

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

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S.C. SUPREME COURT

Certiorari to Horry County

The Honorable Kristi F. Curtis, Circuit Court Judge

2015-CP-26-02839

Bruce A. Hill, #223106,

PETITIONER,

v.

State of South Carolina,

RESPONDENT.

Appellate Case No.: 2019-001695

APPENDIX

ASHLEY A. MCMAHAN
McMahan & Taylor Attorneys, LLC
PO Box 50536
Columbia, SC 29250
(803) 219-1110

ATTORNEY FOR PETITIONER

ALAN WILSON
Attorney General

CHELSEY F. MARTO
Assistant Attorney General

PO Box 11549
Columbia, S.C. 29211
(803) 734-3737

ATTORNEYS FOR RESPONDENT

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VERSUS

TRANSCRIPT OF RECORD

BRUCE ANTWAIN HILL

September 1, 2011
September 12, 13, 14, 2011
Conway, South Carolina

B E F O R E:

HONORABLE STEVEN H. JOHN, Judge.

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

GREGORY HEMBREE, ESQ.
JIMMY A. RICHARDSON, II, ESQ.
ASSISTANT SOLICITOR FOR HORRY COUNTY
ATTORNEYS FOR STATE

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

DIXIE COX EUBANK
CIRCUIT COURT REPORTER
FIFTEENTH JUDICIAL CIRCUIT

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1 (THE FOLLOWING TAKES PLACE ON SEPTEMBER 1, 2011, BEFORE
2 SELECTION OF A JURY FOR THE TRIAL OF THIS CASE.)

3 THE COURT: All right. We are here today for (2011-GS-
4 26-00987), regarding the State of South Carolina versus Bruce
5 Antwain Hill, regarding the indictment for murder, (2011-GS-
6 26-00988), again, State of South Carolina versus Bruce Antwain
7 Hill versus -- or versus Bruce Antwain Hill regarding an
8 indictment for murder, and (2011-GS-26-01327), State of South
9 Carolina versus Bruce Antwain Hill regarding an indictment for
10 burglary first degree, all these matters having been true-
11 billed by the Horry County Grand Jury on March 31, 2011.

12 All right. From the State, Solicitor, are there any
13 matters that you need to bring to the Court's attention at
14 this time?

15 MR. HEMBREE: Yes, Your Honor. Just as a matter of
16 housekeeping. We are in receipt of Rule 5 and Brady motions
17 from Mr. Hazzard. At this stage we believe we've complied
18 with those. I think we've provided him quite an extensive
19 file, any -- I'm not aware if he has reviewed the physical
20 evidence that is in the possession of the Horry County Police
21 Department. There's also some evidence that is in the custody
22 of the Clerk of Court's Office, so if he needs any assistance
23 whatsoever in viewing the evidence, such as in the Clerk's
24 Office, certainly he can look at it at his leisure. Any evidence
25 that's in the possession of the Horry County Police, if

1 there's any -- you know, if there's any assistance he needs,
2 coordination through us in taking a look at any of that
3 material we would be happy to assist him with that.

4 **THE COURT:** All right. Before we proceed on from that
5 issue, Mr. Hazzard, any discovery matters, any issues such as
6 that that you are aware of at the present time?

7 **MR. HAZZARD:** No sir.

8 **THE COURT:** All right, sir. And obviously, again, as
9 with the Solicitor, if there's any assistance you need from
10 the Court regarding that matter you will bring it to my
11 attention.

12 All right, Solicitor.

13 **MR. HEMBREE:** Your Honor, the -- as to reciprocal
14 discovery, we've not received any response from our reciprocal
15 discovery motions served upon Mr. Hazzard and his client, so
16 we assume there's no defense of alibi, no mental defenses,
17 nothing like that we -- to be expected, or no documents or
18 other physical evidence that Mr. Hazzard intends to introduce
19 that is not in the possession of the Horry County Police or
20 the Clerk of Court.

21 **THE COURT:** All right. Is that your understanding, Mr.
22 Hazzard?

23 **MR. HAZZARD:** That's correct.

24 **THE COURT:** All right. Very good, sir.

25 **MR. HEMBREE:** And Your Honor, one -- one issue that --

1 I don't know if it's really a motion. Just kind of looking
2 for the Court's guidance, kind of to lay this issue on the
3 table, as the Court is aware, there has been an individual,
4 Richard Gagnon, who was convicted some time ago for the
5 murders of the Parkers. It is our theory of the case, or
6 under our theory of the case his conviction and his
7 involvement in this crime is irrelevant to the trial of Mr.
8 Hill, and we do not intend to present any evidence, or elicit
9 any testimony regarding Mr. Gagnon. We -- as I say, it's our
10 belief that that would be irrelevant based on the theory in
11 this case. This is a DNA case, and it really is a very
12 straightforward DNA case.

13 We are not aware -- I'm not aware that Mr. Hazzard
14 intends to inject the conviction of Mr. Gagnon, or his
15 involvement in this crime at any point in the trial, but if he
16 does I guess I just want to make Mr. Hazzard aware, make the
17 Court aware, that we will be objecting to that. We are
18 objecting to that now, if that's his intention, and we would
19 want to hold a hearing to proffer whatever testimony he might
20 wish to elicit regarding Gagnon's involvement prior to the
21 jury hearing any of that -- any of that evidence.

22 **THE COURT:** All right. Well, as to -- let's just break
23 it up. As to the State's case, as I understand it you do not
24 intend to present any evidence such that it would elicit
25 testimony or produce evidence that would bring up the prior

1 matter involving Mr. Gagnon; is that right?

2 **MR. HEMBREE:** That's correct, Your Honor.

3 **THE COURT:** And obviously if you ask a question and you
4 get a response to that question, you know, first it might be a
5 matter we might need to address out of the presence of the
6 jury, but it might very well open a door then that Mr. Hazzard
7 would be well within his rights to question the witness about
8 whatever answer they gave in presenting his defense of Mr.
9 Hill, and certainly that issue we can't cover because it may
10 or may not happen, but if it does we'll address it at that
11 point in time, but understanding, of course, then that, you
12 know, there's obviously protected Constitutional Rights
13 regarding cross-examination that the Defense then does have,
14 so what I would say then -- thank you, Solicitor.

15 What I would say then, Mr. Hazzard, when we get done
16 with the State's case, and the issue has not been broached at
17 that point in time regarding Mr. Gagnon, that has not come up
18 at that point in time during the State's presentation of the
19 case, if we get to the defense and past -- obviously past the
20 motions that you would present at the end of the State's case,
21 and we get to the defense, then we would be -- I would
22 probably be asking you at that point in time whether or not
23 you intend to bring that issue, of your own volition, to the
24 jury's attention, and most likely what we would do at that
25 point in time is conduct some hearing outside of the presence

1 of the jury before it is presented to them, and we'll cover it
2 at that point in time. I don't -- I think that would be the
3 best way to handle this, and that's the way I'm going to
4 proceed in this matter, so that you understand if you intend
5 now, just be prepared that you understand that you need to
6 bring that to the Court's attention at the time that the
7 defense of Mr. Hill comes up, so that we can cover it before
8 it goes to the jury, and the Court will make a ruling at that
9 point in time whether or not it's going to go before them or
10 not. All right.

11 **MR. HAZZARD:** If I might be heard, Your Honor.

12 **THE COURT:** Yes sir.

13 **MR. HAZZARD:** The res gestae of this case, based on
14 prior legal proceedings, is that Mr. Gagnon, and according to
15 the State's theory, Mr. Hill, were present in the home at the
16 time of the crime, and committed the crime, each aiding and
17 abetting the other. As such, I believe the Defense has the
18 right to ask any witness regarding that situation, regarding
19 Mr. Gagnon's presence, regarding Mr. Gagnon's actions, or
20 inactions.

21 **THE COURT:** Okay. In what way? I'm -- was struggling
22 there to understand what it is that ---

23 **MR. HAZZARD:** Hold on one moment. Court's indulgence,
24 Your Honor.

25 **THE COURT:** I guess I'm struggling to understand the

1 scope of the question. I ---

2 **MR. HAZZARD:** Your Honor, with regard to the res gestae
3 of this case, based on prior legal proceedings, Richard Gagnon
4 has been convicted of the murders of Mr. and Mrs. Parker,
5 okay. Excuse me. The State's theory has always been that
6 more than one person was involved, and they have since charged
7 this gentleman, Mr. Hill, with that. Now, it's not a matter
8 of, you know, bringing up an issue of third-party guilt, per
9 se, because it's not a question. It has actually been decided
10 by a jury, ruled upon, and Mr. Gagnon has been convicted of
11 the crime, therefore placing him at the scene of the crime on
12 the date in question, and I believe the Defense has the right
13 to question any State witness regarding ---

14 **THE COURT:** As to whether or not there is evidence that
15 somebody else participated in the crime.

16 **MR. HAZZARD:** Yes sir.

17 **THE COURT:** All right. You intend then to pursue that
18 and say, was there a trial, and was Mr. so and so convicted of
19 murder at that trial; is that what you intend to do also?

20 **MR. HAZZARD:** Well, Your Honor, that's a matter of
21 public record.

22 **THE COURT:** What's your position, Solicitor?

23 **MR. HEMBREE:** Your Honor, it's -- it's irrelevant to
24 the trial of Mr. Hill, and it's -- it has nothing to do with
25 res gestae. It -- certainly it's a matter of public record.

1 We don't take any issue with that. We agree, obviously Mr.
2 Gagnon has been convicted, but his conviction is completely
3 irrelevant to the State's theory of the case here as to Mr.
4 Hill. This case is simple and straightforward. There is DNA
5 of Mr. Hill in the house, blood drops that are fresh, that are
6 the same freshness of that of the victims, so we can place him
7 in the house at the time of the murders, and that's all.
8 That's all we intend to elicit. We don't intend to show a
9 connection between he and Mr. Gagnon. If we were to do that
10 then that would become relevant. That may become relevant.
11 If we tried to link the two together then that may be -- then
12 that may -- would make it relevant. And certainly Mr. Hazzard
13 could present a defense -- there's -- I can see --
14 theoretically he could -- he could present a defense that
15 would make Gagnon's presence, or Gagnon's participation
16 relevant as to the culpability of his client, Mr. Hill.
17 Certainly if Mr. Hill took the stand, or another person took
18 the stand who could say, I know of this, I know Hill and
19 Gagnon were in it together, or you know, I can explain why --
20 or Mr. Hill takes the stand and says, yes, I was there but I
21 didn't do it, but Gagnon was there and Gagnon did do it, then
22 it becomes relevant, Your Honor, but it doesn't become
23 relevant up to that point. And I guess what I want to avoid
24 is an opening statement that is, there's been another man
25 convicted of this crime. That's not -- it's not relevant at

1 that point.

2 On cross-examine of the State's witness, hasn't there
3 been someone else convicted of this crime. It's not relevant
4 at that point.

5 **THE COURT:** All right.

6 **MR. HAZZARD:** If I might respond very briefly, Your
7 Honor.

8 **THE COURT:** Yes sir.

9 **MR. HAZZARD:** What the State wants to avoid is any
10 mention of Mr. Gagnon, simply because they cannot, despite
11 their theory that Gagnon and Hill committed this crime, and
12 Gagnon has already been convicted of it, they have, to my
13 knowledge, with the discovery I've received, absolutely not
14 one scintilla of evidence connecting Mr. Hill to Mr. Gagnon,
15 and that's what they want to avoid.

16 **THE COURT:** Well, I can certainly see that the Defense
17 would be allowed to examine the State's witnesses as to
18 whether or not they have evidence that there was someone else
19 participating in the crime, someone else was present, somebody
20 else participated in this matter, you know, that there's other
21 DNA, or there's other evidence, but I do not see the
22 relevance, and find that it would invade the jury's province
23 in telling them about the conviction of another person, and
24 them deciding the -- whether or not the State can prove the
25 Defendant here guilty beyond a reasonable doubt. That would

1 give that jury information that would invade their decision-
2 making process, that it would tell them that, in the Court's
3 estimation, it's fine to convict Mr. Hill because he's there
4 with a guy that another jury has already found guilty of the
5 murder, that Mr. Hill's DNA is here, and y'all don't have to
6 do much thinking because his DNA is there with some other guy
7 another jury has already found guilty of murder, and I'm not
8 going to allow that.

9 I will allow you to examine the witnesses about whether
10 somebody else is present, there's somebody else involved in
11 that matter, what the evidence shows, but I will not allow you
12 to bring up that some other person has been convicted, because
13 that would, in the Court's estimation, lessen the jury's
14 obligation, and lessen in their minds their responsibility to
15 treat this matter separately, and again, lessen their
16 responsibility in that they would feel, and know, well,
17 another jury has already found a guy guilty, and Mr. Hill is
18 there present with him, so we are going to find him guilty of
19 murder too; we just don't have -- you know, we don't have to
20 think about this much, so I'm not going to allow that. No
21 sir.

22 **MR. HAZZARD:** I appreciate that, Your Honor. I guess
23 my concern, if you would indulge me for a second, is that if I
24 do ask a State's witness that question that the Court posits
25 on cross-examination, that being, in your investigation,

1 officer/detective, whoever, you know, did you come across
2 evidence indicating that someone other than Mr. Hill may have,
3 or was present in the home on the night of the incident, and
4 if they say, oh no, we -- we don't know of anybody else that
5 was there, and this might be someone who actually testified in
6 Mr. Gagnon's trial, then where am I left?

7 **THE COURT:** Then obviously that would be a matter of
8 them giving testimony under oath at a separate trial that is
9 contradictory to the testimony they give in this trial, and
10 I'm sure there is a transcript of the record of Mr. Gagnon out
11 there already regarding his appeal, so I'm sure you have that
12 available to you, and you can read through it, and look at
13 what witnesses testified there, and so that's a totally
14 separate issue. That's somebody giving contradictory
15 testimony, testifying under oath at one point in time to (A),
16 and testifying at another time under oath to (B), so that's
17 just totally and completely different.

18 **MR. BRUCE HILL:** Your Honor ---

19 **THE COURT:** You need to talk to your, sir.

20 **MR. BRUCE HILL:** Yes sir.

21 **THE COURT:** Yes sir, Mr. Hazzard, anything else?

22 **MR. HAZZARD:** Nothing further on that point, Your
23 Honor.

24 **THE COURT:** All right, sir. Very good.

25 All right, Solicitor, you understand then -- if I

1 understand your position that you may or may not present this,
2 but Mr. Hazzard can fully explore with, you know, detective,
3 you know, who might be crime scene investigator, and collected
4 evidence. Certainly Mr. Hazzard can ask him about all the
5 evidence that crime scene investigator collected, and whether
6 or not it's tied to this particular individual, or tied to a
7 completely separate individual, I mean, because that's --
8 that's part of what was found at the scene of the crime. I'm
9 certainly going to allow that, but we are not telling the jury
10 what happened in another trial. We are just not going to do
11 that, because that, to me -- again, I think that harms the
12 Defendant in this case, not -- I don't think it aids the
13 State; I think it harms the Defense, because then the jury
14 isn't -- had -- would have the tendency to look at their
15 responsibility -- despite anything I might say to them they
16 are going to already know, well, somebody else is convicted,
17 and here he's with them, so what do we have -- you know, be
18 basically looking at why are we here, so I'm not doing that.
19 We are not going to do that in this trial.

20 MR. HEMBREE: Thank you, Your Honor.

21 THE COURT: All right. Anything else from the State?

22 MR. RICHARDSON: Yes sir, Your Honor. And again, this
23 is not so much as a motion, but we just don't want to catch
24 anyone by surprise.

25 I've discussed just a second with Mr. Hazzard our

1 intention with regard to Codus, and of course a bunch of this
2 case Your Honor is familiar with it, but our intent is to
3 bring someone in to basically refer to Codus as the national
4 DNA data base, not to say anything about the fact that Mr.
5 Hill was in prison when it came in, or anything that would
6 subjugate him to some sort of prejudice with regard to Codus.
7 That's our intent, just to basically say that it was triggered
8 through a national data base.

9 **THE COURT:** All right. Mr. Hazzard, do you have any
10 comment on that?

11 **MR. HAZZARD:** It's my understanding that they are going
12 to try to tie the Defendant to the DNA found at the scene,
13 specifically based upon the results of the Schmerber test, or
14 the Schmerber sample that was taken, I believe, on March 9th
15 of this year down in Georgetown. As that is the case, I do
16 not see why there is any indication, or any need to tell the
17 jury that the Defendant is in a national data base, because
18 the jury can sit there and say, well, I ain't in no data base,
19 so he must, ergo, have a prior criminal record, and must have
20 been previously incarcerated. I would object to that, Your
21 Honor.

22 **THE COURT:** All right, sir. I appreciate that.

23 Who is the witness that's going to be testifying about
24 Codus? Who is that?

25 **MR. RICHARDSON:** Your Honor, his name is David McClure.

1 He's from SLED. He, basically, is the person to see with
2 regard to Codus, and he would have seen the -- where there was
3 a hit, and would have informed -- or someone from that office
4 would have informed Horry County.

5 **THE COURT:** All right, so I'm assuming that -- and
6 correct me if I'm wrong -- you are going to have somebody
7 testify that certain matters were collected at the scene of
8 the crime, they were put in this national data base sometime
9 thereafter because the crime is alleged to have occurred in
10 2005, and that it was put into the national data base in and
11 around then, sometime later. This witness would testify as a
12 result of -- they got some information from the national data
13 base that would connect Mr. Hill to that. I mean, in essence,
14 that's what the testimony would be about.

15 **MR. RICHARDSON:** Yes sir.

16 **THE COURT:** Mr. Hazzard, I think that is -- in that
17 sense, with the crime having occurred in 2005, as I understand
18 it, I don't believe Mr. Hill -- Mr. Hill was arrested -- when
19 was he arrested -- let's see -- that was 2009, I believe, in
20 2009. I think it is proper for the State to be able to give
21 some background information as to why there is a delay between
22 2005, 2009 in this matter. I do not find any prejudice.
23 Obviously not going to allow the State to testify as to the
24 background reasons as to why Mr. Hill was in the national data
25 base, or that he had been arrested in Tennessee, or whatever

1 the situation was, but the basic information about samples
2 being collected, put in the data base. There is a -- some
3 connection that's made, the State is alerted, and then they
4 proceed with that, and Mr. Hill is thereafter arrested. I'm
5 going to allow at least that basic information -- and I'm not
6 telling the State how to ask the questions, but I'm just
7 trying to give you a general scope of what I believe is proper
8 and would allow the State to do.

9 MR. HAZZARD: Note the Defense's objection for the
10 record.

11 THE COURT: Yes sir. All right. Thank you.
12 Anything else, Solicitor?

13 MR. RICHARDSON: The only other thing, Your Honor, and
14 I believe that -- I believe it's well-settled, I just didn't
15 want to get in the middle of this trial and there be a problem
16 with it, but we fully intend to put up all of the major
17 witnesses in the chain of custody with the sample left at the
18 scene, and the sample taken after the Schmerber hearing, and
19 fill out that chain of custody to SLED. and then into the
20 hands of the analyst. What we would plan to avoid is bringing
21 every person that touched the sample, or either of those
22 samples once it got to SLED. Of course Your Honor is aware
23 that once it gets to SLED different people will break open the
24 bags, not going into the sample itself, but to take it to the
25 analyst, and it would be -- we don't propose to do all of

1 that, but we do plan on creating the SLED -- the chain for
2 SLED as near as practical.

3 **THE COURT:** Well -- and I appreciate that. I'm
4 assuming, you know, the analyst from SLED is going to find
5 that the -- you know, however it came to the analyst, that the
6 sample was, you know ---

7 **MR. RICHARDSON:** Yes sir.

8 **THE COURT:** ---Sealed and untouched, and had not been
9 tampered with in any way before they conducted their testing,
10 and if that's the case then, you know, I -- it would seem that
11 that probably would be -- would fall within the rules. I
12 don't know how the testimony is going to proceed, so I can't
13 tell you what I'm going to rule, but certainly, at the very
14 least, the analyst has got to be able to verify the security
15 of whatever they tested, and it's been, you know, not tampered
16 with, and untouched, and you know, preserved, you know. With
17 that then we will -- that might be a proper way to proceed,
18 but we will just see how that testimony comes out.

19 **MR. RICHARDSON:** Yes sir, Your Honor. I believe that's
20 all that the State has as far as pretrial motions.

21 **THE COURT:** All right, Mr. Hazzard, matters you need to
22 bring to the Court's attention.

23 **MR. HAZZARD:** Thank you, Your Honor. First of all I
24 apologize. I got your Law Clerk's e-mail this morning. I was
25 out yesterday, and I do not receive e-mail remotely, so I

1 apologize to you and her.

2 **THE COURT:** Okay. That's all right. That's fine. I
3 appreciate that.

4 **MR. HAZZARD:** Two things, Your Honor. Number one, with
5 regard to the -- back on March 1st, down in Georgetown, you,
6 I, and Deputy Solicitor Richardson, addressed a matter
7 regarding the Interstate Agreement on Detainers. As the Court
8 knows, Mr. Hill was brought back from Tennessee October 21st
9 of 2010. He made a request back in September of 2010, and
10 pursuant to the Interstate Agreement on Detainers his hundred
11 and eighty days began to run back in September when he
12 notified the Prosecutor's office. By my calculations that
13 time would have run on or about March 17th or 18th of 2011.
14 Now the Prosecutor requested and was granted a hearing and --
15 on his request for a continuance on March 1st, and he
16 indicated at that time, as I recall, that this was a complex
17 matter and so the State just needed some more time. I do not
18 recall him giving any specific indication as to why there had
19 been this delay.

20 As the Court is aware from that initial hearing the
21 murder warrant for Mr. Hill was issued May 28th of 2009, so at
22 that time the State felt they had the connection of the DNA.
23 That was bolstered by an article in the Sun News on June 5th
24 of 2009, that stated very specifically that, yes, we've tied
25 Bruce Hill with some DNA found at the scene of the crime,

1 that's why we've issued this murder warrant.

2 Now, they did not take any steps to move Mr. Hill at
3 that time. Mr. Hill, in turn, requested to come back and
4 address these charges under the Interstate Agreement on
5 Detainers codified in 17-11-10 et seq, South Carolina Code of
6 Laws. Excuse me.

7 At the March 1st hearing, again, there was no specific
8 information given by the Prosecution as to why the delay, why
9 they needed more time, why they needed an extension, and the
10 Court has already reviewed the indictments and seen that Mr.
11 Hill was not even indicted until thirty days after that
12 hearing where the State requested a continuance.

13 The Defense's position was, at the March 1st hearing,
14 and continues to be today, that they were not entitled to an
15 extension as of March 1st, especially when you look at the
16 fact that they didn't even bother to indict Mr. Hill until
17 basically a month after they requested that extension. The
18 case law, State versus Holbrook, 260 S.E. 2d 181, State versus
19 Patterson, 256 S.E. 2d 417 are very clear that the hundred and
20 eighty day rule must be complied with, that yes, a continuance
21 can be granted but it must be for good cause shown. I would
22 submit that no good cause has ever been shown why the case was
23 initially continued, and as a result to do so would be an
24 abuse of discretion, and we would ask that the Court dismiss
25 these charges pursuant to **Holbrook** and **Patterson** based on the

1 State's failure to prosecute within the hundred and eighty
2 days.

3 THE COURT: All right, sir.
4 Solicitor.

5 MR. RICHARDSON: Your Honor, of course I haven't been
6 able to review the transcripts or anything from the March 1st
7 hearing, but I do remember talking about the complexity, and
8 it being a double murder, going through some of that stuff,
9 and I believe too, Mr. Hazzard's first time being able to meet
10 with Mr. Hill was when he was brought back from Tennessee.

11 Once he was brought back from Tennessee we initiated
12 some plea offers, and entered into discussions with regard to
13 whether or not he would want to proffer any sort of testimony.
14 That took some time. I believe the Court was made aware of
15 all of that, but I believe that going through the complexity
16 of having a double murder trial we are not -- even if we
17 didn't go through exactly what was at stake we just asked for
18 a continuance, saying that we were not prepared for the double
19 murder, and that the one hundred and -- initial one hundred
20 eighty days was not sufficient.

21 Your Honor, that was argued. I believe it was -- was
22 that before Your Honor, in Georgetown? And certainly we
23 believe that the reasons that we had available at that time
24 would have been sufficient, and it is within the discretion of
25 the Court, and ask for that -- for -- within the discretion of

1 the State for -- asked for a continuance. We would also -- we
2 believe it's in the discretion of the Court to grant it.

3 And Your Honor, I will also point out that just a few
4 months ago we were ready, and this was first up for trial, and
5 Mr. Hazzard, at that point, had asked for a continuance. So
6 apparently the issues on the State's behalf have been
7 resolved, but there was still issues that were out there, and
8 that second continuance was based on Mr. Hazzard's -- at Mr.
9 Hazzard's request. This Court did grant another continuance
10 until this trial date.

11 **THE COURT:** All right. The -- yes sir, Mr. Hazzard.

12 **MR. HAZZARD:** Thank you, Your Honor. Very briefly, to
13 address what the Prosecutor said, he indicated plea offers.
14 The only plea offer we have ever received in this case was
15 dated March 8th of 2011, which was a week after that hearing.

16 With regard to the continuance that I requested in the
17 middle of June, as I indicated at that time, the reason for
18 requesting that continuance had nothing to do with this case,
19 or the complexity of this case; it was that I was coming off
20 of two murder cases, and in fact, had just finished a murder
21 case the week of June 6th through the 10th, and that following
22 week the Prosecutor wanted to talk about trying this case the
23 first week of the term of July, and that's why that request
24 for a continuance was requested.

25 And that is really -- has nothing to do with the request

1 made by the State on March 1st.

2 **THE COURT:** All right. And I'm -- want to make sure I
3 completely understand your argument. As I remember the
4 hearing in Georgetown, basically the arguments were tied
5 together. The reasons for the Schmerber, that the Schmerber
6 had to be done, I believe the State had -- believe that there
7 was -- there was testing done, as I understand it, in
8 Tennessee, and then the State gave valid reasons at the time
9 of the Schmerber, to have the testing to be done again, and
10 the Court agreed with that, and knowing that the -- as we
11 know, the State Law Enforcement Division is extremely
12 backlogged, as reports have come out. They've got, I think
13 like forty-five hundred pending cases, and they receive more
14 cases each month than they can test, and they've had the loss
15 of employees, and they can't keep up, and that was all, you
16 know, part of it, that there was going to be some delay, and
17 when the Court found there to be valid reason to grant the
18 Schmerber, that there was going to be a delay in the trial,
19 and the Court, obviously in granting the Schmerber knew that
20 and granted a delay in the trial. Now the matter -- the
21 testing, I think, was obviously done, and I think done on an
22 expedited basis at the request of the State, and not in it's
23 ordinary course or we probably still wouldn't have it, but it
24 had -- was done on an expedited basis, and thereafter it came
25 up and the State is correct that ---

1 Mr. Hazzard, you did request, and with great reason,
2 that you had just come off of an extensive murder trial and
3 you needed time to prepare, and certainly I understood that,
4 and was going to grant, and did grant that, so first, I think
5 the matter has been addressed by the Court. I granted it. I
6 granted the extension.

7 Now, if your argument is that, I made a mistake then,
8 then you are putting it on the record and that's fine, but I -
9 - but I found, for all these reasons I'm stating now, and all
10 the reasons that were stated then, that there was a reason for
11 the Schmerber, and then a reason for a continuance, and then a
12 reason for the other continuance when it came up after that,
13 so I don't think there has been any kind of violation of the
14 hundred and eighty days rule based on these matters, and would
15 reaffirm the Court's previous rulings in that matter. I mean,
16 obviously you objected at the time, and I'm sure that
17 sufficed, but you bring it back up again, that's fine. I
18 appreciate that.

19 All right. Anything else, Mr. Hazzard?

20 **MR. HAZZARD:** One other thing, Your Honor. We also had
21 the Schmerber hearing, I believe it was on March 9, and I
22 objected to it at that time, and I do want to place that
23 objection on the record at this hearing to make sure that the
24 record is very clear. As the Court knows, you know, normally
25 any time you are talking about obtaining a sample, a physical

1 sample from a person, has to be done pursuant to a search
2 warrant, pursuant to 17-13-140 of the South Carolina Code of
3 Laws. Statutory law -- I mean, case law also says that a
4 court order may take the place of that search warrant.

5 Under Illinois v. Gates there is no question that it's
6 permissible for there to be hearsay in the hearing, because
7 there has to be a hearing before the judicial officer. We had
8 that in that Schmerber hearing. As I recall, a representative
9 for the State got on the stand and testified as to the
10 probable cause that a matching sample, or valid evidence would
11 be found from the person of Bruce Hill, and as I recall what
12 he said was that he did not work for SLED; he did not do any
13 testing; he had no knowledge of DNA, but that he had seen some
14 documentation purported to be from SLED that said there was a
15 Codus hit for Bruce Hill, and our position was then, and
16 continues to be now, Your Honor, that when that type of
17 information is used for the purpose of determining whether or
18 not an order or a warrant is going to be issued the
19 factfinder, the Judge, the judicial officer, doesn't have a
20 role in that. In other words, there was no documentation for
21 this Court to review in making a determination, an
22 independent, neutral and detached determination as to whether
23 or not an order, pursuant to Schmerber, to obtain a DNA sample
24 from Mr. Hill was appropriate or proper or not, and as a
25 result I want to reiterate that objection, and ask that the

1 Court reconsider and exclude the sample obtained pursuant to
2 that Schmerber hearing held back in March of this year.

3 THE COURT: Well, all right. As far as the matter to
4 reconsider, if you want to present -- do you have a copy of
5 the transcript?

6 MR. HAZZARD: Of the March 9th hearing?

7 THE COURT: Yes sir.

8 MR. HAZZARD: No sir, Your Honor.

9 THE COURT: All right. Solicitor, let me hear from
10 you.

11 MR. RICHARDSON: Your Honor, I remember that -- that
12 hearing, in part, and I remember it was a great deal of
13 testimony. I believe that the State presented Todd Cox. He
14 had said that he was made aware that there was, of course, a
15 Codus hit that matched to Mr. Hill. From that we
16 established -- we made the case before Your Honor that there
17 was probable cause if -- at least more likely than not, that
18 some other testing was required, and we asked -- and we
19 presented that at that Schmerber hearing.

20 Your Honor, I don't see any abuse of discretion in
21 granting the sample. We argued about the -- I remember the
22 invasion of his privacy, and that we were just asking for a
23 Buccal swab at that time. Just to enlighten the Court, there
24 had been a search warrant issued in Tennessee, and that had
25 been sent to SLED, and came back to Bruce Hill, but we didn't

1 rely upon that for our probable cause. We relied upon the
2 Codus hit because we couldn't the paperwork for the search
3 warrant, and of course there would have had to have been
4 duplicate signings in Tennessee, and we would have needed to
5 use that, so that was the purpose of having the Schmerber
6 hearing. I remember basing it upon the information that there
7 was, in fact, a Codus hit that Your Honor heard. And again,
8 we don't believe that abused your discretion in finding for
9 the State on the Schmerber motion.

10 **THE COURT:** All right, sir. As to the matter -- the
11 matter was previously addressed by the Court. I made a ruling
12 on the record and that was the ruling at that point in time.

13 Mr. Hazzard, if you want me to reconsider it I'll need a
14 copy of the transcript, because I don't have in front of me
15 all the matters that were presented, nor a record of that,
16 so -- but the Court heard the matter, made a ruling, and that
17 was the Court's ruling at the time based upon what was
18 presented at that point in time.

19 Anything else?

20 **MR. HAZZARD:** Nothing further on behalf of the
21 Defendant, Your Honor.

22 **THE COURT:** All right. Very good.

23 All right, so ---

24 **MR. HAZZARD:** Hold -- one moment. Let me confer with
25 my client.

1 THE COURT: Yes sir.

2 (MR. HAZZARD CONFERS WITH HIS CLIENT OFF THE RECORD.)

3 MR. HAZZARD: Thank you, Your Honor. Against my advice
4 and counsel the Defendant wishes to be allowed to address the
5 Court at this time.

6 THE COURT: All right.

7 Madam Clerk, place Mr. Hill under oath, please.

8 BRUCE ANTWAIN HILL, being first
9 duly sworn, testifies as follows:

10 THE COURT: All right, Mr. Hill -- before you say
11 anything to me I want to tell you, you have now been placed
12 under oath by the Clerk of Court. Anything that you say now
13 can and may be used by the State of South Carolina against you
14 in this upcoming prosecution against you regarding the two
15 counts of murder, and burglary in the first degree. It can
16 prejudice your rights; it can hurt your case. I'm sure your
17 attorney has told you this, but do you understand that? Sir?

18 MR. HILL: Yes, I understand, Your Honor.

19 THE COURT: All right, sir, and understanding that, and
20 understanding that it can be used against you, that it could
21 very well hurt your defense in these upcoming cases, do you
22 now want to continue and make this statement to the Court?

23 MR. HILL: No sir, Your Honor.

24 THE COURT: Very good. Thank you very much. Have a
25 seat.

1 **MR. HAZZARD:** Nothing further from the Defense, Your
2 Honor.

3 **THE COURT:** All right, very good. Gentlemen, as I
4 understand it, the matter will proceed to trial on Monday,
5 September 12th. Obviously we will qualify the jury at that
6 point in time, Monday morning, and proceed with this case
7 immediately thereafter, so if there are any other issues
8 please do not hesitate to bring them to my attention, but I
9 will see y'all Monday morning, September 12th.

10 Thank you very much.

11 **MR. HEMBREE:** Thank you, Your Honor.

12 -----END OF MOTION HEARING -----
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1 (THE FOLLOWING TAKES PLACE ON SEPTEMBER 12, 2011, AFTER
2 A GENERAL QUALIFICATION OF THE JURY VENIRE.)

3 (BENCH CONFERENCE TAKES PLACE OFF THE RECORD.)

4 THE COURT: All right, ladies and gentlemen, I
5 appreciate there's going to be a little bit of an
6 inconvenience for you at this point in time, but there is a
7 matter that I have to take up outside your presence. I have
8 to hear fully from the State and the Defense on a matter, and
9 y'all can't be in the courtroom at that point in time while we
10 are doing that, so what I'm going to ask that you do -- what
11 I'm going to have to ask you to do is to go out into basically
12 the hallways. There are some conference rooms that are on
13 this side. Maybe if you can stay on this side. There are
14 some on the other side, but don't go anywhere; don't leave
15 this floor. There's bathrooms on this floor. Don't go
16 anywhere, okay, because you are going to be coming back here
17 in the courtroom in a little while, not very long. In just a
18 little while you are going to be coming back in the courtroom,
19 so please go out and expect to be called back into the
20 courtroom.

21 Thank you very much.

22 (THE FOLLOWING TAKES PLACE OUTSIDE THE PRESENCE OF THE
23 ENTIRE JURY VENIRE.)

24 THE COURT: All right. Let me hear from you, please
25 sir.

1 (SUN NEWS ARTICLE POSTED 9/10/11, SIX PAGES, MARKED
2 DEFENDANT'S EXHIBIT NUMBER ONE FOR IDENTIFICATION, AND FOR
3 PURPOSES OF THIS MOTION ONLY, NOT TO GO TO THE JURY.)

4 **MR. HAZZARD:** Thank you, Your Honor. The Court has
5 just gone through a voir dire up at the bench with certain
6 jurors, those being 388, 203, 116, 287, 167, 334, number 2,
7 number 244, and number 32. That is virtually one-fifth of our
8 jury panel that said that they have read, in the newspaper,
9 and heard on television matters about this case, and that
10 gives the Defense a great cause for concern.

11 We have handed up some documentation, and I think it has
12 been entered as Defense's Exhibit Number 1 for the purpose of
13 motion hearings, or considered as Court's Exhibit; I'm not
14 sure; but specifically, Saturday, September 10th, 2011, the
15 Sun News article quotes Deputy Solicitor Jimmy Richardson,
16 quotes Detective Cox from the Horry County Police Department,
17 and it would be one thing, Judge, if it only talked about this
18 particular charge, and that the case is going to trial.

19 What it talks about also is, Hill was ordered to serve a
20 seven year prison sentence in Tennessee for a conviction of
21 aggravated robbery November 15th of 2006. It talks about how
22 Horry County Police claim that his DNA is matched to two
23 separate samples from the Parkers' home, as well as an
24 unrelated home invasion and armed robbery that occurred in
25 2006 in Long, and then it goes on and talks about an assault

1 and battery with intent to kill and armed robbery charges, and
2 a separate home invasion October 17th of 2006, where police
3 found a latex glove that contained DNA matching Hill.

4 Now, Your Honor, this information comes from the State.
5 They have salted the community with it. It is not a situation
6 where anyone from the Defense was out giving interviews on the
7 courthouse steps, or calling the media, or anything of this
8 nature, but as a result of the action of the State and it's
9 agents we now have one-fifth of our jury panel who indicates
10 that they have read of, heard of, and seen information
11 regarding this case.

12 And I realize that when the Court questioned these
13 jurors at the bench that, with the exception of Number 32 and
14 Number 167, who I believe, if I'm not mistaken, were set aside
15 for this particular trial, that the remainder claim that they
16 could give both the State and the Defense a fair and impartial
17 trial.

18 When you are talking about that number of individuals,
19 Your Honor, and when you are talking about information that
20 specific in the Sun News as to other charges for which this
21 man has never been convicted, and information allegedly about
22 DNA matches and links before there is ever one shred of
23 testimony I would submit that that jury panel, at least a good
24 one-fifth of that jury panel, is going to be left with a
25 feeling of residual guilt toward the Defendant that will inure

1 to his detriment.

2 Your Honor, the Defense asks, at this time, for a change
3 of venue in this case.

4 **THE COURT:** All right. Very good.

5 Before I hear from you, Solicitor, let's put on the
6 record so that we are clear. I had the jurors identify
7 themselves, and then, one by one, I called the juror to the
8 bench, at which time the Solicitor and Deputy Solicitor were
9 present, and the Defense attorney. I asked each juror what
10 they knew, or thought they knew, or had any information about.
11 There were some that had read the Sun News recently, the
12 newspaper article which is marked as Defendant's Exhibit 1,
13 some of them had some information from back in 2005, a couple
14 didn't hardly remember anything at all, but what I did was,
15 for each juror, I explained to them their job, and -- as
16 follows: Basically that their job was to hear the evidence
17 that was presented in this courtroom, either from the witness
18 stand, the witnesses under oath, or any documents or exhibits
19 that were introduced into evidence, and that the juror must
20 base their decision solely and completely on the information
21 they heard in the courtroom and from no other source, that
22 they could not let any information that they knew, or thought
23 they knew, affect their decision in any way. I pointed out to
24 all of them they didn't have any idea whether or not that
25 information was even true or not, but besides that, that they

1 couldn't use that information, they couldn't think about it,
2 they could not let it affect their decision in any way, and so
3 what we did was, I made sure -- and each juror acknowledged --
4 they understand that was their job as a juror. I thereafter
5 asked each juror could they then give to the State of South
6 Carolina, and to the Defendant, a fair and impartial trial,
7 that is, could they set aside any information they thought
8 they knew, or they knew in their mind, and base their decision
9 solely and completely on the information presented in the
10 courtroom and from no other source. Without exception, except
11 for the two people we are going to talk about, one sixty-seven
12 and thirty-two, all the jurors said absolutely yes, that they
13 could do that, and they would, you know, base their decision
14 solely and completely on the information presented in the --
15 in the courtroom.

16 Now, Juror Number 167 had personal contact with one of
17 the deceased, Ms. -- she knew her as Diane, but Gloria Mills
18 Parker. They had some type of businesses -- I would call them
19 nick-knacks, but antiques, those types of things -- that were
20 close to each other, they had constant contact, this Diane
21 Parker had made certain comments to her about her daughter,
22 and the juror told the Court that she could not be fair and
23 impartial, couldn't set that aside.

24 The other juror, Number thirty-two, stated that from
25 church there were friends of the deceased, especially one

1 individual who talked about the case a lot, and he said as
2 recently as one month ago, was talking about the case, and
3 when I asked the juror if he could be fair and impartial and
4 set that aside he informed the Court that he could not, so I
5 excused those two jurors that told the Court they could not be
6 fair and impartial.

7 But the other jurors did say to the Court that yes, they
8 could be fair and impartial, and I found those jurors could
9 remain in the pool.

10 Is that your understanding and recollection of what
11 occurred, Solicitor?

12 **MR. HEMBREE:** Yes, Your Honor, it is.

13 **THE COURT:** Mr. Hazzard.

14 **MR. HAZZARD:** Yes sir, that would be a correct
15 recitation of what occurred.

16 **THE COURT:** All right. Very good.

17 All right, Solicitor, let me hear from you about the
18 arguments that Mr. Hazzard made, please.

19 **MR. HEMBREE:** Well, Your Honor, the most concerning, I
20 think, is his misunderstanding of the Sun News article that
21 was published on Saturday, September 10th. Mr. Hazzard has
22 led the Court to believe that all the facts included in that
23 article were, in some way, communicated to the Sun News by
24 Deputy Solicitor Jimmy Richardson. That simply is not so. If
25 you -- a closer read of the article will indicate that the

1 only thing Mr. Richardson told the Sun News when they called
2 for information about this case recently was that the case was
3 going to trial on Monday, that it was scheduled for -- to
4 begin today, and that was -- that was the extent. It was
5 merely a scheduling -- a scheduling question which we
6 routinely answer, but we do not answer questions about
7 evidence; we do not comment on evidence, and we did not, and
8 Mr. Richardson did not comment on evidence when he spoke to --
9 when he spoke to Tonya Root last week.

10 The other matters that are contained in this article,
11 Your Honor, and that's -- and that's critical, because Mr.
12 Hazzard has suggested that the State has salted the mind, that
13 we have gone out of our way to somehow inject these facts into
14 a newspaper article. That's simply not true. I don't believe
15 he can -- he can substantiate that, other than to what's in
16 the basis of the article itself. And what's in the article
17 says that Jimmy Richardson said the case was going to trial on
18 Monday, and that was it.

19 The reporter even goes so far as to refer to the court
20 hearing back in March. It was a Schmerber hearing that was in
21 front of Your Honor in which Detective Todd Cox testified
22 about the basis of the need for a -- for a blood sample, and
23 of course there were very detailed facts that were included in
24 that open court hearing, and certainly it was appropriate for
25 the media to be there. He or she has referred to what Todd

1 Cox said about the blood samples in the house, about the home
2 invasion, and all the other things that go on here were said
3 by Detective Cox which, once again, was in the course of an
4 open court hearing where, you know, just no way around it.

5 I guess had Mr. Hazzard chosen to he could have
6 requested that the media been banned from that pretrial
7 hearing; we wouldn't have objected to that; but he didn't
8 request that, and therefore they were able to collect this
9 information and report it on Saturday, but it was not at the
10 urging or at the suggestion of the State. Nothing was said by
11 the State to -- other than during the court hearing -- that is
12 included in this article that he takes issue with.

13 I don't -- I did not hear him object to the fact that
14 the case was scheduled for trial. I don't know that he has an
15 objection about the State commenting on the scheduling matter,
16 but I think he's more concerned about the substance,
17 understandably, but that was not done by the State.

18 Your Honor, as far as the process is concerned that was
19 used by the Court just a few minutes ago, the jurors were
20 individually voir dired. Nine out of fifty is not a
21 unreasonable number. We have certainly had cases in this
22 jurisdiction where we've had a much higher number of juror
23 that have had -- had been exposed to some kind of media about
24 a case. That percentage is, in my view, one of this nature
25 that's received as much media attention as it has, is a

1 relatively low number, but regardless, the number really isn't
2 the key, and the key is, can the jurors set aside -- and the
3 inquiry the Court made -- can they set aside whatever exposure
4 they have had to any outside media or other influences, and be
5 fair and impartial, both to the State and to the Defendant.
6 That's the fundamental question.

7 The process that was used in this case, Your Honor, was
8 an individual voir dire, each juror was questioned
9 individually about what they knew. I noted, as I noted -- I
10 took some notes on their responses. With two exceptions the
11 understanding of the case was very general. It was typically
12 something they heard back in 2005; they really didn't offer
13 any details; their recollections were sketchy. As shared with
14 the Court, there were a couple that remembered there was
15 something about a daughter and a boyfriend, but that was the
16 extent of their detailed knowledge, so their knowledge is
17 very, very vague and general in nature. Each and every one,
18 but for the two who did have -- the two, Hogan and Brazell,
19 did have more specific exposure to specific information.
20 The -- Hogan was exposed to -- had personal contact with Diane
21 Parker, knew her, had heard -- she actually, theoretically,
22 could have been a witness in the case, so she -- she certainly
23 was one that had specific knowledge, specific recollection,
24 and indicated that she could not set it aside. When asked the
25 very same questions by the Court that each other juror was

1 asked, just to be on the safe side she said that she could not
2 set that aside. Likewise Mr. Brazell had friends of the
3 victims, they attend his father's church. He's been exposed
4 to, you know, more personal and direct communication about the
5 case, therefore he said he could not be unbiased, and he could
6 not set it aside, and the Court has proper excused those two
7 jurors.

8 The other seven that were questioned, again, were -- the
9 process was -- it was the same process used with every single
10 juror, the same question was asked; it was a process that was
11 imminently fair.

12 The law that controls here, Your Honor, is -- well, just
13 generally, State v. Manning, 329 -- excuse me -- 495 S.E. 2d
14 195; the best practice is to try to seat a jury prior to
15 ruling on a motion to change venue, and essentially by doing
16 that, State v. Easler, the general practice that is suggested
17 by the Appellate Courts is to postpone a ruling until the
18 panel is voir dired, as it has been done in this case. That's
19 State v. Easler, 489 S.E. 2d 617.

20 And we go to the standard on pretrial publicity. Mere
21 exposure -- and this is out of State v. Evans, 645 S.E. 2d
22 904. "Mere exposure pretrial publicity does not automatically
23 disqualify potential jurors. The question is not whether the
24 community remembered the case, but whether jurors had such
25 affixed opinions that they could not judge the Defendant's

1 guilt impartially."

2 Of course that was also followed in State v. Tucker and
3 Patton v. Yount, so, Your Honor, the law is clear, the
4 question is not, has there been exposure; the question is, in
5 spite of that exposure can there -- can there be fair and
6 impartial jurors. The Court has made the appropriate voir
7 dire and inquiry of these jurors, and has excluded the ones
8 that cannot be fair and impartial. Your Honor, we would ask
9 that the motion be denied.

10 **THE COURT:** Yes sir. I was going to ask you, Mr.
11 Hazzard.

12 **MR. HAZZARD:** Thank you, Your Honor. Very briefly.

13 First of all, Your Honor, with regard to the Sun News
14 articles, I don't impute Jimmy Richardson in any way. He's a
15 friend of mine, has been for years. The article stands on
16 it's own, and if you want to parse it, yes, Deputy Solicitor
17 Richardson says the case is going to trial. There is then the
18 third paragraph that talks about the DNA link, and his seven-
19 year prison sentence, and then it says, which anyone can get
20 from any website. I understand that. But then it says, when
21 he was admitted into the Tennessee prison system a sample of
22 his DNA was taken and uploaded into a national data base.
23 That's not something that is commonly available for any member
24 of the media or any common member.

25 And also, when I use the term, the State, I am referring

1 to all agencies of the State, not just the Solicitor's office,
2 because I did mention that Todd Cox obviously said certain
3 things. For instance, one thing that was not in the least bit
4 mentioned in that Schmerber hearing was the paragraph that
5 says, "Hill also faces assault and battery with intent to kill
6 and armed robbery charges in a separate home invasion that
7 occurred on October 17, 2006." Had absolutely nothing to do
8 with the Schmerber hearing.

9 Also, the Prosecutor, Mr. Hembree, says that their
10 office does not ever comment on facts. I would ask the Court
11 to turn it's attention to Exhibit Number 2, which was WBTW's
12 story of September 11, 2011. The third paragraph it says,
13 "Fifteenth Circuit Solicitor Greg Hembree said Hill's blood
14 was found on a window at the Parkers' home, where it looked as
15 though someone cut themselves while trying to break in." Now,
16 if that's not commenting on the facts of the case I don't know
17 what is, or I do always give the Solicitor the benefit of the
18 doubt. Perhaps he was misquoted in some fashion.

19 But, Your Honor, I -- we stand on our position that it's
20 not just the fact that stories exist, it's the fact that the
21 stories talk about this man's prior record; it talks about
22 matches that haven't been proven, the DNA, and it talks about
23 other charges that he has never gone to trial on, never been
24 convicted of, and I just think that it would -- I definitely
25 think it would leave a feeling of residual guilt that will

1 inure to his detriment, Your Honor.

2 THE COURT: All right. Thank you.

3 MR. HEMBREE: Judge, I ---

4 THE COURT: And I appreciate it, Solicitor, and I
5 understand that you don't agree with the statements, and he
6 doesn't agree, and I appreciate that. I think I've heard
7 enough of that, all right. Thank you.

8 MR. HEMBREE: Thank you, Your Honor.

9 THE COURT: The standard -- it's set in several cases.
10 One of those is State v. Manning, but there's a number of
11 other cases, Patterson, number of others. Basically the
12 standard is that, when jurors have been exposed to pretrial
13 publicity it's not error -- a denial of a change of venue is
14 not error when the jurors are found to have the ability to set
15 aside any impressions or opinions and render a verdict based
16 on the evidence presented at trial, therefore mere exposure to
17 pretrial publicity does not automatically disqualify a
18 prospective juror, instead, the relevant question is not
19 whether the community remembered the case, but whether the
20 jurors had such fixed opinions that they could not judge
21 impartially the guilt of the defendant. The moving party
22 bears the burden of showing actual juror prejudice as a result
23 of such publicity.

24 And the case also notes, "The defendant's right to be
25 tried in the county where the alleged crime was committed is

1 an ancient right, and well-recognized at Common Law, however,
2 this privilege is conditioned upon a possibility of impaneling
3 an impartial jury in that county. Because the situs of the
4 alleged crime is usually the home of the defendant this right
5 allows the defendant to surround himself with the influences
6 of his good character, and if he -- if he establishes one, and
7 the witnesses are accessible for the purposes of trial."

8 I believe that, in questioning the jurors that the Court
9 allowed to remain in the pool so far -- obviously we haven't
10 finished the voir dire -- but those being 388, 203, 116, 287,
11 334, 2 and 244, I believe the Court has followed the proper
12 standard. All those jurors have expressed to the Court that
13 they can give to the State and the Defendant a fair and
14 impartial trial, that anything that they thought they knew, or
15 thought they heard, or whatever the case was, they could set
16 that aside and based their decision solely and completely on
17 the facts and evidence presented in this courtroom, and from
18 no other source, therefore I would respectfully decline to
19 grant the motion for a change of venue, the Court having
20 excused the two jurors that indicated they could not follow
21 that standard.

22 Anything further as to that motion before we continue
23 with the voir dire, Mr. Hazzard?

24 **MR. HAZZARD:** No sir, Your Honor. The Defense does
25 want to thank the Court, because it realizes it did

1 inconvenience the jury a great deal, but it does thank the
2 Court for taking it up and putting it on the record at this
3 time.

4 THE COURT: Yes sir. Thank you.

5 All right. Let's see if we can't get the jury panel
6 back in, please.

7 (THE FOLLOWING TAKES PLACE WITHIN THE PRESENCE OF THE
8 JURY VENIRE.)

9 (NOTE MARKED COURT'S EXHIBIT NUMBER 1.)

10 THE COURT: All right, ladies and gentlemen, we are
11 going to continue now with the -- with voir dire. Those are
12 the questions that I need to ask you before we select a jury
13 in this case, so we'll continue on with that.

14 The next thing is, I'm going to read to you certain
15 possible or potential witnesses. These are parties that might
16 be called as witnesses in this case. Doesn't necessarily mean
17 that all of them will be, but certainly there's a potential
18 for any of these to be called.

19 Sheree Brown, South Carolina Law Enforcement Division,
20 Heather Brummett, Horry County Police Department, Betty
21 Butler, South Carolina Law Enforcement Division, George
22 Carrick, Tyler Caines, CSS John R. Caulder, Horry County
23 Police Department, Detective Todd Cox, Steve Lambert, South
24 Carolina Law Enforcement Division, David McClure, South
25 Carolina Law Enforcement Division, Detective Chad Mullinax,

1 Dr. Clay Nichols, Jennifer Parker, Lori Rabon, Horry County
2 Police Department, Amy Stephens, South Carolina Law
3 Enforcement Division, Katie Urka, U-r-k-a, South Carolina Law
4 Enforcement Division, Doris Yarbrough, South Carolina Law
5 Enforcement Division, and Sergeant Beatty, B-e-a-t-t-y, Myrtle
6 Beach Police Department.

7 Is there any member of the jury panel that's related by
8 blood or marriage, close personal friends, acquaintances of
9 any of these possible or potential witnesses, or the
10 Defendant, Bruce Antwain Hill, if so, please stand.

11 All right. Yes Ma'am. Your name and juror number,
12 please.

13 A. Dianne Bohannon.

14 **THE COURT:** All right, Ma'am, and who is it the you
15 might know?

16 A. Rick Beatty.

17 **THE COURT:** Let me just ask you the qualification
18 question. Despite the fact that you may know Mr. Beatty and
19 he may or may not be called as a witness in this case, can you
20 give to the State of South Carolina and to the Defendant a
21 fair and impartial trial, that is, can you be a fair and
22 impartial juror in this case?

23 A. Yes sir.

24 **THE COURT:** Thank you very much, Ma'am.

25 I'm sorry. Your juror number again was.

1 A. Twenty-six.

2 THE COURT: Twenty-six. Thank you, Ma'am.

3 Anybody else?

4 All right. Is there any member of the jury panel that,
5 either you, yourself, or a member of your immediate family has
6 ever had any matters of any kind handled in any way by the
7 Fifteenth Circuit Solicitor's Office? That's the prosecutor's
8 office that's located in Horry and Georgetown Counties; if so,
9 please stand.

10 Yes sir, Mr. Young.

11 A. Yes, Your Honor. I'm Number 399. I've dealt with the
12 Solicitor's Office, and I know Mr. Hazzard.

13 THE COURT: Can you give to the State of South Carolina
14 and to the Defendant a fair and impartial trial; can you be a
15 fair and impartial juror in this case?

16 A. Yes, Your Honor.

17 THE COURT: Thank you very much.

18 MR. HAZZARD: Your Honor, may Solicitor Hembree and I
19 approach right quick?

20 THE COURT: Absolutely.

21 MR. HAZZARD: Thank you, sir.

22 (BENCH CONFERENCE TAKES PLACE OFF THE RECORD.)

23 THE COURT: Just so that I'm clear what I'm talking
24 about, the Fifteenth Circuit Solicitor's Office, they handle
25 cases in Circuit Court; they handle cases in Family Court;

1 they handle cases in Magistrate's Court, so we are talking
2 about all the possible courts that the matters could have been
3 raises, so again -- and I'll get to you in just one second,
4 Ma'am.

5 So has any member of the jury panel, either you,
6 yourself, or a member of your immediate family, had any
7 matters of any kind handled by the Fifteenth Circuit
8 Solicitor's Office in any possible court system; if so, please
9 stand.

10 All right. Yes Ma'am, you stood up for a while. Your
11 name and juror number.

12 A. It's Karen Pearce, Number 352. I don't know if this is
13 required or not. My husband is a police officer with Myrtle
14 Beach Police Department, and I know he has testified in cases.

15 **THE COURT:** All right. Can -- since you've brought it
16 to the Court's attention, can you give to the State of South
17 Carolina, can you give to the Defendant a fair and impartial
18 trial; can you be a fair and impartial juror in this case?

19 A. Yes sir.

20 **THE COURT:** Thank you very much.

21 Yes Ma'am. Your name and juror number, please.

22 A. Nancy Littles, 212.

23 **THE COURT:** Yes Ma'am.

24 A. My son had a court date.

25 **THE COURT:** In -- okay. All right. Can you give to

1 the State of South Carolina and to the Defendant a fair and
2 impartial trial; can you be a fair and impartial juror in this
3 case?

4 A. Yes sir.

5 THE COURT: Thank you very much, Ma'am.

6 Yes Ma'am.

7 A. Bethany Harris, juror Number 254.

8 THE COURT: Yes Ma'am.

9 A. My ex-husband has been here before.

10 THE COURT: All right. Can you give to the State of
11 South Carolina and to the Defendant a fair and impartial
12 trial; can you be a fair and impartial juror in this case?

13 A. Yes sir.

14 THE COURT: Thank you very much, Ma'am.

15 Yes Ma'am.

16 A. My name is Judith Slayton, Number 324, and my husband
17 has been ---

18 THE COURT: Has appeared in court.

19 A. Yes sir.

20 THE COURT: Very good, Ma'am. Can you give to the
21 State of South Carolina and to the Defendant a fair and
22 impartial trial; can you be a fair and impartial juror in this
23 case?

24 A. Yes sir.

25 THE COURT: Thank you very much.

1 All right. Is there any member of the jury panel that,
2 either you, yourself, or a member of your immediate family,
3 has ever had any matters handled, of any kind, by the
4 Fifteenth Circuit Public Defender's Office? That would either
5 be here in Horry, or Georgetown County. Any matters
6 whatsoever, if so, please stand.

7 Is there anybody that -- member of the potential jury
8 panel that's related by blood or marriage, or close personal
9 friends or acquaintances of anybody employed by the Fifteenth
10 Circuit Solicitor's Office; if so, please stand?

11 Is there anybody that's related by blood or marriage,
12 close personal friends or acquaintances of anybody employed at
13 the Public Defender's Office, either in Horry County or
14 Georgetown County; if so, please stand?

15 All right, Solicitor, if you want to stand and identify
16 yourself and members of your staff.

17 **MR. HEMBREE:** Thank you, Your Honor. My name is Greg
18 Hembree. I'm the Solicitor for the Fifteenth Circuit. I'll
19 be trying this case on behalf of the State, with Chief Deputy
20 Solicitor Jimmy Richardson.

21 **THE COURT:** Thank you very much.

22 Mr. Hazzard.

23 **MR. HAZZARD:** Thank you, Your Honor.

24 **THE COURT:** Yes sir.

25 **MR. HAZZARD:** Good afternoon. My name is Ron Hazzard.

1 I'm employed with the Fifteenth Circuit Public Defender
2 Office. As the Judge said, we do cases in Horry County and
3 Georgetown County.

4 THE COURT: Thank you.

5 Is there any member of the jury panel that's related by
6 blood or marriage, close personal friends, acquaintances of
7 these gentlemen that have introduced themselves to you that
8 has not already been identified to the Court; if so, please
9 stand?

10 All right. Is there any member of the potential jury
11 panel that you believe you have some kind of personal,
12 political, religious, philosophical belief that you believe
13 would prevent you from being a fair and impartial juror in
14 this case; if so, please stand?

15 All right. Yes Ma'am, your name and juror number,
16 please.

17 A. Tina Queen, 281.

18 THE COURT: All right, Ma'am, come forward and -- come
19 talk to me, please.

20 Counsel.

21 (BENCH CONFERENCE TAKES PLACE OFF THE RECORD.)

22 THE COURT: All right. Madam Clerk, I'm going to set
23 Juror Number 281 aside at this -- from this particular case
24 only.

25 DEPUTY CLERK OF COURT: Yes sir.

1 **THE COURT:** Ma'am, Juror Number 281, I have set you
2 aside from this particular case only. What I'm going to have
3 you do is, I'll excuse you until 1:45. You will need to be
4 back downstairs in the jury assembly room to see if you are
5 selected on that jury with Judge Hyman.

6 All right. Thank you, Ma'am.

7 All right. Is there any member of the jury panel that
8 you, yourself, were a former law enforcement officer, or
9 you've got a current family member who is now in law
10 enforcement, or was in the past in law enforcement? If any of
11 that applies to you, please stand.

12 All right. Yes Ma'am, right there in the middle. Your
13 name and juror number, please.

14 A. Sandy Moore, Juror 244.

15 **THE COURT:** Yes Ma'am.

16 A. My father is the Police Chief in Aynor ---

17 **THE COURT:** In Aynor. All right. Can ---

18 A. ---James Cooper.

19 **THE COURT:** All right. Very good. Can you give to the
20 State of South Carolina and to the Defendant a fair and
21 impartial trial; can you be a fair and impartial juror in this
22 case?

23 A. Yes sir.

24 **THE COURT:** Thank you very much, Ma'am.

25 All right. Yes Ma'am. Right here.

1 A. One ninety-seven, Joyce Kasperski. My husband is a
2 retired Philadelphia police officer.

3 THE COURT: Can you give to the State of South Carolina
4 and to the Defendant a fair and impartial trial; can you be a
5 fair and impartial juror in this case?

6 A. Yes.

7 THE COURT: Thank you very much, Ma'am.
8 Yes Ma'am.

9 A. I have various cousins ---

10 THE COURT: I'm sorry. First I need for you to ---

11 A. I'm sorry. Dianne Bohannon, Number 26.

12 THE COURT: Very good.

13 A. I have various cousins who are on Myrtle Beach P.D., my
14 mom was the first female cop on the Myrtle Beach PD, various
15 others retired.

16 THE COURT: All right. Very good. Can you give to the
17 State of South Carolina and to the Defendant a fair and
18 impartial trial; can you be a fair and impartial juror in this
19 case?

20 A. Yes, I can.

21 THE COURT: Thank you very much.
22 Yes Ma'am.

23 A. Susan Miele, Juror 234.

24 THE COURT: Yes Ma'am.

25 A. My husband is retired by New Jersey State Police.

1 **THE COURT:** Can you give to the State of South Carolina
2 and to the Defendant a fair and impartial trial; can you be a
3 fair and impartial juror in this case?

4 A. Yes sir.

5 **THE COURT:** Thank you very much, Ma'am.

6 Yes sir.

7 A. Juror 91, Harold Dixon. My brother-in-law is a North
8 Carolina Highway Patrol.

9 **THE COURT:** Can you give to the State of South Carolina
10 and to the Defendant a fair and impartial trial; can you be a
11 fair and impartial juror in this case?

12 A. Yes sir.

13 **THE COURT:** Thank you very much.

14 Yes Ma'am.

15 A. Karen Pearce, Number 352. My husband is currently
16 employed with the Myrtle Beach Police Department.

17 **THE COURT:** Can you give to the State of South Carolina
18 and to the Defendant a fair and impartial trial; can you be a
19 fair and impartial juror in this case?

20 A. Yes sir.

21 **THE COURT:** Thank you very much, Ma'am.

22 All right. Is there any member of the jury panel,
23 either you, yourself, or a member of your immediate family, a
24 member of any kind of victims' rights or law enforcement
25 support organizations? Let me give you a couple of examples.

1 It's not an exhaustive list of any kind, just kind of examples
2 of what I'm talking about. Citizens Against Violent Crime,
3 Mothers Against Drunk Driving, the South Carolina Law
4 Enforcement Officers' Association, South Carolina Sheriffs'
5 Association, just some kind of victims' rights or law
6 enforcement support organizations; if so, please stand.

7 All right. The next question I'm going to ask you,
8 ladies and gentlemen, is whether you, yourself, or a member of
9 your immediate family, has ever been the victim of a crime.
10 Now, I am not going to ask you what occurred; I do not want
11 you to volunteer any information to me about what occurred.
12 The question is going to be straight-forward; was it yourself
13 or a family member, and then I will ask the qualification
14 question. So, is there any member of the potential jury panel
15 ---

16 (AT THIS TIME A CELL PHONE RINGS IN THE COURTROOM.)

17 Let's all take a minute right now. If y'all have cell
18 phones I want y'all to check it and make sure that they are
19 turned off. The next one that goes off is going to get seized
20 by the Deputy Sheriffs, and you will not see that
21 communication device again.

