was leaving the Sheriff's
15 Department but I don't know where they was headed. But he had
16 been bonded out. He was released.

17 Q. So he was being released from jail?

18 A. Yes, sir, he was released.

19 Q. State's Exhibit Number 12, is this an accurate
20 statement; Saturday, December 1st, 1990, Johnny Bennett
21 released from Lexington County Jail?

22 A. Yes, sir, that's correct.

23 Q. And did you talk with him when he was released from
24 jail about Benton?

25 A. Yes, sir, we did.

1 Q. What, if any, rights did you advise him of before
2 you talked with him?

3 A. I advised him that he remembered on Friday when I
4 had talked with him and he had been advised of his rights and
5 that they still were in effect. And he said, Yes, I
6 understand that.

7 Q. Stated he still understood his rights?

8 A. Yes, sir.

9 Q. Did he ask to speak with a lawyer?

10 A. No, sir.

11 Q. Did he say he didn't want to talk with you?

12 A. No, sir.

13 Q. Did you do anything to make him give up his rights?

14 A. No, sir.

15 Q. Did he voluntarily agree to talk with you all at the
16 jail on this Saturday, December 1st?

17 A. Yes, sir, he did.

18 Q. Now, what did he say on this Saturday morning about
19 him and Benton Smith?

20 A. Yes. He pretty much told the both of us the same
21 thing that he had talked with me about on Friday. And that --
22 he said that after they had came back from Columbia, West
23 Columbia that they had rode back down to Swansea and messed
24 around down there for a little while, and then they went to
25 Orangeburg and met up with some ladies and all.

1 Q. So that was a little different from what he told you
2 the day before?

3 A. Yes, sir.

4 Q. The day before, he said he left Columbia and where
5 did they go?

6 A. They went to Orangeburg.

7 Q. But on Saturday, he said they left Columbia and
8 where did they go?

9 A. They went back through Swansea and rode around a
10 little while, then they went to Orangeburg.

11 Q. What did he say they did in Orangeburg now when he's
12 talking with you Saturday morning?

13 A. That they had met with some young ladies. I think
14 they went to the college. And that, you know, Benton had met
15 a young lady or so.

16 Q. And what did he say they did after leaving
17 Orangeburg?

18 A. After leaving Orangeburg, they came back and he
19 stated that he was dropped off under the tree on that
20 particular evening.

21 Q. Still didn't know anything about what happened to
22 Benton?

23 A. No, sir.

24 Q. Is this a fair statement; at the jail on Saturday,
25 Bennett does not know what happened to Smith? Is that

1 correct?

2 A. That's correct, sir.

3 MR. MYERS: Move to put this on the calender, Your
4 Honor, for December the 1st, Saturday.

5 THE COURT: You want to renew the same objection?

6 MR. FLOYD: Yes, sir, Your Honor, just continue
7 that.

8 BY MR. MYERS:

9 Q. Now, did he tell you anything else as to what
10 happened to Benton while y'all were talking in the jail or did
11 he agree to help you any further?

12 A. He agreed that he would be in touch with us, that he
13 would help us further.

14 Q. Anything else of any significance in the
15 conversation with Mr. Bennett there at the jail?

16 A. No, sir, nothing I could remember.

17 Q. Now, what happened after that, Detective Hamer?

18 A. That Saturday afternoon, later that evening, myself,
19 Detective Jones, I think it was a captain at the time, Captain
20 Paavel, he had watch command duty, which was the supervisor
21 for the whole Sheriff's Department on the weekend, we went
22 down and met with the Smith family to go over some things
23 further. And while meeting with them, I received some radio
24 communications, contacted my office, and from there, after
25 leaving the Smith residence, went to meet with the defendant,

1 Johnny Bennett.

2 Q. The radio communication was that Johnny Bennett
3 wanted to see you?

4 A. Yes, sir, that's correct.

5 Q. And where did you go to find Johnny Bennett? And
6 we're talking about Saturday afternoon, Saturday night, what?

7 A. It was Saturday night. It was after nightfall,
8 probably somewhere in the neighborhood of maybe around 9:00;
9 8:30, 9:00, but it was well after dark.

10 Q. And where did you go to find Mr. Bennett?

11 A. Went around to his residence, which was on Jasper
12 Sutton. Just take a left from leaving the victim's residence,
13 go up the next corner and take a left, go down about a quarter
14 of a mile or so and hang a left and you would circle back
15 around on your left to the defendant's residence.

16 Q. When you got there, what -- did you see Johnny
17 Bennett?

18 A. Yes, sir, we did.

19 Q. What, if any, kind of rights did you advise him?

20 A. I advised him that he was still under his rights,
21 that you know what we had talked about earlier, that they are
22 still under effect. And he said, Yes, sir, I understand all
23 of that.

24 Q. Did he say he wanted to talk with a lawyer?

25 A. No, sir.

1 Q. Did he tell you that he didn't want to talk to you?

2 A. No, sir.

3 Q. As a matter of fact, he sent word for you to come
4 over and see him?

5 A. Yes, sir, he did.

6 Q. Was he cooperative?

7 A. Yes, sir.

8 Q. Did he agree voluntarily to talk with you?

9 A. Yes, sir, he did.

10 Q. Now, what did he tell you there at his house
11 Saturday night?

12 A. He stated -- there was another officer that was
13 there with him, and they were standing by the driveway, and he
14 stated that he knew where some guys were that would be able to
15 give us some information that may could help us in locating
16 Benton.

17 Q. And what else did he say?

18 A. He stated that he would be willing to take us to
19 locate him. From my understanding of what he had stated, that
20 the guys were trying to lay low due to there had been a drug
21 sweep in the area probably about a month or month and a half
22 before and he was going to help us to locate some people that
23 were hiding out.

24 Q. And he wanted you to check on these other people
25 about Benton Smith?

1 A. Yes, sir, that's correct.

2 Q. Is this fair to say; at his house that Saturday
3 night Bennett doesn't know what happened to Smith, wants y'all
4 to check out others?

5 A. Yes, sir, that's correct.

6 MR. MYERS: We move to put this on the calender for
7 Saturday, December the 1st.

8 MR. YOUNG: Same objection.

9 THE COURT: Noted, denied.

10 BY MR. MYERS:

11 Q. Now, did he take you anywhere or did y'all go
12 anywhere to check out these other people?

13 A. Yes, sir. We went down to Theodore Reeds Club. We
14 put him in the car with us. As a matter of fact, he sat in
15 the front seat beside me. I was driving and Detective Jones
16 was sitting in the back seat. And we had approximately about
17 four or five other cars to follow us that we had contacted,
18 that we were going to a club so we were probably going to need
19 some assistance, some other officers.

20 So he guided us down to Theodore Reeds Club, which
21 was out off of Highway 692. If you go back through downtown
22 Swansea and head out towards St. Matthews, Calhoun County,
23 there's a little club that sat out there kind of in the middle
24 of a field.

25 Q. And who went to the club with you? Did Johnny

1 Bennett go?

2 A. The defendant, Johnny Bennett, Detective Jones,
3 Sergeant Yarborough, and there were probably about five or six
4 other officers.

5 Q. And who was Johnny Bennett wanting y'all to check
6 out, talk to?

7 A. The first person we was going to try to locate was
8 Isadore Mack, and I didn't know who Isadore Mack was at the
9 time. And he -- the plan was that the defendant, Johnny
10 Bennett, would go into the club, stand beside Isadore Mack and
11 we would come in there shortly thereafter, which I'd given him
12 about five minutes, and we would escort both of them out at
13 that time.

14 Q. Did y'all find Isadore Mack in Reeds Club?

15 A. Yes, sir, we did.

16 Q. Did the defendant go in?

17 A. Yes, sir. We parked along the road, which we could
18 see the club. We was out in the main road, the highway, It
19 was kind of a little short driveway that wind up to the club.
20 Approximately five minutes, we drove up, went inside and we
21 did locate Isadore Mack.

22 Q. Did you get Isadore Mack outside?

23 A. Yes, sir, we did.

24 Q. Y'all talked with Isadore Mack?

25 A. Yes, sir.

1 Q. After you get through talking with Isadore Mack, do
2 you go back and talk with Johnny Bennett?

3 A. Yes, sir, we did.

4 Q. What did you tell Johnny Bennett?

5 A. We told the defendant, Johnny Bennett, that Isadore
6 Mack didn't tell us anything, he didn't give us any
7 information, that this fellow is not giving us anything. And
8 we went on to say some others things -- I went on to say some
9 other things to him. Pretty much both of us did, yes, sir.

10 Q. Y'all kept talking with Johnny Bennett?

11 A. Yes, sir.

12 Q. What else did y'all say to Johnny Bennett?

13 A. As I was talking with him, I pretty well advised
14 him, I said, Johnny, we know that Benton's not alive and that,
15 you know, the best thing we can do is to try to get him back
16 home so that his family would know and that they can try to
17 put some things to rest about what has happened. And if you
18 know these -- Bennett you know these guys, that you know them
19 quite well, being that Isadore knows who's involved in this,
20 how would these guys think, what would they do.

21 Q. What did Johnny Bennett say?

22 A. He pretty well looked at us for a moment and he
23 thought and says, I know them pretty well, I know the way they
24 think. And he said, Drive, let's go.

25 Q. So he wanted y'all to drive?

1 A. Yes, sir.

2 MR. MYERS: Without objection, another map.

3 (WHEREUPON, State's Exhibit No. 29, a Map, was
4 marked and admitted into evidence.)

5 BY MR. MYERS:

6 Q. Freddie, this is a similar map as this one, but this
7 is the Town of Swansea; is that right?

8 A. Yes, sir.

9 Q. Right here is Stillinger's?

10 A. Yes, sir.

11 Q. There's the high school?

12 A. Yes, sir.

13 Q. The bank?

14 A. Yes, sir.

15 Q. Now, where on this map would you go toward Reeds
16 Club?

17 A. Yes, sir. Out here off of St. Matthews Road, head
18 out. And before you reach the county line out there there's a
19 road that cuts back off to the left out here and you go out,
20 and it's a paved road, and there was a little road that cut up
21 into a field, and that's where Reeds Club was located.

22 Q. Now, where on this map -- you referred to an area
23 called Happy Town. Where is Happy Town on that map?

24 A. Happy Town would be down in here (indicated).

25 Q. Did Johnny Bennett live in Happy Town?

1 A. Yes, sir, that's correct.

2 Q. Did Benton Smith live in Happy Town?

3 A. Yes, sir, that's correct.

4 Q. Now, you said something about Jasper Sutton Road is
5 right here?

6 A. Yes, sir.

7 Q. Is that Jasper Sutton Road where Johnny Bennett
8 lived?

9 A. Yes, sir, that's correct.

10 Q. And what road did Benton Smith live on?

11 A. He lived on Cassidy Road, which was right here
12 (indicated).

13 Q. Is this where Benton Smith lived on Cassidy Road?

14 A. Yes, sir, that's correct.

15 Q. And you were saying earlier about y'all had been at
16 Mr. Smith's residence?

17 A. Yes, sir.

18 Q. And you got the call to go speak to Johnny at his
19 house and you were saying about some directions. How did you
20 get to Johnny's house from Benton's house to meet him that
21 night?

22 A. We left from out the driveway here at the Benton's
23 residence -- the Smith's residence, and went right up here,
24 took a left on the first road to the left, went down the road
25 a little ways about a quarter of a mile or so and turn left

1 and it circles back around to your left right back up in here
2 at a dead end.

3 Q. Now, you all were back over here to the right side
4 of Swansea, between Swansea and St. Matthews, is Reeds Club?

5 A. Yes, sir.

6 Q. And then the last thing you said was after telling
7 Johnny Bennett the family wanted Benton back, and you knew he
8 was dead?

9 A. Yes, sir.

10 Q. And he said, Okay, let's go?

11 A. Yes, sir.

12 Q. Where did y'all go?

13 A. We had headed back into Swansea. And when we got
14 back into Swansea, we hit Number 6, came back out Swansea
15 heading back up towards Lexington. We turned right onto
16 Cassidy Road, went down past the Smith's residence, we turned
17 left. And then we went down that road past the road that
18 circles around to his residence and went up to a -- a little
19 ways just up from there and there was a driveway, and he said
20 turn left up in here.

21 Q. Did you know where you were going?

22 A. No, sir.

23 Q. Who was giving directions?

24 A. He was giving the directions, the defendant.

25 Q. Going from Reeds Club back over to Happy Town past

1 Johnny Bennett's residence, other than him giving directions,
2 was he saying much of anything else?

3 A. No, sir, he didn't say too much. He was just
4 telling us which way to turn, either left or right, when we
5 would get close enough to wherever we had to make a turn.

6 Q. Did you or Detective Jones say Johnny, where are we
7 going or anything like that?

8 A. No, sir.

9 Q. Now, when you get back down here past the road that
10 goes to his house and take a left up into a driveway, what's
11 in that driveway?

12 A. There was a mobile home sitting there.

13 Q. Did you know whose mobile home it was?

14 A. No, sir.

15 Q. What happened when you get to that driveway where
16 the mobile home is?

17 A. Well, when we turned up in there, I asked him, I
18 said, Who lives here? And he said, Don't worry about that.

19 Q. Did he ever tell you right then who lived there?

20 A. No, sir.

21 Q. What did y'all do when you got up into that driveway
22 about the mobile home?

23 A. Well, when we pulled up along the side of it, which
24 put his side to the closest to the mobile home, I said, Well,
25 you know, Johnny, we need to know who lives here just in case

1 these people come out, and we're on their property. And he
2 said, It's my sisters residence, don't worry about it.

3 Q. It's his sister's residence?

4 A. Yes, sir.

5 Q. Is this correct, right in here, his sister's
6 residence?

7 A. That's correct.

8 Q. Johnny Bennett's sister?

9 A. Yes, sir.

10 Q. Now, what did you do when he says it's my sister's
11 residence, don't worry about it?

12 A. Well, we felt like it was fine, so we proceeded to
13 walk through the backyard. The backyard was pretty clear, cut
14 down pretty good, level and all. We walked through the
15 backyard and then we hit a little -- few little trees area.
16 It wasn't really thick, but just a few little trees. We had
17 to go through a few little trees.

18 And then we hit what looked like a little firebreak
19 or something where at some point in time maybe the forestry or
20 someone had been through there or either land clearing, but it
21 was a little firebreak that we hit and went across it into
22 another little stretch of trees.

23 Q. What happened?

24 A. Well, as we crossed that second one he said, you
25 know, I think it would probably be somewhere around here. But

1 we kind of -- Charlie, Detective Jones, kind of started to
2 phase a little bit to the right, and I kind of started to
3 phase a little bit to the left. And Johnny was kind of in the
4 middle, the defendant, and he kind of would ease a little bit
5 my way and then a little bit Detective Jones' way.

6 And shortly after we had moved in a little bit
7 further, my flashlight hit -- the light of it caught kind of
8 like a piece of a red material or something and I seen what
9 was believed to be some type of a bone fragment or something,
10 and there was a line of trees like kind of an above-ground
11 grave that was in brush lying over something.

12 And I yelled out to Charlie, I said, Charlie, over
13 here. So Charlie moved back over towards me and I was holding
14 the flashlight on it. And Charlie moved in a little bit
15 closer, bent down and kind of looked a little closer. And he
16 said, Yeah, that's it. And Johnny moved in, and when Johnny
17 seen it he pretty well -- the defendant bent over like he was
18 throwing up.

19 Q. When Charlie said this was it, what was it?

20 A. That was -- pretty much that was the body. We had
21 discovered an above-ground grave. We had discovered a body at
22 that point. Because of the length of everything, we felt like
23 we had a whole body there.

24 Q. Did Johnny Bennett say anything at that time?

25 A. No, sir.

1 Q. Did he actually throw up?

2 A. I never seen anything come up, nothing at all.

3 Q. What happened after that?

4 A. We started walking back to the residence to get on
5 the radio and to get on the phone to get some forensics people
6 out there and anyone else that we would need. And as we was
7 getting close to the back of the residence, about where the
8 car was parked along the side of the residence, the lady came
9 out of the residence and her husband was walking behind her
10 and she wanted -- she yelled out what were we doing on her
11 property and what was going on. And I explained to her that
12 we were with the Sheriff's Department, I identified who we
13 were, and that we had a situation here, that we were going to
14 be here for awhile, and that we had discovered something in
15 her backyard.

16 Q. What did she say?

17 A. She insisted that she wanted to see what we had
18 discovered and wanted to know what it was. So I went ahead
19 and told her that we had possibly a body back there in her
20 backyard. And she insisted that she wanted to see it, she did
21 not believe it.

22 So we had a couple of other officers that was out by
23 the roadway, they started doing some radio communication and
24 assisting us. They also secured off the roadway by the
25 driveway. And if you go up past the driveway, there was a

1 little road that cuts down beside her property, they secured
2 all of that off. So we proceeded back there to -- myself,
3 Detective Jones, the defendant, Johnny Bennett, his sister and
4 his brother-in-law, we all walked back there once again.

5 Q. What happened when you got back there?

6 A. Well, when we actually got back there and signed the
7 flashlight on what we had found, she fainted, she fell out,
8 she fell to the ground. Johnny picked her up, the defendant
9 picked her up in his arms. And we, at that time, had to call
10 for an ambulance for her, and we proceeded to head back to the
11 house.

12 Q. Now, back into this area, Freddie, on the map 29?

13 A. Yes, sir.

14 Q. That's where you found Benton's body?

15 A. Yes, sir.

16 Q. And this is a little road you said was on the other
17 side of the house?

18 A. Yes, sir.

19 Q. And what's back down that road back down there?

20 A. If you go past -- if you go on past her property,
21 near where I was telling you, there's kind of like a little
22 firebreak, which is somewhat maybe a little road that turns
23 left and go back up in there on that firebreak. But if you go
24 straight on in down that road a little ways, it's real rough,
25 back up in there, but there's an old cemetery back up in there

1 to the right.

2 Q. Freddie, I'm going to show you one more map that's
3 without objection.

4 (WHEREUPON, State's Exhibit No. 30, a Map, was
5 marked and admitted into evidence.)

6 BY MR. MYERS:

7 Q. State's 30, is that a blown up area of where we were
8 talking about the body, the defendant's residence that was
9 shown on 29?

10 A. Yes, sir.

11 Q. That would be the Smith's residence?

12 A. Yes, sir.

13 Q. Right here would be the Smith's?

14 A. No, the Smith's would be here (indicated).

15 Q. Cassidy Road?

16 A. Yes, sir, Cassidy Road.

17 Q. And this is Happy Town Road?

18 A. Yes, sir.

19 Q. Come on up, take a left, and that's back down Jasper
20 Sutton, Johnny Bennett's house?

21 A. Yes, sir, that's correct.

22 Q. Going straight on is his sister's house?

23 A. Yes, sir.

24 Q. And this is the road on the other side of the house
25 going down where the little cemetery is back there?

1 A. Yes, sir.

2 Q. Now, when y'all pulled up the house, did you pull up
3 on the road or did you pull up on the driveway when you first
4 got there?

5 A. When we first got there, we pulled up on the
6 driveway and pulled into where the passenger side was closest
7 to the sister's residence.

8 Q. And as you went on back down and you kept talking
9 about a firebreak, is this the firebreak right here?

10 A. Yes, sir. That night, I felt like -- you know, the
11 best I could tell, it kind of seemed like a little firebreak
12 that we had crossed.

13 Q. And the body was on the other side of firebreak; is
14 that correct?

15 A. Yes, sir.

16 Q. Once you located the body back there, you called in
17 some other officers and stuff at that time?

18 A. Yes, sir.

19 Q. Now, where did you take Johnny Bennett's sister who
20 fell out, and her husband and Johnny Bennett, where did you
21 take them?

22 A. We walked back up to the residence. We went around
23 the other side of the home into the residence.

24 Q. You talking about down this side right here?

25 A. Yes, sir, the opposite side from the driveway where

1 we had parked and went around the other side. We went in the
2 front into the living room and he pretty well -- I think he
3 sat for awhile rocking her, and she kind of started to come to
4 before the ambulance arrived to check her out.

5 Q. Now, let me go back to the calender for just a
6 minute and then we'll talk about some other things. Saturday
7 night between 11:00 and 11:30, Bennett takes officers to
8 Smith's body; is that an accurate statement?

9 A. Yes, sir.

10 MR. MYERS: Your Honor, we move to put this on the
11 calender exhibit for Saturday, December the 1st.

12 THE COURT: Any objection?

13 MR. FLOYD: Subject to the same objection.

14 THE COURT: Put it on.

15 BY MR. MYERS:

16 Q. Where did you take Johnny Bennett when you leave his
17 sister's residence?

18 A. From there, we go back into Swansea and then we hit,
19 I think it's Highway 692, the one right on the -- right past
20 Stillinger's, right on the other side of Stillinger's, and
21 head out toward the county line again. But we don't -- we
22 only get probably about two or three blocks down from
23 Stillinger's and we pull over at the -- I think it was one of
24 the schools, the middle school, so that we were sitting right
25 there, we pulled up at the school.

1 Q. Why?

2 A. Because he was going to take us to the location that
3 Andre Haskins was hiding out at.

4 Q. Why were you looking for Andre Haskins?

5 A. During the check, we had -- there were warrants for
6 Andre Haskins, there were drug warrants for him. So we wanted
7 to pick him up that night, also, being that it had been
8 mentioned that he was hiding out and that he was friends of
9 Isadore Mack and Tommy Ferlick.

10 Q. Who brought up the name of Andre Haskins to you?

11 A. The defendant, Johnny Bennett.

12 Q. So, first of all, he told you Isadore Mack?

13 A. Yes, sir.

14 Q. Now, he said Andre Haskins?

15 A. Yes, sir.

16 Q. Then you mentioned a third name, Tommy Ferlick?

17 A. Tommy Ferlick, yes, sir.

18 Q. So then he mentioned a third name?

19 A. Yes, sir.

20 Q. And this is after he takes you to the body?

21 A. It was after we had -- yes, after we went to the
22 body, then we talked about the other group of guys.

23 Q. After he took y'all to the body?

24 A. Yes, sir.

25 Q. Did he tell y'all he's the one that killed Benton

1 Smith and put him out there?

2 A. No, sir.

3 Q. Who was he blaming?

4 A. He was blaming those other guys.

5 Q. What did you do after you found -- you said you
6 looked for Andre Haskins, did you find him?

7 A. Yes, sir, we found him, also.

8 Q. And what did you do then?

9 A. We arrested him on the drug warrants and we took him
10 into the Sheriff's Department, also.

11 Q. Who all did you take to the Sheriff's Department?

12 A. Isadore Mack, Andre Haskins and the defendant,
13 Johnny Bennett.

14 Q. And you talked with all of those folks in jail?

15 A. Yes, sir.

16 Q. Now, let me ask you this. You knew that night that
17 Benton Smith's car had been found previously?

18 A. Yes, sir.

19 Q. And you'd been to Mr. Smith's house where he lived?

20 A. Yes, sir.

21 Q. Did you know the car was over there at his house?

22 A. Yes, sir, it was there.

23 Q. And that night or early Sunday morning?

24 A. Yes, sir.

25 Q. What did you have someone to do with Benton Smith's

1 car, the little blue car?

2 A. Yes. I had a wrecker contacted to come to the
3 Smith's residence to pick the car up and take it to the
4 Sheriff's Department, put it in -- place it in the back
5 parking lot where it would be secured and for it could be
6 processed later.

7 Q. Is this correct; Smith's car towed to LCSD,
8 Lexington County Sheriff's Department?

9 A. Yes, sir, that's correct.

10 MR. MYERS: Your Honor, we'd like to put this on
11 December 2nd, early Sunday morning, on the calender.

12 THE COURT: Same objection?

13 MR. FLOYD: Yes, sir.

14 BY MR. MYERS:

15 Q. Now, it's December the 2nd, Sunday, early Sunday
16 morning?

17 A. Yes, sir.

18 Q. And then y'all round up Isadore Mack and Andre
19 Haskins and you take them back to jail with Johnny Bennett?

20 A. Yes, sir.

21 Q. You talk with Isadore Mack?

22 A. Yes, sir.

23 Q. Talk with Andre Haskins?

24 A. Yes, sir.

25 Q. Talk with Johnny Bennett?

1 A. Yes, sir.

2 Q. Do you talk with them all in one room or talk with
3 them separately?

4 A. We had them all separate.

5 Q. Now, when you're talking with Johnny Bennett back at
6 the Sheriff's Department, do you advise him of his rights?

7 A. Yes, sir.

8 Q. And do you do it in a written form?

9 A. Yes, sir, that's correct.

10 Q. Is this the written form that you advise him of his
11 right at this time on December the 2nd?

12 A. Yes, sir, correct, that's the form.

13 Q. And did you get him to initial each one of his
14 rights?

15 A. Yes, sir, that's correct.

16 Q. Did you get him to sign that paper?

17 A. Yes, sir.

18 MR. MYERS: Your Honor, we'd offer this into
19 evidence.

20 THE COURT: Objection? Same objection?

21 MR. FLOYD: Same objection, Your Honor.

22 THE COURT: All right. The objection is noted.

23 Denied.

24 (WHEREUPON, State's Exhibit No. 31, a Statement,
25 was marked and admitted into evidence.)

1 BY MR. MYERS:

2 Q. State's 31, there's a social security number up in
3 the corner up here?

4 A. Yes, sir.

5 Q. Whose social security number is that?

6 A. That's the defendant's, Johnny Bennett.

7 Q. And did he give you that number?

8 A. Yes, sir, that's correct.

9 Q. And then there's some more writing on here, December
10 2nd, 1990, and that's 400 a.m., four o'clock a.m. in the
11 morning?

12 A. Yes, sir.

13 Q. Johnny Olandis Bennett, I am 20 years old and my
14 place of birth and date of birth being the 27th of September,
15 1970, Lexington County?

16 A. Yes, sir.

17 Q. My address is 171 Jasper Sutton Road, Gaston?

18 A. Yes, sir.

19 Q. Before answering any questions or making any
20 statements Detective F. Hamer -- is that you?

21 A. Yes, sir.

22 Q. And Detective C. Jones?

23 A. Charlie Jones, yes, sir.

24 Q. Person who identified himself as Lexington County
25 detectives duly warned and advised me. Now, there's five

1 rights there. Could you read those rights, what you advised
2 Johnny Bennett of.