22 All right. Let's go back to the question. Is there any
23 member of the jury panel, either you, yourself, or a member --
24 I'm sorry -- whether either you, yourself, or a member of your
25 immediate family, ever been the victim of a crime, if so,

1 please stand.

2 All right. Yes Ma'am. Your name and juror number,
3 please.

4 A. 197, Joyce Kasperski.

5 THE COURT: All right, Ma'am. Was it yourself, or a
6 family member, or both?

7 A. Both.

8 THE COURT: Can you give to the State of South Carolina
9 and to the Defendant a fair and impartial trial; can you be a
10 fair and impartial juror in this case?

11 A. Yes.

12 THE COURT: Thank you very much, Ma'am.

13 Yes sir, on the end there.

14 A. Juror 332, John Sorokach.

15 THE COURT: All right, sir. Was it yourself, a family
16 member, or both?

17 A. Both.

18 THE COURT: Can you give to the State of South Carolina
19 and to the Defendant a fair and impartial trial; can you be a
20 fair and impartial juror in this case?

21 A. Yes.

22 THE COURT: Thank you very much.

23 Yes sir.

24 A. Kevin Chestnut, Number 58.

25 THE COURT: Yourself, family member or both?

1 A. Both.

2 THE COURT: Can you give to the State of South Carolina
3 and to the Defendant a fair and impartial trial; can you be a
4 fair and impartial juror in this case?

5 A. Yes.

6 THE COURT: Thank you very much.
7 Yes Ma'am.

8 A. Robin Banister, Juror 13.

9 THE COURT: Was it yourself, family member or both?

10 A. Family member.

11 THE COURT: Can you give to the State of South Carolina
12 and to the Defendant a fair and impartial trial; can you be a
13 fair and impartial juror in this case?

14 A. Yes sir.

15 THE COURT: Thank you very much.
16 Yes sir. Right behind her.

17 A. Bruce Roper, Juror 298.

18 THE COURT: And was it yourself, a family member or
19 both?

20 A. Family member.

21 THE COURT: Can you give to the State of South Carolina
22 and to the Defendant a fair and impartial trial; can you be a
23 fair and impartial juror in this case?

24 A. Yes, Your Honor.

25 THE COURT: Thank you very much.

1 Yes sir.

2 A. Steve Meghee, Juror 227.

3 THE COURT: And was it yourself, family member of both?

4 A. Myself.

5 THE COURT: Can you give to the State of South Carolina
6 and to the Defendant a fair and impartial trial; can you be a
7 fair and impartial juror in this case?

8 A. Yes sir.

9 THE COURT: Thank you very much.

10 All right, ladies and gentlemen, I'm going to ask you
11 what I classify as my general or catch-all question. Do you
12 have any question; do you know of any reason, have any
13 question in your mind that you believe you cannot give to the
14 State of South Carolina and to the Defendant a fair and
15 impartial verdict in this matter, that is, for any reason
16 whatsoever you believe you cannot be a fair and impartial
17 juror in this case; if so, please stand?

18 Further questions from the State.

19 MR. HEMBREE: None from the State, Your Honor.

20 THE COURT: Further questions from the Defense.

21 MR. HAZZARD: None on behalf of the Defense, Your
22 Honor.

23 THE COURT: Very good.

24 All right, ladies and gentlemen, the process -- what's
25 going to happen now is, in a random order the Clerk of Court

1 is going to call the names of potential jurors that come from
2 the random juror sheet that the computer came up.

3 If and when your name is called you will come forward,
4 you will come around and you will come to a place basically
5 right in front of where the Court Reporter is, where Ms. Dixie
6 is holding her hand. You will stand and you will face to the
7 back of the courtroom. At that point in time the Clerk will
8 inquire of the State whether to present or excuse the juror.
9 If you are presented by the State then the Clerk will inquire
10 of the Defendant to either seat or excuse the juror. If you
11 are presented by the State and seated by the Defense, the
12 Clerk will instruct you to go have a seat in the juror box.
13 If you are excused by either one of them, obviously you will
14 go back and have a seat from whence you came.

15 If you have any personal items, book, purse, whatever
16 that might be, if your name is called please bring that
17 forward in case you are seated you can go directly to the
18 juror box.

19 All right, Madam Clerk.

20 (AT THIS TIME JURORS WERE CALLED AND THE JURY WAS STRUCK
21 ACCORDING TO THE JURY STRIKE SHEET ATTACHED HERETO.)

22 THE COURT: Any objection to the jury as empaneled from
23 the State?

24 MR. HEMBREE: No objections from the State, Your Honor.

25 THE COURT: Any objections to the jury as empaneled

1 from the Defense?

2 MR. HAZZARD: None from the Defense, Your Honor.

3 THE COURT: Very good. I find the jury has been
4 properly empaneled pursuant to Batson versus Kentucky and
5 J.E.D. versus Alabama.

6 All right, ladies and gentlemen of the jury, I'm going
7 to ask that you do one thing for me in just a few moments, and
8 that is, I'm going to ask you to select your foreperson for
9 this particular jury.

10 Let me tell you very briefly what the foreperson's
11 duties and responsibilities are so you will understand that.
12 If we are here in the courtroom and there is some matter that
13 the jury needs attention to, the witness needs to speak up,
14 the lawyers need to speak up, or whatever it is, the
15 foreperson raises their hand, gets the Court's attention;
16 we'll handle the matter, whatever it might be. If you are
17 back in the jury room and some matter comes up, the foreperson
18 will take the note pad and pen that's provided and write out a
19 note, sign it, get it to the bailiff and again, it will come
20 to me and I will handle the matter, whatever it might be.

21 When we have finished the evidentiary portion of a
22 trial; we've heard all the evidence in this case, and we've
23 heard the closing arguments of the State and the Defense, and
24 I've given you the law that you are going to apply in this
25 particular case, and then I've submitted the case to you for

1 your deliberations and your unanimous decision in this
2 particular matter the foreperson's duties and responsibilities
3 change in this regard. The foreperson is going to act like
4 the chairman at a meeting, to make sure -- important duty that
5 the foreperson has, to make sure that everybody that wants to
6 speak has an opportunity to do so, everybody's voice has an
7 opportunity to be heard. Now, the foreperson's voice and vote
8 carries no more weight than any other member of the jury;
9 everybody is on an equal plane in that regard, but somebody
10 needs to be in charge, and again, if there is some question or
11 matter then, again, the foreperson will write that out and
12 sign it, and get it to the bailiff and it will come to me and
13 we will handle the matter, whatever it might be. The final
14 duty and responsibility of the foreperson is, once the jury
15 has well and truly deliberated in this case, and reached it's
16 unanimous decision in this particular matter, the foreperson
17 will take the verdict form that the Court will provide to you,
18 check the appropriate block, or write out the appropriate word
19 if necessary, thereafter sign your name as the foreperson,
20 indicating that this, indeed, is the unanimous verdict of the
21 jury in this particular matter.

22 So, with that understanding of the foreperson's duties
23 and responsibilities I'm going to ask you to go back in your
24 jury room, select your foreperson, knock on the door, let the
25 bailiff know who it is, and again, Mr. Gowans and Ms. Slayton,

1 as the alternates y'all can vote on the foreperson, but
2 obviously being alternates, y'all can't be the foreperson.

3 All right. Go back and select your foreperson, please.

4 (THE FOLLOWING TAKES PLACE OUTSIDE THE PRESENCE OF THE
5 JURY CHOSEN FOR THE TRIAL OF THIS PARTICULAR CASE.)

6 (AT THIS TIME THE REMAINING JURY VENIRE WAS EXCUSED.)

7 THE COURT: My intention, gentlemen, is to break for
8 lunch at this point in time. Is there any matters that we
9 need to take up from the State or the Defense at this point in
10 time, or can it wait until after lunch?

11 MR. HAZZARD: Your Honor, on Friday afternoon,
12 September the 9th, the Defense was provided with a SLED DNA
13 report that purports to involve Mr. Hill, and we need to
14 address it in some form or fashion, Your Honor.

15 I have not had the opportunity to confer with any expert
16 regarding it, haven't had the opportunity to do anything with
17 it. Received it Friday afternoon.

18 THE COURT: All right. So are you making a motion at
19 this point in time to continue the case, or what -- what are
20 you asking me to do?

21 MR. HAZZARD: To protect Mr. Hill's rights and his
22 interests ---

23 THE COURT: And I will certainly be glad to do so if
24 you tell me what it is you would like me to do. I can't
25 volunteer to do something. You need to ask me to do something

1 and I'll be glad to listen to you.

2 **MR. HAZZARD:** Yes sir. Those words were a preamble.

3 **THE COURT:** I appreciate that. I'm sorry. Okay.

4 **MR. HAZZARD:** No problem. In order to protect Mr.
5 Hill's interests, at this time the Defense is asking for a
6 continuance. Concomitant with that I will be making an ex
7 parte motion for funding for certain purposes in this matter.

8 **THE COURT:** All right. Very good.

9 Do you want to address that now, Solicitor?

10 **MR. HEMBREE:** Yes, Your Honor. This is very easy to
11 address. This Report was provided months ago to Defense
12 coun -- a report -- let me put it this way, a report was
13 provided months ago to Defense counsel. That SLED report was
14 issued by -- by SLED Forensic Scientist Katie Urka on April
15 14th of 2011. It was provided in discovery a long, long time
16 ago, and it's a critical report because it essentially says
17 the boucle swab of Bruce Hill matches four drops of blood in
18 the house, so that Report has been provided to Defense
19 counsel. He's had it from many, many months.

20 In preparing ---

21 **THE COURT:** I'm sorry. That date, again, was what?

22 **MR. HEMBREE:** The date on the Report, Your Honor, was
23 April 14th, 2011, and we can provide -- when Peggy Snowden, my
24 Legal Assistant, gets up here she can give us the exact date
25 it was provided in discovery, but was provided months ago.

1 Your Honor, the Report that was provided on Friday was
2 generated as a result of a request I had from SLED. When
3 talking to Katie Urka in preparation for this case I noted
4 that she found that the DNA profile developed from Item
5 Nineteen, which was a blood drop in the master bedroom matched
6 -- well, and I'll use -- I use her words, "The probability of
7 randomly selecting an unrelated individual having a DNA
8 profile matching this item is approximately one in three point
9 three quadrillion", so that was -- but that was -- it only
10 dealt with Item Number Nineteen. I asked her what the
11 percentages would be on the other three items that she tested
12 that are listed as 22, 23 and 25 on this Report. She said,
13 well, because of the -- because of the nature of the testing
14 the percentages were different, so the match is still there,
15 so I asked her to run those numbers, basically do me what the
16 randomly selected percentage would be on these other three
17 matches, and that's what she added to this Report. She merely
18 ran the numbers on that and found that -- and I'll read it.
19 "The probability of randomly selecting an unrelated individual
20 having a DNA profile matching these items is one in six
21 hundred billion." That's as to Items 22 and 23. As to Items
22 25 it matched one in three point two billion. So, because of
23 the result they got in each one of those tests they got a
24 little bit different number, and I asked -- simply asked her
25 to run those numbers. So the matches were always there; that

1 information had previously been provided, but the percentages,
2 the mathematics, basically, on those other three samples had
3 not been -- had not been calculated by SLED. I asked them to
4 go back and calculate it; they did, but wanted to -- wanted to
5 put that in report form, and therefore I've provided it to
6 Defense counsel.

7 **THE COURT:** All right. Can we put into the record the
8 original Report, or the report you said dated -- was dated
9 4/14/2011, and the report from Friday? Can we put copies of
10 both of those in as part of this motion, please?

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

12 **THE COURT:** And show those to Mr. Hazzard so he can
13 make sure that those are the two reports we are talking about.

14 **MR. HEMBREE:** Thank you, Your Honor. And I'll go on to
15 say, these Reports are absolutely identical in every other
16 respect. The only thing that's changed -- or not even changed
17 -- was added, was the statistical analysis on the percentages
18 of the match.

19 **THE COURT:** All right. Mr. Hazzard, could you look at
20 those two that the Solicitor just handed to you, and see if
21 that's the information.

22 **MR. HAZZARD:** What, these two?

23 **THE COURT:** Those two, yes sir.

24 **MR. HAZZARD:** I mean, I'm familiar with the dates on
25 them, April 14th and September 9th, because now I've got three

1 reports, November 25th of '09, April 14th of 2011, and
2 September 9th of 2011.

3 My problem, Your Honor, is that I am not a educated
4 person when it comes to DNA to that extent. I can look at a
5 chart and make some determinations as to whether there appear
6 to be anomalies, but when it comes to getting two different
7 reports, and especially one being received on the eve of
8 trial, and it's somebody facing a murder charge, that gives me
9 a great deal of concern.

10 THE COURT: All right. Have those two marked by the
11 Court Reporter first, before we go any further, so that we
12 have them marked.

13 (SLED REPORT DATED APRIL 14, 2011 MARKED STATE'S EXHIBIT
14 NUMBER 1, FOR MOTION HEARING ONLY, NOT TO GO TO JURY.)

15 (SLED REPORT DATED SEPTEMBER 9, 2011 MARKED STATE'S
16 EXHIBIT NUMBER 2, FOR MOTION HEARING ONLY, NOT TO GO TO JURY.)

17 THE COURT: Before we do anything else, gentlemen, the
18 jury selected as their foreperson juror number 334, so
19 that's -- the foreperson is juror number 334.

20 What I'm going to do is excuse the panel. I'm going to
21 tell them to come back at 3:30. It appears I'm not -- if we
22 go forward. I'm obviously not deciding this. I'm trying to
23 do -- administratively decide what we are doing here. I'm not
24 deciding this motion here.

25 I'll tell them to come back at 3:30. I'm not sure --

1 based on the Court's schedule we will probably at least get
2 through the opening arguments. I'm not sure how much further
3 we will get, but anyway ---

4 MR. HAZZARD: Your Honor ---

5 THE COURT: Yes.

6 MR. HAZZARD: ---During the course of the Prosecutor's
7 statement my client has talked to me, and based on him talking
8 to me it is my understanding that he wishes to withdraw and
9 forego any motion for a continuance based on this DNA, and I
10 would ask that the Court have a colloquy with him and place
11 that on the record.

12 THE COURT: All right, Mr. Hill, could you stand up,
13 please sir.

14 And Madam Clerk, could you place him under oath.

15 BRUCE ANTWAIN HILL, being first
16 duly sworn, states as follows:

17 THE COURT: All right, Mr. Hill, your attorney just
18 made a statement to me, and let me see if I understand the
19 situation. There's two reports that have been now marked as
20 exhibits in this matter, you know, for the purposes of these
21 arguments that we are having right now, or this motion that we
22 are having right now, and one of them is State's Exhibit 1,
23 and that's the one that is dated April 14, 2011, a DNA
24 analysis, and State's Exhibit 2 is the September 9, 2011 DNA
25 analysis. Now, I'm hearing from your attorney and from the

1 Solicitor that there may or may not been significant
2 differences or not. I haven't made a decision about that.
3 Obviously there's two different positions. The State has one
4 position, your attorney has another position. I haven't made
5 my ruling on this. I'm still hearing from them, so your
6 attorney has indicated then that y'all talked, you and Mr.
7 Hazzard talked, and you would like to have him withdraw the
8 motion to continue the case based on any differences between
9 the two reports, whether they are significant or they are not
10 significant. I don't know because I haven't made a decision
11 at this point in time, but they could be significant
12 differences; they could be insignificant differences; I don't
13 know, but be that as it may, do you want to continue with the
14 motion, and that is, the motion to continue this case, to put
15 it off to a later date somewhere else down the road, or do you
16 want to withdraw, or not go forward with the motion to
17 continue? What would you like to do, sir?

18 MR. HILL: I would like to withdraw it, Your Honor.

19 THE COURT: You would like to withdraw that motion, and
20 so meaning that you do not want the Court to decide to -- and
21 I haven't made a decision, but it was before me to continue it
22 to a later date, so you don't want me to decide that; is that
23 right?

24 MR. HILL: Yes sir, Your Honor.

25 THE COURT: You want to go forward; is that what you

1 are telling me?

2 **MR. HILL:** Yes sir, Your Honor.

3 **THE COURT:** All right. Very good.

4 Based upon the Defendant's decision -- and it's --
5 ultimately all these decisions are Mr. Hill's decisions -- he
6 has decided that he wants his attorney to withdraw the motion,
7 and that is so granted.

8 All right. Thank you, gentlemen. Y'all can have a seat.

9 Solicitor, is there anything else that you need to tell
10 me at this point in time?

11 **MR. HEMBREE:** No, Your Honor. I don't think we have
12 any other legal matters.

13 We would like to come back perhaps a little bit earlier
14 to review exhibits with Mr. Hazzard prior to 3:30. That's the
15 only request we would have of the Court.

16 **THE COURT:** All right. Mr. Hazzard.

17 **MR. HAZZARD:** Your Honor, of course there is going to
18 be the issue of wanting to place the plea offer on the record,
19 and other than that, that would be the only motion that I
20 foresee at this point.

21 **THE COURT:** All right. Very good.

22 Solicitor, when would you suggest would be sufficient
23 time? Knowing the jury is going to come back at 3:30 what
24 time would you suggest that you and Mr. Hazzard meet to just
25 go over the exhibits before the jury comes back?

1 MR. HEMBREE: Ten after three. Say twenty minutes.

2 THE COURT: Is that sufficient, Mr. Hazzard?

3 MR. HAZZARD: (NODS AFFIRMATIVE)

4 THE COURT: All right, gentlemen, if y'all don't mind
5 doing that, I appreciate it. We will reconvene at 3:30.

6 At that point in time, Mr. Hazzard, you can place the
7 matter on the record that you would like to.

8 All right. Thank you very much.

9 And I did tell you, gentlemen, that juror number 334 is
10 the foreperson. All right.

11 MR. HAZZARD: Yes sir.

12 THE COURT: Thank you very much.

13 (THE FOLLOWING TAKES PLACE AFTER A LUNCH BREAK, AND
14 OUTSIDE THE PRESENCE OF THE JURY.)

15 THE COURT: All right, Solicitor, Deputy, and Mr.
16 Hazzard, could y'all come up here for one second, please?

17 (BENCH CONFERENCE TAKES PLACE OFF THE RECORD.)

18 THE COURT: Dixie, can you mark this as a Court's
19 Exhibit, please, and give it back to me?

20 (NOTE FROM JUROR MARKED COURT'S EXHIBIT NUMBER 2.)

21 THE COURT: All right, Solicitor, there was a matter
22 that you wanted to place on the record at this time.

23 MR. HEMBREE: Yes, Your Honor. I appreciate the
24 Court's indulgence in allowing Mr. Richardson, Mr. Hazzard and
25 I to go through the exhibits, and to premark it. We have

1 nearly -- almost everything that we would intend to introduce,
2 and many of the exhibits we have stipulated to, or agreed that
3 will come into evidence.

4 I would like to go ahead and put those matters on the
5 record. We have other exhibits that we have marked for
6 identification purposes.

7 One housekeeping matter prior to that that I wanted to
8 touch on that I think was just something that we all -- I
9 forgot. I know I missed it, and Dixie pointed it out to me at
10 the break. There were two of these DNA reports that were
11 introduced earlier today when Mr. Hazzard made his motion for
12 continuance and then it was withdrawn. These were actually
13 marked as State's Exhibits, and I don't think Mr. Hazzard
14 intended for those to go in as State's Exhibits -- these are
15 the DNA reports. I believe that he intended for those to be
16 Court's exhibits, and we have no objection to him ---

17 **THE COURT:** I appreciate that, but I don't know that --
18 I think it was properly the State's exhibit, and those were
19 all for the motion to continue, which was later withdrawn, but
20 it's as to the motion to continue. They are not exhibits for
21 the trial. They all pertain to a motion. We are starting the
22 number numbers all over again for the trial, so the ones
23 you've marked are fine. Those were State's Exhibits for the
24 purpose of the motion only.

25 **MR. HEMBREE:** Then I will -- that's been clarified,

1 Your Honor. Thank you. And I will leave that to the Court
2 Reporter.

3 THE COURT: All right.

4 MR. HEMBREE: Your Honor, as far as the other exhibits
5 that we have marked -- we've premarked, State's Exhibits 1
6 through 68, and it's just going to be much easier for me to
7 refer to exhibits -- because there aren't very many of them --
8 that are for identification purposes only.

9 THE COURT: All right.

10 MR. HEMBREE: State's 26, 27, 28, 30, 33, 40, marked
11 for identification purposes only, and those are photographs.
12 Those are crime scene photographs that have been marked for
13 I.D. only.

14 We have State's 63, 64, 65 and 66 which are for
15 identification purposes only, Your Honor, and those are boucle
16 swabs that were taken at the crime scene.

17 And then, Your Honor, State's 67, 68 are for
18 identification purposes only, and those are -- those are some
19 charts of the DNA results.

20 THE COURT: All right.

21 MR. HEMBREE: Those are for identification purposes
22 only. We will address those issues as they come up in the
23 course of the trial.

24 THE COURT: All right. Very good.

25 (PHOTOS MARKED AS STATE'S EXHIBIT NUMBERS 26, 27, 28,

1 30, 33 AND 40, FOR IDENTIFICATION ONLY.)

2 (BUCCAL SWABS MARKED STATE'S EXHIBIT NUMBERS 63,64, 65
3 AND 66, FOR IDENTIFICATION ONLY.)

4 (DNA CHARTS MARKED STATE'S EXHIBIT NUMBERS 67, 68, FOR
5 IDENTIFICATION ONLY.)

6 THE COURT: Do y'all want to, at this point in time,
7 state the numbers of the exhibits that you are in agreement
8 that they in at this point in time, or you can do it at a
9 later time. It doesn't ---

10 MR. HEMBREE: I may be doing it backwards. I guess I
11 was doing it sort of a negative order. Everything else, 1
12 through 68, except for the ones I've just named, were in
13 evidence.

14 THE COURT: All right. Well, that wasn't clear to me,
15 so, all right, basically, except for those numbers that you
16 just mentioned, State's Exhibits 1 through -- what was it, 68?

17 MR. HEMBREE: 68, yes sir.

18 THE COURT: ---68, are in evidence.

19 Is that correct, Mr. Hazzard?

20 MR. HAZZARD: Yes sir, Your Honor.

21 THE COURT: All right. Very good. All right.

22 (LARGE CRIME SCENE POSTER ADMITTED INTO EVIDENCE AS
23 STATE'S EXHIBIT NUMBER 1.)

24 (PHOTOS ADMITTED INTO EVIDENCE AS STATE'S EXHIBIT
25 NUMBERS 2 THROUGH 57.)

1 (WALLET ADMITTED INTO EVIDENCE AS STATE'S EXHIBIT NUMBER
2 58.)

3 (BLACK SHOE ADMITTED INTO EVIDENCE AS STATE'S EXHIBIT
4 NUMBER 59.)

5 (SPENT SHELL CASINGS ADMITTED INTO EVIDENCE AS STATE'S
6 EXHIBIT NUMBERS 60, 61, and 62.)

7 THE COURT: All right, Deputy, could you ask juror
8 number 388 to come out, please, just that one juror, please,
9 juror number 388.

10 (JUROR NUMBER 388 ENTERS THE COURTROOM.)

11 THE COURT: Ma'am, you -- first, you are juror number
12 388, correct?

13 A. (NODS AFFIRMATIVE)

14 THE COURT: All right. And you wrote me a note and
15 indicated some information, and I will tell you, the questions
16 I asked the jury panel as a whole, I don't know that any one
17 of them would have caused you to respond, but I appreciate you
18 being diligent and telling us the information.

19 And I've made that as Court's Exhibit Number 2. It's
20 no necessity to read it again. I've gone over it with
21 counsel. The question I have for you is, based on the
22 information that you have given to me in the handwritten note
23 that's Court's Exhibit 2 now, can you give to the State of
24 South Carolina and to the Defendant a fair and impartial
25 trial; can you be a fair and impartial juror in this case?

1 And I need an absolute yes or no from you, Ma'am.

2 A. I can't really give you an absolute yes or no.

3 THE COURT: Well, I need for you to tell me, yes,
4 Judge, I can, and no -- or no, Judge, I cannot.

5 A. No, I cannot.

6 THE COURT: All right. Very good. Let me -- let me --
7 let me explain to you the situation.

8 A. Okay.

9 THE COURT: Let's go over -- and I don't know if I
10 explained this to you before, but I think I did when you came
11 up initially about hearing some information outside court. I
12 believe we talked -- we had a discussion. But if you will
13 remember what I told you was, you have to make your decision
14 solely and completely on the information that is presented in
15 this courtroom, and from no other source; you can't let any
16 outside sources; you can't let any matters that happened
17 outside the courtroom, or that you think you know, or maybe
18 you heard, or anything of any nature ---

19 A. Right.

20 THE COURT: ---Affect your decision here in this
21 courtroom; it has to be based only on the facts and evidence
22 that are presented during this trial, and upon no other
23 source; and you understand that to be the job of a juror,
24 correct?

25 A. Yes.

1 **THE COURT:** All right. And understanding the job as a
2 juror, and based upon the information that you placed in your
3 handwritten note to me, can you give to the State and the
4 Defendant a fair and impartial trial; can you be a fair and
5 impartial juror in this case?

6 A. Based on the information I'm given, yes sir.

7 **THE COURT:** All right. Based on the information you
8 are given in this courtroom.

9 A. In this courtroom.

10 **THE COURT:** Yes Ma'am. And taking into consideration
11 nothing else from any other source; I'm going to make a
12 decision only on what you hear in this courtroom, and from no
13 other source; is that correct?

14 A. That's correct.

15 **THE COURT:** And you will be fair and impartial to the
16 State and the Defense?

17 A. Yes sir.

18 **THE COURT:** Thank you very much, Ma'am. If you will
19 just go back and -- why don't you just stand in the hallway,
20 cause I'm going to call the whole jury panel back out right
21 now.

22 **(JUROR EXITS THE COURTROOM)**

23 **THE COURT:** Anything further from the State at this
24 point in time as to that particular matter?

25 **MR. HEMBREE:** No, Your Honor.

1 **THE COURT:** Mr. Hazzard.

2 **MR. HAZZARD:** Yes sir, Your Honor. At this time the
3 Defense would ask that that juror be replaced with one of the
4 alternates because when the Court asked her whether or not she
5 could be a fair and impartial juror she gave a lengthy
6 hesitation, and then I believe said something to the effect
7 that she was not sure if she could or not. After further
8 speaking with the Court she then said she could, but obviously
9 it gives the Defense a great cause for concern that anyone
10 would even have any doubt, sitting on the jury, as to whether
11 they could be fair and impartial, so we would ask that juror
12 388 be replaced with one of the alternates.

13 **THE COURT:** All right. Thank you.
14 Response, Solicitor.

15 **MR. HEMBREE:** Your Honor, we don't have any objection
16 to the juror being excused. I'll say that. I don't really
17 have a position on it.

18 **THE COURT:** All right. In abundance of caution -- and
19 I saw the same hesitation as reflected by Mr. Hazzard -- and I
20 will say that it gave me some cause for concern when I
21 questioned the juror and, honestly, based upon her prior work,
22 am surprised that she would have a question about that,
23 therefore, I find there is cause to excuse this juror as
24 requested by the Defense in this matter, so I'm going to
25 excuse Juror Number 388.

1 As required in Section 14-7-1340, there -- the Court had
2 seated two alternate jurors. When, in Criminal Court, there
3 are two or more alternates seated it then becomes the
4 responsibility of the Clerk of Court, by lot, to replace the
5 juror who has been excused by the Court. It's obviously
6 different in Civil Court. In Civil Court you just -- it's the
7 first alternate goes in their place. In Criminal Court it's
8 different, so therefore, Madam Clerk, what you will do is
9 place the name of alternate 134 on a small piece of paper and
10 fold it up; you will put the name of alternate 324 on a small
11 piece of paper and fold it up. We will -- stick them in that
12 plastic cup -- since we don't have the old juror drum anymore.
13 I told the Clerk of Court not to get rid of it but she
14 probably did.

15 DEPUTY CLERK OF COURT: We still have it.

16 THE COURT: All right. Just stick it in there. All
17 right.

18 All right, Ma'am, pick one out. All right. Tell me
19 which number, please Ma'am.

20 DEPUTY CLERK OF COURT: 324.

21 THE COURT: 324. All right, juror number 324 is
22 substituted in the place of the juror excused, and the juror
23 excused again was 388, and 324 will be a regular member of the
24 jury now.

25 MS. DEPUTY, could you ask juror number 388 who is in --

1 she's still in the hall, correct? Would you ask her to come
2 back in, please.

3 (JUROR NUMBER 388 ENTERS COURTROOM.)

4 THE COURT: All right, Ma'am, after discussing the
5 matter, Ma'am, with the counsel -- and this does not reflect
6 on the Court's belief about your ability to be a juror -- I
7 think you could do everything that you are suppose to do, but
8 I believe it's proper -- and make sure that there is a fair
9 and impartial trial for the Defendant, I'm going to excuse you
10 from this particular case.

11 That does not relieve you from your duties as being a
12 juror this particular week. What I will have you do is call
13 back that juror information line after six o'clock tonight,
14 but as to this particular case you are now excused.

15 Thank you, Ma'am.

16 And if you would just give your button to the Deputy
17 Sheriff, please.

18 (JUROR EXITS THE COURTROOM.)

19 THE COURT: All right. Is the State ready to proceed
20 with opening statements?

21 MR. RICHARDSON: Yes sir, Your Honor.

22 THE COURT: And the Defense.

23 MR. HAZZARD: Defense is ready, Your Honor.

24 THE COURT: All right. Ask the jury to come in,
25 please.

1 (THE FOLLOWING TAKES PLACE WITHIN THE PRESENCE OF THE
2 JURY.)

3 THE COURT: All right. The first thing, juror number
4 324, Ms. Slayton, I'm substituting you in as a regular member
5 of the jury. You are one of the twelve members of the jury.
6 The Court has found reason to excuse a juror, so you are
7 substituted in her place, so you are one of the twelve regular
8 members of the jury.

9 And so then juror number 134, Mr. Gowans, you remain the
10 sole remaining alternate in this particular matter. All
11 right, sir.

12 A. Yes sir.

13 THE COURT: All right. As I understand it then, juror
14 number 334, Ms. Spearman, the jury elected you to be the
15 foreperson for this particular jury; is that correct?

16 A. Yes, Your Honor.

17 THE COURT: All right. Very good.

18 As to the foreperson and the alternate, if y'all would
19 always occupy the two seats that you are in right now. The
20 rest of you ladies and gentlemen just fill in wherever it is
21 that you happen to come back in from the jury room. There's
22 no assigned seating other than the Court needs to know where
23 the foreperson and the alternate are.

24 The very first thing that's going to happen in this
25 matter is, the Clerk of Court is going to administer your oath

1 to you, so if all of you would please stand at this time.

2 (THE JURY STANDS, AND IS SWORN AT THIS TIME.)

3 THE COURT: All right, is there any member of the jury
4 panel that did not affirmatively take the oath as given by the
5 Clerk of Court; if so, please stand.

6 The Court finds that the jury is properly sworn in this
7 matter.

8 All right, ladies and gentlemen, I told you at the very
9 beginning, when the Court read to you some information or
10 allegations that were contained in the indictment -- I'm going
11 to remind you that that wasn't evidence. Again, that document
12 is the charging document, the document by which the matter is
13 brought to court. It's not evidence. You haven't heard any
14 evidence in this case, but I just wanted to bring that back up
15 to you and remind you about that.

16 When the Defendant was charged with those crimes by the
17 State of South Carolina the Defendant entered his plea of not
18 guilty to those charges. Two things. That means the
19 Defendant is presumed innocent of the charges brought against
20 him, and secondly, that puts the burden of proof on the State
21 of South Carolina to prove the Defendant guilty of the crimes
22 charged beyond a reasonable doubt. The Defendant does not,
23 and never has any burden to prove anything to you. That
24 State, now and always, has the burden of proof. It must, by
25 evidence presented in this case, prove to you, if it can, the

1 guilt of the Defendant to the crime charged, and that is, to
2 prove the Defendant guilty of the crimes charged beyond a
3 reasonable doubt.

4 Your job is going to be the judges of the facts of this
5 case. You will be operating as the judges of the facts of
6 this case. I will not indicate to you at any time what I
7 believe the facts of this case are, because that's not my job;
8 that's not my responsibility; that's your job and your
9 responsibility, to weigh all the evidence, to look at all the
10 evidence that is presented in this case, to find that evidence
11 which convinces you of it's truth, and then weigh that
12 evidence against the State's burden to prove the Defendant
13 guilty of the crime charged beyond a reasonable doubt.

14 One of your jobs in this matter will be to assess or
15 judge the credibility or the believability of the witnesses
16 that appear before you on the witness stand. I will remind
17 you again at the end, but if you will think about it for a
18 second, this is something you do every single day of your
19 life. When somebody tells you something you are automatically
20 judging whether or not you believe them, and how do you do
21 that? You are using your good common sense, your good
22 judgment that you use in conducting your own affairs. You
23 apply that to the facts and evidence in this case, and find
24 that evidence which convinces you of it's truth, and again,
25 then you weigh that evidence against the State's burden to

1 prove the Defendant guilty beyond a reasonable doubt.

2 How the case will proceed when we get done with the
3 opening statements -- and it might not be now until first
4 thing tomorrow morning -- we will proceed with the evidence in
5 this case. The opening statements -- both the State and the
6 Defense will give you opening statements. I will tell you
7 now, and I will remind you again at the end, the opening
8 statements, are not evidence. They cannot be considered by
9 you as evidence in the case. The evidence in this case, from
10 which you will make your decision, comes from the witness
11 stand, or any properly introduced documents or exhibits that
12 might come in in this case. But those opening statements and
13 those closing statements are important. The opening
14 statements -- the -- each side brings to you, and brings to
15 your attention the matters they believe are important, and
16 potentially what they may be asking you to do as a result of
17 your verdict in this matter. They are certainly going to do
18 that in their closing statements. But after we get done with
19 those opening statements then we will have the evidence that
20 will be presented to you. When we get done with the evidence
21 in this case then we will have the closing statements. Each
22 side will give one to you. They will make arguments to you
23 again. Those arguments are not evidence; can't be considered
24 by you as evidence, but they are important to each side's
25 summation to you.

1 After that I will give you the law that you will apply
2 to the facts and evidence you find to be true in this matter,
3 and then I will submit the case to you for your deliberation
4 and your unanimous decision in this particular matter.

5 Now, in effect, there will be three matters that you
6 will have to decide. Each one of them is separate, because
7 the State has charged the Defendant -- and which he has pled
8 not guilty, and presumed innocent -- three separate charges,
9 two counts of murder, and one count of burglary in the first
10 degree, so you are going to have to make a separate decision
11 then for each one of them, find that evidence which convinces
12 you of it's truth, and weigh that evidence, in each one of
13 those, against the State's burden to prove the Defendant
14 guilty of the crimes charged beyond a reasonable doubt. You
15 will make that decision in each one of them, so you'll make
16 three separate decisions.

17 During the course of the trial the attorneys may raise
18 certain matters to the Court. It might be a motion, or
19 seeking some guidance from the Court. That goes from my duty
20 to control how the case is presented if there are questions to
21 me, control the conduct of the trial. Again, if I make any
22 rulings in your presence, if I say anything in your presence
23 remember, I'm not making any comments on the facts; I don't
24 have any comments on the facts; that's your job and your
25 responsibility, but I may need to tell the lawyers how the

1 trial will be conducted, how the matters will be presented, so
2 if I do that in your presence, and I don't send you out to
3 your jury room please remember.

4 If you would, I would appreciate -- you want to give you
5 complete attention to the State and the Defense while they
6 give you their opening statement.

7 Thank you very much.

8 Solicitor.

9 **MR. RICHARDSON:** Thank you, Your Honor.

10 Madam Forelady, ladies and gentlemen of the jury, what
11 you are going to hear over the next two or three days is the
12 stuff of a nightmare. It is that sheer terror that wakes you
13 up in the middle of the night, causes you to go check the
14 locks, causes you to go check on your children, make sure all
15 the windows are closed. It's that that wakes you up, is that
16 a door rattling, or is that a window breaking. But what you
17 are going to find is that sometimes we are not fortunate
18 enough, and it's not a nightmare. Sometimes it's for real.
19 And on April 12th, 2005, it was that sheer terror for Charlie
20 and Diane Parker. And Diane also goes by the name Gloria, and
21 in the indictments it refers to her as Gloria.

22 But you are going to meet this couple through witnesses
23 that are a little bit older. They lived off of Highway 90, up
24 where 22 crosses over, and another landmark you will find is a
25 little glass company called Mirror-Tec that used to be open up

1 there, and that's -- that was their business; that's what put
2 bread on their table.

3 But on April 12th, 2005, that terror struck, and the
4 last face that they saw, each of them murdered, was this
5 Defendant, Bruce Hill. To them that was the face of terror.

6 You are going to hear, see, feel as it was through a man
7 named Bill Carrick, George Carrick, but he also goes by Bill,
8 and he will tell you that on that morning he was an employee
9 of Mirror-Tec, and he, along with little Charlie and some
10 other members had got ready for work, they had met up early
11 that morning. Mirror-Tec is right across the yard from
12 Charlie and Diane's house. And with a shout from little
13 Charlie everybody realized something was wrong. Well,
14 actually a shout from a man that is deceased, that brought
15 little Charlie over there. And he will be able to tell you
16 what he saw, what he felt, what he heard as he peered down at
17 these lifeless bodies, and the blood pools that surrounded
18 them.

19 You will hear from Horry County Police that came in and
20 cordoned off the area, wouldn't allow anybody in that wasn't
21 suppose to be in. Tyler Caines, he was one of the first
22 responders. You will also hear from Robbie Caulder. Robbie
23 Caulder is a crime scene technician, and he will tell you what
24 he saw, the evidence that he was able to collect, and he will
25 tell you how it looked to him on that early morning in April,

1 2005. He will tell you how, at a table there was a box, and
2 all the box's contents had been rummaged through, and he will
3 tell you, in front of the box is a bed.

4 Let me just show the chart of it. He will tell you
5 about this box, and he will tell you about a bed that
6 contained a wallet. A wallet was laid up on the bed, and a
7 purse, and there was a boot over here. He will tell you about
8 how everything looked, of course, the bodies. And you will
9 see where this was rummaged through, and other stuff in the
10 room was rummaged through.

11 And what you will find is that Mr. Bruce Hill left
12 something for you to work with. He took -- maybe took some
13 stuff. We don't know what was in there, but we know that he
14 left some stuff, stuff that was very personal to him, and you
15 will hear about that. It wasn't a driver's license, wasn't a
16 fingerprint. It was much more personal than even that. It
17 was his very blood.

18 Now we are not going to be able to tell you what caused
19 it, if there was a fight here, or a fight there, or whatever
20 caused him to become injured we don't know, but we know that
21 he bled, and around this box that was all gone through, right
22 there at the bed, there was drips of blood, drops of blood,
23 here. There was drops of blood here, Bruce Hill's blood,
24 here, here, his own blood. And that blood was in the same
25 condition as the decedents' blood, Charlie and Diane's. In

1 other words, that wasn't dried blood any more than their's was
2 dried blood. You will hear evidence, testimony that that
3 blood appeared to have been left at the same time their blood
4 was left, here where this box is, where the bed is, here,
5 again, around the box, on his path out, which would appeared
6 to have gone over Diane, and here.

7 You are going to hear from a group of witnesses -- and
8 it always gets a little tiring, because the same questions are
9 asked. They are very short witnesses, but it's -- what I'm
10 talking about is this chain of custody, and Mr. Caulder will
11 tell you -- in addition to what all he saw he will tell you, I
12 collected this blood with a swab, and I put it into this
13 sealed compartment that's made for it; it's a sterile swab;
14 and I sealed it, and then I sealed it again inside of a box,
15 and I sealed both edges of the box, making sure that it wasn't
16 tampered with. And he will -- whoever touched it he will say,
17 you know, I gave it to so and so, and that person will say, I
18 kept it; nobody tampered with it when it was in my custody.
19 And you will follow that chain all the way till it gets to
20 SLED, South Carolina Law Enforcement Division.

21 And a person at SLED, a chemist -- you will hear from
22 him, and he will say yes, I know about -- this is different
23 blood; this isn't his blood, or isn't her blood; somebody
24 else's blood; but without a standard we don't know whose it
25 is; I don't know who to compare it to.

1 There will be people that will tell you of this super
2 computer, national DNA data base chain, and how this case, the
3 case against Bruce Hill, sat dormant for a long while, and
4 finally the computer said, remember Charlie and Diane's
5 murder; we've got a suspect. And you will hear about people
6 that went to Mr. Hill and took a swab from the interior of his
7 mouth, another boucle swab. We will follow that chain as it
8 goes back to SLED. And when it goes back to SLED you will
9 hear a different chemist that will say, hey, we've got
10 something.

11 I'm going to leave the figures and the mathematics to
12 her, but I think you will be impressed. It's our duty and our
13 burden as the State of South Carolina to prove to you, beyond
14 a reasonable doubt, that that man killed Charlie and Diane
15 Parker. When you hear the figures you are going to have to
16 decide for yourself; is it reasonable that anybody else could
17 have done it.

18 Talked about nightmares, talked about terror, and I can
19 tell you now, it will be easy to be offended, to get very
20 angry early on, but we, as the State, don't want you to do
21 that. We don't want you to jump to any conclusion. This
22 system is set up that we give Bruce Hill the benefit of the
23 doubt, and the way you do that is, you listen to each one of
24 these witnesses before you start making up your mind; you
25 compile all of that evidence. It's going to be a short trial.

1 I don't want that to take away from the magnitude of it. I've
2 already told you, there's two dead people, not involved in
3 anything, that find themselves in the midst of a nightmare, so
4 don't let the fact that it's two or three days long diminish
5 that. In those two or three days, and in listening to those
6 witnesses you are going to have plenty to base your decision
7 on. We will just ask you not to jump to any conclusions.
8 It's going to be quick.

9 This isn't a death penalty case. We are not asking you
10 to go out and put this person to death. It's not that kind of
11 case. It's one part. It's just guilt or innocence, whether
12 or not Bruce Hill killed Charlie Parker, whether or not Bruce
13 Hill killed Diane Parker, and whether or not he burglarized
14 their house in the process.

15 And I would be remiss without telling you. You already
16 know what killing somebody is, but here we use the word
17 murder, and murder is simply the killing of another with
18 malice aforethought, with evil heart, the killing of someone
19 else with malice. In other words, it wasn't self-defense; it
20 wasn't, you know, it's either him or me. Burglary is going
21 into someone's home, without their permission, and with the
22 intent to commit a crime inside of the home, and burglary
23 first is if you do those things at night, or if you do those
24 things with a gun, or you show a gun, threaten a gun, or you
25 hurt someone that's not along with you, that's not a partner

1 to the crime itself, so if you hurt a victim, that's burglary
2 first, and that's what he's charged with.

3 Y'all, this case is going to be short, but it is going
4 to be -- it's going to be very crucial for you to listen to
5 all of the parts, I mean, he does deserve a fair trial, and at
6 the end of it we are going to come right back up in a closing
7 statement, much like this, and point out facts that you've
8 heard along the way, try to tie it together for you, and when
9 it gets to that point we believe that there won't be any doubt
10 for you to worry about.

11 See, if you will remember when you swore in a few
12 minutes ago you swore to seek the truth. You are looking to
13 seek the truth, what really happened. That's all you are
14 looking for, and it gets pretty easy once you narrow it down
15 to that. The crimes aren't very complex, just a few elements.
16 It's really -- doesn't come down to what happened, because
17 it's clear it's a murder, clear it's two murders, it's clear
18 it's a burglary. The only thing left is, who did all these
19 things. And I submit to you when you hear about the odds of
20 it being anyone else it will be clear to you, that young man
21 over there is the one that did these dastardly deeds.

22 And finally, this is your chance to meet that with
23 justice. And the family waited a long time; Mr. Hill waited a
24 long time; we've all waited a long time for you to be
25 presented with this case, and then you to make a just

1 decision, and that's all any of us is going to ask of you.

2 Listen to the facts, and make a just decision.

3 Now, Mr. Hembree, he is our elected Solicitor. He will
4 be trying this case with me. Mr. Ronald Hazzard, Public
5 Defender, you've already met, and that is Mr. Bruce Hill. I
6 don't see many members of the witnesses, but you will be
7 introduced to them as they come up to swear in to tell the
8 truth, take that stand and to tell you what they know, and I
9 would ask you to listen to them.

10 That's all I have for you for now. I would ask you to
11 listen just as intently to Mr. Hazzard.

12 Thank you.

13 **THE COURT:** All right, Mr. Hazzard.

14 **MR. HAZZARD:** Thank you, Your Honor.

15 Good afternoon. I do not know much of life, but one
16 thing I do know is this, the truth is always consistent, in
17 every respect. It's always consistent in every respect. The
18 truth never comes across as being complicated or difficult.
19 There are never any gaps, or questions, or issues when you
20 have the truth, because the truth always tells all.

21 Now you've already heard one issue. The State says
22 their case is that Bruce Hill broke into these folks' home,
23 Mr. and Mrs. Parker, and that he committed a horrific act, or
24 violence against these people. Evidence and testimony will
25 show that there is absolutely not one iota of evidence or

1 indication that Bruce Hill knew the Parkers, knew where they
2 lived, knew anything about their house, none of that. The
3 evidence and testimony will show that the Parkers' home, when
4 vandalized, or was rummaged through on that tragic night, that
5 there was no apparent item of value taken from the home.
6 Evidence and testimony will show that Ms. Parker was wearing
7 jewelry around her throat; she had jewelry on her wrists; she
8 had jewelry in the jewelry box; she had jewelry in a keepsake
9 box, none of which was touched, so the question becomes, if
10 what they say is the truth, why would this man, who does not
11 know these people, be there. But the truth is always
12 consistent in every respect.

13 Evidence and testimony will show that in the Parkers'
14 bedroom there was a hunting rifle leaned up against the wall,
15 and evidence and testimony will show that the hunting rifle
16 belonged to Mr. Parker, yet with someone, some intruder, some
17 stranger breaking into their home evidence and testimony will
18 show, the rifle remained untouched in the bedroom.

19 Evidence and testimony will show that the disturbances
20 in their bedroom and around their house looked as if papers
21 were being rummaged through, in different drawers and
22 different places where you keep your paperwork. So why
23 would -- if the State is telling you the truth, if what they
24 say -- and I have no doubt -- I've known these men for years -
25 - what they are telling you is what they believe. They are

1 not here selling you a bill of goods. This is what they
2 believe happened, okay, they are honorable men, but in this
3 case I believe that they are wrong in their assumption. But
4 if what they are saying is true, that this man, this young man
5 here, who does not know the Parkers, did not know the Parkers,
6 evidence and testimony show had never been to their house,
7 never met them before. If he broke into their house as the
8 State would have you believe, what paperwork would he have
9 been looking for, since nothing apparently of value was taken?
10 Evidence and testimony will show -- and I believe you will
11 make a determination, after you hear all the evidence, that
12 this appears -- you will have a decision to make as to whether
13 what the State says holds water, or whether this appears to
14 you to be something of a much more personal nature, because I
15 believe when you look at all the evidence, evidence and
16 testimony will show that the house had -- I believe it
17 actually has four -- it has four doors, because there is a
18 sunroom on the side of the house, the northern side of the
19 house, that has two doors, one in the front and one in the
20 back, and if you go into the sunroom of course it acts as kind
21 of a porch, and then there is another door where you enter the
22 house proper, there is the front door of the house that is on
23 the east facing Highway 90, and then there is the kitchen door
24 where the break-in actually occurred that is on the south.
25 Evidence and testimony will show you that the kitchen door

1 that was used to enter the home on that fateful night is the
2 door, the only door the Parkers and their family members,
3 their loved ones, people who knew them, ever used, but the
4 State will have you believe that this man, who does not know
5 these people, has never known them, has never been to their
6 home, that of all the doors, in the middle of the night, he
7 chooses that door, as if he knows them and knows the layout of
8 their house.

9 I tell you these things to simply ask that, as we go
10 through these proceedings, that you honor, truly honor your
11 oath, and I don't even expect you to remember your oath, so
12 what the Clerk said is that -- and what you swore -- is to
13 well and truly try the issues in this case, and a true, true
14 verdict render, and legal scholars much smarter than I will
15 ever be, have told me that verdict comes from a Latin word,
16 veredicto, two words. Dicto means speaks, vere meaning the
17 pure, pure truth, and the pure truth is always consistent.

18 Now we live in an age of media, where you have all kind
19 of shows. You have CSI New York, CSI Miami, CSI Las Vegas,
20 you have SUV shows, all of that, and those shows scare me to
21 death, and the reason they scare me to death is because in an
22 hour you see a case completely wrapped up in a neat little
23 bow, and how many times have any of us seen those shows where
24 they tried an innocent man, and he was acquitted at the end of
25 the show? None. Because we always like things to come to a

1 conclusion, a neat conclusion, and so it is my fear that
2 jurors nowadays sit there and they say, well, because the
3 State charged him he must be guilty, because on TV an innocent
4 person never gets charged.

5 Ladies and gentlemen, this is not TV. We are all human,
6 and as such we all make mistakes, if we didn't erasers
7 wouldn't have pencils, you know, wouldn't have white-out,
8 wouldn't have a back button on the computer.

9 So it is my hope that you have the courage, because
10 that's why I chose each of you, because I sought the courage
11 to follow that oath, no matter where the information leads
12 you, because the truth is always consistent.

13 Thank you.

14 **THE COURT:** All right, ladies and gentlemen, we are
15 going to stop for the day. I know this has taken us a while
16 to get to the point in the trial, but I assure you when we get
17 started in the morning we will continue on and hopefully
18 without too much delay.

19 I'm going to excuse you. I'm going to ask you to be
20 back tomorrow morning, in your jury room, by 9:30, back in
21 your jury room by 9:30.

22 Now, when you go home, you see your husband, your wife,
23 your boyfriend, girlfriend, person down the street, you can
24 talk to them about anything you want to except this case. You
25 may not discuss it with anyone, nor may anyone discuss it with

1 you. Even now, at this point in time you still don't know
2 anything about this case because we haven't hear any evidence.
3 You may not look up anything on the internet; you may not do
4 any research on your own; you may not tweet anybody about it;
5 you can't blog about it; you can't get on the phone --
6 probably antiquated now -- get on the phone and talk to
7 somebody about it. Unintentionally, whoever that person is
8 that you are communicating, besides violating your oath, will
9 give you their opinion about the case. They don't have one;
10 you shouldn't have one.

11 I'm going to ask you, when you go back to your jury room
12 during the case, before I give it to you at the very end,
13 don't talk about this case, because if you express an opinion
14 about the case before you've heard all the evidence, before
15 you know the law that I'm going to give to you that you need
16 to apply to the facts and evidence you find to be true, you
17 might be expressing an opinion that later on, well, I might
18 want to change, but now I've already said it in front of these
19 other people, and it's sometimes hard to retract what you've
20 already said, so please, don't talk about the case until I
21 give it to you at the very end, and again, as best you can,
22 don't have any mental deliberation as to what you believe or
23 don't believe until you've heard everything, and you know the
24 law to apply to the facts and evidence.

25 So with that I'm going to excuse you, ask you to be back

1 in your jury room by 9:30 tomorrow morning, and we will resume
2 the trial at that point in time.

3 Thank you very much.

4 (THE FOLLOWING TAKES PLACE OUTSIDE THE PRESENCE OF THE
5 JURY.)

6 THE COURT: Anything further from the State at this
7 point in time?

8 MR. HEMBREE: No, Your Honor.

9 THE COURT: Anything further from the Defense?

10 MR. HAZZARD: Your Honor, I did want to address the
11 issue of the plea offer, and put that on the record.

12 THE COURT: Yes sir. I'll be glad for you to do that.

13 MR. HAZZARD: Okay. Your Honor, we received a
14 correspondence from Mr. Hembree's office dated March 8th of
15 2011, and the plea offer is as follows: If the Defendant were
16 to plead guilty to two counts of murder and one count of
17 burglary first degree the State offered a recommendation of
18 thirty-five years of active incarceration.

19 In my dealings with Mr. Hill, obviously from the day I
20 received that, and I had obviously spoken with Deputy
21 Solicitor Richardson about it, in negotiations, prior to the
22 actual letter being written, so Mr. Hill and I have discussed
23 it several times over the past six months. It is my
24 understanding that he has always, and still to this day,
25 rejects that offer, and I would like the Court to have a

1 colloquy with him and place that matter on the record at this
2 time.

3 **THE COURT:** All right. Mr. Hill, do you mind standing?
4 You will remember at -- in our previous discussion the Clerk
5 placed you under oath, so you still remain under oath at this
6 point in time.

7 You heard your attorney describe a offer by the State to
8 resolve this matter. Is that your understanding, first, of
9 the offer?

10 **MR. HILL:** Yes sir, Your Honor.

11 **THE COURT:** All right. And you understand, and I'm
12 sure your attorney has explained to you regarding the murder
13 trial, that the -- if the jury would convict you of those
14 crimes the minimum sentence in this matter is thirty years, up
15 to life in prison without the possibility of parole; you
16 understand that.

17 **MR. HILL:** Yes sir, Your Honor.

18 **THE COURT:** And then understanding, obviously, that the
19 plea offer by the State was for a thirty-five years, and I'm
20 not saying the Court will do this, or would do this if you got
21 convicted of them, but just so that you know, you understand
22 if you get convicted of two murders it's within the realm of
23 sentencing ranges that I could give you, that I could give you
24 a sentence on one charge and then run the sentence on the next
25 one consecutive, meaning you've got to serve the first one

1 before you would get to the sentence on the second on; you
2 understand that?

3 MR. HILL: Yes sir, Your Honor.

4 THE COURT: And the offer by the State was for a
5 thirty-five year plea to run concurrent, that is, the same
6 time on all three charges.

7 Have you had enough time to discuss this offer and
8 everything that's involved with it with your attorney, Mr.
9 Hazzard?

10 MR. HILL: Yes sir, Your Honor.

11 THE COURT: All right, sir. Do you wish to continue to
12 exercise your Constitutional Rights and have a jury trial, or
13 do you wish to accept the State's plea offer at this time?

14 MR. HILL: I wish to continue on with my jury trial,
15 Your Honor.

16 THE COURT: Very good. Thank you very much. Y'all can
17 have a seat. Thank you.

18 MR. HAZZARD: The only other thing that I would bring
19 up is the issue of sequestration of the State's witnesses, if
20 the Court wants to address that at this time.

21 THE COURT: All right. You are making that request,
22 Mr. Hazzard?

23 MR. HAZZARD: The Defense is making that request, yes
24 sir.

25 THE COURT: All right. Solicitor.

1 **MR. HEMBREE:** Your Honor, we have no objection to
2 sequestration. I am not aware of any defense witnesses. We
3 would just ask that that request go two -- what's good for the
4 goose is good for the gander, that it be a reciprocal motion,
5 and ---

6 **THE COURT:** All right. Is there any exception to that?
7 As far as the witnesses is there any of them that would fall
8 within the exception under the Victims' Rights Act, or chief
9 investigating officer or anything like that?

10 **MR. HEMBREE:** Todd Cox would be considered the chief
11 investigating officer, Your Honor.

12 **THE COURT:** All right. With that, the Court would
13 grant the Defense's motion for an order of sequestration,
14 meaning that the witnesses must stay out of the courtroom
15 until they are called to testify, except for the State's chief
16 investigating officer who may remain in the courtroom to
17 assist the State in the prosecution of the case.

18 Further motions on behalf of the Defense.

19 **MR. HAZZARD:** Nothing further at this time, Your Honor.

20 **THE COURT:** All right. Thank you, gentlemen.

21 (THE FOLLOWING TAKES PLACE ON THE NEXT DAY, SEPTEMBER
22 13, 2011, OUTSIDE THE PRESENCE OF THE JURY.)

23 **THE COURT:** All right, Solicitor, is the State ready to
24 proceed?

25 **MR. HEMBREE:** Yes, Your Honor.

1 THE COURT: Defense.

2 MR. HAZZARD: Your Honor, we have one matter to take up
3 before the jury comes out.

4 THE COURT: All right. And what might that be?

5 MR. HAZZARD: With regard to trial publicity, again,
6 Your Honor, I'm going to hand up a document from the Sun News
7 dated Monday, September 12th. If I might approach.

8 THE COURT: Yes sir.

9 Do you want to mark that as a Defense Exhibit for your
10 previous motion?

11 MR. HAZZARD: Yes sir.

12 (SUN NEWS ARTICLE POSTED SEPTEMBER 12th MARKED
13 DEFENDANT'S EXHIBIT NUMBER 2, FOR PURPOSES OF THIS MOTION
14 HEARING ONLY, NOT TO GO TO THE JURY.)

15 THE COURT: Yes sir. I'll be glad to hear from you.

16 MR. HAZZARD: Your Honor, if you will look at
17 paragraphs, I believe it's eight and nine, of this story that
18 appeared in the paper. Says, Horry County Police charges
19 Hill, after his DNA sample which was taken when he was
20 committed to the Tennessee Department of Corrections and
21 ordered to serve a seven year prison sentence was uploaded
22 into a national data base and linked to the Parkers' deaths
23 according to authorities. Hill pleaded guilty to robbery and
24 conspiracy to commit aggravated robbery in connection with the
25 November 15, 2006 incident in Tennessee.

1 Then the following paragraph talks about how the Horry
2 County Police learned that Hill's sample matched two separate
3 samples taken from the Parkers' home, as well as samples from
4 an unrelated home invasion, an armed robbery that occurred in
5 2006 in Longs according to authorities.

6 **THE COURT:** Mr. Hazzard, what I'll be glad to do is,
7 when we bring the jury in I'll be glad to inquire of all of
8 them whether or not they have followed my orders, and if not -
9 - done any research on their own, not looked up anything, not
10 read anything about this case, I'll find out if anybody
11 violated the Court's directions to them, and if somebody
12 indicates they did then we will follow up on it.

13 **MR. HAZZARD:** I would appreciate that, Your Honor, but
14 for the record, since a change of venue would no longer be
15 appropriate remedy the Defense would move for a mistrial due
16 to pervasive and improper publicity.

17 **THE COURT:** I mean, I appreciate that. Just the fact
18 that it's -- again, appears on the news, or appears in the
19 newspaper, that's not the basis of a reason to grant a
20 mistrial. I have to find out. I have to inquire of the
21 jurors if they have looked at it. If they did what effect, if
22 any, it has had on them. Other than that there is no reason
23 for a mistrial. So I'll be glad to inquire of them and we
24 will see if there's any grounds that might give the Court
25 reason to consider your motion.

1 Ask the jury to come in, please.

2 MR. RICHARDSON: Your Honor ---

3 THE COURT: Yes sir.

4 MR. RICHARDSON: ---One thing before the jury comes in.

5 The State has asked Ms. Eubank to mark State's Exhibit Number
6 69 for I.D. purposes only. It's a boucle swab that was taken
7 from Mr. Hill, and we've got some swabs already in.

8 I've shown this to Mr. Hazzard. We understand it's for
9 I.D. only, but I did want to make the Court aware so that Ms.
10 Eubank could square her record.

11 (BUCCAL SWAB MARKED STATE'S EXHIBIT NUMBER 69, FOR
12 IDENTIFICATION ONLY.)

13 THE COURT: All right. Very good. All right.
14 Anything else?

15 MR. RICHARDSON: No sir.

16 THE COURT: All right. Ask the jury to come in,
17 please.

18 (THE FOLLOWING TAKES PLACE WITHIN THE PRESENCE OF THE
19 JURY.)

20 THE COURT: All right, ladies and gentlemen, before we
21 get started I need to inquire of all the members of the jury
22 in this particular matter to make sure that all of you
23 followed the Court's instructions in this matter, that is, to
24 make sure that nobody has contacted you, you have not
25 contacted anyone, you have not done any research on your own,

1 you have not looked up anything about this case, you've not
2 read anything about this case. I want to make sure that each
3 and every one of you have followed those instructions. If you
4 have not followed those instructions please stand at this
5 time.

6 The Court finds that all members of the jury remain
7 seated, indicating that they have followed the Court's
8 instructions. I will tell you, this is a continuing
9 obligation that you have throughout this trial, until it is
10 over with. You may not do any research on your own; you may
11 not talk to anyone about this case; nobody may talk to you
12 about it; you cannot send any message to anybody by any
13 electronic means; you can't research it; you can't read
14 anything about this case. Again, I emphasize to you, your
15 decision comes solely and completely from the facts and
16 evidence presented in this courtroom, and from no other
17 source.

18 All right, with that, your first witness, Solicitor.

19 MR. RICHARDSON: Thank you, Your Honor.

20 The State would call George Carrick.

21 THE COURT: Come around, right up here, to be sworn,
22 sir.

23 GEORGE HOWELL CARRICK, being first
24 duly sworn, testifies as follows:

25 DIRECT-EXAMINATION BY MR. RICHARDSON:

1 Q. Mr. Carrick, I'm going to stand over here so you will
2 keep your voice up and face the jury, okay.

3 Please tell the jury where you are from.

4 A. Right now I'm living in Swainsboro, Georgia. Been
5 there for the last couple of years.

6 Q. What part of Georgia is that?

7 A. Central Georgia. About eighty miles the other side of
8 Augusta.

9 Q. Okay. Where were you living back in April of 2005?

10 A. Conway, South Carolina.

11 Q. All right. Where were you working back then?

12 A. At Mirror-Tec, with Charlie Parker.

13 Q. Mirror-Tec, with Charlie Parker. Tell me how long you
14 worked for Charlie Parker at Mirror-Tec.

15 A. I worked for him about a year before he was killed ---

16 Q. Okay.

17 A. ---And I continued to work there for a couple of years
18 afterward.

19 Q. All right. How long had you known Charlie Parker?

20 A. Since mid-seventies. When I got into the glass
21 business I met him.

22 Q. Did you know Diane?

23 A. Yes sir.

24 Q. And you knew their children, that sort of stuff.

25 A. Yes sir. We were friends, as well as co-workers, for

1 quite a while.

2 Q. All right. Now let's go back to April 12th, 2005. Do
3 you remember that morning?

4 A. Yes sir.

5 Q. About what time did you get to work?

6 A. I got to the shop about 7:30.

7 Q. All right. Who all was at the shop with you?

8 A. Charlie, Jr., and Joey Cannon. They both arrived about
9 the same time I did.

10 Q. All right. Is that about the time y'all would normally
11 get to work?

12 A. No, it wasn't. We were suppose to have a delivery in
13 Calabash, North Carolina about nine o'clock so we were coming
14 in early to get stuff loaded up and ready to go. We had all
15 agreed on that the day before.

16 Q. Okay. And at some point y'all got everything loaded up
17 and ready to go to Calabash.

18 A. Yes sir.

19 Q. At that point had big Charlie, or Charlie Parker showed
20 up for work?

21 A. No, he hadn't. He -- we assumed he was still up at the
22 house.

23 Q. Okay. What did y'all -- did y'all go to make him aware
24 that you were leaving, or anything along those lines?

25 A. Yes. We sent Joey up to the house to check on him,

1 because we were getting ready to leave shortly and wanted to
2 be sure he was coming on with us.

3 Q. Okay. And was it unusual that big Charlie wouldn't be
4 at work when y'all got there?

5 A. Well, not really, but if we had plans on a certain
6 thing it was very unusual, yes.

7 Q. All right. Tell us what happened when Joey went to the
8 house. When is the first time you knew anything was wrong?

9 A. Well, it wasn't up there but just a few minutes, and
10 then he hollered for little Charlie, and you know, at the same
11 time, frantic, ran out and hollered for little Charlie,
12 myself, to come up there.

13 Q. Okay. And you ran to the house.

14 A. Charlie was ahead -- little Charlie was ahead of me,
15 and I was shortly behind him.

16 Q. All right. Now how far would you say the house is from
17 Mirror-Tec?

18 A. Maybe a hundred yards.

19 Q. Fairly close.

20 A. Uh huh (**indicating positive**)

21 Q. Is it on the same property?

22 A. Oh yes. Uh huh (**indicating positive**)

23 Q. Close enough that you could hear Joey when he -- when
24 he screamed.

25 A. Yes. Yes. He hollered from the porch and we could --

1 both of us heard him.

2 Q. All right. Tell the jury what you saw and heard. Just
3 take us there that morning when you first arrived at the
4 house.

5 A. Charlie and Joey were inside the house as I got up
6 there. I saw that the glass out of the back door was broken
7 out, and when I entered in -- turned the corner from the
8 kitchen where they were, toward the hallway, the bedroom and
9 the bathroom, back to the right, I saw Diane laying on the
10 floor, and as I went around that corner I saw Charlie in a
11 bathroom with his daddy -- there was blood all over the place
12 in the bathroom, and he was in there with his daddy.

13 I went into the bedroom toward his mama to see what was
14 wrong, went down to the floor, and noticed that she was white,
15 cold, had a spot on her chest right there with blood on it. I
16 kind of opened her shirt a little bit and saw the bullet hole
17 right there, and knew that she was passed, and turned and
18 Charlie was in the bathroom kind of -- real frantic, going a
19 little nuts with his dad, and I just told him, it looks like
20 it's too late, Charlie, something bad has happened, let's get
21 out of here and call 911.

22 Q. Okay. I want you to take this Exhibit, Number 1, Mr.
23 Carrick, and tell me if you recognize this. Do you know what
24 that is?

25 A. Yes. That's a floor plan of their house.

1 Q. Okay. And -- all right, show the jury, if you would,
2 where you came in.

3 A. Through this door right here ---

4 Q. Okay. And that was ---

5 A. ---Which is the side ---

6 Q. ---Where the glass was broken out.

7 A. ---Side door. The glass was broken out of this door.

8 Q. And when you -- trace your route, please, for the jury
9 when you come in through that door.

10 A. I came in through here, turned and went ---

11 **THE COURT:** You need to keep your voice up, sir, or be
12 behind a microphone.

13 A. Okay. I came in through this door, and came down this
14 hallway, around to right here, where I saw Diane laying there,
15 and as I turned this corner, and then I saw Charlie and little
16 Charlie in this room right here, the bathroom. I went ---

17 Q. All right. And you said you went into this room.

18 A. I went into this room right here and dropped down to
19 Diane, thinking -- not knowing what was wrong. I was going to
20 try to resuscitate her, but it was too late.

21 Then I came back out of this room, came right here.
22 Charlie was coming -- he was in here over his dad, kind of
23 shaking him, trying to pick him up, not -- just frantic.

24 Q. Yes.

25 A. And then Charlie came out and we went back out this

1 same door.

2 Q. And then called 911.

3 A. Yes sir.

4 Q. Mr. Carrick, how far is it from here to where this body
5 was laying -- to -- to here?

6 A. Ten or fifteen feet. Straight across a hall, little
7 small hallway.

8 Q. All right.

9 A. And they were both kind of in the doorways almost.

10 Q. How far would big Charlie have been from Diane? Just
11 use me for an example. I'm going to just start walking back,
12 and tell me about the closest point. Just tell me when to
13 stop walking.

14 A. About there, where you are at now.

15 Q. Okay. So that's about the distance from the bathroom
16 to where Diane was?

17 A. Yes sir.

18 Q. Were you there when the police arrived, Mr. Carrick?

19 A. Yes sir. Yes sir.

20 Q. And how long did you remain there at the house?

21 A. Well, till probably mid-afternoon, three or four
22 o'clock in the afternoon.

23 Q. All right, Mr. Carrick, that's all the questions that I
24 have for you. If you could, answer any questions Mr. Hazzard
25 might have.

1 A. Okay.

2 THE COURT: Cross-examination.

3 MR. HAZZARD: Thank you, Your Honor.

4 Good morning, Mr. Carrick.

5 A. Good morning.

6 CROSS-EXAMINATION BY MR. HAZZARD:

7 Q. So you and Mr. Cannon and Mr. Parker, Jr. all entered
8 the house that morning, correct.

9 A. Yes sir.

10 Q. Okay. And you, I believe told Deputy Solicitor
11 Richardson, that you entered through the kitchen door; is that
12 correct?

13 A. Yes sir.

14 Q. Okay. When you entered through the kitchen door, was
15 there any damage to the door that you noticed?

16 A. Yes sir. The glass was broken out of it. One of the
17 panes of glass was broken out of it.

18 Q. Okay. One of the panes of glass was broken out of it.

19 A. Yes sir.

20 Q. And was that the pane of glass that was closest to the
21 door handle?

22 A. Yes sir.

23 Q. Okay. Now, did you have an opportunity to look at the
24 door at any point, either when you went in, or you came back
25 out?

1 A. I didn't really pay that much attention to it, other
2 than it being broken out.

3 Q. Okay. Did you see any blood around the door or on the
4 door?

5 A. No sir. I didn't notice any.

6 Q. Okay. Did you see or notice any blood on the glass
7 that was remaining in the door?

8 A. No sir, I -- I didn't pay any attention to it, to be
9 honest with you.

10 Q. Okay. But I mean, if it had been -- if it had blood on
11 it you probably would have noticed it, right?

12 A. Probably, but I just -- I see broken glass every day of
13 my life. It was just a broken glass. I -- at the time I
14 assumed Charlie probably would lock himself out going up to
15 the house and busted the glass out to get in ---

16 Q. Okay. You ---

17 A. ---But I didn't pay that much attention to it.

18 Q. Okay. When you said that you were referring to Mr.
19 Parker, Sr..

20 A. Yes sir.

21 Q. Okay. That he might have locked himself out of the
22 house the night before, had to break the glass to get in.

23 A. Yes sir.

24 Q. Which is obviously no big deal for y'all because y'all
25 could replace that one ---

1 A. Put another piece in there. Uh huh (indicating
2 positive)

3 Q. Okay. When you walked down the hallway after you
4 entered -- let me ask you this. Did you see any blood drops
5 in the kitchen?

6 A. No sir. I passed through the kitchen real quick.

7 Q. Okay. And do you recall seeing any blood drops leading
8 down the hallway to where Mr. and Mrs. Parker were, near the
9 end of that hall?

10 A. No sir.

11 Q. Okay. Did y'all call 911 from the house, or from the
12 business across the way?

13 A. Called them on the cell phone in the yard.

14 Q. Okay. While you were in the house did you notice
15 whether or not it appeared any other door had been tampered
16 with, entered or exited through on the house?

17 A. No sir. I didn't pay any attention to any other part
18 of that house after I saw Diane laying on the floor.

19 Q. Okay. But if a door had been standing open do you
20 think that would have caught your attention?

21 A. No sir. You can't really see the other doors in that
22 house from where I was.

23 Q. Okay. So the path you took you really couldn't see any
24 other doors?

25 A. No sir.

1 Q. Okay. And when you exited back through the kitchen
2 door did you see any blood drops, or any trail of blood around
3 the door, on the steps, anything like that?

4 A. I wasn't really looking at anything. I didn't see
5 anything on the way out of that house.

6 Q. All right.

7 MR. HAZZARD: No further questions.

8 A. Yes sir.

9 THE COURT: Any redirect?

10 MR. RICHARDSON: No sir, Your Honor.

11 THE COURT: All right. You may step down.

12 Do you wish the witness to be excused?

13 MR. RICHARDSON: No sir. He's going to remain with us.

14 THE COURT: All right. Very good. You remain under
15 subpoena.

16 Your next witness.

17 MR. RICHARDSON: Your Honor, the State would call Tyler
18 Caines.

19 THE COURT: If you will come forward, up here to be
20 sworn, please.

21 TYLER CAINES, being first duly
22 sworn, testifies as follows:

23 DIRECT-EXAMINATION BY MR. RICHARDSON:

24 Q. Mr. Caines, what do you do for a living?

25 A. I am a Baptist Pastor at Wampee Baptist Church.

1 Q. All right. Is that here in Horry County?

2 A. Correct.

3 Q. All right. Did -- how long have you been a preacher?

4 A. Seven years.

5 Q. Seven years. So you would have been a preacher back in

6 2005, April of 2005?

7 A. Yes.

8 Q. Did you have another job back in April of 2005?

9 A. Yes. I worked for the Horry County Police Department.

10 Q. Okay. Did you have an occasion to go out to 6303

11 Highway 90, in Horry County?

12 A. Yes. I responded to a 911 call that day, to that

13 address.

14 Q. All right. And that is Charlie and Diane Parker's

15 home.

16 A. Yes sir.

17 Q. Approximately what time did you arrive on the scene?

18 A. 8:53.

19 Q. All right. Who was with you, Mr. Caines?

20 A. I arrived that morning with Officer Jack Lee, with the

21 Horry County Police Department.

22 MR. HAZZARD: Your Honor, at this point I notice that

23 the witness has pulled out a document, and I don't know ---

24 THE COURT: Do you want him to identify it?

25 MR. HAZZARD: Sir.

1 **THE COURT:** Do you want him to identify what it is?

2 **MR. HAZZARD:** I'm not -- yes, I would ask that he
3 identify it, and if there's a proper foundation for him using
4 it.

5 **THE COURT:** All right, sir, very good.
6 Solicitor.

7 A. I just pulled out my copy of the Incident Report I
8 wrote that morning.

9 Q. All right. Do you need to refer to that to refresh
10 your memory?

11 A. No. I was just making sure on the time, I mean, but I
12 don't have to have it.

13 **THE COURT:** Mr. Caines, if you need to -- subject to
14 any objection by Defense -- if you need to refresh your memory
15 from the document you may do so, but you may not testify from
16 the document. You can go down and look at it, and then put it
17 aside, and then ask a question, but you can't testify from the
18 document.

19 A. I'm good.

20 **THE COURT:** All right. Very good. Go ahead,
21 Solicitor.

22 Q. Well, if you do need to look back, that's fine; just
23 don't read from it.

24 A. Okay.

25 Q. So you arrived on scene at about 8:53?

1 A. Yes sir.

2 Q. And who was with you, please?

3 A. Officer Jack Lee.

4 Q. All right. Did you go into the home of Charlie and
5 Diane Parker?

6 A. No sir, I did not.

7 Q. All right. Tell the jury what you did upon arriving at
8 the scene at 6303 Highway 90.

9 A. When we arrived that morning there was one family
10 member on the scene -- that was Charlie Parker, Jr. -- two
11 employees. EMS had arrived shortly before we arrived. We
12 went on the scene, realized that we had two victims that were
13 deceased in the home, so at that time we kept everyone out.
14 We secured the house as a crime scene, and we started roping
15 off the area.

16 Q. Okay. Did you ever go into the home of Charlie and
17 Diane Parker?

18 A. No, I did not.

19 Q. Is there any particular reason that you didn't?

20 A. I just felt there was no need to -- for me to go in as
21 well. Officer Lee went in, and I just felt that was adequate.

22 Q. Okay. And so you set up a parameter around the home.

23 A. Correct.

24 Q. Didn't allow any other people to come in unless they
25 had some purpose for being in there.

1 A. That's correct.

2 Q. All right. Were the bodies still there?

3 A. Yes, they were.

4 Q. Okay. Had you ever been to that address before?

5 A. No sir.

6 Q. Did you ever -- did you know Charlie or Diane Parker?

7 A. No sir.

8 Q. Do you know, or did you know Bruce Hill?

9 A. No sir.

10 Q. Every heard of him before?

11 A. Not that I recall.

12 Q. Okay.

13 MR. RICHARDSON: That's all the questions that I have

14 for you. If you would answer any questions Mr. Hazzard has.

15 A. Okay.

16 THE COURT: Cross-examination.

17 MR. HAZZARD: Thank you, Your Honor.

18 CROSS-EXAMINATION BY MR. HAZZARD:

19 Q. Good morning, Pastor Caines. How are you, sir?

20 A. Good. Thank you.

21 Q. Okay. On that day you never entered the house. Did

22 you take a walk around the house to check for suspects, or

23 anything of that nature?

24 A. We did that morning. I remember distinctly going in

25 the back yard looking for tire tracks, and things that may be

1 on the ground, you know, that was left by someone.

2 Q. Okay. Now you indicated that Officer -- I think you

3 said his name is Jack Lee ---

4 A. Correct, yes sir.

5 Q. ---That Officer Lee did enter the house, correct?

6 A. Yes sir. Uh huh (*indicating positive*)

7 Q. Okay. When he entered the house which door, to your

8 knowledge, did he enter through?

9 A. Through the back door.

10 Q. Through the back door. Through the kitchen door?

11 A. Yes. It was -- I never went in, so I'm not familiar

12 with the house. If 90 -- I would consider to be the front of

13 the house, so the door we went in, or that he went in, would

14 be the back of the house, back where the glass was broken, and

15 those things that happened there.

16 Q. Okay. Did you see any blood on or around the kitchen

17 door, to your recollection?

18 A. Not that -- not that I recall, any blood that I saw.

19 Q. Okay. Did you take a -- part of your training,

20 obviously, is to observe a potential crime scene, correct?

21 A. Correct.

22 Q. Okay. And at this point, in April of 2005, how long

23 had you been a police officer?

24 A. Since 1997.

25 Q. Okay. So approximately eight years at that point?

1 A. Yes sir.

2 Q. Okay. Well trained in what you did at that time as

3 your career, correct, or your profession.

4 A. Yes. I felt like it.

5 Q. So do you feel confident that, while looking at the

6 outside of the house, that you made note of all potential

7 clues, or looked for clues, anything that might give an

8 indication of what might have occurred at the residence?

9 A. Are you asking did we look for evidence? That was your

10 question?

11 Q. No sir. I'm sorry.

12 A. I'm sorry.

13 Q. Let me rephrase it. My question specifically is, do

14 you feel that -- or do you recall giving a close observation

15 to the perimeter of the home, the outside of the home?

16 A. Yes. I feel that we did, yes.

17 Q. Okay. And you didn't -- you didn't observe any blood

18 on the kitchen door, or the glass that was broken out, any

19 blood on there?

20 A. No sir. I don't recall any.

21 Q. Do you recall seeing any trail of blood leading away

22 from the kitchen door, or up to the kitchen door, or any trail

23 of blood near the kitchen door?

24 A. I don't recall that, no sir.

25 Q. Okay. Did you -- as part of your job did you and

1 Officer Lee ever discuss what he observed in the house?

2 A. I remember him saying about the bodies, that the bodies
3 were in there, but just mentioned. I don't remember going in
4 great detail with Officer Lee about bodies, or how things
5 were.

6 Q. Okay. Now, you've indicated that EMS arrived, and I
7 wasn't clear on something. I apologize. Did you arrive
8 before EMS, or after the Emergency Medical Service workers?

9 A. EMS arrived before we did.

10 Q. Okay. To your knowledge and observation, did EMS
11 workers enter the house?

12 A. Yes, they did.

13 MR. HAZZARD: Thank you. No further questions.

14 THE COURT: Any redirect?

15 MR. RICHARDSON: No sir, Your Honor.

16 THE COURT: Do you wish the witness to be excused?

17 MR. RICHARDSON: Yes sir, please.

18 THE COURT: Any objection?

19 MR. HAZZARD: No, Your Honor, no objection.

20 THE COURT: All right. Very good.

21 All right, Mr. Caines, you are released from your
22 Subpoena and you may go back to your regular activities, sir.

23 A. Thank you.

24 MR. HEMBREE: May we approach, Your Honor?

25 THE COURT: Yes sir.

1 **(BENCH CONFERENCE TAKES PLACE OFF THE RECORD.)**

2 **THE COURT:** All right, ladies and gentlemen, the
3 attorneys have indicated that there is some matter of law that
4 I need to take up, and probably need to take up outside your
5 presence, so I'll need for you to go -- for you to go to your
6 jury room for a couple of minutes, please.

7 Thank you.

8 **(THE FOLLOWING TAKES PLACE OUTSIDE THE PRESENCE OF THE**
9 **JURY.)**

10 **THE COURT:** Yes, Solicitor.

11 **MR. HEMBREE:** May it please the Court, Your Honor. We
12 have six photographs that -- crime scene photographs that we
13 intend to introduce that the -- the Defense has objected to
14 the other photographs, the crime scene photographs we had
15 stipulated into evidence. These are State's Exhibits 26, 27,
16 28, 30, 33, and 40, for identification purposes. Your Honor,
17 these photographs -- well, I'll -- and I'll hand them up to
18 the Court, but I feel I need to give a bit of history about
19 these particular photographs.

20 As Your Honor is aware, this case has -- at least this
21 piece of the case has been presented to the Court before.
22 When we tried this case against Mr. Gagnon several years ago
23 we submitted a -- essentially the same group of photographs
24 that we are submitting in this case. The ones that have been
25 objected to were all reviewed and ruled on by the Court at the

1 time, and were admitted into evidence, at the time, so those -
2 - those have been ruled upon in another trial.

3 Now certainly that's not binding up this Defendant in
4 this trial, however, what we have done -- what I have done is,
5 at that time, during Gagnon, the Court reviewed these
6 photographs, along with others. There were other photographs
7 that the Court determined were not necessary, were not
8 relevant, or were more prejudicial than probative, and they
9 excluded -- the Court excluded those photographs. I am not
10 even attempting to introduce any of those photographs in this
11 trial. We are attempting to introduce any autopsy photographs
12 in this trial. Respecting the Court's ruling in the previous
13 case there is no reason in the world why the Court would admit
14 those photographs. There is nothing different. There is
15 nothing that has changed between the two, so we are not even
16 attempting to introduce those other photographs in this trial;
17 however, the ones that we submit today, or we ask the Court to
18 consider today, are the ones that we -- that we used to tell
19 the story that are relevant and have been ruled on previously,
20 so I guess I'm saying that -- I'm presenting the ones only
21 because they are the ones that the Court has previously
22 ruled upon.

23 **THE COURT:** All right. All right, let's start with --
24 do you have copies of them, or you know which ones I'm talking
25 about if I say Plaintiff's (SIC) 26, or you need to look at

1 it?

2 MR. HEMBREE: Probably need -- yes sir.

3 THE COURT: All right. Well, let's start with
4 Plaintiff's (SIC) 26. Tell me what's the purpose of it?

5 MR. HEMBREE: Your Honor, Plaintiff's (SIC) 26 shows
6 the blood drops that have -- that are on the floor, shows the
7 legs of the victim, Charlie Parker. It will show, and there
8 will be testimony regarding the significance of the blood
9 spatter that is shown in this photograph, and it will -- it
10 will go to the -- when the injuries occurred, and which
11 injuries led to this blood letting.

12 THE COURT: All right, sir.

13 MR. HEMBREE: This is State's 26, for identification.

14 THE COURT: Yes. State's 26.

15 All right. State's 27, for ID. Let's go through them
16 one at a time.

17 MR. HEMBREE: Your Honor, this photograph -- although
18 it depicts the blood letting on the legs, it also depicts the
19 blood letting on the body, as well as the blood letting in the
20 sink and in other parts of the bathroom. This gives a -- this
21 gives a perspective of the -- it's the only photograph --
22 there are two photographs that give the perspective of the
23 bathroom. That's significant because it will show where one
24 projectile was located. It will orient where that projectile
25 is located, as well as another projectile, but most

1 significantly is that there is a blood letting that's obvious
2 at the sink that shows -- that will demonstrate that Mr.
3 Parker had been injured high in the body when that blood
4 letting occurred, and at some point took a position -- was
5 able to take a position at that sink in the course of this
6 assault.

7 **THE COURT:** All right, sir. How about State's 28?

8 **MR. HEMBREE:** Your Honor, State's 28 doesn't show Mr.
9 Parker quite so clearly. The significance of this was
10 actually to show that the bathroom window's blinds were
11 closed. It's a different perspective than State's 27. 27 is
12 a lower perspective showing the full length of the victim's
13 body. 28 shows some of the victim's body, but primarily the
14 window that shows as -- as the blind being closed.

15 **THE COURT:** All right. Very good. How about 30?

16 **MR. HEMBREE:** Your Honor, 30 is a photograph of the --
17 30, for ID purposes, is a photograph as you enter the master
18 bedroom. It shows the orientation of the furniture. It shows
19 the orientation of Diane Parker's body as it was found by law
20 enforcement on that date and time.

21 **THE COURT:** All right. 33.

22 **MR. HEMBREE:** 33, Your Honor -- there was a wound to
23 Diane Parker that was unique. It actually entered -- it
24 entered in the front of her body, went through her body,
25 exited her back, and then actually kind of ricocheted up, and

1 entered her back in the back part of her body. This
2 photograph shows that injury.

3 **THE COURT:** All right, sir. And State's 40.

4 **MR. HEMBREE:** And Your Honor, State's 40 is, once
5 again, a photograph that showed -- that orients the bedroom
6 from where -- there were some items that we believe were
7 either stolen or rifled through. It shows the condition of
8 the bed sheets. It does show the victim's body oriented in a
9 viewpoint going out of the bedroom as opposed to coming into
10 the bedroom we would submit -- and this is a rather distant
11 shot from the victim's body -- there's really nothing -- we
12 would submit there is nothing prejudicial about this at all
13 because of it's distance. It really is more of a shot to show
14 the orientation as well as the items that are on the bed, and
15 the condition of the bed.

16 **THE COURT:** All right. Very good. Any other arguments
17 you want to make?

18 **MR. HEMBREE:** No, Your Honor.

19 **THE COURT:** All right. Mr. Hazzard, I'll be glad to
20 hear from you, sir.

21 **MR. HAZZARD:** Thank you, Your Honor. With regard to
22 number 40, the Prosecutor said that it orients the bedroom.
23 If I'm not mistaken he has another photograph that is agreed
24 to be in evidence that only shows Mrs. Parker, I believe from
25 the waist down, does not show the top of her body, shows her

1 legs and her feet, if memory serves correctly, that would also
2 tend to orient the bedroom for the jury, without them having
3 to see her in this manner.

4 With regard to 33, the Prosecutor indicates that it
5 shows a unique wound.

6 Court's indulgence.

7 Shows the unique nature of the wound. It is a bullet
8 hole. There is a great deal of blood there. We would submit
9 that Mr. Caulder, as well as, I'm assuming the -- Dr. Nichols
10 who did the autopsy, that's going to testify to entrance
11 wounds and exit wounds which -- thus making that issue for
12 this picture to be duplicative at best, and that any --
13 therefore any probative value that this picture might have is
14 far outweighed by the prejudicial nature. A picture of this,
15 blood soaked as it is, I would submit, would tend to, and be
16 calculated to arouse the prejudice and passion of the jury as
17 opposed to their intellect and reason for the purposes of this
18 trial. That is Number 33.

19 With regard to Number 30, the Prosecutor, I believe,
20 said it was with regard the orientation of the furniture and
21 the body. I would submit that there are other pictures that
22 have been submitted and agreed to to go into evidence that
23 will show the orientation of the furniture. This picture,
24 unfortunately, shows Ms. Parker lying on the floor face up.
25 Her mouth is open. Your Honor, it is just a very shocking and

1 graphic photograph, and for them to say that, well, we need
2 this for the purpose of orienting the body with the furniture
3 in the room, and the space in which this occurred, Your Honor,
4 they have this big exhibit, State's Number 1, that clearly
5 shows the bodies as they were found, and with regard to all of
6 the furniture in the room, thus making that picture
7 duplicative at the most -- or at best, I should say, and
8 therefore the probative value of it is far outweighed by the
9 possible prejudice to the Defendant as it is calculated to
10 arouse the passion and prejudices of the jury. I apologize.

11 With regard to Number 28, Your Honor, the Prosecutor
12 told you that the sole purpose for showing this picture of Mr.
13 Parker, the deceased, lying covered in blood in the bathroom,
14 is to show that the blinds are closed. That's what he said,
15 that we are showing this -- we want to submit this picture to
16 show that the blinds in the bathroom were closed. Your Honor,
17 there has got to be a better way, through testimony, obviously
18 -- we will stipulate to the fact that the blinds were closed.
19 To show a shocking and jarring picture like this, we would
20 submit, highly prejudicial, has virtually no probative value
21 with regard to the determination of whether the blinds were
22 open or closed or not, considering the fact that we will
23 stipulate to that fact, and the prejudice of it would far
24 outweigh any probative value in that case.

25 THE COURT: All right.

1 **MR. HAZZARD:** Your Honor, with regard to State's
2 Exhibit Number 27, that is a more close up shot of Mr. Parker
3 lying, unfortunately, covered in blood, in the bathroom.
4 Very, very graphic in nature, Your Honor, very graphic in
5 nature, and the Prosecutor indicated that it shows the blood
6 on him. Now, if it were someone's blood on him other than his
7 blood, I would submit possibly there would be some probative
8 nature to it, but again, they have people's number one which
9 shows the positioning of the bodies in the different rooms,
10 and in relation to each other, and we would submit that the
11 jarringly graphic nature of this picture would strongly
12 prejudice the Defendant, and far outweigh any probative value
13 that it has, Your Honor.

14 And with regard to Number 26, the Prosecutor said,
15 again, that it shows a pattern of blood on Mr. Parker. Again,
16 yes, that's Mr. Parker's blood. I don't think there's any
17 question about that. I don't -- didn't hear the Prosecutor
18 say anything about any type of expert testimony regarding the
19 directional nature of the spatter, or anything of that nature.
20 It's my understanding that Mr. Caulder will testify that it
21 was in a mist-type pattern, and what that means. I would
22 submit to show the photo itself, the jarring nature of the
23 photograph, any probative value that it has is far outweighed
24 by the prejudice to the Defendant, and such a photograph would
25 be calculated solely to around the passion and prejudices of

1 the jury against the Defendant in this case.

2 And the one thing that the Court knows that has changed
3 since these photographs were admitted in Mr. Gagnon's trial
4 is, I believe that our Supreme Court had cautioned the
5 prosecution and the bench regarding submitting into evidence,
6 you know, gratuitous photographs that show, you know, very
7 gory scenes, specifically, and especially when they are not
8 needed, and are duplicative of facts that can be brought out
9 in other forms and other fashions, without submitting the jury
10 to this. That is the specific reason for the Defense's
11 objections to photograph 26, 27, 28, 30, 33, and 40 as
12 submitted by the Prosecution, Your Honor.

13 THE COURT: Thank you.

14 Anything else, Solicitor?

15 MR. HEMBREE: No, Your Honor.

16 THE COURT: All right. In this particular matter the
17 Court is well aware of the Supreme Court's directions in this
18 matter regarding photographs, and the cautions that the
19 Supreme Court has issued about unduly graphic photographs, or
20 the natures of those, and whether they are just designed to
21 become inflammatory, or to prejudice the rights of the
22 defendant.

23 In this particular case I'll first start off with the
24 fact in conducting the Rule 403 analysis, to weigh the
25 probative value, see if there is -- the matters are unduly

1 prejudicial to the Defendant the Court takes into
2 consideration the definition of murder. The State has to
3 prove, beyond a reasonable doubt, that the defendant killed
4 another person with malice aforethought. Malice is hatred,
5 ill-will or hostility toward another person. It's the
6 intentional doing of a wrongful act without just cause or
7 excuse, and with the intent to inflict an injury, or under
8 circumstances that the law will infer an evil intent. That is
9 the burden the State of South Carolina has.

10 The first ground that the Court would have to allow the
11 photographs is, it is proper use by the State of South
12 Carolina to use these photographs to meet it's burden of
13 proof, or attempt to meet it's burden of proof in the case
14 against Mr. Hill on the two counts of murder, those being, in
15 the Court's mind, necessary photographs to give the jury a
16 contemplation and understanding of what did or did not occur
17 the night the two victims were murdered. I do not find them
18 to be unduly graphic or shocking. The Court, in the prior
19 trial, did not allow much more graphic and shocking
20 photographs, and obviously the Solicitor did not try to
21 reattempt to introduce those. I find that these are proper
22 and probative of the issues that the State must attempt to try
23 to prove in their case in chief. I have kept in mind the
24 Supreme Court's caution about photographs. I have kept in
25 mind my authority and the examination that I must make under

1 Rule 403. I do find that, on the issues to be proved, besides
2 the ones mentioned by the Solicitor, that the probative value
3 of these photographs outweighs any prejudicial effect to the
4 Defendant, and is important to give the jury a proper
5 understanding and consideration of what did or did not occur
6 on the night that the two victims were murdered, therefore,
7 I'm going to allow photographs 26, 27, 28, 30, 33 and 40 to
8 come into evidence in this case.

9 MR. HEMBREE: Thank you, Your Honor.

10 (PHOTOS ADMITTED INTO EVIDENCE AS STATE'S EXHIBIT
11 NUMBERS 26, 27, 28, 30, 33 AND 40.)

12 THE COURT: Anything else that y'all need to cover at
13 this point in time?

14 MR. HEMBREE: Nothing from the State, Your Honor.

15 THE COURT: All right.

16 MR. HAZZARD: Nothing from the Defense.

17 THE COURT: Thank you very much, Mr. Hazzard.

18 MR. HAZZARD: Yes sir.

19 THE COURT: All right. Ask the jury to come back in
20 then.

21 (THE FOLLOWING TAKES PLACE WITHIN THE PRESENCE OF THE
22 JURY.)

23 THE COURT: All right, Solicitor, you next witness,
24 please sir.

25 MR. HEMBREE: Thank you, Your Honor.

1 The State calls Crime Scene Specialist John Caulder to
2 the stand.

3 **THE COURT:** Please come around up here to be sworn,
4 sir. Thank you.

5 **JOHN CAULDER,** being first duly
6 sworn, testifies as follows:

7 **THE COURT:** You may proceed, Solicitor.

8 **MR. HEMBREE:** Thank you, Your Honor.

9 **DIRECT-EXAMINATION BY MR. HEMBREE:**

10 Q. Mr. Caulder, who do you work for?

11 A. Horry County Police Department.

12 Q. And in what capacity do you serve Horry County Police
13 Department?

14 A. I'm the Senior Investigator in the Crime Scene Unit.

15 Q. And what does that entail?

16 A. Our responsibilities at the Crime Scene Unit are to
17 respond crimes. It's crime scene reconstruction where --
18 entails blood stain interpretation, foot wear, tire wear,
19 fingerprints. We just kind of do the broad spectrum.

20 Q. You would sort of be the CSI guy for Horry County.

21 A. Yes sir.

22 Q. Not that that's -- that's television -- this is real
23 life, so -- but that's the role that you fulfill with Horry
24 County Police?

25 A. Yes sir, that is correct.

1 Q. How long have you been with Horry County Police,
2 Investigator Caulder?

3 A. I've been with Horry County for fourteen years, as a
4 crime scene investigator for the last, going on eight years.

5 Q. And would you give this jury the benefit of your
6 training and experience as a crime scene investigator and
7 analyst?

8 A. In just the different facets of crime scene
9 investigation, like I say, I've had eight years on the job. I
10 have been to training with the FBI, through other local state
11 agencies, through SLED, which is our State division, law
12 enforcement division, and I also have been to various
13 trainings offered through private companies.

14 Q. Investigator Caulder, could you estimate how many
15 special trainings you've gone through for Crime Scene
16 Investigation and Analyses?

17 A. It's been well over three hundred hours.

18 Q. And you have been qualified in courts of record in this
19 State to testify as an expert in the field of Crime Scene
20 Investigation and Analyses.

21 A. Yes sir.

22 Q. On how many occasions?

23 A. One -- one prior occasion in this court.

24 Q. Okay. In this particular court.

25 A. Yes sir.

1 **MR. HEMBREE:** Fair enough.

2 Your Honor, we would, at this point, submit Investigator
3 Caulder as an expert in the field of Crime Scene Analyses and
4 Investigation.

5 **THE COURT:** All right. Mr. Hazzard, do you wish to
6 voir dire the witness as to his qualification or challenge
7 him?

8 **MR. HAZZARD:** No sir.

9 **THE COURT:** All right. Very good. The witness is
10 qualified to give his opinion.

11 **MR. HEMBREE:** Thank you, Your Honor.

12 Q. Investigator Caulder, were you working -- you were
13 working with the Horry County Police Department April 12th of
14 2005.

15 A. Yes sir.

16 Q. And were you called to a scene on that date?

17 A. Yes sir, I was.

18 Q. Do you recall approximately what time you were called
19 out?

20 A. It was about 8-fiftyish in the morning, April the 12th.

21 Q. And when you arrived -- what's the normal protocol?
22 What's the procedure once the -- if Tyler Caines was the first
23 -- one of the first responders, what's the process that takes
24 place before you get there, typically?

25 A. Typically what happens is, the dispatcher will get a

1 call, and the road officers will respond out. What they
2 basically do is, they determine what they have. This is just
3 according to the way the call comes from dispatch. Once they
4 are there and they determine they do have a crime scene, or a
5 scene that requires other assistance, which would be a crime
6 scene unit or other depart -- parts of the department, the
7 Detective Division, they will rope the area off. The way they
8 are trained, which is part of our responsibility, is to train
9 the department officers in crime scene, and how to handle a
10 crime scene is, they are trained to rope off an area that is
11 larger than the scene itself, meaning that if we had a scene
12 that took place the size of this piece of paper we would rope
13 off two sizes of the paper, and that's the way they are
14 trained.

15 Once they rope it off and secure it at that point in
16 time they man that station, or they stand there and make sure
17 that nobody crosses the crime scene tape, and if they do cross
18 the crime scene tape that they log in and out of a crime scene
19 entry log, which is documented by the person who enters the
20 crime scene signing in and our, date and time.

21 Q. And what's the purpose of them securing, you know, and
22 preventing, you know, people without official business to come
23 into that crime scene at that point? What's the reason for
24 that?

25 A. So it doesn't contaminate the scene. What is there is

1 there. Naturally the first responding officers, or officer,
2 gets there. Naturally they -- once they assess what they have
3 they do -- don't want to take anything to the scene or take
4 anything away from the scene, so once they rope it off and
5 secure it, it doesn't allow for other people to come in and
6 bring any outside contamination, or take anything from inside
7 the scene out -- out of the scene.

8 Q. Got you. When you say rope off you don't -- you don't
9 mean like the real rope.

10 A. No. It's just -- it's -- lack of a better term, it's
11 just yellow crime scene tape that is roped around the
12 perimeter.

13 Q. Now, when you arrived, when you got to the scene, what
14 was -- what was the -- what was your view of?

15 A. When I first arrived on scene they had -- Officer Tyler
16 Caines had the area -- and as well as other officers -- had
17 roped off pretty much the whole yard, or secured with the
18 crime scene tape, the whole yard in front of the incident
19 location, which was probably better than an acre of land, and
20 they had secured -- there was one vehicle inside of the scene,
21 one patrol vehicle inside the scene, but the rest of the
22 patrol vehicles was outside of the scene, and of course
23 Officer Caines was standing just inside the tape with his
24 crime scene entry log.

25 Q. Okay. Now, just so -- explain to this jury your

1 general process. What are the stages or steps that you take
2 when you are called upon to process a crime scene,
3 particularly one of this size?

4 A. With every crime scene -- what happen at every crime
5 scene, no matter how big or small, the same steps are taken.
6 Basically, when we first arrive on the scene we talk with the
7 initial responding officer -- most of the time -- in this case
8 it would have been Officer Caines -- we find out what he
9 observed upon entry, or what he knows of the situation so far.
10 The reason for that is, where did he walk when he walked into
11 the house, did he touch anything, did he have to open any
12 doors, if he did, where did he touch the doors, if he moved
13 anything. If EMS responded we need to know from them if
14 they've moved anything, touched anything, that way it can be
15 documented, because when it comes back to reconstruction of
16 the crime scene if something is out of place and there is no
17 way to explain it, like EMS had moved it, or a police officer
18 had moved it to secure it, then it becomes kind of complicated
19 when it comes to reconstruction. The story may not fit
20 together.

21 On this date Officer Caines advised us of what he saw,
22 you know, who had been in the scene with him, and after he
23 arrived, from that point we start taking notes, you know, just
24 the general -- you know, what's the temperature, what's the
25 lighting outside, things like that, then we start photographs.

1 We photograph the entire exterior of the home, or of the
2 scene, just shows all different points or areas as we -- we
3 see it when we arrive.

4 Then we wait for -- in this case we had to obtain a
5 search warrant, which could take some time, depending on how
6 long it takes to find a judge. Once the search warrant is
7 secured, as soon as we are notified, then we make entry into
8 the home. Once we are inside the home we photograph --
9 there's generally three photographs that are taken of every
10 room, or three to four photographs of each room, and it
11 depicts the entire room, from different angles. Basically the
12 way we photograph is from corner to corner, and that's four
13 corners, so you want to take those four photographs to show
14 the entire room prior to us starting any type of processing so
15 -- in case we -- when we do come back to reconstruct it we are
16 able to do that without -- with showing how it was done before
17 we touched it.

18 Pretty much after we photograph everything then we come
19 back out of the residence, then we start getting -- go through
20 our -- for lack of a better term -- game plan, and find out
21 what we are going to do to process the scene.

22 Q. And so you've got -- you get just -- you find out some
23 basic facts from the officers on the scene, would be step one.

24 A. Yes sir.

25 Q. Step two is, you document -- photographically document

1 the scene, exterior and interior.

2 A. Yes sir.

3 Q. You have not marked any pieces of evidence at this
4 point.

5 A. No sir.

6 Q. You are just taking photographs as you have found it.

7 A. That is correct.

8 Q. Then your third step is to -- you kind of come back out
9 of the house and confer, I guess with other officers, and
10 maybe other crime scene specialists, to determine what steps -
11 - what the next steps are going to be?

12 A. Yes sir, that is correct.

13 Q. All right. And then those would be -- give me some
14 examples of what the next steps would be.

15 A. Pretty much the other investigators -- there were two
16 other investigators, crime scene investigators there that day.
17 It's kind of a round tape type meeting, or -- that we all have
18 seen what was in the house and what needs to be done, as far
19 as dusting for fingerprints, the kind of evidence collections
20 we are going to do, what needs to be collected, what was seen
21 when we first walked in there, whether we need to process it
22 with like luminol, or something with blood enhancement if
23 there was shoe wear, or fingerprints in the scene, some type
24 of enhancement processes, and methodically break down of what
25 type of search, which room we are going to start in, and

1 methodically go through each individual in our mind, just kind
2 of round table it so we know that we go into it and hopefully
3 not miss anything, and the reason for the round table meeting
4 outside is so we can go over each step, and the fact that
5 there are also two others there that kind of our extra eyes,
6 so ---

7 Q. So you've done your planning, your round table
8 discussion, you've done your -- you mapped out your plan for
9 what you are going to do next, then you did what in this case?
10 What would be the next step?

11 A. Once we have had that meeting, we know what we are
12 going to do. We go back in and we try to remove the obvious
13 evidence, and in this case, you know, it was gun -- there were
14 some casings on the ground, gun -- or handgun casings on the
15 ground. We try to go ahead and number those, and anything
16 that's obvious, or that just stands out, that would be out --
17 so we don't disturb it, we go ahead, number it, and each one -
18 - each thing that we collect has it's own numerical sequence
19 or number with it, and it's photographed. Then we go ahead
20 and collect it, get it out of the way, that way we don't
21 contaminate it, and that way it doesn't get kicked around and
22 moved, and it's out of place to where it was.

23 Then once the obvious things are taken, collected and
24 numbered and packaged and put them we then go to other things
25 like, in this case we sprayed the hallway from the kitchen to

1 the bathroom, we sprayed with luminol, which is -- it reacts
2 with blood in darkness, and it kind of fluoresces, so we did
3 that in the hallway from the kitchen. Then in the hallway
4 just outside the bathroom we used an amino black, which is an
5 enhancement of -- like if there's shoe wear or fingerprints in
6 blood it will enhance it, kind of reacts with the blood to
7 show anything inside of the blood itself.

8 The victims are then kind of looked over to make sure if
9 there's anything on them as far as -- we kind of try to
10 document the wounds, if they've any defensive wounds, what
11 wounds they have to themselves, and then we wait for the
12 coroner, and once the coroner has been apprised and sees the
13 situation the victims are then removed from the scene, then we
14 go back and do it all over again, with the victims gone from
15 the scene.

16 Q. Understood. So tell me -- take me back to the
17 numbering of the -- you go -- go back in. You've -- the
18 things that are quite clear you -- that -- or clear to you,
19 that you know, or you are going to collect as evidence, or
20 document as potential evidence in a case, you number those
21 items.

22 A. Yes sir.

23 Q. And how do you number? What process do you use?

24 A. Mainly it's where we start, from room to room. In this
25 case we left the kitchen -- the back door would have been what

1 we considered the first items that we've done anything with,
2 because there was a busted window in this case. So that
3 would have been the first thing we processed, so if we
4 collected anything from there that anything collected from
5 there would be considered one, two, three, how many -- it's
6 according to how many items had gotten -- if there was
7 anything collected at the door.

8 Once we moved down the hallway anything in the hallway
9 would have been 2, 3, 4, each room methodically. I mean --
10 and then like later if you see the drawing or the diagram, or
11 the sketch that I did there may be numbers. There may be a
12 number two here, but there will be a number 24 beside it.
13 Well, the reason for that is because after everything was
14 initially picked up, and we went back again after the victims
15 were removed from the scene we may find something that was
16 either under them, or may have been behind a trash can or
17 something else that -- because then we physically start moving
18 everything.

19 Q. Fair enough. Now, you prepared a diagram in connection
20 with your investigation of this case.

21 A. Yes sir.

22 Q. That's State's Exhibit 1. It's in evidence.

23 I'm going to ask you, Investigator, if you would, to
24 come down from the stand. We will -- I will set that diagram
25 here, and ask you to step down, and I will ask you some

1 questions about that diagram and what you found.

2 A. Okay.

3 Q. Come down this way.

4 A. Yes sir.

5 **THE COURT:** If you would, Solicitor, if you would just
6 make sure you are in front of one of those two microphones,
7 you and the witness.

8 Q. Investigator Caulder, I'm probably going to have you
9 take this position right here so -- your testimony is the most
10 important -- so that the Court Reporter can get it, and the
11 jury can hear you.

12 **MR. HEMBREE:** Can everyone see that?

13 There is a pointer.

14 Q. Now, Investigator Caulder, we will also have a number
15 of photographs I know you have previously reviewed that are
16 now in evidence. These are State's 2 through 57 in evidence.
17 What I have done is, I've taken these photographs and put them
18 on a PowerPoint so we could see them a little better. I'm
19 going to ask you some questions about these photographs, ask
20 you then to relate them to the diagram when appropriate.

21 A. Okay.

22 **MR. HAZZARD:** Your Honor, may we approach right quick?

23 **THE COURT:** Sure.

24 **MR. HAZZARD:** Thank you.

25 **(BENCH CONFERENCE TAKES PLACE OFF THE RECORD.)**

1 **THE COURT:** Go ahead, Solicitor.

2 **MR. HEMBREE:** Thank you, Your Honor.

3 Q. Investigator Caulder, take the position there so you
4 can -- can you see the screen okay from there?

5 A. Yes sir.

6 Q. If you would, this is State's Exhibit 2, in evidence,
7 that we are looking at on the screen. Would you describe that
8 for the jury.

9 A. This is the front of the residence, which would be --
10 on the diagram it would be up here.

11 This is Highway 90, looking down Highway 90 back toward
12 Conway. The road is to the right. You can see the Mirror-Tec
13 business in the background of that photograph. The Mirror-Tec
14 business which had been -- to the diagram it would have been
15 this way. And this is the Highway 90 side of the diagram.

16 Q. And let me show you State's 3 in evidence. Describe
17 the scene we are looking at there.

18 A. This is still on Highway 90. You can see the crime
19 scene tape that surrounded the yard, and you can see it to the
20 left and you can see it to the right. That is the front of
21 the residence, which would be here. You can see the front
22 door here on the diagram and in the photograph. You can see
23 the two front windows on this end, which is the Conway side.
24 Conway is to your left; Little River is to the right.

25 Q. Describe -- this is State's Exhibit 4 in evidence.

1 A. This is also the front of the -- this is the front of
2 the house. It's just a close up, and we are standing to front
3 we are looking from East to the West. You are looking at --
4 from this way back this way you can see the front door. It's
5 about -- to the right of that photograph this is the front
6 door. You can see the bedroom window.

7 Q. State's 5.

8 A. This is the -- this is the Little River side of the
9 house, which would be the west -- you are looking at the west
10 side of the house, and this is the north side. What you are
11 looking at is right here. It's this doorway right here, the
12 end of this -- apologize because it's cut off, the end -- the
13 drawing here, but that's the doorway right here that you are
14 looking at.

15 Q. Any sign of forced entry on that door?

16 A. No sir. There was a -- down on the ground was a -- you
17 can see it in the photograph -- there's like two windows, like
18 they were doing some remodeling at some point in time, and
19 those were newer windows, but the glass was broken in them.
20 They hadn't been put up, and they had been there for some
21 time.

22 Q. State's 6.

23 A. This is the Conway side, or the actual south side of
24 the house. This is this side of the residence. You are
25 looking at this way, back toward that way. I mean, you can

1 see the back door. You see the Lincoln Navigator to the left
2 of the photograph, which is parked here, then the back door of
3 the residence. That leads into the kitchen. You see the two
4 bedroom window, again.

5 Q. Is that area -- and I'm talking about this area right
6 here -- is that visible from the highway?

7 A. No sir. This is State's ---

8 Q. State's 7. Let me identify it first.

9 A. I'm sorry.

10 Q. That's okay. State's 7.

11 A. This is the same photograph. You are look -- well,
12 basically. It's just a different view of the same picture.
13 You are looking back toward Highway 90, so now you are looking
14 from -- in the diagram you are looking from back -- bottom up.
15 You can see the Lincoln Navigator. The back door is evident.
16 And you see the bathroom window is the one to the far left.
17 It's about the center of the photograph, and the bedroom
18 window is the last window to your right.

19 Q. State's Exhibit 8.

20 A. This is the back door of the residence. You are just -
21 - the photographs we just -- the last two photographs we just
22 looked at -- this is the entry -- or the point of entry. This
23 is the one with the window -- the glass pane is broken out,
24 just here in the dining room.

25 Q. And you are looking into the kitchen area?

1 A. The kitchen area, yes sir.

2 Q. State's Number 9.

3 A. Just closer to the -- entry point to the doorway to the
4 kitchen. You can see a little better view of the kitchen area
5 here, and the entry door.

6 Q. Now, you indicated that there was some broken glass in
7 the doorway. Show you State's 10. Indicate where that broken
8 glass is.

9 A. It's on the doorway that leads into the kitchen, and if
10 you look at the photograph you can see the broken window pane
11 just above the door handle.

12 Q. This area here?

13 A. Yes sir. That window pane there. It's the only one
14 that was broken out.

15 Q. And that's obviously closest to the door knob.

16 A. Yes sir.

17 Q. What about -- did you find any blood on that glass?

18 A. No sir. There was no blood on the glass, and there was
19 no glass on the ground. The reason why is because, prior to
20 my arrival, from the information that I gotten, that -- I
21 don't recall the name of the person, but someone from Mirror-
22 Tec, which is the business nextdoor, had came into the house
23 and cleaned up the glass. It had -- I did get an opportunity
24 to see the glass, but it was intermeshed in a trash bag with a
25 bunch of other trash. They had cleaned up all the broken

1 glass that was around the door.

2 Q. Would that glass have been considered contaminated?

3 A. Yes sir. At that point in time -- once it had been
4 touched by someone else and then put into the trash bag it was
5 -- it was just no -- no use.

6 Q. In spite of that, did you observe any blood on that
7 glass?

8 A. No sir.

9 Q. At least what you had thought ---

10 A. Yes sir. From -- we -- and I even spread out -- just
11 through here there was -- there was kind of a chair -- you
12 can't -- can't really -- I don't think you see it in any of
13 the photographs. There was like a little bench type chair
14 that was outside. We actually dumped the contents of the
15 trash bag out onto that little bench, and did not observe --
16 it's on the back side of the photograph. I don't think you
17 ever gave me the photograph. There it is.

18 Q. Take you back to it, to State's 6.

19 A. In the -- just that back door there was like a bench.
20 We dumped the -- I dumped the trash bag out to physically go
21 through each -- see if I could see anything, any type of blood
22 or anything that's on the -- on the glass, but -- did not
23 observe any, but it had been -- whether it was broken up that
24 much when the door was broken into, or if it was -- that was
25 more breakage done upon clean-up, but it was just in little

1 tiny pieces, so, I mean, it was kind of hard to tell.

2 Q. And State's 11.

3 A. That's just a straight-on view of the back door, the
4 broken glass pane itself, on the back door.

5 Q. State's 12.

6 A. This is a view into the kitchen, still standing -- and
7 I'm standing on the inside of the doorway, just looking into
8 the kitchen. You can see the dining room in the background.

9 Q. State's 13.

10 A. This is a view of the hallway, standing in the kitchen.
11 This is this area right here. The kitchen is now to my left,
12 and this is the hallway that leads to the back part of the
13 house where the victims were found.

14 Q. And tell this jury what your -- you know, if you looked
15 straight down that hallway what do you -- what are we looking
16 into in that doorway that we see at the end of the hall?

17 A. You see the victim. In this doorway is a bathroom --
18 or a bedroom, and that's the actual east end of the house, and
19 this is -- what I have marked here is the second bedroom.

20 It's just a view from here toward here, into the second
21 bedroom and the window. This points out toward Highway 90.

22 Q. And take you to State's 14.

23 A. This is a view standing in the doorway, of the second
24 bedroom. You are looking toward the window which leads out,
25 and in the background is Highway 90. So we are standing in

1 this area right here, and that's a photograph overlooking the
2 second bedroom.

3 Q. Now, was there -- were there items of significance,
4 evidentiary significance, in your view, found in this bedroom?

5 A. Inside the bedroom there was what appeared to be like a
6 blood -- like a blood drop on the bed, which is -- in this
7 photograph is the far side of the bed. There was a blood
8 drop.

9 Also the window -- it's not real visible on the window,
10 but through the window there's -- if you look in the center of
11 the photograph at the window panes, those are actually two --
12 there were two holes -- it's a double-paned glass -- where a
13 projectile has exited out of the window. It just comes from
14 inside the house and exits to the outside of the house.

15 Q. Investigator Caulder, you mentioned that there were two
16 holes, two holes, one hole through each pane of glass, or
17 actually two separate holes?

18 A. No, just -- just -- it was one single shot, but it went
19 through two panes of glass.

20 Q. And of course this may be the better way to -- be the
21 better vantage point in State's 15. If you will describe what
22 we see there.

23 A. This is the window in the second bedroom, and what you
24 are looking at -- the thing about pictures, or photography can
25 be kind of -- kind of funny, especially the way the photograph

1 is taken. The trajectory angle of the projectile that went
2 through the window is pretty -- pretty straight. It has an
3 upper -- a slight upper angle, but it looks a little more
4 deviated in the photograph because of the way it's taken.

5 But this is a photograph that shows two panes of glass.
6 You can see like two separate holes, and there's a -- because
7 it's two panes of glass.

8 Also, in the awning that's outside of the window there's
9 also an exit point from where the projectile exited out
10 through that also.

11 Q. State's 16, in evidence.

12 A. We are back outside. This photograph is the outside of
13 the second bedroom. That's the awning I was just referring
14 to. You can see the front door to the right of the
15 photograph. In the center of the awning you can see the tiny
16 hole where the projectile has exited out and then through the
17 awning.

18 Q. And State's 17.

19 A. This is just a closer view, and actually shows the hole
20 in the awning that -- from where the projectile exited out of
21 the residence.

22 Q. And 18.

23 A. This is looking outward, still outside -- outside of
24 the residence. This shows the two holes, the two projectile
25 holes in the glass. You can see what I was talking about when

1 I referred to the illusiveness of the photograph. It's
2 because I'm down low, so it naturally looks like more of an --
3 or a different type of angle, more of an angle than it
4 actually is. Like I say, the trajectory was just slightly
5 upward, so it's not -- it's not as much as the photograph
6 leads you to believe.

7 Q. Let me take you real quickly back to State's 13. So
8 you can actually see that -- can you see that hole from the
9 hallway?

10 A. Yes sir.

11 Q. Now, if you will describe what we see in State's 19.

12 A. This is a view of the hallway, up toward the bathroom
13 of the residence. Actually the photograph -- I'm standing
14 here, on this end, looking back toward the south end of the
15 residence, which is looking from the Little River side to the
16 Conway side. I'm looking back and you can see the -- Mr.
17 Parker, the victim -- you can see his feet to the right of the
18 photograph, the doorway that leads to the empty bedroom at the
19 end of the hallway.

20 Q. And his feet are actually outside of the bathroom.

21 A. That is correct.

22 Q. And could you describe -- just orient the jury to where
23 the master bedroom is as we look at this photograph.

24 A. If you see the -- the end doorway, which is the empty
25 bedroom, just to the left of it, which you can't see because

1 of the dressers and items in the view of the photograph, but
2 to the left of the door -- the empty bedroom is the doorway to
3 the master bedroom. You can actually see the top of the
4 frame, and you can see the doorway to the second bedroom,
5 which is this doorway, just on the other side of the
6 bookcase -- tape case.

7 Q. The distance from the -- I guess Mr. Parker's feet, or
8 the doorway of the bathroom, to the bedroom, the master
9 bedroom, how -- do you have any estimate on distance between
10 those?

11 A. It's probably about six feet, at the most, from his
12 foot to the doorway.

13 Q. Taking you to State's 20. What are we looking at here?

14 A. This is just an overview of this area here. The
15 bathroom is to the right. You can see Mr. Parker's -- the
16 victim's foot, or feet here, to the -- on the bottom of the
17 photograph. You can see the empty bedroom straight at the end
18 of the photograph, and the master bedroom is to the left of
19 the photograph, which is all of this area right here.

20 Q. What's that little item in the righthand corner, or the
21 righthand corner of the hallway?

22 A. It's a plant holder.

23 Q. I take you to State's 21. Tell us what you see there.

24 A. This is the -- once again, this is the floor, and you
25 can see Mr. Parker's feet outside of the bathroom door. This

1 is the floor, just in this area right here, just outside of
2 the bathroom. You can see some -- you can see some blood just
3 to the left of the photograph, and just down below in the
4 photograph.

5 Q. Now, we go to State's 22, and tell the jury what we are
6 looking at right here.

7 A. What we are looking at here is -- on this diagram, is
8 the bathroom, the -- so what we are looking at is the door
9 jam, the far east door -- or south door jam of the bathroom.
10 What you can see, and what's particular about this photograph
11 is, there is some blood spatter that is on the frame of the
12 back end of the door, which would have shown at the time, or
13 tells me that the door was actually open, it wasn't closed
14 when there was the blood letting, or blood that spattered onto
15 the hinge of the door, so I know that the door is in the
16 position it was when the incident occurred.

17 Also, in the center right of the photograph is also
18 still the door frame itself. You can see where a projectile
19 has impacted off of the door frame, I mean, also showing that
20 the door was completely open, or on the position it's in now,
21 you know, when the incident occurred.

22 Q. You say the projectile -- there was damage to the door
23 frame.

24 A. That's correct.

25 Q. And did -- no projectile -- a projectile was not

1 recovered from the door frame.

2 A. Not from the door frame, no sir.

3 Q. Appear more like ---

4 A. Like a glancing blow, like a ricochet. The projectile
5 hit, and then went into the bathroom.

6 Q. I'm going to show you State's 22 because that's -- it's
7 a little tougher to see some of this blood spatter. Show you
8 the photographs that we have in evidence, and ask you if any
9 of the blood spatter, in it's direction or condition, is
10 instructive to you about what occurred at the time.

11 A. It's -- what it tells me is the blood occurred after.
12 So at some point in time the person who was bleeding, in this
13 case was -- could have been the victim, or is going to be the
14 victim. When he's -- he's standing up at this point. When --
15 because of the directionality of the blood -- it starts high,
16 directionality of it tails off toward the bottom of the door.
17 It doesn't look real good in this photograph, or up on the
18 screen, but toward the bottom you can see that the trajec --
19 tra -- directionality of the blood spatter itself indicates
20 that the person was standing up at the time, so they were at
21 least standing -- he was standing while he was at the door
22 frame.

23 Q. State's 23, in evidence.

24 A. This is the same -- it's just the bathroom door, and I
25 was just looking at it in it's open position, like it is

1 just -- the door jam is to the right where the scale in it.
2 It's just behind what you -- the photograph you just saw. You
3 can see the blood spatter as far as it's tailing off. Near
4 the numbering of 8 to 16 you can see how the blood spatter
5 itself tends to point -- tails off and comes away from the
6 door, so the person was at least that -- at that point, at the
7 door, is standing above that area when the bleeding started,
8 and it caused blood spatter out, so he was at least that high
9 on the door, or in that area of the door.

10 Q. Investigator Caulder, you said he was -- it must -- or
11 you said the blood letting started at the door. It could have
12 started before that.

13 A. Could have started that -- he was -- at least when he
14 was standing at the door this is -- we know he was standing.
15 That's what tells you that -- indicates in the blood spatter
16 that he is definitely standing at the frame during the
17 bleeding.

18 Q. And looking at 23, the photograph I have, see if you
19 can maybe see it a little more clearly. The directionality of
20 the blood spatter on the door is it -- in what direction is it
21 traveling?

22 A. It's move from right -- the right of the photograph to
23 the left, so that the blood is trailing from right to left of
24 the photograph, so it's the inside of the frame to outside, or
25 inside the door frame to -- toward the empty bedroom, so the

1 blood is coming from here back this way.

2 Q. And so it's coming kind of down and kind of a diagonal
3 angle?

4 A. Yes sir. From up toward the top of the door -- well,
5 just above mid frame of the door downward.

6 Q. Take you to State's 24, have you tell us what you can
7 note of evidentiary value in that photograph.

8 A. This is a photograph of Mr. Parker's feet at the
9 bathroom door. You can look that there is -- notice the
10 bottom of his feet and the blood spatter that is on his ankle,
11 or leg area here, and also at the floor. It's not real good
12 in this photograph. Again, photographs usually don't
13 reproduce too well on these PowerPoints, but you can see the
14 directionality of the blood spatter itself, meaning that he
15 was standing when some of the blood letting occurred, so the
16 directionality of that blood spatter is from up to down,
17 indicating he was standing at some point.

18 Q. And State's 25 shows. We will go to State's 26.

19 A. This is Mr. Parker. Again, this is -- the top part of
20 the photograph is his left knee, bottom is his right knee.
21 you can see the -- in between the two knees are -- is blood
22 spatter that's what is referred to as ninety-degree blood
23 spatter. It's just in between the two knees or the left knee
24 inside ---

25 Q. On the floor?

1 A. Yes sir, on the floor. That indicates he was standing
2 at some point in time. Ninety degree blood drops are just
3 straight up and straight down. I mean it's -- so he was
4 standing at that point sometime. You can also tell that by
5 the spatter that's on his leg, thigh area and leg areas, that
6 blood was coming down, so whether he stood there and -- we
7 know that he stood there because of the ninety-degree droplets
8 on the floor, and also the indication of the -- the small
9 blood spatter that is on his -- looks best on this right, or
10 the bottom leg in this photograph. Just to the upper part of
11 the knee you can see how the blood tails off. Kind of looks
12 like a fish.

13 Q. This is State's 25.

14 A. Same -- same general area, Mr. Parker's feet. That's
15 the doorway. The bathroom is to the left, hallway on your
16 right. That is his left leg and left foot. It's at the top
17 of that photograph, right is the bottom. You can see the --
18 some ninety-degree droplets on the top of his right foot, and
19 you can also see the spatter as far as it goes, on the left
20 foot and the right -- his right ankle, indicating, once again,
21 that he was standing at some point in time during the
22 bleeding.

23 Q. Investigator Caulder, this is State's 27, in evidence.
24 If you will describe what we are viewing here.

25 A. You can see Mr. Parker lying in -- in the bathroom.

1 This is the hallway, is the bottom part of the photograph. If
2 you notice, the sink area indicates that Mr. Parker stood at
3 the sink at some point in time. He did have a -- he did have
4 a wound to his face area, which would have indicated that he
5 did have a blood letting from the face. He stood at the sink
6 at some point in time and bled down. That's why you see the
7 blood trailing, like a heavy flow of blood on the sink, and
8 down. On this side, the closest part of the photograph, or
9 the sink on the photograph, you can see blood swipes where --
10 where his hand has come across, so there's blood on his hands
11 at some point in time when he comes across the sink, like he
12 grabs it and comes across it.

13 You can also see in this photograph the blood that's on
14 the right side of Mr. Parker. See the different -- how -- how
15 it stands in blood. Gravity pulls it naturally down. So the
16 photograph is -- could be misleading as far as -- because the
17 blood is not going to be instantly dry, so while he's lying on
18 his right side some of the blood is going to start trailing
19 for -- that way, but most of it is centered here. Blood won't
20 backtrack, but it will -- here so I mean, showing that all
21 this blood is here in the photograph because he was standing
22 at some point in time, and this is also indicative around the
23 sink area.

24 Q. Now, let me ask you about the area of the commode.
25 Anything of evidentiary significance around the commode?

1 A. Yes sir. After Mr. Parker was removed from the scene
2 by the Coroner's office an item was located to the right of
3 the -- the back side of the toilet, and the back side of that
4 waste basket that's on the left, we did find a projectile from
5 both sides, which was a fired projectile, which is part of a
6 bullet. It's the actual bullet itself. There were two found.
7 One on the right, which is behind the toilet, on the other
8 side of the toilet, and then behind the little waste basket,
9 or -- that's in the left -- left side of the photograph.

10 Q. We also see some items in the bathroom. What are we
11 looking at right there?

12 A. This appears to be like a little iron, like a little
13 stand that was in the bathroom, that was toppled over while
14 Mr. Parker was moving around in the bathroom. There are two
15 towels that are there, that are under Mr. Parker. That's what
16 it appears to be, towels, but from my understanding, from
17 information gathered, that that items were placed there after
18 the incident by a family member.

19 Q. Take you to State's Exhibit 28. Tell us what we see
20 there.

21 A. This is still the bathroom. You can see the window
22 that exited, that points back toward this side of the house.
23 That's the window that looks back -- that looks toward the
24 back door. You can still see the sink to the right of the
25 photograph. You can see Mr. Parker still. In the bathtub

1 area you notice the sliding glass door. The closest sliding
2 glass door had been pushed out and in, indicating that, at
3 some point in time while in the bathroom Mr. Parker fell back
4 prior to his present location there, and knocking the glass
5 back into the tub. Didn't bust the glass, it just knocked it
6 off it's track, and back into the tub.

7 Q. Also note the blinds are closed.

8 A. Yes sir.

9 Q. State's -- excuse me. State's 30.

10 A. This is the view into the master bedroom, standing
11 right here at the hallway looking into the master bedroom.
12 You will see this is Mrs. Parker as she was down when I
13 arrived. This was how she was found when I arrived.

14 Q. Just inside the door, just inside the door frame.

15 A. Yes sir.

16 Q. And we are looking at -- let the record -- show us what
17 we are ---

18 A. This is just looking straight into the master bedroom,
19 and you see the dresser here. You can see -- it looks like a
20 gun case or something to the far back, or some kind of --
21 dresser or something to the far back. There's a closet that
22 is to -- you can kind of see the door slightly ajar on the
23 left side of the photograph. The bed and another dresser is
24 just to the right of the photograph but you can't see that
25 part yet.

1 Q. Weren't there a couple of shotguns, or some kind of a
2 long gun, couple -- one or two long guns that were found in
3 the bedroom?

4 A. Yes sir. There were two long guns found in the far
5 corner, just on the other side of the door to the closet there
6 is -- just to the left of that back dresser, the tall dresser
7 in the back of the room, just laid up in -- in that corner.

8 Q. Take you to State's 31.

9 A. This is -- once again, you are looking -- this is
10 standing at the doorway of the master bedroom, looking into
11 the -- this is the southeast corner of the bedroom, where the
12 television is, so you are looking toward the southeast, toward
13 Highway 90 side. You can see Mrs. Parker in the bottom of the
14 photograph. You can see the master bed to the right of the
15 photograph, dresser to your left, and there is a dresser far
16 southeast corner where the television is.