3 A. Yes, sir. Number one, that I have the right to
4 remain silent and not make any statement at all. Number two,
5 that any statement I do make can be used against me in court.
6 Number three, that I have a right to have an attorney present
7 at any time during questioning. Number four, that if I cannot
8 afford an attorney, I can apply to the Court to have one
9 appointed at no cost to me. Number five, that if I decide to
10 talk to an officer without an attorney present, I may stop at
11 any time and request an attorney be present for further
12 questioning. Each one of those is initialed with his initials
13 out to the left side.

14 Q. Out to the left side by each number?

15 A. Yes, sir.

16 Q. Why do you get him to initial those rights?

17 A. So that -- just so that they have understood their
18 rights and that that's their handwriting that they understand
19 what they had been advised of.

20 Q. Did he tell you he understood each and every one of
21 those rights?

22 A. Yes, sir.

23 Q. And did he ever request an attorney?

24 A. No, sir.

25 Q. Did he ever tell you that he did not want to talk to

1 you?

2 A. No, sir.

3 Q. Did you do anything to threaten him, coerce him,
4 promise him anything to get him to give up his rights?

5 A. No, sir.

6 Q. Did you intimidate him any to give up his rights?

7 A. No, sir.

8 Q. Did he appear to understand and know what he was
9 doing?

10 A. Yes, sir.

11 Q. Did you have any problems talking with him or he
12 talking with you?

13 A. No, sir.

14 Q. Did you ever pull out a gun and threaten him with a
15 gun?

16 A. No, sir.

17 Q. Did he freely and voluntarily give up all of his
18 rights?

19 A. Yes, sir, he did.

20 Q. And did you ask him to sign down here indicating
21 that he gave them up?

22 A. Yes, sir, that's correct.

23 Q. And is that his signature down here showing that he
24 gives up those rights?

25 A. Yes, sir.

1 Q. And did he agree to talk with you?

2 A. Yes, sir.

3 Q. And did y'all talk with him?

4 A. Yes, sir, we did.

5 THE COURT: Counsel, let me again just remind the
6 jury.

7 Ladies and gentlemen, let me remind you that, again,
8 this is another statement. It's the same as the statement I
9 told you about earlier. And, in fact, in any of these
10 statements made by the defendant, remember, that you make
11 first a determination of whether the State has proven beyond a
12 reasonable doubt that he did make the statement. Second, did
13 they prove beyond a reasonable doubt that when he made the
14 statement that he did so knowingly, freely and voluntarily.
15 And if you make those determinations that he did, then you
16 will determine how much weight to give to the statement.
17 Again, those are decisions to be made by you.

18 Mr. Solicitor?

19 BY MR. MYERS:

20 Q. That statement that he gave, did y'all record that
21 statement?

22 A. Yes, sir, that's correct.

23 Q. And is this the taped-recorded conversation y'all
24 had with Johnny Bennett December the 2nd, early morning hours,
25 at Lexington County Sheriff's Department?

1 A. Yes, sir, that's correct.

2 MR. MYERS: Your Honor, we would offer to play this
3 tape for the jury at this time.

4 THE COURT: Same objection?

5 MR. FLOYD: Yes, sir.

6 THE COURT: So noted, denied.

7 (WHEREUPON, State's Exhibit No. 32, a Cassette
8 Tape, was marked and admitted into evidence.)

9 BY MR. MYERS:

10 Q. As a matter of fact; on State's Exhibit 32, y'all
11 even advised him of those rights again on the tape; is that
12 right?

13 A. Yes, sir, that's correct.

14 MR. MYERS: Your Honor, we have a transcript of this
15 tape. We would propose to let the jury read the transcript,
16 but taking it back up from them after the tape is played for
17 them, not to take them to the jury room.

18 THE COURT: All right. Same objection?

19 MR. FLOYD: Could I confer with Mr. Myers a moment?

20 THE COURT: Sure.

21 (WHEREUPON, transcripts were passed out to the
22 jury.)

23 THE COURT: Now, ladies and gentlemen, you'll be
24 looking at a transcript of the tape while the tape is being
25 played. Remember, again, what you'll do is basically make

1 your determinations of fact from the tape as you hear them.

2 If there is any difference in the transcript and the tape,

3 certainly you would go by what you hear on the tape.

4 Go ahead.

5 (WHEREUPON, State's Exhibit No. 32 was played for

6 the jury, and at the conclusion, all transcripts were

7 collected from jury.)

8 BY MR. MYERS:

9 Q. Now, this is on Sunday and he's not telling you to

10 check the others now, he's blaming others?

11 A. Yes, sir.

12 MR. MYERS: Your Honor, we'd like to put Bennett

13 blamed others on here for December the 2nd, Sunday.

14 THE COURT: Same objection?

15 MR. FLOYD: Same objection, Your Honor.

16 THE COURT: So noted.

17 Q. Now, Freddie, as I understood it, he's blaming those

18 others of taking Benton Tuesday night about five to seven when

19 he's there at Stillinger's and seen it happen?

20 A. Yes, sir.

21 Q. Right there in the middle of Swansea?

22 A. Yes, sir, that's correct.

23 Q. He denied he was in Orangeburg at that time on

24 Tuesday night in Benton's car; is that right?

25 A. Yes, sir.

1 Q. Now, he also said something about somehow he got
2 Benton's car, but he parked at an old ball field. Where is
3 that old ball field?

4 A. Yes, sir. There off of Cassidy Road right past the
5 Smith's residence, and then you turn left on Happy Town Road,
6 if you turn right and you'll go down about half a mile,
7 three-quarters of a mile or so and it's on a dirt road, and
8 there used to be an old ball field sitting there.

9 Q. He give you any reason at any time why he would park
10 Benton's car at the old ball field?

11 A. No, sir.

12 Q. And you said on there that Benton got about a grand
13 and Andre got about a grand, a big score.

14 A. Yes, sir, they had made a big score.

15 Q. Now, he also said the camera that he gave Bonita was
16 really his camera, not Benton's?

17 A. Yes, sir, that's what he said.

18 Q. And also, Freddie, he said that Isadore told him
19 where Benton's body was?

20 A. Yes, sir.

21 Q. And as I understood it, he said that happened at --
22 Isadore told him that at Reeds Club that night, that Friday
23 night that y'all arrived?

24 A. Yes, sir.

25 Q. And that was six or seven hours before y'all had

1 this taped interview?

2 A. Yes, sir.

3 Q. Of course, y'all talked to Isadore Mack, you had
4 Isadore Mack at the jail with you?

5 A. Yes, sir, we did.

6 Q. Isadore Mack ever been charged with the murder of
7 Benton Smith?

8 A. No, sir, he was not.

9 Q. And also, on State's Exhibit Number 12, did y'all
10 arrest Johnny Bennett and keep him in jail on that Sunday,
11 December 2nd?

12 A. Yes, sir, we did.

13 Q. So he's back in Lexington County jail on December
14 2nd of 1990?

15 A. Yes, sir.

16 Q. And who is that asked him that what he was telling
17 y'all then was the truth, the whole truth, so help you God?
18 Who asked him that?

19 A. That was Detective Charlie Jones asking that
20 question.

21 Q. And what did Johnny Bennett say?

22 A. That that was the truth.

23 Q. Now, the next day would have been Monday, December
24 3rd; is that right?

25 A. Yes, sir.

1 Q. Monday, December 3rd, where did y'all go that day
2 and who do you talk with?

3 A. That Monday, we went to Orangeburg, we talked with
4 Ms. Bonita Gonsalves. We came back through Swansea and, if
5 I'm not mistaken, we located Mr. Tommy Ferlick and talked with
6 him.

7 Q. Let me stop you. One more thing before we go to
8 December 3rd.

9 A. Yes, sir.

10 Q. On that Sunday, December the 2nd, that tape was made
11 before daylight, about four, five o'clock in the morning?

12 A. Yes, sir.

13 Q. And you had given orders before then to have the car
14 towed to the Sheriff's Department?

15 A. Yes, sir.

16 Q. Later on that Sunday, was that car processed by some
17 officers?

18 A. Yes, sir, it was.

19 Q. Were you present when it was processed?

20 A. Yes, I was present when it was actually started to
21 be processed.

22 Q. And who was doing the processing?

23 A. Detective Jim Hickman.

24 Q. Is that Officer Hickman way back there in the back?

25 A. Yes, sir, that's him.

1 Q. And how did y'all have to get inside Benton Smith's
2 car to process it?

3 A. Yes, sir. We had to contact someone that was on the
4 road, if I'm not mistaken, to come with a slim-jim. I just
5 don't remember which officer it was. But the best I remember,
6 one of them slim-jimed it to get in it for us.

7 Q. Now, if you'd tell me, I think you eat a slim-jim.
8 Tell the jury what a slim-jim is.

9 A. It's a tool that officers and locksmiths and all
10 use. It's probably about three, sometimes two and a half,
11 maybe three feet long. It's very thin. They just slide it
12 down between the window, down the side of door and pop the
13 lock to get into the vehicle.

14 Q. Y'all didn't have keys?

15 A. No, sir.

16 Q. Now, let's go on to Monday. You go to Orangeburg
17 and talk with Bonita?

18 A. Yes, sir.

19 Q. Did you have a conversation with her?

20 A. Yes, sir.

21 Q. Is that the first time y'all had talked with Bonita?

22 A. Yes, sir, that's the first time.

23 Q. And what did Bonita give to y'all on December the
24 3rd?

25 A. She gave us a couple of wine glasses. She gave us a

1 camera and she gave us a black, like shaving kit to place the
2 items in that she gave to us that had been given to her.

3 Q. Are these the little wine glasses?

4 A. Yes, sir.

5 Q. This is the camera?

6 A. Yes, sir.

7 Q. This is the black shaving kit?

8 A. Yes, sir.

9 Q. On that Sunday, on that tape.

10 A. Yes, sir.

11 Q. Johnny Bennett ever mention anything about the black
12 shaving kit?

13 A. No, sir.

14 Q. Any time before that he ever mention anything about
15 the black shaving kit?

16 A. No, sir.

17 Q. Y'all continue the investigation, talking with
18 various people on Monday?

19 A. Yes, sir.

20 Q. Do you come back to the Lexington County Jail and
21 talk with Johnny Bennett again on Monday, December the 3rd?

22 A. Yes, sir, we do.

23 Q. And when you start out talking with him, do you
24 advise him of his rights?

25 A. Yes, sir.

1 Q. Same rights you had advised him of before?

2 A. Yes, sir, that's correct.

3 Q. Does he give those rights up and talk with you
4 again?

5 A. Yes, sir, he did.

6 Q. And who's he blaming now?

7 A. He's still blaming Andre Haskins, Tommy Ferlick and
8 Isadore Mack.

9 Q. So Monday, December 3rd, is that correct?

10 A. Yes, sir.

11 Q. Bennett blames others?

12 A. Yes, sir, that's correct.

13 MR. MYERS: Your Honor, I'd like to put this on the
14 calender.

15 THE COURT: Same objection?

16 MR. FLOYD: Same objection, Your Honor.

17 BY MR. MYERS:

18 Q. So he's still blaming other people?

19 A. Yes, sir.

20 Q. What do y'all tell him, Freddie?

21 A. As he's talking with us, we stop him in the midst of
22 while he's talking about still blaming others and we told him
23 that we had been to Orangeburg, we had been to Swansea, we had
24 talked to various people and that what he's telling us is not
25 the truth. We just pretty well told him at that point -- I

1 think I told him that, you know, Johnny, you're lying to us.

2 Q. What did he do then?

3 A. That's when he sat for a moment and he decided to
4 tell us what happened.

5 Q. What did he do before he decided to tell you what
6 happened?

7 A. I'm not quite -- there was -- oh, I remember, okay.
8 We had a pad in front of him and before he decided what
9 happened or to talk to us further, he decided to write a
10 one-line statement.

11 Q. Is that the statement that he wrote out?

12 A. Yes, sir, that's correct.

13 MR. MYERS: We offer that in evidence, Your Honor.

14 THE COURT: Same objection?

15 MR. FLOYD: Same objection, Your Honor.

16 THE COURT: All right.

17 Ladies and gentlemen, again, this is a statement
18 given. Remember, you make the determination one, as to
19 whether or not it's been proven that he made the statement.
20 Second, as to whether or not he did so freely and voluntarily
21 understanding his rights. And third, if you determine that he
22 did on both of those, then you will determine how much weight
23 to give to it.

24 (WHEREUPON, State's Exhibit No. 33, a Statement,
25 was marked and admitted into evidence.)

1 BY MR. MYERS:

2 Q. Talking about December 3rd, that evening in
3 Lexington County Sheriff's Department.

4 A. Yes, sir.

5 Q. He's continuing to blame those other three people?

6 A. Yes, sir.

7 Q. You stop him, tell him you talked with a lot of
8 folks that day and you know that he's lying?

9 A. Yes, sir.

10 Q. He hangs his head. Do y'all continue to question
11 him or what does he do?

12 A. He hangs his head and sits in silence for a few
13 minutes, could have been five, ten minutes, somewhere in that
14 neighborhood. But he hangs his head and then he writes out a
15 one-line statement on a pad that we had in front of him.

16 Q. Did you tell him what to write?

17 A. No, sir.

18 Q. Were you questioning him any during this time?

19 A. No, sir.

20 Q. State's Exhibit 33, you've got 12-3-90, 7:40 p.m.,
21 and who wrote that?

22 A. That's all of his handwriting. The only thing in
23 the top right-hand corner is where I wrote the case number
24 later. But that's all his handwriting.

25 Q. And what did he write out in that one-line sentence.

1 A. I, Johnny Bennett, need help, with an exclamation
2 mark, signed Johnny Bennett 12-3-90, 7:40 p.m.

3 Q. And he writes that in his own handwriting?

4 A. Yes, sir.

5 Q. And you put the case number up there later on?

6 A. Yes, sir.

7 Q. Did he explain to you what that means, that, I,
8 Johnny Bennett, need help?

9 A. No, sir.

10 Q. After he writes this out, what happened then,
11 Detective?

12 A. That he agrees to talk with us, and we advised him
13 that it was going to be taped.

14 Q. You advised him of his rights again?

15 A. Yes, sir.

16 Q. Same rights you've been advising him of?

17 A. Yes, sir, that's correct.

18 Q. Then you have a taped statement again of Johnny
19 Bennett?

20 A. Yes, sir.

21 Q. And then this is on Monday, December the 3rd?

22 A. Yes, sir.

23 Q. What does he do in that taped statement on Monday,
24 December 3rd?

25 A. In that statement, he stopped blaming everyone else

1 and did state to us that he had did it by himself, he had
2 acted alone, that he had killed the victim, Benton.

3 Q. And then did you take that tape and have one of your
4 secretaries type it out in a transcript?

5 A. Yes, sir, we did.

6 Q. And did you go back the next day on the 4th and let
7 Johnny Bennett read over that transcript?

8 A. Yes, sir, we did.

9 Q. And did he initial every page?

10 A. Yes, sir, that's correct, he did.

11 Q. And then did he sign it?

12 A. Yes, sir, he did.

13 Q. And is this the transcript which he signed?

14 A. Yes, sir, this is it.

15 Q. And the statement is given on the 3rd, taped
16 statement; transcript is made, he signed the transcript on the
17 4th?

18 A. Yes, sir.

19 Q. Is this the tape recording of his confession on the
20 3rd?

21 A. Yes, sir, this is it.

22 MR. MYERS: Your Honor, we offer the tape and we
23 offer the transcript into evidence.

24 MR. FLOYD: Same objection.

25 THE COURT: Same objection noted and denied.

1 (WHEREUPON, State's Exhibit Numbers 34 and 35, a
2 Transcript and Audiotape, were marked and admitted into
3 evidence.)

4 MR. MYERS: The transcript, Your Honor, is State's
5 Exhibit 34. The tape is State's Exhibit 35. Again, Your
6 Honor, I'd like to pass out to the jury copies of State's
7 Exhibit 34, which is the transcript, and then play 35, the
8 tape.

9 THE COURT: Jurors, do some of you want to stand and
10 stretch just for a second? Now, we're going to take a break
11 as soon as we're through with direct here, okay. You can
12 stand a second. I know we've been going about an hour and a
13 half, and I apologize, but I try not to break during the
14 direct or cross of a particular witness.

15 (WHEREUPON, copies of State's Exhibit No. 34 were
16 passed out to the jurors, and State's Exhibit No. 35 was
17 played.)

18 BY MR. MYERS:

19 Q. Detective Hamer, December 3rd, 1990, Monday, is this
20 correct, Bennett confesses to murdering Smith?

21 A. Yes, sir, that's correct.

22 MR. MYERS: I'd like to put this on the calender
23 chart, Your Honor.

24 THE COURT: Same objection?

25 MR. FLOYD: Same objection, Your Honor.

1 THE COURT: Noted.

2 Q. Now, that tape is transcribed?

3 A. Yes, sir.

4 Q. Y'all take it back to Johnny Bennett?

5 A. Yes, sir.

6 Q. Showing you State's Exhibit 34, right there in the
7 middle on the first page.

8 A. Yes, sir.

9 Q. What's that?

10 A. That's an advisement of rights.

11 Q. So that's another advisement of rights at the top?

12 A. Yes, sir.

13 Q. Then, of course, the transcript has a second
14 advisement of rights?

15 A. Yes, sir, that's correct.

16 Q. Now, there at the beginning is some initials, whose
17 initials are those?

18 A. Those are the defendant, Johnny Bennett's initials.

19 Q. And also at the bottom?

20 A. Yes, sir, those are his initials, also.

21 Q. Then we have on the second page, the same thing?

22 A. Yes, sir.

23 Q. Third page, every page has his initials on it. Why
24 do y'all get him to initial each page?

25 A. For the defendant to read through it and any

1 corrections or anything they need to do and to initial it that
2 they have read through it and for us not to be able to add or
3 take anything away from it.

4 Q. And then on the last page, the last thing before the
5 end of the interview is you got his initials; why do you have
6 him initial there?

7 A. Yes, sir, that's the end of the statement, and to
8 put his initials there for nothing else to be added.

9 Q. And then you get him to sign?

10 A. Yes, sir, that's correct.

11 Q. And then you have him sign again that he certified
12 he's read it and received a copy?

13 A. Yes, sir, that's correct, also.

14 Q. Make him sign it twice?

15 A. Yes, sir.

16 Q. And when do you get him to sign that confession?

17 A. December the 4th, 1990 at two o'clock p.m.

18 Q. Is this correct, Bennett signs confession?

19 A. Yes, sir.

20 MR. MYERS: Your Honor, we'd like to put this on
21 December the 4th, Tuesday on the calender.

22 THE COURT: Same objection?

23 MR. FLOYD: Same objection.

24 THE COURT: So noted.

25 BY MR. MYERS:

1 Q. Now, in talking with him when he confesses, what
2 does he say about knowing he was going to murder Benton, did
3 he say anything about it?

4 A. Yes, sir. He just had stated that about when he had
5 -- when Benton came up and touched him or something that
6 second time how he had snapped and that he had got the
7 screwdriver out of the car and started stabbing him. And he
8 had mentioned that he knew he would kill someone.

9 Q. What you mean he mentioned he knew he would kill
10 someone?

11 A. That he had eventually knew that he had thought
12 about killing a family member.

13 Q. Where did he say he killed Benton?

14 A. He said that it was at the old ball field.

15 Q. The old ball field?

16 A. Yes, sir.

17 Q. Then how does he get him from the old ball field up
18 to where he buried him?

19 A. That he placed him in the car after stabbing him
20 there and taking him up to the sister's residence and that he
21 had carried him back to that area where he buried him at.

22 Q. He said he knew about this old cemetery back here?

23 A. Yes, sir.

24 Q. Now, at the end there, y'all said -- you asked him
25 about Benton Smith's wallet. He said he'd be willing to take

1 y'all out to try and find the wallet?

2 A. Yes, sir.

3 Q. What happened on December the 5th?

4 A. Okay. December the 5th, we left and went to the
5 Swansea area to pick up some items and we went to Orangeburg.

6 Q. Now, you went to the Swansea area to pick up some
7 items?

8 A. Yes, sir.

9 Q. Who was with you?

10 A. The defendant, Johnny Bennett, myself, Detective
11 Jones, I think Sergeant Harrison. I think he was sergeant
12 during that time. He was the supervisor over investigations,
13 I think, yeah, because Lieutenant Phillips, and approximately
14 about four, maybe three other cars, yes, sir.

15 THE COURT: Counsel, how much longer is direct going
16 to be?

17 MR. MYERS: Ten minutes.

18 THE COURT: Okay. We've been going almost two hours
19 now. You think you'll be done in about 10 minutes?

20 Jurors, do you want to go ahead and take a break now
21 or go ahead and see if you can get direct over with? Any
22 feelings either way? Go ahead and get it over with? All
23 right. Let's go ahead and get it over with.

24 BY MR. MYERS:

25 Q. We're talking about the day after he signed the

1 confession on the 5th?

2 A. Yes, sir.

3 Q. You advised him of his rights again?

4 A. Yes, sir.

5 Q. Where does he take you?

6 A. He takes us to the -- he takes us down off of --

7 let's see. He takes us --

8 Q. You can walk up there and point.

9 A. Okay. The first place is right here on Lewis Rast
10 Road, and there was some items we located in the field out
11 there (indicated).

12 Q. And who showed you where those items were?

13 A. The defendant, Johnny Bennett.

14 Q. And was Detective Hickman with you that day when you
15 processed those items?

16 A. Yes, sir, that's correct.

17 Q. And what items did Johnny Bennett take you to see?

18 A. We found some, like, wearing glasses out there,
19 little red-colored glasses, and a key case out there in that
20 field.

21 Q. In this area?

22 A. Yes, sir.

23 Q. Key case and glasses?

24 A. Yes, sir.

25 Q. The key case, does it have any kind of

1 identification in it?

2 A. Yes, sir. It was a little folding-type key case
3 that you could put a couple little small ID things or
4 something in it.

5 Q. Are these are the glasses you found out there?

6 A. Yes, sir.

7 Q. And who takes possession of these items?

8 A. Detective Hickman.

9 Q. Now, after that, you said you went to Orangeburg.
10 Why do you go to Orangeburg?

11 A. He stated that the wallet was in a park by where
12 Ms. Gonsalves lived, right across the road somewhat from her
13 apartment.

14 Q. Now, did you find the wallet down there across from
15 Ms. Gonsalves' apartment?

16 A. No, sir.

17 Q. Never did find the wallet?

18 A. No, sir.

19 Q. Now, if you'd have a seat back there again.

20 A. (The witness complied).

21 Q. Now, the next day I think was December the 6th. Did
22 y'all go down there and talk with Pamela and Bonita again?

23 A. Yes, sir, we did.

24 Q. Mr. Bennett didn't go down there with you on
25 December the 6th; is that right?

1 A. No, sir, he didn't, that's correct.

2 Q. Now, I want to ask you this. The 5th, you go out
3 and you find the key case and the glasses?

4 A. Yes, sir.

5 Q. The 6th, you talk with Bonita and Pamela?

6 A. Yes, sir.

7 Q. Now, on December the 10th and 11th, did the
8 defendant send y'all any kind of messages?

9 A. Yes, sir. He sent us a message that he wanted to
10 speak with us, Detective Jones and myself.

11 Q. Did he send those messages over two days?

12 A. Yes, sir.

13 MR. MYERS: Your Honor, we'd put two exhibits here,
14 a note to Officer Hamer and Detective Jones, Johnny Bennett
15 wants to see one of you. That's on December the 10th. On
16 December the 11th, he sends one note to Officer Jones and one
17 to Hamer. We'd offer these in evidence.

18 THE COURT: Same objections?

19 MR. FLOYD: Same objection, Your Honor.

20 THE COURT: We'll go ahead and allow them to be
21 admitted.

22 (WHEREUPON, State's Exhibit Numbers 36 and 37,
23 Messages, were marked and admitted into evidence.)

24 BY MR. MYERS:

25 Q. 36 and 37, on December 10th, Monday; December 11th,

1 Tuesday, Johnny Bennett's wanting to see y'all?

2 A. Yes, sir.

3 Q. Do y'all go talk with him on those two days?

4 A. No, sir, we do not.

5 Q. December the 12th, Wednesday, do y'all go talk with
6 Johnny Bennett?

7 A. Yes, sir.

8 Q. What does he want to do then?

9 A. That he wants to take a ride out to show us where
10 some other items are, where the rest of the items are.

11 Q. By this time, now, he's got some lawyers?

12 A. Yes, sir, that's correct.

13 Q. Do y'all tell him that he's got a lawyer and you
14 can't talk with him?

15 A. Yes, sir.

16 Q. What does he say?

17 A. He said forget about the lawyers.

18 Q. He sent for you?

19 A. Yes, sir.

20 Q. You advise him of his rights again?

21 A. Yes, sir.

22 Q. He gives those rights up?

23 A. Yes, sir.

24 Q. Where does he take you on December the 12th?

25 A. We go to Swansea again and we go to -- once we go

1 into Swansea, we go out off of, I think it's Huckabee Road out
2 towards St. Matthews line, heading out towards Calhoun and we
3 stop near a red barn or something out there.

4 Q. And when you stop by that red barn, who takes you
5 out in that direction?

6 A. The defendant, Johnny Bennett.

7 Q. And what does he take you out there to find?

8 A. The floor mats that came out of the vehicle.

9 Q. Do you find the floor mats?

10 A. Yes, sir.

11 Q. Behind the barn, is that where the floor mats were
12 at?

13 A. No, sir, they're right -- they're not exactly in
14 front of the barn. They were on the front side of the barn,
15 but not in front of the barn. They was right near the edge of
16 the road, kind of on a little mound or a little hill, like
17 some dirt or something pushed up, but they were sitting right
18 along kind of a small little mound pushed up.

19 Q. And what is written on those floor mats?

20 A. Benton is written on the floor mats.

21 Q. Are these the floor mats over here?

22 A. Yes, sir, those are the ones.

23 Q. Did you go look for the wallet again that day?

24 A. Yes, sir.

25 Q. Where do you go this time to look for the wallet?

1 A. We go into Orangeburg County again and we go down to
2 a little creek and it's heavily briars and grown up down in
3 there, and there was no way pretty much that we could get down
4 in there.

5 Q. But this was a different location in Orangeburg he
6 had taken you a week before?

7 A. Yes, sir, that's correct.

8 Q. On the statement, he said the wallet was at the
9 murder scene?

10 A. Yes, sir.

11 Q. Then he takes you across from Bonita's house?

12 A. Yes, sir.

13 Q. Then he takes you to a creek somewhere?

14 A. Yes, sir.

15 Q. Did y'all ever find Benton Smith's wallet?

16 A. No, sir, we never did.

17 Q. Now, Freddie, I'm going to ask you this to try to
18 get these things squared away, if we could. On December the
19 5th --

20 A. Yes, sir.

21 Q. -- he takes you out and shows y'all where the key
22 case is and the glasses?

23 A. Yes, sir.

24 Q. Do you go back to where the body was found that day?

25 A. Yes, sir, we go back there, also.

1 Q. And what was the purpose of going back to where the
2 body was found?

3 A. Because when Detective Jones -- and just like we
4 could not -- when the body was recovered the screwdriver had
5 not been recovered.

6 Q. Where did Johnny Bennett tell you the screwdriver
7 was?

8 A. He told us that it was there where the body was.

9 Q. Did y'all go back on the 5th with a metal detector?

10 A. Yes, sir, that's correct.

11 Q. What did you find?

12 A. Found the screwdriver.

13 Q. In what vicinity?

14 A. Right -- lying probably right near where the body
15 was, probably right beside it or so where the body had been
16 placed.

17 Q. Is this true; on December the 5th, on Wednesday,
18 Bennett directs officers to the eye glasses, the key case and
19 the screwdriver?

20 A. Yes, sir, that's correct.

21 MR. MYERS: We move to put this on the calender.

22 THE COURT: Same objection?

23 MR. FLOYD: Same objection, Your Honor.

24 THE COURT: Noted.

25 BY MR. MYERS:

1 Q. December the 6th, the next day, officers talk with
2 Pamela and Bonita?

3 A. Yes, sir.

4 MR. MYERS: We move to put that on December 6th,
5 Your Honor.

6 Q. And then on December the 10th and 11th, by these
7 notes, is that right, Bennett asked to see officers?

8 A. Yes, sir, that's correct.

9 Q. Y'all don't see him those days, but you talk with
10 him finally on the 12th?

11 A. Yes, sir, we did.

12 Q. And what does he take you to on the 12th?

13 A. He takes us to the floor mats and he takes us out to
14 the creek in Orangeburg.

15 Q. Is this correct; officers -- Bennett directs
16 officers to floor mats?

17 A. Yes, sir, that's correct.

18 THE COURT: Same objection, Counsel?

19 MR. FLOYD: Same objection.

20 THE COURT: Noted.

21 Q. The wallet is never found?

22 A. The wallet is never found.

23 MR. MYERS: I don't know what else to ask you.

24 That's all, Your Honor.

25 THE COURT: Thank you, sir.

1 All right. Ladies and gentlemen, we'll take a
2 break. Let me ask you to step to the jury room just for a
3 moment. And while you're there, be sure not to talk about the
4 case, okay.

5 (WHEREUPON, the jury leaves the courtroom at
6 approximately 5:50 p.m.)

7 THE COURT: All right. The jury is secured,
8 Counsel. Let's talk about scheduling. I understand, first of
9 all, we've got dinner reservations for the jury at seven. How
10 long do you anticipate cross is going to take?

11 MR. FLOYD: Your Honor, I was going to bring that to
12 your attention. I imagine I'll be an hour and a half. Maybe
13 hour and a half, maybe two. Probably at least an hour and a
14 half, though.

15 THE COURT: I've got drug court at six. Obviously,
16 this would have to take precedence, and Judge Keesley may be
17 able to do it for me, too, my part of it. But, again, I
18 assume you want to get the jurors to at least have a few
19 minutes to get by the motel before they get to dinner, is that
20 correct?

21 SEQUESTRATION TEAM MEMBER: Yes, sir.

22 MR. MYERS: Your Honor, we've got some witness
23 problems. We would like to go -- I don't want to
24 inconvenience anybody, but we'd like to go as long as we could
25 tonight because we've got some pretty big witness problems.

1 THE COURT: Are there some witnesses who just can't
2 get back tomorrow?

3 MR. MYERS: Yes, sir.

4 THE COURT: How long is that going to take?

5 MR. MYERS: For what?

6 THE COURT: To get those witnesses in.

7 MR. MYERS: We can get them here, but they've got to
8 be out of here by lunchtime tomorrow. .

9 THE COURT: Oh, lunchtime, I see.

10 MR. MYERS: And right now, I thought that I'd have
11 them up first thing in the morning, but right now that's -- if
12 we could just go as long as we could tonight that sure would
13 help me out a lot. And one of them is Dr. Sexton. He's got
14 some commitments.

15 THE COURT: You want to get Dr. Sexton tonight?

16 MR. MYERS: No, sir. I just want to go as long as
17 we can tonight so it can help me out on the scheduling
18 tomorrow.

19 MR. FLOYD: We don't want to inconvenience anybody,
20 but it's been a long day. And it's just an important witness
21 on cross-examination and I kind of hate to the start him at
22 six --

23 THE COURT: I understand.

24 MR. FLOYD: -- and go for an hour an a half.

25 MR. MYERS: We don't mind staying.

1 THE COURT: I'm sorry, I couldn't hear you?

2 MR. MYERS: We don't mind staying here.

3 THE COURT: Certainly. Let me do this, let me let
4 the jurors come back and let me leave this -- I want to see
5 how they're feeling and how they want to do. Certainly, if
6 any jurors are too tired to concentrate, that's not fair to
7 either side. But if they feel like going on a little bit
8 longer, then we may go on.

9 But I certainly understand, obviously, Solicitor,
10 you had anticipated being through at lunchtime or some time
11 tomorrow. And from what I've done in most of these cases, if
12 I can sort of assume what's coming, I imagine if we stopped at
13 this point, I assume you're not even going to get through
14 tomorrow, probably.

15 MR. MYERS: We'd have to run late. That's why -- I
16 want to finish tomorrow, so I'd like to run as late tonight as
17 we can.

18 THE COURT: Right. Right. Let's bring the jurors
19 back in and see what they've got to say about it.

20 (WHEREUPON, the jury enters the courtroom at
21 approximately 5:55 p.m.)

22 THE COURT: All right. All the parties and
23 attorneys are in the courtroom and all jurors have returned.

24 Madam Forelady, this is where we've got to put you
25 to work. We're trying to do some scheduling. I understand

1 the sequestration team had some dinner plans for you at seven.
2 What I want to do is just kind of get a feel from you and the
3 jury how you feel.

4 The Solicitor indicates that he has some scheduling
5 problems with witnesses, has nothing to do with the facts of
6 the case, simply scheduling problems with some of the
7 witnesses and wanted to go a little later this evening. And,
8 obviously, my concern is, first of all, for you and the jury,
9 and just whether or not you feel like you can go a little bit
10 later. If some of you are too tired and can't concentrate,
11 obviously, I don't want you to do that, but if you feel like
12 you can go a little bit later, we can do that, too.

13 Let me do this, why don't you go back in the jury
14 room and all of you talk about it and see how you feel about
15 it, and if you feel like you can go a little bit longer,
16 maybe, tell us how much longer you feel like you could go,
17 okay, and we'll abide by that. But the only thing you don't
18 do is, remember, don't talk about the case itself while you're
19 doing it, okay, just scheduling.

20 Madam Forelady, just send word out as to what the
21 jury decides, okay?

22 (WHEREUPON, the jury leaves the courtroom at
23 approximately 5:56 p.m.)

24 MR. FLOYD: Your Honor, we would offer an
25 accommodation.

1 THE COURT: Well, let's take a break now and I'll
2 chat with all the attorneys. Why don't y'all come back to
3 chambers in just a second.

4 (WHEREUPON, a brief recess was taken.)

5 THE COURT: Let me note for the record, the jury
6 indicated that they could go as much as an hour or so more.
7 We'll try to get this witness's cross in and I don't think
8 we'll be able to go much longer than that. This jury is being
9 real patient with us. Although, this is actually a little
10 earlier than most death penalty cases when we finish in the
11 evening.

12 Let's bring the jury in. Are they ready?

13 (WHEREUPON, the jury enters the courtroom at
14 approximately 6:12 p.m.)

15 THE COURT: All parties and attorneys are in the
16 courtroom and the jurors have returned.

17 Madam Forelady, as I understand, you indicated the
18 jury felt like they could go another hour or so; is that
19 right?

20 THE FORELADY: Yes, sir.

21 THE COURT: Okay. And we'll do everything we can to
22 cut it off at that. And I apologize for the two hours it took
23 for this witness a little while ago. What I try to do is --
24 with both sides, I try not to interrupt their particular part
25 of the examination if I can because it's fair to them to be

1 able to just keep everything together.

2 And sometimes, things just have -- you know, with
3 these type cases, there are certain things that just have to
4 be in the record. And it's nobody's fault, nobody can do
5 anything about it, they just take a long time to do, and I
6 appreciate your patience with that. But I assure you, we're
7 doing -- as you can gather, we've had a long day, we're doing
8 everything we can to move as expeditious as possible. Thank
9 you for your patience.

10 All right. Cross?

11 CROSS-EXAMINATION

12 BY MR. FLOYD:

13 Q. Good evening, Mr. Hamer.

14 A. Good evening, Mr. Floyd.

15 Q. I think you said that you first got involved in this
16 matter, was it like Wednesday or Thursday of that week?

17 A. Thursday. I think the report was taken on
18 Wednesday, and I would have probably gotten the note Thursday
19 morning. Because the uniform officer would have taken it,
20 then it would come into the Sheriff's Department and then the
21 cases would be assigned. So I think I would have gotten it on
22 Thursday morning.

23 Q. And at that time, you first had your contact with
24 Mr. Bennett in connection with this bench warrant; is that
25 correct?

1 A. Yes, sir, that was on Friday.

2 Q. Now, you were a homicide investigator at that time?

3 A. We worked pretty much whatever came in, whatever
4 came across your desk, yes.

5 Q. But would you agree with me, it's probably been
6 sometime since you've served a bench warrant for a petty
7 larceny?

8 A. Yes, sir.

9 Q. And so you took that occasion to speak with
10 Mr. Bennett?

11 A. Yes, sir.

12 Q. Now, where were you when you first had your initial
13 conversation with him?

14 A. They first -- well, we picked him up from his
15 residence, and when I got him to the Sheriff's Department, we
16 sat down in my office and talked.

17 Q. At that time, he did not admit any involvement in
18 this matter?

19 A. No, sir, he did not.

20 Q. Of course, he admitted that had he saw Mr. Smith,
21 Benton Smith, on Tuesday; did he not?

22 A. Yes, sir, he admitted it.

23 Q. Now, that was -- was that Thursday and about what
24 time was that Thursday?

25 A. No, sir, that was Friday when --

1 Q. That was Friday, I'm sorry. What time was it
2 Friday?

3 A. Approximately, probably about around three or four
4 in the afternoon, somewhere around in there.

5 Q. Now, you next had contact with him when he got out
6 of jail on the bench warrant; is that correct?

7 A. Yes, sir, Saturday.

8 Q. And what time was that?

9 A. Probably would have been shortly after noontime,
10 somewhere -- somewhere close to noon or right after noontime.

11 Q. Now, we're on Saturday?

12 A. That's on Saturday, yes, sir.

13 Q. And at that time, I think you were with Charlie
14 Jones?

15 A. Yes, sir.

16 Q. And Johnny Bennett was with his father?

17 A. Yes, sir.

18 Q. Now, Charlie Jones had a long-time relationship with
19 Mr. Bennett's father, didn't he, or they'd known each other
20 for a long time?

21 A. Yes, sir.

22 Q. Played ball together or something back in school?

23 A. I think something like that, yes, sir.

24 Q. And was this conversation in the presence of
25 Mr. Bennett's father?

1 A. Yes, sir.

2 Q. It took place where, right outside the jail?

3 A. Right outside the jail, right outside the courtroom
4 in the lobby area, yes, sir.

5 Q. Now, we're at about noon Saturday?

6 A. Right about, somewhere in that neighborhood, yes,
7 sir.

8 Q. Now, by that time, are you suspicious that -- is
9 Johnny Bennett a suspect?

10 A. No, sir, I wouldn't say so.

11 Q. Why not?

12 A. You know, as long as he was talking with me, I was
13 just seeing what information he could provide us or what he
14 could help us with because the only thing I knew pretty well
15 is that he had been with the victim that Tuesday when he left.

16 Q. So you are calling Benton Smith a victim, so you
17 assumed that some criminal activity had occurred in connection
18 with him?

19 A. Well, a victim is -- any time, I think, when someone
20 does a missing person report, the person is listed as a victim
21 when they're missing.

22 Q. But you don't suspect Johnny Bennett at that time?

23 A. No, sir. I couldn't say I did, no, sir.

24 Q. Did you have any suspects at that time?

25 A. No, sir.

1 Q. Now, the next contact would have been Saturday
2 evening?

3 A. Yes, sir.

4 Q. And what time was that?

5 A. Approximately around 9:00, 9:30, sometime well after
6 dark, when we had been down to the Smith's residence.

7 Q. And didn't you have deputies kind of in Johnny
8 Bennett's neighborhood staking out his house?

9 A. No, sir. I never had anyone staking out his house.
10 There was officers that afternoon that had been assisting the
11 Smith family looking in potholes and, I think, drainage areas
12 and stuff throughout the Swansea area. But I never had
13 instructed anyone to keep an eye on anybody.

14 Q. But somehow word got to some deputy who was -- the
15 deputy that got the information to you, wasn't he parked on
16 Jasper Sutton Road?

17 A. Yes, sir. When I got a radio communication to meet
18 with the defendant, Johnny Bennett, there was an officer
19 there, yes, sir.

20 Q. And who all went to Johnny Bennett's house at that
21 time?

22 A. Myself, Detective Jones and I think that was about
23 it. Because there was -- I think Captain Paavel was still
24 back at the Smith's residence, if I'm not mistaken.

25 Q. Now, is this when Johnny told you he would assist

1 y'all in locating and helping out to find out what happened
2 with Benton Smith?

3 A. He said he would help locate Isadore Mack, Tommy
4 Ferlick and Andre Haskins. I know he mentioned Isadore Mack.
5 He said that they would possibly -- as best I can recall, he
6 said they would possibly have some kind of information or you
7 would need to talk to these guys.

8 Q. And did y'all drive him to where Isadore Mack was?

9 A. Yes, sir.

10 Q. And Isadore Mack was at a place called Reeds place?

11 A. Yes, sir.

12 Q. Now, Reeds place is an old house, old farmhouse kind
13 of out in the country that's kind of an illegal nightclub,
14 wasn't it?

15 A. Well --

16 Q. Well, not licensed nightclub?

17 A. To be honest with you, I don't know. You know, they
18 could have those places, and I don't know if they had to have
19 a kind of a license to have that place or not.

20 Q. It was kind of a watering hole, if you would, for
21 the community?

22 A. It was a club, yes, sir. It was a club they had out
23 there, yes, sir.

24 Q. Now, isn't it true that Johnny Bennett went and
25 talked to Isadore Mack outside of the presence and earshot of

1 law enforcement officers?

2 A. Yes, sir, he was outside of our presence. He went
3 into the club and he was to stand beside Isadore Mack, yes,
4 sir.

5 Q. And he had some conversation with him, didn't he?

6 A. Well, I can't say that, sir. I'm pretty sure they
7 talked about something or he talked to him.

8 Q. And after that conversation, didn't he come out and
9 tell you and Charlie Jones that Isadore Mack, Andre Haskins
10 and Tommy Ferlick told him they had robbed Benton Smith and
11 killed him and told him where the body was?

12 A. No, sir, he -- when we brought the two of them out
13 of the club, I think the first person we talked with --
14 because we had -- we had the defendant, Johnny Bennett, taken
15 over by another car and we talked to Isadore Mack first to see
16 what he would tell us.

17 Q. I'm going to show you an investigative report dated
18 12-6-90, December 6th, '90, and I refer you to the bottom
19 paragraph. And was that a report that was made in connection
20 with this investigation?

21 A. Yes, sir.

22 Q. Would you read that bottom paragraph for us.

23 A. Okay. In speaking with Johnny Bennett further, he
24 advised detectives that Isadore Mack, Andre Haskins and Tommy
25 Ferlick told him they had robbed Benton Smith and killed him.

1 Mr. Bennett also stated they told him they had placed the body
2 in a wooded area off Happy Town Road. Mr. Bennett stated he
3 would show Detective Jones and Detective Hamer where Benton
4 Smith's body could be located.

5 Q. And wasn't that right at -- wasn't that at Reeds
6 place? What's right above that?

7 A. Detectives, along with Johnny Bennett, arrived at
8 Theodore Reeds place at approximately 10:30 p.m. where Isadore
9 Mack was arrested for public disorderly conduct.

10 Q. So according to this investigative report, when
11 y'all took Johnny Bennett to Reeds place, he had a
12 conversation with Isadore Mack, after which he told you that
13 Isadore, Andre Haskins and Tommy Ferlick had robbed Benton
14 Smith and placed the body in a wooded area off Happy Town
15 Road, which he was then going to take you to. Do you agree
16 that's what the investigative report indicates?

17 A. Yes, sir. Also, what is the date on the bottom of
18 that report?

19 Q. 12 -- oh, I'll show you, but it's 12-6-90.

20 A. Yes, sir. Okay. Yes, sir, that's what Detective
21 Jones' report is stating and when -- I don't know when he did
22 that report.

23 Q. But that's what it states?

24 A. Yes, sir, that's what it states.

25 Q. And he was with you, right?

1 A. Yes, sir.

2 Q. So after that, he directed y'all to an area behind
3 his sister's house; is that correct?

4 A. Yes, sir.

5 Q. I believe this would be -- this would be the one
6 with that area. And would you agree with me that this is the
7 exhibit, it's Number 30, it shows the area where the body was
8 located?

9 A. Yes, sir.

10 Q. Now, in this area, this, of course, is Johnny's
11 sister's residence; is that correct?

12 A. Yes, sir.

13 Q. And there's an old cemetery back there and then the
14 body was found here under some leaves, sticks and maybe some
15 small trees?

16 A. Yes, sir.

17 Q. And would you agree with me, and I don't want to put
18 words in your mouth, that the body was probably -- well, I
19 won't. How far behind his sister's residence was the body?

20 A. I was, probably, if I had to take a guess on it, I
21 think somewhere around maybe 40, 30 -- maybe 30 or 40 yards.

22 Q. 30 or 40 yards?

23 A. I'm not sure, but I know it was close right after
24 you crossed that little firebreak.

25 Q. Now, do you recall whether or not the sister had a

1 dog?

2 A. I can't recall if she did or not. I don't believe I
3 encountered any dog that night.

4 Q. Would you agree that you could see the area where
5 the body was, maybe not the body itself because of the leaves,
6 but you could see the area like from the back door of the
7 sister's house?

8 A. It was pretty thin back there, but, you know, I'm
9 not sure if you could or not. You know, we're talking about
10 nighttime and I'm not sure if you could. But it was pretty
11 thin back there, I couldn't say for certain.

12 Q. Well, of course, that's -- you don't know -- did
13 anybody say when the body was placed there?

14 A. Did they say when?

15 Q. Right.

16 A. I think he stated -- I think he stated he placed it
17 there that Tuesday.

18 Q. So you're saying that it was placed there Tuesday?

19 A. Yes, sir.

20 Q. 30 to 40 yards behind the house, so that would have
21 meant it had been there for four to five days; is that right?

22 A. Yes, sir.

23 Q. And nobody has noticed it, to your knowledge?

24 A. To my knowledge, no one had noticed it.

25 Q. Now, you mentioned -- where did he say that -- did

1 he say he put the body there Tuesday?

2 A. Let's see. If I'm not mistaken, he stated in his
3 statement that he placed it there that Tuesday when they came
4 back from -- after he had knocked him out, so when they came
5 back from Orangeburg.

6 Q. Now, would you agree with me this dirt road up here
7 that runs down here kind of where the old cemetery was?

8 A. Yes, sir.

9 Q. Isn't it true that that road runs all the way
10 through here and connects with other roads back in here?

11 A. I'm not sure if it does. I tried driving down that
12 road another day that we went back in there and I could only
13 get close to about where that cemetery was and I don't think
14 -- with the vehicle we were driving, I didn't see anyway we
15 could make it further. So we did see a cemetery back there,
16 but I'm not sure about how far back that road goes.

17 Q. And how about what appears to be a road here, did
18 you follow that road that direction?

19 A. No, sir. Once again, that road more appeared to be
20 just kind of like a firebreak or something cut up, some trees,
21 you know, when someone was clearing some land. But that
22 wasn't much of a road that I could see.

23 Q. Did your investigation indicate that this was like a
24 lover's lane area back in here that people drive back into?

25 A. No, sir. I didn't know anything about it being a

1 lover's lane, no, sir.

2 Q. Now, the body is found, and I believe it's about
3 midnight or so?

4 A. Close around midnight, yes, sir.

5 Q. And we're now at Saturday night; is that correct?

6 A. Yes, sir.

7 Q. Is Johnny Bennett arrested at that time?

8 A. No, sir.

9 Q. You don't consider him a suspect yet?

10 A. I still didn't know -- I didn't know what to
11 consider him as. I just took it that he was still providing
12 -- he was providing information.

13 Q. In fact, I believe you testified that when he saw
14 the body, he doubled over as if to retch?

15 A. Yes, sir.

16 Q. And then, of course, his sister had some significant
17 reaction to it, did she not?

18 A. Yes, sir.

19 Q. And he and his sister had some -- he consoled his
20 sister?

21 A. Yes, sir.

22 Q. And they had some conversation; is that correct?

23 A. I don't know if they talked that much because she
24 was -- pretty much had passed out and it took awhile for her
25 to come to, when he carried her back to the house.

1 Q. So from there, was he under arrest yet?

2 A. No, sir.

3 Q. Was he free to go?

4 A. Yes, sir.

5 Q. And did you let him go then?

6 A. He didn't choose to go. He was free to go, but he
7 didn't ask about going anywhere.

8 Q. So instead of exercising his freedom and walking
9 away, he got back in the police car with y'all?

10 A. Yes, sir.

11 Q. So where did y'all go in the police car then?

12 A. We went to -- went down to Peter McDaniel's house.
13 We went and parked at the school, and the defendant, Johnny
14 Bennett, was going to lead us up to Peter McDaniel's house and
15 knock on the door because Andre Haskins or whoever answered
16 the door would respond to the defendant coming there.

17 Q. So he helped you gather up the other, and I'll put
18 it in quotes or parentheses, suspects?

19 A. Well, according to him, yes, sir.

20 Q. And so who all was gathered up that night?

21 A. Andre Haskins, Isadore Mack and the defendant,
22 Johnny Bennett.

23 Q. Did you consider any of them suspects, including
24 Johnny?

25 A. Well, you know, I guess you could -- if you wanted

1 to say that at that -- pretty much anyone could be, I guess.
2 We still didn't know what all we had.

3 Q. So did you treat them, all three, as suspects at
4 that time?

5 A. No, sir. The other two were under arrest for
6 different charges.

7 Q. Johnny was not under arrest?

8 A. No, sir.

9 Q. So if he wasn't under arrest, did you take him home?

10 A. No, sir.

11 Q. Where did you take him?

12 A. To Lexington County Sheriff's Department.

13 Q. And is that the same place you took the other two
14 people who were under arrest?

15 A. Yes, sir, that's correct.

16 Q. So whether he was under arrest or not, he went to
17 the same place the people who were under arrest went?

18 A. Yes, sir, which was the front area of the Sheriff's
19 Department.

20 Q. Was he free to go?

21 A. Yes, sir.

22 Q. Did you tell him that?

23 A. No, sir, I didn't tell him that.

24 Q. So you have all three of them at the jail at that
25 time?

1 A. Had two at the jail, one up front.

2 Q. You're saying Mr. Bennett was up front and the other
3 two were in the jail?

4 A. Yes, sir.

5 Q. Okay. So at what time -- so the body's found at
6 noon. And I think you said there was testimony you took in an
7 initial statement from him at four o'clock a.m.; is that
8 correct?

9 A. The body was found at about midnight and took a
10 statement from him about four a.m. after interviewing the
11 other two at the jail.

12 Q. Now, you said that -- I believe you testified that
13 you talked to each of the other two suspects separately?

14 A. Yes, sir.

15 Q. Isn't it true that you interviewed them together?

16 A. No, sir. We talked to them separate, then we later
17 had them in a room together.

18 Q. And when you took a statement from them, they were
19 both in the same room?

20 A. No, sir.

21 Q. Isn't it true that when you're taking Isadore's
22 statement, Andre adds something to it?

23 A. No, sir, I don't think he was in the room during
24 that.

25 MR. MYERS: Your Honor, we object mainly on

1 relevance. What relevance is it whether he took statements
2 from other people together or separate? It has nothing to do
3 with the sentencing of Johnny Olandis Bennett, Jr. We object
4 on relevance.

5 THE COURT: Is it relevant to the issues? Is it
6 relevant?

7 MR. FLOYD: Yes, Your Honor, we think it's relevant.
8 You know, one of the things that the jury can consider in
9 mitigation is whether accomplices and the role the defendant
10 played in it.

11 MR. MYERS: Well, he's got to bring somebody in to
12 put evidence of that. Whether somebody was together or
13 separate, two other people who are not convicted of murder,
14 that's totally irrelevant.

15 THE COURT: I'm going to give him a little bit of
16 leeway.

17 You do need to go ahead and at least at some point
18 demonstrate relevance, Mr. Floyd.

19 MR. MYERS: Thank you, Your Honor.

20 BY MR. FLOYD:

21 Q. Now, at four o'clock when Mr. Bennett gave you the
22 statement, was he a suspect then?

23 A. At four o'clock, of taking the statement to him,
24 yes, sir, I made a decision after the statement that he needed
25 to be kept at Lexington County Jail.