17 Q. And the condition of the bed itself.

18 A. The bed -- when I arrived the comforter or -- comforter
19 and sheet had been, just like they arose, like somebody jumped
20 out of bed and threw the blanket and comforter back. There is
21 -- what's hanging from the side of the bed is a pair of
22 earphones that were attached to a CD player that's on -- just
23 out of view on this photograph.

24 Q. And this area over here.

25 A. This is the dresser area, which is here. There has

1 been some rummaging through the area. There's like a jewelry
2 box or something, or a safe -- personal keeper, jewelry box
3 type thing, that's on the top of that dresser, that had been
4 rummaged through, just papers and effects scattered out --
5 about, on top of the dresser.

6 Q. Obviously there was a significant blood letting in the
7 bathroom, or a lot of -- lot of blood in various locations.
8 Was -- was that the condition in the master bedroom?

9 A. No sir. There was -- around Mrs. Parker, just her
10 upper torso and head area, there was blood on the floor, just
11 up under her. Then just at the foot of the bed, from the far
12 wall where the television is, back toward -- and in the left
13 part of the photograph, is the closet door. In front of the
14 bed was a trail of ninety degree blood droplets that led
15 from -- that ran from where the wall of the television is back
16 toward the closet. There were several droplets of blood that
17 ran the length.

18 Q. Now you've already touched on what ninety-degree blood
19 droplets are, but could you explain that to the jury, what
20 that means, what is significant about that?

21 A. Once -- kind of like the -- with blood it's kind of
22 like if you were to take this instrument here, and if you were
23 to apply a liquid to it, well, the liquid is pulled down by
24 gravity. It's slowly pulled, or as more is applied.

25 In this case the blood would have been -- there would

1 have been some type of wound, and blood would have dripped
2 straight down. When we say ninety degree, it's just a
3 straight drop as it drops off, and I would hold this, and I
4 would apply a liquid over here, or some type of liquid, blood
5 or water. Once it flows the length of this the more weight
6 that's applied by adding more water, or more blood, it would -
7 - gravity would have caused it to pull away. Well, what
8 happens it drops in a teardrop. It goes straight down. It's
9 actually round. I know when we view raindrops we think they
10 come as a teardrop. That's not correct. It's actually round,
11 completely round from the time they fall. But once gra --
12 over time gravity and other out -- wind, outside effects,
13 cause that oscillating ball to separate, or it starts to
14 separate, so when the blood or -- in this case blood, once it
15 comes off of whatever is bleeding it drops straight down, it
16 forms like a round -- just like it is. It's -- it oscillates
17 in the air; it turns. It's round, and once it hits it causes
18 this -- sometimes it may spatter out, but it will be round,
19 just like it is, which means it falls straight down.

20 Q. Well, that shape is how you determine that it's a
21 ninety degree blood drop.

22 A. That is correct.

23 Q. I know we saw some others that had like a directional,
24 like a little tail on it, that means something different.

25 A. That means that -- the blood spatter that -- that

1 earlier we had looked at, once the blood spatter strikes an
2 object, if it's ninety degree straight down it will keep it's
3 roundness, so -- but once you start changing the angle, or the
4 force that it comes it will change the trajectory, or the look
5 of the blood droplet itself.

6 If I dropped -- if I were to -- just like you would in
7 everyday life, if you were -- when you were a kid you would
8 sling blood. What happens is, the biggest part is going to
9 point back to where it come from. So if you have -- it did
10 look like a teardrop on there, on Mr. Parker's legs, or those
11 blood spatter, looked like a teardrop, was heavier. When
12 blood -- first the impact that tails away from the direction
13 which it came, so it will be kind of like when the -- a fish,
14 and they will have like a tail, like a little tadpole. The
15 heaviest part is where the blood first impacts the surface,
16 then it tails away from the direction it came from. That's
17 why you have blood droplet that have tailed away. That means
18 if I see something that looks like a tadpole with the tail
19 pointing from that direction I know that the blood has come
20 from there.

21 Q. Is someone were running, Investigator, would you expect
22 -- and there was a blood letting, and they were running, would
23 you expect to find ninety degree drops that you've described?

24 A. No sir, if there -- ninety degree means you are
25 standing. It doesn't mean you are standing -- I couldn't tell

1 you how long you are standing, but it means that you stood at
2 some point in time. It could be a normal gait, just means
3 just a normal walk, would cause ninety degree, but once there
4 is any move -- if I take off running across from here -- but
5 if I take off running and I was bleeding, there was a blood
6 letting, there would be some directionality to the way I'm
7 going.

8 Q. State's 32.

9 A. This is the view of Mrs. Parker's feet. The purpose of
10 these photographs are to show that she did not walk through
11 any blood. It's a standard photograph to show that the victim
12 did not move a whole lot, or walk back into an area where
13 there was blood.

14 Q. State's 33.

15 A. This is the back of Mrs. Parker's neck, just below the
16 neck area, between the two shoulders. This shows that there
17 is an exit wound. There was a small wound right there. Just
18 below that little strand of hair is an exit wound, where the
19 projectile entered the front of her, and exited the back side,
20 where that projectile had gotten lodged in the blood that had
21 saturated Mrs. Parker's hair. It wasn't located till the next
22 day when -- upon autopsy, as the Coroner had removed it and
23 seen at autopsy. The projectile fell out into the bag in
24 which she was transported.

25 Q. And in relation to this I take you to State's 34.

1 A. This is where -- this was under Mrs. Parker. This --
2 what this is is, it's like a ricochet of the projectile that
3 exited -- or went through her front side, exited the back
4 side. She was on -- this shows that she was on the floor.
5 When it exited her back -- this is what caused it to ricochet,
6 sort of ricocheted up, and the projectile ricocheted back into
7 her hair.

8 Q. I take you to State's number 35.

9 A. This is Mrs. Parker's arm. I think you it -- if I'm
10 correct this is her left arm, just -- here is the forearm.
11 This is more of a -- more like a defensive wound, because it
12 once -- once she was at autopsy it was determined she had
13 placed her arm in front, and she had -- she had a bullet wound
14 here, and it lined up perfectly like she was -- had put her
15 arm to protect herself.

16 Q. And you mentioned defensive wounds. I know you know
17 that term very well, but I'm not sure the jury is familiar
18 with that sort of -- I mean, that's a term of art for you. If
19 you will describe what a defensive wound is for the jury.

20 A. Defensive wounds are any type of thing -- you -- you
21 know, when you are a little kid you learn how to be defensive.
22 It doesn't matter if you are -- even now when your brothers or
23 your sisters pick at you, and they jump at you, and you know,
24 you kind of jump back, these are considered defensive.
25 Defensive can be -- you could have scratches on your hands

1 that could be defensive wounds. And generally if you have --
2 if there is a fight between two persons that involve just
3 hands most of the defensive wounds are going to come to the
4 back side of the victim, which means that if I were grabbing,
5 or if I were the perpetrator, and I was punching or hitting,
6 or whatever, the person trying to protect themselves are going
7 to leave wounds on the suspect that would be here.

8 You may have seen cases where people said, well, you
9 know, I'm the victim cause I got scratches here. Well, that's
10 not true, because changes are better than not, the person is
11 trying to get them off, push them off. It's whatever you --
12 just a wound that has -- that shows that there was some kind
13 of defense made to protect themselves, which this would have
14 been. If it lines up to these -- she was kind of like in this
15 stance when she got shot. We know she was on the ground
16 because the other shot indicates that the bullet did enter,
17 exit, and ricocheted off the floor, and then finally in that -
18 - in her hair. That means she attempted to come up in some
19 kind of -- for lack of a better -- it's like a pugilistic
20 stance. Pugilistic stance is a stance that the old fighters
21 used to take back in the day when you -- it's just a natural
22 defense to put up your hands. That's what this is.

23 Q. Show you State's 36.

24 A. This is also the master bedroom, but we are standing
25 here at the edge of the bed now. This is the feet of Mrs.

1 Parker, looking back still toward the southeast corner of the
2 bedroom, which is this corner of the bedroom here. You can
3 see the dresser in the background. Now you can see some of
4 the floor in front of the bed, and you can see the
5 dishevelment of the bed here, or the sheets and the comforter.

6 Q. Now we -- look at the dresser. You have referred to
7 this earlier. I call your attention to this area, and this
8 area right here, and ask if you -- this may be easier to see
9 it -- ask if you can describe where we are looking at in those
10 two areas.

11 A. The top part of the dresser, which is about -- to the
12 left of this photograph, is where that little safety box,
13 jewelry box, whatever you want to call it -- it's a little
14 wooden box -- that you can see someone has went through, and
15 rifled through and thrown -- thrown papers out.

16 On the floor just to the left of the dresser is also
17 like a -- kind of like a piece -- I'm assuming it was a piece
18 of the jewelry box, or the little wooden box. You can see
19 where they knocked it off. You can see where there are papers
20 on the ground, indicating that they -- when they went through
21 it they just threw it to the ground, threw it off to the side,
22 and rifled through the rest of it.

23 Q. State's 37.

24 A. This is the same dresser. This is just an over --
25 looking down at the jewelry box, the wooden box itself. You

1 can see how somebody had rifled through it and removed papers
2 and put papers on top of the desk. And just to the left of
3 the photograph is that wooden drawer or -- that went along
4 with the jewelry box where the papers were on the ground too.

5 Q. State's 38.

6 A. This is a view of the master bed. We are looking from
7 the Little River side, or north to south. The back wall is
8 the Conway side, which is this side of the bed. You can see
9 the CD player that I spoke of earlier, that has the headphones
10 attached to it and they were hanging off the edge of the bed.

11 On the far side of the bed, kind of dark in this
12 photograph, is a black in color boot. Just between -- in
13 front of it is -- and it's a female boot. Just in front of it
14 is some paper, kind of like the paper you find in shoes that's
15 always aggravating when you are buying a brand new pair, that
16 you've got to pull out. That's what that appears to be, that
17 type paper.

18 Q. Next is State's 59, in evidence. If you would identify
19 that for the jury.

20 A. That is the -- that is the boot that -- that you are
21 looking at. It's kind of hard to see, but that's the boot
22 that was on the bed itself.

23 Q. And that's the condition you found it; the boot is
24 sitting on the bed when you got there.

25 A. Yes sir, that's correct.

1 Q. The paper that you referred to are these area here.

2 A. Yes sir.

3 Q. I show you State's 39.

4 A. This is a close-up photograph. This is with the number
5 after it has been identified, and I get the shot where it's
6 being collected as number 2. You can see the boot to the
7 left, and those two crumpled up pieces of paper that were on
8 the bedside. The one in the center, piece of paper in the
9 center is -- it's consistent looking and feeling with those --
10 that type of paper that's in shoes. This one is more like an
11 advertisement paper that has been balled up.

12 Q. State's 40.

13 A. Also looking, once again, back at the master bedroom.
14 This time we are looking from the southeast corner back to the
15 northwest corner of the bedroom, so we are looking from the
16 Conway corner to the Little River corner. In the background
17 is the hallway and bathroom. Can't -- can't see the bathroom
18 real good, but you can see the hallway, the corner of the
19 hallway here, in the far background through the door. You can
20 see -- notice the side of the bed, on the nightstand is the
21 telephone. The telephone was off the hood. The receiver
22 itself is facing upward. You can see Mrs. Parker as she was
23 found. To the right of the photograph is the closet. You can
24 just see the bottom corner of the closet door.

25 Q. And this photograph, is that -- that area -- we are

1 looking at basically the corner of the hallway as you would
2 come down -- if you were coming from the kitchen ---

3 A. From the kitchen.

4 Q. ---This is the way you would go.

5 A. Yes sir.

6 Q. Got you. And let me draw your attention to this area
7 on top of the dresser here. Tell us what was there.

8 A. Up on top of there was like a -- there was a little
9 glass -- little jewelry box, safekeeping box. It's up at --
10 on top of the dresser. There's a little glass, like a little
11 jewelry glass thing that women -- like the middle of it points
12 out. It's where women stick rings and stuff on to keep them
13 safe. But the jewelry was just scattered around. Didn't
14 appear to see any jewelry missing. It was just like it had
15 been rifled through, and just scattered on top of the -- all
16 down the top of the dresser.

17 Q. Take you to State's 41. Tell us what you see there.

18 A. Just in the center of the photograph is -- that's a
19 bullet hole. It's in the bottom, box springs, of the master
20 bed -- or the master bed. It's just about here at the master
21 bed, but it's in the bottom, the bottom box springs. You see
22 it goes through the sheet -- or the fitted sheet, and into the
23 box springs in the bed.

24 Q. And showing you State's 42.

25 A. What this is a photograph of the top of the master bed.

1 What we are doing here is showing you, in the center of the
2 photograph, you can look -- see what looks like a piece of
3 cotton. Well, that told us then that the shot was fired, the
4 one you had just -- the photograph you just saw, the shot was
5 fired when the covers were down, so meaning that Mrs. Parker
6 was still lying in the bed when the first shot, or that shot
7 to the mattress occurred, because it entered both sides of the
8 comforter, and then into the box springs, then the covers were
9 shed.

10 Q. So the -- as I understand, the bullet goes through the
11 comforter, through the sheets, through the bed, while the
12 comforter is ---

13 A. On the side of the bed.

14 Q. ---On the side of the bed.

15 A. Yes sir.

16 Q. But when you found it, or it was found by law
17 enforcement, that comforter was pulled open as if someone
18 had ---

19 A. Yes sir.

20 Q. ---Flung it open and jumped out of the bed.

21 A. Just like you jump out of the bed, had flung the
22 comforter back, but when we started examining the bullet hole
23 in the bottom we found that the actual bullet had been -- the
24 round had went through the comforter, the sheet, and into the
25 box spring.

1 Q. So we can say at this point that there was a -- it's
2 fair to say that there was a shot fired that went through this
3 window, correct ---

4 A. Yes sir.

5 Q. ---This one.

6 A. Went through here, and then we can say that there was
7 at least someone standing in this area when a shot was fired
8 into the bed.

9 Q. Okay. And we also have a shot fired that hit the
10 doorway of the bathroom and glanced off.

11 A. Yes sir. And we have another round. Mr. Parker has
12 three -- if I'm thinking correctly -- has three wounds to him,
13 then the wounds to Mrs. Parker are two, I think, two or three.
14 I can't exactly remember. I mean, she had -- or I know she
15 had more than shots fired, which means she had that one which
16 would have just been one, consistent with one, into her
17 stomach, so three, four -- at least five, six rounds had been
18 fired, two, three, two. Seven.

19 Q. Seven. And if there were three shots fired at Mrs.
20 Parker that would be eight.

21 A. Eight.

22 Q. State's 43.

23 A. This is just a photograph. Again, the sheet -- the
24 master bedroom bed, the sheet has been pulled up. This is a
25 photograph of the box spring with the hole into the box

1 spring. You can't see it at all. I do apologize, just a
2 PowerPoint thing. You just can't see the photograph as good.
3 But that shows the bullet that went in, or the hole that went
4 into the box spring.

5 Q. And then number 44.

6 A. And this is the -- just to the left of number 10 is the
7 projectile that was located in the box spring. You notice the
8 white. That's the uncovering of the box spring itself. We
9 had to rip it out to get to the projectile.

10 Q. Now you've mentioned that you recovered a number of
11 projectiles. You've mentioned two in the bathroom, and one
12 from the bed. The one that went out the window was not
13 recovered, and then, of course, the projectiles that were
14 recovered at the autopsy.

15 A. Yes sir.

16 Q. Were those projectiles ever analyzed as a gun -- did
17 you have any sort of ballistic testing done with those
18 projectiles to try to match them to a weapon?

19 A. No sir. We never did send them off, or have any --
20 because we never recovered a weapon, so we -- there was no
21 need to send those. We didn't have anything to compare it to.

22 Q. Showing you State's Number 45.

23 A. This is a photograph. Again, you can notice this is
24 the master bed, and those -- now the comforter has been
25 removed. Well, upon removal we found, just up under the edge

1 of the comforter, on the far end, or the foot of the bed, was
2 a purse, which you see a purse, a wallet, and some effects
3 that were either out of the purse or the wallet. The wallet
4 is the -- Mr. Parker's wallet, and then, of course, the purse
5 belonged to -- that of Mrs. Parker. You can also see Item
6 Number 2, which is the shoe, and the two pieces of crumpled up
7 paper also on the edge of the bed.

8 Q. Referring to this photograph, you couldn't -- you
9 couldn't see the purse and the wallet initially; they were
10 covered with the comforter.

11 A. That is correct. It was just -- the purse was more
12 covered, and then the comforter laid over the edge of it.

13 Q. Now I show you -- was there any money recovered from
14 Mrs. Parker's purse?

15 A. No sir.

16 Q. Any other things of value that you recall that were
17 recovered from her purse?

18 A. I don't recall what was inside of the purse. No.

19 Q. But no money.

20 A. No sir.

21 Q. Now I'm showing you State's Number 58, in evidence.
22 Can you identify that?

23 A. Yes sir. This is the wallet that was laid out like
24 this on number -- right there at Number 1. It has some
25 identifying things made out to Mirror-Tec, which would have

1 been Mr. Parker's business nextdoor, and some identifying --
2 like Conway National Bank type stuff that Mrs. Parker -- and
3 his identification to Mr. Parker, Mr. Parker's identification.
4 No money found in it.

5 Q. Did you find money anywhere?

6 A. No sir. I didn't.

7 Q. State's 46.

8 A. Just a closer view of the photograph of -- the previous
9 photograph showing the purse, the wallet, the B.C. Powder, and
10 the couple of pieces of paper that were found on the end of
11 the master bed.

12 Q. Take you to State's 47. Tell us what we are looking at
13 there.

14 A. This is the foot of the master bedroom, or the foot of
15 the bed, and this is at the foot of the bed in the master
16 bedroom. What we are looking from is the Little River, which
17 is the closet side, to the Conway side, so you are looking
18 from north to south of the bed -- master bedroom and the front
19 of the -- foot of the bed. It shows evidence -- markers
20 showing one to the right, 3 to the far end, and 4, 5, and then
21 6 is the dresser that we have just shown. 3, 4 and 5 are
22 blood drops, or droplets of blood on the floor, leading -- or
23 like I say, that's the Conway wall, or the south wall of the
24 master bedroom, and number 1 of 6 items that we just discussed
25 about the dresser and the master bed.

1 Q. I note that the -- the item number 3, that blood drop
2 is very close to item number 6.

3 A. Yes sir. It's -- once again, the photograph is kind of
4 misleading as far as the way things look. You are just
5 talking within a confined space, you know, a couple of --
6 maybe a foot, two foot, at the most. Just that photograph is
7 just kind of off.

8 Q. Item 4 is very close to the foot of the bed,
9 approximately where the wallet and purse are located.

10 A. Yes sir. It's in between the dresser -- or just --
11 just about a straight line between the dresser and the foot of
12 the bed where item 1 is.

13 Q. And then 5 is a little further, coming back this way.

14 A. Yes sir.

15 Q. And take a look at State's 48.

16 A. This is a close-up view of item 3. What it is is --
17 the reason there's an evidence marker there, it's a blood
18 droplet, and it -- this is the one that was located near the
19 south wall of the bedroom. The reason it's photographed is
20 that it is a swab collected of that blood droplet to be sent
21 off, to be analyzed.

22 Q. Understood. And I show you State's 49.

23 A. This is item number 4, which is a another -- it's a
24 blood droplet that is between the dresser and the bed, and
25 once again, it is also swabbed.

1 Q. State's 50.

2 A. This is item 5. This was located toward the -- more
3 north of the master bed, in the master bedroom. It is also --
4 it's hard to see in this photograph, and once again, I
5 apologize. Is -- you can see the blood droplet, and what's
6 unique about this one is, if it were a better view, is the --
7 the blood is still kind of tacky, which is consistent with the
8 entire scene where Mr. Parker and -- or Mrs. Parker's blood
9 was still kind of wet. Mr. Parker, the blood around him had
10 started to dry, so it kind of has that tackiness to it, where
11 the blood starts to dry, and like everything else, dries from
12 out to in, which is from less to more.

13 Q. Did you draw any significant conclusions from the fact
14 that the condition of the blood drops you found basically are
15 in relation to the blood of the victims.

16 A. We did determine that since there wasn't any blood on
17 the victim, or Mrs. Parker's feet, that chances are better
18 than not the blood -- that was significant about it is, is a
19 person had walked in front of it, the chances are better than
20 not -- we knew it wasn't Mr. Parker because he did not leave
21 from this area after he was shot, and Mrs. Parker, being found
22 here, and with the indication of the shots and the ricochet of
23 the projectile, indicates that chances are better than not
24 that it was not her that was walking in front of the bed, but
25 someone else, because of the ninety degree, meaning the person

1 was not in a great rush. Mrs. Parker probably would have
2 been, at least fearing for herself, would have been probably
3 at a faster pace.

4 Q. Any conclusions drawn as to the -- or in relation to
5 the freshness of the various blood samples you found. Any
6 conclusions drawn regarding the freshness, or the condition as
7 to freshness between the victims' blood and the blood droplets
8 you found?

9 A. It occurred with the same time frame, meaning that when
10 this -- the blood droplets that landed -- or that were at the
11 foot of the bed, that ran the length of the room, 3, 4, 5 and
12 7, occurred at the same -- during the same time frame when Mr.
13 and Mrs. Parker were shot.

14 Q. Seven. I mean -- excuse me, not 7. This is 51,
15 State's 51.

16 A. This is item 7. This is back toward the -- to the left
17 of this photograph is the door that leads to the closet in the
18 master bedroom. That's where the bottom of Mrs. Parker. Of
19 course the top of the photograph is the east, or 90 side of
20 the bedroom. You can see four actual blood droplets. There's
21 one to the bottom, just below the numbers in the photograph,
22 and there are three right there around number -- the evidence
23 marker. These were also swabbed, not all of them, but the one
24 that's right there in the "L" of the number 7 was swabbed and
25 collected as evidence.

1 Q. And Investigator, you can -- obviously there are
2 several blood droplets, but you didn't swab every single
3 location.

4 A. No sir.

5 Q. So what's your training? What is your -- what do you -
6 - how do you make that judgment about which ones to do and
7 which ones not to do?

8 A. Some of those that -- if it's obvious -- if it's
9 obvious blood. The blood letting that occurred here in the
10 bathroom was obvious that it was Mr. Parker's because of the
11 blood that was centered just around the back and the chest
12 area of Mrs. Parker, the blood would have just been -- kind of
13 would have been just to her -- the blood that was here was out
14 of place. There was a trail of it, so the person that -- the
15 person that had left it behind had walked, so -- and it was
16 out of the norm for these two have left it, and instead of
17 collecting each one we try to take the beginning, middle and
18 end, which means that, if I can say that the person was
19 walking along chances are that it's the same blood of the
20 person, so that's why you just do the beginning, the middle,
21 and the end.

22 Q. Take you to State's 52. Tell us what we are looking at
23 here.

24 A. This is the doorway leading in -- I'm standing in the
25 hallway right here, which is the hallway -- the apex of the

1 hallway leading into the kitchen, and the bathroom. The
2 bathroom and the kitchen -- well, the bathroom is behind me.
3 This is the entry to the second bedroom, the one that the
4 window was -- the projectile had exited out of. What you are
5 looking at is the -- our evidence marker number 13, which is a
6 blood droplet on top of some paper tissue, that same kind of
7 paper that's consistent with being like in a shoe box.

8 Q. State's 53.

9 A. This is a close-up view of the blood droplet that was
10 on the tissue there at the doorway at the second bedroom.

11 Q. State's 54.

12 A. This is a lamp or a flower pot holder that is here in
13 the hallway just between the bathroom and the master bedroom.
14 The doorway that you see to the left of the photograph is the
15 empty bedroom, and you can see at the door, the open door to
16 the bathroom where Mr. Parker was found. Just in between the
17 pot holder and the door, that is a shell casing that is on the
18 floor.

19 Q. State's 55.

20 A. This is a photograph of the shell casing that we just
21 saw an overview of. It's located right here on the diagram.
22 The evidence markers there said it was collected as evidence
23 number 15.

24 Q. State's 56.

25 A. Once we got -- once I got on the ground and started

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1 looking under things, there was a shell casing that was
2 located up under the pot plant holder that was just in the
3 corner. It was very out of place, hard to see, so when I
4 got down and started searching, that was one of the things I
5 saw, was another shell casing up under the plant holder.

6 Q. And finally, State's 57.

7 A. This is also a shell casing, a spent shell casing.
8 This is located inside of the empty bedroom. The doorway
9 was open here, and just along the wall in the empty bedroom
10 was -- that shell casing was found.

11 Q. I'm going to ask you to take a look at State's 60,
12 61, and 62 in evidence and ask if you can identify those for
13 us.

14 A. These -- item 15 is the one that we have seen
15 previously in a photograph, which was collected from here in
16 the hallway. That is a spent five millimeter shell casing.

17 Item number 16 that was located under the plant holder
18 in the hallway is a shell casing, should be -- it's nine
19 millimeter, and number 17, which was collected here, is a
20 spent nine millimeter shell casing also. All three of them
21 are the same as far as caliber, being nine millimeter, and
22 all three are -- I'm making sure -- all three are
23 Winchesters, to mean the maker of it is a Winchester nine
24 millimeter shell casing.

25 Q. Now, you -- can't say those were fired from the same

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1 gun, but they were fired -- they are the same caliber?

2 A. They're the same caliber.

3 Q. And made by the same maker?

4 A. That's correct.

5 Q. Typically, and I know many -- a lot of weapons can be
6 used to fire different calibers, but this is a very common
7 caliber for a semi-automatic handgun?

8 A. Yes sir.

9 Q. Now, a semi-automatic handgun, could you describe for
10 this jury a shell casing, once a -- once a projectile is
11 fired, the bullet is fired with a semi-automatic handgun,
12 what typically happens to the shell casing?

13 A. Typically in a semi-automatic handgun once the firing
14 of the weapon happens, the gas -- it creates the -- the gas
15 has pushed the extractor back. It ejects the round and the
16 next round comes up and into -- when the breach closes, so
17 it forces a new round into the -- to be fired, so it would
18 be every time the pull of the trigger, the breach is -- the
19 breach opens, ejects and it inserts a new one automatically
20 every time.

21 Q. So as it fires, this slide slides back, slides
22 forward, reloads, shoot again, and the shell casing is cast
23 out one side or the other, but it's cast -- cast away from
24 the gun?

25 A. Yes sir.

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1 Q. It is not retained -- it's not retained inside the
2 gun like a revolver?

3 A. No sir. It's kind of like a simultaneous action.
4 Once that -- once the gas is -- the inertia happens where it
5 forces -- once that explosion -- it's a small explosion.
6 Once the firing pin strikes the primer, the bullet, it
7 ejects the round out and forces -- the new round comes up.

8 Q. Investigator, the -- were there any signs other than
9 the broken glass -- I may have asked you this; I'm sorry if
10 I did, but other than the broken glass that you testified to
11 previously at the back door, were there any other signs of
12 forced entry on this house?

13 A. No sir. None of the windows were -- there were no
14 cracks on any of the other windows of the residence. The
15 front foyer, speaking of that, the door was kind of screwed
16 shut, you know, was a big dresser that had been forced up
17 against the door, so -- and no signs that it had been moved
18 at all, and that, in fact, had been screwed shut, and the
19 entry point here, there was no signs of any forced entry on
20 either.

21 Q. Investigator Caulder, let me ask if you can step back
22 up to the stand. Thank you for being patient with these
23 photographs.

24 Investigator, you testified that you took blood
25 samples from the location. You took some samples that you

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1 submitted for testing?

2 A. Yes sir.

3 Q. Tell us what process is used when collecting those
4 blood samples.

5 A. The blood samples, or any blood sample that's taken
6 is -- there's a sterile -- we use sterile swabs. In this
7 case we had -- the swab itself is just like a regular cotton
8 swab, but it comes out of just a sterile package, individual
9 package. In this case it also included a plastic like
10 ampule that covers the swab itself. We remove the plastic,
11 take the swab and the ampule out of the plastic, the sterile
12 packet, use sterile water.

13 Sterile water comes individualized in just a sterile
14 water packet. You break the top of it, use a couple of
15 drops of water. Then you swab the surrounding blood swab.
16 Then the swab just closes back up into the ampule. Then it
17 shuts down. Then it is placed into a box, a cardboard box,
18 that is individually marked, the evidence number it is,
19 where it came from, who collected it, and sealed.

20 Q. I'm going to show you what's been marked for
21 identification as State's 63, have you take a look at that
22 and tell us if you can identify what that is.

23 A. This is my evidence collection number -- number 3,
24 which is from the floor on the south wall in the master
25 bedroom, and it was collected on the 12th day of April,

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1 2005.

2 Q. Collected by you?

3 A. Yes sir.

4 Q. And do the numbers that you -- of course, there are
5 various numbers on that, but the number that you placed on
6 that evidence box, does it correspond to the evidence number
7 on your diagram?

8 A. That is correct.

9 Q. So the number 3 would be the number 3 that you ---

10 A. Yes sir, off the southeast -- or the east -- the
11 south and east corner of the bedroom near the foot of the
12 bed.

13 Q. Okay, from the diagram, State's Exhibit 1?

14 A. Yes sir.

15 Q. I show you State's Exhibit 64 for identification
16 purposes.

17 A. This is my evidence item number 4. It was collected
18 from the floor in the master bedroom on the 12th day of
19 April, 2005, by me, and that's also from the -- on the
20 diagram from the floor just in front, if I'm recalling
21 correctly, but the one that's between the dresser and the
22 bed. The diagram -- sorry, got to get a little water.

23 Q. Okay. I show you State's Exhibit 65 for
24 identification purposes. Identify that for us, please.

25 A. This is my evidence item number 7, which was

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1 collected from the floor just in the master bedroom near the
2 closet. It was collected on the 12th day of April, 2005.
3 It's marked as floor in master bedroom near closet and
4 collected by me.

5 Q. And finally this is State's 66 for identification
6 purposes.

7 A. This is evidence number 13. It was from the piece of
8 paper that was on the floor at the doorway entrance of the
9 second bedroom, and it was collected April 12th, 2005, by
10 me.

11 Q. And when you -- let me just ask you to open -- if
12 you'll go ahead and open Number 63 in evidence if you can,
13 and just kind of show the jury what that -- and how you
14 packaged that, what steps you take to secure that evidence.

15 A. This, the swab, this is the ampule, the plastic
16 ampule that I was referring to. This comes packaged in a
17 sterile plastic container. It is ripped open and that's --
18 that's what comes out. The sterile water is then -- once
19 the ampule -- this swab is pushed through the ampule, this
20 swab is pushed through the ampule.

21 This is the opening at the top, you can clip it, push
22 the ampule -- or the swab through. The sterile water is
23 placed on top of it. You swab your area, in this case, in
24 this evidence item, the blood swab was swabbed with the
25 sterile water and the sterile swab. The swab is pulled back

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1 down through the ampule. It is sealed. It is placed into
2 this cardboard box that had already been marked on. Then I
3 handed it to another investigator. I would call out the
4 number and he would put it in the box, and at that point in
5 time it was sealed at the scene.

6 Q. So y'all had two of them working -- you got two
7 people working together to make sure you've got it right?

8 A. That's correct.

9 Q. And then you sealed it up, correct?

10 A. Yes sir; yes sir. I sealed it up and then I
11 transport it back to the police department.

12 Q. And what did you do with these -- after you secured
13 this, you said you took it back to the police department.
14 What do you do with it when you get back there?

15 A. In this -- in this case, generally what we do is once
16 it's back at the police department, we will -- you put it
17 into another tamper-resistant type of packaging. It has to
18 be individually wrapped before -- S.L.E.D.'s protocol is --
19 is that it has to be wrapped individually to keep from
20 cross-contamination. That's why each one is in an
21 individual box, but there is also a next step.

22 We'll package it separately in another -- either like a
23 manila folder or a brown folder individually, or plastic,
24 seal them in plastic individually, then put them in their
25 own -- another different container. All of them were signed

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1 and sealed by the person that is doing it. In this case, it
2 would be me. Then it is sent to S.L.E.D.

3 Q. And you turned into Horry County evidence custodian
4 Lori Rabon?

5 A. That is correct.

6 Q. And other than the collection, while they were in
7 your custody and control, did you -- did you open them back
8 up? Did you alter or change them in any way?

9 A. No sir. Once they're in there and all the
10 information is applied, it is not re-opened by us for any
11 reason. It's only opened by S.L.E.D. personnel that test
12 it.

13 **MR. HEMBREE:** Bear with me one moment, Investigator.

14 Q. And I think I asked the question, but just for
15 clarification, I see that red tape is on both sides of the
16 box that seals it up. Was that applied by you?

17 A. Yes sir.

18 Q. And this house is located in what county?

19 A. Horry County.

20 **MR. HEMBREE:** Please answer any questions Defense
21 counsel may have for you.

22 **THE COURT:** All right, Mr. Hazzard, before you do
23 that, ladies and gentlemen, we're going to take a short
24 break for about five, ten minutes. Then we'll come back in
25 and finish the cross-examination. Take your jury to your

JURY OUT/JURY IN

1 jury room.

2 Everyone else remain seated while the jury retires,
3 please.

4 (THE FOLLOWING TAKES PLACE OUTSIDE THE PRESENCE OF THE
5 JURY.)

6 THE COURT: All right. We'll take a short break for
7 about five or ten minutes. Thank you very much.

8 (THE FOLLOWING TAKES PLACE AFTER A BREAK AND OUTSIDE
9 THE PRESENCE OF THE JURY.)

10 THE COURT: All right, Solicitor.

11 Yes sir, if you'd return to the witness stand.

12 Solicitor, are you ready to proceed?

13 MR. HEMBREE: Yes, Your Honor.

14 THE COURT: All right.

15 Mr. Hazzard, are you ready to proceed with your cross-
16 examination?

17 MR. HAZZARD: Yes sir.

18 THE COURT: All right, very good.

19 Ask the jury to come in, please.

20 (THE FOLLOWING TAKES PLACE WITHIN THE PRESENCE OF THE
21 JURY.)

22 THE COURT: All right, Mr. Hazzard, your cross-
23 examination.

24 MR. HAZZARD: Thank you, Your Honor.

25 THE COURT: Yes sir.

ROBBIE JOHN CAULDER - CROSS BY HAZZARD

CROSS-EXAMINATION BY MR. HAZZARD:

Q. Good afternoon, Mr. Caulder. How are you, sir?

A. Good afternoon.

Q. Now, who arrived first at the -- at the house there, you or the E.M.S. workers, sir?

A. E.M.S.

Q. Okay. And so they had done whatever business that they were going to do prior to you entering the home, is that correct?

A. That would be correct, yes sir.

Q. Okay. And how many E.M.S. workers were there, sir?

A. That, sir, I do not know.

Q. Okay. Now, the time of this event, April of 2005 -- well, let me ask you this. I'm sorry. Now, as far as this particular crime scene is concerned, you collected everything, correct?

A. Yes sir.

Q. Okay. No one else collected anything? You collected it?

A. From the scene, yes sir.

Q. Yes sir, from the scene.

A. Yes sir.

Q. And you bagged it in whatever manner it was to be bagged, is that correct?

A. Yes sir.

ROBBIE JOHN CAULDER - CROSS BY HAZZARD

- 1 Q. Okay, and you labeled it in whatever manner it was
2 going to be labeled, right?
- 3 A. Yes sir.
- 4 Q. And then where did you store it after you did all
5 that?
- 6 A. It was stored at Horry County Police Department.
- 7 Q. Okay. Let's back up. When you took it out of the
8 house, where did you take it?
- 9 A. The Horry County Police Department.
- 10 Q. Okay. Did you put it in a car first?
- 11 A. Yes sir.
- 12 Q. Okay, and then did you transport it by car to the
13 Horry County Police Department?
- 14 A. Yes sir.
- 15 Q. Okay. And then once you got back to the police
16 department, what happened to it?
- 17 A. It is placed into evidence.
- 18 Q. It is placed into evidence?
- 19 A. Yes sir.
- 20 Q. That day?
- 21 A. Yes sir.
- 22 Q. Okay. Now, once you place stuff into evidence or
23 let's -- I'm sorry. This particular case, when you placed
24 this stuff into evidence, did you ever remove it from
25 evidence?

ROBBIE JOHN CAULDER - CROSS BY HAZZARD

1 A. I would have to kind of -- have to explain evidence.
2 There's a -- there's a big misconception. I can -- I can
3 see it playing out. As a crime scene person, evidence and
4 crime scene is attached. There is no difference. There's
5 -- you're -- people refer to us as two different things.

6 Evidence as far as the evidence ladies or the evidence
7 custodians taking in evidence items from the road and there
8 is -- but we -- crime scene people collect our own evidence,
9 and we package and then place it into the same places that
10 the evidence ladies would be, like whether it's in the
11 secured warehouse or in a secured vault. We place it into
12 the same things. They are then responsible, once it is
13 placed there by us, they are then -- like Ms. Rabon, she is
14 the evidence supervisor. She is in charge of the two
15 persons that work under her in the evidence itself.

16 We -- basically what I'm trying to say is we are two in
17 the -- two in the one. We are the same in the one. I mean,
18 there is no difference. There -- I don't take it -- when I
19 say take it and place it into evidence, I put it to where it
20 is until Ms. Rabon or one of her designees transports that
21 evidence to S.L.E.D., and chances are when that stuff goes
22 to S.L.E.D., it's transported once again by us. There -- we
23 are two different units, but are the same unit.

24 Q. Okay.

25 A. They don't go to -- they don't go to crime scenes and

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1 they -- they -- the evidence unit don't go -- respond to
2 crime scenes and they deal with more evidence than what we
3 do. We only deal with the evidence that we collect.

4 Q. Okay, so what you're saying is that -- or let me ask
5 you if this is a correct statement. Is what you're saying
6 that any and all material that you took from the home of the
7 Parkers, you did not turn it over to anyone to place into a
8 vault or anything of that nature for safekeeping, is that
9 correct?

10 A. No sir. It was placed there by me.

11 Q. Okay. Placed where, sir?

12 A. In the secure facility. It's -- the evidence is
13 secure from the time I get on scene and I collect or I deem
14 what is evidentiary, it -- I maintain -- I maintain it until
15 it is released by evidence, the evidence supervisor, to be
16 transported to S.L.E.D. or any other testing unit. I mean,
17 it doesn't -- we're in the same office.

18 The evidence and crime scene are the same office, I
19 mean, and when I say the secure area, we have a secure
20 warehouse that only the -- at that point in time there were
21 only two, five, six of us. There are only six persons that
22 have access to the evidence.

23 Q. Thank you, and that gets me back to my previous
24 question, which was once you place something, some item,
25 some material in this secure facility, is there any

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1 circumstance in this case where you would have taken it back
2 out and then put it back into evidence?

3 A. There could have been. If there is, I'm not
4 familiar, because there are some times that some things are
5 collected that during the course of the investigation that
6 are not deemed -- like a set of car keys.

7 I'm not saying this case in particular, but say it's
8 -- a set of car keys are collected at a crime scene. If
9 it's deemed not evidentiary or will not produce any type of
10 results in that matter and they belong to a said victim,
11 they can be released, like cars. Once cars are processed
12 -- they are taken as evidence, but once a car is processed,
13 it can be released after -- after it -- after it yields any
14 evidence or anything like that.

15 When we are done with it, it can be released, so, I
16 mean, as far as the evidence that is -- that is sealed and
17 maintained, it's sealed and maintained, each individually.
18 I mean, could I have the bigger box that they may have been
19 placed in, could it have been opened and a set of keys been
20 released, that I don't -- I don't know.

21 If -- and if Ms. Rabon, the supervisor, evidence
22 supervisor, would have released something or if a detective,
23 like Detective Cox in this case would have wanted to review
24 something, or if you came and reviewed it, it would have
25 been opened, it would have had to have been opened, or if

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1 the Solicitor's Office came and reviewed the evidence, case
2 evidence, it would have had to have been opened.

3 Q. Okay. Since you don't actually turn this material
4 over to another person for their safekeeping, am I correct
5 in saying then that there would be no paperwork for you
6 physically turning it over to someone else, sir?

7 A. There would -- there would be a paperwork of the
8 chain that I do. Anything that I collect and I hand it over
9 to evidence, once -- once I've taken -- once I've taken my
10 hands off of it and put it in that safekeeping, like I said,
11 if -- like if defense attorneys, or the Solicitor's Office,
12 or the detective in charge of the case wants to come look at
13 that evidence, if they take a piece to review it, like cell
14 phones or something like that that has to be taken somewhere
15 locally to be reviewed or taken to S.L.E.D., then Ms. Rabon
16 would have a part of that.

17 So my evidence chain on the bottom of that is something
18 that happened -- the bottom of my evidence chain can say
19 number 3 was taken and transported elsewhere.

20 Q. What does it mean on your chain of custody when it
21 says relinquished by you, received by evidence?

22 A. That means that I have now physically tak- -- it has
23 been physically stored.

24 Q. And that's what it means in all cases and
25 circumstances?

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1 A. That is correct.

2 Q. Okay. Now, when you investigated this crime scene,
3 you had only been a crime scene analyst for a little over
4 four months, is that correct?

5 A. December to April, yes sir.

6 Q. Now, is the -- what is the first thing you did when
7 you arrived at the scene, sir?

8 A. The first thing I did was talk with the initial
9 responding officer to find out what -- what actually the
10 scene entailed.

11 Q. Okay. And am I correct in my understanding that your
12 protocol, while you were waiting on the search warrant, for
13 instance, to enter the home, that you documented the outside
14 perimeter of the home and kind of worked your way in in
15 concentric circles, taking pictures as you went, correct?

16 A. Yes sir, that is correct.

17 Q. Okay. And I believe you testified that you were
18 apprised of the fact that there had been broken glass by the
19 kitchen door, but that one of the gentlemen who worked for
20 Mirror-Tec mistakenly had swept it up and put it in a
21 garbage bag?

22 A. Yes sir, that's correct.

23 Q. But that you, in your due diligence, went through,
24 took everything out of that garbage bag, examined every
25 single piece of glass, correct?

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- 1 A. I wouldn't say I individually went through every
2 piece, but I did -- did dump the bag, yes sir, and viewed it
3 to see if I could see any signs of, you know, blood, if
4 there had been blood on -- on the glass.
- 5 Q. Okay. And that's what you were looking for, correct?
- 6 A. Yes sir, that's correct.
- 7 Q. And you did not find any signs of any blood, correct?
- 8 A. No sir.
- 9 Q. Okay. And no blood on the kitchen door, correct?
- 10 A. No sir.
- 11 Q. Was there any blood in the kitchen itself?
- 12 A. No sir.
- 13 Q. Any blood in the hallway or any trail of blood
14 leading down the hall?
- 15 A. No sir.
- 16 Q. Okay, because I'm -- you've testified to a trail of
17 blood and I'm trying to figure when you've got a trail, it's
18 got to have a start and an end, correct?
- 19 A. That's correct.
- 20 Q. Okay, so the only trail you're referring to, I
21 believe, are those three drops that you indicated were found
22 in the master bedroom, one by the foot of the bed, one a
23 little bit over from that, and one by the -- between the bed
24 and the dresser, is that correct, or the bed and the
25 dresser, correct?

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1 A. Whether that was the starting point, yes, if that, in
2 fact, was the starting point. I would say from the hallway
3 leading into the master bedroom, but the three drops were
4 just the swabs I collected. That's just a photograph. I
5 mean, there was -- there was more droplets. I mean, that's
6 just -- that's just the three that were swabbed.

7 Q. Did they lead out of the house or to other places in
8 the home, anything of that nature, sir?

9 A. The only -- the only two -- the only areas was the
10 second bedroom -- from the second bedroom into the master
11 bedroom, I mean, no other -- no other places throughout the
12 house.

13 Q. Okay. Now, in your experience, you believe that the
14 point of entry was through the kitchen door, is that
15 correct?

16 A. That is correct.

17 Q. Okay. And in your experience, what do you believe to
18 have been the purpose of breaking out the glass by the
19 intruder?

20 A. Given -- given the way the scene looked like in the
21 bedroom, I -- I'd hate to guess with it, but nothing having
22 appeared to have been taken and it being ---

23 Q. Okay. Let me rephrase my question. In your
24 experience and based on your knowledge and training, do you
25 believe that -- is it -- do you believe that the glass was

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1 - or is it your training and thought that the glass was
2 broken to gain entry into the kitchen, to open the door?

3 A. In this particular case, I don't know, but I have
4 worked cases that where that's how they gain entry, that's
5 correct.

6 Q. Okay; Okay. Now, breaking a pane that is adjacent to
7 a door knob would not be helpful in gaining entry into a
8 home if that home had a key deadbolt, is that correct?

9 A. So you're asking if they busted the window and there
10 was a keyed deadbolt on the inside?

11 Q. A double deadbolt, keyed.

12 A. No sir, not if it were -- not if the deadbolt were
13 locked and it had to be keyed from -- keyed from both sides.

14 Q. Yeah, so then in this case, whoever is doing the
15 entry, would it be fair to say that they either know the
16 type of ---

17 **MR. HEMBREE:** Object, Your Honor. This calls for
18 speculation.

19 **THE COURT:** I haven't heard the question. Let me hear
20 the question first.

21 **MR. HAZZARD:** Thank you, Your Honor.

22 Q. Based on your training and experience, would it be
23 fair to say that whoever forced entry either knew the type
24 of lock they were dealing with, that it was not a double
25 deadbolt keyed lock or that they were just willing to, on

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1 the off-chance, break the glass and hope for the best?

2 **THE COURT:** I'll sustain the objection.

3 **MR. HEMBREE:** Thank you, Your Honor.

4 Q. You testified that there was at least one rifle, and
5 possibly two, found in the master bedroom, is that correct?

6 A. That is correct, yes sir.

7 Q. Okay, and based on your investigation in this case,
8 the indication was that those rifles belonged to the
9 Parkers, is that correct?

10 A. That is correct.

11 Q. Okay. And I believe you testified that -- well,
12 first of all, Ms. Parker had jewelry on her person, correct?

13 A. Yes sir, but -- if I'm recalling correctly, yes sir.

14 Q. Yes sir, all right, bracelets?

15 A. Yes sir.

16 Q. Necklace or necklaces?

17 A. **(Nods affirmative)**

18 Q. Okay. That was not taken, correct?

19 A. That is correct.

20 Q. And I believe you told the Solicitor that all of the
21 jewelry, although it had been rummaged through or moved
22 around, appeared to be intact and present, correct?

23 A. That would be correct, yes sir.

24 Q. Okay, but yet there was a lot of rummaging with
25 regard to paperwork, is that correct?

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1 A. Yes. Well, the papers that were in the jewelry box.
2 I mean, there was no other papers throughout the house that
3 appeared to be rummaged through. I mean, when you say
4 paperwork, just what was in that -- that wooden box that was
5 on the dresser appeared to be rummaged through.

6 Now, when I -- the paper that was near the shoe or
7 was just -- appeared to be just paper they used to like keep
8 stuff from breaking or ...

9 Q. Let me ask you to think very carefully and think back
10 for me, if you would, and are you sure that there was only
11 one place in that room where there was paperwork that
12 appeared to be disturbed?

13 A. Other than from just recalling from memory, the two
14 places I remember is just the side of the bed where the shoe
15 was found, which was the south side of the bed. It doesn't
16 appear that I -- I don't recall something being rummaged
17 through other than what is photographed.

18 Q. Okay, but you don't deny that there might have been
19 another spot in that room, another place in that room, where
20 paperwork was moved around the floor or something of that
21 nature?

22 A. If there is, then -- then there's a photograph of it
23 if there is, and if I could look through all the photographs
24 again, I'd look at it, but if there's no photograph that
25 exists, then no sir. I'm willing to say that I have seen

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1 all the photographs, yes sir.

2 Q. Okay, so you are indicating that, no, to your
3 knowledge and your recollection there's only one place in
4 that master bedroom where there was paperwork that was moved
5 around or rummaged around?

6 A. That is correct.

7 Q. All right. And you indicated that there was a C.D.
8 player on the bed, but that that obviously -- that was still
9 there on the bed, is that correct?

10 A. Yes sir, that is correct.

11 Q. Did you also look into the -- I believe you testified
12 that there was a Lincoln Navigator, I believe, in the back
13 behind the house?

14 A. Yes sir, that is correct.

15 Q. Okay. And did you look into that Navigator and at
16 some point inventory it?

17 A. Yes sir. The Lincoln Navigator was -- we did search
18 the Lincoln Navigator.

19 Q. Okay. And there was some tools, Dewalt tools, found
20 in that Navigator, is that correct?

21 A. Yes sir, that is correct.

22 Q. Okay. And they were untouched as well, correct?

23 A. That is correct.

24 Q. To your knowledge, based on your investigation and
25 your observation, had the phone lines been disabled?

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1 A. We -- we didn't check to see if they were actually
2 working, no sir, so I -- if they were -- if they were in
3 working or proper working order, that I do not know.

4 Q. Okay, but I believe your investigation indicated that
5 one of the gentlemen had actually called the house first
6 looking for Mr. Parker that morning trying to get him out to
7 the shop?

8 A. From the information that was relayed to me, yes sir.

9 Q. Okay. Based on your investigation of the house, did
10 it appear that any other part of the house was searched?

11 A. No sir. After -- after a complete investigation of
12 the whole residence, no other rooms in the house appeared to
13 have been rummaged through, pilfered through, anything
14 outside of the master -- or the bedroom, the master bedroom,
15 and -- and just everything taking place right there in the
16 hallway at the bathroom and master bedroom.

17 Q. When you were testifying to the Prosecutor, you
18 indicated that the person that left the ninety degree blood
19 drops had to have had some type of wound. What type of
20 wound, sir, or are you just speculating?

21 A. No, no speculation as to the wound. I mean, if
22 you've got a -- what type of wound, that I could not tell
23 you.

24 Q. Okay.

25 A. I mean, I just know it was a wound.

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1 Q. Okay. Was there any sharp surface or object in the
2 house that contained blood on it?

3 A. No other places other than what was indicated, just
4 that the -- there was no other places for blood, where blood
5 was located.

6 Q. Okay. Any blood found under either Mr. or Ms.
7 Parker's fingernails to your observation, sir?

8 A. No sir.

9 Q. Like they might have scratched somebody or cut them
10 in some fashion?

11 A. No sir.

12 Q. Were either of the Parkers holding a weapon, sir?

13 A. No sir.

14 Q. Okay. Any indication that either of the Parkers had
15 fired a weapon, sir?

16 A. No sir.

17 Q. Okay. Now, you indicated that the purse and the
18 wallet, Mr. Parker's wallet and Ms. Parker's purse, that
19 they were initially under the comforter?

20 A. Yes sir, under the -- under the edge of the
21 comforter, yes sir, or that what had been thrown back type
22 of -- or moved. It was up under the edge, yes sir.

23 Q. And I believe you told the Prosecutor that the
24 comforter was thrown back as if someone had jumped out of
25 bed, correct?

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- 1 A. Yes, that's correct.
- 2 Q. Okay. And when you arrived there, the comforter was
3 still covering the wallet and the purse, correct?
- 4 A. That's correct.
- 5 Q. Any blood on the wallet or the purse?
- 6 A. No sir.
- 7 Q. Did you dust the wallet and the purse for
8 fingerprints, sir?
- 9 A. Yes sir.
- 10 Q. Okay. Find any foreign prints on the wallet or the
11 purse?
- 12 A. No sir.
- 13 Q. Okay. And you indicated, I believe, I want to make
14 sure I'm clear, that you were responsible and documented all
15 of these things, correct?
- 16 A. That's correct.
- 17 Q. Collected all of these items that are placed in
18 evidence, correct?
- 19 A. That's correct.
- 20 Q. And you, yourself, placed them in whatever facility
21 they ended up in?
- 22 A. At the Horry County Police Department, yes sir.
- 23 Q. Okay.
- 24 A. Now, as far as removal, once they were out of my
25 physical control and placed into the -- into the secured

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1 facility, Evidence Supervisor Rabon control- -- says, okay,
2 whomever take them to S.L.E.D. for DNA, or firearms,
3 whatever they are going to the other lab to be tested for,
4 so she could -- she's responsible for the evidence once I
5 secure it.

6 Q. Okay. And there would be paperwork that indicates
7 that, correct?

8 A. There would be paperwork indicating who took it to
9 S.L.E.D., who signed for it at S.L.E.D., and there again is
10 that confusion. There -- there is no chain between evidence
11 people because it never moves from a secured facility. It's
12 -- there's -- once -- once the only people who have control
13 over it is just us. It -- now, it is secured in a secured
14 facility by me, but there's only five other people that have
15 access to it period who can move it around.

16 Sometimes once a year the supervisor over crime scene
17 and evidence goes around and he -- the evidence that has
18 been deemed no evidentiary -- or if a case has been closed,
19 he moves and condenses things in the warehouse and then
20 moves it in the computer, so as far as stuff like that,
21 that's just a normal, everyday thing that occurs, so, I
22 mean, there's no difference between crime scene and evidence
23 other than the evidence that is collected from the road,
24 which we don't have any part of.

25 Q. What do you mean when you say evidence that's

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1 collected from the road?

2 A. Like if the detectives come in and turn in evidence
3 on a case they are working, like a tape or something. We
4 don't have anything to do with that. They will turn it in
5 to the evidence supervisor or the evidence custodial ladies,
6 and they will place it into the vault to be secured. We
7 wouldn't have anything to do with it, but if the detective
8 came to me and said could I get a tape out of evidence, I
9 could sign that tape out to him.

10 So if it is signed out to go somewhere other than
11 S.L.E.D., or if it is signed out of the vault for whatever
12 reason, there should be a sequence of chains that show it
13 has been exchanged from hand to hand, so if I've turned this
14 evidence in, whoever transported it to S.L.E.D., there will
15 be a -- there will be a chain saying that, yes, it was
16 turned over to S.L.E.D., who collected it at S.L.E.D., and
17 where it went from in S.L.E.D. through their chain.

18 Q. Do you have any knowledge or recollection as to when
19 the items that were sent to S.L.E.D. for analysis were sent?

20 A. I don't -- I don't recall. It was -- it was -- it
21 was a short amount of time, so a week. I mean, it wasn't
22 very long, so I don't -- I don't rightfully recall, because
23 there was -- my understanding, there's several times things
24 were sent, and sometimes I may take things, but whether -- I
25 just don't recall what the time frame was.

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1 Q. Once you take them to S.L.E.D. -- in this case, how
2 long did it take to get them back?

3 A. It just depends how long it takes S.L.E.D. to test
4 something. I mean, that's -- once it's at S.L.E.D., it's
5 out of our control as to when we get them back. Then again,
6 you know, the G.S.R. kits we could get back in a week, but
7 then they house it in a secure vault until we pick it up,
8 so, I mean, they could -- I mean, it just -- that depends,
9 too, greatly. So we don't go up there every day is what I'm
10 trying to say.

11 Q. Okay, so we could be talking about anywhere from a
12 week to two weeks, to even months, depending upon the type
13 of test that needs to be run?

14 A. Yes sir.

15 Q. Okay, so if I'm looking at a document that says chain
16 of custody and it says it's relinquished by you to evidence
17 on this crime that occurred on April 12th and you're
18 relinquishing it to evidence on April 21st, what does that
19 tell me, sir?

20 A. What is it telling you?

21 Q. Yes sir. What is it telling me?

22 A. I have no clue.

23 Q. You have no clue?

24 A. I don't have a clue what it's telling you. I don't
25 know. I know what it tells me. It means ---

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1 Q. What does it tell you, sir?

2 A. It means to me that everything that I've dealt with
3 has been secured and put where it needs to be put at that
4 time. Now, as far as I'm assuming what you're alluding to,
5 but it never leaves me, so, I mean, so I don't know --
6 evidence is just -- it's just a word, and once again, it
7 gets -- the word is just diluted. There is no difference.

8 It's -- evidence is nobody any different than me.
9 I'm -- Ms. Rabon, who will testify, she's not my supervisor.
10 She's supervisor over evidence, but she's the same
11 department that I'm in. There's no difference between she
12 and I. There's no secret evidence place in crime scene, two
13 different units. We're the same people.

14 Q. So as long as it's with you, you consider it to be in
15 evidence?

16 A. That's correct.

17 **MR. HAZZARD:** All right, no further questions.

18 **THE COURT:** Any redirect?

19 **MR. HEMBREE:** No, Your Honor.

20 **THE COURT:** All right.

21 You may step down, sir.

22 **MR. HEMBREE:** We ask that this witness be excused,
23 Your Honor.

24 **THE COURT:** Any objection?

25 **MR. HAZZARD:** No sir, Your Honor.

JURY OUT/LUNCH BREAK

1 **THE COURT:** All right.

2 Sir, you are released from your subpoena and may go
3 back to your regular activities, sir.

4 **DETECTIVE CAULDER:** Thank you, Your Honor.

5 **THE COURT:** All right.

6 All right, ladies and gentlemen, we are going to break
7 for lunch at this point in time, and I'm going to ask that
8 you be back in your jury room at two o'clock, please.

9 Remember, don't talk about the case. Don't allow
10 anybody to talk to you about it. If you do go to lunch and
11 you go to someplace that's close to the courthouse, there's
12 any number of them that are within two or three blocks of
13 the courthouse, I'm going to ask that you wear your juror
14 button because other people are going to be eating lunch and
15 they may or may not be related to this case, but it would
16 help them to know that they are not supposed to be talking
17 about it in your presence.

18 If something like that should happen, obviously you
19 remind them that, you know, you are a juror and move or
20 whatever is necessary to keep you from hearing anything.

21 So with that, be back in your jury room at two o'clock.
22 Thank you very much.

23 **(THE FOLLOWING TAKES PLACE OUTSIDE THE PRESENCE OF THE**
24 **JURY.)**

25 **THE COURT:** All right, Solicitor, is there anything

JURY IN
LORI RABON - DIRECT BY RICHARDSON

1 from the State before we break for lunch?

2 **MR. HEMBREE:** No, Your Honor.

3 **THE COURT:** From the Defense, Mr. Hazzard?

4 **MR. HAZZARD:** No sir, Your Honor.

5 **THE COURT:** All right, very good. See y'all back at
6 two o'clock. Thank you very much.

7 **(THE FOLLOWING TAKES PLACE AFTER A BREAK AND OUTSIDE**
8 **THE PRESENCE OF THE JURY.)**

9 **THE COURT:** All right, Solicitor, are you ready to go
10 forward?

11 **MR. RICHARDSON:** Yes sir, Your Honor.

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

13 Mr. Hazzard?

14 **MR. HAZZARD:** The Defense is ready, Your Honor.

15 **THE COURT:** Very good.

16 Ask the jury to come in, please.

17 **(THE FOLLOWING TAKES PLACE WITHIN THE PRESENCE OF THE**
18 **JURY.)**

19 **THE COURT:** All right, Solicitor, your next witness,
20 please sir.

21 **MR. RICHARDSON:** Your Honor, the State would call Lori
22 Rabon.

23 **THE COURT:** All right.

24 Ms. Rabon, come around and be sworn, please Ma'am.

25 **LORI RABON,** being first duly sworn, testifies

LORI RABON - DIRECT BY RICHARDSON

1 as follows:

2 **DIRECT-EXAMINATION BY MR. RICHARDSON:**

3 Q. Ms. Rabon, would you tell this jury where you work.

4 A. I work with the Horry County Police Department.

5 Q. And what -- what's your job here with Horry County?

6 A. My job is I'm the evidence supervisor, and that just
7 entails that it's my responsibility to oversee the evidence
8 that the officers have dropped for cases.

9 Q. All right. How long have you been in evidence at
10 Horry County?

11 A. Since 2001.

12 Q. Do you remember the date that Charlie Parker and
13 Diane Parker were murdered?

14 A. Yes, I do.

15 Q. Okay. Were you working on the 12th of April of 2005?

16 A. Yes, I was.

17 Q. All right. How did you first come to learn of this?

18 A. Captain Jones, I believe he would have been Sergeant
19 Jones at the time, came through our section, which is the
20 crime scene and evidence section, and requested that we
21 assist the detectives and patrol out on a case, that we had
22 a double homicide and that they were needing crime scene's
23 assistance.

24 Q. All right. And from that, Officer Caulder or Agent
25 Caulder got involved?

LORI RABON - DIRECT BY RICHARDSON

- 1 A. Yes, he did.
- 2 Q. All right. Did you receive evidence from the crime
3 scene?
- 4 A. Yes, I did.
- 5 Q. All right. Explain to the jury how evidence came in
6 in this particular case.
- 7 A. In this case, Investigator Caulder responded to the
8 scene and collected several different items from the scene.
9 Some items were collected for trial. Some items were
10 collected for comparison. The evidence that I received was
11 collected to be held and preserved for court.
- 12 Q. I want to pass to you State's Number 63. Do you
13 recognize State's 63?
- 14 A. Yes, I do.
- 15 Q. Please tell the jury what is State's Number 63.
- 16 A. State's Exhibit 63 is a swab collected by Caulder
17 from the floor near south wall in the master bedroom.
- 18 Q. And what was the number, Horry County's number, for
19 State's 63?
- 20 A. Number 3.
- 21 Q. All right, and in the crime scene, it would be listed
22 as 3?
- 23 A. That's correct.
- 24 Q. All right. What -- when you received it, tell the
25 jury how it looked.

LORI RABON - DIRECT BY RICHARDSON

1 A. When blood swabs are received into evidence, they are
2 packaged in this outer container. It's a red -- has red
3 letters on it and it's a white container. The red seal is
4 placed on here for the integrity of the evidence by the
5 investigator, and he initials the outer seal.

6 Q. And there's one on each end of the box?

7 A. There is.

8 Q. And is that Robbie Caulder's -- have you ever seen
9 his signature or his initials before?

10 A. Several times.

11 Q. All right. And is that his initials?

12 A. It is.

13 Q. Okay. Now, I pass to you also what has been marked
14 as State's Exhibit Number 64, and I would ask if you
15 recognize that?

16 A. Yes, I do.

17 Q. What is that?

18 A. It is a blood swab collected by Caulder from the
19 floor in the master bedroom.

20 Q. And what was Horry County's number for that?

21 A. Number 4.

22 Q. Okay. And when you received Number 4, was it in the
23 same box, sealed at both ends?

24 A. Yes, it was.

25 Q. Let me pass to you what's been marked as State's

LORI RABON - DIRECT BY RICHARDSON

1 Exhibit Number 65. Do you recognize that?

2 A. Yes, I do. It's a swab collected by Caulder from the
3 floor in master bedroom near closet.

4 Q. And what was Horry County's number for that?

5 A. Number 7.

6 Q. Does that also correspond with number 7 on the
7 diagram?

8 A. Yes, it will.

9 Q. And finally, State's Exhibit Number 66, do you
10 recognize that?

11 A. Yes, I do. It's also a swab collected by Caulder
12 from a piece of paper on the floor at the second bedroom.

13 Q. And what's Horry County's number for that?

14 A. Number 13.

15 Q. I ask you on 63 through 66, any of these, were they
16 sealed and secured when you received them?

17 A. Yes, they are. It's our department protocol that all
18 swabs are contained inside, sealed, before we accept them.

19 Q. Okay. And did they appear to be tampered with when
20 you received these four items?

21 A. No, they did not.

22 Q. Did you tamper with these in any way?

23 A. No, I have not.

24 Q. Okay. What date did these four items come into
25 evidence?

LORI RABON - DIRECT BY RICHARDSON

1 A. If I can look at my notes.

2 Q. If your notes help refresh your memory.

3 A. 4/19/2005.

4 Q. Now, the date in question is 4/12/2005. Can you
5 explain to the jury why there may be a difference between
6 4/12 and 4/19/2005?