1 Q. So he is in custody?

2 A. Yes, sir, after that statement, he was in custody.

3 Q. So as of that period of time, he had been in police
4 control for approximately four hours?

5 A. He had been where?

6 Q. Under police control for approximately four hours?

7 A. I wouldn't say we controlled him, he got at us.

8 Q. But after the body was discovered, he remained in
9 your presence and control, did he not?

10 A. Yes, sir, and he never asked to leave, sir.

11 Q. So he's been there now for four hours?

12 A. Yes, sir.

13 Q. And when is the next time that you had contact with
14 Mr. Bennett?

15 A. Let's see, four o'clock Saturday night, Sunday
16 morning, I think it would have been Monday evening.

17 Q. Monday evening.. So now he's been there -- four
18 o'clock in the morning Sunday?

19 A. Sunday morning, yes, sir.

20 Q. So that would be 20 hours Sunday. And it's now -- I
21 think on your notice it's about 7:40 p.m. Monday evening;
22 isn't that correct?

23 A. Yes, sir.

24 Q. So at that point in time, he had been in police
25 custody some approximately 40 hours; would that be correct?

1 A. 40 hours?

2 Q. Uh-huh.

3 A. And you're counting from four o'clock -- four
4 o'clock Sunday morning?

5 Q. Uh-huh.

6 A. Okay. You can say about 40.

7 Q. About 40 hours, would that be fair?

8 A. Okay.

9 Q. So he had been in custody for about 40 hours? I'll
10 let you --

11 A. If you want to figure on it. Okay. Yes, sir,
12 you're good.

13 Q. For about 40 hours. Now, during that 40 hours, was
14 he allowed to have contact with his family?

15 A. I didn't have any control of that.

16 Q. Do you know whether he was allowed -- do you know
17 whether he ever saw his family or attorney, anybody during
18 that 40 hours?

19 A. I don't know that, but that's through jail
20 procedures as to who he's allowed to call, who he's allowed to
21 see. I don't have any control over that.

22 Q. So you next get with him, I think at 7:40; is that
23 correct?

24 A. Yes, sir.

25 Q. And at that point in time, you go to interview him

1 again about this matter?

2 A. Yes, sir.

3 Q. And you were seeking more information?

4 A. Well, see if he wanted to tell us anything further.

5 Q. And is that when he gave you this, it's called

6 State's Exhibit --

7 A. 33?

8 Q. 33.

9 A. Yes, sir.

10 Q. And according to that, it says, I, Johnny Bennett,
11 need help, exclamation point?

12 A. Yes, sir.

13 Q. Now, he's in jail, suspect in a murder case and he
14 tells you he needs help. Did y'all give him any help?

15 A. We waited to see what he was going to do.

16 Q. Wouldn't you agree with me that what that looks like
17 is he needs a lawyer?

18 A. I couldn't interpret what that means, sir, because
19 he had every opportunity to ask for a lawyer.

20 Q. Well, isn't that what he's saying when he says I
21 need help?

22 A. I can't say that's what he's saying.

23 Q. Well, what kind of help would you think he needed
24 right then?

25 A. I couldn't say what kind of help he needed.

1 Q. Do you think it would have been helpful for him to
2 have a lawyer there?

3 A. Sir, that wasn't for me to determine. Just as he
4 wrote that, he could have wrote he needed a lawyer.

5 Q. I believe you testified that he wrote that. Did
6 y'all -- and y'all just sat there with him after that?

7 A. Yes, sir.

8 Q. And then you took a statement from him that we heard
9 awhile ago. What time was that statement? Was it eight
10 o'clock?

11 A. I don't have it in front of me. Okay. Yes, sir,
12 eight o'clock p.m.

13 Q. What happened during the 20 minutes from 7:40, when
14 he says I need help -- what happened in the 20 minutes between
15 7:40 when he said I need help?

16 A. About five to ten minutes may have passed, somewhere
17 in that neighborhood, and then he stated that he would give a
18 statement. And there during that, we advised him that it
19 would be taped.

20 Q. Did you discuss what he was going to say?

21 A. We didn't -- there may have been something said, but
22 we didn't go through his statement.

23 Q. Now, you didn't advise him of his rights between
24 7:40 and 8 o'clock, did you?

25 A. Between 7:40 and 8 o'clock?

1 Q. Right.

2 A. No, sir.

3 Q. His advice of rights form that you gave that you
4 have with this statement, you gave him at eight o'clock when
5 he gave this statement, didn't you?

6 A. Yes, sir, that's correct.

7 Q. Now, before I get into that, let me just clear up
8 that point we had awhile ago. Do you recognize that document?

9 A. Yes, sir.

10 Q. That's the statement of Isadore Mack, isn't it?

11 A. Yes, sir.

12 Q. And whose voice there appears in his statement?

13 A. Voice identified as Andre Haskins.

14 Q. So he was present, they were both present when you
15 took this statement?

16 A. They both was interviewed separately. When the
17 statement was taped, yes, he could have been present. And
18 that may explain of why we didn't take two separate taped
19 statements because we interviewed one, we interviewed the
20 other one, then we did the taped statement.

21 Q. Now, I want to ask you a couple questions about the
22 statement.

23 A. Yes, sir.

24 Q. Do you have it in front of you? I'd like to ask you
25 to turn to page three of the statement.

1 MR. MYERS: Which statement are you talking about?

2 MR. FLOYD: I'm talking about the December 3rd,
3 eight o'clock p.m. statement.

4 Q. Do you have page three, Detective Hamer?

5 A. Yes, sir.

6 Q. And I refer you down to about where you -- the
7 question that you -- where you asked the question, Hamer,
8 okay, were y'all pulled over beside the road or still on the
9 roadway or pulled up in a driveway or. Do you find that
10 statement?

11 A. Yes, sir.

12 Q. Now, would you agree with me that comes right after
13 you asked him where he struck him and he says he struck him in
14 the jaw?

15 A. Yes, sir.

16 Q. And Mr. Bennett's response to that question was, No,
17 we were still on the road when I slammed on brakes in the
18 middle of the road. Is that correct?

19 A. Yes, sir.

20 Q. Then would you agree with me that your next question
21 was, All right. You picked him up and put him in the car? Is
22 that your question?

23 A. Yes, sir.

24 Q. Now, there had been nothing said about that before
25 you asked that question in this statement, was there?

1 A. Yes, sir. If -- up there where Bennett was talking,
2 it says, So when I got back in the car, I drove to her house
3 onto Kennerly Road, got seven miles from Swansea, that's when
4 I slammed on brakes and I got out -- well, I didn't get out
5 right then, so Benton asked me was I all right.

6 I didn't say anything, I just looked at him. So he
7 got out and came on the driver's side, which I was driving at
8 the time. He reached in and he touched me and I said -- and
9 said were you all right. Then at that time, I jumped out the
10 car and that's when I hit him and he was knocked unconscious.

11 Q. He never said anything about putting him back in the
12 car, did he?

13 A. Well, no, sir, he didn't. The next thing I would
14 ask him is what he did. I guess the statement asked him is
15 what he did after that or did he pick him up or what.

16 Q. Well, you didn't ask him that. You didn't ask him
17 if he picked him up or stuck him somewhere in the woods or
18 whatever. You asked, All right, you picked him up and put him
19 in the car. Had he already told you that in this 20-minute
20 time frame?

21 A. No, sir, I couldn't say he had told me. That would
22 have been probably been the most logical thinking of me asking
23 him did he pick him up and put him in the car.

24 Q. That's more logical than asking what did you do
25 next?

1 A. Well, I had asked him had he pulled over beside the
2 road or still on the roadway or in a driveway. No, we were
3 still on the road when I slammed on brakes in the middle of
4 the road. All right, you picked him up. Because if you hit
5 someone and knocked them unconscious what would you -- you ask
6 did you pick him up and put him in the car.

7 Q. Well, you might could wait until he wakes up?

8 A. Yes, sir, you could, but I wouldn't say that I
9 talked to him about that in between that brief time. I was
10 pretty much -- whatever he would tell us, I would pretty much
11 figure what the next question was to ask him, sir.

12 Q. Okay. Let's go to the next question.

13 A. Okay.

14 Q. You asked him, All right, you picked him up and put
15 him in the car. He says, Uh-huh. Then your next question is,
16 All right, on the passenger side?

17 A. Yes, sir.

18 Q. Now, you didn't ask him well, where did you put him
19 in the car, but you asked him did he put him in the passenger
20 side; is that correct?

21 A. Yes, sir.

22 Q. Now, hadn't you already talked with him to find out
23 this information?

24 A. No, sir, we did not have any long conversation.

25 Now, like I said, there may have some things said, but we did

1 not have any long conversation.

2 Q. Did you just by luck give him two correct
3 speculations in a row?

4 A. Well, I don't even know that that was correct that
5 he put him on the passenger side.

6 Q. Well, he said yes, didn't he?

7 A. Yes, sir.

8 Q. You didn't ask him where he put him in the car, was
9 it the trunk, the back, the floorboard or whatever, you just
10 said in the passenger side like you already knew that.
11 Wouldn't you agree with me that's the way it looks?

12 A. Well, if that's the way it looks, yes, sir.

13 Q. So you must have had some conversation with him
14 between 7:40 when he said I need help --

15 A. We had --

16 Q. -- and eight o'clock when you advised him of his
17 rights?

18 A. Yes, sir, it was a very brief conversation.

19 Q. But you obtained some information during that very
20 brief conversation?

21 A. There may have been some information obtained, I
22 couldn't -- I would say it was very little. There may have
23 been some obtained.

24 Q. And that was obtained before he was advised of his
25 rights here at eight o'clock?

1 A. Yes, sir, if we talked any during that 15 or 20
2 minute, yes, sir.

3 Q. Now, you mentioned, although it's not on the tape, I
4 think you said that at that time he also said something to you
5 about that he knew he would kill someone. Is that what you
6 said?

7 A. Yes, sir, and I think I put that in one of my
8 investigative reports, something near the end of it or
9 something.

10 Q. I agree that you did.

11 A. Yes, sir.

12 Q. And can you tell us what else you had in that
13 investigative report that was said at the same time?

14 A. You want me to read what's highlighted?

15 Q. Yeah, because that's what -- according to your
16 report, that was said at the same time.

17 A. Yes, sir. Subject stated that he always knew that
18 he would kill someone. Subject stated that something happened
19 to him whenever he was around 12 years old involving some
20 guys.

21 Q. Now, you didn't tell us that earlier, did you?

22 A. No, sir.

23 Q. Are you saying that this statement was made at the
24 same time the taped statement was made?

25 A. That was made at the end of -- after we were -- that

1 was put in a summary of an investigative report at the end of
2 that taped statement.

3 Q. And why isn't that statement taped also, if he was
4 cooperating?

5 A. Well, that was just something he was talking about,
6 sir.

7 Q. Now, at the same time that you were out in Swansea
8 at the Smith residence, before you talked to Johnny Bennett,
9 wasn't there some information received in the Sheriff's
10 Department concerning these other suspects?

11 A. You talking about that night?

12 Q. Yes.

13 A. I don't -- I found out about some information or
14 something later about supposed to have been some phone calls
15 or something made.

16 Q. Yes. I'm going to show you an investigative report.

17 A. Yes, sir.

18 Q. Mr. Hamer, I'd like to play something for you to see
19 if you recognize it.

20 MR. MYERS: No, sir. If he's playing something by
21 somebody else, I object on hearsay. If he's playing something
22 by Detective Hamer, Detective Hamer said, I don't have an
23 objection.

24 THE COURT: All right. Do we need to take this up,
25 Counsel?

1 MR. FLOYD: Yeah.

2 THE COURT: Ladies and gentlemen, let me ask you to
3 step to the jury room just for a moment. Now, while you're
4 there, please be sure not to talk about the case.

5 (WHEREUPON, the jury leaves the courtroom at
6 approximately 7:00 p.m.)

7 THE COURT: The jury is secured. What sort of tape
8 is it, Mr. Floyd?

9 MR. FLOYD: Your Honor, this is a tape -- and what I
10 just passed up to Detective Hamer was an investigative report
11 that's part of the file, of a 911 tape. And this is the 911
12 tape. Your Honor, I wanted to see if he could identify it,
13 and I believe he can. And then we're going to eventually,
14 hopefully, get this into evidence. But we think it's part of
15 our case and it goes to these other suspects.

16 THE COURT: Do you know who is on the 911 tape?

17 MR. FLOYD: Yes, we'll be able to establish that.

18 THE COURT: Just tell me who's on it.

19 MR. FLOYD: Rebecca Dixon. She admits she's on the
20 tape, at least she did in the last trial. There's a little
21 dispute -- there's a second call, also. We have some citizens
22 of the community under subpoena that can identify the second
23 voice. I could play it for Your Honor, it's about 15 minutes.

24 THE COURT: Let me ask this, is she on the witness
25 list? Is she going to be called by either side, do you know?

1 MR. FLOYD: We have her under subpoena.

2 THE COURT: Do you plan to call her?

3 MR. FLOYD: Yes.

4 THE COURT: Why could you not just get that
5 testimony from her instead of through this witness?

6 MR. FLOYD: Because part of our defense is that this
7 matter was not thoroughly investigated, and therefore, they
8 focused on Johnny Bennett and didn't pursue these other
9 suspects. We're not necessarily offering this for the truth
10 of the matter, but to show they had this information and they
11 did not pursue it.

12 And I think it's admissible because it goes to the
13 evidence in the case. Under the resentencing statute, we can
14 get into the evidence of guilt in the case, including the lack
15 of evidence or the lack of diligent pursuit of other evidence,
16 the lack of thoroughness in the investigation.

17 THE COURT: Yes, sir. I don't have so much a
18 question of relevance at this point. I think there is -- as
19 Mr. Myers said, there is a legitimate problem about hearsay
20 though because this is a -- regardless of how you do it,
21 you're still bringing a witness into the courtroom through --
22 you're bringing her words into the courtroom through another
23 fashion.

24 And as I understand it, basically it seems like you
25 are bringing it in for the jury, in essence, to hear what she

1 said. I assume it's going to be a contradictory statement.
2 And I understand it's for them to make the point that they had
3 some other information, apparently. But again, it still seems
4 that that's what it's coming in for, is for the content of
5 what she said.

6 MR. FLOYD: Well, Your Honor, we would just ask --
7 that's why we showed the report first. You know Your Honor
8 ruled early on in the trial, because when Mark Jones was on
9 the stand we made objections to hearsay, and since it was part
10 of the investigation and investigative report it was allowed
11 in. And that's the same situation with this information and
12 this tape.

13 MR. MYERS: No, sir, that wasn't your ruling. The
14 ruling on Mark Jones was is why he took certain actions and he
15 received a missing persons report and that's why he was doing
16 that. This, I can't cross-examine a tape. It wasn't admitted
17 in the first trial. They had to bring Ms. Dixon in. If they
18 bring Ms. Dixon in, then we'll deal with that then.

19 But not only that, it was also thrown out for
20 blaming third parties. Now here, you can't even blame third
21 parties here in this part. Third parties are out. If it's
22 out in the guilt phase, it certainly isn't admissible in the
23 penalty phase. I can't cross-examine a tape.

24 If they want to bring Ms. Dixon in, then we'll have
25 to take up a matter of law with her. But it certainly is

1 inappropriate to ask this officer about a call that somebody
2 else made. And once she testifies, it will be cleared up like
3 it was the last time.

4 MR. FLOYD: Your Honor, we would ask the court
5 reporter to go back to your ruling on Mark Jones, because the
6 ruling was he was allowed to testify to hearsay. He was
7 allowed to say what Paul Smith said to him.

8 We objected to it being hearsay, and the ruling was
9 that since it was part of the investigation and contained in
10 the investigative report, he was allowed to testify to the
11 words of Paul Smith, though we couldn't cross-examine him.

12 Same thing here. We've got an investigative report.
13 What's on this tape is pretty much in that investigative
14 report. So we would argue that it's admissible and that would
15 be consistent with the earlier ruling.

16 THE COURT: Well, again, that was a report that the
17 officer had prepared himself. And I realize -- I grant there
18 was some hearsay there, but again, it came from the report
19 and, again, as part of the report was designed and was brought
20 in by the State in order to show based on that statement why
21 the officer took what particular actions that he did at the
22 time. I don't gather this is going to -- it's brought in in
23 order to demonstrate why this officer did anything that he did
24 or did not do or anything that he didn't do.

25 MR. FLOYD: I think we'll show that he did know

1 about this information. I couldn't tell you the exact time he
2 first became aware of it, but --

3 MR. MYERS: I have an additional objection.

4 THE COURT: Let me ask you this. Wouldn't it be
5 more appropriate just to bring it in through Ms. Dixon if
6 she's going to testify, and give you an opportunity to recall
7 the officer after that?

8 MR. FLOYD: Yeah, I would think that's --

9 THE COURT: Okay.

10 MR. FLOYD: That's okay. I might could just get it
11 in -- well, I could just ask him a question or two that he got
12 some information about a 911 call, maybe just when he got it
13 and then I won't go into it any further.

14 MR. MYERS: No, sir, we object to the relevance of
15 that. And also, that is not mitigating testimony. Whether a
16 police officer adequately investigated a case or not is not
17 mitigating testimony because it doesn't go to the character of
18 the defendant. So it's not mitigation. We're in the
19 sentencing phase, not the guilt phase.

20 MR. FLOYD: Your Honor, mitigation goes beyond just
21 the character of the defendant. It specifically says that,
22 for example, if there are accomplices in the case, then that
23 can be considered. It also says you can consider the evidence
24 of guilt. And any time you're looking at evidence of guilt,
25 you can look at the strength of the investigation and whether

1 it was a full investigation.

2 THE COURT: Certainly. But again, wouldn't it be
3 better, more appropriate just to take that up at the point
4 Ms. Dixon comes to testify? Then again, obviously, you can
5 recall the officer then if you need to.

6 MR. FLOYD: I can deal with it that way.

7 THE COURT: I think procedurally we're better off
8 just doing that.

9 And do you know -- are you planning to call
10 Ms. Dixon, Mr. Myers?

11 MR. MYERS: She's not on our list.

12 THE COURT: Okay. I gather she is going to be
13 called, though, is that right?

14 MR. FLOYD: We have her under subpoena.

15 THE COURT: Okay. All right, let's bring the jury
16 in.

17 MR. FLOYD: Your Honor, before you bring the jury
18 in, how long we planning on going, because we told them an
19 hour and I don't want them to be blaming me for something --

20 THE COURT: How much longer do you have?

21 MR. FLOYD: I'm going to be awhile longer with this
22 thing, I could be another hour.

23 THE COURT: I'll ask the jury. When they come back
24 in let me ask them. You say you're going to need about how
25 much longer?

1 MR. FLOYD: I could be as much as another hour.

2 THE COURT: Let me bring them out. I'll just tell
3 them that and see what they say.

4 (WHEREUPON, the jury enters the courtroom at
5 approximately 7:03 p.m.)

6 THE COURT: All parties and attorneys are in the
7 courtroom and all jurors have now returned.

8 Madam Forelady, we have to pester you with another
9 decision. I bet you didn't know you'd have to make all these
10 decisions now, did you? While you were out, I chatted with
11 the attorneys and it appears that cross-examination may take
12 another hour, and it's possible that we could have some
13 redirect. I don't know at this point, we just don't know
14 that. And I guess my question to you is do you want -- we've
15 basically gone the other hour you gave us, do you want to go
16 ahead and go through and finish or would you rather just come
17 back in the morning? We're talking about, in essence, after
18 eight o'clock if we did that.

19 Do you want to go back in the jury room and talk
20 about it or do most jurors feel like you know pretty well what
21 you want to do? And you understand, either way is okay with
22 me, I'll do whichever. I have no problem with either way.
23 This is my job, I've got to be here anyway. You want to go
24 back and talk about it?

25 THE FORELADY: Yes, just give us one minute.

1 THE COURT: Okay. Sure. And you understand, either
2 way you want to do it is fine, there's not a problem.

3 (WHEREUPON, the jury leaves the courtroom at
4 approximately 7:05 p.m.)

5 (WHEREUPON, the jury enters the courtroom at
6 approximately 7:08 p.m.)

7 THE COURT: All right. All parties and attorneys
8 are in the courtroom and all jurors are back again.

9 What's the situation, Madam Forelady?

10 THE FORELADY: We feel that several of our jurors
11 are really at the point of being tired and we don't think it
12 would benefit either the State or the defendant for us to
13 continue at this time.

14 THE COURT: I agree. I agree.

15 THE FORELADY: Testimony might be missed.

16 THE COURT: And let me be sure you understand. Of
17 course, one thing that I have to do is I always have to do a
18 balance when I do scheduling. We take into account, first of
19 all, we basically snatched you folks away from your homes,
20 your families, your businesses.

21 And I know at least two of you have indicated
22 concerns regarding work, and we understand that and that's why
23 we try to make -- we don't want to do short days because -- at
24 least not too short, but we also don't want to go so long that
25 you can't concentrate on what you're doing. And if we do

1 that, you're right, we're not doing anybody a favor if we do
2 that. But let's come back in the morning --

3 Do you have a preference as to -- I don't want to go
4 later than 9:30, either 9:00 or 9:30 --

5 THE FORELADY: They've indicated 9 o'clock would be
6 fine.

7 THE COURT: Nine o'clock would is okay? Good, we'll
8 start at nine o'clock in the morning. And we'll see you then.
9 Have a good evening. Enjoy your dinner, but what's the one
10 thing you don't do? You don't talk about the case. All
11 right.

12 (WHEREUPON, the jury leaves the courtroom at
13 approximately 7:10 p.m.)

14 THE COURT: Are all the jurors gone?

15 MR. RIDDLE: Yes, sir.

16 THE COURT: Counsel, I need to bring up one point,
17 Counsel. Just have a seat, if you will. I need to bring up
18 one point. We need to get a matter straightened out. We do
19 need, first of all, let's put on the record we had a bench
20 conference earlier -- have I already put that on the record
21 yet, about the Jackson V. Denno?

22 MR. RIDDLE: I thought about that, Judge, I don't
23 think we have.

24 THE COURT: We did not. I think we had a bench
25 conference, I've noted we've had a couple of bench

1 conferences. The major one was -- oh, the first one was a
2 bench conference here during the testimony of the sister of
3 Mr. Bennett's girlfriend, as I recall. There was an issue
4 regarding whether or not she had one conviction or two
5 convictions. The bench conference was over on the side out of
6 the presence of the jury and we made the determination that
7 there was, in fact, only one conviction. I think we clarified
8 that, is that correct, Mr. Myers?

9 MR. MYERS: Yes, sir, that's correct.

10 MR. FLOYD: Correct.

11 THE COURT: The second bench conference was related
12 to the statements sought to be introduced by the State.
13 Mr. Floyd again -- and this was before any of the statements
14 were introduced. Mr. Floyd again renewed his objection to the
15 not having the Jackson V. Denno hearing for admission of the
16 statements. As you know, that objection went throughout the
17 testimony and, of course, the objections were made
18 appropriately at all times during the testimony. And, of
19 course, I ruled against the renewal of the motion.

20 Is that correct? Do either of you want to add
21 anything to that, Mr. Myers?

22 MR. MYERS: No, sir.

23 MR. FLOYD: I think you stated it correct, Your
24 Honor.

25 THE COURT: Okay. Thank you. I need to bring one

1 other thing up and let me be sure we get this clear and kind
2 of get this out in the open. I had sort of a -- I picked up a
3 suggestion that, perhaps, we're showing some favoritism in the
4 scheduling. I want to be sure that there's not a concern
5 about that and that we need to get that on the record.

6 I've been doing this for 17 years, and 11 years in
7 family court, and, I guess, if you don't pick up a thick skin
8 after that, then you don't get one. But one thing I'm always
9 extremely sensitive about is to make sure that nobody is
10 concerned that we're doing something that is basically causing
11 them a problem.

12 What I want to do is let's put on the record if
13 anybody has got a problem in terms of the scheduling. And let
14 me note that there are two or three things that I have to take
15 into account. As we indicated a moment ago, when dealing with
16 a jury the first thing that I take into account is the jury.

17 And I take into account one thing in particularly
18 and that is this, that as I told them a moment ago, we've
19 taken 13 citizens, at this point, from this county and we've
20 snatched them from their homes and their families and their
21 businesses. And my theory has always been that we are ill
22 behooved to extend short days when we've taken these folks
23 from their homes, knowing they want to get back to their
24 families as soon as they can.

25 And, frankly, in terms of scheduling, they are one

1 of my two -- they are one of my two priorities, and the
2 defendant is a priority in terms of being able to take part in
3 the process. And as I told them a moment ago, I certainly
4 don't want to go so long that they can't concentrate.

5 So that's why what we did earlier was when Mr. Myers
6 had a scheduling problem, I left it to the jury and they
7 wanted to stay a little bit longer. And as you know, we've
8 done that just now. In fact, even let them suggest when they
9 want to come back in the morning.

10 But I want to be sure we understand that we've got
11 all these things to take into account. And as both of you
12 know, as all sides know, a case of this type just requires a
13 lot of patience. Every area -- in most cases, some areas
14 might not be explored, but they have to be explored in a
15 capital case, always have to be. Both sides have to put in
16 sort of testimony they might not normally put in in another
17 situation. So we have to be sure that those are taken care
18 of. And, unfortunately, it takes longer than anybody would
19 like it to, but it does.

20 So bearing that in mind, you know, I try to adjust
21 the schedules as much as I can. But what I want to do is
22 this, is basically if either side feels that there is some
23 sort of favoritism in scheduling, I want you to have a chance
24 to say so. I want you to know I'm certainly not offended by
25 it. But if the scheduling, also, is causing anybody problems,

1 I want you to tell me that, too, because I certainly don't
2 want the scheduling to interfere with anybody being able to
3 present their case in the fashion that they feel they need to
4 do it.

5 Let me just ask, from the State's side, is there any
6 problem with the scheduling in the fashion that we've done it
7 so far?

8 MR. MYERS: No, sir.

9 THE COURT: From the defense?

10 MR. FLOYD: No, Your Honor.

11 THE COURT: All right. Let me ask this, too.

12 Mr. Bennett, let me ask you. I won't put you under oath --
13 I've put you under oath about a hundred times, I think,
14 already and I won't do it this time. In terms of the
15 scheduling as we've done it, has it caused you any problems?
16 Have you been able to get enough rest, has it caused you any
17 problems in being able to concentrate and work with your
18 attorneys and go through this process?