7 A. The case would have been -- we would have responded
8 as a crime scene unit on the 12th of April, 2005. When the
9 officer, the crime scene officer, responds to the scene and
10 collects his evidence, he will have an investigative end to
11 work for his case, and it may take a week or how many ever
12 days for him to complete his investigation in order for us
13 to know what we will then need to do with the evidence that
14 he collected.

15 Q. Where were these four items, if you know, from 4/12
16 until 4/19 when you logged them in as receiving them?

17 A. They would have been in the custody of Investigator
18 Caulder.

19 Q. All right. Would they have been in evidence?

20 A. Yes.

21 Q. All right. Explain to the jury an overview of the
22 Horry County Evidence Department.

23 A. At the Horry County Police Department, the crime
24 scene and evidence section is one section. We are, for lack
25 of better terms, under the same roof. The crime scene

LORI RABON - DIRECT BY RICHARDSON

1 investigators have the same care, custody, and control of
2 evidence just as I do or the administrative staff that works
3 strictly for evidence.

4 An easier way for me to explain it is that a crime
5 scene investigator has access to all the evidence that the
6 police department holds just as the crime scene tech- -- the
7 evidence technicians do.

8 Q. Okay. What part of your office space would these
9 four have originally come into?

10 A. The evidence would have originally have been brought
11 into the lab and to be disbursed for either S.L.E.D. holding
12 or they would be put on the vault shelf.

13 Q. I guess the main thing is during this entire time,
14 are these secured?

15 A. Yes, they are.

16 Q. All right. And they are -- are they secured within
17 the building?

18 A. Yes, they are.

19 Q. And are they secured within these boxes?

20 A. Yes, they are.

21 Q. If these boxes had been opened or tampered with,
22 would you be able to tell?

23 A. Yes, I would. The seal would be obviously broken.

24 Q. Okay. And during the time from 4/12 to 4/19, or
25 whenever they were in your custody, were these tampered with

LORI RABON - DIRECT BY RICHARDSON

1 in any way?

2 A. No. The seals remained intact.

3 Q. Okay. Now, what was -- why would they have been
4 signed over to you specifically if Mr. Caulder is in
5 evidence or is part of the evidence team, why would they
6 have been signed over to you on the 19th?

7 A. I would have taken custody of the evidence for the
8 trip to S.L.E.D., which is in Columbia. It's routine day-
9 to-day activities that when we have cases during the day, we
10 may decide that we need to make a trip to S.L.E.D. in
11 Columbia, and that day just, you know, ended up being my
12 turn.

13 Q. Okay. Did you do anything with these four items
14 before going to S.L.E.D.?

15 A. They were packaged up in envelopes for the DNA
16 Department.

17 Q. Okay. And the envelope, what did it look like?

18 A. It's a regular brown envelope and we seal it with the
19 same red evidence tape that's on the ends of the boxes, and
20 I would initial the tape.

21 Q. Let me ask you, what do you call that tape?

22 A. It's integrity seal, and it's labeled Horry County
23 Police Evidence.

24 Q. So these would have remained sealed?

25 A. Yes sir.

LORI RABON - DIRECT BY RICHARDSON

1 Q. And each would have been put in an envelope and that
2 would have been sealed?

3 A. Yes, they would.

4 Q. Would these all have been put in the same envelope?

5 A. DNA swabs are placed in separate envelopes and the
6 outer container is where I would label what item number that
7 our department was using for a descriptive on the evidence.

8 Q. So you would have taken this individual box and
9 placed it in an envelope, sealed that envelope, and ---

10 A. Labeled it number 4.

11 Q. And then you took it to the South Carolina Law
12 Enforcement Division?

13 A. Yes.

14 Q. Did anybody tamper with it or open any of those four
15 or five -- three or four tamper-proof seals while it was in
16 your custody?

17 A. No. They were still sealed when we made it to
18 S.L.E.D.

19 Q. And when you go to S.L.E.D., please tell the jury
20 what takes place at that point.

21 A. When we go to S.L.E.D., there is a log-in facility
22 where you meet an evidence technician that works for
23 S.L.E.D., and basically I take her all the case documents
24 that they will need to perform all tests that need to be
25 compared for the case.

LORI RABON - DIRECT BY RICHARDSON

1 I will give her the case documents and the evidence,
2 and she will log in the exact evidence that we are asking
3 them to compare, and they will put the evidence in a heat-
4 sealed pouch. Both ends of the heat-sealed pouch will be
5 sealed, and the delivering officer will initial the seal.

6 Q. So, for example, State's Number 64 is actually Horry
7 County's number 4, this sealed container would have been
8 placed into an envelope and sealed by you?

9 A. That's correct.

10 Q. And then that container would be sealed again by
11 S.L.E.D.?

12 A. That is correct.

13 Q. And during the time that you had any of these, no one
14 tampered with them, or bothered them, or changed them in any
15 way?

16 A. No, they did not.

17 Q. Now, I want to show you what's been marked as State's
18 Exhibit Number 69 and ask you what that is?

19 A. This is a oral swab standard from Bruce Hill
20 collected by Todd Cox.

21 Q. Do you see the date that that was collected?

22 A. March 17th, 2011.

23 Q. All right. Did you ever have custody and control of
24 that box?

25 A. It would have been turned into evidence, yes. It

LORI RABON - DIRECT BY RICHARDSON

1 would have been turned into evidence.

2 Q. And is that box properly sealed?

3 A. Yes, it is. Both ends are sealed with red tape.

4 Q. Okay. Does it appear to have been tampered with?

5 A. No, it does not.

6 Q. All right. What date was that signed into evidence?

7 A. March the 17th, 2011.

8 Q. The same date it was drawn?

9 A. Yes.

10 Q. What did you do with this box once it came in to
11 Horry County?

12 A. The standard was put on the S.L.E.D. shelf and
13 assigned to Investigator Brummett to be delivered to
14 Columbia to S.L.E.D.

15 Q. Would this have been in -- also in some sort of a
16 secondary sealed package before it went to S.L.E.D.?

17 A. Yes, it would.

18 Q. All right. And did you ride with Officer Brummett to
19 Columbia?

20 A. Yes, I did.

21 Q. Did anybody tamper with it or change it in any way
22 while you were riding with her?

23 A. No.

24 Q. And then you met with someone at S.L.E.D. who would
25 have put it into another package?

LORI RABON - DIRECT BY RICHARDSON

1 A. At log-in, we met with the evidence technician and
2 transferred it to their custody.

3 MR. RICHARDSON: The Court's indulgence one moment,
4 Your Honor.

5 THE COURT: Yes sir.

6 Q. Ms. Rabon, with regard to State's Exhibit 63, 64, 65,
7 and 66, do you know who you gave these to at S.L.E.D., the
8 individual person?

9 A. I do not have that in my notes. It just lists
10 S.L.E.D. on our chain of custody.

11 Q. Okay. Well, let me ask you this. Do you know a
12 Betty Butler?

13 A. Yes, I do. She's a evidence technician for S.L.E.D.

14 Q. Okay. And with regard to State's Exhibit Number 69,
15 do you remember who that was given to, and if you don't
16 know, that's ---

17 A. No, I don't know specifically.

18 Q. Have you ever heard of a Doris Yarbrough?

19 A. Yes. She works in log-in at S.L.E.D.

20 Q. Also?

21 A. Yes sir.

22 MR. RICHARDSON: No other questions. If you would
23 please answer any questions Mr. Hazzard may have for you.

24 THE COURT: Cross-examination.

25 MR. HAZZARD: Thank you, Your Honor.

LORI RABON - CROSS BY HAZZARD

1 **CROSS-EXAMINATION BY MR. HAZZARD:**

2 Q. Good afternoon, Ms. Rabon. How are you?

3 A. Good. How are you?

4 Q. I'm doing all right. Now, you're the supervisor, I
5 think you said, of the evidence area?

6 A. Yes, I am.

7 Q. Okay. So do you supervise Investigator Caulder?

8 A. No, I do not.

9 Q. You do not, but he has access to the evidence area
10 any time he feels the need to obtain something or place
11 something there?

12 A. Yes. We -- his supervisor and my supervisor is the
13 unit director. We both answer to the same supervisor.

14 Q. Okay. Now, a lot of agencies, one person or maybe
15 two people, a person in the daytime and a person at night,
16 handle evidence to the exclusion of everyone else, correct?

17 A. That's correct.

18 Q. Okay. And, in fact, some agencies, if I'm a police
19 officer or a detective and I obtain a piece of evidence that
20 I want to log in and it's two in the morning, they'll
21 actually have kind of a mailbox system where I drop it in
22 there and I cannot retrieve it, correct?

23 A. That is correct.

24 Q. Because the only person who is going to touch it,
25 handle it, and log it in, and deal with its disposition from

LORI RABON - CROSS BY HAZZARD

1 that point is the evidence custodian, correct?

2 A. That is correct.

3 Q. Now, how many people have access to your evidence
4 room?

5 A. Six.

6 Q. Six. And that includes Mr. Caulder?

7 A. Yes, it does.

8 Q. And when these folks come and go, and pick up things
9 or drop things off, what is the protocol by which they have
10 to sign for it?

11 A. There is a chain of custody that's in our computer
12 system that changes the bin location so we know where items
13 are when we need to find them.

14 Q. Okay, so if I'm an investigator, a C.S.I. guy, and I
15 come in and pick up something that is in evidence and take
16 it out with me, what is done so that someone would know that
17 I have removed it?

18 A. If you're disposing of evidence, there will be -- our
19 chain of custody would be filled out for the disposition of
20 that evidence.

21 Q. Okay.

22 **MR. HAZZARD:** The Court's indulgence, Your Honor.

23 **THE COURT:** Yes sir.

24 Q. Now, the investigators, the C.S.I. guys, do they work
25 on more than one case at a time, or typically are they only

LORI RABON - CROSS BY HAZZARD

1 working on one case, Ma'am?

2 A. They're typically working one case at a time.

3 Q. Okay. So how many people do C.S.I. for Horry County,
4 or let me rephrase that; back in 2005, how many individuals?

5 A. Were working in crime scene?

6 Q. Were working in crime scene investigation, yes Ma'am.

7 A. We had three total investigators at the time.

8 Q. Okay. And that would have been Mr. Caulder, Mr.
9 Gause, and Mr. Cestare?

10 A. Yes.

11 Q. Okay. And so is my -- were all three of them
12 involved in this case?

13 A. Yes, they were.

14 Q. So that means there was no one else to do any crime
15 scenes for any cases that came up the next day or the day
16 after?

17 A. We didn't have any more call-outs to my recall at
18 this point during this call-out. Robbie Caulder would have
19 been the primary C.S.I. on this case, and the other two
20 would just have assisted.

21 Q. Okay. Let me rephrase my question. I can see where
22 it was confusing. I apologize for that. I'm not just
23 talking about the physical time that they are on the scene,
24 for instance at the Parkers' home.

25 A. Right.

LORI RABON - CROSS BY HAZZARD

1 Q. I'm talking about the days after that, like that week
2 between the 12th when Mr. Caulder says he got this stuff and
3 the 19th when your records indicate he finally logged it in.
4 Are there other cases going on that they are working on and
5 like, for instance, preparing charts like this (indicating),
6 and dealing with evidence and things of that nature?

7 A. Sure. They work different call-outs. They work on
8 an on-call status.

9 Q. Okay.

10 **MR. HAZZARD:** The Court's indulgence.

11 Q. Okay. And I believe you told Deputy Solicitor
12 Richardson that swabs like those right there have to be
13 sealed before you accept them? In fact, you didn't actually
14 accept this -- let me ask -- did you -- did Mr. Caulder
15 actually hand it to you at some point in time, or did you
16 walk into the evidence room or evidence area and there it
17 was when you needed to take it to S.L.E.D.?

18 A. They were to be delivered to S.L.E.D. on the 19th.
19 That was our scheduled day that we were planning on going,
20 so when I received them from Investigator Caulder, they were
21 already sealed.

22 Q. Okay. So he actually physically handed them to you
23 is your recollection?

24 A. Yes.

25 Q. Okay.

BETTY WALKER BUTLER - DIRECT BY RICHARDSON

1 **MR. HAZZARD:** Okay, thank you. No further questions,
2 Ma'am.

3 **THE COURT:** Redirect?

4 **MR. RICHARDSON:** No redirect, Your Honor. We would
5 just ask that she be excused from her subpoena.

6 **THE COURT:** Any objection?

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

8 **THE COURT:** All right.

9 Ms. Rabon, you are released from your subpoena and may
10 go back to your regular activities.

11 **MS. RABON:** Thank you.

12 **THE COURT:** All right, Solicitor, your next witness,
13 please.

14 **MR. RICHARDSON:** Thank you, Your Honor. The State
15 would call Ms. Betty Butler.

16 **THE COURT:** All right, Ma'am, if you would come all
17 the way around up here to be sworn, please.

18 **BETTY WALKER BUTLER,** being first duly sworn,
19 testifies as follows:

20 **THE COURT:** All right, Solicitor.

21 **DIRECT-EXAMINATION BY MR. RICHARDSON:**

22 Q. Ms. Butler, please tell the jury where you work.

23 A. I work for the South Carolina Law Enforcement
24 Division, also known as S.L.E.D.

25 Q. And that's in Columbia?

BETTY WALKER BUTLER - DIRECT BY RICHARDSON

1 A. It's in Columbia, South Carolina, yes.

2 Q. Ms. Butler, how long have you been with S.L.E.D.?

3 A. Over fifteen years.

4 Q. And what do you do there at S.L.E.D.?

5 A. In '05, I was a forensic technician in Evidence
6 Control Department. We would take in evidence from various
7 agencies throughout the State of South Carolina and we would
8 log it into our system for tracking purposes.

9 Q. Okay. Do you know Lori Rabon?

10 A. Yes, I do.

11 Q. Did you have an occasion to work on or get evidence
12 in this particular case, State versus Bruce Hill?

13 A. Yes, I did.

14 Q. Okay. Specifically, let me pass to you what's been
15 marked as State's Exhibit Number 63 and ask if you recognize
16 State's Exhibit 63?

17 A. State's Exhibit 63 is our item number 23, blood swab
18 of floor near the wall, south wall in the master bedroom,
19 yes.

20 Q. Okay. And when you say item number 63, that's
21 S.L.E.D.'s item number?

22 A. Number 2- -- it's S.L.E.D.'s item number 23.

23 Q. Okay. And Horry County would have an item number,
24 and then S.L.E.D. would assign them an item number, and then
25 we'd come along and assign this sticker number, but State's

BETTY WALKER BUTLER - DIRECT BY RICHARDSON

1 Exhibit 63 for S.L.E.D.'s purposes was a blood standard, and
2 you labeled it as number 23?

3 A. That's correct.

4 Q. When you received State's Exhibit Number 63 -- well,
5 first of all, would you at S.L.E.D. take any item that was
6 not tamper-proof?

7 A. All the swabs have to be sealed when they come in.
8 If they are not sealed, we notate it on the log-in sheet.

9 Q. Is there such a notation on State's Exhibit 63, on
10 your item 23?

11 A. No, there is not.

12 Q. So this was sealed when you received it?

13 A. Yes, it was.

14 Q. In addition to this box being sealed at both ends, do
15 you remember how else it was sealed or how Horry County
16 seals their items?

17 A. I don't remember how they seal their items, but I
18 know how we seal it. Everything that comes in to us has to
19 be in a heat- -- before it leaves our custody, it has to be
20 in a heat-sealed pouch where we close it up, and the
21 submitting agency has to initial and date across the seal.

22 Q. So you know this was sealed?

23 A. Yes.

24 Q. Okay. And then you went in and sealed it again?

25 A. Yes, I did.

BETTY WALKER BUTLER - DIRECT BY RICHARDSON

1 Q. And you did that in the presence of the delivering
2 agency?

3 A. That's correct.

4 Q. What do you do with this re-sealed package after it
5 is heat-sealed?

6 A. Once this package has been heat-sealed and the
7 officers initial and date across the seal, I give it back to
8 the submitting agency, and at that particular time we had a
9 lock-box, which we call a refrigerator. It was a little
10 slot that they had to drop the evidence inside of that
11 particular box.

12 Q. So that agent actually drops it into the box?

13 A. Yes. We look at them while they drop the evidence in
14 this slot in the refrigerator.

15 Q. Let me pass to you what's been marked as State's
16 Exhibit 64 and ask if you recognize that?

17 A. State's Exhibit 64 is our item number 25. Yes, I do.

18 Q. And what is State's 64?

19 A. State's Exhibit 64 is blood swab from the floor in
20 the master bedroom.

21 Q. Okay, and that one would also have been sealed, and
22 then you would have re-sealed it?

23 A. Yes, it would have been.

24 Q. And dropped in the same package as 63?

25 A. That's correct.

BETTY WALKER BUTLER - DIRECT BY RICHARDSON

1 Q. And let me pass you what's been marked as State's
2 Exhibit 65, and tell the jury if you recognize that.

3 A. State's Exhibit 65 is our item number 19. It's a
4 blood swab of flooring near the master bedroom near the
5 closet. Yes, I do.

6 Q. And, again, this would have been sealed when you
7 received it?

8 A. That's correct.

9 Q. Did not appear to have been tampered with?

10 A. No, it wouldn't.

11 Q. And then you re-sealed it and put it in a lock box?

12 A. In a heat-sealed pouch where the -- all of these was
13 into a heat-sealed pouch where I sealed it and the
14 submitting agency initial and date across the seal and sign
15 it and dropped it in that lock box.

16 Q. And item number 66, see if you recognize that.

17 A. State's Exhibit 66 is our item number 22. It's a
18 blood swab, says a piece of paper floor of second bedroom.

19 Q. Okay. And, again, this would have come in the same
20 way?

21 A. Yes, it would have.

22 Q. It did not appear to have been tampered with?

23 A. No, it did not.

24 Q. And had it been tampered with, you wouldn't have
25 accepted it?

BETTY WALKER BUTLER - DIRECT BY RICHARDSON

1 A. Had it been tampered with ---

2 **MR. HAZZARD:** Objection to leading, Your Honor.

3 A. Had it been tampered with ---

4 **THE COURT:** Ma'am, excuse me.

5 I'm going to allow the question. I don't find it was
6 leading, but Solicitor, if you will make sure that you don't
7 supply the answer in the question. Thank you.

8 A. Had it been tampered with, we would have notated it
9 on this log-in sheet, and we would also have asked the
10 submitting agency why this particular swab is open, and if
11 they didn't have an answer, we would -- normally we would
12 send it back, and swabs have to be closed, always sealed.

13 Q. Do you have any indication on your paperwork if any
14 of these have been open?

15 A. No. Everything was sealed.

16 Q. And I know you sealed it again and handed it to the
17 agent. When this came in, would they have all been in one
18 pouch -- one pouch or would they have been in separate
19 pouches?

20 A. When they came in, I don't know -- remember on -- if
21 they were in separate pouches or not because we put it in
22 our heat-sealed pouches where we put it underneath the
23 container number.

24 Q. Do you individually seal it or do you seal them all
25 in one pouch?

BETTY WALKER BUTLER - DIRECT BY RICHARDSON
CROSS BY HAZZARD

1 A. Those particular ones right there was in just one
2 pouch, one heat-sealed pouch.

3 Q. All right. While these were in your custody or
4 control, or in your presence, did anyone tamper with these,
5 State's Exhibit 64, 65, 66, and 63, in any way?

6 A. No, no one did not.

7 Q. Now, once it goes into that locked box, do you have
8 any other dealings with these pieces of evidence?

9 A. No, I do not.

10 Q. Okay. Do you know while they are stored in that box
11 if anything else is to be done with them?

12 A. They are stored in that box so someone else can come
13 by with the key which is in -- normally in the DNA
14 Department at that time to pick it out of the lock box.
15 They have the key to get it out.

16 Q. Okay. And you don't know of your own independent
17 knowledge who would have come by and picked these up?

18 A. Yes. Our forensic technician, Sheree Brown, picked
19 the evidence up from the DNA box.

20 MR. RICHARDSON: Thank you. Please answer any
21 questions Mr. Hazzard might have for you.

22 THE COURT: Cross-examination.

23 MR. HAZZARD: Thank you, Your Honor.

24 CROSS-EXAMINATION BY MR. HAZZARD:

25 Q. Good afternoon, Ms. Butler. How are you?

BETTY WALKER BUTLER - CROSS BY HAZZARD

1 A. Good afternoon. I'm fine, thank you.

2 Q. Now, those items that Deputy Solicitor Richardson was
3 asking you about, you don't know where those items were
4 received or where the items you received were collected
5 from, do you?

6 A. Only what it says on the log-in sheet.

7 Q. Only what it says on the log-in sheet, okay. Now, I
8 noticed you said about every item Horry County had one
9 number and S.L.E.D. had a different number. Is that
10 standard procedure, Ma'am?

11 A. Everything that comes into our laboratory, S.L.E.D.'s
12 laboratory, always has to have an item number for tracking,
13 our tracking purpose.

14 Q. Okay, and you use that item number specifically for
15 tracking?

16 A. For tracking, yes.

17 Q. Okay. And you indicated, I believe, there was
18 something about the submitting agency or the representative
19 of the submitting agency would put the items through some
20 kind of slot?

21 A. We have a locked -- at that particular time we have a
22 refrigerator, which is a locked refrigerator, where it have
23 the slot where once we heat- -- heat-seal the pouch and have
24 them initial and date it, we give it back to them and have
25 them drop it down this slot, which is called the DNA box in

BETTY WALKER BUTLER - CROSS BY HAZZARD

1 our -- was in the Evidence Control Department.

2 Q. Okay. And once it's placed in that -- or once it's
3 dropped in that slot, can the person submitting it get their
4 hands on it?

5 A. No, they cannot.

6 Q. Okay, so it's not like a open bin or something like
7 that?

8 A. No, it's not a open bin. It's a -- it's a
9 refrigerator. It has the front where it just have a little
10 slot that you can drop the evidence in.

11 Q. Okay. Now, once it's in that refrigerator, what
12 protocol is used regarding removing it?

13 A. The next person, which is either the forensic
14 technician in our DNA Department, or the -- either the --
15 or the forensic technician can come and get the evidence out
16 of the DNA box.

17 Q. Okay. How many people have access to the box?

18 A. At that particular time, I do not know.

19 Q. Okay, but is it safe to say based on what you're
20 testifying to that anyone who did have access would have to
21 have a key? They would have to be authorized, correct?

22 A. Yes, they would have to be authorized before they can
23 come and get the evidence out of the box.

24 Q. Okay. And, again, the only thing you know about what
25 you received is what you were told or what was written on

BETTY WALKER BUTLER - CROSS BY HAZZARD
SHEREE BROWN - DIRECT BY RICHARDSON

1 the box that contained the sample, correct?

2 A. That is correct.

3 Q. Okay.

4 MR. HAZZARD: Thank you so much, Ms. Butler. No
5 further questions.

6 THE COURT: Any redirect?

7 MR. RICHARDSON: No sir, Your Honor.

8 THE COURT: Do you wish the witness to be excused?

9 MR. RICHARDSON: Yes sir, please.

10 THE COURT: Any objection?

11 MR. HAZZARD: No objection, Your Honor.

12 THE COURT: All right.

13 Ma'am, you are released from your subpoena and may go
14 back to your regular duties. Thank you.

15 Your next witness, please sir.

16 MR. RICHARDSON: Your Honor, the State would call
17 Sheree Brown.

18 SHEREE BROWN, being first duly sworn,
19 testifies as follows:

20 THE COURT: Go ahead, Solicitor.

21 DIRECT-EXAMINATION BY MR. RICHARDSON:

22 Q. Ms. Brown, please tell the jury where you work.

23 A. South Carolina Law Enforcement Division, also known
24 as S.L.E.D.

25 Q. Were you working with S.L.E.D. back in April of 2005?

SHEREE BROWN - DIRECT BY RICHARDSON

1 A. Yes.

2 Q. And what were you doing at S.L.E.D. in 2005?

3 A. I was a forensic technician within the DNA
4 Department.

5 Q. Okay. Do you still -- are you still a forensic
6 technician?

7 A. Yes, I am.

8 Q. Okay. Do you know Ms. Betty Butler?

9 A. Yes.

10 Q. She works there with you?

11 A. Yes, she does.

12 Q. I'm going to hand you a few items, please Ma'am,
13 State's Exhibit 63 and ask if you recognize that?

14 A. Yes.

15 Q. Please tell the jury what that is.

16 A. S.L.E.D. item number 23, and its description is one
17 sealed item containing converted items described as swab
18 from floor near south wall in master bedroom.

19 Q. Okay. Did you have an occasion to take that item
20 into your custody?

21 A. Yes.

22 Q. Please tell the jury how you gained control of that
23 item.

24 A. Back in 2005, the heat-sealed pouch that these
25 containers were in were dropped into a drop -- locked drop

SHEREE BROWN - DIRECT BY RICHARDSON

1 box for the DNA Department. It was my duty at that time to
2 go retrieve any evidence that was submitted to DNA and take
3 it upstairs and route it to where it needed to be going at
4 the time.

5 Q. And did you take State's 63, I believe your item 23?

6 A. Yes.

7 Q. And where did you take it?

8 A. At the time, it was -- what was -- I took it -- I had
9 it physically in my custody and transferred it in the
10 computer to show it went into the DNA refrigerator in the
11 fourth floor DNA lab.

12 Q. Well, where is -- where is Evidence? Where does Ms.
13 Betty usually work? What floor would that be on?

14 A. The first floor.

15 Q. So you basically took that from the first floor ---

16 A. To the third, and then from the third to the fourth.

17 Q. Okay, for testing, or do you know why it was taken?

18 A. This case was assigned to an ana- -- DNA analyst, so
19 that's how I knew I had to route it to the DNA refrigerator,
20 so that's the location that the analysts' work is kept.

21 Q. In that place where his work is kept, is that also
22 secured?

23 A. Yes.

24 Q. When you received that, you say it was in a heat-
25 sealed pouch?

SHEREE BROWN - DIRECT BY RICHARDSON

1 A. Correct.

2 Q. Did it appear to be tampered with in any way when you
3 received it?

4 A. No, it had not. If it had, it would have been noted.

5 Q. Okay. And you would have been able to tell?

6 A. From the notes that was put in place.

7 Q. Okay. Did you tamper with State's Exhibit 63 in any
8 way while you had it in your custody?

9 A. No.

10 Q. Did anybody tamper with it while you had it in your
11 custody?

12 A. No, no one.

13 Q. And then you took it to a secured location on the
14 third and then the fourth floor?

15 A. Yes.

16 Q. I pass to you what's been marked as State's Exhibit
17 64, please. Tell me if you recognize State's Exhibit 64?

18 A. Yes. It's considered S.L.E.D. item 25.

19 Q. Okay.

20 A. And it's described as a swab from floor in master
21 bedroom.

22 Q. Okay. And was that also in a heat-sealed pouch?

23 A. Yes.

24 Q. You got that from where?

25 A. From Evidence Control.

SHEREE BROWN - DIRECT BY RICHARDSON

- 1 Q. The first floor?
- 2 A. Yes.
- 3 Q. And where did you take State's 64?
- 4 A. The same location as State's 63.
- 5 Q. Okay. Did anybody tamper with State's 64 while it
- 6 was in your care and control?
- 7 A. No.
- 8 Q. Did it appear to have been tampered with before you
- 9 got control over it?
- 10 A. No, it would have not been tampered with.
- 11 Q. And that was, of course, placed in another secure
- 12 location ---
- 13 A. Yes.
- 14 Q. --- with 63?
- 15 I ask you if you recognize State's Exhibit 65,
- 16 please?
- 17 A. Yes.
- 18 Q. Please tell the jury what State's 65 is.
- 19 A. State's 65 is S.L.E.D.'s number 19, and it's
- 20 described as swab from floor, master bedroom, near closet.
- 21 Q. Was that also in your custody and control for a
- 22 period of time?
- 23 A. Yes, ---
- 24 Q. And was ---
- 25 A. --- first floor to the third, and then to the fourth

1 STATE OF SOUTH CAROLINA) COURT OF GENERAL SESSIONS
2)
3 COUNTY OF HORRY) (11-GS-26-00987)
4) (11-GS-26-00988)
5) (11-GS-26-01327)
6 STATE)
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VERSUS

TRANSCRIPT OF RECORD

BRUCE ANTWAIN HILL

September 1, 2011
September 12, 13, 14, 2011
Conway, South Carolina

B E F O R E:

HONORABLE STEVEN H. JOHN, Judge.

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

GREGORY HEMBREE, ESQ.
JIMMY A. RICHARDSON, II, ESQ.
ASSISTANT SOLICITOR FOR HORRY COUNTY
ATTORNEYS FOR STATE

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

DIXIE COX EUBANK
CIRCUIT COURT REPORTER
FIFTEENTH JUDICIAL CIRCUIT

VOLUME 2 OF 2
(SEE VOLUME 1 FOR INDEX)

SHEREE BROWN - DIRECT BY RICHARDSON

- 1 floor to be -- so it could be analyzed.
- 2 Q. Did you tamper with State's 65 in any way?
- 3 A. No, I did not.
- 4 Q. Did anyone in your presence tamper with 65?
- 5 A. No.
- 6 Q. Or any of these?
- 7 A. None of these.
- 8 Q. And was that also in a heat-sealed pouch?
- 9 A. Yes.
- 10 Q. And delivered to a secure location?
- 11 A. Yes.
- 12 Q. And finally State's 66, please tell the jury if you
- 13 recognize that.
- 14 A. Yes. State's Exhibit 66, is also S.L.E.D.'s number
- 15 22, and it's described swab from piece of paper, floor,
- 16 second bedroom.
- 17 Q. And when you received that, tell the jury how that
- 18 was packaged.
- 19 A. The same as the previous three, in a heat-sealed
- 20 pouch that was retrieved from the Evidence Control area.
- 21 Q. First floor to the third, and then the fourth floor?
- 22 A. Correct.
- 23 Q. Did you tamper with State's 66 in any way or see any
- 24 signs of tampering with it?
- 25 A. None.

SHEREE BROWN - CROSS BY HAZZARD

1 **MR. RICHARDSON:** Thank you. Please answer any
2 questions Mr. Hazzard might have for you.

3 **THE COURT:** Cross-examination.

4 **MR. HAZZARD:** Thank you, Your Honor.

5 **CROSS-EXAMINATION BY MR. HAZZARD:**

6 Q. Good afternoon, Ms. Brown. It's good to see you
7 again.

8 A. Afternoon.

9 Q. Now, your testimony is basically that you took those
10 items, you took what was received, whatever it may be, and
11 transported it from the first floor to the third floor and
12 then again to the fourth floor, is that correct?

13 A. Correct.

14 **MR. HAZZARD:** Okay, thank you. No further questions.

15 **THE COURT:** Any redirect?

16 **MR. RICHARDSON:** No sir.

17 **THE COURT:** Do you wish the witness to be excused?

18 **MR. RICHARDSON:** Yes sir, please.

19 **THE COURT:** Any objection, Mr. Hazzard?

20 **MR. HAZZARD:** No sir, Your Honor.

21 **THE COURT:** All right.

22 Ma'am, you are released from your subpoena and may go
23 back to your regular activities.

24 Your next witness, Solicitor.

25 **MR. RICHARDSON:** Thank you, Your Honor. The State

JURY OUT/ON RECORD

1 calls Steve Lambert to the witness stand.

2 **MR. HAZZARD:** Your Honor, we have a matter to take up
3 outside the presence of the jury at this time.

4 **THE COURT:** All right.

5 Ladies and gentlemen of the jury, if y'all would go to
6 your jury room and I will call you back out as soon as I
7 can. Thank you very much.

8 **(THE FOLLOWING TAKES PLACE OUTSIDE THE PRESENCE OF THE**
9 **JURY.)**

10 **THE COURT:** Yes sir, Mr. Hazzard.

11 **MR. HAZZARD:** Your Honor, at this time the Defense
12 wants to renew its objection with regard to the DNA evidence
13 in this case, specifically the obtaining of the buccal swab
14 pursuant to a Schmerber hearing held back in March of this
15 year, and I am also unclear, and perhaps the Prosecutor can
16 help me with this.

17 I am not sure whether Mr. Lambert would also be
18 testifying with regard to the CODIS match, and obviously as
19 I indicated previously, we have a strenuous objection with
20 regard to that, and with regard to the CODIS match, the
21 objection obviously, Your Honor, is that it's my
22 understanding based upon what the Prosecutor said that he
23 intends to ask regarding this CODIS match and that it
24 matches Bruce Hill, which basically is hearsay, that we
25 received something off of a -- you know, off of the COMbined

JURY OUT/ON RECORD

1 DNA Index that says DNA belongs to Bruce Hill, you know,
2 without any actual verification of the sample that was
3 placed into CODIS actually being Bruce Hill.

4 **THE COURT:** All right, sir.

5 Solicitor.

6 **MR. HEMBREE:** Your Honor, we will -- we will elicit
7 testimony from Mr. Lambert that he entered Mr. -- he entered
8 these unknown standards, the profile that he -- he developed
9 from these four standards, into the CODIS system. Of
10 course, we don't intend to make any mention whatsoever that
11 this is a -- you know, how you get into CODIS other than it
12 is a national DNA database.

13 We're not going to make any reference to the fact that
14 it has to be done after arrest because quite frankly there
15 are a lot of ways you can get into the CODIS system other
16 than a criminal conviction.

17 The -- we also intend to call David McClure from
18 S.L.E.D., who is the -- the person at S.L.E.D. who manages
19 and is in charge of it and is responsible. He is the person
20 in the State of South Carolina who is responsible for the
21 CODIS system in South Carolina. He is the one who received
22 the response back from this computer database that indicated
23 it was -- that they had a possible hit that matched Bruce
24 Hill.

25 He will also testify that even though they received

JURY OUT/ON RECORD

1 that match, that that is not sufficient for court purposes.
2 That is a, even in their protocols, is an investigative tool
3 and it requires a confirma- -- a confirmatory test by law
4 enforcement after a match is made, so he will clear -- he
5 will make that point very clear and will -- of course, that
6 will be handled by another -- that confirmatory test will be
7 handled by other witnesses following that up.

8 **THE COURT:** All right.

9 As for the CODIS issue, Mr. Hazzard, it's premature at
10 this point in time. I am happy for you to raise it, but I
11 haven't heard the information so I can't make a ruling. I'm
12 certainly not going to make a ruling to prevent the State
13 from going into it if that was the purpose of your motion.

14 If you have some question about the sufficiency after
15 the testimony, then I'll be glad to hear from you, but I'm
16 not going to prevent them from testifying if that was the
17 purpose of your motion.

18 As to the Schmerber matter, the Schmerber hearing was
19 held. The Court ruled on that. That's already happened. I
20 appreciate the fact you're raising it to me, but your
21 objections that you had to it were the objections that you
22 stated at the time of the Schmerber hearing. The Court
23 ruled on it. That matter is part of this case, and that's
24 done and over with.

25 Now, if you have some other objections, I'll be glad to

JURY OUT/ON RECORD/JURY IN

1 hear from you.

2 **MR. HAZZARD:** Not at this time in relation to these
3 matters, Your Honor. Thank you for hearing me out.

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

5 I just sent the jury out, so we need to at least give
6 them about five minutes, so let's just take a very short
7 break, about five minutes, and then we'll come back in.
8 Thank you very much.

9 **MR. HEMBREE:** Thank you, Your Honor.

10 **(THE FOLLOWING TAKES PLACE AFTER A BREAK AND OUTSIDE**
11 **THE PRESENCE OF THE JURY.)**

12 **THE COURT:** All right, Solicitor, is the State ready
13 to proceed?

14 **MR. HEMBREE:** Yes, Your Honor.

15 **THE COURT:** Defense?

16 **MR. HAZZARD:** Yes sir.

17 **THE COURT:** All right.

18 Ask the jury to come in, please.

19 **(THE FOLLOWING TAKES PLACE WITHIN THE PRESENCE OF THE**
20 **JURY.)**

21 **THE COURT:** All right, Solicitor, your next witness,
22 please sir.

23 **MR. HEMBREE:** Thank you, Your Honor.

24 The State calls Steve Lambert to the witness stand.

25 **THE COURT:** Please come around and be sworn, sir.

STEVEN J. LAMBERT - DIRECT BY HEMBREE

1 **STEVEN J. LAMBERT**, being first duly sworn,
2 testifies as follows:

3 **DIRECT-EXAMINATION BY MR. HEMBREE:**

4 Q. Good afternoon, Mr. Lambert.

5 A. Good afternoon.

6 Q. Who do you work for these days?

7 A. I'm retired from the South Carolina Law Enforcement
8 Division.

9 Q. And how long were you with S.L.E.D.?

10 A. From 1990 through 2008.

11 Q. And in what capacity did you serve at S.L.E.D.?

12 A. I was originally hired as a DNA analyst to perform
13 DNA testing at S.L.E.D. and eventually was named the
14 supervisor of DNA case work at S.L.E.D.

15 Q. And if you would, give the jury and the Court the
16 benefit of your training and experience in the field of
17 forensic serology and DNA analysis.

18 A. Okay. I've got a Bachelor's of Chemistry from Mars
19 Hill College in Mars Hill, North Carolina. I've got a Ph.D.
20 in Biochemistry from the University of South Carolina in
21 Columbia.

22 In 1990 I was hired at S.L.E.D. after I got my Ph.D.
23 and was trained there at S.L.E.D. under the supervision of a
24 court-qualified analyst who worked at S.L.E.D. in serology,
25 and then I also attended the F.B.I. Academy in Quantico,

STEVEN J. LAMBERT - DIRECT BY HEMBREE

1 Virginia, and took classes there in forensic DNA, and also
2 was a visiting scientist at the F.B.I. Academy. I also
3 attended numerous seminars and training classes over the
4 years that I was at S.L.E.D.

5 Q. And, Mr. Lambert, you were -- you have been qualified
6 in courts of this state many times to testify as an expert
7 in the field of forensic serology and DNA analysis?

8 A. Yes sir.

9 Q. Approximately how many times?

10 A. It's over eighty times.

11 **MR. HEMBREE:** Your Honor, we would offer Mr. Steve
12 Lambert as an expert in the field of forensic serology and
13 DNA analysis.

14 **THE COURT:** All right.

15 Mr. Hazzard, do you wish to voir dire the witness or
16 question his qualifications?

17 **MR. HAZZARD:** No sir, Your Honor.

18 **THE COURT:** All right, sir.

19 He is qualified to give his opinion.

20 You may proceed.

21 Q. Mr. Lambert, in connection with State versus Bruce
22 Hill, certain pieces of evidence were back in 2005 provided
23 to you to analyze, do DNA analysis on, is that correct?

24 A. Yes. It was associated with the victims, Charles
25 Parker and Diane Parker.

STEVEN J. LAMBERT - DIRECT BY HEMBREE

1 Q. And I want to show you what's been marked as State's
2 Exhibit 65, 64, 63, 66, and ask if you can identify these
3 four items of evidence for us?

4 A. Okay. 63 is a swab. It's item number 23 identified
5 from the floor near south wall in M.B.; that's the master
6 bedroom.

7 Q. What is the S.L.E.D. number on that?

8 A. It's L05, which indicates the year, 2005, and this is
9 case number 4428, so I've also got my initials on this item.

10 Q. Okay. Does it have an item number, a specific item
11 number?

12 A. With our item associated with this, it was item
13 number 23 once it went into S.L.E.D. Everybody has a
14 different item number.

15 State's Exhibit 65 is item number 19 at S.L.E.D., the
16 same case number. It's from the floor in the master bedroom
17 near closet.

18 State's Exhibit 66 is S.L.E.D.'s item number 22. It's
19 a piece of paper from the floor at the second bedroom. This
20 is a swab from the piece of paper.

21 And Number 25, S.L.E.D.'s number 25, State's Exhibit
22 Number 64 is from the floor in the master bedroom.

23 Q. And how did these items, these four items, come into
24 your possession?

25 A. They were submitted to the lab through the log-in,

STEVEN J. LAMBERT - DIRECT BY HEMBREE

1 evidence log-in, at S.L.E.D., were eventually brought
2 upstairs to the DNA refrigerator, which is a secure
3 refrigerator that contains our evidence, and then was picked
4 up by me to perform analysis on it.

5 Q. And were these in addition to being secured by
6 evidence tape and inside these boxes -- not -- it's not
7 evidence tape. I guess it's secure tape, integrity tape, I
8 believe, is the name of it. In addition to that, were they
9 secured in any other way when you received them?

10 A. They would have been submitted inside a heat-sealed
11 pouch. The heat-sealed pouch would have a seal on it with
12 the initials of the person who sealed it, and we examined
13 that pouch, and this evidence, of course, for any evidence
14 of tampering, that is if somebody opened that prior to it
15 getting to me.

16 Q. And when you opened -- you retrieved these from the
17 DNA refrigerator on the fourth floor?

18 A. It would have been the third or the fourth floor --
19 yeah, it would have been the fourth floor in this case.

20 Q. When did you retrieve these items?

21 A. I retrieved these from the DNA refrigerator on the
22 fourth floor on 4/21/2005, so I retrieved all those items on
23 April 21st, 2005.

24 Q. When you retrieved them, was there any evidence that
25 they had been tampered with or altered in any way?

1 A. No. That's the first thing that we look for, is to
2 make sure that everything is intact and everything is as it
3 should be.

4 Q. Now, after you retrieved these items, what testing
5 did you undertake with these four items?

6 A. We did the standard DNA test on these items, but
7 prior to doing that, we want to identify the body fluid.
8 These were submitted to the lab to look for a blood or a
9 body fluid, so we tested initially for blood, and the
10 results of that testing for those items, for the number 19,
11 which was the swab from the floor in the master bedroom near
12 the closet, we identified human blood on that item.

13 On item 22, which was the swab from the piece of paper
14 found on the floor of the second bedroom, that's blood
15 identified, human blood identified. On number 23, the swab
16 from the floor near the south wall of the master bedroom is
17 human blood identified, and number 25 is the floor in the
18 master bedroom, is human blood identified on that also.

19 Q. And upon determining that human blood was identified
20 of these four swabs, of these four samples, what additional
21 testing did you undertake?

22 A. At this point once we've identified the body fluid,
23 we're going to do DNA testing on it, so we're going to take
24 that swab, We're going to snip off a little bit of it and
25 run it through the DNA process. We're going to extract DNA

1 from the swab. We're going to purify that DNA.

2 We're going to figure out if we've got enough to
3 continue with the test and once we do, we perform the DNA
4 test, which looks at fifteen different areas on the DNA
5 molecule that are different from each other from person to
6 person.

7 That is these areas contain identifiers that would be
8 specific for a particular person, and we look at each one of
9 those areas and then we look at the known standards that
10 were submitted to the lab to see if we have any matches,
11 that is does someone who is submitted to the lab match the
12 evidence the was submitted to the lab.

13 Q. Were you able to develop a DNA profile on these four
14 standards?

15 A. Yes, I was.

16 Q. What type of DNA tests were run on these standards?

17 A. There were two tests that were run and their product
18 name is the profiler test, which tests for nine different
19 locations, and then the COfiler test, which tests for
20 another additional four locations, but two of them are
21 duplicated between the two tests, but on three of the
22 samples we ran the profiler test, and then on sample 19 I
23 ran the profiler and the COfiler test.

24 Q. And when did you report your results of the DNA test
25 on these four items?

STEVEN J. LAMBERT - DIRECT BY HEMBREE

1 A. The report for the results of those four items was
2 published on June 26, 2007.

3 Q. I'm going to have you look at what's been marked as
4 State's Exhibit 67 for identification purposes and tell us
5 if you can identify the data that is reported on that -- on
6 this document, this chart.

7 A. Okay. If I could take just a second to verify that
8 that's the correct values. Yes sir, those are correct.

9 Q. And what are these?

10 A. This is the actual DNA results from the tests that we
11 performed. The top table is from the profiler test. The
12 bottom table is the sample 19 that we ran on COfiler, and in
13 each one of these columns there's a number or two numbers.
14 You get one of these numbers from your mom; you get one of
15 them from your dad. If there's a single number, that means
16 that mom and dad gave you the same number when you were
17 conceived, but each one of these columns is a different
18 test.

19 If you look at the way this is laid out on the
20 profiler, you've got nine different tests, and then if you
21 will notice on the COfiler with the D-3 and the D-7, that's
22 the same number that you have on the previous test, so
23 that's an internal control between the profiler and the
24 COfiler.

25 Q. Mr. Lambert, would this chart assist you in

STEVEN J. LAMBERT - DIRECT BY HEMBREE

1 explaining your testimony to this jury?

2 A. Yes sir.

3 MR. HEMBREE: Your Honor, we would at this time move
4 into evidence State's 63, 64, 65, 66, as well as 67, the
5 chart.

6 THE COURT: All right.

7 Mr. Hazzard.

8 MR. HEMBREE: Subject to any previous objection, Your
9 Honor.

10 THE COURT: All right.

11 I'm going to allow State's 63 through 66 in evidence.

12 As to the chart itself, any objection to the chart?

13 MR. HAZZARD: No sir, Your Honor. I've had the chance
14 to review the chart and -- well, I guess my objection would
15 be ---

16 THE COURT: As it reflects the information ---

17 MR. HAZZARD: As it reflects the ---

18 THE COURT: --- gained from 63 through 66, ---

19 MR. HAZZARD: Yes sir, Your Honor.

20 THE COURT: --- that would be the objection? All
21 right.

22 MR. HEMBREE: But as to the -- as to the way the chart
23 is set up, no, there is ---

24 THE COURT: All right, sir. Very good.

25 All right, I'm going to allow State's 63 through 67 in

STEVEN J. LAMBERT - DIRECT BY HEMBREE

1 evidence at this point in time.

2 You may proceed.

3 (FOUR SWABS ADMITTED INTO EVIDENCE AS STATE'S EXHIBIT
4 NUMBER 63, 64, 65, AND 66.)

5 (DNA CHART ADMITTED INTO EVIDENCE AS STATE'S EXHIBIT
6 NUMBER 67.)

7 MR. HEMBREE: Let me ask you, Mr. Lambert, to step
8 down, if I could, and if you could take a position here so
9 the jury can hear you good and the Reporter can hear your
10 testimony, and keep your voice up because we don't have
11 quite the same benefit of the microphones.

12 THE COURT: Can you move your microphone from the
13 State's table as close as possible, Solicitor, I guess to
14 the edge of the table anyway.

15 MR. HEMBREE: If I can, Mr. Lambert, let me get you to
16 come right here close to this microphone right there.

17 THE COURT: Very good.

18 MR. HEMBREE: If you will take this pointer, it might
19 be of some help.

20 Q. And explain to the jury the results that you obtained
21 from your DNA testing of these four samples.

22 A. Okay. As you see here on each one of these rows
23 represents a sample. This is 19, the swab from the master
24 bedroom; 22, a swab from the paper; 23 and 25, two other
25 swabs from the master bedroom.

STEVEN J. LAMBERT - DIRECT BY HEMBREE

1 In the profiler part of the table, you just read
2 across. That's that, samples, DNA result, and it kind of
3 reads kind of like a social security number. Once you get
4 to a certain point, you've pretty much established that that
5 -- is that person's identifying DNA.

6 This is -- each one of these columns here is a DNA
7 location. This is D3S1358. It's a spot on chromosome
8 number 3, and this person who bled at the scene and left
9 their blood there, a type is a 16 at that location.

10 At vWA, which is another chromosomal location, they
11 were a 15,19; 19,23, and all the way across. Now, you see
12 the 16 and the 18 are in parentheses. That means that we
13 were at a low level of sample. Sometimes you have a ton of
14 sample; sometimes you have a very small amount. This one
15 was kind of -- sort of in between, but the 16 and the 18
16 indicated there was a small amount, but we were able to type
17 them.

18 Some of these go all the way across and you don't see
19 any parentheses. Number 25 here has several parentheses, so
20 it's a very low level, and actually I've got here in the
21 D18S51 column where the 16 is actually dropped out there, so
22 that happens when you've got a low level of sample. Both
23 the numbers don't show up, so that's the result for the
24 profiler, plus if you go down to the COfiler in Table 2, I
25 took one of the samples, sample 19 and ran the COfiler test,

STEVEN J. LAMBERT - DIRECT BY HEMBREE

1 which gave me one, two, three, four more additional DNA
2 locations.

3 The D7 is the same result that I had on the profiler
4 here, so that's kind of an internal test, and the D3S1358
5 gave me the same result as the profiler, so it's a profiler,
6 plus we had an additional one, two, three, four locations,
7 plus the nine, for a total of thirteen locations.

8 The last bit of the column here is a amelogenia, which
9 indicates the sex of the individual, so there's an XY there
10 which indicates it's a male, so this is blood from a male,
11 and this is his DNA type.

12 Q. And can you draw any conclusions from the numbers
13 that you're getting from these different locations?

14 A. The conclusion that I could get for these is that it
15 appears to come from the same male. You see very strict
16 concordance between all of these places with the exception
17 of D18S51. There's that 16 drop down for sample number 25.
18 I think everything else shows concordance, but this would
19 lead me to believe that it's from the same male.

20 Q. And the fact that there's not a 16 in this one out
21 of, I don't know, thirty, quite a few possibilities, but
22 that one, the 16, is dropped out indicates to you that you
23 didn't have sufficient sampling and that number just dropped
24 out because of an insufficient amount?

25 A. That's correct.

STEVEN J. LAMBERT - DIRECT BY HEMBREE

1 Q. It doesn't in any way indicate that it is not the
2 same person?

3 A. No.

4 Q. All right. Now, if you had gotten different numbers
5 there, that would be something significant that it might be
6 a mixture or might not be the same person?

7 A. That's right. This 18 here that is in parentheses
8 indicates I've got a low amount of sample. If I had a lot
9 of sample and there was a number dropped out there, then I
10 would -- I would wonder if the possibility exists, but in
11 this particular case, it was a low level sample.

12 Q. So if you were -- it's your opinion, in your
13 professional opinion, these were samples that came from the
14 same person?

15 A. Yes sir.

16 Q. Now, did you have anyone -- did these -- at the time
17 that you did these back in 2007, did you have a known
18 standard to compare it to?

19 A. No. I did this testing in 2005, and it was finally
20 reported in 2007 basically because we didn't have a known
21 standard to compare it to. We tested several individuals
22 and didn't get a match to this standard and finally reported
23 it out in 2007 as an unknown individual.

24 Q. All right. What was your last, I guess, official act
25 with this standard? What was the last thing you did

STEVEN J. LAMBERT - DIRECT BY HEMBREE
CROSS BY HAZZARD

1 with these standards? Now you've developed them, but you
2 don't know -- you don't have a match to anybody. What would
3 you then do?

4 A. Once we didn't have a match, we put it in a database
5 to search.

6 Q. And what kind of database is that?

7 A. It's a database that contains samples from crime
8 scenes. Some of them are a known source. Some of them are
9 unknown, but it goes into that database and searches against
10 potential people to look for matches.

11 Q. All right. Go take your seat.

12 **MR. HEMBREE:** Mr. Lambert, I don't believe I have
13 anything else for you. Please answer any questions that Mr.
14 Hazzard has for you.

15 **THE COURT:** All right.

16 Cross-examination.

17 **MR. HAZZARD:** Thank you, Your Honor.

18 **CROSS-EXAMINATION BY MR. HAZZARD:**

19 Q. Good afternoon, Mr. Lambert. How are you?

20 A. Good afternoon.

21 Q. Okay, you indicated to the Prosecutor that you
22 entered your sample in a database, is that correct?

23 A. That's correct.

24 Q. Okay. Now, with regard to this database, there are
25 many ways and many individuals who end up included in the

STEVEN J. LAMBERT - CROSS BY HAZZARD

1 database, correct, like military folks and stuff like that?

2 A. No, not military individuals unless there just
3 happens to be that they had a military background, but the
4 Armed Forces do not put their samples into that database.

5 Q. Okay. Now, with regard to that right there, you
6 tested what was provided to you, correct?

7 A. Yes sir.

8 Q. Okay. And you have no idea or no knowledge
9 personally with regard to the swabs that ended up in those
10 boxes that were bundled up and sent to S.L.E.D., do you,
11 sir?

12 A. Not other than just opening them at S.L.E.D. That's
13 -- from then on, I know what their history was as long as
14 they were in my possession.

15 Q. Yeah, as long as they were in your possession?

16 A. That's correct.

17 Q. Yeah, but you don't know where those samples were
18 taken, how they ended up in those boxes with that labeling,
19 correct?

20 A. That's correct. I didn't work the crime scene in
21 this case.

22 Q. Now, with regard to your protocol, once you receive
23 it how do you have to control it and keep it safe? What --
24 what's done on your end?

25 A. We have a secure facility at S.L.E.D. Of course,

STEVEN J. LAMBERT - CROSS BY HAZZARD

1 it's got limited access. You have to be able to get in, and
2 even once you're inside S.L.E.D., I store this evidence in a
3 secure heat-sealed pouch. I seal it once I'm done with it.
4 I put my initials and my -- the date that I sealed it on
5 that pouch so I can tell if anybody has gone into that pouch
6 after I have, and then it's stored in a secure refrigerator,
7 so it's limited access and even on top of that, I can tell
8 whether somebody has been into my pouch or not.

9 Q. Okay. And as far as -- I think you said something
10 about one of the samples was supposed to have been from the
11 master bedroom. Again, you weren't there when anything that
12 ended up in those boxes was collected, correct?

13 A. That's correct. That's the way that it was
14 identified to S.L.E.D., was swab from master bedroom.

15 Q. Okay, so that's what the submitting agency claims,
16 right?

17 A. Yes sir.

18 Q. Okay.

19 MR. HAZZARD: All right, thank you. No further
20 questions.

21 THE COURT: Redirect?

22 MR. HEMBREE: Nothing on redirect, Your Honor.

23 THE COURT: Do you wish the witness to be excused?

24 MR. HEMBREE: Yes, Your Honor, please.

25 THE COURT: Any objection?

DAVID McCLURE - DIRECT BY HEMBREE

1 **MR. HAZZARD:** No sir, Your Honor.

2 **THE COURT:** All right.

3 Sir, you are released from your subpoena and may go
4 back to your regular duties, sir.

5 **MR. LAMBERT:** Thank you.

6 **THE COURT:** Your next witness, Solicitor.

7 **MR. HEMBREE:** The State calls David McClure to the
8 stand.

9 **THE COURT:** All right, sir, if you would come around
10 up here to be sworn, sir. Thank you.

11 **DAVID McCLURE,** being first duly sworn,
12 testifies as follows:

13 **THE COURT:** Go ahead, Solicitor.

14 **MR. HEMBREE:** Thank you, Your Honor.

15 **DIRECT-EXAMINATION BY MR. HEMBREE:**

16 Q. Mr. McClure, who do you work for?

17 A. The South Carolina Law Enforcement Division.

18 Q. And what are your primary responsibilities at
19 S.L.E.D.?

20 A. I'm the Lieutenant Supervisor over the DNA Database
21 Unit.

22 Q. And how long have you been with S.L.E.D.?

23 A. Will be twenty-one years next March.

24 Q. And how long have you been over the DNA Database
25 Unit?

DAVID McCLURE - DIRECT BY HEMBREE

1 A. I've been working in the DNA Database Unit since
2 1994, and been the supervisor since 2008.

3 Q. Now, tell the -- tell us just how the database unit
4 works, not -- just what -- Mr. Lambert just testified that
5 he entered an unknown standard, and it just sort of keeps on
6 rolling, is that the way it works?

7 A. Sure. Back in 1994, South Carolina passed
8 legislation that established the State's DNA database. It
9 is a database that is comprised of genetic profiles from
10 various sources.

11 In 1998, Federal legislation was passed that gave the
12 F.B.I. the authority to develop CODIS, which is the COMbined
13 DNA Index System, and it is a computer software that allows
14 DNA profiles to be shared between law enforcement agencies
15 for the purpose of generating investigative leads for
16 unsolved cases.

17 Q. And you have been working with that database program
18 since how long?

19 A. Since 1994 when our legislation was passed.

20 Q. Now, did you happen to develop a potential profile in
21 this case, the State versus Bruce Hill?

22 A. Yes, we did.

23 Q. And when did that occur?

24 A. In May 28th of 2009, there was a hit generated to an
25 individual to an evidence sample from this case.

DAVID McCLURE - DIRECT BY HEMBREE

1 Q. And what steps are taken when you get a hit, as you
2 say, as a possible match? What steps are taken by you when
3 something like that happens?

4 A. That is confirmed, and then we send a letter to the
5 investigating officer advising them that there was a hit in
6 this case.

7 Q. Let me show you what's been marked as State's 70 for
8 identification purposes. Do you recognize that document?

9 A. Yes, I do.

10 Q. What is that?

11 A. This is a letter sent to Neil Livingston indicating
12 that there was a hit in this case.

13 Q. And who is Neil Livingston with?

14 A. The Horry County Police Department.

15 Q. And what is his -- well, who signed that letter?

16 A. I did.

17 **MR. HEMBREE:** Your Honor, we would submit this letter
18 in evidence as State's 70 at this point.

19 **THE COURT:** Mr. Hazzard?

20 **MR. HAZZARD:** The Court's indulgence, Your Honor.

21 **THE COURT:** Yes sir.

22 **MR. HAZZARD:** Subject to previous objection we took up
23 in camera, Your Honor.

24 **THE COURT:** All right.

25 Can I see it, Solicitor?

DAVID McCLURE - DIRECT BY HEMBREE

1 **MR. HEMBREE:** Yes sir.

2 **THE COURT:** Thank you. All right, sir, I'm going to
3 allow State's Exhibit 70 into evidence at this time.

4 **MR. HEMBREE:** Thank you, Your Honor.

5 **(S.L.E.D. REPORT ADMITTED INTO EVIDENCE AS STATE'S**
6 **EXHIBIT NUMBER 70.)**

7 Q. Investigator McClure, I would ask you to publish this
8 letter to the jury. Why don't you just read the letter
9 starting at Dear Neil Livingston.

10 A. Sure. It says, Dear Neil Livingston, the short
11 tandem repeat, STRPCR DNA profile developed from item 19 was
12 compared to the COMBINED DNA INDEX SYSTEM, CODIS. This
13 profile matches the STRPCR DNA profile developed from Bruce
14 Antwain Hill. This information is provided for
15 investigative purposes only. If the suspect is charged, an
16 additional biological specimen must be submitted for court
17 purposes. This search was conducted by Lieutenant David
18 McClure with the South Carolina Law Enforcement Division.

19 Q. And that was the extent of your involvement in this
20 case, Investigator McClure?

21 A. Yes sir, it was.

22 **MR. HEMBREE:** Thank you very much. Please answer any
23 questions Mr. Hazzard might have for you.

24 **THE COURT:** All right, Mr. Hazzard.

25 **MR. HAZZARD:** Thank you, sir.

DAVID MCCLURE - CROSS BY HAZZARD

1 **CROSS-EXAMINATION BY MR. HAZZARD:**

2 Q. Good afternoon, Mr. McClure. How are you?

3 A. Just fine, sir, and you?

4 Q. I'm doing all right. Now, I hope I was paying
5 attention. You indicated to the Solicitor that you were
6 responsible for placing a sample in the CODIS system, an
7 unknown sample at that time in the CODIS system back in
8 2005, is that correct?

9 A. Actually the case agent assigned the DNA, Steve
10 Lambert, would have placed the profile into CODIS. We would
11 have reviewed that profile and marked it for upload to the
12 national system.

13 Q. And what he received, he received from the submitting
14 agency, the Horry County Police Department, correct?

15 A. I assume that he would have received it from them,
16 yes sir.

17 Q. Okay. And you don't have any personal knowledge of
18 what or where the substance that he received came from?

19 A. No sir, I do not.

20 Q. Okay.

21 **MR. HAZZARD:** No further questions.

22 **THE COURT:** Any redirect?

23 **MR. HEMBREE:** No, Your Honor. We'd ask that
24 Investigator McClure be excused.

25 **THE COURT:** Any objection?

TODD F. COX - DIRECT BY RICHARDSON

1 **MR. HAZZARD:** No sir, Your Honor.

2 **THE COURT:** All right.

3 Sir, you are released from your subpoena and may go
4 back to your regular duties, sir.

5 **AGENT McCLURE:** Thank you, sir.

6 **THE COURT:** All right.

7 Your next witness, Solicitor.

8 **MR. RICHARDSON:** Your Honor, the State would call Todd
9 Cox.

10 **TODD F. COX,** being first duly sworn,
11 testifies as follows:

12 **DIRECT-EXAMINATION BY MR. RICHARDSON:**

13 Q. Detective Cox, please tell the jury where you work.

14 A. I work at the Horry County Police Department as a
15 Senior Detective.

16 Q. And how long have you been with the Horry County
17 Police?

18 A. I went to work with Horry County Police in 1996, and
19 I was promoted to detective in 1999, so I've been there
20 right at fifteen years total.

21 Q. And you were working as a detective in 2005, April of
22 2005?

23 A. I was.

24 Q. Did you have an occasion to go out to 6303 Highway 90
25 in Conway?

TODD F. COX - DIRECT BY RICHARDSON

1 A. Yes, I did.

2 Q. And what was the purpose of you going out there?

3 A. I was at that time, as I am today, assigned to the
4 Violent Crime Section. I had come in to work that morning
5 and we were advised there in the office that there was a
6 possible double homicide at that location, ---

7 Q. Okay.

8 A. --- so I responded out there at the direction of my
9 supervisor.

10 Q. Were there other police officers out there?

11 A. Yes sir, several.

12 Q. Who was the chief detective on that case?

13 A. Senior Detective Neil Livingston was assigned as the
14 lead detective on the case at that time.

15 Q. Is Neil Livingston still with the department?

16 A. No sir. He's retired.

17 Q. When did he retire?

18 A. The end of last year, the end of 2010.

19 Q. Okay. Now, tell the jury your actions on that day
20 out at the Parker residence.

21 A. When I arrived on scene, I made sure that I was
22 signed in on the crime scene entry log, and I interviewed
23 Mr. Joey Cannon, who is now deceased unfortunately, but he's
24 the fellow who they talked about earlier who had actually
25 gone in and swept up the glass, the first one to go into the

TODD F. COX - DIRECT BY RICHARDSON

1 Parker residence, so I interviewed him. I conducted a
2 gunshot residue evidence collection kit on him, photographed
3 him, and just dealt with him specifically.

4 Q. Okay. Anything else that you did there at the Parker
5 residence?

6 A. There on scene, I assisted with the removal of the
7 bodies, was the one that actually went into the scene after
8 it had been processed by -- or part-way through the
9 processing by C.S.I. I assisted with the removal of the
10 bodies.

11 Q. So once C.S.I. was through, you helped to tote out
12 the body bag of Charlie Parker and Diane Parker?

13 A. Yes sir.

14 Q. Anything else that you remember doing that day?

15 A. No sir. I was sent on another assignment at that
16 time.

17 Q. Okay. Now, at some point did you receive notice that
18 there was a hit on -- did you know about the blood that was
19 collected at the Parker residence?

20 A. Yes sir.

21 Q. All right. Did you receive notice that there was, in
22 fact, a hit on that blood?

23 A. Yes.

24 Q. All right. Tell us what you did as a result of
25 finding that information.

TODD F. COX - DIRECT BY RICHARDSON
JURY OUT/ON RECORD

1 A. In -- in March of this year, the State petitioned the
2 Court for an order so that I may obtain a DNA swab, a known
3 standard sample, from the Defendant in this case.

4 Q. Okay, and were you able to obtain that swab?

5 A. I was.

6 Q. I pass to you what has been marked as State's Exhibit
7 Number 69 and see if you recognize that.

8 A. Yes, I do.

9 Q. And please tell this jury what item 69 is.

10 A. That's the swab carton which contained at the time
11 that I sealed it two oral swabs that I obtained from the
12 Defendant in this case.

13 Q. All right. Tell the jury about that process, what
14 goes into obtaining an oral swab.

15 A. It's really a very simple process. We have a
16 swab ---

17 (Diabetic juror asks for a break.)

18 **THE COURT:** Madam Forelady, take your jury to the jury
19 room, please.

20 **(THE FOLLOWING TAKES PLACE OUTSIDE THE PRESENCE OF THE**
21 **JURY.)**

22 **THE COURT:** Just be at ease.

23 All right, we'll be at ease until the jury is ready to
24 come back.

25 Sir, you can step down, but please don't discuss the

JURY IN
TODD F. COX - DIRECT BY RICHARDSON

1 matter with anyone.

2 DETECTIVE COX: Thank you, sir.

3 THE COURT: Thank you very much.

4 (THE FOLLOWING TAKES PLACE AFTER A BREAK AND OUTSIDE
5 THE PRESENCE OF THE JURY.)

6 THE COURT: All right, Solicitor, are you ready to
7 resume?

8 MR. RICHARDSON: Yes sir, Your Honor.

9 THE COURT: Mr. Hazzard?

10 MR. HAZZARD: Yes sir.

11 THE COURT: Ask the jury to come in, please.

12 (THE FOLLOWING TAKES PLACE WITHIN THE PRESENCE OF THE
13 JURY.)

14 THE COURT: All right, Solicitor, you may proceed.

15 MR. RICHARDSON: Yes sir, Your Honor. Thank you.

16 CONTINUING DIRECT-EXAMINATION BY MR. RICHARDSON:

17 Q. Now, Mr. Cox, I believe you were -- or Detective Cox,
18 you were telling us you had received an order to take a
19 buccal swab?

20 A. That's correct.

21 Q. Tell the jury is this that swab?

22 A. Yes.

23 Q. State's Exhibit 69?

24 A. It is.

25 Q. Okay. Now, tell the jury what entailed in your

TODD F. COX - DIRECT BY RICHARDSON

1 taking that swab, exactly what you did.

2 A. We are issued basically cotton swabs, but they are
3 longer and they come in a sealed package. I open that
4 package up, insert it into the Defendant's mouth and rub it
5 on the inside of his cheek. I rubbed it for a period of
6 between five and ten seconds.

7 I then take this box -- this white carton comes flat.
8 It's virgin; it's pristine. It hasn't been used. It's
9 flat. I form it, fold it into the box shape. I insert the
10 swabs into it, seal the ends of the box up with the
11 integrity tape, with the red evidence tape, initial those
12 pieces of tape, label the box with the person's name who had
13 been swabbed, my name. I then initialed it, dated it, and
14 timed it.

15 Q. Okay, and what time did you take the swab?

16 A. 10:30 A.M.

17 Q. And the date again, please?

18 A. March 17th, 2011.

19 Q. And what did you do with this box once you had sealed
20 the ends?

21 A. I kept it on my person until that afternoon when I
22 went back to headquarters and I submitted it to the Evidence
23 Section at the County Police Department.

24 Q. Okay. Now, is your job -- does your job require you
25 to go into the secured part of Evidence?

TODD F. COX - DIRECT BY RICHARDSON
CROSS BY HAZZARD

1 A. No. I'm not permitted in there.

2 Q. All right, so you leave this box with an evidence
3 custodian?

4 A. That's correct.

5 Q. All right. Did you tamper with this swab in any way
6 one you took the swab from Mr. Hill?

7 A. No, I did not.

8 Q. All right. Did anyone else tamper with it in any
9 way?

10 A. Not that I'm aware of.

11 Q. All right. And you sealed it on both ends?

12 A. That's correct.

13 Q. Would anyone have been able to tell if this had been
14 opened?

15 A. It would have been very apparent, yes sir.

16 Q. Okay. And you also initialed it?

17 A. That's correct.

18 Q. All right.

19 **MR. RICHARDSON:** I believe that that is all the
20 questions that I have. Please answer any questions Mr.
21 Hazzard might have.

22 **THE COURT:** All right, Mr. Hazzard, cross-examination.

23 **MR. HAZZARD:** Thank you, sir, Your Honor.

24 **CROSS-EXAMINATION BY MR. HAZZARD:**

25 Q. Good afternoon, Detective Cox, how are you?

TODD F. COX - CROSS BY HAZARD

- 1 A. Doing well. How are you, sir?
- 2 Q. I'm doing good, trying to beat the heat today.
- 3 Now, you indicated that Neil Livingston was the lead
- 4 detective on this?
- 5 A. That's correct.
- 6 Q. But Neil is retired?
- 7 A. He is.
- 8 Q. But he hasn't passed on? I mean, he's still around,
- 9 right?
- 10 A. He -- he's still around, yes sir.
- 11 Q. Okay. And you were also present on April 12th, 2005,
- 12 at the Parkers' home?
- 13 A. I was.
- 14 Q. Okay, so there was you and there was Detective
- 15 Livingston. Any other detectives assigned to this case to
- 16 your knowledge?
- 17 A. There was numerous detectives over there that
- 18 morning, yes sir.
- 19 Q. Do you remember who all was involved?
- 20 A. Detective Chuck Powell; he's now a sergeant.
- 21 Detective Allen Large, Detective John Lewis, Detective Scott
- 22 Bogart. I don't recall who else. Our supervisor at the
- 23 time, he was then Sergeant Maurice Jones; he's now a
- 24 captain.
- 25 Q. And did he take an active hand in the investigation

TODD F. COX - CROSS BY HAZARD

1 or did he simply supervise?

2 A. I -- I don't recall.

3 Q. Okay. That's fine. Okay, so at the very least then
4 under your testimony, there was Detective Livingston, you,
5 Detective Powell, Detective Large, Detective Lewis, and
6 Detective Bogart all working on this case, correct?

7 A. That's correct.

8 Q. Okay. And while you were there, did you enter the
9 house, walk the crime scene, walk the property, sir?

10 A. I entered the house at such time that it was time to
11 remove the victims' bodies from there, and that -- it was at
12 that point that I walked into the home, yes sir.

13 Q. Okay. And what did you do when you were in the home,
14 sir?

15 A. Walked back there to where -- obviously where the
16 bodies were -- I mean, we saw the pictures of it -- assisted
17 in putting them in the bags for transport and removing them
18 from the scene, talked with Robbie Caulder, Investigator
19 Caulder I should say, while I was in there, yes sir.

20 Q. Okay. And is that the -- well, you said you assisted
21 in bagging -- having the bodies placed in the -- in the
22 covers or the bags that are used to transport them.
23 Who were you assisting in that?

24 A. The Coroner's Office, and then they -- I believe they
25 contract with a transport service, so there was those folks

TODD F. COX - CROSS BY HAZZARD
HEATHER BRUMMETT - DIRECT BY RICHARDSON

1 as well, but representatives from the Coroner's Office.

2 Q. All right.

3 MR. HAZZARD: Thank you, sir.

4 No further questions, Your Honor.

5 THE COURT: Redirect?

6 MR. RICHARDSON: Nothing, Your Honor.

7 THE COURT: All right. Do you wish the witness to be
8 excused?

9 MR. RICHARDSON: Yes sir, please.

10 THE COURT: All right.

11 You are released from your subpoena, sir.

12 OFFICER COX: Thank you.

13 THE COURT: All right.

14 Your next witness, please.

15 MR. RICHARDSON: Your Honor, the State would call
16 Heather Brummett.

17 THE COURT: Please come around to be sworn up here,
18 Ma'am.

19 HEATHER BRUMMETT, being first duly sworn,
20 testifies as follows:

21 THE COURT: Go ahead, Solicitor.

22 DIRECT-EXAMINATION BY MR. RICHARDSON:

23 Q. And where are you employed, please?

24 A. Horry County Police Department.

25 Q. And what is your title and your duties there?

HEATHER BRUMMETT - DIRECT BY RICHARDSON

1 A. Crime scene investigator and working various crime
2 scenes, processing evidence, signing in evidence,
3 transporting, photographing.

4 Q. Okay. I pass to you what's been marked as State's
5 Exhibit Number 69 and see if you recognize that.

6 A. Yes, I do.

7 Q. And please tell the jury what that is.

8 A. It is a heat-sealed envelope containing a swab box
9 for Bruce Hill.

10 Q. And did you have occasion to have custody and control
11 over that box?

12 A. Yes, I did.

13 Q. Okay. And tell the jury how you came to hold that
14 box.

15 A. Well, evidence and crime scene work closely together,
16 so at times I will take evidence to S.L.E.D. for processing.
17 This was one of the items that was given to me to take to
18 S.L.E.D. that -- this particular day, March 22nd, so I took
19 this item along with the form and signed it over to the lady
20 at S.L.E.D. and put my initials at the top.

21 Q. All right. And did anyone ride with you to
22 S.L.E.D.?

23 A. Yes. Lori Rabon had rode with me that particular
24 day.

25 Q. Okay. During the time that you had custody and

HEATHER BRUMMETT - DIRECT BY RICHARDSON

1 control over State's Exhibit Number 69, was it secured?

2 A. Yes.

3 Q. All right. Would you tell the jury how it was
4 secured.

5 A. With the evidence tape on the ends, and then I
6 believe it was in a heat-sealed envelope, and then S.L.E.D.
7 just replaced that into their own heat-sealed envelope.

8 Q. So this is an envelope that S.L.E.D. would have
9 provided?

10 A. Yes, that's correct.

11 Q. And are those your initials?

12 A. Yes, they are.

13 Q. All right. Did anyone tamper with this, or change
14 it, or open the box, anything in your presence?

15 A. No, not in my presence.

16 Q. All right. Did you tamper with State's Exhibit
17 Number 69?

18 A. No, I did not.

19 Q. Could you tell if it had been tampered with?

20 A. Yes, you would have been able to tell.

21 **MR. RICHARDSON:** That's all the questions that I have.
22 If you would answer any questions Mr. Hazzard might have for
23 you.

24 **THE COURT:** Cross-examination.

25 **MR. HAZZARD:** Thank you, Your Honor.

HEATHER BRUMMETT - CROSS BY HAZZARD

1 **CROSS-EXAMINATION BY MR. HAZZARD:**

2 Q. Good afternoon, Officer Brummett. How are you?

3 Is that proper, officer, or is it investigator?

4 A. It's investigator or officer. Whichever you prefer
5 is fine.

6 Q. Good afternoon, Investigator Brummett.

7 A. Hello.

8 Q. What was the date again that particular sample was
9 transported?10 A. The date that I received it and transported it was
11 March 22nd, 2011.

12 Q. 2011?

13 A. Yes, that's correct.

14 Q. Okay. And who did you receive it from?

15 A. I don't recall who I received it from, whether I
16 pulled it out of the evidence section where it's stored, or
17 whether Lori Rabon gave it to me. Again, we're all there
18 together, so we all have access, crime scene and evidence
19 together.20 Q. Okay, so you could just go back in the Evidence
21 Section and grab whatever you needed based on what was
22 called for on that day and take it wherever you needed to
23 take it to, is that correct?24 A. Sort of. We have a bucket for S.L.E.D., so anything
25 that needs to go to S.L.E.D. is in that bucket in a secure

HEATHER BRUMMETT - CROSS BY HAZZARD

1 location, so that would have been one of the items in the
2 bucket, and I would have taken it with me that morning.

3 Q. All right, so it was in the bucket, is that correct?

4 A. I'm saying under most conditions, things are in the
5 bucket, so yes. I do not recall whether someone gave it to
6 me or whether it was in the bucket.

7 MR. HAZZARD: All right. Thank you so much,
8 Investigator Brummett.

9 No further questions, Your Honor.

10 INVESTIGATOR BRUMMETT: Thank you.

11 THE COURT: Any redirect?

12 MR. RICHARDSON: No sir, Your Honor.

13 THE COURT: All right. Do you wish the witness to be
14 excused?

15 MR. RICHARDSON: Yes sir, please.

16 THE COURT: Any objection?

17 MR. HAZZARD: No sir, Your Honor.

18 THE COURT: All right.

19 Ma'am, you are released from your subpoena and may go
20 back to your regular duties.

21 INVESTIGATOR BRUMMETT: Thank you, sir.

22 THE COURT: Next witness.

23 MR. HEMBREE: The State calls Doris Yarbrough to the
24 stand.

25 THE COURT: Come on up here to be sworn, Ma'am.

DORIS YARBROUGH - DIRECT BY HEMBREE

1 **DORIS YARBROUGH**, being first duly sworn,
2 testifies as follows:

3 **THE COURT:** Go ahead, Solicitor.

4 **MR. HEMBREE:** Thank you, Your Honor.

5 **DIRECT-EXAMINATION BY MR. HEMBREE:**

6 Q. Good afternoon, Ms. Yarbrough.

7 A. Good afternoon.

8 Q. Who do you work for?

9 A. I work for the South Carolina Law Enforcement
10 Division, also known as S.L.E.D.

11 Q. And in what capacity do you serve S.L.E.D.?

12 A. I'm a forensic technician in the Log-in Department.

13 Q. All right. And what does that mean? What do you
14 do?

15 A. My office receives all evidence from throughout the
16 State of South Carolina for forensic analysis.

17 Q. And did you have occasion to log-in evidence in
18 connection with State versus Bruce Hill?

19 A. I did.

20 Q. Let me show you State's Exhibit 69 for identification
21 purposes and ask if you can identify that, please?

22 A. I can identify it by the lab number that's on it, the
23 yellow sticker.

24 Q. Yes Ma'am, and what was -- when -- have you seen that
25 evidence before?

DORIS YARBROUGH - DIRECT BY HEMBREE

1 A. Yes sir.

2 Q. All right. And how did it come into your possession
3 previously?

4 A. I received it from Investigator Heather Brummett of
5 the Horry County Police Department on March 22nd of 2011.

6 Q. And when you received it from her, what did you do
7 with it?

8 A. When they bring the evidence in, I place it into
9 this. It's called a heat-sealed pouch. I seal it with a
10 heat sealer. I have the investigator initial and date the
11 heat seal and then sign and date below, and then once the
12 lab number is printed out through the computer, I place it
13 on the package.

14 Q. Very good. Now, that -- after it's heat-sealed, it's
15 secure?

16 A. Correct.

17 Q. It can't be tampered with without opening the bag
18 obviously?

19 A. Correct.

20 Q. After you took it into evidence, where did it -- who
21 ultimately received that evidence for testing?

22 A. Once it's logged in, then I place it into our DNA
23 evidence intake storage, which is in a evidence -- secure
24 evidence room in our office, and it stays there until it's
25 requested by the DNA Department.

DORIS YARBROUGH - DIRECT BY HEMBREE

1 Q. And do you know when this evidence was requested by
2 the DNA Department?

3 A. I do. It was requested on 3/29 of 2011.

4 Q. And then what happens after DNA Evidence requests it?
5 What happens to the evidence?

6 A. They usually send us an e-mail with the items that
7 they'd like to pick up. There are three other log-in
8 technicians, as well as a part-time evidence room
9 technician, and all of us have access to that evidence room
10 to dispense that evidence to the technician that would like
11 to pick it up.

12 Q. While it was in your custody and control, was it
13 changed or altered in any way?

14 A. No sir, it was not.

15 Q. All right. When was it logged out of the evidence
16 room?

17 A. It was logged out on 3/29 of 2011.

18 Q. To?

19 A. It was logged out -- actually Amy Stevens is a
20 forensic technician, and she is the one who transferred the
21 custody to DNA analyst Katie Urka.

22 **MR. HEMBREE:** Please answer any questions Defense
23 counsel may have, please.

24 **THE COURT:** All right, cross-examination, Mr. Hazzard.

25 **MR. HAZZARD:** Thank you, Your Honor.

DORIS YARBROUGH - CROSS BY HAZZARD

1 **CROSS-EXAMINATION BY MR. HAZZARD:**

2 Q. Good afternoon, Ma'am. How are you?

3 A. Fine, thank you.

4 Q. Ma'am, do you have any knowledge regarding the number
5 of items that S.L.E.D. received on this particular case?

6 A. The only thing I can tell you is that I logged in
7 item number 76.

8 Q. Okay. And so it's at least seventy-five others
9 then?

10 A. Yes sir.

11 Q. Okay. That a list of at least as being in regards to
12 this case?

13 A. Yes sir.

14 Q. All right.

15 **MR. HAZZARD:** Thank you. No further questions.

16 **THE COURT:** Redirect?

17 **MR. HEMBREE:** Nothing on redirect, Your Honor. We
18 would ask that Ms. Yarbrough be excused.

19 **THE COURT:** Any objection?

20 **MR. HAZZARD:** No sir, Your Honor.

21 **THE COURT:** All right.

22 Ma'am, you are released from your subpoena and may go
23 back to your regular duties.

24 **MS. YARBROUGH:** Thank you.

25 **THE REPORTER:** Judge, may I get a correction, please,

KATIE URKA - DIRECT BY HEMBREE

1 on the number of that item.

2 MS. YARBROUGH: Item number 76.

3 MR. HEMBREE: Just for clarification, Your Honor, it's
4 State's Exhibit 69 for identification purposes, and S.L.E.D.
5 item 76. I just didn't want that to ---

6 THE COURT: Any objection to that, Mr. Hazzard?

7 MR. HAZZARD: Is it being moved into evidence at this
8 time?

9 THE COURT: No; no. I'm just saying what the
10 Solicitor stated, that it was S.L.E.D. number 76 and State's
11 Exhibit Number 69. Did you have any objection to that
12 statement?

13 MR. HAZZARD: No sir, Your Honor.

14 THE COURT: All right, very good. I just wanted to
15 make sure.

16 All right, your next witness, please.

17 MR. HEMBREE: The State calls Katie Urka to the
18 witness stand.

19 THE COURT: Please come around up front to be sworn,
20 Ma'am.

21 KATIE URKA, being first duly sworn, testifies
22 as follows:

23 THE COURT: Go ahead, Solicitor.

24 MR. HEMBREE: Thank you, Your Honor.

25 DIRECT-EXAMINATION BY MR. HEMBREE:

KATIE URKA - DIRECT BY HEMBREE

1 Q. Ms. Urka, who do you work for?

2 A. I'm a forensic DNA analyst with the South Carolina
3 Law Enforcement Division.

4 Q. How long have you been with S.L.E.D.?

5 A. About five and a half years.

6 Q. And if you would, please give the jury and the Court
7 the benefit of your training and experience in the field of
8 forensic DNA analysis.

9 A. I have a Bachelor of Science degree in Forensic
10 Biology. I also have a Master of Science in Forensic
11 Biology. Upon my employment at S.L.E.D., I completed a
12 year-long training program on how to handle DNA evidence and
13 issue reports.

14 Q. And you have been qualified in courts of record of
15 this State as an expert in the field of forensic DNA
16 analysis?

17 A. Yes.

18 Q. On how many occasions?

19 A. Twenty.

20 **MR. HEMBREE:** Your Honor, we would offer Ms. Katie
21 Urka as an expert in the field of forensic DNA analysis.

22 **THE COURT:** All right.

23 Mr. Hazzard, do you wish to voir dire the witness or
24 challenge her qualifications?

25 **MR. HAZZARD:** No sir, Your Honor.

KATIE URKA - DIRECT BY HEMBREE

1 **THE COURT:** All right.

2 She is qualified to give her opinion.

3 You may proceed, Solicitor.

4 **MR. HEMBREE:** Thank you, Your Honor.

5 Q. Ms. Urka, I want to show you what's been marked as
6 State's Exhibit 69 for identification purposes and ask if
7 you recognize that piece of evidence?

8 A. Yes.

9 Q. Please tell the jury what that is.

10 A. It is S.L.E.D. item number 76, which is a buccal swab
11 from Bruce Hill.

12 Q. And you received -- when did you receive this item of
13 evidence for examination?

14 A. March 29th, 2011.

15 Q. Who did you receive it from?

16 A. Amy Stevens.

17 Q. When you received it, was it in the heat-sealed
18 pouch?

19 A. Yes.

20 Q. Had it been tampered or altered -- tampered with or
21 altered in any way based on your inspection of it when you
22 received it?

23 A. Nothing that I could tell.

24 Q. What was -- what was requested of you with this piece
25 of evidence?

KATIE URKA - DIRECT BY HEMBREE

1 A. With a known buccal swab, I would obtain a DNA
2 profile and compare it to any evidence profiles in that
3 case.

4 Q. Were you able to obtain a DNA profile on this buccal
5 swab?

6 A. Yes.

7 Q. And did you generate a report as a result of that
8 analysis?

9 A. Yes.

10 Q. Let me show you State's Exhibit 68 for identification
11 purposes and ask if you recognize that data?

12 A. It appears to be a copy of the DNA standard for Bruce
13 Hill.

14 Q. Would this document assist you in explaining your
15 testimony to the jury?

16 A. It can.

17 MR. HEMBREE: Your Honor, at this time we would move
18 item 68 and 69 into evidence.

19 THE COURT: Is there any objection, Mr. Hazzard?

20 MR. HAZZARD: Subject to the previous objections made
21 in this case, Your Honor.

22 THE COURT: All right. I'm going to allow State's 68
23 and 69 in evidence at this time.

24 MR. HEMBREE: Thank you, Your Honor.

25 (DNA CHART ADMITTED INTO EVIDENCE AS STATE'S EXHIBIT

KATIE URKA - DIRECT BY HEMBREE

1 **NUMBER 68.)**

2 **(BUCCAL SWAB ADMITTED INTO EVIDENCE AS STATE'S EXHIBIT**
3 **NUMBER 69.)**

4 Q. Ms. Urka, I'm going to ask you to step down off the
5 witness stand and we'll move in front of the jury so you can
6 kind of tell us what all this data means in connection to
7 some of the evidence. Did you compare this genetic profile
8 to evidence that was obtained in the -- in the case?

9 A. Yes.

10 Q. All right. If you will step down, we'll take a look
11 at some of these.

12 **THE COURT:** Make sure you are in front of one of the
13 microphones, please.

14 **MR. HEMBREE:** Thank you, Your Honor.

15 Q. Ms. Urka, this is one of the -- this, although it
16 looks like a piece of metal, it's a microphone, and I'm
17 going to ask you to take a position about right here, sort
18 of facing the Court Reporter and the jury, and first I'm
19 going to show you State's 68 in evidence and just have you
20 explain to the jury what all this means.

21 A. This is a DNA profile. Each of these is a location
22 on the DNA and we obtain a set of numbers at each location,
23 so the DNA profile is this entire string of numbers.

24 Q. Now, the testing you did in -- this test was done in
25 April?

KATIE URKA - DIRECT BY HEMBREE

1 A. I would have to look at my notes for that.

2 Q. Certainly. Go ahead.

3 **THE COURT:** Why don't you go ahead and take them with
4 you.

5 A. I'm not sure if I can. I would need the whole case
6 file.

7 **THE COURT:** Is it something you can't pick it up and
8 take it over there? Go ahead and just bring it over.

9 A. The DNA testing I did actually ---

10 **THE COURT:** Ma'am, you need to turn around and face
11 the Court Reporter and the jury, please.

12 A. The DNA testing that I performed actually started in
13 March of 2011.

14 Q. All right, and you developed a profile and you issued
15 this report on what date?

16 A. April 14th of 2011.

17 Q. All right. Now, what sort of testing kit did you use
18 in March when you ran this test?

19 A. I used a DNA testing kit called Identifiler and it
20 contains fifteen DNA locations.

21 Q. And you -- this is the profile that you developed.
22 Now, in 2005, was S.L.E.D. using the Identifiler testing
23 kit?

24 A. No.

25 Q. And you compared this sample, the known sample of

KATIE URKA - DIRECT BY HEMBREE

1 Bruce Hill, this Defendant, against other samples or
2 evidence that was obtained in the case?

3 A. Correct.

4 Q. Now, I'm going to show you State's Exhibit 67 in
5 evidence. Did you run this DNA test?

6 A. No.

7 Q. Do you know who ran that test?

8 A. Steve Lambert.

9 Q. Now, you used his results from the previous -- from
10 the items that were submitted, the unknown items that were
11 submitted to S.L.E.D. for testing, and you used his results
12 and compared those against the Identifiler results you
13 received from the known sample?

14 A. Correct.

15 Q. All right, so now these testing kits are slightly
16 different?

17 A. Right.

18 Q. In what way?

19 A. Back when this test was completed, there were two
20 different kits used on evidence called Profiler Plus and
21 Profiler, so there's two separate tables, and there was only
22 a total of thirteen locations.

23 Q. With the Identifiler, you have more locations?

24 A. Correct.

25 Q. But what you're comparing from the known to the

KATIE URKA - DIRECT BY HEMBREE

1 unknown are the locations that match up, would that be fair
2 to say?

3 A. Yes.

4 Q. All right. Let's just take it from the beginning of
5 the -- Table 1, the Profiler Plus that was run by Steve
6 Lambert, on S.L.E.D. items 19, 22, 23, and 25. Now, if you
7 would, tell us what that tells you, what this -- what this
8 tells you or this column tells you.

9 A. This is one particular location on the DNA for four
10 different samples.

11 Q. And what's the result?

12 A. There was a 16.

13 Q. And now can you compare that to the test that was run
14 on the Identifiler for that same DNA location?

15 A. This one corresponds to this location here.

16 Q. And I note here at the top of this column it's
17 D3S1358, D3S1358 on both of these reports. Is that -- am I
18 picking that up the right way?

19 A. Yes. These contain thirteen locations. Those
20 thirteen locations are also in this kit, but this one has
21 two additional.

22 Q. Okay. It's just a newer kit in the reverse?

23 A. Correct.

24 Q. Now, what do we show here under D3S1358? What's the
25 result?

KATIE URKA - DIRECT BY HEMBREE

- 1 A. 16.
- 2 Q. And here?
- 3 A. 16.
- 4 Q. Here?
- 5 A. 16.
- 6 Q. Here?
- 7 A. 16.
- 8 Q. And here?
- 9 A. 16.
- 10 Q. A perfect match?
- 11 A. Correct.
- 12 Q. Let's go to the next -- the next location. What it
- 13 that?
- 14 A. The next location is vWA.
- 15 Q. All right, and we have a vWA here on State's 68.
- 16 What is our result at vWA for 19?
- 17 A. 15, 19.
- 18 Q. And a perfect match for 22?
- 19 A. 15, 19.
- 20 Q. 23?
- 21 A. 15, 19.
- 22 Q. 25?
- 23 A. 15, 19.
- 24 Q. And on the Identifiler at vWA, what do we have?
- 25 A. 15, 19.

KATIE URKA - DIRECT BY HEMBREE

- 1 Q. A perfect match?
- 2 A. Correct.
- 3 Q. Let's go to FGA, to that location. What do we have
- 4 there?
- 5 A. There was a 19, 23 for the evidence.
- 6 Q. All four of the evidence samples matched, a perfect
- 7 match?
- 8 A. There's a 19, 23 for all evidence and 19, 23 for the
- 9 standard.
- 10 Q. All right. Go to the next column.
- 11 A. D8, 15; D8, 15.
- 12 Q. The next column.
- 13 A. D21, 30; D21, 30.
- 14 Q. The next column.
- 15 A. D18, 16, 18. The fourth item of evidence here has
- 16 some drop-out at the 18 -- 16, 18.
- 17 Q. Now, does this drop-out -- what does that indicate to
- 18 you?
- 19 A. It could be a number of things. It could be a low-
- 20 level sample, just it didn't -- all the information is just
- 21 not present in that sample.
- 22 Q. Fair enough. All right, let's go to the next column.
- 23 A. D5, out of 12 -- I believe that's a 12.
- 24 Q. A perfect match on that column?
- 25 A. Correct.

KATIE URKA - DIRECT BY HEMBREE

- 1 Q. How about here?
- 2 A. D13, 12, 14. D13 is 12, 14.
- 3 Q. Very good. How about here?
- 4 A. D7, that's 10. D7 has a 10.
- 5 Q. All right. It's -- I'll mispronounce it, but the
- 6 next column.
- 7 A. Amelogenia is a gender marker and it's telling me
- 8 that this is a male, XY.
- 9 Q. And here on the Identifiler, State's 68?
- 10 A. XY.
- 11 Q. Now, do I understand this D3 here, it's really just a
- 12 repeat of this D3 under this testing kit?
- 13 A. Correct. This kit has this location, and this
- 14 location are duplicates.
- 15 Q. Understood, but as we -- as we test under here at D3,
- 16 what -- how does that correspond to the Identifiler?
- 17 A. 16 and it matches.
- 18 Q. And D16?
- 19 A. D16 was 10, 13. D16, 10, 13.
- 20 Q. TH01?
- 21 A. The evidence was 8. The standard is 8.
- 22 Q. TPOX?
- 23 A. Also 8, and the standard is 8.
- 24 Q. CSF1PO?
- 25 A. The evidence was 12. The standard is 7, 12.

KATIE URKA - DIRECT BY HEMBREE

1 Q. So, again, what does that indicate to you that 7
2 didn't show up here?

3 A. It indicates drop-out within that sample.

4 Q. But one of them is the same? One of the contributors
5 is the same -- is a match?

6 A. The 12 is.

7 Q. Correct, and then D7?

8 A. D7 is a duplicate, so it's 10 and also 10 is the
9 standard.

10 Q. Please take a seat again.

11 Ms. Urka, as part of your analysis, do you do some
12 statistical analysis to make a determination as to what the
13 probabilities that this is some un- -- some other person
14 other than Bruce Hill with this genetic profile?

15 A. When I have a standard that matches a piece of
16 evidence, I will calculate a statistic to determine the
17 rarity of that profile.

18 Q. All right. I'm going to ask you if you would to tell
19 this jury the statistical rarity of item 19, S.L.E.D. item
20 19.

21 A. The probability of randomly selecting an unrelated
22 individual having a DNA profile matching item 19 is
23 approximately 1 in 3.3 quadrillion.

24 Q. 3.3 quadrillion. How -- how -- that's a very large
25 number?

KATIE URKA - DIRECT BY HEMBREE
CROSS BY HAZZARD

1 A. Correct.

2 Q. How much larger is that than the people on the
3 planet?

4 A. There are just under seven billion people in the --
5 in the world, so it is approximately a million times larger
6 than the world's population.

7 Q. The items 22 and 23, what is the probability of
8 randomly selecting an unrelated individual with this DNA
9 profile?

10 A. One in six hundred billion.

11 Q. So nearly one hundred times the number of people on
12 the planet?

13 A. Correct.

14 Q. And then the DNA profile developed from item 25, what
15 is the probability of randomly selecting an unrelated
16 individual with that DNA profile?

17 A. One in 3.2 billion.

18 MR. HEMBREE: Ms. Urka, please answer any questions
19 that Mr. Hazzard might have for you.

20 THE COURT: All right, cross-examination.

21 MR. HAZZARD: Thank you, Your Honor.

22 CROSS-EXAMINATION BY MR. HAZZARD:

23 Q. Good afternoon, Ms. Urka. How are you?

24 A. Good.

25 Q. All right. Let me make sure I'm clear. On these two

KATIE URKA - CROSS BY HAZZARD

- 1 little charts right here, this one on the top is -- is this
2 the one you did or is this the one someone else did?
- 3 A. I did that one.
- 4 Q. Okay. And this is your analysis of a known sample
5 taken from Bruce Hill, correct?
- 6 A. Correct.
- 7 Q. Okay. And this other one is the one that somebody
8 else did, is that correct, or did you do this one, too?
- 9 A. That DNA analysis was performed by Steve Lambert.
- 10 Q. Okay. And what he performed it on was specimens
11 submitted to S.L.E.D., correct?
- 12 A. Correct.
- 13 Q. Okay. Now, do you have any knowledge as to how those
14 particular specimens were obtained?
- 15 A. No.
- 16 Q. Okay. Do you have any knowledge as to the time
17 between them being obtained and being packaged?
- 18 A. No.
- 19 Q. Do you have any knowledge with regard to the
20 circumstances under which those swabs back in '05 were
21 packaged?
- 22 A. No.
- 23 Q. Okay. You weren't at the crime scene?
- 24 A. No.
- 25 Q. Okay. And you don't work at the Horry County

KATIE URKA - CROSS BY HAZZARD

1 evidence place?

2 A. No.

3 Q. Don't know how they handle stuff?

4 A. No.

5 Q. All right. so if they take Bruce Hill's DNA from
6 another case, stick it in some boxes and send it off to
7 S.L.E.D. with a note or a notification that says this is on
8 the Parker case, do you have any way of knowing that that is
9 an incorrect packaging?

10 A. I can only go by how the evidence is labeled when it
11 comes to S.L.E.D.

12 Q. Labeled when it gets to you, correct?

13 A. Correct.

14 Q. Okay. And so what you did was you took a known
15 sample of his and you compared it to another sample of his,
16 correct?

17 A. I compared a known standard to DNA profiles developed
18 from evidence samples.

19 Q. Okay. And you have no idea where those evidence
20 samples actually came from, do you?

21 A. No.

22 Q. How many -- to your knowledge, how many samples were
23 sent to S.L.E.D. in this case?

24 A. I don't know how many items the previous analyst
25 tested.

KATIE URKA - CROSS BY HAZZARD

1 Q. Okay, so you weren't the first analyst involved.
2 Would that have been Mr. McClure, or someone else, or ...

3 A. It was Steve Lambert.

4 Q. Okay, Steve Lambert. So you've got Steve Lambert
5 tests the stuff, and Mr. McClure has tested the stuff on
6 this case; you have tested the stuff on this case. How many
7 items did you test, Ma'am?

8 A. I tested several standards.

9 Q. Okay. and how many would be several, less than ten
10 or more than ten if you know?

11 A. Four.

12 Q. Four?

13 A. Correct.

14 Q. Okay. And with regard to what you've got and what
15 you put in your paperwork as to a known standard matching
16 something else, all you're saying it matches is what the
17 submitting agency tells you is inside that package,
18 correct?

19 A. I'm not sure if I follow.

20 Q. Okay. In your report it says something along the
21 lines of there are certain things that you're testing,
22 correct?

23 A. Correct.

24 Q. Okay. And you're saying that his known sample
25 matches certain things, and that it had to match. There's

KATIE URKA - CROSS BY HAZZARD
COURT TO JURY

1 no way in the world one in however many quadrillion that it
2 could be someone else, right?

3 A. Right.

4 Q. Okay. And you're saying they matched specific items
5 or samples, right?

6 A. Correct.

7 Q. But your only knowledge of what those samples are or
8 purport to be is how it's sent to you by the submitting
9 agency, what they say it is, right?

10 A. Right.

11 **MR. HAZZARD:** All right, thank you.

12 No further questions.

13 **THE COURT:** Redirect?

14 **MR. HEMBREE:** Nothing on redirect, Your Honor. We'd
15 ask Ms. Urka be excused.

16 **THE COURT:** Any objection?

17 **MR. HAZZARD:** No sir, Your Honor.

18 **THE COURT:** All right.

19 Ma'am, you are released from your subpoena and may go
20 back to your regular activities.

21 All right, Solicitor and Mr. Hazzard, if y'all want to
22 come up here for a second, please.

23 **(BENCH CONFERENCE TAKES PLACE OFF THE RECORD.)**

24 **THE COURT:** All right, Madam Forelady and members of
25 the jury, I understand that there are two remaining

COURT TO JURY
JURY OUT

1 witnesses who unfortunately are tied up in other activities
2 and can't be present until morning, so we are going to
3 recess for today and we will come back tomorrow morning.
4 We'll have you come back tomorrow morning at 9:30. I would
5 have you come back earlier, but there are other motions in
6 other matters and other criminal cases that I have to take
7 care of tomorrow morning before that, so I won't have you
8 here until I know that we're done with those other matters.

9 So as I've told you several times now, when you leave
10 don't talk about the case. Don't allow anybody to talk to
11 you about it. Don't look up anything about this case. You
12 can't do any research on your own. You can't blog about it,
13 you can't tweet about it, you can't tell anything to anybody
14 about this case.

15 If somebody asks you, you just tell them you can't talk
16 about it now. You can talk to them all you want to when the
17 case is all done and over with as much as you want to or
18 absolutely as little as you want to. That will be your
19 choice, but until then, you may not discuss it with anyone.
20 You can't discuss it among yourselves until I tell you to,
21 so don't read anything, don't watch anything.

22 I'll see you tomorrow morning, 9:30. Thank you very
23 much.

24 (THE FOLLOWING TAKES PLACE OUTSIDE THE PRESENCE OF THE
25 JURY.)

JURY OUT/ON RECORD

1 **THE COURT:** Any matters from the State at this point
2 in time?

3 **MR. HEMBREE:** No, Your Honor.

4 **THE COURT:** All right.

5 Any matters from the Defense, Mr. Hazzard?

6 **MR. HAZZARD:** No sir.

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

8 All right, gentlemen, I'll see y'all back tomorrow
9 morning, 9:30. As I indicated, I have some other matters
10 before that, but, you know, we'll get started by 9:30.

11 All right, thank you very much.

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

13 **(ON SEPTEMBER 14, 2011, THE FOLLOWING TAKES PLACE**
14 **OUTSIDE THE PRESENCE OF THE JURY.)**

15 **THE COURT:** Is there anything the State has before we
16 get started?

17 **MR. HEMBREE:** No, Your Honor.

18 **THE COURT:** Anything from the Defense, Mr. Hazzard?

19 **MR. HAZZARD:** Yes sir, Your Honor. I'd like to hand
20 up to the Court the media coverage for the last twenty-four
21 hours, specifically with regard to ---

22 **THE COURT:** Hold on one second. We've created a
23 feedback, Solicitor, by whatever you did. Let the Court
24 Reporter see what ---

25 All right, Mr. Hazzard, go ahead, sir.

JURY OUT/ON RECORD

1 **MR. HAZZARD:** Thank you, Your Honor. I wanted to
2 place into evidence copies of -- as a part of Defendant's
3 motion for now what has become a mistrial with regard to
4 improper and pervasive media coverage, the first document
5 being a Sun News article posted on Tuesday, September 13th,
6 2011, and it states Horry County Police charged Hill in 2009
7 after his DNA sample which was taken when he was committed
8 to the Tennessee Department of Corrections and ordered to
9 serve a seven year prison sentence, was uploaded into a
10 national database and linked to the Parkers' death.

11 It goes on to say Hill was serving a sentence in
12 Tennessee after he pleaded guilty to robbery and conspiracy
13 to commit aggravated robbery in connection with a November
14 15th, 2006, incident there.

15 This same Sun News story is also posted on WBTW's web
16 site verbatim as far as I can tell. WMBF also had coverage
17 of it and placed information on their web site, and that
18 would be the second document I would hand to the Court
19 Reporter to have marked today as a Defense exhibit for the
20 purposes only of this motion, and that coverage also
21 indicates Mr. Hill's prior incarceration and prior
22 convictions.

23 **(SUN NEWS ARTICLE, SEPTEMBER 13, 2011, MARKED AS**
24 **DEFENDANT'S EXHIBIT NUMBER 3 FOR IDENTIFICATION ONLY.)**

25 **(WMBF DOCUMENT, SEPTEMBER 14, 2011, MARKED AS**

JURY OUT/ON RECORD
JURY IN

1 **DEFENDANT'S EXHIBIT NUMBER 4 FOR IDENTIFICATION ONLY.)**

2 **THE COURT:** All right, sir. Again, Mr. Hazzard, what
3 we'll do is I will inquire of the jury when they first come
4 in, whether or not they followed the Court's instructions,
5 whether or not they have availed themselves to any media
6 information against the Court's instructions, again with
7 following the Court's ruling that the publication of the
8 information is not the issue. It's whether or not the jury
9 has been affected in some way about it.

10 All right, let's -- we'll take just a very short break.
11 Y'all get organized and we'll make sure all the jurors are
12 here and then we'll get started. Thank you very much.

13 **MR. HAZZARD:** Thank you, sir.

14 **(THE FOLLOWING TAKES PLACE AFTER A BREAK AND OUTSIDE**
15 **THE PRESENCE OF THE JURY.)**

16 **THE COURT:** Ask the jury to come in, please.

17 **(THE FOLLOWING TAKES PLACE WITHIN THE PRESENCE OF THE**
18 **JURY.)**

19 **THE COURT:** All right, ladies and gentlemen, before we
20 get started, I want to ask you, as I did yesterday, to make
21 sure that all members of the jury have followed the Court's
22 instructions in that you did not talk about the case, you
23 did not allow anybody to talk to you about it, you didn't do
24 any research on your own, you didn't look up anything, you
25 didn't read about this case, you didn't watch anything about

RICHARD F. BEATTY - DIRECT BY RICHARDSON

1 this case, so did all of the jurors follow the Court's
2 instructions? If you did not, please stand at this time.

3 Let the record reflect that all jurors remain seated.
4 We will proceed.

5 Your next witness, Solicitor.

6 **MR. RICHARDSON:** Thank you, Your Honor.

7 The State would call Rick Beatty.

8 **THE COURT:** All right.

9 Please come around to be sworn, sir, right up here.

10 **RICHARD F. BEATTY**, being first duly sworn,
11 testifies as follows:

12 **THE COURT:** You may proceed, Solicitor.

13 **MR. RICHARDSON:** Thank you, Your Honor.

14 **DIRECT-EXAMINATION BY MR. RICHARDSON:**

15 Q. Please tell the jury where you are employed.

16 A. With the City of Myrtle Beach.

17 Q. And what's your title with the City?

18 A. My title now is the traffic supervisor as a sergeant.

19 Q. All right. Sergeant Beatty, how long have you been
20 with Myrtle Beach?

21 A. Nineteen years.

22 Q. Were you working with Myrtle Beach Police on April
23 23rd, 2005, the early morning hours?

24 A. Yes sir.

25 Q. And tell the jury exactly what you were doing that

RICHARD F. BEATTY - DIRECT BY RICHARDSON

1 morning.

2 A. Early morning, around 2:20, I was out working traffic
3 enforcement in the area of Ocean Boulevard in Myrtle Beach.

4 Q. You were on the boulevard catching speeders or people
5 that -- some sort of traffic violation?

6 A. Yes sir, any traffic violation.

7 Q. All right. Did you happen -- did you have an
8 occasion to meet with Bruce Hill?

9 A. Yes sir.

10 Q. And tell the jury about that meeting.

11 A. I conducted a traffic stop on a GMC Yukon that had
12 the license plate illumination light that was out and
13 conducted a traffic stop.

14 Q. All right. Did you notice anything interesting as
15 you approached the vehicle?

16 A. As I approached the vehicle, the driver jumped into
17 the back seat and the front passenger had jumped into the
18 driver's seat to take control of the vehicle.

19 Q. And that was after it had been -- after the vehicle
20 had stopped?

21 A. That's correct.

22 Q. When you got to the new person sitting behind the
23 wheel, who was that?

24 A. If I could look at my notes?

25 Q. Yes sir, if you need them to refresh your memory.

1 Just don't read from them.

2 A. It was a Mr. Bruce ---

3 **THE COURT:** Officer, what you can do is you can review
4 your notes to refresh your memory, and then you can put them
5 down and answer the question.

6 A. Okay. Bruce Antwain Hill.

7 Q. All right. So Bruce Antwain Hill was that passenger
8 that had slid over into the driver's seat?

9 A. That is correct.

10 Q. Did he give you an address?

11 A. Yes sir. If I could look at my notes?

12 Q. Yes sir.

13 A. 126 Jamaican Queen in Tabor City. He provided a
14 driver's license.

15 Q. Okay. That was the address that he gave you from the
16 driver's license?

17 A. That is correct.

18 Q. And for the jury's own knowledge, how far is -- where
19 is Tabor City?

20 A. Approximately thirty minutes -- thirty miles towards
21 Loris or on the other side of Loris.

22 Q. All right. Now, were you able to determine who the
23 other guy was that jumped in the back seat?

24 A. Yes, sir.

25 Q. And what was his name?

RICHARD F. BEATTY - DIRECT BY RICHARDSON
CROSS BY HAZZARD

- 1 A. If I could refer to my notes?
- 2 Q. Yes sir.
- 3 A. Khalil Saleem Moore.
- 4 Q. Okay. And did -- were you able to get an address
5 from Mr. Moore?
- 6 A. Yes sir. He provided a South Carolina driver's
7 license, and it was 898 Pint Circle in Longs.
- 8 Q. Okay. And the date that you met Mr. Hill was April
9 23rd?
- 10 A. That is correct.
- 11 Q. And about 2:30, you said?
- 12 A. 2:20.
- 13 Q. 2:20, and that was in Myrtle Beach?
- 14 A. Yes sir.
- 15 **MR. RICHARDSON:** I have no further questions.
- 16 **THE COURT:** All right.
- 17 Mr. Hazzard, cross-examination?
- 18 **MR. HAZZARD:** Okay.
- 19 **CROSS-EXAMINATION BY MR. HAZZARD:**
- 20 Q. And this was April 23rd of which year, sir?
- 21 A. Excuse me just one second. 2005.
- 22 Q. Okay. And on April 23rd of 2005, did Bruce Hill give
23 you any problems?
- 24 A. No sir, not that I can recall.
- 25 Q. I mean, if he became belligerent or tried to fight

RICHARD F. BEATTY - CROSS BY HAZZARD
GEORGE HOWELL CARRICK - DIRECT BY RICHARDSON

1 you, anything of that nature, you'd recall it, wouldn't you,
2 sir?

3 A. I should.

4 MR. HAZZARD: Thank you. No further questions.

5 THE COURT: Any redirect?

6 MR. RICHARDSON: No sir, Your Honor.

7 THE COURT: Do you wish the witness to be excused?

8 MR. RICHARDSON: Please.

9 THE COURT: Any objection?

10 MR. HAZZARD: No objection, Your Honor.

11 THE COURT: All right.

12 Officer, you are released from your subpoena and may go
13 back to your regular duties.

14 Your next witness, Solicitor.

15 MR. RICHARDSON: Your Honor, the State would call Mr.
16 George Carrick, recall George Carrick.

17 GEORGE HOWELL CARRICK, being previously duly
18 sworn, testifies as follows:

19 THE COURT: Just come back up, sir. Please remember
20 that you remain under oath as you were previously placed
21 under oath, all right, sir?

22 MR. CARRICK: Yes sir.

23 THE COURT: Thank you.

24 DIRECT-EXAMINATION BY MR. RICHARDSON:

25 Q. Mr. Carrick, now you had previously testified that

1 you used to work for Charlie Parker?

2 A. Yes sir.

3 Q. Have you ever heard the name Khalil Moore before?

4 A. Yes sir. He worked for us for a while.

5 Q. All right. Tell us about the relationship that you

6 had with Khalil Moore and the relationship that Charlie had

7 with Khalil Moore.

8 A. Khalil went to school with little Charlie, Charlie,

9 Jr., and he came to work for us for a brief period of time.

10 We had a certain job that we needed some help on, and off

11 and on he was around there with little Charlie, and they --

12 he was a lot of times down on his luck, and so the Parkers

13 would kind of take care of him some, try to.

14 Q. You say take care of him. Do you ever know if he

15 ever ate with them or ---

16 A. Oh, yeah. I mean, that was part of taking care of

17 him, making sure he was -- you know, had meals. He was

18 around there a good bit.

19 Q. And do you ever know if Khalil Moore had ever been in

20 Charlie or Diane's house?

21 A. Oh, yeah. He had dinner with them quite a bit.

22 Q. Okay. And did you eat with them quite a bit also?

23 A. Some, uh huh, yeah.

24 Q. All right. And I believe earlier you described it

25 almost as an extended family?

1 A. Yeah, uh huh. Yeah, they kind of, you know, took him
2 under their wing to try to help him out.

3 Q. Okay. And was Khalil Moore working for Charlie
4 Parker or the glass company back in April of 2005?

5 A. No. He was gone before then. The job that we needed
6 him on had ended, and so we didn't -- no longer needed him.
7 It was a few months before April. I don't remember exactly
8 how long before.

9 Q. Okay. The day -- let's go back the day before the
10 murders, April 11th, 2005. Do you remember that day?

11 A. Pretty much, yeah. I mean, it was a average day. I
12 don't remember specifically what we did, but it was just a
13 typical day. We worked till probably around four o'clock
14 and then as a general rule just kind of hung out around the
15 shop.

16 I usually tried to get away from there about dusk or
17 so. I didn't live far from there, and I always liked to get
18 home by dark, but as a general rule we kind of hung out
19 around the shop. A lot of times they'd cook. We, you know,
20 would shoot darts, just mess around.

21 Q. Was that the last time you saw big Charlie or
22 Charlie Parker?

23 A. Yes sir.

24 Q. And I know you don't know an exact time, but can you
25 give this jury an idea of when the last time you saw him?

GEORGE HOWELL CARRICK - DIRECT BY RICHARDSON
CROSS BY HAZZARD

1 A. It was probably around 7:00, 7:30 on April 11th.

2 Q. Okay. I think you've testified to this earlier, but
3 do you know Bruce Hill?

4 A. No sir.

5 Q. He never worked for big Charlie?

6 A. No sir. I never heard of him.

7 **MR. RICHARDSON:** I think that's all the questions I
8 have. If you'd answer any questions that Mr. Hazzard might
9 have for you.

10 A. Yes sir.

11 **THE COURT:** All right, Mr. Hazzard.

12 **CROSS-EXAMINATION BY MR. HAZZARD:**

13 Q. Good morning, Mr. Carrick.

14 A. Good morning.

15 Q. Okay, now when you testified before, you did not
16 mention a Khalil Moore, did you, sir?

17 A. No sir.

18 Q. Okay. And you've actually given testimony prior to
19 this week in this matter, correct?

20 A. Yes sir.

21 Q. At any time then, did you mention a Khalil Moore,
22 sir?

23 A. No sir.

24 Q. Okay. Did you provide this information as far as who
25 all had previously worked for Mirror-Tec to the police back

GEORGE HOWELL CARRICK - CROSS BY HAZZARD

1 in 2005?

2 A. No sir, not that I recall. I mean, I believe all I
3 was asked was who was there at the end.

4 Q. Okay. Do you know or in your presence was anyone,
5 whether it was little Charlie, Mr. Parker, Jr., I should
6 say, or you, or Mr. Cannon, who now unfortunately is
7 deceased, to your knowledge were any of you asked about
8 prior employees of Mirror-Tec?

9 MR. RICHARDSON: Your Honor, that calls for hearsay
10 except for himself.

11 THE COURT: Why don't you rephrase the question, Mr.
12 Hazzard, to make clear while he was present did -- did that
13 occur.

14 MR. HAZZARD: Yes sir. I apologize.

15 THE COURT: That's all right. No -- no sir. You go
16 right ahead.

17 Q. While you were present, what you heard, was anyone
18 asked about a roster or a listing of people who had
19 previously worked for Mirror-Tec?

20 A. No sir, not that I remember.

21 Q. Not that you recall, okay, but there's no question
22 that to your knowledge the police investigated a great
23 number of individuals in regard to this case, correct?

24 A. Yes sir, I assume so.

25 Q. Okay. And how long prior to April of '05, if you

GEORGE HOWELL CARRICK - CROSS BY HAZZARD

1 know, did this Mr. Moore stop working for Mirror-Tec?

2 A. I don't know exactly, but I think it was three or
3 four months.

4 **MR. HAZZARD:** All right, thank you. No further --
5 well, let me ask you this. Let me ask you this.

6 Q. So Mr. Moore had been invited into the Parkers' home
7 on occasion, correct?

8 A. Yes sir.

9 Q. Okay. And he had worked out at the shop, correct?

10 A. Yes sir.

11 Q. Okay. To your knowledge was Mr. Moore ever privy to
12 what was in Mr. and Ms. Parker's bedroom?

13 A. I wouldn't think so, no sir.

14 **MR. HAZZARD:** All right, thank you.

15 No further questions.

16 **THE COURT:** Redirect?

17 **MR. RICHARDSON:** No sir, Your Honor.

18 **THE COURT:** All right. Do you wish this witness to be
19 excused?

20 **MR. RICHARDSON:** Please.

21 **THE COURT:** Any objection?

22 **MR. HAZZARD:** No sir.

23 **THE COURT:** All right.

24 Mr. Carrick, you are released from your subpoena and
25 you may go back to your regular activities, sir.

DR. CLAY ALLEN NICHOLS - DIRECT BY HEMBREE

1 **MR. CARRICK:** Thank you.

2 **THE COURT:** Thank you.

3 All right, Solicitor, your next witness, please sir.

4 **MR. HEMBREE:** The State calls Dr. Clay Nichols to the
5 stand.

6 **THE COURT:** All right.

7 All right, sir, if you would come all the way up front
8 to be sworn, sir.

9 **CLAY ALLEN NICHOLS,** being first duly sworn,
10 testifies as follows:

11 **THE COURT:** Go ahead, Solicitor.

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

13 **DIRECT-EXAMINATION BY MR. HEMBREE:**

14 Q. Dr. Nichols, good morning.

15 A. Good morning, sir.

16 Q. Where do you work now?

17 A. Work, I'm the Deputy Chief Medical Examiner for the
18 State of North Carolina.

19 Q. And you were working -- where is your office? Where
20 are you located?

21 A. Office of the Chief Medical Examiner in Chapel Hill.
22 We are actually on the campus of the University of North
23 Carolina.

24 Q. And previously did you work in South Carolina?

25 A. Yes, I did.

DR. CLAY ALLEN NICHOLS - DIRECT BY HEMBREE

1 Q. Where was your employment back in 2005?

2 A. 2005, I was the Chief Medical Examiner for Richland
3 County, which is Columbia.

4 Q. And if you would, please give the jury and the Court
5 the benefit of your training and experience in the field of
6 forensic pathology.

7 A. I received my Bachelor of Science degree from the
8 University of Oklahoma in 1981. In 1985 I received my M.D.
9 degree also from Oklahoma. After that, I entered a
10 residency program in anatomic and forensic pathology at
11 M.U.S.C. in Charleston, completing that five years later.

12 After that, I was on the faculty at M.U.S.C. for ten
13 years where I was an Associate Professor teaching pathology
14 and forensic pathology to medical students, residents,
15 fellows, dental students, pharmacy students.

16 In 2000, I left M.U.S.C. and entered private practice
17 in the Columbia area. Part of the private practice
18 agreement was that I was the Chief Medical Examiner for
19 Richland County. I was there for ten years.

20 After that, I briefly retired for two months, then re-
21 entered forensic pathology as the Deputy Chief Medical
22 Examiner for the entire state of North Carolina.

23 I am board certified by the American Board of Pathology
24 in both anatomic and forensic pathology, and I have
25 unrestricted licenses to practice medicine and surgery in

DR. CLAY ALLEN NICHOLS - DIRECT BY HEMBREE

1 both South Carolina and North Carolina.

2 Q. And, Dr. Nichols, you've been qualified many times in
3 courts of record of this state, and I assume most states
4 now, in the field of forensic pathology?

5 A. Yes, I have. In fact, coming to Horry County is like
6 coming home.

7 Q. Okay. How many times have you been qualified as an
8 expert?

9 A. Hundreds.

10 **MR. HEMBREE:** Your Honor, we would offer Dr. Nichols
11 as an expert in the field of forensic pathology.

12 **THE COURT:** All right.

13 Mr. Hazzard, do you wish to voir dire the witness or
14 challenge his qualifications?

15 **MR. HAZZARD:** No sir, Your Honor.

16 **THE COURT:** Very good.

17 The witness is qualified to give his opinion.

18 You may continue, Solicitor.

19 **MR. HEMBREE:** Thank you, Your Honor.

20 Q. Dr. Nichols, you were called upon to do an autopsy
21 back in April of 2005, I believe April 13th of 2005, two
22 autopsies, one of Charlie Parker, one of Diane Parker?

23 A. That's correct.

24 Q. If you would, tell the jury just generally what the
25 procedures of the process is when you're conducting an

DR. CLAY ALLEN NICHOLS - DIRECT BY HEMBREE

1 autopsy.

2 A. An autopsy begins with a phone call, a request for an
3 autopsy. It usually comes from the coroner. In this case,
4 I believe it was Robert Edge. After that, the bodies are
5 received.

6 We look at the body first with the clothes on, and
7 then with the clothes off, looking for any evidence of
8 injury or some clue as to the cause of death.

9 In cases of gunshot wounds or suspected cases of
10 foreign body entry, x-rays are done looking for the presence
11 or absence of bullets. After that, a dissection is
12 performed where all the major organ systems are removed.
13 They are examined, inventoried. Small pieces of tissue are
14 sampled for further microscopic examination, and also during
15 the course of an autopsy, fluids are collected for
16 toxicologic evaluation.

17 At some point all those pieces of information come
18 together and a final report is issued.

19 Q. And you conducted an autopsy, as you mentioned, on
20 Charlie Parker?

21 A. Yes, I did.

22 Q. What were your significant findings and conclusions
23 as it relates to Charlie Parker, Sr.?

24 A. Mr. Charlie Parker was shot three times. Would you
25 like me to read the descriptions?

DR. CLAY ALLEN NICHOLS - DIRECT BY HEMBREE

1 Q. Certainly, if you would, please.

2 A. The numbers were arbitrarily labeled numbers 1
3 through 3 and the numbering sequence indicates the ones that
4 I found, first to the third. It does not indicate the
5 firing sequence.

6 The gunshot wound number 1 is a distant perforating
7 gunshot wound to the left face located 8.5 inches from the
8 top of the head and 1.5 inches to the left of the mid-line.
9 The wound is just slightly to the left side of the lips of
10 the lower face.

11 The wound is circular, measuring 0.6 by 0.6 inch in
12 greatest diameter. There was a 0.5 inch abrasion border at
13 the nine o'clock position. No soot or powder stippling is
14 identified. The bullet is found to enter at this site
15 traveling through the chest and exiting through the left
16 back at a distance of 19 inches from the top of the head and
17 6.5 inches to the left of mid-line.

18 The exit wound had lacerated edges, measuring 0.3 by
19 0.2 inch in greatest diameter. Along its course the bullet
20 lacerates the left lower lung lobe. Since the bullet
21 exited, no bullet was recovered. The approximate angles of
22 trajectory are down and backwards.

23 Gunshot wound number 2 is to the mid abdomen located 22
24 inches from the top of the head and 1.5 inch to the right of
25 mid-line. The wound is circular, measuring 0.3 inch in

DR. CLAY ALLEN NICHOLS - DIRECT BY HEMBREE

1 diameter. No distinct abrasion border is identified. The
2 bullet is found to enter this site with subsequent
3 laceration of the right lobe of the liver.

4 The approximate angles of trajectory are backwards and
5 slightly downwards. The bullet exits the right lateral back
6 at a distance of 26 inches from the top of the head and 7.5
7 inches to the right of mid-line. The exit wound has
8 lacerated edges, measuring 0.4 by 0.9 inch in greatest
9 diameter, and since, once again, the bullet exited, no
10 bullet was recovered.

11 Gunshot wound number 3 is to the right abdomen, 22
12 inches from the top of the head and 6 inches to the right of
13 mid-line. The wound is elliptical, measuring 0.3 by 0.2
14 inch in greatest diameter. A partial area of gunpowder
15 stippling, which includes the right biceps, as well as the
16 skin around the gunshot wound, measures 12 by 8 inch in
17 greatest diameter.

18 In addition, a small grazed wound is located 20 inches
19 from the top of the head along the right biceps, which may
20 be associated with this gunshot wound. The bullet is found
21 to enter the abdomen at this site with subsequent laceration
22 of the right liver lobe. The bullet ultimately exits the
23 left back at a distance of 29 inches from the top of the
24 head and 5.5 inches to the left of mid-line.

25 The wound is elliptical with lacerated edges, measuring

DR. CLAY ALLEN NICHOLS - DIRECT BY HEMBREE

1 0.1 by 0.3 in greatest diameters. Once again, the bullet
2 exits and no bullet was recovered. The approximate angles
3 of trajectory are to the left, down and backwards.

4 Q. So three shots or three wounds to Mr. Parker, no
5 bullets were recovered?

6 A. That's correct.

7 Q. Dr. Nichols, I'm going to ask you to step down from
8 the stand for just a moment, and if you will take the
9 position here facing -- facing the Court Reporter, I'm going
10 to ask you to take this pointer and demonstrate to the jury
11 the track of those bullets, the approximate entry and exit
12 of those wounds on me just as it would -- and we will talk
13 about gunshot wound number 1 first.

14 A. Gunshot wound number 1 is approximately here, to the
15 left side of the face, and the bullet travels essentially to
16 the left and downwards, and it exits the left back at a
17 distance of 19 inches from the top of the head, excuse me,
18 turn around, approximately here, so the bullet is going
19 here, and down, and out the back.

20 Gunshot wound ---

21 Q. Let me ask you a question about gunshot wound number
22 1. It's a distance gunshot wound. What is that -- is that
23 significant?

24 A. A forensic pathologist can determine four basic
25 ranges of fire. Now, the ranges of fire are seldom the

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1 exact ranges of fire, but by looking at the body and
2 physical evidence around the wound, a forensic pathologist
3 can kind of gauge exactly to some degree how far away the
4 gun was when the trigger was pulled.

5 The first range of fire is a contact gunshot wound.
6 That means that the barrel of the gun is in direct contact
7 with the skin. When the trigger is pulled, not only does
8 the bullet come out and make an injury, but everything in
9 the barrel also comes out and goes through the wound track.
10 What's in the barrel, you have soot, you have unburned
11 gunpowder, you have rust, grease. Whatever is in the barrel
12 is going to go into the wound track.

13 If you back off just a fraction of an inch, and it
14 doesn't have to be like this literally, a fraction of an
15 inch, when the trigger is pulled, the bullet goes through.
16 The heavier elements, such as unburned gunpowder, also go
17 into the wound track, but the soot, which is lighter, gets
18 deposited in the ring around the wound. That's known as a
19 loose contact gunshot wound.

20 Back off a couple of inches, now when the trigger is
21 pulled, the bullet goes through the body, causes an injury.
22 The soot, which is lighter, smoke-like, dissipates, and what
23 gets deposited on the skin is unburned gunpowder, which
24 looks like a salt and pepper pattern around the wound.
25 That's known as stippling.

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1 And if you back up even further, and it depends on the
2 type of ammunition and the type of gun used, probably
3 eighteen inches to two feet, when the trigger is pulled the
4 bullet still goes through the body causing an injury. All
5 the lighter elements, the soot, the smoke, and the unburned
6 gunpowder gets dissipated, so all that's left behind is the
7 gunshot wound that causes the injury. There's no evidence
8 of any sort of closeness of when the trigger is pulled.

9 Now, that can be, as I mentioned, eighteen inches to
10 two feet away, all the way up to the maximum firing range of
11 the weapon, so it could be several hundred yards. I don't
12 know, but oftentimes there are other clues such as the
13 physical dimensions of a room, or a car, or some sort of
14 other parameter that will help narrow down the range of
15 fire.

16 So in this particular case, it was a distant gunshot
17 wound, which meant that the gun when the trigger was pulled
18 was some distance away from Mr. Parker when the bullet
19 entered the body. There's no evidence of soot, no evidence
20 of stippling or unburned gunpowder deposited on the skin.

21 Q. Very good. But this just doesn't mean a far
22 distance? It's a distance of eighteen inches or greater?

23 A. Greater, yes sir.

24 Q. Okay. Gunshot wound number 2, if you'll show this
25 jury the angle with that pointer.

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1 A. It enters the right abdomen, which is your belly,
2 about yonder, about 1.5 inches to the right of mid-line. It
3 goes through the right lobe of the liver, which certainly in
4 itself could be a fatal injury, and then it exits the right
5 lateral back, and the distance -- excuse me, if you'll turn
6 around again, 26 inches thereabouts, and 7.6 inches to the
7 right of mid-line, right about here, so essentially it's
8 pretty much going straight through. There's some deviation,
9 but no significant deviation.

10 Q. And let's talk about gunshot wound number -- was a
11 distant gunshot wound?

12 A. It was, yes.

13 Q. Let's talk about gunshot wound number 3.

14 A. This is also to the right abdomen, and this is a
15 little more complicated, because there is a graze wound to
16 the right biceps, which is up here, and a graze wound just
17 means that the bullet grazes or takes a very shallow
18 tangential track through the muscle of the body.