19 THE DEFENDANT: No, Your Honor.

20 THE COURT: You're certain of that?

21 THE DEFENDANT: Yes, sir.

22 THE COURT: And you understand that if it does at
23 some point, I want you to tell your lawyers or if they don't
24 say anything, tell me, okay?

25 THE DEFENDANT: Yes, sir.

1 THE COURT: Be sure and let us know that. I had one
2 case where we had -- some years back in another county where a
3 defendant was having trouble concentrating in the case and
4 nobody knew why and we found out that in that county, what
5 happened was we were going fairly late in the evening, you
6 know, seven or eight o'clock, and they were getting him up at
7 four o'clock in the morning at the jail. And the poor guy
8 just wasn't getting enough sleep. So we had to put him
9 somewhere else to make sure he got enough rest.

10 And I want to be sure that you get enough rest and
11 that you kind of get everything you need in order to be able
12 to defend yourself in this matter. So you understand if
13 there's a problem you know to say so, right?

14 THE DEFENDANT: Yes, sir.

15 THE COURT: And you feel free to do that, too.

16 Okay. Anything else, Counsel, before we --

17 MR. MYERS: No, sir.

18 MR. FLOYD: Your Honor, we would just ask that
19 Detective Hamer be reminded that he's still on the stand and
20 not to discuss his testimony.

21 THE COURT: Yes. Detective Hamer, you are still on
22 the stand, you're still under oath. And remember, you don't
23 talk -- I know you've heard this a thousand times, you've
24 testified a lot, but you know not to talk with anybody about
25 your testimony.

1 THE WITNESS: Yes, sir, Your Honor.

2 THE COURT: And you understand, I'll probably ask
3 you that first thing in the morning, too?

4 THE WITNESS: Yes, sir, I understand.

5 THE COURT: See you in the morning.

6 (WHEREUPON, the trial of this case was recessed
7 for the day.)

8

9 ** END OF VOLUME IV **

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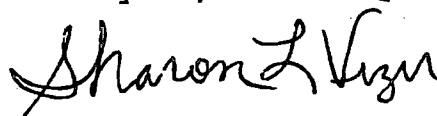
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C E R T I F I C A T E

I, Sharon L. Vizer, Official Court Reporter for the 11th Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete transcript of record of all the proceedings had and the evidence introduced in the trial of the captioned case in Circuit Court on the 13th day of July 2000.

I do further certify that I am neither of kin, counsel nor have an interest to any party hereto.

May 19, 2004


SHARON L. VIZER

CIRCUIT COURT REPORTER

STATE OF SOUTH CAROLINA) IN THE COURT OF GENERAL SESSIONS
COUNTY OF LEXINGTON) 11TH JUDICIAL CIRCUIT

THE STATE) TRANSCRIPT OF RECORD

-VS-) 93-GS-32-2354

JOHNNY O. BENNETT,) ** VOLUME V **

DEFENDANT.)

JULY 14, 2000

LEXINGTON, SOUTH CAROLINA

B E F O R E:

THE HONORABLE MARC H. WESTBROOK, JUDGE.

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

DONNIE MYERS, SOLICITOR

DAYTON RIDDLE, DEPUTY SOLICITOR

SHAWN GRAHAM, ASSISTANT SOLICITOR

ATTORNEYS FOR THE STATE

WAYNE FLOYD, ESQUIRE

HERVERY YOUNG, ASSISTANT PUBLIC DEFENDER

ATTORNEYS FOR THE DEFENDANT

SHARON L. VIZER

CIRCUIT COURT REPORTER

I N D E X

(SW) - DENOTES STATE'S WITNESS

(DW) - DENOTES DEFENSE WITNESS

(IC) - DENOTES IN CAMERA

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ANNIE RUTH SMITH (SW):

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CERTIFICATE OF REPORTER

-1752

E X H I B I T S

NO.	DESCRIPTION	ID.	EV.
<u>FOR THE COURT:</u>			
1	- LETTER ABOUT DR. AIKEN AND REPORT	-1056	
2	- WITNESS LIST	-1056	
3	- 911 TAPE	-1816	
4	- INVESTIGATION REPORT	-1817	
5	- NOTE FROM JURY REQUESTING AN EASEL	-2142	
6	- NOTE FROM JURY	-2147	
 <u>FOR THE DEFENDANT:</u>			
1	- CERTIFICATE		-1104
2	- STATEMENT	-1252	
3	- STATEMENT	-1252	
4	- STATEMENT	-1252	
5	- CLIMATOLOGY DATA		-1829
6	- OWENS STEEL APPLICATION		-1829
7	- PHOTOGRAPH		-2027
8	- PHOTOGRAPH		-2027
9	- PHOTOGRAPH		-2027
10	- PHOTOGRAPH		-2027
11	- PHOTOGRAPH		-2027
12	- PHOTOGRAPH		-2027
13	- DIPLOMA CERTIFICATE		-2027
14	- HOSPICE CERTIFICATE		-2027

E X H I B I T S

NO.	DESCRIPTION	ID.	EV.
<u>FOR THE STATE:</u>			
1 -	SUMMARY CHART		--925
2 -	SUMMARY CHART		--952
3 -	SUMMARY CHART		--962
4 -	MAP		--987
5 -	LARGE PHOTOGRAPH		-1015
6 -	SENTENCE SHEET		-1029
7 -	LARGE PHOTOGRAPHS (2)	-1035	-1036
8 -	DOCUMENT - EXTENSION LETTER		-1089
9 -	SUMMARY CHART		-1090
10 -	CERTIFICATE OF RELEASE		-1108
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16 -	PILLOW		-1138
17 -	DRINKING GLASS		-1139
18 -	DRINKING GLASS		-1139
19 -	RED GLASSES		-1140
20 -	FLOOR MAT		-1141
21 -	FLOOR MAT		-1141
22 -	SHAVING CASE		-1142

E X H I B I T S

NO.	DESCRIPTION	ID.	EV.
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24	- COPY OF CHECK		-1172
25	- COPY OF CHECKS		-1177
26	- CAMERA		-1233
27	- STATEMENT/RECEIPT		-1242
28	- BENCH WARRANT		-1272
29	- MAP		-1290
30	- MAP		-1298
31	- STATEMENT		-1304
32	- AUDIOTAPE		-1309
33	- HANDWRITTEN STATEMENT		-1317
34	- STATEMENT		-1321
35	- AUDIOTAPE		-1321
36	- MESSAGE/NOTE		-1328
37	- MESSAGE/NOTE		-1328
38	- PHOTOGRAPH		-1443
39	- PHOTOGRAPH		-1443
40	- PHOTOGRAPH		-1448
41	- PHOTOGRAPH		-1448
42	- PHOTOGRAPH		-1448
43	- FINGERPRINT CARD		-1454
44	- PHOTOGRAPH		-1458

E X H I B I T S

NO.	DESCRIPTION	ID.	EV.
<u>FOR THE STATE:</u>			
45 -	PHOTOGRAPH		-1458
46 -	PHOTOGRAPH		-1458
47 -	PHOTOGRAPH		-1458
48 -	PHOTOGRAPH		-1458
49 -	PHOTOGRAPH		-1458
50 -	KEYCASE		-1461
51 -	SCREWDRIVER		-1464
52 -	PHOTOGRAPH		-1466
53 -	PHOTOGRAPH		-1466
54 -	PHOTOGRAPH		-1468
55 -	PHOTOGRAPH		-1468
56 -	SHIRT		-1471
57 -	CHART		-1499
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59 -	MEMO NOTICE/LETTER		-1555
60 -	MEMO NOTICE/LETTER		-1559
61 -	MEMO NOTICE/LETTER		-1560
62 -	LETTER		-1564
63 -	STATEMENT		-1626
64 -	REQUEST LETTER		-1628
65 -	REQUEST LETTER		-1632
66 -	REQUEST LETTER		-1644

E X H I B I T S

NO.	DESCRIPTION	ID.	EV.
<u>FOR THE STATE:</u>			
67 -	REQUEST LETTER		-1648
68 -	LETTER		-1660
69 -	LETTER		-1660
70 -	LETTER		-1662
71 -	LETTER		-1663
72 -	PHOTOGRAPH		-1668
73 -	PHOTOGRAPH		-1668
74 -	PHOTOGRAPH		-1668
75 -	PHOTOGRAPH		-1683
76 -	PHOTOGRAPH		-1683
77 -	PHOTOGRAPH		-1683
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85 -	PHOTOGRAPH		-1741
86 -	AWARD		-1745
87 -	CERTIFICATE		-1745
88 -	PHOTOGRAPH		-1748

EXHIBITS

NO.	DESCRIPTION	ID.	EV.
<u>FOR THE STATE:</u>			
89	- PHOTOGRAPH		-1748
90	- BOOKING PHOTOGRAPH		-2004

1 Friday, July 14, 2000

2 THE COURT: Counsel, let me note, first of all, the
3 head of the sequestration team tells me that the jury is
4 doing well. I'm very pleased to hear that, of course.
5 Apparently no problems with them.

6 Anything from the State?

7 MR. MYERS: No, sir.

8 THE COURT: Defense?

9 MR. FLOYD: No, Your Honor.

10 THE COURT: Again, I believe we're in the middle of
11 the cross-examination of Detective Hamer.

12 (WHEREUPON, the jury enters the courtroom at
13 approximately 9:12 a.m.)

14 THE COURT: All the parties and attorneys are in
15 the courtroom and all jurors have returned.

16 Ladies and gentlemen of the jury, I hope all of you
17 had a good evening last night. We're ready to go again. One
18 thing you want to be thinking about when we get a break this
19 morning is to decide how you want to do for lunch.

20 Our practice has been that if the jury prefers to
21 go out somewhere for lunch it normally takes about an hour
22 and a half to get everybody fed at one place and get them
23 back, and if you want to stay in we could probably do it
24 within about an hour, if you wanted to stay in and eat.
25 That's up to you, and again, I don't have much problem either

1 way with that. It doesn't affect me a whole lot but I'll let
2 you determine that.

3 And as the evening goes on too, we'll see how
4 you're doing this evening, kind of like we did yesterday,
5 sort of discuss with you, making sure all of you are focusing
6 and concentrating. We'll continue on.

7 Mr. Floyd?

8 MR. FLOYD: Thank you, Your Honor.

9 CROSS-EXAMINATION

10 BY MR. FLOYD:

11 Q. Good morning.

12 A. Good morning, sir.

13 Q. I'd like to go back to the statement that we were
14 dealing with. Do you have that up there with you?

15 A. No, sir.

16 Q. I want to ask you some questions from that December
17 3rd statement.

18 A. Okay. Thank you.

19 Q. I refer you back to page four. Detective Hamer, I
20 think you testified that Mr. Bennett said that he snapped;
21 isn't that correct?

22 A. Yes, sir.

23 Q. Isn't, in fact, that word, your word? Let me ask
24 you -- let's go down to the middle of the page where you
25 asked the question, start with the word okay. Do you see

1 that point?

2 A. In the middle of the page?

3 Q. Yes.

4 A. Okay.

5 Q. Did you not at that time ask, Okay, when he
6 scratched you on the shoulder what did you do then? I know
7 you said --

8 And then Bennett says, That's when I --

9 And then you say, You snapped?

10 A. Yes, sir, that's what I said.

11 Q. So you're the one that used that word?

12 A. Well, the word had been used in one or two lines
13 above that, because he said that I pushed him away and that's
14 when he scratched me on my shoulder and that's when I
15 snapped.

16 Then I said, Okay, when he scratched you on your
17 shoulder what did you do then? I know you said -- and that's
18 when I -- and I said you snapped.

19 Q. And you entered you snapped there?

20 A. Well, that's what he had said previously.

21 Q. All right. Let's go down to the next part of it,
22 okay?

23 A. Yes, sir.

24 Q. Now, let's turn back to page three, please. Would
25 you agree with me a confession if it's really a confession

1 should be accurate?

2 A. I think the confession is pretty accurate.

3 Q. Okay. Well, let's go through that now.

4 A. Okay.

5 Q. You went through Tuesday, I think that's when the
6 day that all this -- most of this happened; is that correct,
7 the Tuesday?

8 A. Yes, sir.

9 Q. Now, I believe you said they went to the bank
10 first. Would you agree that he says that in his statement?

11 A. Yes, sir, he had stated that a couple of times. I
12 think it's in his statement somewhere, if you want to go back
13 through the statement and point out where it's at. But he
14 said that on two or three different occasions, yes, sir.

15 Q. Now, we know that's accurate through other
16 witnesses, don't we?

17 A. Yes, sir.

18 Q. In fact, would you agree with me that according to
19 the bank records the check was cashed at about 11:56 that
20 morning?

21 A. Yes, sir, that's correct. And we stopped by the
22 bank and checked on things, I think as early as that Monday,
23 because one of the young ladies at the bank that cashed the
24 check she knew the victim, Mr. Benton Smith, but she was not
25 able to identify who was in the car with him. She said there

1 was another person but she couldn't give us a whole lot of
2 information. So that's correct.

3 Q. So we know the unemployment check came in. We know
4 it was cashed by about 11:56?

5 A. Yes, sir, that's correct.

6 Q. Then I think the next thing that's talked about is
7 going to fill out some employment applications in the
8 Columbia area?

9 A. Yes, sir, that's correct.

10 Q. I'm going to ask you if you are familiar with this
11 document?

12 A. No, sir. I think this is the first time I've seen
13 this.

14 Q. You never have seen that document before?

15 A. I don't think I have.

16 Q. Now, after they did the employment applications --
17 let's go to page three. Let me ask you this. Do you think
18 that happened, do you think they went in and --

19 MR. MYERS: Objection. It makes no difference what
20 this officer thinks. He's not here to think about stuff --

21 THE COURT: I'll have to sustain as to the form of
22 the question, Counsel. Certainly, he can't speculate. Now,
23 you understand, of course, obviously that's different from a
24 witness can give a 701 lay witness opinion if there is a
25 sufficient evidentiary basis for it.

1 MR. FLOYD: Thank you, Your Honor.

2 BY MR. FLOYD:

3 Q. What's the next thing that -- let's go to page
4 three, the top of the statement. Isn't it true that he said
5 after they filled out the applications they went to
6 Orangeburg; is that correct?

7 A. It says after we finished work -- well, filling out
8 applications for that day we was coming through Swansea and I
9 told him that I wanted to go to Orangeburg, and he said okay.
10 So "um" I drove to Orangeburg and went to "um" Bonita
11 Gonsalves' house.

12 Q. Now, who does he say drove?

13 A. According to this he said he drove to Orangeburg,
14 which is the defendant said I.

15 Q. The defendant said I drove?

16 A. The defendant, Johnny Bennett, said he drove.

17 Q. He said he drove, didn't he?

18 A. Yes, sir.

19 Q. Then he said, didn't he, that when they got to
20 Orangeburg -- let's go on down. He knocked on the door, that
21 she wouldn't open the door; is that correct?

22 A. Yes, sir.

23 Q. So he left; is that correct?

24 A. Well, according -- he said that they had some
25 conversation. He said she wouldn't open the door. The only

1 thing she said was that I hurt her which made me angry
2 because the way that it went it should not have went. So I
3 got back into the car. So there was some conversation
4 through the door. I don't know if she had a chain on the
5 door or what.

6 Q. But they didn't get in at that time; is that
7 correct?

8 A. According to him he didn't get in.

9 Q. So the next thing they did is he got back in the
10 car, according to the statement, right?

11 A. Yes, sir.

12 Q. And then who did he say drove the car at that
13 point?

14 A. He states that he drove from her house on to
15 Kennerly Road about seven miles from Swansea.

16 Q. Then what did he do?

17 A. Then he slammed on brakes.

18 Q. So he said he was driving the car then he slammed
19 on the brakes; is that correct?

20 A. Yes, sir.

21 Q. And did you ever have any other information that
22 Benton let anybody drive his car?

23 A. No, sir, that's one thing, in meeting with the
24 family, he didn't allow anyone to drive his car. He didn't
25 give his possessions. He didn't stay out overnight. So, no,

1 sir.

2 Q. All right. So then he says he got out of the car
3 at that time; is that correct? He says, I got out -- well, I
4 didn't get out right then. So when Benton asked me was I all
5 right I didn't say anything I just looked at him. So he got
6 out and came on the driver's side, which I was driving at the
7 time. So he's repeating that he was driving at the time with
8 Benton in the car; is that correct?

9 A. Yes, sir.

10 Q. He reached in and he touched me, and I jumped out
11 of the car and that's when I hit him; is that correct?

12 A. Yes, sir.

13 Q. Now, do you know or did you ask him at that time
14 what time of the day this happened?

15 A. No, sir. I don't think I asked him about the time
16 of day, unless it would be in here. I don't think I asked
17 him about it.

18 Q. Do you know whether or not this was daytime or
19 nighttime?

20 A. No, sir, I don't. I pretty well in going through
21 the statement -- I think as we went through the statement
22 that we came to believe that it could have been sometime
23 during the daytime, because I think that we had asked him
24 something about was anyone around or something when he got to
25 his sister's house or was he concerned about anybody seeing

1 him or something. So I think somewhere near -- it may be in
2 the statement or it may be afterwards.

3 Q. Now, actually, if you go back through the statement
4 he says he finally got back to his sister's house at 7:50,
5 didn't he? And I'll refer you to that page, okay. That's on
6 the bottom of page four, fourth line up from the bottom.

7 A. Okay. You said the fourth line from -- in that
8 last paragraph?

9 Q. Yes, starting on the fifth line.

10 A. The fourth line, Drove back to the old ball field
11 and parked the car there. And I got back into the car and I
12 just rode, and that's when I -- I came to my senses. That's
13 when I was in -- and I went by Willie Smith's house and me
14 and Willie was talking. So at that time I told Willie that I
15 was going to Orangeburg.

16 Q. Are your pages the same as mine?

17 A. Well, I'm on page four, the last paragraph.

18 Q. The fourth line, this line here.

19 A. Okay. Fourth line from the bottom?

20 Q. Yeah.

21 A. I got there, it was around about ten minutes until
22 8:00, 7:50, and I stayed there until about 10:15, that's when
23 I went home.

24 Q. So according to the statement he got back to his
25 sister's house at 7:50 p.m.; is that correct?

1 A. That's after he -- according to what he talked
2 about he's done some other thing.

3 Q. Oh, yeah, we're going to go in between there, but
4 that's what I'm saying. He gets back to his sister's house
5 about 7:50; is that correct?

6 A. Okay, well, what are you asking me?

7 Q. Well, what I'm trying to go through with you is
8 everything he said he did that day to see if it's an accurate
9 statement, okay. Would you agree with me that according to
10 the statement on Tuesday night he gets back to his sister's
11 house at 7:50 p.m.?

12 A. Okay, but he went to his sister's house before he
13 talks about 7:50 p.m.

14 Q. I -- pardon?

15 A. He had been to his sister's house once before that
16 day.

17 Q. Right. I'm talking about at the end of the day he
18 goes back at 7:50?

19 A. Again?

20 Q. Yes. We're going to go in between here now, okay?

21 A. Yes, sir.

22 Q. So we got the check cashed at 11:56?

23 A. Yes, sir.

24 Q. Then we got a trip into Columbia for employment
25 applications?

1 A. Yes, sir.

2 Q. We got a ride back to Swansea?

3 A. Yes, sir.

4 Q. Then we go on to Orangeburg where there's a brief
5 stop at Bonita's house and she doesn't let him in?

6 A. Yes.

7 Q. That's where we are so far.

8 A. Yes, sir.

9 Q. Then from there we're on the trip back to Swansea.
10 And by the way, how long does it take to get from Swansea to
11 Orangeburg?

12 A. 55, 60 miles an hour, anywhere in the neighborhood
13 35, maybe 45 minutes. If you go from Swansea to Orangeburg
14 taking a couple of the back stretches I think you can do it
15 in about 35 or 40.

16 Q. 35 to 40?

17 A. Now, I couldn't be exact on that. I'm only
18 guessing.

19 Q. And how much time would it take to drive into
20 Columbia, or let's say Cayce or West Columbia?

21 A. Cayce, West Columbia and Columbia?

22 Q. Uh-huh.

23 A. From Swansea I think it's roughly probably right at
24 about 30 minutes, 25 to 30 minutes.

25 Q. So we've got the check cashed at 11:56, drive into

1 Columbia?

2 A. Yes, sir.

3 Q. Or Cayce or West Columbia, wherever the job
4 applications were?

5 A. Yes, sir.

6 Q. And then we come back to Swansea, then to
7 Orangeburg, now we're coming back to Swansea from Orangeburg
8 when this happens on the road, according to the statement; is
9 that correct?

10 A. Yes, sir.

11 Q. Now, according to the statement Benton was hit when
12 they were parked in the middle of the road, because he
13 slammed on brakes in the middle of the road; is that correct?

14 A. Yes, sir.

15 Q. Then he says he picked him up and he put him in the
16 car on the passenger side; is that correct?

17 A. Yes, sir.

18 Q. Now, of course, then he says he drove back to
19 Swansea, went back to the old ball field, which is in Happy
20 Town?

21 A. Yes, sir.

22 Q. Now, on State's Exhibit 29, Detective Hamer.

23 A. Yes, sir.

24 Q. Is this the old ball field we're talking about
25 here?

1 A. Okay. Yes, sir, that's correct.

2 Q. Now, how far is the old ball field from his
3 sister's house?

4 A. It's -- if you come from the sister's house back
5 out to the main road, the main highway of Cassidy and just go
6 straight across, if his sister is a half mile down that road
7 in the other direction the old ball field is probably just a
8 little bit less or maybe about the same distance on the dirt
9 road across from the intersection. So about the same
10 distance either way.

11 Q. Does that mean it's about a mile; is that what I
12 got from that?

13 A. Could be roughly in the neighborhood of a mile,
14 maybe three-quarters of a mile. I couldn't be sure.

15 Q. Three-quarters of a mile to a mile?

16 A. Maybe less than a mile.

17 Q. And would you describe that area for the jury.

18 A. The ball field?

19 Q. The old ball field area.

20 A. The old ball field area was existed probably quite
21 some years back and it was in the midst of some pine trees
22 and all but there was still a clearing there for the
23 community where they used to play baseball and all, but there
24 wasn't anything else in that area.

25 It's just a clearing pretty much and a little

1 wooded area right off of that dirt road that was used to play
2 baseball there. I don't even think that there was like the
3 fence for the home plate or anybody, none of that that I seen
4 was still there. You could just -- when you drive up there
5 you knew that it used to be an old ball field.

6 Q. And you can see that area from the road?

7 A. Yes, sir, during that time you could.

8 Q. Now, let's go to page four now. Then he said he
9 sat there for about 15 minutes before Benton regained
10 consciousness; is that correct?

11 A. Okay, which line are you on?

12 Q. Top, about --

13 A. Okay. About 15 minutes, yes, sir.

14 Q. And then he says when he came through and so forth,
15 then he scratched him on the shoulder; is that correct, that
16 Benton scratched Bennett on the shoulder?

17 A. He says he went to touch me again and I pushed him
18 away, and that's when he scratched me on my shoulder and
19 that's when I snapped.

20 Q. Was there ever any evidence of Mr. Bennett having
21 scratches on his shoulder?

22 A. I couldn't be for certain about that. I don't
23 think I ever asked or I don't think we ever had him to remove
24 his shirt. So I couldn't be for certain about that.

25 Q. You all never had him remove his shirt to see if he

1 had scratches or marks on the body?

2 A. I don't think we did.

3 Q. Let's go down to the last response of his on that
4 page. And would you give your running dialogue of what
5 happened from there, okay?

6 A. Yes, sir.

7 Q. That's when I -- when I realized what I had done
8 that's when I picked the body up and put it in the back of
9 the trunk; is that correct?

10 A. Yes, sir.

11 Q. Drove to my sister's house, a wooded area by the
12 old cemetery. That's where I put the body. So here we go
13 from the old ball field driving up to the sister's house; is
14 that correct?

15 A. Yes, sir.

16 Q. Got back into the car, I just rode. That's when I
17 came to my senses and I went by Willie Smith's house, and me
18 and Willie was talking; is that correct?

19 A. Yes, sir.

20 Q. Did you ever check with Willie Smith to see if
21 Johnny came by there and determine what time he came by
22 there?

23 A. I think we tried to find out who that Willie Smith
24 or something was but I don't know if -- I don't think we ever
25 managed to find out who he was.

1 Q. Well, did you ask Johnny where Willie Smith lived?

2 A. Yes, sir, we asked him about that.

3 Q. And what did he tell you?

4 A. I'm not sure what his response was about Willie
5 Smith if -- because I think there was a couple of Willie
6 Smith's, that one lived in Gaston-Swansea, and one -- I think
7 one lived down off of Highway 21.

8 Q. Now, he's cooperating with you, isn't he?

9 A. Yes, sir.

10 Q. In fact, he asked for you, didn't he?

11 A. Yes, sir.

12 Q. And he's telling you what you want to know, but he
13 couldn't tell you where Willie Smith is?

14 A. No, sir, I don't think he gave us an address or
15 anything on Willie Smith.

16 Q. Do you have any references in your investigative
17 notes about any attempts to identify or locate this Willie
18 Smith?

19 A. Probably I don't have any information about
20 locating him. The name was mentioned by the defendant,
21 Johnny Bennett, but we didn't have anything else to locate
22 him.

23 Q. And you didn't ask him who he was and what his
24 address was?

25 A. Well, we would have tried to get that from him, but

1 evidently if he didn't provide it we didn't have it.

2 Q. Do you have anything in your investigative notes to
3 show that you even ever tried to get this information from
4 Johnny Bennett or any other source?

5 A. Well, he was the one that provided it to us, sir,
6 and if he would have given us more, if we would have had more
7 on him I'm pretty sure we would have found him.

8 Q. Did you make any attempts to get any more
9 information on Willie Smith?

10 A. Only what he would give us, sir.

11 Q. Well, did you ever ask him, where is Willie Smith;
12 who is Willie Smith; how did he get to his house?

13 A. I'm pretty sure we asked him, sir.

14 Q. Do you got anything to show us that you did?

15 A. No, sir, but I'm pretty sure we asked him about it.

16 Q. You didn't ask him about it in this statement, did
17 you?

18 A. It may not be in there.

19 Q. It may not be?

20 A. No, sir.

21 Q. Would you check and let us know if it is.

22 A. Well, you know, if there's no mention of it then
23 it's not in there, but if you want me to read through the
24 whole statement, I can't say it's in there.

25 Q. Now, then he says -- do you know how long he stayed

1 at Willie Smith's house?

2 A. If he didn't say in here then I wouldn't know how
3 long.

4 Q. So next thing he says, he told Willie -- and I'm
5 down now to one, two, three, four, about six line there, so
6 at that time I told Willie I was going to Orangeburg. You
7 find where I am there?

8 A. Yes, sir.

9 Q. I went to Orangeburg and went to Pamela Gonsalves'
10 house, which is Bonita's sister. Do you know what time he
11 got there?

12 A. No, sir.

13 Q. Now, did you have some other information from other
14 sources about -- in fact, did you talk to Bonita and Pamela
15 about the situation?

16 A. I talked to Bonita on that Monday, which is
17 December 3rd. I don't think I talked to Pamela until that
18 Thursday or so.

19 Q. And what information did you have from them as to
20 the time he got to Orangeburg to Pamela's house and then to
21 Bonita's?

22 A. I don't think I had any information from Pamela as
23 to when he got to her house because, like I said, this was
24 done on the 3rd and I hadn't talked to Pamela about the 6th
25 or so.

1 Q. So did you eventually check that out, and can you
2 tell us what time he got there to Pamela or Bonita's house?

3 A. Is it not in Bonita's -- something that we had in
4 her statement as to about what time he got down there?

5 Q. I think there was some information. Did you
6 investigate, did you find out what they said?

7 A. I can't tell you what that time was right off the
8 top of my head. If I looked at her statement I could tell
9 you about what she said about what time it was.

10 Q. All right. We'll get to that in a minute.

11 A. Okay.

12 Q. Then he says he took Bonita to use the phone; is
13 that correct?

14 A. Yes, sir.

15 Q. Then he says, When I came -- when we came back we
16 started arguing. She took the keys out of the car, she ran
17 -- and I told her to give me the keys. She ran inside the
18 house with the keys. She ran and got a knife, talking about
19 do I want to take her on and all this and that.

20 You spoke with Bonita, didn't you?

21 A. Yes, sir.

22 Q. Did she confirm that she went in the house and got
23 a knife and came out?

24 MR. MYERS: Objection. Now he's wanting to get the
25 hearsay through this officer. Bonita was on the witness

1 stand. He had a right to cross-examine her. I don't think
2 it's appropriate to drag this out by asking this officer what
3 somebody else said and pit the witnesses. The witnesses
4 should have been asked when they were on the stand, not
5 through different witnesses.

6 THE COURT: Yes, I understand. I'm going to give
7 him a little bit of room to do that.

8 But let's don't go too far with it, Mr. Floyd. I
9 agree it should have been asked of the previous witness, but
10 I'll give you a chance to ask this witness too.

11 MR. FLOYD: No, Your Honor, what we're saying is it
12 should have been asked by the investigating officer --

13 MR. MYERS: Did you say he could go forward,
14 because if he's going to make a jury argument we'll send the
15 jury out.

16 THE COURT: Yes, I think he's going forward.

17 I understand your question, Mr. Floyd. Go ahead
18 and ask it.

19 BY MR. FLOYD:

20 Q. Then it says a girl named Pat. Read forward in the
21 statement. A girl named Pat came out and intervened in this
22 argument; is that correct?

23 A. Okay, yes, sir. Pat came -- Pat came up and told
24 me not to do it.

25 Q. Now, did you locate or attempt to locate Pat to try

1 to confirm this part of the statement?

2 A. I think we may have spoken with Pat. I think she
3 may have been in Orangeburg that Monday when we went down
4 there but, you know, we wouldn't have known that that Monday.

5 Q. When did you go back after you got this statement
6 to check with this person named Pat to confirm if this
7 portion of the statement was accurate?

8 A. We didn't talk with her anymore about this
9 statement.

10 Q. Then he says he talked with Bonita for about an
11 hour and a half; is that correct?

12 A. Okay. Yes, sir.

13 Q. Then he drove back to Swansea, parked the car in
14 the old ball field; is that correct?

15 A. Yes, sir.

16 Q. Now, that would have meant that he would have
17 walked from the old ball field to his sister's house,
18 correct?

19 A. Okay. Yes, sir.

20 Q. And you say that's three quarters of a mile to a
21 mile?

22 A. Yes, sir.

23 Q. So according to this statement, the check was
24 cashed at 11 -- the check was cashed we know at 11:56?

25 A. Yes, sir.

1 Q. So from 11:56, which is about noon, to 7:50, which
2 is about 8:00, about eight hours, according to this statement
3 they drove to Columbia, entered some job applications, they
4 then go back to Swansea?

5 A. Yes, sir.

6 Q. They then drove to Orangeburg, stopped briefly at
7 Bonita's house?

8 A. Yes, sir.

9 Q. They then drove back to Orangeburg. They stopped
10 on the way, Johnny Bennett driving Benton's car, slams on the
11 brakes. He hits Benton somewhere about seven miles outside
12 of Swansea on Kennerly Road?

13 A. You talking about when they went to Swansea and
14 made one stop at Bonita's? They come back, they stop in the
15 middle of the road. Okay, go ahead.

16 Q. They then drive to Orangeburg -- I mean, they then
17 drive to the old ball field in Swansea, at which time he
18 waits 15 minutes for Benton to regain consciousness. They
19 then have the stabbing incident. He then drives from the old
20 ball field to his sister's house, at which time he deposits
21 the body?

22 A. Yes, sir.

23 Q. He then drives to Willie Smith's, at which time he
24 has some conversation with him. He then drives back to
25 Orangeburg, at which time he sees both Pamela and Bonita, at

1 which time he spends, after they have a little altercation,
2 another hour and a half with her talking. He then drives
3 back to the old ball field, and he then walks to his sister's
4 house. And all this is accomplished in less than eight
5 hours, according to the statement.

6 A. Yes, sir.

7 Q. And did you do any investigation to see if that
8 actually could be physically accomplished?

9 A. Well, I think that within an eight hour period, and
10 according to when he had met for -- went down to speak to
11 Bonita on that Monday, he possibly could have made a couple
12 of trips to Orangeburg if he went back to Orangeburg that
13 evening. I wouldn't say that for him to make those couple of
14 trips, I don't think that would be too hard.

15 Q. You don't think it would be too hard. What time
16 would have been the earliest that he could have gotten to
17 Orangeburg that afternoon according to the statement and the
18 check cashed?

19 A. I couldn't tell you about what time he got to
20 Orangeburg that afternoon. I don't know exactly how many
21 places that they -- that he filled out applications at, and I
22 think there was some mention that they took some with them.

23 Q. Well, did you ask how many places they had
24 applications?

25 A. I may have, and they may have went four or five

1 places. I'm not sure, but I may have asked him something
2 about it.

3 Q. Can you give us any kind of evidence or indication
4 of that conversation where those places were? Do you have
5 that in your investigative notes or --

6 A. There's an investigative report that I'm pretty
7 sure that you have that I talked about even in the first part
8 of where he had been interviewed where I think they stopped
9 at the Horseman Doll, that they stopped at a steel place, and
10 I can't remember off the top of my head, but I'm pretty sure
11 it's in a report that you have that a few places that he
12 talked about.

13 Q. That's in the earlier statement, isn't it? An
14 earlier statement that he had given you?

15 A. Yes, sir.

16 Q. Now, in that earlier statement, did you consider
17 that earlier statement to be a truthful statement?

18 A. Sir, each time I talked with the defendant, Johnny
19 Bennett, we'd take the information that he gave us and tried
20 to work with it from there.

21 Q. Did you do any investigation to determine whether
22 they, in fact, did go to any of these places to submit
23 applications?

24 A. No, sir, I don't think I talked with those places.

25 Q. Now, going back to the bottom of page four.

1 A. Yes, sir.

2 Q. Doesn't it say that he returned the car, parked the
3 car behind the high school Wednesday night? That's right at
4 this very bottom.

5 A. Okay. Are you talking about on Tuesday or
6 Wednesday, you going to Wednesday?

7 Q. Yeah. Because on Tuesday it basically says he
8 stayed with his sister and then went home for awhile, right?

9 A. Okay, he says -- okay, Wednesday, the next morning
10 I got up. I got in the car and I went back to Orangeburg. I
11 came back that Wednesday night, parked the car behind the
12 high school and I got into the car with some friends.

13 Q. Is that right; that's what he said then?

14 A. Yes, sir.

15 Q. And then go to the next page. And who did he say
16 he got in the car with?

17 A. Isadore Mack, Andre Haskins and Tommie Furtick.

18 Q. Did you verify whether or not that part of the
19 statement was accurate or do any investigation to determine
20 whether it was?

21 A. They -- the investigation of Isadore Mack, Andre
22 Haskins and Tommie Furtick was that in every attempt they was
23 trying to stay away from the defendant, Johnny Bennett. They
24 really didn't want him around them.

25 Q. So did you feel that that part of the statement was

1 not accurate?

2 MR. MYERS: Objection. That's up to the jury to
3 determine that statement, not this officer.

4 THE COURT: Counsel, again, the form of the
5 question is incorrect, but if you want to ask him if there's
6 some particular reason or something you can link it back to,
7 certainly he can do that.

8 BY MR. FLOYD:

9 Q. Did you investigate that part of the statement?
10 I'll ask you that.

11 A. Did I investigate if they picked him up?

12 Q. Uh-huh.

13 A. From behind the high school?

14 Q. Yes.

15 A. Well, they had stated that they had not seen Benton
16 or Benton's vehicle when I had first interviewed them. So,
17 no, sir, I didn't go any further with that.

18 Q. Next question: Do you know where the keys to the
19 car are at?

20 Wasn't the response, The keys were left in the car?

21 A. Yes, sir, that's what he says.

22 Q. Was that accurate?

23 A. No, sir, we didn't find the keys. You know what
24 I'm saying. I don't know if he left the keys there or not.
25 Once the car was processed we had to use a slim-jim to get

1 into the car. As far as what he did with the keys, sir, I
2 don't know.

3 Q. But what he said was he left them in the car; is
4 that correct?

5 A. That's what he said in the statement.

6 Q. And when you found the car, though, the keys
7 weren't in it, were they?

8 A. The officer testified that no, sir, the car was
9 locked.

10 Q. Then let's go down to the bottom of page five, kind
11 of near the bottom, the third where you start to ask him
12 about the wallet. Johnny, you're still on the tape.

13 You see that line?

14 A. Yes, sir.

15 Q. I want to ask you a question about Benton Smith's
16 wallet. Do you know what happened to his wallet?

17 And wasn't the response on this statement was, His
18 wallet was still at the scene, and when I went to move him it
19 fell out of his pocket. I picked it up, then threw it back
20 on the ground.

21 Is that correct?

22 A. Yes, sir, that's what he said.

23 Q. So according to his statement the wallet was left
24 in the old ball field area; is that correct?

25 A. Yes, sir.

1 Q. That's this area right here that we've been talking
2 about?

3 A. Yes, sir.

4 Q. Was the wallet found in that area?

5 A. No, sir, it wasn't.

6 Q. Then you asked him where the screwdriver could be
7 found. Go to page six.

8 A. Yes, sir.

9 Q. Where can we find that at?

10 And what did he tell you?

11 A. It should be at the scene, also.

12 Q. So according to him the screwdriver would be at the
13 old ball field also?

14 A. Yes, sir.

15 Q. Now, at this point in time Mr. Bennett has fully
16 cooperated with you, right?

17 A. Yes, sir.

18 Q. And after this statement, didn't you all take him
19 out of the jail and go on a tour kind of, to get certain
20 items of evidence?

21 A. Yes, sir.

22 Q. And that was on December 5th?

23 A. Yes, sir, I think it would have been that --

24 Q. Wouldn't that be the day after the statement was
25 actually signed?

1 A. Right. On the 5th, that Wednesday, yes, sir.

2 Q. Now, who all went on this trip?

3 A. Let's see. Myself, Detective Jones, Lieutenant
4 Phillips, Sergeant Harris, Detective Hickman, and I think
5 maybe Detective Hite, and maybe about five or six other
6 officers.

7 Q. How many vehicles were you all in?

8 A. I think there were three, maybe four in the initial
9 group, and maybe one or two that was held back.

10 Q. Now, I believe you testified that on this trip
11 certain items were found; is that correct?

12 A. Yes, sir.

13 Q. And that Mr. Bennett led you to those items; is
14 that correct?

15 A. Yes, sir.

16 Q. Now, this trip, was there a tape recording made of
17 this trip?

18 A. Yes, sir.

19 Q. Was Mr. Bennett advised or informed that there was
20 a tape recording being made?

21 A. No, sir.

22 Q. Where was the tape?

23 A. Where was --

24 Q. Where was it taken, where was the microphone?

25 A. It was planted or put somewhere in my vehicle. I'm

1 not sure exactly where. I don't know if they put it between
2 the seat, if they put it under the seat, over the sun visor.
3 I couldn't tell you exactly where it was placed, and recorder
4 itself?

5 Q. Yes. Now, tell us that. Where was the recorder?

6 A. I don't even know where that was. That was
7 something that one of the narcotic's team, they had some new
8 equipment. They were assisting us from a distance. They
9 were actually covering us, and that was some new equipment or
10 something that they were using.

11 Q. So a taping device, a microphone was concealed
12 somewhere in the automobile Mr. Bennett was riding in?

13 A. Yes, sir.

14 Q. And then in another vehicle other law enforcement
15 officers were recording everything going on in the car; is
16 that correct?

17 A. Yes, sir.

18 Q. Now, at this point in time, Mr. Bennett's fully
19 cooperating with you; is that correct?

20 A. Yes, sir.

21 Q. Now, how many tapes were made on that trip?

22 A. Two of them was made as best I know, yes, sir.

23 Q. Two of them?

24 A. Yes, sir.

25 Q. And do you have those tapes for us now?

1 A. No, sir.

2 Q. Where are those tapes?

3 A. I threw those tapes away when they were given to
4 me.

5 Q. And they never were saved or preserved for the
6 defendant or his attorneys?

7 A. No, sir, they never were. I listened to a brief
8 portion when the narcotics guy brought them to my office. He
9 said you don't really have anything on these. I put them in
10 to listen to them for a moment. It was a lot of just
11 strictly just static. There was nothing there at the
12 beginning. So it was nothing that we had asked for, it was
13 just staticky [sic]. It wasn't nothing that, like I say, we
14 had asked for. So I just threw them away.

15 Q. If it wasn't working why would they make two whole
16 tapes?

17 A. Sir, that's something you would have to talk to
18 them about. I never knew if those tapes were picking up or
19 anything else. There was nothing there from the portion that
20 I listened to. When the officer handed them to me he said
21 there's nothing there and the recording device I guess just
22 wasn't working and it wasn't anything that we had asked for.

23 Q. Are you familiar with the facilities at SLED?

24 A. Yes, sir.

25 Q. And SLED often assists local law enforcement with

1 their technical or forensic needs?

2 A. Yes, sir, they do.

3 Q. Did you take the tapes over to the SLED lab to see
4 if they could somehow preserve whatever was on those tape to
5 make it audible?

6 A. No, sir.

7 Q. Where do you say that you all first went on that
8 day, the 5th?

9 A. On the 5th, let's see. The first day we went down
10 to -- I think it was down to Charlie Rast Road.

11 Q. And is that on this?

12 A. Yes, sir, that road right there (indicated).

13 Q. Right here?

14 A. Yes, sir.

15 Q. And what do you say was found on that road?

16 A. The key, a key case, and little red glasses.

17 Q. How far were these items off of the road?

18 A. Maybe 10 or 15 feet. I think we have some
19 photographs that will show the road and how far it is that
20 the items were lying right over in the field, and I think
21 Detective Hickman has some measurements on it. But I'm only
22 guessing to say maybe it's 10 or 15 feet.

23 Q. But Detective Hickman was the one that kind of took
24 care of that search of that area?

25 A. Sir?

1 Q. Was Detective Hickman the main guy searching that
2 area or the main guy in charge of that?

3 A. Well, he was the forensic guy, he was the I. D.
4 guy.

5 Q. Now, where in the statement -- is there something
6 in the statement saying that some items were deposited on
7 Charlie Rast Road?

8 A. No, sir, I don't think it's in the statement.

9 Q. From there, where do you go next?

10 A. From there we went to Orangeburg.

11 Q. And where did you go in Orangeburg?

12 A. We went to a park by Bonita's house.

13 Q. And why did you go to Orangeburg to a park by
14 Bonita's house?

15 A. He said that's where the -- that these -- at the
16 playground there's like railroad tires, these big railroad
17 tires, and he said that pretty much right across from her
18 apartment is something, that he had taken the wallet out
19 there and stuck it between two of these railroad tires.

20 Q. Well, that's not what was said in the statement
21 about the wallet, is it?

22 A. No, sir, but that's where he took us to look for
23 it, sir.

24 Q. But the statement -- doesn't the statement say that
25 the wallet was left at the old ball field?

1 A. That's what he said, sir.

2 Q. So now you're saying he said the wallet was at a
3 park in Orangeburg?

4 A. Yes, sir.

5 Q. Are you starting to be concerned as to whether or
6 not the statement is accurate then?

7 A. Well, mainly starting to be concerned that maybe we
8 wouldn't find the wallet. You know, as far as the -- as you
9 say, concerned about the accuracy of it, we were only taking
10 what he had told us, sir.

11 Q. So from Orangeburg where did you next go?

12 A. We came back to Swansea and we went to the -- let's
13 see. From there we came back to the -- I think the old ball
14 field.

15 Q. Okay. And what did you find, if anything, at the
16 old ball field?

17 A. Let's see. I think we were still trying to find
18 the screwdriver and the wallet, if I'm not mistaken.

19 Q. Did you find any items at the old ball field?

20 A. No, sir.

21 Q. Did you search the old ball field area thoroughly?

22 A. Well, you know, we searched it pretty good, pretty
23 much from the area that he pointed out that he was in when he
24 killed him there.

25 Q. Now, according to the statement that's where the

1 killing occurred?

2 A. According to what he told us, yes, sir.

3 Q. Did you find any indication or evidence at the old
4 ball field that a killing had occurred there?

5 A. We couldn't find anything there.

6 Q. Did you find any blood?

7 A. We didn't find any, no, sir.

8 Q. You find any signs of a struggle?

9 A. No, sir, we didn't find any of that there.

10 Q. Did you find the screwdriver?

11 A. No, sir, and as we looked around he told us that
12 the screwdriver wasn't there at the ball field, if I'm not
13 mistaken.

14 Q. Oh, he did tell you that there?

15 A. Yes, sir. And as a matter of fact, on that
16 particular day, either that day or the -- and I think it was
17 that day that -- I guess if you look at the report of it, I
18 think that day or the next time we went out, but anyhow, he
19 mentioned that the screwdriver, I think, would be where the
20 body was.

21 Q. So then did that alert you that another portion of
22 this statement was not accurate?

23 A. Well, you know, to say the accuracy of the
24 statement, he didn't do everything or didn't give the
25 statement right down the line. There was things that, you

1 know, we were bouncing around having to move from this place
2 to that place that he told us about. So once he would get
3 out on the ground then he would let us know something
4 different.

5 Q. So basically that's another aspect of the statement
6 of December the 3rd, signed December 4th, that was not
7 accurate; would you agree with me on that?

8 A. Sir, however you want to put it about the statement
9 that the defendant gave, it was his words.

10 Q. Now, we go from -- when's your next -- is that all
11 that happened on December 5th, as far as Mr. Bennett is
12 concerned?

13 A. Yes, sir, in the location of the -- he identifies,
14 so the location of the screwdriver down behind his sister's
15 house where the body was found.

16 Q. Did you all go there that day and get the
17 screwdriver?

18 A. Yes, sir.

19 Q. And now how long -- Mr. Bennett had been in jail
20 basically from December 1st; is that correct?

21 A. That was on a Saturday night, Sunday morning.
22 Sunday morning about four a.m.

23 Q. Right, whatever day that was.

24 A. Whatever day that was. Sunday and this was, what,
25 Wednesday?

1 Q. This was three or four days later.

2 A. Yes, sir, okay.

3 Q. Now, so you all go back. Is this the day that you
4 go back and you find the screwdriver?

5 A. Yes, sir.

6 Q. Now, the screwdriver was located where, in the area
7 where the body was?

8 A. Yes, sir. Best I understood that it was located
9 right there right close beside where the body had been
10 recovered from. Excuse me, right in that particular area,
11 right close by.

12 Q. Now, on the night that the body was discovered, how
13 many law enforcement officers searched that area?

14 A. Sir, SLED had a forensics team, Detective Hickman
15 had the forensics from our office, along with there was other
16 officers there. I wasn't there to be able to tell you how
17 many officers were there.

18 Q. But there were a good many. They do a thorough job
19 of searching an area where the body is, don't they?

20 A. Yes, sir.

21 Q. And they didn't find a screwdriver there on that
22 night, did they?

23 A. No, sir, and they didn't use a metal detector that
24 night either, sir, as far as I know.

25 Q. So is that all that happened that day?

1 A. Yes, sir.

2 Q. Now, between the time the body was discovered and
3 the time that the screwdriver was found, okay.

4 A. Yes, sir.

5 Q. That's a time of four or five days?

6 A. Okay, yes, sir.

7 Q. That area was not sealed off, was it?

8 A. No, sir.

9 Q. Anybody could have gone back in there?

10 A. Yes, sir.

11 Q. And Andre and Isadore, they were already out of
12 jail, weren't they?

13 A. I couldn't tell you exactly when they got out. I
14 don't know that, sir.

15 Q. Now, what is the next contact that you had with
16 Mr. Bennett?

17 A. Let's see --

18 Q. Oh, let me ask you before we leave December 5th.

19 A. Okay.

20 Q. Did the narcotics officers who were following you
21 with the microphones -- I mean, with the tape recording
22 device.

23 A. Yes, sir.

24 Q. Did they follow you all the way through this entire
25 trip?

1 A. Yes, sir. As far as I know, yes, sir, they covered
2 us.

3 Q. So they were there while you went to all the
4 locations; Orangeburg, Swansea, everywhere?

5 A. Yes, sir.

6 Q. When was the next contact you had with Mr. Bennett?

7 A. Let's see. Wednesday, and then I think that
8 following week, maybe on the 12th.

9 Q. And did he initiate that contact?

10 A. Yes, sir, he did.

11 Q. He had a lawyer by then, didn't he?

12 A. Yes, sir, he did.

13 Q. It wasn't me or Mr. Young, was it, at that time?

14 A. Let's see. I'm not sure. I know that Mr. Young
15 wasn't one. I don't think that you were one of the ones
16 either, but I'm really not sure. But he did have a couple of
17 lawyers, yes, sir.

18 Q. And I think the lawyers had told you not to have
19 any contact with him at that time, had they not?

20 A. Yes, sir, they did.

21 Q. In fact, that was told to you after you got back
22 from the December the 5th trip, wasn't it?

23 A. Yes, sir.

24 Q. Now, you maybe received some communication from him
25 and you meet with him; is that correct, on December the 12th?

1 A. Yes, sir, that's correct.

2 Q. And where do you all go on December the 12th?

3 A. We go to Highway 6. Well, we go to Swansea and go
4 out to -- off of Huckabee Mill Road by a barn, and then we go
5 down to a creek in Orangeburg.

6 Q. On the 12th?

7 A. Yes, sir.

8 Q. Who went on the 12th?

9 A. Detective Jones; myself; the defendant, Johnny
10 Bennett; I think Sergeant Harris; and approximately about
11 three or four other officers.

12 Q. How many carloads this time?

13 A. Oh, about roughly anywhere from three to four,
14 maybe four. I'm not sure.

15 Q. Was there a tape recording made on this trip?

16 A. No, sir, narcotics was not assisting us.

17 Q. Now, where did you first go on the 12th?

18 A. I think we stopped in Swansea briefly. One or two
19 of the officers may have stopped in Swansea, we may have
20 pulled over to the side of the road. Then we went straight
21 to Huckabee Mill Road.

22 THE COURT: Mr. Floyd, how much longer do you
23 anticipate your cross will be?

24 MR. FLOYD: Maybe 15, 20 minutes.

25 THE COURT: Okay. We've gone a little over an hour

1 or so.

2 MR. FLOYD: I don't mind breaking, Your Honor.

3 THE COURT: Ladies and gentlemen, let's take a
4 short break to give you a chance to move around a little bit
5 and get something to drink if you need to. Remember what we
6 don't do, we don't talk about the case.

7 (WHEREUPON, the jury leaves the courtroom at
8 approximately 10:20 a.m.)

9 THE COURT: The jury is secured. Counsel, let me
10 note, I noted a couple of jurors who were starting to look
11 like they're dropping off a little bit. I wanted to be sure
12 to give them a chance to move around.

13 Be sure and give them something -- and ask any of
14 them, even the ones who don't smoke, see if some of them want
15 to just get around, walk around and get some air or
16 something, okay.

17 (WHEREUPON, a brief recess was taken.)

18 THE COURT: All parties and attorneys are in the
19 courtroom. Let's bring the jury in.

20 (WHEREUPON, the jury enters the courtroom at
21 approximately 10:40 a.m.)

22 THE COURT: All right. All parties and attorneys
23 are in the courtroom and all jurors returned.

24 Mr. Floyd?

25 BY MR. FLOYD:

1 Q. Detective Hamer?

2 A. Yes, sir.

3 Q. What time did you get Mr. Bennett on the 12th and
4 leave the jail?

5 A. If I had to take a guess I would say around 10:00
6 a.m. or so, but you could probably have the log pulled and it
7 would be on there about what time we signed him out. But it
8 would be there, yes, sir.