19 It continues through, goes into the right abdomen and
20 out through the -- let's see -- ultimately exits the left
21 back -- excuse me, turn around again, 29 inches, a little
22 bit lower, and 5.5 inches to the right of mid-line,
23 approximately here.

24 Now, in this particular case, there was evidence of
25 stippling, which means that the gun was closer. Once again,

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1 it's an approximation, 12 inches, 18 inches away from the
2 body when the trigger was pulled, and the pattern of the
3 stippling indicates that the arm was actually shielding the
4 abdomen, so there is stippling here.

5 The bullet enter the biceps, leaves the biceps, goes
6 into the abdomen, and think of it as a spray can of paint
7 that gets sprayed on the body, so there's stippling here,
8 there's stippling here, the wound is here. When you remove
9 the arm, there is no stippling here, so you can see like a
10 shadow where the stippling was.

11 Q. And that -- that gunshot, if I understand correctly,
12 was more coming in this way and exiting this side?

13 A. That's correct.

14 Q. Kind of like at a side angle as opposed to a more
15 front-on angle like we had in the other gunshot?

16 A. That's correct.

17 Q. Doctor, I'm just going to keep you here because I'm
18 going to do the same thing. There's no point in sitting you
19 back up there and bring you right back down, ---

20 A. Okay.

21 Q. --- so if you're comfortable testifying.

22 If you could, within a reasonable degree of medical
23 certainty, tell this jury what was the cause of death in
24 this case.

25 A. Charles Parker, Sr. died as a result of internal

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1 hemorrhage secondary to multiple gunshot wounds. What that
2 means is that he bled to death because he was shot.

3 Q. And what was the manner of death?

4 A. This is a homicide, which meant he was killed by
5 another individual.

6 Q. Now, let's talk about your report.

7 Well, go ahead and take your seat, Dr. Nichols.

8 A. Okay.

9 Q. Let's talk about Ms. Diane Parker. When -- when did
10 you conduct her autopsy?

11 A. I conducted her autopsy on the same day after Mr.
12 Parker.

13 Q. And if you would, describe to this jury the
14 significant findings you made in examining her body.

15 A. Three gunshot wounds were once again identified.
16 Once again, the numbering sequence doesn't indicate the
17 sequence in which the wounds were inflicted.

18 Gunshot wound number 1 is to the left arm, 11 inches
19 from the top of the head. The wound is circular with a 0.4
20 inch diameter. No soot or powder stippling is identified.
21 There is a circular 0.1 inch abrasion border. The bullet is
22 found to travel through the arm, exiting the lower arm at a
23 distance of 12.5 inches from the tip of the middle finger.

24 The wound has lacerated edges, measuring 0.8 by 0.35 in
25 greatest diameter. The bullet then re-enters the abdomen at

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1 a distance of 26 inches from the top of the head and one
2 inch to the right of mid-line. The wound is elliptical,
3 measuring 0.48 by 0.35 inch in greatest dimensions.

4 The bullet then lacerates the small intestine, the
5 liver, aorta, and fractures the spine. The bullet is
6 covered from -- recovered from the mid-back. The numbers
7 102, which are the autopsy number, and 1, are inscribed on
8 the base of the bullet by myself.

9 Gunshot wound number 2 is to the mid-chest, 15.5 inches
10 from the top of the head. The wound is circular with a 0.3
11 inch diameter. There is a 0.15 inch abrasion border at the
12 twelve o'clock position. No soot or powder stippling is
13 identified.

14 The bullet is found to enter the chest at this site
15 with subsequent perforation and fracture of the sternum,
16 which is the breast bone right here, a through-and-through
17 laceration of the right cardiac ventricle, which means the
18 bullet perforated through her heart, laceration of the left
19 lower lung lobe, a contusion of the right lower lung lobe,
20 and a contusion is a bruise.

21 The bullet then actually goes through the right lower
22 lung lobe. The passage of the bullet through the body
23 caused bruising of the right lower lung lobe, with
24 subsequent exit from the upper mid-back after fracturing the
25 adjacent spine and lacerating the associated spinal cord.

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1 The bullet exits at the upper mid-back, 11 inches from
2 the top of the head. The wound is elliptical, measuring 0.3
3 by 0.2 inch. The bullet then causes a partial re-entry
4 laceration into the back of the head at a distance of 8
5 inches from the top of the head right at the mid-line. The
6 wound is 0.6 by 0.5 inch in greatest diameter.

7 The associated bullet is recovered from the gurney on
8 which the deceased was transported. The numbers 102 -- once
9 again, 102 is my autopsy number, and number 2 are inscribed
10 on the base of the bullet by myself.

11 The approximate angles of trajectory are upwards and
12 backwards, and what this means, that the bullet went through
13 the body, came out the back of the spine, came up to the top
14 of the head, lacerated or tore the tissue at the back of the
15 head, did not enter, but actually fell out and was recovered
16 on the gurney on which she was transported, so the bullet
17 was not in Ms. Parker. It was actually on the gurney and we
18 recovered that bullet.

19 Gunshot wound number 3 is located on the right chest at
20 a distance of 20 inches from the top of the head and 6.5
21 inches to the right of mid-line. The wound is elliptical,
22 measuring 0.3 by 0.6 inch. There is an associated 0.8 by
23 0.5 inch contusion at the five o'clock position. A
24 contusion is a bruise. As the bullet passed through the
25 body, it caused a bruise.

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1 No soot or powder stippling is identified. The bullet
2 is found to enter the right upper abdomen at this site with
3 subsequent laceration of the liver and spleen. The bullet
4 then exits the left lateral back at a distance of 27 inches
5 from the top of the head and 8 inches to the left of mid-
6 line. The exit wound is elliptical, measuring 0.3 by 0.6
7 inch. No bullet is recovered because it exited. The
8 approximate angles of trajectory are down, backwards, and to
9 the left.

10 In addition to the gunshot wounds, there's ---

11 Q. Let me -- let me stop you there.

12 A. All right.

13 Q. Doctor, if I could ask you to document -- to step
14 down once again, over on the -- on the bullets, and ask you
15 to take the same position and if you would demonstrate to
16 this jury the track of those bullets, 1, 2, and 3 on me.

17 A. Okay. The left arm, the bullet comes in
18 approximately here, travels down and comes out the forearm,
19 and the forearm would have to be around there because it
20 actually enters slightly to the right side of the abdomen.
21 That looks like that's a posture where someone is covering
22 up, trying to protect themselves during the course of the
23 shooting.

24 The bullet then enters the abdomen and lacerates the
25 small intestine, the liver, the aorta. The aorta is the

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1 major blood vessel leading to the heart, and fractures the
2 spine, so the bullet is recovered from the mid-back
3 approximately -- excuse me -- approximately here, so the
4 bullet goes through the right side and I recovered from the
5 spinal area.

6 Gunshot wound number 2 is to the mid-chest, 15 inches
7 from the top of the head, approximately yonder, and that's
8 the one that goes through the heart, that goes through the
9 sternum, of course, lacerating the left lower lung lobe.
10 It's the bullet that causes the bruising to the right lung.

11 Now, this one exits -- excuse me, if you could turn
12 around -- approximately here and then comes up to the back
13 of the head and causes the laceration or tearing of the
14 skin. It does not enter the skull. This is not a head
15 shot. Instead, the bullet falls out of the body during the
16 course of transportation and that's the bullet that is
17 recovered from the gurney.

18 Q. And, Dr. Nichols, I'm going to show you State's
19 Exhibit 33 in evidence and ask you to identify that wound if
20 you can.

21 A. I can. This is gunshot wound number 2 and this looks
22 like the exit from the mid-back.

23 Q. And if you will, show -- if you can point to where
24 the head injury occurred.

25 A. This is her back. This is her top. The bullet comes

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1 out of the mid-back approximately here, and the head injury
2 is actually up in this area underneath her here.

3 Q. And gunshot wound 3?

4 A. It's to the right chest at a distance of 20 inches
5 from the top of the head and 6.5 inches to the right of mid-
6 line, approximately here. This -- excuse me; it's actually
7 lower, and this goes, once again, through the liver and
8 exits from the left lateral back.

9 Excuse me; if you could turn around -- left lateral
10 back approximately here, which is 27 inches from the top of
11 the head and 8 inches to the right of mid-line and more
12 towards the lateral side or the side of the back.

13 Q. Thank you, Dr. Nichols. Please take your seat.

14 Dr. Nichols, within a reasonable degree of medical
15 certainty, what was the cause of death in this case?

16 A. Cause of death for Diane Parker is internal
17 hemorrhage due to multiple gunshot wounds. Once again, she
18 bled to death because she was shot multiple times.

19 Q. And what was the manner of death?

20 A. I classified this, once again, as a homicide. She
21 was shot by somebody else.

22 Q. Now, did she -- did your autopsy reveal any
23 additional injuries to Ms. Parker in addition to the three
24 gunshot wounds that she suffered?

25 A. Yes, it did.

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1 Q. Please tell the jury about that.

2 A. In addition to the gunshot wounds, there's a
3 contusion to the right upper eyelid. A contusion is a
4 bruise. She had a black eye, and in addition, there is a 1
5 by 0.7 inch purple contusion over the right clavicle. The
6 right clavicle is your collarbone approximately in this area
7 here.

8 The clavicle underneath the bone is found to be
9 fractured and associated with the contusion, so she was hit
10 in this area with a hard object with an appropriate amount
11 of force not only to cause a bruise, but also to break her
12 collarbone.

13 Q. Dr. Nichols, I'm going to show you State's Exhibit 30
14 in evidence and ask you if you can -- if you note any
15 injuries on that photograph to Ms. Parker?

16 A. Yes, I do, and although it's rather awkwardly
17 oriented, her contusion, or her black eye, is clearly
18 evident.

19 Q. And that's over the right eye?

20 A. That's correct.

21 **MR. HEMBREE:** Thank you, Dr. Nichols. I don't have
22 any further questions. Please answer any questions that Mr.
23 Hazzard might have for you.

24 **THE COURT:** All right, cross-examination.

25 **MR. HAZZARD:** Thank you, Your Honor.

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1 **CROSS-EXAMINATION BY MR. HAZZARD:**

2 Q. Good morning, Dr. Nichols. How are you, sir?

3 A. Fine. Yourself? Pleasure to meet you.

4 Q. Doing good; thank you for asking.

5 Now, you performed an autopsy on both Mr. and Ms.

6 Parker, is that correct, sir?

7 A. That's correct.

8 Q. And when did you perform this autopsy?

9 A. April 13th, 2005.

10 Q. Okay. And when you performed these autopsies, was

11 one or more members of the Horry County Crime Scene

12 Investigator's Office available, present?

13 A. Yes sir.

14 Q. Okay. And what's the purpose of them being present

15 and available?

16 A. They collect the evidence, such as recovered bullets,

17 and as necessary take photographs.

18 Q. Okay. And when you do an autopsy, the first thing

19 you're doing is you're observing the bodies of the deceased,

20 correct?

21 A. That's correct.

22 Q. And one of the reasons you're observing the bodies of

23 the deceased is to see if there is any evidence, physical

24 evidence, that would be inconsistent with that person,

25 correct?

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1 A. It depends, but yes.

2 Q. Yes. Like, for instance, in this instance you did
3 not recover any African-American hair or hair that is
4 consistent with African-Americans, did you, sir?

5 A. Sir, I don't know if it's African-American or not,
6 but essentially the answer is no.

7 Q. Okay. No hair that caused you to say it was
8 inconsistent with either Mr. or Ms. Parker, to cause your
9 attention to hand it over to the crime scene guys, did you?

10 A. That's correct.

11 Q. Okay. Now, in these cases with regard to Mr. Parker,
12 you indicated that one of his wounds, I believe you have it
13 designated as wound number 3, had some stippling, is that
14 correct?

15 A. That's correct.

16 Q. And I believe you've told this jury that means that
17 you're talking about a distance of roughly 12 to 18 inches
18 from the gun that fired the projectile to the -- to Mr.
19 Parker, is that correct, sir?

20 A. That's correct, yes sir.

21 Q. Okay, so at least with regard to this event and the
22 firing of the projectile that caused wound number 3, can we
23 agree that Mr. Parker was in close proximity to that person
24 who fired the gun?

25 A. That's correct.

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1 Q. Okay. And with regard to Ms. Parker, no hair
2 consistent -- no hair inconsistent with Ms. Parker found on
3 her, correct, or on her clothing or at any time during the
4 autopsy, correct?

5 A. That's correct.

6 Q. Okay, and with regard to Ms. Parker, I believe you
7 indicated that she had received and sustained a black eye
8 and a fractured clavicle, is that correct?

9 A. That's correct.

10 Q. And you indicated that based on your experience,
11 training, and knowledge as a forensic pathologist that you
12 believe the fractured clavicle was sustained by being struck
13 with a hard object, correct?

14 A. That's correct.

15 Q. Okay, so whoever delivered that blow obviously had to
16 have been within arm's reach of Ms. Parker, correct?

17 A. That's correct.

18 Q. Okay. And with regard to the black eye, do you have
19 an opinion as to how that was sustained? Was it sustained
20 through being struck with an object or by a third party?

21 A. Like a fist?

22 Q. Yes, with an object or with a fist, by, you know, --
23 not self-inflicted?

24 A. It's not self-inflicted. It could be a fist, but
25 given the fact that you have a fractured clavicle on the

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THE STATE RESTS

1 same side, it's my opinion that more than likely than not it
2 was the same object that broke the clavicle that gave her a
3 black eye.

4 Q. Okay. And in regard to the infliction of that
5 injury, whoever inflicted that injury would have been within
6 arm's reach, correct?

7 A. That's correct.

8 MR. HAZZARD: Thank you, sir. No further questions.

9 THE COURT: Redirect?

10 MR. HEMBREE: Nothing on redirect, Your Honor.

11 THE COURT: Do you wish the witness to be excused?

12 MR. HEMBREE: Yes, Your Honor.

13 THE COURT: Any objection, Mr. Hazzard?

14 MR. HAZZARD: No sir.

15 THE COURT: All right.

16 Doctor, you are released from your subpoena and may go
17 back to your regular duties, sir.

18 DR. NICHOLS: Thank you. It's been a pleasure, as
19 always.

20 THE COURT: Thank you, sir.

21 All right, Solicitor, the next witness for the State.

22 MR. HEMBREE: Your Honor, the State of South Carolina
23 versus Bruce Antwain Hill, the State rests.

24 THE COURT: All right, very good.

25 All right, Mr. Hazzard, do you have some matters of law

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1 for the Court at this point in time?

2 **MR. HAZZARD:** Yes sir, Your Honor.

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

4 All right, ladies and gentlemen, the State having
5 rested its case, there are certain matters of law that I
6 have to take up outside your presence, so Madam Forelady, if
7 you would take your jury to the jury room, and I will call
8 you back out as soon as I can. Thank you.

9 **(THE FOLLOWING TAKES PLACE OUTSIDE THE PRESENCE OF THE**
10 **JURY.)**

11 **THE COURT:** All right, Mr. Hazzard, be glad to hear
12 from you, sir.

13 **MR. HAZZARD:** Thank you, Your Honor.

14 Your Honor, at this time the Defense makes a motion for
15 a directed verdict. We would submit that the evidence
16 presented by the State does not rise to the level sufficient
17 for a jury to make a determination, even taken in the light
18 most favorable to the State, for the jury to make a
19 determination of guilt in this case.

20 As the Court well knows, it is very settled that the
21 evidence presented must do more than simply raise a mere
22 suspicion or inference of guilt. It must be evidence that
23 clearly and cogently shows the guilt of the Defendant. We
24 would submit the evidence presented in this case by the
25 State fails to meet that burden.

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1 **THE COURT:** All right.

2 Solicitor.

3 **MR. HEMBREE:** Your Honor, there is a great deal of
4 evidence that we could review, but I think the key evidence
5 is -- in noting Mr. Hazzard's motion that -- referring to
6 his Defendant, I don't think there's any question about the
7 fact that a murder and burglary have been committed. The
8 question is his Defendant's participation in those crimes.

9 Your Honor, we would refer to two critical pieces of
10 evidence, the DNA evidence, that numerous drops of blood,
11 four drops of blood, in the house have been identified as
12 being the blood of Bruce Antwain Hill.

13 Secondly, and I think critically, the crime scene
14 specialist testified that the condition of the blood was in
15 the same condition or the same freshness, if you will, as
16 that of the -- that of the victims, therefore drawing the
17 conclusion that he was present in the house as the -- as the
18 defendants (sic) were being murdered and as the burglary was
19 taking place, so his presence in the house and actually the
20 only person who left any physical evidence, that he was
21 present in the house at the commiss- -- during the
22 commission of these crimes.

23 **THE COURT:** Thank you, sir.

24 All right, the standard being that a defendant is
25 entitled to a directed verdict when the State fails to

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1 produce evidence of the offense charged. What the Court
2 looks at is the existence of evidence, not with its weight.
3 The weighing of the evidence, that obviously is for the jury
4 to be concerned with. The Court only looks to see whether
5 or not evidence exists in the case.

6 If there's any direct evidence or substantial
7 circumstantial evidence reasonably tending to prove the
8 guilt of the accused, the case would be properly submitted
9 to the jury.

10 The trial judge is -- has a duty to grant a directed
11 verdict motion when the evidence only raises a suspicion
12 that the accused is guilty. A trial court should grant a
13 directed verdict motion when the jury would be speculating
14 as to the guilt of the accused or where evidence is
15 sufficient only to raise a mere suspicion of guilt.
16 Suspicion implies a belief or opinion as to guilt based on
17 facts or circumstances which do not amount to proof.

18 In this particular case, the Court finds that there is
19 more than sufficient evidence presented if so believed by
20 the jury. Again, that's not my job. That's their job, but
21 if that evidence is so believed by the jury, there is more
22 than sufficient evidence to convict the Defendant of the
23 crimes charged beyond a reasonable doubt if the jury
24 believes that evidence, that evidence does exist.

25 Therefore, the Court respectfully declines to grant the

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1 directed verdict motion as presented.

2 Anything else, Mr. Hazzard?

3 **MR. HAZZARD:** Yes sir, Your Honor.

4 During the course of the trial, I may have missed it,
5 but I do not recall there being any testimony regarding the
6 fact that this offense occurred in Horry County, South
7 Carolina. We would, therefore, move for a directed verdict
8 and a dismissal with regard to lack of jurisdiction in this
9 case, Your Honor.

10 **THE COURT:** The Court does remember such question
11 being asked, but, Solicitor, I'll be glad for you to respond
12 to it if you would like to.

13 **MR. HEMBREE:** Your Honor, I specifically asked that
14 question of Robbie Caulder for that very purpose.

15 **THE COURT:** And the Court does recollect and my notes
16 so indicate that question was asked of Officer Caulder,
17 where the crime occurred, and, therefore, I would
18 respectfully decline to grant your motion in that regard.

19 **MR. HAZZARD:** Yes sir. With regard to the motions for
20 directed verdict, nothing further from the Defense.

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

22 While the jury is out, Mr. Hazzard, you have, I assume,
23 discussed with your client the presentation of Defense
24 evidence in this case?

25 **MR. HAZZARD:** We have discussed that on several

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COURT TO DEFENDANT

1 occasions. I would ask the Court for an opportunity to sit
2 down and discuss it with him now that all of the State's
3 case is in.

4 **THE COURT:** All right, very good. I'll certainly give
5 you that opportunity. At that point in time when we come
6 back, then I'll ask you what's the status of the Defense and
7 please also talk to your client about him testifying in this
8 case because when we come back, I'll also ask him and talk
9 to him about his constitutional rights and ask him if he
10 wishes to testify in this case, all right?

11 **MR. HAZZARD:** Yes sir.

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

13 We'll take a short break. Then we'll come back and
14 resume the trial. Thank you very much.

15 **MR. HEMBREE:** Thank you, Your Honor.

16 **(THE FOLLOWING TAKES PLACE AFTER A BREAK AND OUTSIDE**
17 **THE PRESENCE OF THE JURY.)**

18 **THE COURT:** All right, Mr. Hazzard, have you had
19 sufficient time to talk to your client now that the State
20 has rested its case?

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

22 **THE COURT:** All right, very good. What is the
23 position of the Defense at this point in time?

24 **MR. HAZZARD:** At this time, Your Honor, the Defense
25 would rest and ask to be able to rest in front of the jury

JURY OUT/COURT TO DEFENDANT

1 panel at the appropriate time.

2 **THE COURT:** Absolutely. Understanding that and that
3 your request is that the Defense rest at this time, let me
4 talk to -- talk to you, Mr. Hill, for a minute, please, sir,
5 all right?

6 Madam Clerk, if you could place Mr. Hill under oath,
7 please, Ma'am.

8 **BRUCE ANTWAIN HILL** is placed under oath by
9 the Deputy Clerk of Court.

10 **THE COURT:** All right.

11 Mr. Hill, at this point in time I'm going to explain to
12 you or talk to you about certain of your constitutional
13 rights. If at any point in time you don't understand me or
14 you have a question about what's going on, I need for you to
15 indicate that to me. You can raise your hand, you can tell
16 your attorney, but in some way you need to let me know that
17 you've got a question or you don't understand what we're
18 talking about, okay? Sir?

19 **MR. HILL:** Yes sir.

20 **THE COURT:** I need for you to tell me yes or no.

21 **MR. HILL:** Yes sir, Your Honor.

22 **THE COURT:** All right, very good. Now, we've reached
23 the stage of the trial where you can present your defense.
24 You have the right guaranteed to you by the Constitution of
25 the United States to the Fifth Amendment.

JURY OUT/COURT TO DEFENDANT

1 Now, that amendment to our Constitution states in
2 part that no person shall be compelled in any criminal case
3 to be a witness against themselves. That means nobody can
4 make you be a witness in this case. You can choose to do
5 so. You may do so if you want to, but nobody can make you
6 do so. Do you understand that?

7 **MR. HILL:** Yes sir, Your Honor.

8 **THE COURT:** All right. Now, regarding this, if you
9 decide to testify, you'd be subject to the same rules that
10 govern any other witness that you've seen in this trial.
11 You'll be questioned or asked some questions by your
12 attorney. You'll be cross-examined by the Solicitor as to
13 any matters the Court would deem relevant or proper.

14 Also, if you have any prior convictions that either
15 involve dishonesty or false statement, or for a crime
16 punishable by imprisonment for more than one year, then --
17 and the Court determined that the value of that outweighs
18 any harm or prejudice to you, then the Solicitor would be
19 able to ask you if you had been convicted of that crime in
20 the past. If you stated yes, that would be the end of it.
21 They can't go any further than that.

22 So, Solicitor, regarding a prior record, if any, by Mr.
23 Hill, would there be any matters that you intend -- would
24 intend to cross-examine him about?

25 **MR. RICHARDSON:** Yes sir, Your Honor. Of course, you

JURY OUT/COURT TO DEFENDANT

1 know he's here on loan to us from Tennessee. Those charges,
2 it looks like he pled guilty to conspiracy to commit
3 aggravated robbery, aggravated robbery. Those are the two
4 charges in Tennessee.

5 He also has another robbery from Tennessee, a theft of
6 Five Hundred Dollars or less. That robbery, I believe, Your
7 Honor, is a duplicate.

8 **THE COURT:** Duplicative of the other one?

9 **MR. RICHARDSON:** Yes sir.

10 **THE COURT:** All right.

11 **MR. RICHARDSON:** In addition to those charges, he's
12 got ---

13 **MR. HAZZARD:** I'm sorry to interrupt, but with regard
14 to -- I think the aggravated robbery was mentioned twice?

15 **MR. RICHARDSON:** Yes sir.

16 **MR. HAZZARD:** And that is indicating to me that is
17 only one charge or one conviction.

18 **THE COURT:** All right.

19 **MR. RICHARDSON:** That's a duplicate, Your Honor.

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

21 **MR. RICHARDSON:** In addition to that, he's got a
22 conspiracy charge out of Virginia, sentenced to five years.
23 He has a common law robbery out of Conway, 2003. He's got a
24 cocaine charge or a Schedule II out of Horry County, 2005; a
25 CDV first, 2006; and CDV second, 2007. I don't believe the

JURY OUT/COURT TO DEFENDANT

1 first would come in, and that -- that would be the extent of
2 it, Your Honor.

3 **THE COURT:** All right.

4 So, Mr. Hill, there appear to be certainly more than
5 one charge that the State would be able to examine you on
6 regarding this particular matter that fall within the rule
7 of a crime punishable by imprisonment for more than one year
8 or involving a crime of dishonesty or false statement.

9 And the Court would allow the Solicitor to ask you
10 about the ones -- we would come to some agreement as to the
11 exactness of that regarding the -- probably the one
12 aggravated assault -- I'm sorry, aggravated robbery in
13 Tennessee, and then the CDV second, not first, and the
14 common law robbery and the drug offense in the State of
15 South Carolina, and I believe there was a conspiracy also in
16 Virginia, is that right?

17 **MR. RICHARDSON:** Yes sir, Your Honor.

18 **THE COURT:** A conspiracy in Virginia.

19 So the Solicitor would be able to ask you if you had
20 been convicted of those in the past and if you stated yes,
21 then that would be the end of it.

22 Now, if you decide to testify, it's your decision.
23 You've got to make that decision voluntarily, knowing your
24 rights and knowing and understanding the situation, the
25 protection given to you by the Fifth Amendment of the

JURY OUT/COURT TO DEFENDANT

1 Constitution and any consequences of you deciding to
2 testify.

3 If you decided not to testify, I'm going to instruct
4 the jury that by law they cannot give that fact any
5 consideration whatsoever. They can't use it in their
6 discussions. They can't talk about it in the jury room.
7 It's not part of this case, and I'll make that clear to
8 them.

9 Now, it being your decision in this matter, before I
10 ask you about it, do you want to ask your attorney any
11 questions?

12 **MR. HILL:** No sir, Your Honor.

13 **THE COURT:** All right. Do you understand what we have
14 talked about?

15 **MR. HILL:** It's understood, Your Honor.

16 **THE COURT:** All right, sir. Do you wish to testify in
17 this case?

18 **MR. HILL:** No sir, Your Honor.

19 **THE COURT:** All right. Thank you very much.

20 All right, y'all can have a seat.

21 All right, Mr. Hazzard, since your client has made a
22 decision not to testify, you are indicating to me that the
23 Defense intends to rest at this time, is that correct?

24 **MR. HAZZARD:** Yes sir.

25 **THE COURT:** All right. Certainly we'll do that in

JURY OUT/MOTIONS

1 front of the jury, but do you want to renew your motions at
2 this point in time so I don't have to send the jury back out
3 again?

4 **MR. HAZZARD:** Yes sir. At this time, Your Honor, the
5 Defense would renew the motion for a directed verdict in
6 this case or a verdict of not guilty. We would also renew
7 all motions previously made, both during the course of this
8 trial and in previous hearings on this matter, Your Honor.

9 **THE COURT:** All right. Without reiterating the law
10 that I stated about the directed verdict, the Court will
11 refer back to that and I will continue to state that I find
12 that there is more than sufficient evidence, if that
13 evidence is so believed by the jury, to find the Defendant
14 guilty of the crime scene charged beyond a reasonable doubt
15 and, therefore, would respectfully decline to grant your
16 motion for a directed verdict.

17 As to the other matters that you have raised, such as
18 at the Schmerber hearing and the other matters about the
19 pre-trial publicity, the Court would reaffirm and reiterate
20 all those rulings at this point in time and would
21 respectfully decline to re-address those or change the
22 Court's prior rulings in those matters.

23 All right, anything else, Mr. Hazzard?

24 **MR. HAZZARD:** Nothing further on behalf of the Defense
25 at this time.

JURY OUT/REVIEW OF JURY CHARGE

1 **THE COURT:** Okay.

2 All right, gentlemen, before we get started, the --
3 obviously in this case the Defense has not introduced any
4 evidence in this case, so the Defense would have the last
5 argument in this matter. Do you agree with that,
6 Solicitor?

7 **MR. HEMBREE:** Yes, Your Honor.

8 **THE COURT:** All right, very good. So when we would
9 call the jury back in, obviously the State would give its
10 full and complete argument and then Mr. Hazzard would have
11 his argument for the jury.

12 In this particular matter, let me just go over briefly
13 regarding the charge and let me hear from you as to any
14 other matters that you might suggest. We're going to talk
15 about things we normally talk about with any jury,
16 credibility, believability, the role of an expert witness or
17 witness qualified to give their opinion.

18 Again, we'll talk about, as I indicated to Mr. Hill,
19 the instructions to the jury when a defendant does not
20 testify, that that's not part of the case and they can't
21 consider that in any way, the presumption of innocence, the
22 definition of reasonable doubt, the kind of doubt that would
23 cause a reasonable person to hesitate to act, obviously the
24 law of murder.

25 The Court would include in that a statement that in

JURY OUT/REVIEW OF JURY CHARGE

1 this State motive is not an element of the offense of murder
2 and the State is not required to prove motive, the law of
3 first degree burglary.

4 What else would the State request?

5 **MR. HEMBREE:** Your Honor, I have a -- and it's -- you
6 know, having to anticipate what Mr. Hazzard's argument is
7 going to be, he had inferred throughout the trial and he
8 argued in his opening that someone else is involved. He is
9 implying that someone else is involved in this case.

10 My -- I guess my concern is if he is going to argue
11 that, and certainly he's -- it would be appropriate, or it's
12 his choice to do such a thing. If that is the argument that
13 he makes based on the evidence in this case, then we would
14 seek a charge of the hand of one is the hand of all, as well
15 as a charge on felony murder.

16 **THE COURT:** All right.

17 What's your position, Mr. Hazzard?

18 **MR. HAZZARD:** Well, I don't know so much I argued that
19 someone else was involved. The argument basically was
20 somebody else did it, which may be a fine line, but they are
21 two separate things. Nothing in my line of questioning that
22 I recall, or in my opening statement, gave the indication
23 that Bruce was acting in concert with anyone else, so I
24 would not think that there would be the need for a hand of
25 one is the hand of all or a criminal conspiracy charge.

JURY OUT/REVIEW OF JURY CHARGE

1 **THE COURT:** All right. At this point in time I'm not
2 inclined to charge hand of one. Obviously I'll listen
3 closely to the arguments of counsel in this matter and if I
4 find there to be some question, then we'll probably take a
5 short break and discuss it before I would charge the jury so
6 that y'all would have an opportunity to comment on it, but
7 at the present time, my intention is not to charge the jury
8 about the hand of one, hand of all at this time.

9 **MR. HEMBREE:** And, Your Honor, I understood -- your
10 ruling is understood. I just -- I guess I still am
11 struggling -- I may be looking to the Court for some
12 guidance on how to argue hand of one is hand of all, whether
13 I should argue it at all because I am having -- you see the
14 predicament that the State is in. I'm having to wait to see
15 what Mr. Hazzard argues. I'm not going to have another
16 opportunity to tell this jury what hand of one, hand of all
17 means or what felony murder means.

18 I can couch my argument in a way that this may be the
19 Defense offer. It may not be. If it is, this law would
20 apply. If it is not, then this law wouldn't apply.

21 **THE COURT:** I might -- again, it's not my intention at
22 this point in time to charge that. At the conclusion of
23 both your arguments if I find that it may be that I feel
24 it's necessary to charge that, what I might do at that point
25 in time is give both of you an opportunity to address that

JURY OUT/REVIEW OF JURY CHARGE

1 particular issue only to the jury, not to go back on any
2 other arguments, but I'm telling you now I'm not intending
3 to charge it.

4 If I change my mind, what I may do then is give both of
5 you an opportunity to address that particular aspect of the
6 law with the jury before I would charge them, and again, it
7 would go in the order of the State and the Defense at that
8 point in time, all right?

9 Is that agreeable, Solicitor?

10 **MR. HEMBREE:** That's agreeable with the State, Your
11 Honor.

12 **THE COURT:** Mr. Hazzard?

13 **MR. HAZZARD:** That is agreeable to me, Your Honor, but
14 I do want an understanding that the Court is going to listen
15 to the arguments and then see whether it's appropriate to
16 charge that. I am just hopeful that the Prosecutor will not
17 make a charge in such a way that it becomes necessary to
18 address it.

19 **THE COURT:** Well, I -- the way it's coming up, I don't
20 believe the Solicitor at this point in time is going to
21 bring it up, but again, I don't know. We'll -- we'll just
22 see. We'll see what y'all argue to the jury and then we'll
23 go from there, but based upon how the trial has proceeded so
24 far, it's not my intention at this point in time to tell the
25 jury anything about the hand of one, the hand of all. It's

JURY OUT/REVIEW OF JURY CHARGE

1 not to instruct them about that at all, so with y'all
2 understanding that, I'm assuming it's not going to come up
3 in your closing arguments.

4 I'm obviously not going to tell you how to conduct your
5 closing arguments. That's up to y'all subject to any
6 objections that might come up during the closing argument,
7 but we'll -- we'll leave it at that. I'm not charging it
8 right now. We'll see what y'all do and then we'll go from
9 there, okay?

10 **MR. HAZZARD:** Yes sir.

11 **THE COURT:** All right.

12 **MR. HAZZARD:** So are we going to take up the issue of
13 the appropriate charges to submit to the jury after the
14 closing arguments or do you wish to do that now, because the
15 Defense would ask for a charge of voluntary manslaughter.
16 There was evidence ---

17 **THE COURT:** Okay. I hadn't gotten to that. I had
18 talked to the Solicitor, but I -- that's fine. Stand up. I
19 was going to then turn to you, Mr. Hazzard, and say is there
20 anything you would like to suggest to the Court.

21 **MR. HAZZARD:** I apologize, Your Honor. A charge of
22 voluntary manslaughter is a lesser included to murder. It
23 is our position that based on the testimony of the State's
24 witnesses, there is indication of a struggle in the bathroom
25 between Mr. Parker and his assailant, and we would submit

JURY OUT/REVIEW OF JURY CHARGE

1 that struggle, that close-hand combat, entitles the
2 Defendant to at very least a lesser included of voluntary
3 manslaughter.

4 There has not been any evidence that specifically
5 indicates that this was some form of execution-style slaying
6 or anything of that nature. The jury may very well find
7 that, you know, looking at it in a certain way, that a
8 burglary was in place and/or taking place and then the
9 burglar or burglars was surprised by Mr. -- by Mr. Parker
10 and as a result a struggle occurred in which Mr. Parker's
11 death occurred and then subsequently Ms. Parker's death, so
12 we would submit that a charge of -- a charge of voluntary
13 manslaughter would be appropriate, Judge.

14 **THE COURT:** All right.

15 Solicitor, be glad to hear from you, sir.

16 **MR. HEMBREE:** Your Honor, there's no evidence
17 whatsoever that -- that there was a struggle in the
18 bathroom. There was a gunshot. The closest we get is 12 to
19 18 inches according to -- according to Dr. Nichols, and
20 that's certainly -- there's no hand-to-hand combat going on
21 there, but there -- furthermore, there's no -- I fail to see
22 any sufficient legal provocation while in the commission of
23 a burglary.

24 If you take Mr. Hazzard's argument as he -- as he
25 placed it before the Court a moment ago that his client was

JURY OUT/REVIEW OF JURY CHARGE

1 in the commission of a burglary and then something went bad,
2 I fail to see any sufficient legal provocation when you're
3 in someone else's home in the course of committing a felony
4 that you're now legally provoked to use deadly force. I
5 believe that element is missing.

6 **THE COURT:** Well, let's -- let's just -- just a
7 second. Let's just look at the very first part of voluntary
8 manslaughter.

9 To prove voluntary manslaughter, the State must prove
10 beyond a reasonable doubt that the Defendant took the life
11 of another in the sudden heat of passion based on sufficient
12 legal provocation. Both heat of passion and sufficient
13 legal provocation must be present at the time of the killing
14 to constitute voluntary manslaughter. Sudden heat of
15 passion may for a time affect a person's self-control,
16 temporarily disturb a person's reason.

17 The sudden heat of passion must be the type that would
18 make an ordinary person unable to coolly reflect on their
19 actions and would produce an uncontrollable impulse to do
20 violence. Sufficient legal provocation must be the type
21 that would make a person of ordinary reason and caution
22 become enraged and to lose control temporarily. The
23 provocation needed for voluntary manslaughter must come from
24 some act of or related to the victim.

25 With that understanding of -- or at least that's the

JURY OUT/REVIEW OF JURY CHARGE

1 Court's understanding of what voluntary manslaughter is,
2 what facts or evidence would support that in the record, Mr.
3 Hazzard?

4 **MR. HAZZARD:** Your Honor, the one thing I go back to,
5 the struggle, because based upon how it is perceived, it may
6 be perceived as a situation where someone is doing a
7 breaking and entering, doing a burglary, with absolutely no
8 intention of ever coming into contact with the homeowners
9 whatsoever. They are then surprised by the homeowners and a
10 struggle ensues.

11 The Prosecutor informs the Court that there has been no
12 evidence of a struggle, but their witness testified that, in
13 fact, the shower door was knocked back into the shower and
14 indicated that was part of a struggle that caused that, and
15 that's what caused me to actually bring it before the Court
16 for the Court's consideration, Your Honor.

17 **THE COURT:** All right. Thank you, Mr. Hazzard. I
18 appreciate that. I don't find that there are any facts
19 present in the record that would support the Court charging
20 nor submitting to the jury a lesser included offense of
21 voluntary manslaughter. To do so, in the Court's mind,
22 would cause the jury to engage in absolute speculation and
23 conjecture rather than basing any decision on facts and
24 evidence in the record, and, therefore, I respectfully
25 decline to grant your request at this time.

JURY IN/THE DEFENSE RESTS

1 Any further requests?

2 MR. HAZZARD: Not from the Defense at this time, Your
3 Honor.

4 THE COURT: All right, very good.

5 Gentlemen, would you like about five minutes or so just
6 to collect everything and if you've got -- want to make use
7 of some of the exhibits or something, just to make sure you
8 are organized, and then we'll get started, okay?

9 MR. HEMBREE: Thank you, Your Honor.

10 MR. HAZZARD: Thank you, sir.

11 THE COURT: Thank you very much.

12 (THE FOLLOWING TAKES PLACE AFTER A BREAK AND OUTSIDE
13 THE PRESENCE OF THE JURY.)

14 THE COURT: All right, Solicitor, is the State ready
15 to proceed?

16 MR. HEMBREE: The State is ready, Your Honor.

17 THE COURT: And Mr. Hazzard?

18 MR. HEMBREE: Yes sir, the Defense is ready.

19 THE COURT: Very good, sir.

20 All right, ask the jury to come in, please.

21 (THE FOLLOWING TAKES PLACE WITHIN THE PRESENCE OF THE
22 JURY.)

23 THE COURT: All right, Mr. Hazzard, what's the
24 position of the Defense at this point in time?

25 MR. HAZZARD: Your Honor, at this time the Defense

COURT TO JURY

1 rests.

2 **THE COURT:** All right, ladies and gentlemen, both the
3 State and the Defense have rested in this case. Obviously
4 that does not end the matter. That is the conclusion of the
5 evidentiary portion of this trial. You have now heard all
6 the evidence that is going to be presented in this
7 particular case.

8 What we will have now are the closing arguments of the
9 attorneys. I will remind you, as I told you at the
10 beginning, the closing arguments are not evidence. They
11 cannot be considered by you as evidence in this case, but
12 they are important. They are each side's summation to you
13 of what they believe the evidence has shown to you during
14 the course of the trial, remembering, of course, that you
15 collectively are the judges of the facts of this particular
16 case.

17 When we get done with the closing arguments, depending
18 upon their length, I might take a very short break at that
19 point in time, give you a very short break, and then we will
20 give you -- and I will charge you the law that you're going
21 to use and apply to the facts that you find to be true in
22 this particular matter, and then I will submit the case to
23 you for your deliberation and your unanimous decision in
24 this particular matter, so if you would now, give your
25 attention to both counsel as they give you the closing

STATE'S SUMMATION BY HEMBREE

1 arguments.

2 Solicitor.

3 **MR. HEMBREE:** Thank you, Your Honor. May it please
4 the Court.

5 **THE COURT:** Yes sir.

6 **MR. HEMBREE:** Mr. Hazzard.

7 **MR. HAZZARD:** Yes sir.

8 **MR. HEMBREE:** Madam Forelady, ladies and gentlemen,
9 American history tells us that our second American
10 president, John Adams, was not only a great president, but
11 he was a very gifted lawyer. At his time when he was
12 practicing law in Boston, Massachusetts, he was one of the
13 most talented, most respected, most well thought of lawyers
14 in the then commons, and he had a phrase that he used in
15 nearly every case. It was -- it was -- it became sort of
16 his -- his motto, kind of his -- his bumper sticker, if you
17 will, and it was this, that the truth is a very stubborn
18 thing.

19 Ladies and gentlemen, it is a good thing that the truth
20 is a very stubborn thing, because sometimes truth takes
21 time. In this case, the truth took four years, took four
22 years, to break out of its shell, to become apparent, but
23 because the truth is a very stubborn thing, you have an
24 opportunity to do justice today.

25 There are many parts of this case where the truth is

STATE'S SUMMATION BY HEMBREE

1 undisputed. There are pieces of this case which I would --
2 I would venture to guess that any defense counsel would
3 agree with me about, the concerns of the indictments, and as
4 Judge John discussed with you at the beginning of the case,
5 the indictments in this case are the charging documents.
6 They are the crimes that have been alleged against the
7 Defendant. The purpose is to give that Defendant an
8 understanding, notice, of the charge they must face, and
9 they include elements of the crime.

10 As we look at those indictments and we consider what we
11 have -- what you have seen in this case, what you have
12 heard, the testimony you have heard, the evidence that's
13 been presented to you, there is no doubt that on April 12th,
14 on or about April 12th, 2005, Charles Edward Parker, Sr. was
15 murdered. He was killed by another with malice
16 aforethought. Of that there is no doubt. It wasn't a
17 suicide. It wasn't an accident. It was a murder. He was
18 killed at the hand of another.

19 Malice aforethought, what does that mean? Malice means
20 with evil intentions. It wasn't an accident. It wasn't a
21 mistake. There was an evil heart involved in this case that
22 took the life -- the lives of Charles and Diane Parker.

23 Aforethought. Many times folks think that requires a
24 significant amount of planning, premeditation. That's not
25 the case. In South Carolina law, if you form that intent,

STATE'S SUMMATION BY HEMBREE

1 that desire to kill a split second before you carry out the
2 act, that is sufficient aforethought, so it doesn't require
3 a lot of planning. It doesn't require a lot of
4 premeditation, so Charles Parker was killed with malice
5 aforethought.

6 Diane Parker, likewise. Not an accident, not a
7 mistake, not suicide. Someone entered their home and took
8 their life, not self-defense, no other weapons involved, no
9 other -- no, no -- nothing other than perhaps defensive
10 wounds, no offensive wounds, no evidence of any offensive
11 injuries on either one of the victims. There's no doubt,
12 there's no question Diane Parker was murdered.

13 Burglary in the first degree. There's no doubt that on
14 or about on April the 12th the dwelling of Charles and Diane
15 Parker was entered, that the person who entered intended to
16 commit a crime therein, that when they effected it, that
17 they were not -- they did not have consent to enter, and
18 once they got inside, they were armed with a deadly weapon,
19 or they caused physical injury to a person, or they used or
20 threatened with a dangerous instrumentality, or they
21 displayed what appeared to be a pistol, or they entered
22 during the nighttime hours.

23 Legally, you only need to find the existence of one of
24 those additional elements, entered the dwelling without
25 consent with the intent to commit a crime and any one of

STATE'S SUMMATION BY HEMBREE

1 those additional elements. There's no question that there
2 was a burglary committed. There were two murders committed.
3 Of that we can all agree.

4 Now, what do we know from the physical evidence and the
5 crime scene in this case? We know from State's 10 that
6 there was forced entry used to get into the home. The
7 window was broken. I will also note that there was no
8 deadbolt lock here. This is a very simple door with a
9 little pane of glass right here and just a simple door knob
10 here, a simple lock, no deadbolt lock.

11 We know from the crime scene that a shot was fired that
12 exited this window, went through the window, both panes of
13 glass, and went out, through, and on. We know that
14 happened.

15 We know that a bullet ricocheted off of the door jamb
16 to the bathroom. We know that about this case from the
17 photographs in this case. We know from this photograph a
18 great deal of information. We know that Mr. Parker appeared
19 to be dressed for bed. He was wearing only his boxer
20 shorts.

21 We know that Mr. Parker was injured before to -- in the
22 upper part of his body, shot in the face, as Dr. Nichols
23 testified, before he entered the bathroom. The blood-
24 letting of going into the doorway, as well as in the
25 bathroom, was coming from a high direction.

STATE'S SUMMATION BY HEMBREE

1 We know that there were two bullets recovered in this
2 bathroom. We know that no bullets were recovered from the
3 body of Mr. Parker. All three shots that were fired into
4 him passed through him.

5 We know from this photograph that Ms. Parker was beaten
6 before she was killed. We know that she was just inside her
7 bedroom door. She was out of her bed when she was killed.
8 We know from this photograph that Ms. Parker got out of bed,
9 a bullet was fired into the -- into the box spring here. We
10 know that she at some point was listening to some music. We
11 know that this area was disturbed. This area was disturbed,
12 what appeared to be a robbery.

13 We know from these two photographs that Diane Parker
14 was on the floor when she was shot. She was laying on her
15 back on the floor. We know that the bullet went through
16 her. All of the shots that were fired at Ms. Parker were
17 fatal, that the bullet deflected off of the floor and ended
18 up causing an injury to the back of her head, killed on the
19 floor.

20 We know that there was a robbery. There was -- there
21 was papers gone through. There was what looked to be like a
22 little box that you keep your valuables in, in your bedroom.
23 We know there was a robbery. Somebody went through that
24 box. Somebody rifled through it. They pulled the top of it
25 out. They threw it on the floor down here, and they went

STATE'S SUMMATION BY HEMBREE

1 through the rest of it here.

2 We know from State's 45 that Mr. Parker's wallet was
3 gone through. We know that Ms. Parker's purse was gone
4 through. We know that there was no money recovered, not a
5 dollar, not a dollar nowhere on the money. Whatever money
6 was there was gone.

7 We know that the Defendant, or we know that someone in
8 that house, was bleeding other than the victims, and they
9 left a blood -- a trail of blood through the master bedroom
10 and into the hallway, here, here. We know that these blood
11 -- this blood was recovered very near the areas where the
12 robbery took place. We know that.

13 We know that blood was in the same condition, was in
14 the same level of dryness, the same condition as the
15 victims' blood. As Investigator Caulder told you, that
16 indicates that this blood-letting took place at the same
17 time as the victims' blood-letting.

18 The condition of the blood of the victims and of the
19 unknown bleeder, unknown at the time, was the same. We know
20 that person, that unknown bleeder at the time, also bled
21 down the hall. Item 13.

22 I submit to you there are conclusions that can be drawn
23 from this crime scene, from these photos, and from the --
24 that give us instruction about the sequence of events.

25 Ladies and gentlemen, this is -- this is a positive because

STATE'S SUMMATION BY HEMBREE

1 there are conclusions that can be drawn, but we are basing
2 that based on the physical evidence, based on what we are
3 seeing, and we weren't there, but there -- they are things
4 that are consistent.

5 The window is broken here and entry is made. A gun is
6 fired down this hallway and a bullet goes out this window.
7 We know that Mr. Parker here was struck in the face with a
8 shot before he entered the bathroom. Certainly it is a
9 reasonable conclusion that several shots were fired at Mr.
10 Parker. Certainly one missing or passing through him is
11 going out the window, one hitting him in the face, and he
12 takes refuge around here by the bathroom.

13 We know that there was a shot to his abdomen, a shot to
14 his face that traveled in this direction. We know that he
15 -- but in spite of that shot to the face, he was able to
16 hold himself up on the bathroom sink for a period of time,
17 no doubt trying to gain his composure, trying to understand
18 what's happened.

19 We know that there's a shot that goes into the bed, and
20 we know there's a shot that goes into the door here. It
21 glances off this door. I submit to you that's when it was
22 on. Mr. Parker took off around the corner. The killer came
23 in right behind him. He's shooting across, hits the bed,
24 hits Mr. -- Mr. Parker is in the bathroom.

25 At that point we know -- we know that Ms. Parker threw

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1 -- threw the covers off and she gets out of the bed. We
2 know that she was then struck with a hard object with a
3 sufficient amount of force to her right clavicle to break
4 her collarbone. She was also struck in the face, in the
5 eye.

6 It's reasonable to assume that put her on the ground,
7 and she was shot there. She was shot through the arm, up in
8 a defensive position. That bullet passed through, went into
9 her body. Two bullets were recovered from her body.

10 Thereafter, we know there was robbery, robbery. We
11 know that the shot, what I would call the final shot, to Ms.
12 Parker, to Charlie Parker, was a close shot, twelve to
13 eighteen inches, was what the doctor said, and it was side
14 to side. It was in his right side, and we also know that
15 his feet were outside of the bathroom.

16 Mr. Parker went in the bathroom. He tried to get his
17 composure. He tried to figure out what was going on. He
18 was holding himself up. That's when his wife gets up, and
19 that's when the assailant went after his wife and pistol-
20 whipped her, put her on the ground.

21 At that point Charlie Parker had to do something, and
22 he tried to come out of the bathroom. He didn't get very
23 far, and that killer turned right around, right across the
24 hall from him, and shot him a foot away, right in the right
25 side through the muscle into the chest, and that was the

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1 final shot that killed Charlie Parker. He couldn't defend
2 his wife.

3 The terror that family suffered in those last moments,
4 and let me say this, there's no doubt, this didn't take a
5 lot of time. This assault didn't take minutes, maybe a
6 minute. It was a very short battle, but there's one person
7 brought a gun to the fight, but the thoughts that went
8 through the Parkers' head.

9 We know not only that there was somebody bleeding in
10 that house, we know who it was, and that's where the truth
11 hatched. There's where -- that's where the truth is hard
12 to hide. It took time. It took four years, 2009, but the
13 DNA database constantly being checked, constantly being
14 checked.

15 They put these unknown standards in, four standards,
16 four, or we got four standards. They put one in. It's
17 being checked, it's being checked, it's being checked.
18 2009, get a hit. It could be this guy, Bruce Hill. It was
19 this guy, Bruce Hill.

20 You heard from Ms. Urka yesterday from S.L.E.D. There's
21 no question, no doubt, that it was Bruce Hill's blood that
22 was in that house, one in three point three quadrillion, and
23 these numbers are, you know, a million times more than the
24 people on the planet. There is no question, there is no
25 doubt, Bruce Hill was in that house. Bruce Hill was in that

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1 house at the time that the Parkers were killed, and
2 burglarized, and robbed. There is no doubt.

3 Law enforcement. Robbie Caulder described to you how
4 they take these samples. That's important. They have to be
5 careful about it. This is a big deal. This is important
6 evidence, and so they are very, very careful about the way
7 they do it, and he filled it out.

8 He fills out the box for the master bedroom near a
9 closet. He gives it the number seven, and dates it. He
10 takes the swab, he seals it in the little ampule that you
11 saw him -- saw him demonstrate to you, put it in the box.
12 He actually has another officer check it when he -- when he
13 bags it up at the scene.

14 The other officer checks it to a quality control step
15 to make sure everything is good. He tapes it up, takes it
16 back to evidence, all four of them the same way, handled
17 perfectly. All the numbers correspond to the points on the
18 diagram to the photographs you've seen of the blood that was
19 collected from this scene.

20 You know, it's interesting that the name, Bruce Hill
21 -- and this isn't something -- and we're not picking on
22 somebody. The blood is recovered. The blood is tested.
23 The blood is put in the database. We don't know about Bruce
24 Hill. We just wait.

25 It's interesting that here we are in 2009 and we get

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1 that break. You know, he wasn't the focus of the
2 investigation at the time. It wasn't like we were looking
3 at this guy and this guy only, and this is it. We know --
4 we know -- we know we had a guy, but we don't know who he
5 is. That's why he kept running every few years, every few
6 months, running, running, running, see what you get, and lo
7 and behold, the truth is a stubborn thing.

8 We also know finally that Bruce Hill, he may have never
9 been to the Parkers' home before April 12, 2005, but he had
10 a friend who not only had been there before, but had been
11 employed by the Parkers, had been, as you heard George
12 Carrick explain, had been a -- and they had taken him under
13 his wing. They had tried to help this guy out. They had
14 -- he -- he ate at their table on a regular basis, Khalil
15 Moore. This guy was very familiar with the Parkers. He was
16 intimately familiar with the Parkers.

17 He knows. He worked in their business. The small
18 businessman, typically some keep -- some of them keep a lot
19 of cash around to run their businesses. Khalil Moore has
20 been part of that. He's been part of that family. He's the
21 inside man. He knows about it, so we know this.

22 Mr. Hazzard's role here is to serve as a ---

23 **MR. HAZZARD:** Objection as to what my role is, Your
24 Honor. That's for the Court to tell the jury, not for the
25 Prosecutor to oscillate on.

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1 **THE COURT:** Why don't you rephrase your statement,
2 Solicitor, please.

3 **MR. HEMBREE:** Defense counsels' role in any case is to
4 zealously represent their clients. Mr. Hazzard talked about
5 C.S.I., and he said C.S.I. makes me nervous. C.S.I. -- I
6 don't like C.S.I. because C.S.I., you know, it's a one hour
7 show, and they kind of throw it all up there, and it's all
8 tied up in a nice, neat, little package, and we like that as
9 viewers at home. You know, we like to have our stories
10 resolved that we're -- that we're watching or reading, and,
11 you know, he said that's just not -- you know, that's really
12 not real life and it makes me concerned, and I share that
13 with Mr. Hazzard.

14 And on the other hand, though, because he's conflicted,
15 he says on the one side, well, their life isn't so easy.
16 It's not so nice and neat. It's not so -- you can't -- you
17 know, you can't explain it quite so -- so simply as they do
18 on television, but on the other hand, he stands here and he
19 says, well, the truth is always consistent in every respect.
20 Every link of the chain must be consistent, or else, well,
21 you don't have the truth.

22 That's not so. The truth is the truth, is the truth.
23 The facts are the facts. The evidence is the evidence. The
24 DNA, the blood, is the blood. Those pieces are truth. Now,
25 in any event that occurs, does it all make sense? The truth

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1 is the truth, but people who have done things, people make
2 decisions and take actions that sometimes don't make any
3 sense.

4 That's hard to explain, particularly people engaged in
5 a murder and a robbery, in the heat of the moment, as
6 they're engaged in this extremely emotional experience,
7 they're not all the time using all their logic. Sometimes
8 they panic. Sometimes they freak out, and they run away.
9 We don't know.

10 I know what the truth is, but I also know that no case
11 is ever fully and completely consistent in every way. It's
12 never happened because we have people involved and people do
13 weird things, things that can't be explained. They don't
14 make sense.

15 I'll tell you some things we don't know. We don't know
16 why this Defendant, Bruce Hill -- we cannot say and we do
17 not know why he was bleeding and what caused him to start
18 bleeding. We know some places where he was bleeding. We
19 know that it was him, and we know that it was ninety degree
20 blood droplets, and we know that he was not moving at a fast
21 pace when he dropped that blood, when it dripped to the
22 floor. We do know those things, but -- but we don't know
23 how that happened.

24 We don't know if he cut it on the glass coming in the
25 door. We don't know if he, you know, if he injured himself

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1 with -- when he hit Ms. -- Ms. Parker if in some -- in
2 beating her with the gun, that he somehow injured his hand
3 or some other part of his body that caused an injury. We
4 don't know that he didn't have some prior injury, or bloody
5 nose, or, you know, cut himself -- the gun somehow cut him
6 when it went off and the slide cut his hand in some way.

7 We really don't know the answer to those questions.
8 We're not going to have them. We're not going to be able to
9 answer those questions. There's no way we're going to ever
10 know that. We didn't catch him that day. Had we caught him
11 that day, we might have some evidence about injuries to his
12 hand or other parts of his body that might explain this, but
13 unfortunately it's 2009. It's four years later when we were
14 able to -- to identify him.

15 So the fact is he was bleeding. We can't explain why
16 the blood trail stopped. There's a blood trail that starts
17 in the bedroom or at least is most significant in the
18 bedroom, drops there, a drop down this hall, no more drops,
19 no drops going out of the kitchen. It appears that there's
20 no other forced entry, no other way to make exit of the --
21 from the house. Therefore, we can assume that they used the
22 same door to go out of as -- or he used the same door to go
23 out of as he went into.

24 Now, but there's no blood. I don't know. I can't
25 explain it, don't know why. I don't think -- I don't know

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1 that he miraculously stopped bleeding, but I do know this.
2 I know that as he walks out of the master bedroom and past
3 the bathroom, he will pass a shelf with a whole stack of
4 washcloths, and I also note -- this is State's 29, that on
5 those washcloths, you see some blood drops that appear to be
6 ninety degree blood drops.

7 I don't know if he picked up a washcloth or not and
8 covered it up, figured out that he was bleeding and said,
9 hey, you know, I've got to take care of this. I don't have
10 any idea, but I know he let blood in the house.

11 Why did -- you know, I can't answer the question, not
12 going to be able to answer the question. Why didn't they
13 rob the living room? Why didn't they rob the kitchen? Why
14 didn't he rob -- you know, why didn't he rob the den, or why
15 didn't he rob the unoccupied bedrooms? Don't know the
16 answer to that other than common sense tells you that people
17 keep their valuables in the rooms that they stay in.

18 People keep their valuables typically in their
19 bedrooms, and we also have the -- have the evidence that
20 Bruce Hill was at least acquainted with a very close family
21 friend, Khalil Moore. I don't know if that's the answer or
22 not, but folks, I'll tell you the truth, it really doesn't
23 matter. It just doesn't matter.

24 It's like the back door. Mr. Hazzard made a lot -- a
25 big deal about the back door, why would you go in a back

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1 door if you were a burglar? Well, maybe because you don't
2 want to go in the front door that's out on Highway 90 in
3 front of God and everybody, you know. It's a real mystery
4 about that one, you know, so -- but it doesn't really matter
5 when it gets right down to it because what matters is that
6 Bruce Hill left the best possible evidence he could at that
7 crime scene.

8 Folks, it's truly every homeowner's worst nightmare.
9 It is every homeowner's worst nightmare to be in your bed,
10 to hear something that doesn't sound quite right, something
11 is not right, and you know that you really -- it's probably
12 nothing. You know it's probably nothing, but you get up
13 anyway, and you -- you -- your mind is -- you're asleep and
14 your mind is kind of like, well, I'm just going to check it
15 out. I'm sure it's nothing. It's no big -- but I'm going
16 to check it.

17 Charlie Parker came around that corner and he faced off
18 with that man right there, feet away from him, just coming
19 in the door, armed with a gun, and fired. He's hit,
20 confused. Fear is really the heart -- I can't describe it.
21 He retreats. The assailant comes down the hall, around the
22 corner, quickly. His wife gets up. She is pistol-whipped.

23 He tries to defend her, just gets his feet that far out
24 of the bathroom. The fatal blow is struck to Charlie
25 Parker. Mr. Parker shot, no defense, he can't defend

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DEFENSE'S SUMMATION BY HAZZARD

1 himself, nothing she can do, murdered in cold blood, and
2 robbed. It's ironic that it is the blood of the Defendant
3 that brings us here today.

4 You were asked at the beginning of this case to, as Mr.
5 Hazzard noted, to well and truly try the case. You want to
6 render a verdict that is true and a verdict that is just.
7 It is Bruce Hill's blood that cries out for truth, and it is
8 the bodies of Charlie and Diane Parker that cry out for
9 justice, and I will assure you, ladies and gentlemen, that
10 justice is the very last thing that Bruce Hill wants from
11 this jury.

12 **THE COURT:** All right, Mr. Hazzard.

13 **MR. HAZZARD:** Thank you, Your Honor.

14 Good morning. I told you at the beginning of this
15 trial that there was no connection between Bruce Hill and
16 Mr. and Ms. Parker. I told you that there was nothing of
17 value taken from the home that anyone has ever established
18 to this day. I told you that of all the doors, the door
19 chosen by the intruder was the only door used by family and
20 friends.

21 I told you that papers were rummaged through as if
22 whoever was in there was searching for a certain document,
23 in other words not your random and usual home invasion, and
24 I told you that the evidence and testimony would show that
25 no other part of the house was searched, and I told you that

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1 the evidence and testimony would show that there were guns
2 in the house that belonged to the Parkers. These guns were
3 neither taken, nor were they used, okay?

4 All of those are true. None of those are in dispute.
5 The only thing now we notice is the eleventh hour, the State
6 suddenly comes up with Mr. Khalil Moore, okay, and they're
7 putting Mr. Carrick on the stand the second time he
8 testifies and he says, oh, yeah, I mean, Khalil, I mean, he
9 was at the house all the time, and he ate with the Parkers,
10 and he ate with me, and, you know, he was practically a
11 member of the family.

12 Now, someone you had never heard of in opening
13 statement, someone you had never heard of throughout the
14 course of the trial, someone who Mr. Carrick himself, the
15 second time he testified, told you that he had been placed
16 under oath prior, previously, regarding this situation,
17 never mentioned Khalil Moore.

18 Now, all of a sudden you heard the Prosecutor saying
19 that Khalil Moore was, and I quote, a very close family
20 friend, so you will be placed in the position to give that
21 the attention it deserves and to place the weight on the
22 information it deserves. The fact that eleven days after
23 this crime Bruce Hill happened to be in a car with a guy by
24 the name of Khalil Moore, and now they say, oh, Khalil Moore
25 worked for Mirror-Tec.

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1 Well, it is up to you to determine what is true, what
2 is not, based on the evidence and the testimony, and Judge
3 John will go into you with all that much after I finish
4 talking here, but, I mean, little things strike out to me.
5 It seems like, okay, this happened in 2005. They knew about
6 Bruce Hill, no doubt about it, when he gave a sample in
7 2009, and yet here we are today, two and a half years later.

8
9 Would it give you a little more confidence and comfort
10 in what was said from someone who is now testifying for the
11 third time and mentioning Khalil Moore for the first time,
12 if, for instance, you had a pay stub, some records, employed
13 records of Khalil Moore? Would that give you a little more
14 comfort in that decision as to is there some tie between
15 this man, but, see, that's the problem the State has here
16 because that's what we discussed in the beginning. There is
17 no connection.

18 Now, Judge John will tell you that one of the elements
19 of murder is not motive. You don't have to find a motive,
20 like you always hear in T.V., especially in the old movies
21 that I love so much. However, one thing our life experience
22 tells us and what we've learned over time is there are very,
23 very few random killings, whether it's one spouse is mad at
24 another spouse because they're cheating, or whether it's,
25 you know, a drunken bar fight and somebody says, wait here,

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1 I'm going to go out to the car, or they've got time to cool
2 off, and then they come back with a gun and shoot,
3 whatever.

4 There's virtually a motive for virtually every killing
5 that occurs with the exception of the random spree killings
6 like at Virginia Tech University. Other than that, there's
7 pretty much always a motive, and that's just one of the
8 things you can consider, but, of course, the Judge will tell
9 you that's not a legal requirement.

10 But the Judge also told you don't leave your common
11 sense at home; don't leave your common sense at home. Bring
12 that with you. Take that into the jury room with you, and
13 when you do that, think about, okay, no connection
14 whatsoever, but now the third time around, all of a sudden
15 Khalil Moore, who no one has ever heard of before, is all of
16 a sudden a close family friend.

17 No one else mentioned him, no one else talks about him,
18 no documentation of him, but now he's a close family friend,
19 and you would think six years ago back -- six and a half
20 years ago back in 2005, isn't that really kind of the first
21 person you look at, you know, the quote/unquote, disgruntled
22 former employee, because according to Mr. Carrick, his third
23 time around testifying, Khalil Moore worked at Mirror-Tec,
24 but had stopped, I think he said, three, four, five months
25 prior, you know.