9 Q. Now, what was the purpose of taking him out of the
10 jail on the 12th?

11 A. He had asked to see us. And when we went to see
12 him and we advised him that we had been advised by his
13 attorneys not to speak with him, and he told us to forget
14 about that, that don't worry about that he'll take care of
15 it. And we -- I think his words were something about forget
16 his lawyers. He wanted to show us where the floor mats were,
17 and he was going to show us where the wallet actually was,
18 yes, sir.

19 Q. And so you are saying he's the one that said I want
20 to show you where the floor mats are today and took you to
21 where the floor mats were?

22 A. Yes, sir.

23 Q. But isn't it true that you all were contacted by a
24 citizen of the community who told you all where the floor
25 mats were?

1 A. We were contacted by a citizen -- and you want to
2 use the citizen's name, but whatever. We was contacted by a
3 citizen and we told them that we would meet with the citizen
4 in Swansea, but we were going to follow what our original
5 plan was, is to follow what the defendant was going to show
6 us.

7 Q. So that's just a coincidence that the same morning
8 that you say Johnny Bennett said I'm going to show you where
9 the floor mats were that Lucius Martin called the Sheriff's
10 Department and said I know where the floor mats are, I'll
11 meet you out there; that's just a coincidence?

12 A. If I'm not mistaken, I talked to Mr. Martin that
13 morning and he stated that someone had informed him that they
14 possibly had seen -- I think they had possibly seen some
15 floor mats or something out along that road, and so
16 therefore, I stated before, we stopped in Swansea briefly and
17 that's where we met with Mr. Lucius Martin that works there
18 in Swansea, but we were still going under direction of the
19 defendant, Johnny Bennett. So, yes, sir.

20 Q. I'm sorry. I didn't mean to interrupt.

21 A. No. You wanted to know about Mr. Lucius Martin.
22 If I'm not mistaken he followed along with us.

23 Q. Now, if Johnny Bennett was showing you where the
24 floor mats were and if it's just a coincidence that
25 Mr. Martin called you to say we got some floor mats out here,

1 why didn't you just meet Mr. Martin on the scene since both
2 he and Mr. Bennett would know where the floor mats were?

3 A. Well, my thing was is we were following -- we were
4 going to follow the defendant's lead and we would see what
5 Mr. Martin had also. So, you know, like I said, he wanted to
6 take us to a couple locations.

7 Q. But if Mr. Bennett knew where the floor mats were
8 you wouldn't need to stop and meet Lucius Martin, would you?

9 A. Well, I think it was only logic to meet with
10 Mr. Martin and, you know, see what location he had during the
11 time that we had the defendant.

12 Q. Well, did Mr. Martin when he called in give you the
13 general location of the floor mats?

14 A. I don't recall that he gave me the actual road. I
15 think when I spoke with him on the phone I think I asked him
16 about if he could show us, lead us to where they were, and
17 that was the reason of why we stopped in Swansea that
18 morning.

19 Q. To get him to lead you where the floor mats were?

20 A. Well, I didn't tell him we were taking the
21 defendant out that morning for what the defendant was going
22 to show us. I wouldn't tell him that information.

23 Q. And so then from there -- so the floor mats were
24 found a few feet off the road, right?

25 A. Yes, sir. I couldn't tell you about how many feet

1 but they weren't that far off the road.

2 Q. And then from there you went where, to Orangeburg
3 or something?

4 A. Yes, sir. We went to a creek, some creek down in
5 Orangeburg. I couldn't tell you the name of the creek. It
6 was just -- there wasn't much of a guardrail or much of a
7 bridge rail over the creek but it was a creek, and down in
8 the creek is heavy briars and just some very heavily briared
9 area.

10 Q. And this was to look for the wallet?

11 A. Yes, sir, to look for the wallet.

12 Q. So this is the third location on the map, or
13 fourth, or whatever?

14 A. Somewhere in that neighborhood, yes, sir.

15 Q. So no question, initial statement wasn't accurate
16 on that point?

17 A. Well, once again, it was a statement of his, sir.

18 Q. Now, you had several witnesses say they saw
19 scratches on Johnny Bennett's chest; is that correct?

20 A. Yes, sir.

21 Q. You got a statement here saying that Johnny Bennett
22 is saying that Benton Smith scratched him on his shoulder; is
23 that accurate?

24 A. Yes, sir.

25 Q. But when you brought Johnny Bennett in you never

1 checked to see if there were any scratches on his body?

2 A. No, sir. I don't think we ever asked him about
3 taking off his shirt or anything. No, sir, I don't think we
4 asked him about doing that. And we didn't do a search
5 warrant on him or anything.

6 Q. Did you take a photograph of his body so the
7 scratches could be seen from the photograph?

8 A. No, sir, I didn't take any photographs of him.

9 Q. And nobody checked to see if there was any scabbing
10 or scarring or scratches on his body?

11 A. No, sir.

12 MR. FLOYD: Thank you, Detective. I don't have any
13 further questions.

14 THE COURT: Any redirect?

15 REDIRECT EXAMINATION

16 BY MR. MYERS:

17 Q. I've got a few questions for you, Freddie. Number
18 one, is that when you first talked with Mr. Bennett on Friday
19 November 3rd.

20 A. Yes, sir.

21 Q. He told you that he and Benton Smith had gone to
22 Columbia?

23 A. Yes, sir.

24 Q. When he said he left Columbia and came back through
25 Cayce and West Columbia on Charleston Highway.

1 A. Yes, sir.

2 Q. Did he say Benton Smith stopped to look at any
3 cars?

4 A. Yes, sir, he did.

5 Q. Where did he stop to look at any cars?

6 A. If I'm not mistaken it was on Charleston Highway
7 that I think he may have named the name of the place and that
8 it was somewhere down the street from the McDonald's or
9 somewhere. But he had stated in there -- the defendant
10 stated that it was a white Cadillac that they looked at on
11 Charleston Highway, and that he really liked it or something.

12 Q. Is this a copy of your report?

13 A. Yes, sir.

14 Q. Interview with Johnny Bennett on November 30th?

15 A. Yes, sir.

16 Q. What type of car did Johnny Bennett say they
17 stopped and looked at?

18 A. Looked at a white Eldorado at a used car lot on
19 Charleston Highway near the K-mart.

20 Q. Okay. Thank you. And also, when did Johnny
21 Bennett tell you he murdered Benton Smith?

22 A. On that Tuesday -- that Tuesday the 27th, that's
23 when he said he killed him.

24 Q. Is that correct; November 27th, 1990, murdered
25 Benton Smith?

1 A. Yes, sir, that's correct.

2 MR. MYERS: No further questions.

3 THE COURT: Any recross?

4 RECROSS-EXAMINATION

5 BY MR. FLOYD:

6 Q. Did you go down to the car lot and check out the
7 story?

8 A. No, sir, I didn't talk with anyone at the car lot..
9 It was basically what the defendant said, sir.

10 MR. FLOYD: No further questions.

11 MR. MYERS: Jim Hickman.

12 THE COURT: You can step down. You're free to go
13 if you want to.

14 JAMES L. HICKMAN, after having been duly
15 sworn, testified as follows:

16 THE CLERK: Please state your name for the record.

17 THE WITNESS: James L. Hickman, H-i-c-k-m-a-n.

18 DIRECT EXAMINATION

19 BY MR. MYERS:

20 Q. Mr. Hickman, how long have you been in law
21 enforcement?

22 A. Approximately 28 years.

23 Q. And were you with the Lexington County Sheriff's
24 Department in November of 1990?

25 A. Yes, sir, I was.

1 Q. Did you have an occasion to go out to the Happy
2 Town area on late Saturday night December the 1st or early
3 Sunday morning December 2nd, 1999 to process a murder scene?

4 A. Yes, sir, I did.

5 Q. And would you tell the jury what your duties would
6 have been.

7 A. My duties, at that particular time, I was an
8 investigator and an identification officer. I did the
9 identification officer part on a part-time basis to help the
10 regular I. D. officers out. This was my weekend duty where I
11 had -- my duty was to process any scenes that might come up.

12 To process a scene is simply I go out and
13 investigate that scene. I go out and see what's there. If
14 there's any evidence to be collected I collect it and take
15 care of it, make out the proper paperwork and make sure it
16 gets to the proper location like SLED or the F. B. I. lab or
17 any other place it needs to go.

18 I also take photographs of the scene itself, the
19 general location, the location of any evidence that is at the
20 scene. I then formulate a report. This report is forwarded
21 to the Solicitor's Office, the investigating officer or
22 anybody else that needs it. I then come to court and testify
23 as I am doing today in any proceedings that I'm required to.

24 Q. Did you go out in the Happy Town area of Happy Town
25 Road concerning a body?

1 A. Yes, sir, I did.

2 Q. Now, I want to refer first to State's Exhibit
3 Number 30. Is this where the body was located back in here?

4 A. Yes, sir, it is.

5 Q. Now, how did you get back to that area? Did you
6 come in through this driveway and walk back or did you drive
7 down through that road?

8 A. No, sir. I came up through the driveway. I think
9 it's 182 Happy Town. Yes, sir, 182 Happy Town. I pulled
10 into the driveway, and I'm not sure whether I parked in the
11 front or pulled around to the back, but then I was led back
12 through the backyard through the woods, across the road and
13 into the other section.

14 Q. I want to hand you two photographs, if I could.
15 What do these two photographs depict relating to that area?

16 A. One photograph shows -- it's an aerial view of the
17 entire area showing the house, the driveway, the roads, the
18 wooded area where the body was found. The other photograph
19 is a little bit closer view of just the general location and
20 the area where the victim was found at.

21 MR. MYERS: Offer these in evidence.

22 THE COURT: Any objection?

23 MR. FLOYD: We have no objection to those
24 photographs, Your Honor.

25 THE COURT: Thank you, sir.

1 (WHEREUPON, State's Exhibit Numbers 38 and 39,
2 Photographs, were marked and admitted into evidence.)

3 BY MR. MYERS:

4 Q. Now, this photograph, I'm going to refer to
5 photograph number 38, and I'm also going to be referring to
6 chart number 30. Now, Happy Town Road on chart 30 runs in
7 front of Bennett's sister's place; where is that road in
8 front of?

9 A. If you look down at the bottom of the photograph
10 you'll see this road running along here, it's running the
11 length of the photograph. This is Happy Town Road. This
12 section here would be the 182 Happy Town Road.

13 Q. Bennett's sister's residence on the chart, where is
14 that on the photograph?

15 A. That's this trailer here and this area right here
16 (indicated).

17 Q. The road on the upper side of this chart by the
18 residence going back where the body was, where is that road
19 on the photograph?

20 A. If you'll look to the far side you'll see the road
21 coming up here and this goes straight on out. There's a
22 trailer on the opposite side, and this will be 182 on the
23 this side but the road is right here (indicated).

24 Q. Now, Mr. Bennett described that road goes back and
25 there's a firebreak running that way. Where is that

1 firebreak in the photograph?

2 A. If you follow the road down you'll see an
3 intersection where it splits off, goes off to the right and
4 to the left. This is what he's referring to, and if you go
5 to the left is where the body was found back up in here
6 (indicated).

7 Q. And if you would, on the chart where the body is,
8 show the jury on the photograph approximately where the body
9 was.

10 A. If you'll look where my finger is at it's somewhere
11 right along in this area here (indicated).

12 Q. Now, on this photograph, behind the trailer or
13 behind the home of Bennett's sister's is kind of a sandy
14 looking area, is that directly behind the trailer?

15 A. Yes, sir, it is.

16 Q. I'm going to hand you State's Exhibit Number 39.
17 That sandy area behind the trailer, where is that sandy area
18 on 39?

19 A. You'll see the light area here on the photograph,
20 this is that area he's referring to (indicated).

21 Q. And on 39, where is that road on the chart that
22 goes down beside --

23 A. This would be the road here (indicated). It will
24 be at the top section.

25 Q. And then where is the firebreak that intersects

1 with that road?

2 A. This would be the intersection we're referring to
3 and this is the firebreak road along this area here, which
4 would be directly behind the cleared area (indicated).

5 Q. And on this photograph, referring to the chart,
6 about where was the body found on this?

7 A. If you turn down this road, somewhere right along
8 in here (indicated).

9 Q. Now, going from the intersection of those roads,
10 down the firebreak, towards the body there are some things in
11 this photograph right here; can you tell the jury what those
12 things look like, across that firebreak.

13 A. Yes, sir.

14 Q. First of all, let's look at the chart. Is it
15 indicated on this chart what those two things are?

16 A. Yes, sir, it does.

17 Q. One right here and one right here?

18 A. Yes, sir.

19 Q. Show on the photograph and describe for the jury
20 what that was.

21 A. Right along in this area in here there's some logs
22 and trash that's been put across the road and it appears in
23 an attempt to keep someone from driving down the road. So
24 there's two of them there. There's one pile and then there's
25 another pile behind it right along in this area in here

1 (indicated).

2 Q. And on the photograph, if you can tell the jury,
3 where was the body in relation to where these piles of logs
4 across the road were?

5 A. It would be just a little bit further down from
6 where the pile of logs are down in this area, just a little
7 bit further (indicated).

8 Q. Now, did you take some measurements relating to the
9 body, those logs and that firebreak road?

10 A. Yes, sir, I did.

11 Q. How far from the intersection right here, how far
12 down the road in here would those logs be?

13 A. The first row of logs was 47-foot, 3-inches.

14 Q. From the intersection?

15 A. From the intersection itself. And then the second
16 row of logs was 82-foot, 7-inches.

17 Q. Now, how far was the body off from the firebreak,
18 did you have a distance on that?

19 A. Yes, sir, 19 feet.

20 Q. So the firebreak in here, the body was back 19 feet
21 back over from the road?

22 A. Yes, sir, it was.

23 Q. Now, when you got there, was the body apparent
24 laying out on the ground?

25 A. No, sir.

1 Q. Describe for the jury.

2 A. The body was covered with logs and pine straw and
3 some leaves and other things that was just thrown on it.
4 About the only thing I could see, I could see one white shoe
5 that was up, and then I think it was the left arm had come up
6 and it was leaning over back and it was stuck up in the air.

7 Q. I'm going to hand you these three photographs and
8 ask you, can you identify those?

9 A. Yes, sir, I can.

10 Q. And do they -- are they a affair and adequate
11 representation of where the body was found and the body being
12 covered up when you were there early on that Sunday morning?

13 A. Yes, sir, photograph number one shows the -- the
14 first one here shows, as I described earlier, the tennis shoe
15 which you can see. The second one shows the body as it laid
16 covered up with just the arm stuck out, and then the last one
17 is after -- the same scene after we pulled the stuff off the
18 top of the body.

19 Q. Who took those photographs?

20 A. I did.

21 MR. MYERS: Your Honor, we offer these in evidence.

22 THE COURT: Any objection?

23 MR. FLOYD: I have to look at them first, Your
24 Honor.

25 [PAUSE.]

1 MR. FLOYD: Your Honor, we don't object to these.

2 THE COURT: All right. Go ahead and have her mark
3 them then let me take a look at them too.

4 (WHEREUPON, State's Exhibit Numbers 40, 41 and
5 42, Photographs, were marked and admitted into evidence.)

6 THE COURT: I find the photographs are appropriate,
7 thank you.

8 BY MR. MYERS:

9 Q. First of all, Detective Hickman, is this kind of an
10 adequate representation of the head being back toward the
11 intersection of the road, the feet being away?

12 A. Yes, sir, it is.

13 Q. Now, if you'd come down here, please.

14 A. (The witness complied).

15 Q. State's Number 40, start down there and explain
16 that to the jury.

17 A. In State's Number 40 you can see it just looks like
18 a pile of pine straw and little limbs and trees just laying
19 around, but if you look real close in this area here you will
20 see what looks like white, and it's actually a tennis shoe.
21 You can see it in this area, see the logs running across here
22 (indicated.)

23 Referring to State's Exhibit Number 40, you can see
24 it's just a general, just like any other ground or woods with
25 pine straw and leaves on them. You can see the logs laying

1 here along with -- around the trees. But if you look real
2 close in this area here you can see the white, which would be
3 the tennis shoe or the shoe.

4 And again on State's 40 you can see the pile of
5 leaves, pine straw and the limbs running across here, and
6 then if you look real close you can see in this area the
7 white, that would be the shoe, would be the left shoe.

8 Q. Now, did you all start removing some of those logs,
9 debris and things?

10 A. Yes, sir. After we photographed everything we did
11 remove all the logs and the limbs and stuff.

12 Q. Show the jury what 41 is.

13 A. 41 is prior to us removing anything. And again,
14 you can see this is just from a different angle, this is
15 looking up. You can see the pine straw, the leaves and
16 everything. You can see the arm as I described earlier.
17 This is this arm that's stuck up (indicated).

18 Q. While you're right here, his head would be this
19 area and his feet down here?

20 A. Yes, sir. His head would be right along in here
21 somewhere, and if you'll look back here you can see this tree
22 here (indicated). See how it looks like it's a straight mark
23 down his legs. That tree is in between his legs. One leg on
24 either side of it.

25 Referring to State's 41, you'll see that the body

1 -- you'll see the arm stuck up here. This is his arm
2 (indicated). His head would be in this location here
3 (indicated). And if you'll look back up you'll see the tree
4 with the mark on it, what appears to be a mark, his feet are
5 straddled back one on each side of it.

6 And again on 41, you can see the leaves and the
7 general location. It's just a different angle from what the
8 other photograph was. You can see the arm as it appears as
9 we saw it. The head being in this location, and looking back
10 seeing this tree here with the mark on, his feet being one on
11 each side of it. He's laying his head here and his feet back
12 here (indicated).

13 Q. When you took this photograph you were pretty much
14 where his head was, shooting back toward where his feet were?

15 A. Yes, sir.

16 Q. Now, on State's Exhibit Number 42, this shows the
17 feet straddling the tree and is taken from feet back towards
18 his head in the other direction?

19 A. Yes, sir. You'll see in this photograph here --
20 you'll see, first of all, you notice the white shoes. And we
21 have removed the debris from the top of it so we can get a
22 better shot and see how he's laying. As I described earlier,
23 you see this tree here is in between his legs with his head
24 back up here, and this again would be the arm that was stuck
25 up in the air (indicated). He's laying on his back.

1 Referring to State's 42, you'll see again, you'll
2 see the grass. We have removed the debris from the top of
3 him. You'll see the whiteness of his shoes here that you saw
4 earlier in the other photograph. You'll see this tree here
5 which his legs are one on each side, his head being back in
6 this location and this being the arm that was out
7 (indicated).

8 You'll see in this photograph, State's Exhibit 42,
9 where the debris has been removed from him to get a better
10 look at him. You'll see feet here straddle this tree, and
11 you'll notice that his shoes are white. That's the white
12 part we saw earlier in the other photograph. Back up this
13 way towards the top of the photograph would be his head, and
14 this is the arm that we saw in the other photographs
15 (indicated).

16 Q. Thank you, you can have a seat back.

17 A. (The witness complied.)

18 Q. Now, did another agency come in and also
19 participate in processing the crime scene?

20 A. Yes, sir.

21 Q. And what agency would that have been?

22 A. That was SLED, South Carolina Law Enforcement
23 Division.

24 Q. And would Agent John Christy with SLED have been
25 one of those?

1 A. Yes, sir.

2 Q. Now, did you stay there until the body was removed?

3 A. Yes, sir, I did.

4 Q. And in that area did you find any type of murder
5 weapon on December the 2nd?

6 A. No, sir, we did not.

7 Q. Now, we're talking about pretty much, Jim, when you
8 finished there it would have been Sunday, December 2nd, that
9 morning?

10 A. Yes, sir.

11 Q. Now, did you have an occasion to go back to
12 Lexington County Sheriff's Department on that Sunday and
13 process a little blue car?

14 A. Yes, sir, I did.

15 Q. State's Exhibit Number 14, do you recognize that?

16 A. Yes, sir.

17 Q. And when you processed that car at the Lexington
18 County Sheriff's Department, did you have a key to get in?

19 A. No, sir, I did not.

20 Q. How did you have to get in?

21 A. It was opened by one of the other officers with a
22 slim-jim.

23 Q. And tell the jury what you were doing when you were
24 processing the interior.

25 A. Checked the interior for -- just like a crime scene

1 itself, I do the same thing. I check it for latent
2 fingerprints, see if there's any latent prints in it or blood
3 or any other thing that might be used for evidence. And I
4 collect that evidence and I log it, tag it and put it in the
5 property room and make sure it gets to the proper place.

6 Q. Did you collect any personal items of Benton Smith
7 to return to the family from that car, such as pillows,
8 little small wine glasses, or a Bible, or a radar detector,
9 or red glasses with a light on it, or a key case, or anything
10 of that nature inside the car, or walking cane with a brass
11 duck head?

12 A. No, sir, I did not.

13 Q. Did you dust the inside rearview mirror?

14 A. Yes, sir.

15 Q. To see if you could find any fingerprints?

16 A. Yes, sir, I did.

17 Q. Would you tell the jury whether you were able to
18 dust and obtain prints.

19 A. Yes, sir. I processed the inside of the vehicle
20 and I found approximately 11 latent fingerprints. There were
21 two of them on the rearview mirror itself, and then I found a
22 -- and I'm still not sure if it's a Kentucky Fried Chicken, I
23 know it's a chicken box, in the back seat where I processed
24 for latent prints, and I found several on it, too.

25 Q. When you found these prints on the box at that

1 time, you don't know whose prints they are?

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

3 Q. Did you have an occasion to go inside the Lexington
4 County Sheriff's Department to see Johnny Bennett?

5 A. Yes, sir, I did.

6 Q. And did you take some fingerprints of Johnny
7 Bennett on December 2nd inside the Lexington County Sheriff's
8 Department?

9 A. Yes, sir. I took a set what we called rolled
10 fingerprints on a fingerprint card of Johnny Bennett.

11 Q. I hand you this and ask you if you can identify
12 that.

13 A. Yes, sir, it's a set of rolled fingerprints. It's
14 bearing my name and Johnny Bennett's, and it's dated
15 12-2-1990.

16 MR. MYERS: I offer this into evidence, Your Honor.

17 THE COURT: Any objection?

18 MR. FLOYD: No objection, Your Honor.

19 THE COURT: Without objection.

20 (WHEREUPON, State's Exhibit No. 43, a
21 Fingerprint Card, was marked and admitted into evidence.)

22 BY MR. MYERS:

23 Q. Now, State's Exhibit 43, you took these prints and
24 these are the fingerprints of Johnny Bennett, the defendant;
25 is that right?

1 A. Yes, sir.

2 Q. Did you then take his fingerprints on this card and
3 compare them with the fingerprints you found on the rearview
4 mirror and on the Kentucky Fried Chicken box?

5 A. Yes, sir, I did.

6 Q. Tell the jury what you completed.

7 A. The two lifts from the chicken box matched up to --
8 were his left thumb and two prints from the rearview mirror
9 was his right middle finger.

10 Q. Step down.

11 A. (The witness complied.)

12 Q. 43, State's 43, the fingerprint card, which one of
13 these fingers matched up with the prints on the rearview
14 mirror?

15 A. That would be his left thumb, which is this print
16 here, which is down the bottom; and it's also again in this
17 location, which is number six print, being two locations
18 (indicated). It would be in two locations here, which is
19 number six, and then again down in this location here
20 (indicated).

21 Q. Now, if the mirror was up right here in the car and
22 the hood of the car is straight up from us.

23 A. Yes, sir.

24 Q. Which side of the mirror were those fingerprints
25 on?

1 A. It would be on the far side where the passenger
2 side's at.

3 Q. Over to the right side?

4 A. Yes, sir.

5 Q. Was it on the front side of the mirror or the
6 backside?

7 A. It was on the front side where the mirror itself
8 was at.

9 Q. Now, as to the Kentucky Fried Chicken box, which
10 one of the fingers of Johnny Bennett would have been on that
11 Kentucky Fried Chicken box in Benton Smith's little blue car?

12 A. As we look at the card it's on the right middle,
13 which would be this finger here, which is number three finger
14 in this location here (indicated). And then again on the
15 right down on the bottom, which would be here, top, would be
16 up here in the middle, and then again down here (indicated).

17 Q. Is this an accurate statement; on Sunday, December
18 the 2nd that you found Bennett's fingerprints lifted from the
19 car mirror and chicken box inside the car?

20 A. Yes, sir, it is.

21 MR. MYERS: Your Honor, we move to put this on the
22 calender exhibit.

23 THE COURT: Without objection.

24 BY MR. MYERS:

25 Q. Jim, I'd also like to ask you on Wednesday,

1 December the 5th did you have an occasion to go with some
2 officers along with Johnny Bennett in the Swansea area off of
3 Lewis Rast near Charlie Rast Road?

4 A. Yes, sir, I did.

5 Q. And was Johnny Bennet present?

6 A. Yes, sir, he was.

7 Q. And did you take some photographs out there?

8 A. Yes, sir, I did.

9 Q. Did someone point out some items relating to this
10 crime in that area?

11 A. Yes, sir.

12 Q. Who pointed out items?

13 A. Mr. Johnny Bennett.

14 Q. And what items did he point out?

15 A. He pointed out a -- it was a key case with a
16 driver's license, a SAFE membership credit card and a SAFE
17 A.T.M. card and a pair of red glasses with bright lights on
18 them.

19 Q. Did you photograph these proceedings?

20 A. Yes, sir, I did.

21 Q. I'm going to hand you these one, two, three, four,
22 five, six photographs and ask can you identify those?

23 A. Yes, sir, I can. This photograph shows the road
24 and the field where we found everything. It also shows
25 Mr. Bennett. Another photograph here is from another

1 different angle up the field showing the red glasses.
2 Another photograph showing -- indicating the location of the
3 glasses and the key case by means of a little red flags; and
4 another photograph showing Investigator Jones, Sergeant
5 Harris both -- one each pointing to the glasses and the key
6 case; and another photograph showing the glasses, a close up
7 view of the glasses; and another photograph, the last
8 photograph showing the key case itself.

9 MR. MYERS: I offer these into evidence.

10 THE COURT: Any objection?

11 MR. FLOYD: No objection.

12 THE COURT: Without objection.

13 (WHEREUPON, State's Exhibit Numbers 44 through
14 49, Photographs, were marked and admitted into evidence.)

15 BY MR. MYERS:

16 Q. On the Map Number 29, is this where these items
17 were found near Lewis Rast, Charlie Rast Road, right at that
18 intersection outside of Swansea?

19 A. Yes, sir.

20 Q. Now, come down, please, sir.

21 A. (The witness complied.).

22 Q. Explain to the jury what Number 44 is?

23 A. Number 44, this is a roadway here (indicated). You
24 can see our cars parked in it. Over to the left-hand side
25 you can see two people standing, one being -- if I'm not

1 badly mistaken it's Investigator Hamer, the other one being
2 Mr. Bennett. This is over in the field where the items were
3 found at.

4 You'll see the roadway here coming down, the car.
5 This is where we just parked our cars in it and stepped over
6 to the side of the roadway. Over to the left-hand side here
7 you'll see two people standing (indicated). I believe one is
8 Investigator Hamer, the other one being Mr. Bennett.

9 Referring to State's 44, you'll see the roadway
10 here that we were talking about (indicated). These are our
11 cars parked in the roadway, stepped over to one side, this
12 being the field (indicated). I think it's just tall grass at
13 that time. You'll see two people standing here, one of them,
14 the shorter guy, is Investigator Hamer, and the other man
15 being Mr. Bennett (indicated).

16 Q. Now, referring to Number 45, the field with the
17 roadway back over here?

18 A. Yes, sir.

19 Q. Can you tell jury what this red thing is right
20 here.

21 A. If you look real close you'll see the little red
22 thing, it is the glasses, the red glasses.

23 Q. Did you take possession of those glasses?

24 A. Yes, sir, I did.

25 Q. State's Exhibit 19?

1 A. Yes, sir, these are the glasses.

2 Q. State's Exhibit Number 46, the roadway is back out
3 here against the field?

4 A. Yes, sir.

5 Q. You've got two red flags.

6 A. Yes, sir.

7 Q. What will those two red flags depict in this
8 photograph?

9 A. I was trying to make it easy for people to see
10 where these two items was. The first or the nearest one to
11 me, little red flag, is where the glasses were found at. The
12 one further away is where the key case was found.

13 Q. And then did you have some officer out there
14 pointing to each individual item?

15 A. Yes, sir.

16 Q. Photograph 47, first of all, who is this officer
17 here?

18 A. That's Sergeant Harris.

19 Q. And I think he's back out here with the glasses on;
20 is that him right here?

21 A. Yes, sir, that is him.

22 Q. And what is he pointing to?

23 A. He's pointing down to the location of the key case.

24 Q. And who is this officer?

25 A. That's Investigator Charlie Jones.

1 Q. And what is he pointing to in this red flag?

2 A. He's pointing down to the location of the glasses.

3 Q. Now, 48, what is that a close-up picture of?

4 A. That's just of the glasses itself as the item,
5 State's Exhibit Number 19, as they lay in the field.

6 Q. And then Number 49, this little thing in here?

7 A. Yes, sir. If you'll look real close you'll see a
8 key case, the little round thing is the button to snap on top
9 of the key case. It's a little hard to see but if you look
10 real close you can see it.

11 Q. Did you take possession of that key case on
12 December the 5th?

13 A. Yes, sir, I did.

14 Q. Is this that key case?

15 A. Yes, sir, it is.

16 MR. MYERS: We offer this in evidence, Your Honor.

17 THE COURT: Any objection?

18 MR. FLOYD: Let me take a look at it, Your Honor.

19 No objection, Your Honor.

20 THE COURT: All right.

21 (WHEREUPON, State's Exhibit No. 50, a Key
22 Case, was marked and admitted into evidence.)

23 BY MR. MYERS:

24 Q. State's Exhibit Number 50 is the key case, right?

25 A. Yes, sir.

1 Q. And if I opened that key case, show how this
2 compares with the key case in the photograph.

3 A. If you'll look at the photograph and the key case
4 together you'll see the little round silver thing here
5 (indicated). Look at the key case here. The round silver
6 thing, see the key case here (indicated). See the round
7 object here, then look at the key case.

8 Q. And were some items in that key case when you found
9 it out there on December 5th?

10 A. Yes, sir, they were. There was a South Carolina
11 driver's license in the name of Benton Smith.

12 Q. Can you show that to the jury.

13 A. (The witness complied.)

14 There was a SAFE A. T. M. card in the name of
15 Benton Smith, and a SAFE credit card membership card in the
16 name of Benton Smith.

17 Q. But based on photograph 49, when you found that key
18 case out there in the field, it was open and you could see
19 the latch right there?

20 A. Yes, sir.

21 Q. Any money in there?

22 A. No, sir.

23 Q. Now, did you have an occasion on this same date to
24 go back up to where the body was found behind Bennett's
25 sister's trailer?

1 A. Yes, sir.

2 Q. And what was the purpose for going back up there?

3 A. Go back to look for a screwdriver, which was the
4 murder weapon.

5 Q. And did you have to use any equipment to locate the
6 screwdriver?

7 A. Yes, sir, I requested that a metal detector be
8 obtained and brought to me in the field.

9 Q. Did you have to use that metal detector in your
10 search?

11 A. Yes, sir, I did.

12 Q. And as a result of having the metal detector with
13 you what, if anything, did you find near where the body had
14 been?

15 A. Right close to where the body was at, somewhere
16 around his waist, while I was using the metal detector I got
17 an indication that there was something there. You couldn't
18 see it from where I was at. I got down on my hands and knees
19 and started taking leaves and pine straw off, and after just
20 a second or two I discovered a wooden-handle screwdriver.

21 Q. Did you take possession of that screwdriver?

22 A. Yes, I did.

23 Q. I ask you to look in that small bag.

24 A. Yes, sir, this is the screwdriver I found that day.

25 Q. And this is some of the containers it was kept in?

1. A. Yes, sir.

2. MR. MYERS: We offer this into evidence, Your
3. Honor.

4. THE COURT: Any objection?

5. MR. FLOYD: No objection, Your Honor.

6. THE COURT: All right, without objection.

7. (WHEREUPON, State's Exhibit No. 51, a
8. Screwdriver, was marked and admitted into evidence.)

9. BY MR. MYERS:

10. Q. Who led you all to this screwdriver?

11. A. Mr. -- Johnny Bennett.

12. Q. Now, I want to refer to State's Exhibit 42. On
13. December the 5th Benton Smith's body was not there?

14. A. No, sir, it was not.

15. Q. It had been removed?

16. A. Yes, sir.

17. Q. But approximately where in location to where his
18. body had been did you find this screwdriver on Wednesday,
19. December the 5th?

20. A. If you'll look right along his waistline you can
21. see some little limbs that run across there. It's a little
22. bit difficult to see but you can look real close and it would
23. be right in this area right in here (indicated). It's awful
24. hard to see. You can see the limbs right along his waist
25. level, you can see the trees running across the pine straw.

1 The screwdriver was found right up under here (indicated).

2 Then again referring to State's Exhibit 42, you'll
3 see the victim laying here (indicated). And you can also
4 look under the pine straw along in here and you can see a
5 limb or two, and right along in this area in here is where it
6 was found (indicated).

7 Q. I'm going to hand you this small stick-on
8 screwdriver and ask if you'll come over to the Map Number 30
9 and place that screwdriver approximately where it would have
10 been in relation to Benton Smith's body.

11 A. (The witness complied.)

12 Q. So it would have been between his body and that
13 firebreak road there; is that correct?

14 A. Yes, sir.

15 Q. And I want to ask you too, is this an accurate
16 statement; on December 5th, 1990, on Wednesday, Bennett
17 directs officers to eye glasses, key case and screwdriver?

18 A. Yes, sir, it is.

19 Q. On December the 12th, did you have an occasion to
20 go back in the Swansea area and go out off Huckabee Mill
21 Road?

22 A. Yes, sir, I did.

23 Q. And who directed you and the officers to Huckabee
24 Mill Road?

25 A. Mr. Bennett.

1 Q. And what, if anything, did you all find out off
2 Huckabee Mill Road?

3 A. I found two floor mats with the name Benton on
4 them.

5 Q. Before we go there let me go back to the day you
6 found the screwdriver. There was a photograph taken of the
7 screwdriver?

8 A. Yes, sir.

9 Q. Are these two of the photographs?

10 A. Yes, sir. One photograph being the screwdriver
11 when I first saw it with still some of the debris over the
12 top of it, and the second photograph is after I cleared all
13 the debris off, with a scale on it.

14 MR. MYERS: We'd offer these in evidence, Your
15 Honor.

16 THE COURT: Any objection?

17 MR. FLOYD: No objection, Your Honor.

18 (WHEREUPON, State's Exhibit Numbers 52 and 53,
19 Photographs, were marked and admitted into evidence.)

20 BY MR. MYERS:

21 Q. 52 would be prior to the moving of the debris?

22 A. Yes, sir. If you'll see, as I showed you earlier
23 in the other photograph, remember the logs that was running
24 up underneath the debris? These are those logs and you can
25 see the plant here (indicated). You'll see the screwdriver's

1 still got some debris on it, and it was fairly -- it was down
2 a ways. So this is whenever I cleaned some of it off and
3 could actually see it.

4 Q. And 53, is that after you cleaned the debris off?

5 A. Yes, sir. You'll see the same thing, just a little
6 different angle. You'll see logs here (indicated). And this
7 is after I cleared everything off of it.

8 In 52, you'll see the screwdriver laying here
9 (indicated). You'll remember the logs in the other
10 photograph that we looked at. You'll see some of the debris
11 and other things laying up on top of it. Then I finished
12 clearing it all off, remember the logs up here (indicated).
13 Finished clearing it all off and placed a scale there and
14 took another photograph.

15 And 52, you'll see, remember the logs we talked
16 about here, this is some of the leaves and other debris on
17 top of the screwdriver in this location, and then when I got
18 a little closer and I got everything cleared off, as in 53,
19 you'll see no debris on it. You'll see the logs here and the
20 scale (indicated).

21 Q. Now, this was on Wednesday, December the 5th?

22 A. Yes, sir.

23 Q. The following Wednesday, now we're at Huckabee Mill
24 Road and you talk about some floor mats?

25 A. Yes, sir.

1 Q. You take pictures of those floor mats off Huckabee
2 Mill Road?

3 A. Yes, sir, I did.

4 Q. Are these photographs taken that day by you upon
5 locating the floor mat?

6 A. Yes, sir. One photograph showing the general
7 location of where we found the mats, and the other photograph
8 a little closer up showing the floor mats themselves.

9 MR. MYERS: Offer them in evidence.

10 MR. FLOYD: No objection.

11 (WHEREUPON, State's Exhibit Numbers 54 and 55,
12 Photographs, were marked and admitted into evidence.)

13 BY MR. MYERS:

14 Q. What does 54 depict, Detective?

15 A. It shows Huckabee Mill Road. That is the roadway
16 you see there. And over to my left you will see the side of
17 the road and it looks like a building or a barn or something
18 along there. And then if you look real close in the
19 photograph you'll see right along in this area here you'll
20 see what looks like a driveway or a little entrance tool.

21 Along this area here you'll see what's looks like
22 little driveway. Right up that little driveway there's a
23 pile of bricks over in here, and up in that area is where we
24 found the floor mats at (indicated).

25 Q. And did you take a photograph of the floor mats?

1 A. Yes, sir, I did.

2 Q. 55?

3 A. Yes, sir. You'll see the floor mats as they lay
4 when I found them. You'll see that they are sort of blue,
5 and you'll see the name on them, one being down and one being
6 up on top of the photograph.

7 Q. And those floor mats are the same as 20 and 21 with
8 Benton written on both of them?

9 A. Yes, sir.

10 Q. Did you take possession of these floor mats on that
11 day?

12 A. Yes, sir, I did.

13 Q. Now, is this a fair and accurate statement; on
14 December the 12th, on Wednesday, Bennett directs officers to
15 floor mats?

16 A. Yes, sir, it is.

17 Q. Now, let me ask you one more thing, and you can
18 have your seat up there.

19 A. (This witness complied.)

20 Q. Did you have an occasion to go with the body of
21 Benton Smith when it was autopsied by Dr. Joel Sexton in
22 Newberry?

23 A. Yes, sir, I did.

24 Q. And did you witness the autopsy?

25 A. Yes, sir, I did.

1 Q. And did you also make a chart while Dr. Sexton was
2 doing an autopsy of various wounds to the body?

3 A. Yes, sir, I did.

4 Q. And where on his body were these wounds?

5 A. Most all the wounds were in the top of the
6 shoulders, across, and in the back of the head.

7 Q. And while you were there at the autopsy, did you
8 take possession of various items of evidence from the
9 autopsy?

10 A. Yes, sir, I did.

11 Q. Did you take possession of that shirt that Benton
12 Smith was wearing when he was murdered?

13 A. Yes, sir, I did.

14 Q. Does is that shirt contain tear marks as if
15 inflicted with some type of object such as that Phillips head
16 screwdriver?

17 A. Yes, sir, it does.

18 Q. Is this that shirt?

19 A. Yes, sir, it is.

20 Q. And on that shirt, can you demonstrate numerous
21 stab wound marks on the shirt?

22 A. Yes, sir, I can.

23 MR. MYERS: We'd offer this in evidence, Your
24 Honor.

25 THE COURT: Any objection?

1 MR. FLOYD: No objection.

2 THE COURT: All right. Without objection.

3 (WHEREUPON, State's Exhibit No. 56, a Shirt, was
4 marked and admitted into evidence.)

5 BY MR. MYERS:

6 Q. State's 56, is that the shirt that Benton Smith was
7 wearing when his body was found?

8 A. Yes, sir, it is.

9 Q. Now, first of all, let me ask you something. Right
10 here is a portion, it's a hole in it. Was that hole there
11 when you found Benton Smith's body?

12 A. No, sir.

13 Q. And over here is another hole. Was that hole there
14 when you found Benton Smith's body?

15 A. No, sir, it was not.

16 Q. Those holes were made by whom?

17 A. By SLED when they were sent out to be analyzed for
18 blood and other things. SLED cuts a patch out where they do
19 the analysis from, and SLED did that, SLED chemistry lab.

20 Q. This tear mark over on the side over here where
21 it's ripped up, was that there, the tear, torn material, was
22 that there when you found Benton Smith's body?

23 A. Yes, sir, it was.

24 Q. Other than these two holes being out, is this shirt
25 in the same condition as when you found it on his body?

1 A. Yes, sir, it is.

2 Q. And you don't have to point out all of them, but
3 show the jury, if you could, where some of the stab wounds
4 are through this shirt.

5 A. You can look up in this area here, and you all get
6 a chance to look at it closer, you can see some of the stab
7 wound -- well, I just stuck my pointer through one there, and
8 there's more. There's another one there. You see it go
9 through, and there's about eight of them right in this area
10 here (indicated).

11 Q. Are there some more over on this side and on the
12 other side?

13 A. Yes, sir. There's some more on this side. I think
14 there's one here, there's two or three on this side
15 (indicated). I think I counted about eight or nine of them.

16 MR. MYERS: Answer any questions they have.

17 THE COURT: Cross?

18 MR. FLOYD: Your Honor, I'll probably be a few
19 minutes with him. Do you want to go forward or --

20 THE COURT: Well, we've been going, what, right at
21 an hour? It might be a good time just to take maybe about a
22 ten-minute break just to move around a little bit. Be sure
23 we don't talk about the case.

24 (WHEREUPON, the jury leaves the courtroom at
25 approximately 11:42 a.m.)

1 THE COURT: The jury is secured. We'll stand in
2 recess.

3 (WHEREUPON, a brief recess was taken.)

4 THE COURT: I understand our smokers are back.
5 Bring them on in.

6 (WHEREUPON, the jury enters the courtroom at
7 approximately 12:00 p.m.)

8 THE COURT: All parties and attorneys are in the
9 courtroom and all jurors have returned.
10 Counsel?

11 MR. FLOYD: Thank you, Your Honor.

12 CROSS-EXAMINATION

13 BY MR. FLOYD:

14 Q. Officer Hickman, what time did you arrive on the
15 scene where the body was?

16 A. At 23:40, which would be 11:40.

17 Q. And what time was the investigation on the scene
18 concluded?

19 A. At 03:45.

20 Q. At that time, was the body still on the scene or
21 was that when the body was removed from the scene?

22 A. No, sir, it had been removed prior to that. The
23 exact time, I don't know, but that's the time that we secured
24 from the scene itself.

25 Q. Were you the first forensic person on the scene?

1 A. Yes, sir, I was.

2 Q. And how many officers came out and assisted in the
3 scene investigation?

4 A. There was myself and two officers from SLED.

5 Q. Did they remain out there on the scene until 3:45
6 also?

7 A. Yes, sir, they did.

8 Q. So three of you were -- what were you all doing in
9 your investigation for those almost four hours?

10 A. We were searching for evidence, photographing the
11 scene. When we find any evidence, label it, mark it. I made
12 a crime scene sketch, and taking notes for our reports that
13 we fill out later.

14 Q. Do you actually grid off the area and search the
15 various areas?

16 A. No, sir, we did not.

17 Q. Did not do that. At some point in time, would the
18 body have been removed and then you check to see what was
19 under the body?

20 A. Yes, sir.

21 Q. So three officers -- how big of an area do you
22 start cording off and say this is our crime scene?

23 A. It depends on which crime scene on something like
24 this. It would probably have been maybe a foot, two foot or
25 three foot on either side of the body.

1 Q. And was a screwdriver eventually found in an area
2 that would have been within that three foot area?

3 A. Yes, sir, it was.

4 Q. So you had three officers searching the area for
5 about four hours and the screwdriver was not located?

6 A. Yes, sir.

7 Q. Who would have removed the body from the area?

8 A. The coroner's office.

9 Q. Then where would they remove it to?

10 A. To -- probably it would have went to the Lexington
11 County -- Lexington Memorial Hospital.

12 Q. Where was the autopsy actually performed?

13 A. Newberry, South Carolina.

14 Q. And so when did the body get to Newberry?

15 A. It would have been transported that morning of the
16 autopsy.

17 Q. And when was the autopsy performed?

18 A. The autopsy was started on 12-3-1990 at nine
19 o'clock in the morning.

20 Q. And concluded by?

21 A. I don't have the time it was concluded. It was
22 that morning.

23 Q. Sometime that morning?

24 A. Yes, sir.

25 Q. So the results of the autopsy were known to you by

1 at least, say, before noon of December 3rd?

2 A. Yes, sir.

3 Q. So if State's Exhibit 34, the statement of Johnny
4 Olandis Bennett of December the 3rd at eight o'clock p.m. --

5 A. Yes, sir.

6 Q. That was some eight hours or so after the autopsy
7 results were known?

8 A. Yes, sir.

9 Q. Now, you accompanied -- your next involvement --
10 well, you did the processing of the car. Did you do that
11 that same day?

12 A. The day of the autopsy?

13 Q. No, the day of the --

14 A. Yes, sir, it was the same day. It was after
15 daylight that morning.

16 Q. And you found 11 fingerprints?

17 A. Yes, sir.

18 Q. And you identified four of them, I think?

19 A. Yes, sir.

20 Q. Are those the only four you identified?

21 A. Yes, sir.

22 Q. So you didn't identify any, like, say, from
23 Mr. Smith himself?

24 A. No. The other latent prints that I lifted were of
25 no value. They lacked sufficient detail for me to even

1 compare them to anyone.

2 Q. And did you process the vehicle for other evidence;
3 blood, fiber, hair?

4 A. Yes, sir, I did.

5 Q. Did you find any other evidence that morning?

6 A. There was some evidence from the trunk that was
7 collected and sent out to SLED for analysis.

8 Q. Now, would your next involvement have been the
9 December 5th?

10 A. Well, the next would have been the autopsy, which
11 was on the 3rd, and then December 5th after that.

12 Q. Now, were you in the vehicle with Johnny Bennett on
13 this trip or were you in one of following vehicles?

14 A. No, sir, I was in my vehicle following everybody.

15 Q. Did you stop in Swansea also on the way?

16 A. Yes, sir.

17 Q. Did you all meet up with Lucius Martin there?

18 A. The best I can recall, yes, sir, we did. I was
19 following. Wherever they stopped, I stopped.

20 Q. Now, were you by yourself in the car in your
21 vehicle?

22 A. Yes, sir.

23 Q. So you didn't have anything to do with the taping
24 or the recording?

25 A. No, sir.

1 Q. Now -- I'm sorry, I had the wrong day. I don't
2 believe you stopped by. I think that was the 12th with the
3 floor mats. The 5th you didn't go that way, I believe, and
4 I'm sorry if I put that in your mind.

5 A. Okay.

6 Q. On the 5th, where is the first place you all went?

7 A. The first place we went was to Charlie Rast Road.

8 Q. Now, you took some photographs of that area?

9 A. Yes, sir.

10 Q. And you testified that Mr. Bennett pointed out some
11 items to you, the glasses?

12 A. Yes, sir.

13 Q. Was that the only item you got from that area?

14 A. The glasses and the key case.

15 Q. The key case?

16 A. Yes, sir.

17 Q. Now, you don't have a photograph of him actually
18 pointing it out, do you?

19 A. No, sir.

20 Q. In fact, you have the -- those are Lexington County
21 deputies?

22 A. Yes, sir.

23 Q. Pointing it out; is that correct?

24 A. Yes, sir.

25 Q. From there, where did you go?

1 A. If I remember correctly, I think from there we went
2 to Orangeburg.

3 Q. You don't have any photographs of Orangeburg,
4 nothing found in Orangeburg?

5 A. There was nothing found there.

6 Q. And from there where did you go?

7 A. We came back to Lexington County, and I'm not sure
8 where we -- I seemed to recall that we stopped at what they
9 call the old ball field first and then went back to 182 Happy
10 Town.

11 Q. Did you find any evidence in the old Ball field?

12 A. No, sir.

13 Q. Did you all do a thorough search of that area?

14 A. Yes, sir, I think we did.

15 Q. Didn't find any blood in that area?

16 A. No, sir.

17 Q. Any signs of a struggle?

18 A. No, sir.

19 Q. Any wallet?

20 A. No, sir.

21 Q. Is that all you all did on that day?

22 A. I went back to the scene and found the screwdriver.

23 Q. Oh, that's right, I'm sorry. You went back to the
24 scene and the screwdriver was found in the one to three foot
25 grid area you all were working?

1 A. Yes, sir.

2 Q. Now, the next time would have been the 12th, would
3 have been your next involvement?

4 A. Yes, sir.

5 Q. Now, on that time, like I think we've already
6 established, you went in your own car and you weren't
7 involved in the taping?

8 A. Yes, sir.

9 Q. Stopped by Swansea?

10 A. Yes, sir.

11 Q. And Lucius Martin went out there with you all?

12 A. Yes, sir.

13 Q. Now, when you found those floor mats, did you
14 measure the distance how far they were off of the road?

15 A. Yes, sir, I did.

16 Q. And how far were they off the road?

17 A. One floor mat was 8-foot from the edge of the
18 roadway and 12-foot, 6-inches from the pile of bricks. The
19 second floor mat was 12-foot from the road's edge and 9-foot,
20 5-inches from the pile of bricks.

21 Q. Now, I'm going to show you State's Exhibit 55, and
22 is that the way they were found?

23 A. Yes, sir.

24 Q. So when they were found the wording was up so that
25 you could see the wording?

1 A. Yes, sir.

2 Q. And, as you say, they were about -- one of them was
3 eight feet from the road and the other was 12 feet from the
4 road; is that correct?

5 A. Yes, sir.

6 Q. Now, this photograph, State's Exhibit 54, where
7 would they be on this photograph?

8 A. Referring to State's Exhibit 54, if you'll look
9 back the road here you'll see a little place, looks like a
10 little driveway or an entrance place where you can go in, and
11 I think I showed you all this a little while ago, but if
12 you'll look real close here, pull up in here, and we're right
13 in this general area here (indicated).

14 You'll see along in here in State's Exhibit 54,
15 you'll see what looks like a little driveway or little paved
16 place. You pull right up in there and right close to the
17 house here is the pile of bricks, and that's where they were
18 found there (indicated).

19 Q. Do you have a photograph that would have been taken
20 from standing right on the side of the road looking toward
21 the mats?

22 A. No, sir, I don't think so.

23 Q. But in this photograph you would have had to have
24 been standing up here; is that correct? If you were going to
25 take the kind of photograph I was mentioning you would be

1 standing up in here?

2 A. Yes, sir.

3 Q. Shooting in that direction; is that correct?

4 A. Yes, sir, and I really don't think that you could
5 see them from the roadway itself.

6 Q. That's what I was trying to establish. You don't
7 have a photograph to show us whether you could or could not
8 have stood on the roadway edge and seen the mats?

9 A. No, sir, I do not.

10 MR. FLOYD: Thank you.

11 MR. MYERS: No further questions. Come down.

12 MR. GRAHAM: Jay Patel.

13 THE COURT: You can step down.

14 JAY V. PATEL, after having been duly sworn,
15 testified as follows:

16 THE CLERK: Have a seat and state your name for the
17 record.

18 THE WITNESS: Jay V. Patel, P-a-t-e-l.

19 DIRECT EXAMINATION

20 BY MR. GRAHAM:

21 Q. Where are you employed, Mr. Patel?

22 A. At the Lexington County Detention Center.

23 Q. And on December 20th, 1990, where were you
24 employed?

25 A. At Lexington County Detention Center.

1 Q. And was Johnny Bennett an inmate at the Detention
2 Center at that time?

3 A. Yes, he was.

4 Q. On December 20th, 1990, did you search Johnny
5 Bennett's cell?

6 A. Yes, I did.

7 Q. And would you tell the jury what you found.

8 A. On the bottom bunk that was his bunk, we pulled
9 back the mattress and found a shank there.

10 Q. When you say a shank, what is a shank?

11 A. It's more or less a homemade weapon. It's more or
12 less a weapon made in the jail, usually, used as either
13 defensive or an offensive weapon.

14 Q. And where was that found?

15 A. It was in the center of his bunk underneath his
16 mattress.

17 Q. And after you found the shank what did you do?

18 A. I called the sergeant on duty, Sergeant Chisholm.

19 Q. And at some point, did you remove the mattress from
20 the cell?

21 A. Later on after he came up there and he told me to
22 secure everything, I did move the mattress to the short
23 hallway, which is a secure area behind the officer's
24 corridors.

25 Q. And after you had moved the mattress to that secure