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1 You don't think the police asked him about it, and you
2 don't think the police did their job? I mean, after all,
3 what did Detective Cox tell you when he testified? He said,
4 oh, it wasn't just me working on the case. There was me,
5 there was Neil Livingston, who is now retired, but still
6 available to testify and in the area, and then there were
7 four other detectives out there working on this case, okay,
8 over the last six and a half years.

9 And that's what they come up with for you on the third
10 time of testifying is, oh, Khalil Moore worked for Mirror-
11 Tec. I submit to you that if that were indeed the case, you
12 would have heard it from Mr. Carrick the first time he
13 testified previously. You would have heard it from him when
14 he testified on Monday of this week, but again, that is for
15 your determination and yours alone.

16 But why are those issues important as to what I
17 discussed with you previously about the connection of any of
18 the doors, what existed in the house, the fact nothing was
19 taken? The connection and the importance of it to me is
20 that is the scene that you see consistent with someone who
21 was familiar with the victims? Is it consistent with
22 someone who had a personal axe to grind of some sort, or at
23 least thought they did, with Mr. and Ms. Parker, you know?

24 And it's inconsistent with this man who doesn't know
25 these poor people, doesn't know anything about this area,

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1 doesn't know the Mirror-Tec business, as having been
2 involved.

3 Now, what evidence does Solicitor Hembree rely on? He
4 relies on these blood drops, referred to as a trail of blood
5 that we don't know how it got there. That's fine; that's
6 fine. That is absolutely fine. We've got no problem with
7 that whatsoever, because we told you, and I asked Ms. Urka,
8 I said what you tested, the standard that you tested was
9 tested against another sample of Mr. Hill's blood, correct?
10 She said yes, absolutely right.

11 Now, when Mr. Caulder got on the stand, that was the
12 gentleman who processed the crime scene and took all this
13 stuff up, and that's where we kind of run into a snag here,
14 because what Mr. Caulder told you initially was yes, I went
15 to the crime scene, I obtained all of the samples, I marked
16 everything. I did it all myself, even though there were a
17 couple of other crime scene folks there, and then I went
18 back and I logged it into evidence, and I asked him, I said,
19 okay, did you put it in the car at some point, you know? He
20 said yes, I put it in the car, took it back, put it into
21 evidence.

22 I said, well, yes, sir, but what if I'm looking at this
23 document that says it didn't make it to evidence until seven
24 to nine days later, and what was his statement under oath?
25 He said, well, he went -- actually went through a lot of

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1 different things as far as how the evidence department
2 works, and the investigative side works, and how the
3 investigative folks are kind of like the evidence folks, and
4 they've got free run of the evidence area, and they can come
5 in and go as they please, and take what they need, and drop
6 stuff off, and he goes into all of that.

7 And I just went back to the question of, okay, why does
8 it say it didn't get there until seven to nine days later,
9 and his statement under oath was I consider it to be in
10 evidence when it's with me, okay?

11 And the State did their part. Deputy Solicitor
12 Richardson then put Ms. Rabon up, who is the supervisor of
13 the Evidence area for the Horry County Police Department,
14 and he tried to save the situation. He asked her, well, you
15 know, you've got some paperwork there. When did this stuff
16 get in evidence, and what did Ms. Rabon say, straightforward
17 and upright, April 19th, seven days later.

18 Now, when you put all of this together, the reason that
19 is significant is because you've heard me ask these folks,
20 especially the folks from S.L.E.D., what you test is what
21 you're sent. That's what you're testing, and how S.L.E.D.
22 describes what they test is based on how the submitting
23 agency describes it, simple as that, because when you've got
24 those swabs -- like he said, it looks like a Q-tip, has a
25 plastic end on it that you clamp on, and once you put that

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1 thing on there, they all look alike.

2 They all look alike, and there's no mystery to this,
3 that we believe that some samples from a different case were
4 taken and that they were -- bear with me one second, folks
5 -- and that they were changed out or put in the wrong box,
6 or possibly just thrown into the wrong pile, because after
7 all, what did the folks -- what did Ms. Brummett tell you?

8 Ms. Brummett, from the Horry County Police Department,
9 said yeah, I took some stuff up there to S.L.E.D., and I
10 said, well, where did you get it from? She said, oh, I got
11 it out of the bucket; the bucket. Ms. Rabon referred to it,
12 or may be referring to something else altogether, as a bin.
13 Now, when you consider how S.L.E.D. handles stuff, remember
14 the S.L.E.D. folks who testified. Ms. Betty, up here, name
15 was Butler, who said that when someone brings something to
16 S.L.E.D., it has to be in the proper condition, they hand it
17 to me, I put it in the seal immediately. The person who
18 brings it then has to sign across the seal. I then hand it
19 back to them. They then slide it into a slot into a
20 refrigerated locked container. I didn't hear no buckets at
21 S.L.E.D., okay?

22 But the Horry County Police Department, six people go
23 in, go out, never heard anybody say anything about there
24 being any type of a vault, any type of a controlled
25 atmosphere, any type of having to sign in or out, you know.

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1 You just take stuff and you throw it in the bucket, say
2 here, we need this to go up the road and have it tested, you
3 know. Does that make you more secure that the right sample
4 went where it was supposed to go, you know?

5 Also, when we were talking to the folks from the Horry
6 County Police Department, the evidence folks and the
7 investigator folks, Ms. Rabon, who is the supervisor, you
8 know, tells you that she does not have the authority to
9 supervise the people who are going in and out of the
10 Evidence area if they are investigators.

11 She doesn't have that authority, so she is tasked with
12 supposedly controlling the evidence, documenting the
13 evidence, safekeeping the evidence, but she has no control
14 over the people who have access to this evidence, and I
15 submit to you that's where the breakdown occurs. That's
16 where the problem comes up.

17 Now, the samples are incorrectly catalogued as being
18 specimens from this particular crime scene, and they are
19 sent to S.L.E.D. with dozens of other known samples that
20 were sent, you know, because what did -- I think it was --
21 one of them -- Ms. Urka said -- I asked how many samples did
22 you receive? Ms. Urka said she tested four herself, and
23 then there were the other two forensic guys, the DNA guys,
24 who tested many more.

25 And one woman said, well, I know there's at least

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1 seventy-six, seventy-five other things because I'm holding
2 number seventy-six, so that's a lot of stuff in the bucket
3 that's going up the road to be tested, stuff that's getting
4 tossed in the bucket at the Horry County Police Department.

5 So once it's improperly catalogued and stuck in the
6 bucket, it goes up the road. No match is found, so it's
7 entered in the database. A match is found in 2009 in the
8 database. 2011, Bruce Hill provides them with a sample of
9 his DNA and, of course, it matches his DNA, and that's where
10 we stand today.

11 Now, they make a big deal about this trail of blood of
12 his that's in the house, and what I want you to understand
13 and what I want you to look at on these things, when you
14 have the opportunity to review each and every one of these
15 things that have a slot in them, one thing you are not going
16 to find, you're not going to find any address on it as to
17 where it was collected.

18 You're not going to find a name on it. This is not
19 going to say taken from the Parker residence. It's not
20 going to say taken from Highway 90. It simply says found in
21 a bedroom, found on the floor. Now, I am sure there are a
22 lot of bedrooms and a lot of floors that they take samples
23 from in Horry County.

24 Yet, once you label it that way, something found on the
25 floor, something found in the master bedroom, you toss it in

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1 the bucket, whether it's the right case, whether it's the
2 wrong case. S.L.E.D.'s stuff, how do they do it? Their
3 stuff, what they specifically deal with, was like this. It
4 can't go in the wrong place like that. These things, ah,
5 just toss them in the bucket.

6 But one thing I did find interesting is that the
7 Prosecutor tells you that Bruce Hill was in the house, and
8 Bruce Hill was bleeding all over the place, okay? What did
9 Dr. Nichols tell you? That's the gentleman who did the
10 autopsy. He said for both victims, for Mr. and Ms. Parker,
11 whoever did this to them was in close proximity, close
12 proximity. There's no question about it. You can't, you
13 know, give somebody a black eye and break their collarbone
14 and not be within an arm's length. You can't have the wound
15 that Mr. Parker had with the stippling around it described
16 as, you know, twelve to eighteen inches away and not be an
17 arm's length.

18 But I notice no samples went up to S.L.E.D. claiming
19 that Bruce Hill's blood was found on either of the Parkers,
20 so you can make the mistake about a floor, or a wall, or a
21 hallway when you're labeling stuff, throwing it in a box,
22 and throwing it in a bucket, and the box just says found in
23 the master bedroom, found in the hallway, found in the bath,
24 but now if it says found on the person of, Mr. Parker or Ms.
25 Parker, you know where that came from, but otherwise, you

DEFENSE'S SUMMATION BY HAZZARD

1 know, yeah, yeah, something was found on the floor somewhere
2 in a bedroom or in a hallway, throw it in the bucket, throw
3 it in the bucket. They'll sort it out when it gets up road,
4 I guess.

5 But, again, no samples of this man found anywhere on
6 their person, and I'll tell you, you can look at -- you can
7 look at Bruce as he sits here. Common sense will tell you,
8 this is real hair, folks, and you don't even see all of it.
9 It's fine; you can leave it the way it is, sir, but he
10 obviously has it tied up in the back so that it doesn't hang
11 as long as it actually is, you know. That didn't grow
12 yesterday. That didn't grow ten years ago, probably not
13 even fifteen years ago.

14 He probably hasn't had a haircut literally since his
15 childhood, and if it's me and I'm in my house fighting for
16 my life and somebody with hair like that is within a foot of
17 me, I very well may die, but I guarantee you I'm going to
18 have a handful of hair. I'm going to have a handful of hair
19 fighting for my life.

20 So what did Dr. Nichols tell you, no African-American
21 hair or any that was inconsistent with either of the Parkers
22 found on either of them at the time he did the autopsy.
23 Obviously Mr. Caulder did not find any at the scene, and
24 that's why, as Dr. Nichols said, that's why the crime scene
25 guys go to the autopsy, because there's sometimes hair,

DEFENSE'S SUMMATION BY HAZZARD

1 fibers, whatever, something inconsistent with the human body
2 that the autopsy specialist finds on them and he can turn it
3 over to the crime scene folks right then and there, but
4 nothing like that found here.

5 Now, the Prosecutor has described this as a nightmare,
6 and there is absolutely no doubt that it was. There is
7 nothing more sacred to me, and to any of us, I don't
8 believe, than the safety of our loved ones and the sanctity
9 of our homes, because that's what I fight to go back to
10 every day. That's what I fight to go back to every single
11 day.

12 But another nightmare is the thought that someone can
13 come to you four and a half or five years later and say, Mr.
14 Hazzard, we think you were involved in this double homicide.
15 What, who, where? Yeah, out there on Highway 90. I don't
16 know these people. Well, where were you September 14th of
17 2005, or 2006, you know, five years ago, where were you?
18 Where were you that night, midnight, one o'clock, two
19 o'clock?

20 I submit to you virtually none of us would have an
21 alibi or would be able to say where we were or what we were
22 doing four or five years ago on a certain day, but that's
23 the position that Bruce Hill has been placed in, when they
24 come to him in 2009, four and a half years after this
25 tragedy occurs, and they say, oh, we got science. We got

DEFENSE'S SUMMATION BY HAZZARD

1 technology that says it was you.

2 And he says, wait a minute, now, I didn't do anything.
3 How did -- how can this happen, you know, but see, that's
4 one of the other things I mentioned when this trial first
5 started. Anything, anything, that is touched by the hand of
6 man is subject to being done incorrectly, subject to
7 mistake, subject to error, and that's what you have here
8 with those boxes with just hallway, or bedroom, or whatever,
9 not saying the Parker household, not saying, you know, the
10 Parker crime, not saying Highway 90, or an address or
11 anything like that. That is what happens, and this is the
12 situation that we now find ourselves in.

13 Now, the Judge is going to talk to you about a lot of
14 things, and one of them is the concept of reasonable doubt.
15 He had already mentioned it to you, I believe, if I'm not
16 mistaken, in his opening comments to you, and he's going to
17 cover that, as well as all the other law.

18 Solicitor Hembree did a great job of explaining what
19 murder is, and so the elements of murder, and I won't bore
20 you with that, or the elements of burglary, first degree,
21 but with regard to reasonable doubt, it's gone by many
22 different names over the years, even just in the twenty
23 years I've been practicing law.

24 Now, I think it's known that a doubt that causes a
25 reasonable man to hesitate to act. I mean, if it's known as

DEFENSE'S SUMMATION BY HAZZARD

1 something else now, Judge John will definitely tell you, but
2 what I look at is if it were me, would it cause me to doubt
3 the guilt of this man as he sits here when I know that he
4 has no motive, no motive. Would that cause me to doubt
5 whether he did this. Would it cause me to doubt his
6 involvement in their theory of what occurred when nothing of
7 value was taken.

8 Now, the Prosecutor, he does some nice sleight of hand.
9 He says, yeah, there was no money in the wallet. There was
10 no money in the purse. I understand all that, but I asked
11 Mr. Caulder, the -- the crime scene guy, and I'll put this
12 over here.

13 This is the wallet, and I'm not sure where the purse
14 is, or whether that went in evidence, but I asked were there
15 any foreign fingerprints found on the wallet or found on the
16 purse as it was sitting up under a comforter, and he said
17 no, no foreign fingerprints whatsoever, so the Prosecutor, I
18 believe, wants you to think that it was rifled through and
19 things of value were removed, but there's no indication of
20 that, because that gives you reason to doubt that this man
21 who does not know these people supposedly broke into their
22 house.

23 The fact that the only place in the house searched was
24 the master bedroom, and different people keep things
25 different places, you know, no question about that. A lot

DEFENSE'S SUMMATION BY HAZZARD

1 of people I know, they keep their spare cash in books, put
2 them on the bookshelf.

3 Normally when you have a home invasion case where -- or
4 just a burglary case where someone is looking for value,
5 they tear up the whole house. They tear up the whole house,
6 seat cushions, everything, because they're looking for stuff
7 of value. One of the best places they're always looking is
8 the freezer, you know. People never think, don't put the
9 cash in the freezer.

10 But I submit to you the evidence indicates that who
11 committed this crime knew this house, knew these folks, and
12 knew what they specifically were after, some piece of
13 paperwork, because remember, no jewelry is taken. The
14 jewelry is kind of pushed around and pushed aside, but no
15 jewelry is taken, but paperwork, what paperwork would that
16 man want?

17 Heck, if you go with their theory, well, let me leave
18 that out, but they talk about Khalil Moore and how he
19 supposedly knows these folks, but what did Mr. Carrick tell
20 you? He was pretty sure that even if this Khalil Moore had
21 worked there and had been there as many times as he said, he
22 couldn't even go with that Khalil Moore would know what was
23 in their bedroom and have a reason to be searching for
24 anything in their bedroom, you know.

25 The fact that this evidence collected by Mr. Caulder

DEFENSE'S SUMMATION BY HAZZARD

1 apparently riding around in his car for a week, being
2 intermingled with other stuff, or maybe just intermingling
3 when it's all tossed in the bucket, who knows, does that
4 give you reason to doubt? Does that make you more sure or
5 less sure of his guilt?

6 The fact that there were two rifles in the house, not
7 one, but two apparently, that belonged to the Parkers, and
8 neither of them is touched. No attempt to use either of
9 them by either of the Parkers, you know, that causes me to
10 think it's more apt that when the person walked in, they
11 were recognized, because the initial reaction to someone you
12 know, I would think would be, hey, what are you doing here,
13 not let me grab my gun and shoot you. Does that make you
14 more sure or less sure of his guilt? Is it consistent with
15 what the State tells you, and I submit to you when you look
16 at all of it, you will see that it is not.

17 I talked to you in the very beginning about courage,
18 and the courage that it will take for you to do the oath and
19 complete the oath that you have taken. I swear I hope that
20 you have that courage to look at this evidence, to look at
21 all of it to see how it does not fit up, that they have
22 tried very valiantly to take a square peg and jam it into a
23 round hole, but it just doesn't fit.

24 And, yeah, the simple thing to do would be to say,
25 well, they say his blood was there, so it must have been

DEFENSE'S SUMMATION BY HAZZARD
JURY OUT

1 him. I mean, after all, that's the theory they're working
2 under. In six years, there's nothing else, nothing else.
3 That's what they're working under. They just took it, they
4 threw it in the bucket, said fine, let's charge him and
5 let's go with it.

6 Now, I'm hoping that you don't just take it and throw
7 it in the bucket, too. I hope you have the courage and the
8 fortitude to actually look at all of the evidence to see the
9 inconsistencies there and why are there inconsistencies,
10 because he didn't do it, and yes, the Prosecutor is right, I
11 say it, I will say it until the day I die, yes, the truth is
12 always consistent in every respect, and here you don't have
13 that consistency. Why?

14 Because this man committed no crime on April 12th of 2005.

15 I thank you for your time and your attention.

16 **THE COURT:** All right, Madam Forelady and ladies and
17 gentlemen of the jury, why don't you take your jury to your
18 jury room for a break, all right, and I will call you back
19 out shortly. Thank you very much.

20 Everybody else remain seated.

21 **(THE FOLLOWING TAKES PLACE OUTSIDE THE PRESENCE OF THE**
22 **JURY.)**

23 **THE COURT:** All right. We'll take a short break for
24 about five minutes and then we'll come back in and I'll give
25 the instructions to the jury. Thank you very much.

JURY IN
JURY CHARGE

1 **(THE FOLLOWING TAKES PLACE AFTER A BREAK AND OUTSIDE**
2 **THE PRESENCE OF THE JURY.)**

3 **THE COURT:** Solicitor, are you ready for the jury?

4 **MR. HEMBREE:** Yes, Your Honor.

5 **THE COURT:** All right.

6 And Mr. Hazzard?

7 **MR. HAZZARD:** Yes sir, Judge.

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

9 Ask the jury to come in, please, sir. Thank you.

10 **(THE FOLLOWING TAKES PLACE WITHIN THE PRESENCE OF THE**
11 **JURY.)**

12 **THE COURT:** All right, ladies and gentlemen, we have
13 now come to the stage of the proceedings where I'm going to
14 give you the law that you're going to apply to the facts
15 that you find to be true in this particular case.

16 I told you at the very beginning that one of your jobs
17 and responsibilities and basic job was to be judges of the
18 facts and that I would not indicate to you in any way what I
19 believe the facts of this case are because that wasn't my
20 job, that was your job, and I believe that I have done that.

21
22 Now, in that same vein, if you came into this courtroom
23 with any preconceived ideas of what the law is, what it
24 ought to be, what it should be, what you hope it would be,
25 you will disregard that. You will take the law as I now

JURY CHARGE

1 give it to you and apply it to the facts and evidence you
2 find to be true in this particular matter.

3 Now, I told you at the very beginning one of your jobs
4 and duties was to judge the credibility, that is the
5 believability, of the witnesses that come before you and
6 have testified before you under oath. In doing so, you can
7 believe one witness against several, several against one.
8 You can believe a portion of what a witness says and
9 disregard the remaining portion of it. If you have a good
10 and sound reason for doing so, you could disregard in its
11 entirety the testimony of a particular witness.

12 You look at whether that witness that has testified
13 before you has exhibited any kind of bias, interest,
14 prejudice that they might have in giving you the testimony
15 they gave you. Obviously you would consider their motive.
16 You consider the opportunity for knowledge, how did they
17 come about that information that they gave you from the
18 witness stand.

19 In looking at these witnesses, I told you you are
20 judging the credibility and believability, and it's
21 something you do every single day of your life. You are
22 automatically judging when people tell you something whether
23 or not you believe them, and you are using your good common
24 sense and your good judgment to do so, and that's what we're
25 asking you to do here today.

JURY CHARGE

1 You use your good common sense, use your good judgment,
2 apply it to the facts and evidence presented in this case,
3 find that evidence which convinces you of its truth and
4 weigh that evidence against the State's burden to prove the
5 Defendant guilty of the crimes charged beyond a reasonable
6 doubt.

7 You don't have any friends to reward. You don't have
8 any enemies to punish. Your verdict can't be the result of
9 any kind of passion, prejudice, or sympathy. It has to be
10 an examination of the facts and evidence in this case and
11 finding that evidence which convinces you of its truth.

12 There are two types of evidence, and they were
13 presented in this case, and they are presented in virtually
14 every single case that's tried, and that's called direct and
15 circumstantial evidence. Now, direct evidence is the
16 testimony of a person who claims or asserts to have actual
17 knowledge of a fact, what they saw, what they heard, what
18 occurred in their presence.

19 The other type of evidence is called circumstantial
20 evidence. Now, circumstantial evidence is proof of a chain
21 of facts indicating the existence of a fact. The law
22 doesn't make any distinction between these two. A greater
23 degree of proof of one or the other is not required. Your
24 job is to weigh all the evidence presented and find that
25 evidence which convinces you of its truth.

JURY CHARGE

1 In this case I qualified several witnesses to give
2 their opinion. Sometimes they're called expert witnesses.
3 Now, normally we don't allow witnesses to give their opinion
4 about things. They have to testify to what they actually
5 know, what they saw, what they observed, but sometimes
6 certain witnesses by their experience, their training, their
7 expertise in a particular field are allowed to give their
8 opinion.

9 Now, just because the Court allows certain witnesses to
10 give their opinions to you does not give them any special
11 status. They don't have any greater degree of certainty
12 over other witnesses. You look at all the witnesses the
13 same. You weigh all the evidence the same, and you find
14 again that evidence which convinces you of its truth.

15 In this particular matter the Defendant did not
16 testify. I tell you and I emphasize to you that this is not
17 a factor in your deliberations in this case. It is not part
18 of your case. You may not discuss it. You may not use it
19 in your deliberations.

20 Every defendant has the constitutional right to remain
21 silent no matter what the charge may be against that
22 particular person. If someone asserts that right, it may
23 not be used or held against him in any way. Therefore, you
24 can draw no conclusion whatsoever from the fact the
25 Defendant did not testify. It's just not part of this case.

JURY CHARGE

1 The State, as I told you at the very beginning, has the
2 burden of proof. The State has to bring the evidence to
3 you. It's the State's burden to bring the evidence, produce
4 the evidence, that you evaluate to see whether or not there
5 is sufficient evidence to prove the Defendant guilty of the
6 crime charged beyond a reasonable doubt.

7 I told you at the very beginning when I read to you the
8 indictments, the charging documents that brought the matter
9 to the Court, that the Defendant pled not guilty to those
10 documents and that at that point in time put the burden of
11 proof on the State of South Carolina to prove the Defendant
12 guilty of the crimes charge beyond a reasonable doubt.

13 A person charged with committing a crime, a criminal
14 offense in South Carolina, in these United States, is never
15 required to prove themselves innocent no matter what the
16 seriousness of the charge may be. Every Defendant is
17 presumed innocent of the crime for which the indictment was
18 issued unless and until guilt has been proven to you by
19 evidence satisfying you of that guilt beyond a reasonable
20 doubt.

21 Now, that presumption of innocence didn't end at the
22 beginning of the trial. It hasn't ended now. It does not
23 end until you are convinced that the State has produced to
24 you sufficient evidence which you believe which convinces
25 you of the guilt of the Defendant beyond a reasonable doubt.

JURY CHARGE

1 Now, this presumption of innocence, it's like unto a
2 robe of righteousness. It's placed on the shoulders of the
3 Defendant and stays on the shoulders of the Defendant until
4 and if the State proves to you the guilt of the Defendant of
5 the crime or crimes charged beyond a reasonable doubt.

6 It's not just some legal phrase or legal theory. It's
7 a substantial right to which every defendant, to which every
8 American is entitled, unless you, the jury, are satisfied of
9 the Defendant's guilt beyond a reasonable doubt.

10 So, what's reasonable doubt? Reasonable doubt is the
11 kind of doubt that would cause an ordinary, reasonable
12 person to hesitate to act. Proof beyond a reasonable doubt
13 is proof that leaves you firmly convinced of the Defendant's
14 guilt.

15 Now, there are very few things that we can know with
16 absolute certainty, and the law doesn't require the State of
17 South Carolina to give you that kind of proof. What is
18 required is if based upon your consideration of the
19 evidence, the evidence you find to be true, you are firmly
20 convinced that the Defendant is guilty of the crime charged,
21 you must find the Defendant guilty.

22 On the other hand, based upon your view of the
23 evidence, the evidence you find to be true, you are not
24 firmly convinced the Defendant is guilty of the crime
25 charged, you must give the Defendant the benefit of the

JURY CHARGE

1 doubt and find him not guilty.

2 The Defendant has been charged by the State of South
3 Carolina with two different crimes, and I am going to define
4 them here now for you. The first one is two counts of
5 murder. Remember, there's going to be three decisions
6 you're going to have to make, and I will talk to you about
7 that in just a second, but there's two counts of murder.

8 The Defendant being charge with murder, the State has
9 to prove to you beyond a reasonable doubt that the Defendant
10 killed another person with malice aforethought. Malice is
11 hatred, ill will or hostility towards another person. It's
12 the intentional doing of a wrongful act without just cause
13 or excuse and with an intent to inflict an injury or under
14 circumstances that the law would infer an evil intent.

15 Malice aforethought does not require that this malice
16 exist for any particular time before the act is committed,
17 but the malice has to exist in the mind of the Defendant
18 just before and at the time the act is committed.
19 Therefore, there has to be this combination of the evil
20 intent and the act.

21 Now, malice aforethought can be express or inferred.
22 Now, in talking about that, what we mean is express malice
23 is shown when somebody speaks words which express hatred or
24 ill will for another or when the person prepared beforehand
25 to do the act and later committed it. Malice can be

JURY CHARGE

1 inferred from conduct showing a total disregard for human
2 life.

3 Inferred malice can also arise when the deed is done
4 with a deadly weapon. Now, a deadly weapon is any kind of
5 article, instrument, or substance which is likely to cause
6 death or great bodily harm, and whether or not an instrument
7 has been used as a deadly weapon depends on the facts and
8 circumstances of each particular case.

9 In the State of South Carolina, motive is not an
10 element of the offense of murder, and the State of South
11 Carolina is not required to prove to you motive.

12 The Defendant is also charged with one count of
13 burglary in the first degree. The State has to prove to you
14 beyond a reasonable doubt that the Defendant entered a
15 dwelling without consent. Now, a dwelling is any building
16 or portion of a building in which a person ordinarily
17 sleeps.

18 In order to prove that the Defendant entered the
19 dwelling, the State does not have to show that the
20 Defendant's entire body entered the dwelling. The smallest
21 entry is sufficient.

22 The State also has to prove to you beyond a reasonable
23 doubt that the Defendant intended to commit a crime, either
24 a felony or a misdemeanor, at the time of the entry. The
25 mere entry into a dwelling without consent is not burglary.

JURY CHARGE

1 If the intent to commit a crime is formed after the entry,
2 it's not burglary. On the other hand, if the Defendant
3 intended to commit a crime at the time of entry, it's a
4 burglary even if the intent was abandoned after the entry.

5 Intent is shown by the acts and conduct of the
6 Defendant and other circumstances from which you could
7 naturally and reasonably infer intent, and then the State
8 has to show to you one of the following, doesn't have to
9 show to you all of these, but it has to show at least one of
10 the following: When entering or while in a dwelling or when
11 fleeing, the Defendant or an accomplice was armed with a
12 deadly weapon or explosive, and again, a deadly weapon, as I
13 told you, is any kind of article or instrument or substance
14 which is likely to cause death or great bodily harm.

15 When entering or while in the dwelling, or when
16 fleeing, the Defendant caused physical injury to anyone not
17 participating in the crime. When entering while in the
18 dwelling or when fleeing, the Defendant used or threatened
19 to use a dangerous object; when entering or while in the
20 dwelling or when fleeing the Defendant displayed what was or
21 appeared to be a knife, pistol, revolver, rifle, shotgun, or
22 other firearm. Finally, the Defendant entered or remained
23 in the dwelling in the nighttime, nighttime being the period
24 between sunset and sunrise during which there's not
25 sufficient daylight to recognize a person's face except by

JURY CHARGE

1 artificial light or moonlight. Again, the State has to
2 prove one of those, not all of them.

3 That, ladies and gentlemen, is the basic law that you
4 are going to apply to the facts and evidence you find to be
5 true in this matter, and the Court has prepared for you
6 verdict forms for you to use in setting forth your verdict.

7 It has on the case the case caption, State of South
8 Carolina versus Bruce Antwain Hill, and there's a separate
9 verdict form for each charge, since again there is a
10 separate decision on each charge.

11 The first one is on the charge of murder of Charles
12 Edward Parker, Sr., we, the jury, by unanimous consent, find
13 the Defendant, and there's two choices, two blocks to check.
14 There's one before the other; obviously don't assign
15 anything to that. We have to put one before the other, so
16 not guilty or guilty.

17 So Madam Forelady, when your jury has reached a
18 unanimous verdict on that particular charge, you will sign
19 the verdict form, check the appropriate block, put today's
20 date. You go on to the next verdict form.

21 On the charge of murder of Gloria Mills Parker, we, the
22 jury, by unanimous consent, find the Defendant, again two
23 choices, not guilty or guilty. Again, when your jury has
24 reached a unanimous verdict on that particular matter, Madam
25 Forelady, you check the appropriate block, sign it, put

JURY CHARGE

1 today's date.

2 And the final being on the charge of burglary in the
3 first degree of the dwelling of Charles Edward Parker, Sr.
4 and Gloria Mills Parker, we, the jury, by unanimous consent,
5 find the Defendant, again two choices, not guilty or guilty,
6 and again, Madam Forelady, when your jury reaches a
7 unanimous decision on that, you check the appropriate block,
8 sign your name and put today's date.

9 The three verdicts, you obviously realize there are
10 three decisions you make. Just because you find the
11 Defendant guilty or not guilty on one particular charge does
12 not obviously automatically mean he is guilty or not guilty
13 of the next charge. You must consider each one of them
14 separately, make a separate decision as to all three of
15 them.

16 Now, I read to you and I told you at the very beginning
17 this decision must be unanimous. Unanimous means exactly
18 what you think it means. It means twelve/zero. It doesn't
19 mean eleven/one, ten/two, any combination thereof. It means
20 every single one of you agree that is your verdict, so Madam
21 Forelady, when you check that box and you sign your name,
22 you're telling the Court every single member of the jury
23 agrees that is their verdict, whatever that verdict is.

24 What I'm going to have you do, Madam Forelady, is take
25 the twelve members of the regular jury to the jury room.

JURY OUT

1 Mr. Alternate, if you will stay with us, please sir. Do not
2 begin your deliberations until the bailiff brings in to you,
3 your jury room, the verdict form and the exhibits. When the
4 bailiff hands to you the verdict form and the exhibits, then
5 you may begin your deliberations.

6 Please retire to your jury room.

7 (AT 12:55 P.M., THE FOLLOWING TAKES PLACE OUTSIDE THE
8 PRESENCE OF THE JURY.)

9 THE COURT: All right, Solicitor and Mr. Hazzard, is
10 there any reason at this point in time that the Court should
11 not excuse the alternate?

12 MR. HEMBREE: None whatsoever, Your Honor.

13 MR. HAZZARD: Nothing from the Defense, Your Honor.

14 THE COURT: All right, very good.

15 All right, sir, your job obviously was to step in the
16 shoes of one of the regular members of the jury should they
17 be unable to go forward. It appears that they are ready,
18 willing, and able to go forward, so I am able to excuse you
19 from your service in this case.

20 And in consultation with the Clerk's Office, I am going
21 to excuse you from your jury service for this particular
22 week. It will not be necessary for you to report back. You
23 have concluded your jury service for this week. Thank you
24 very much. Just remember to give your button to the Deputy
25 Sheriff when you leave. Thank you, sir.

JURY OUT/EXHIBITS REVIEWED

1 All right, are there any exceptions, deletions,
2 additions to the charge from the State?

3 MR. HEMBREE: No sir.

4 THE COURT: From the Defense?

5 MR. HAZZARD: No, Your Honor.

6 THE COURT: All right. Gentlemen, please get with the
7 Court Reporter to make sure that we have all the exhibits
8 necessary to go to the jury room, and I would like to take
9 this opportunity, Solicitor, Deputy Solicitor, and Mr.
10 Hazzard to commend all three of you. You did everything
11 that the Court would expect of you in presenting this case
12 for your respective clients. You did everything that, you
13 know, upholds the highest standards of the practice of law
14 and I appreciate that. Thank you.

15 MR. HEMBREE: Thank you.

16 MR. HAZZARD: Thank you, sir.

17 THE COURT: All right. We will be at ease until the
18 jury needs us. Thank you very much.

19 (AT THIS TIME EXHIBITS WERE REVIEWED AMONG THE COURT
20 REPORTER AND COUNSEL FOR THE STATE AND COUNSEL FOR THE
21 DEFENSE. THE EXHIBITS WERE APPROVED BY ALL.)

22 (THE EXHIBITS AND THE VERDICT FORM WERE THEN TAKEN TO
23 THE JURY ROOM BY THE BAILIFFS.)

24 (THE JURY WAS INSTRUCTED TO BEGIN DELIBERATION AT 1:00
25 P.M.)

ADMONISHMENT BY THE COURT

1 **(THE JURY DELIBERATED AND THE FOLLOWING TAKES PLACE AT**
2 **3:30 P.M. OUTSIDE THE PRESENCE OF THE JURY.)**

3 **THE COURT:** All right, Solicitor and Mr. Hazzard, I
4 understand that the jury has reached a verdict in this
5 matter. Is the State ready to receive it?

6 **MR. HEMBREE:** Yes, Your Honor.

7 **THE COURT:** Defense?

8 **MR. HAZZARD:** The Defense is ready.

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

10 As I always do when we have a verdict, especially in
11 criminal court, but in some civil court matters, I will
12 address the persons who are assembled in the courtroom.

13 I do not know what the verdict of the jury is. We will
14 all receive it at the same time. We've asked this jury to
15 do a very difficult thing, come to a unanimous conclusion
16 regarding the matters presented. Whatever the verdict is,
17 it will be received with respect, and it will be received
18 with silence.

19 The Court will not tolerate any kind of show of emotion
20 or outburst of any kind. If such happens, you will be
21 detained by an Horry County Deputy Sheriff for further
22 proceedings.

23 If you cannot follow these instructions, I will
24 certainly be glad for you to leave the courtroom. You are
25 given an opportunity to leave the courtroom at this time.

JURY IN/VERDICT

1 Thank you very much.

2 Ask the jury to come in, please.

3 (AT 3:35 P.M., THE FOLLOWING TAKES PLACE WITHIN THE
4 PRESENCE OF THE JURY.)

5 THE COURT: All right, Madam Forelady, has your jury
6 reached a verdict in these matters?

7 THE FORELADY: Yes, Your Honor.

8 THE COURT: All right, very good. Could you hand the
9 verdict forms to the Clerk of Court, please Ma'am.

10 All right, Madam Clerk, you may publish the verdict.

11 DEPUTY CLERK OF COURT: Indictment Number 2011-GS-26-
12 987, State of South Carolina, County of Horry, versus Bruce
13 Antwain Hill, on the charge of murder of Charles Edward
14 Parker, Sr., we, the jury, by unanimous consent, find the
15 Defendant guilty.

16 Indictment Number 2011-GS-26-988, State of South
17 Carolina, County of Horry, versus Bruce Antwain Hill, on the
18 charge of murder of Gloria Mills Parker, we, the jury, by
19 unanimous consent, find the Defendant guilty.

20 Indictment Number 2011-GS-26-1327, State of South
21 Carolina, County of Horry, versus Bruce Antwain Hill, on the
22 charge of burglary, first degree, of the dwelling of Charles
23 Edward Parker, Sr., and Gloria Mills Parker, we, the jury,
24 by unanimous consent, find the Defendant guilty. Signed by
25 Foreperson, Melissa Spearman, dated September 14th, 2011.

POLLING OF THE JURY

1 Ladies and gentlemen of the jury, if this is your
2 verdict, so signify by raising your right hand.

3 (AT THIS TIME EACH AND EVERY JUROR RAISED HIS OR HER
4 RIGHT HAND AFFIRMING THE VERDICTS AS PUBLISHED.)

5 THE COURT: The jury, having affirmed their verdict as
6 requested by the Clerk of Court, does the State wish the
7 jury polled?

8 MR. HEMBREE: No, Your Honor.

9 THE COURT: Does the Defense wish the jury polled?

10 MR. HAZZARD: The Defense requests individual polling,
11 Your Honor.

12 THE COURT: Very good.

13 All right, Madam Clerk, if you will poll the jury by
14 juror number only, please Ma'am.

15 DEPUTY CLERK OF COURT: When I call your number, if
16 you will please stand.

17 Juror Number 136. Is this your verdict?

18 JUROR NUMBER 136: Yes.

19 DEPUTY CLERK OF COURT: Is this still your verdict?

20 JUROR NUMBER 136: Yes.

21 DEPUTY CLERK OF COURT: Thank you.

22 21. Is this your verdict?

23 JUROR NUMBER 21: Yes.

24 DEPUTY CLERK OF COURT: Is this still your verdict?

25 JUROR NUMBER 21: Yes.

POLLING OF THE JURY

1 DEPUTY CLERK OF COURT: Thank you.
2 328. Is this your verdict?
3 JUROR NUMBER 328: Yes.
4 DEPUTY CLERK OF COURT: Is this still your verdict?
5 JUROR NUMBER 328: Yes.
6 DEPUTY CLERK OF COURT: Thank you.
7 154. Is this your verdict?
8 JUROR NUMBER 154: Yes Ma'am.
9 DEPUTY CLERK OF COURT: Is this still your verdict?
10 JUROR NUMBER 154: Yes Ma'am.
11 DEPUTY CLERK OF COURT: Thank you.
12 90. Is this your verdict?
13 JUROR NUMBER 90: Yes.
14 DEPUTY CLERK OF COURT: Is this still your verdict?
15 JUROR NUMBER 90: Yes.
16 DEPUTY CLERK OF COURT: Thank you.
17 334. Is this your verdict?
18 JUROR NUMBER 334: Yes.
19 DEPUTY CLERK OF COURT: Is this still your verdict?
20 JUROR NUMBER 334: Yes.
21 DEPUTY CLERK OF COURT: Thank you.
22 374. Is this your verdict?
23 JUROR NUMBER 374: Yes Ma'am.
24 DEPUTY CLERK OF COURT: Is this still your verdict?
25 JUROR NUMBER 374: Yes Ma'am.

POLLING OF THE JURY

1 **DEPUTY CLERK OF COURT:** Thank you.
2 8. Is this your verdict?
3 **JUROR NUMBER 8:** Yes Ma'am.
4 **DEPUTY CLERK OF COURT:** Is this still your verdict?
5 **JUROR NUMBER 8:** Yes Ma'am.
6 **DEPUTY CLERK OF COURT:** Thank you.
7 13. Is this your verdict?
8 **JUROR NUMBER 13:** Yes Ma'am.
9 **DEPUTY CLERK OF COURT:** Is this still your verdict?
10 **JUROR NUMBER 13:** Yes Ma'am.
11 **DEPUTY CLERK OF COURT:** Thank you.
12 346. Is this your verdict?
13 **JUROR NUMBER 346:** Yes.
14 **DEPUTY CLERK OF COURT:** Is this still your verdict?
15 **JUROR NUMBER 346:** Yes.
16 **DEPUTY CLERK OF COURT:** Thank you.
17 180. Is this your verdict?
18 **JUROR NUMBER 180:** Yes Ma'am.
19 **DEPUTY CLERK OF COURT:** Is this still your verdict?
20 **JUROR NUMBER 180:** Yes Ma'am.
21 **DEPUTY CLERK OF COURT:** Thank you.
22 324. Is this your verdict?
23 **JUROR NUMBER 324:** Yes.
24 **DEPUTY CLERK OF COURT:** Is this still your verdict?
25 **JUROR NUMBER 324:** Yes.

JURY OUT/MOTIONS

1 **DEPUTY CLERK OF COURT:** Thank you.

2 **THE COURT:** The jury having affirmed their verdict
3 after singular polling, is there anything as to the jury
4 itself from the State?

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

6 **THE COURT:** From the Defense?

7 **MR. HAZZARD:** No sir, Your Honor.

8 **THE COURT:** All right. Thank you.

9 All right, ladies and gentlemen of the jury, I want to
10 thank you for your service. I appreciate what you have done
11 on behalf of the State of South Carolina and fellow citizens
12 of Horry County. If any of you are in a
13 relationship, you understand it's sometimes difficult to get
14 two people to agree to anything, much less having twelve
15 people unanimously agree in any particular matter. We
16 understand, and we asked that you do a very difficult thing.
17 We appreciate your service.

18 I am going to excuse you for your -- for the balance of
19 the week. Your jury service for this particular week is now
20 ended. You may leave. Thank you very much.

21 **(THE FOLLOWING TAKES PLACE OUTSIDE THE PRESENCE OF THE**
22 **JURY.)**

23 **THE COURT:** All right, Mr. Hazzard, motions on behalf
24 of the Defense.

25 **MR. HAZZARD:** At this time, Your Honor, the Defense

JURY OUT/MOTIONS

1 renews its motion or makes another motion at this point for
2 a new trial. We would submit to the Court that this verdict
3 of the jury does not comport with the evidence educed at the
4 trial of the case.

5 We would also renew all motions previously made during
6 the course of the trial and during the course of the
7 pendency of this action.

8 **THE COURT:** All right, sir. Regarding the motions
9 that were made during the pendency of the action or prior to
10 the jury's decision in this matter, the Court reaffirms and
11 reiterates all those rulings as if fully repeated herein and
12 respectfully declines to reconsider or change those rulings.

13 Regarding your motion for a new trial, the evidentiary
14 standard is whether or not there is competent evidence to
15 sustain the jury's verdict. I find that there was -- as I
16 indicated in the motion for directed verdict, the Court
17 finds that there was more than sufficient evidence presented
18 by the State to find the Defendant guilty of all of the
19 crimes charged beyond a reasonable doubt and with that so
20 find that there is sufficient competent evidence to sustain
21 the jury's verdict and, therefore, respectfully decline to
22 grant your motion for a new trial.

23 Further motions on behalf of the Defense?

24 **MR. HAZZARD:** No other motions on behalf of the
25 Defense at this time, Your Honor.

SENTENCING

1 **THE COURT:** All right, thank you.

2 Is the State ready to proceed with sentencing?

3 **MR. HEMBREE:** Yes, we are, Your Honor.

4 **THE COURT:** All right, Solicitor, I'll be glad to hear
5 from you, sir.

6 **MR. HEMBREE:** Your Honor, the -- I have conferred with
7 -- with the family of Charlie and Diane Parker. They do not
8 wish to make any statement to the Court at this time.

9 I just would like to publicly acknowledge their
10 presence. Charlie and Diane were obviously -- they have not
11 only a large family, but a loving family. They have
12 been as -- as I'm sure the Court has observed, they've been
13 here at the trial throughout the proceedings, that they have
14 been through this process before, and they have -- when they
15 come, they come as a big group and have been with it to the
16 bitter end, and they -- their support is greatly
17 appreciated, and I just wanted to say thank you to them.

18 **THE COURT:** All right, sir. Thank you.

19 All right, Mr. Hazzard, on behalf of the Defendant.

20 **MR. HAZZARD:** Your Honor, this Court has heard the
21 evidence in this case, and this Court has also been in the
22 somewhat unusual position of basically having exclusive
23 jurisdiction over each and every matter. That was addressed
24 in this case over the past a little over two years now.

25 Bruce Hill is a young man, having been born in 1984.

SENTENCING

1 The Court is aware of his prior record. I will say that
2 Bruce, from the day that I first spoke with him during his
3 incarceration in Tennessee, has been very easy to work with,
4 very easy-going, very respectful. He -- he has been someone
5 that I have not had a problem working with whatsoever, and
6 as this Court knows with Public Defender clients, that is
7 not always the case.

8 His brother is seated back here in the second row,
9 obviously overcome with emotion at this time, to give an
10 indication of the family support that he has. I know that
11 in my representation of him both his mother and his maternal
12 and paternal grandmothers have been intimately involved in
13 asking about the case, what is going on, what can we do to
14 help Bruce, and so he has that family support.

15 I do not believe that -- that they could take it, and
16 so his brother is here representing them as well. I did not
17 want the Court to think that this man stood here without any
18 family love or support, that he was that type of person.

19 I would simply ask that the Court in looking at all the
20 factors give Mr. Hill any and all mercy that the Court deems
21 appropriate, Your Honor.

22 **THE COURT:** All right. Thank you, sir.

23 2011-GS-26-987, State of South Carolina, County of
24 Horry, versus Bruce Antwain Hill regarding murder. The
25 Court has taken into consideration obviously the facts of

SENTENCING

1 this case, what was testified to during the trial of this
2 case. I've taken into consideration the plea on behalf of
3 the Defendant by his attorney. I have also taken into
4 consideration the Defendant's age at this time and his prior
5 record.

6 Based on all these matters, the Court finds that the
7 appropriate sentence in this matter is the Defendant is
8 committed to the State Department of Corrections for a
9 determinate term of life imprisonment without the
10 possibility of parole.

11 2011-GS-26-988, regarding murder, the Defendant is
12 committed to the State Department of Corrections for a
13 determinate term of life imprisonment without the
14 possibility of parole, to run concurrent with 2011-987.

15 2011-GS-26-1327, burglary, first degree, the Defendant
16 is committed to the State Department of Corrections for a
17 determinate term of thirty years concurrent with 2011-GS-26-
18 987 and 988.

19 These proceedings are at an end. Thank you very much.

20 **MR. HEMBREE:** Thank you, Your Honor.

21 **MR. RICHARDSON:** Thank you, Your Honor.

22 (Conclusion of Transcript of Record.)
23
24
25

C E R T I F I C A T E

I, the undersigned, DIXIE COX EUBANK, Official Court Reporter for the Fifteenth 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 evidence introduced in the hearing of the captioned case, relative to appeal, in the Court of General Sessions for Horry County, South Carolina, on the 1st, 12th, and 13th day of September, 2011.

I DO FURTHER CERTIFY that I am neither of kin, counsel nor interest to any party hereto.

November 29, 2011


DIXIE COX EUBANK

CIRCUIT COURT REPORTER

FIFTEENTH JUDICIAL CIRCUIT

2011119807

STATE OF SOUTH CAROLINA
In The Court Of Appeals

APPEAL FROM HORRY COUNTY
Court of General Sessions
Steven H. John, Circuit Court Judge

CASE NO: 2011-GS -26-00988, 2011-GS-26-00987, 2011-GS-26-01327

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2011 SEP 19 AM 11:27
CLERK OF COURT
HORRY COUNTY

The State, ... Respondent,

V.

Bruce Hill, ... Appellant.

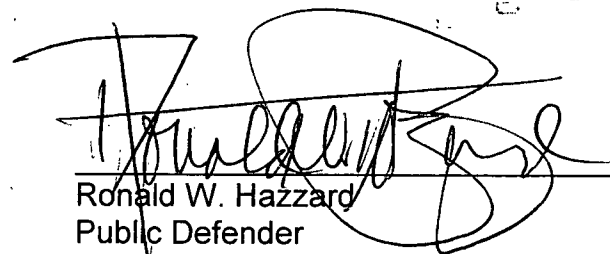
pos 9.21.11
pn 9.21.11

NOTICE OF APPEAL

FILED
HORRY COUNTY
2011 SEP 19 AM 11:20
MELANIE HUGGINS
CLERK OF COURT

Bruce Hill, appeals the conviction and sentence in this case. The sentence was imposed by the Honorable Steven H. John, on September 14, 2011.

September 19, 2011



Ronald W. Hazzard
Public Defender
Horry County Public Defender Office
Post Office Box 1666
Conway, SC 29528
843-915-5385
Attorney for Appellant

Other Counsel of Record

Jimmy J. Richardson
Solicitor
Post Office Box 1276
Conway, SC 29528
843-915-5460
Attorney for Respondent

RECEIVED

SEP 21 2011

SC Court of Appeals

STATE OF SOUTH CAROLINA
In The Court Of Appeals

APPEAL FROM HORRY COUNTY
Court of General Sessions
Steven H. John , Circuit Court Judge

CASE NO: 2011-GS-26-00988, 2011-GS-26-00987, 2011-GS-26-01387

The State, ... Respondent,

V.

Bruce Hill , ... Appellant.

PROOF OF SERVICE

I certify that I have served the Notice of Appeal on the State of South Carolina by depositing a copy of the Notice in the United States Mail, postage prepaid, on September 21, 2011, addressed to the attorney of record:

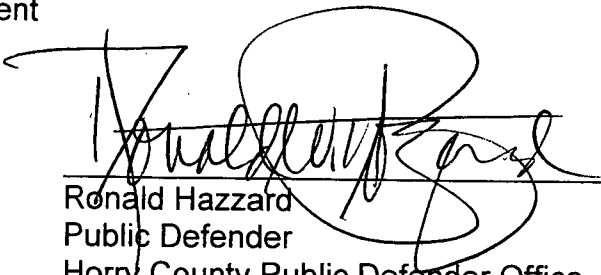
Jimmy J. Richardson
Solicitor
Post Office Box 1276
Conway, South Carolina, 29528
Attorney For Respondent

September 21, 2011

RECEIVED

SEP 21 2011

SC Court of Appeals


Ronald Hazzard
Public Defender
Horry County Public Defender Office
Post Office Box 1666
Conway, SC 29528
843-915-5385
Attorney for Appellant

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CLERK OF COURT
HORRY COUNTY

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MELANIE HUGGINS
CLERK OF COURT

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM HORRY COUNTY
Steven H. John, Circuit Court Judge

The State of South Carolina.....Respondent,

v.

Bruce Antwain Hill.....Appellant.

APPELLATE CASE NO. 2011-199807

FINAL BRIEF OF APPELLANT

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JUL 31 2013

SC Court of Appeals

Jonathan M. Hiller, Esq.
HILLER & HILLER, PA
1053 London St., Ste. B
Myrtle Beach, SC 29577
843-626-2835

ATTORNEY FOR APPELLANT

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STATEMENT OF THE ISSUES ON APPEAL

I

The trial judge erred when he granted the State's request to disallow any mention of the conviction of Richard Gagnon for the same crimes for which Appellant stood trial.

II

The trial judge erred when he admitted into evidence a letter sent from SLED to local Horry County law enforcement, which indicated Appellant had a criminal record.

III

The trial judge erred when he granted the State a six month continuance of the 180 days it had to bring Appellant to trial under the Interstate Agreement on Detainers Act.

STATEMENT OF THE CASE

On May 28, 2009, Appellant was charged with murder and first-degree burglary. (R. p. 15, lines 3-6). These charges arose out of a 2005 double-homicide committed in Horry County. In 2008, Appellant's codefendant, Richard Gagnon, was convicted of the same double homicide in a separate jury trial before the Honorable Judge Steven H. John. (R. p. 12, lines 16-23).

When Appellant was charged with this crime, he was serving time in Tennessee. On August 26, 2010, pursuant to the Interstate Agreement on Detainers Act, Appellant requested the final disposition of all untried South Carolina charges pending against him. (R. pp. 345-46). The Horry County Clerk of Court and the Office of the Solicitor of the Fifteenth Judicial Circuit received Appellant's request on September 3, 2010. (R. p. 350).

Appellant's jury trial before The Honorable Steven H. John began on September 12, 2011. Prior to the start of the trial, three hearings occurred. The first was held on March 1, 2011 and concerned a motion for a continuance brought by the solicitor. The hearing resulted in a six-month extension of time for the solicitor to call Appellant's case to trial. (R. p. 16, line 23 - p. 17, line 2).

The second was a Schmerber hearing conducted on March 17, 2011. The result of this hearing was a court order that required Appellant to provide an involuntary DNA sample for testing. (R. p. 37, lines 14-25).

The third hearing concerned pre-trial matters. It was conducted on September 1, 2011. As a result of this hearing, Appellant was prevented from any mention to the jury of the 2008 murder and burglary conviction of his codefendant, Richard Gagnon. (R. p. 58, lines 9-21). Judge John presided over each of these pretrial hearings.

On September 14, 2011 the jury returned a verdict that found Appellant guilty of both murder and first-degree burglary. (R. p. 329, lines 11-25). Judge John denied Appellant's new trial motion, declined to reconsider any of the ruling made during the pendency of Appellant's case, and reaffirmed his prior rulings. (R. p. 334, lines 8-22). At sentencing Appellant received life in prison without the possibility of parole on each murder indictment and a concurrent thirty-year sentence on the burglary indictment. (R. p. 337, lines 6-18). Appellant filed a timely notice of appeal with the South Carolina Court of Appeals on September 21, 2011.

STATEMENT OF THE FACTS

The evidence that ultimately linked Appellant to the 2005 double homicide was four drops of blood collected from the crime scene. (R. p. 144, line 13-p. 145, line 25). Caulder, an Horry County Police Department (HCPD) crime scene investigator, testified he collected these blood drops from the crime scene as evidence items three, four, seven and thirteen. (R. p. 150, line 24-p. 151, line 10). Though Caulder claimed to collect this evidence from the crime scene on April 12, 2005, he kept physical custody of the blood drops until April 19, 2005. (R. p. 182, line 15-p. 183, line 18). On cross-examination he maintained that as long as the blood drops were with him they were in evidence. (R. p. 175, lines 15-p. 176, line 16). The day he turned this crucial evidence into the secure evidence facility was the day it went to Columbia for testing. (R. p. 193, lines 18-23).

On April 21, 2005, Lambert, a DNA analysis employed by the South Carolina Law Enforcement Division (SLED) initiated testing of the blood drops. (R. p. 217, line 21-p. 219, line 1). On June 26, 2007, SLED published the result of the DNA test. (R. p. 220, lines 1-2). The report concluded that the blood drops belonged to an unknown

individual. (R. p. 225, lines 12-23). Lambert's last responsibility with regard to his testing of the blood drops was to upload the unknown DNA sample he developed into a database that contains both known and unknown DNA samples from crime scenes. (R. p. 225, line 24-p. 226, line 10).

On May 28, 2009, McClure, the SLED DNA Database Unit supervisor, ran a DNA database search that generated a report linking the DNA standard developed by Lambert to Appellant. (R. p. 230, lines 20-25). SLED then sent a letter to the HCPD to inform them that the unknown DNA profile developed by Lambert had been submitted to the COmbined DNA Index System (CODIS) and matched with a DNA profile developed from Appellant. (R. p. 232, lines 10-18). Over the objection of the defense, the letter was submitted into evidence and published to the jury. (R. p. 231, line 17-p. 232, line 9).

At some point after Appellant's DNA profile was linked to the unknown profile collected from the crime scene in 2005, agents with the HCPD travelled to Tennessee to meet with Appellant. (R. p. 26, lines 18-21). Testimony indicates these agents may have obtained a Tennessee search warrant to collect a DNA sample from Appellant, but the paperwork and potential results related to that endeavor were lost, and the agents who went to Tennessee subsequently left the employment of the HCPD. (R. p. 27, lines 9-25).

On August 26, 2010, Appellant filed a request under the Interstate Agreement on Detainers Act for the disposition of all his untried South Carolina charges. (R. p. 346). The correctional facility in which Appellant was then housed, Northeast Correctional Complex in Mountain City, Tennessee, sent both the Office of the Solicitor of the Fifteenth Judicial Circuit and the Horry County Clerk of Court copies of Agreement on Detainer Forms II, III and IV on September 1, 2010 via Certified Mail, Return Receipt

Requested. (R4. pp. 344-49). The solicitor's office and the clerk's office both acknowledged receipt of Appellant's request for disposition of his pending South Carolina charges on September 3, 2010. (R. p. 350).

In response, via letter dated September 15, 2010, the solicitor's office served Agreement on Detainers Form VII and set October 21, 2010 as the date that custody of Appellant would transfer from Tennessee to South Carolina. (R. p. 342). Via letter dated September 22, 2010, the solicitor's office confirmed October 21, 2010 as the date custody of Appellant would transfer to South Carolina and provided Agreement on Detainer Form VI, which projected Appellant would be tried on or about November 8, 2010. (R. p. 339).

On March 1, 2011, Deputy Solicitor Richardson appeared before Judge John to request an extension of the time in which to bring Appellant to trial. He calculated the time given to South Carolina under the Interstate Agreement on Detainers Act would run on March 4, 2011 unless the court granted the State a continuance. (R. p. 13, lines 9-17). In support of his motion, Richardson pointed out that Appellant had yet to complete his seven-year sentence in Tennessee, recalled the preparation that was involved in Richard Gagnon's trial, unsuccessful plea negotiations with Appellant, and the fact that the State had yet to schedule or conduct a Schmerber hearing. (R p. 13, line 22-p. 14, line 12).

Appellant opposed the State's motion for a continuance. He argued that Richard Gagnon's trial was irrelevant to the State's prosecution of Appellant, as no identifiable connection exists between Appellant and Richard Gagnon. (R. p. 15, lines 12-21). He also stressed the fact that the State had failed to even schedule a Schmerber hearing and pointed out that Appellant was unable to earn good time credit in Tennessee while awaiting his trial in South Carolina. (R. p. 16, lines 1-19).

Judge John ruled the State demonstrated good cause for a six-month extension of time in which to bring Appellant to trial and found that a six-month continuance would not prejudice Appellant's rights or prove unduly burdensome to him. (R. p. 16, line 23-p. 17, line 4). The court further noted Richard Gagnon's trial was complicated and required much preparation and ordered the State to conduct its Schmerber hearing on Wednesday, March 9, 2011. (R. p. 17, lines 4-23).

This hearing took place on March 17, 2011. (R. p. 239, lines 15-18). Appellant opposed the Schmerber motion. (R. p. 21, lines 19-22). As its lone witness, the State called Cox, an investigator with HCPD. Cox testified to his second-hand knowledge of the details surrounding the DNA testing done by SLED on the unknown blood sample from the 2005 crime scene and the subsequent CODIS match to Appellant's DNA in 2009. (R. p. 25, line 17-p. 26, line 17). Cox, who was one of the officers that responded to the crime scene in 2005, then testified to his knowledge of the location from where the four blood drops that SLED tested were collected. (R. p. 29, lines 7-23).

Cross-examination elicited the admission that, though he read it in the past, Cox did not bring documentation of the CODIS hit on Appellant to the hearing. (R. p. 30, lines 10-25). Cox further testified that he did not know how to read the results of DNA tests. (R. p. 31, lines 3-13). Based on these admissions, Appellant argued that the State failed to present any documentary evidence to support the testimony and further that the State's witness was not qualified to testify regarding the accuracy of the alleged DNA test. (R. p. 33, line 18-p. 34, line 5; R. p. 35, lines 12-20).

Judge John found that the State presented sufficient probable cause of Appellant's involvement in the double-homicide (and another unsolved Horry County crime) to allow

the court ordered collection of non-testimonial identification evidence from Appellant. (R. p. 37, lines 1-25). After the Schmerber hearing, Cox used buccal swabs to collect DNA evidence from the inside of Appellant's cheek. (R. p. 238, line 25-p. 239, line 6). The DNA sample collected from Appellant was sent to SLED, which tested it, developed a DNA profile and then issued a report on April 14, 2011. (R. p. 257, lines 14-16).

The final pretrial hearing was held on September 1, 2011. Judge John decided several matters that impacted Appellant's trial. First, the State asked for a ruling that would keep Appellant from any mention of Richard Gagnon's conviction for the same crime. (R. p. 51, line 25-p. 52, line 21). Judge John first ruled that he would address whether he would allow Appellant to raise the issue of Richard Gagnon's conviction at the close of the State's case if that fact had not been brought out during the State's case. (R. p. 53, line 3-p. 54, line 10).

Appellant argued that he should be allowed to question any witness regarding the participation and presence of Richard Gagnon in the double-homicide, because the State had placed both Appellant and Richard Gagnon at the scene at the same time, (R. p. 54, lines 13-20), and because Richard Gagnon's conviction is a matter of public record. (R. p. 55, lines 2-21). The State responded that Richard Gagnon's conviction is irrelevant to its theory of the case, which was based on DNA evidence that Appellant was involved in the crime. (R. p. 55, line 23-p. 56, line 7).

Citing to concerns about relevance, the State candidly admitted its desire to keep Appellant from mentioning Richard Gagnon's conviction during opening statements and during the cross-examination of witnesses for the State. (R. p. 56, line 23-p. 57, line 4). In response, Appellant stated the real reason the State wished to keep Richard Gagnon out

of the trial was because the State had no evidence to connect Appellant to Richard Gagnon, and that this lack of evidence connecting the two codefendants was precisely the information the State wished to keep from the jury. (R. p. 57, lines 9-15).

Judge John ruled he would only allow Appellant to cross-examine on the general topic of another person's participation in the double homicide. He agreed with the State that Richard Gagnon's conviction for the same crime was irrelevant to Appellant's trial. He also found that it would invade the jury's role of fact finder to hear another person was already convicted of the same crime. (R. p. 57, lines 16-25). He concluded that the information would make it easy for the jury to convict Appellant as they could convict him simply because Richard Gagnon had been convicted without treating evidence of Appellant's involvement in the crime separately. (R. p. 58, lines 9-21). As he concluded that information about Richard Gagnon's conviction would harm Appellant at trial, Judge John refused to allow Appellant to mention Richard Gagnon. (R. p. 60, lines 8-19).

The second matter raised at the September 1, 2011 pre-trial hearing involved the State's desire to inform the jury that Appellant's DNA profile was linked to the double homicide through a CODIS hit. The State assured the court that it would not prejudice Appellant by referring to Appellant's incarceration in Tennessee and that it only wanted to refer to CODIS as a national DNA database which provided the initial link between the blood drops at the crime scene and Appellant. (R. p. 60, line 25-p. 61, line 8). Appellant argued no reference to CODIS was necessary, as the State could rely on the SLED profile that resulted from the Schmerber hearing to link his DNA to the crime scene. (R. p. 61, lines 11-15). Appellant further argued that any mention of – or reference to – CODIS would prejudice him as it could give the jury an indication of Appellant's criminal record,

since “the jury can sit there and say ‘well, I ain’t [sic] in no database so he must, ergo, have a criminal record, and must have been previously incarcerated.’ I would object to that, Your Honor.” (R. p. 61, lines 15-21).

Judge John found that considering the passage of time between the 2005 double homicide and Appellant’s arrest for the crime in 2009, he would allow the State to go into background information that would help explain the delay in the prosecution of Appellant and further ruled this testimony would not prejudice Appellant. (R. p. 62, lines 16-22). Judge John also made clear that the State was not to explain how or why Appellant’s DNA was uploaded to CODIS or that Appellant was arrested in Tennessee. (R. p. 62, line 23-p. 63, line 8).

Appellant then renewed his objections to the court’s grant of the continuance on March 1, 2011 and argued that the State failed to present any specific reasons to show why the continuance was necessary and pointed the court to the fact that Appellant was not even indicted until thirty days after the extension was granted. (R. p. 66, lines 7-12). Appellant maintained the State failed to show any good cause as to why it should receive a continuance; the grant of a continuance constituted an abuse of discretion, and that Appellant’s charges should be dismissed as a remedy. (R. p. 66, line 13-p. 67, line 2).

The State acknowledged that it relied on the complexity of preparing a double homicide case for trial and again mentioned plea negotiations with Appellant to support its request for an extension and stated that Judge John exercised proper discretion when he granted a six-month extension on March 1, 2011. (R. p. 67, line 5-p. 68, line 2). The State also reminded the court that Appellant’s defense counsel requested one continuance of the trial. (R. p. 68, lines 3-10). In response, Appellant stated that the only written plea

offer to Appellant was dated March 8, 2011, thus post-dating the continuance by seven days. (R. p. 68, lines 12-15). Appellant further stated the second extension was requested in mid-June for unrelated matters. (R. p. 68, lines 16-24). (This extension did extend Appellant's trial beyond the six-month continuance Judge John granted.)

In reconsidering his ruling on the continuance, Judge John linked the grant of the six month extension to the State's then-outstanding need to conduct a Schmerber hearing, affirmed his prior ruling on the State's requested continuance and found no violation of the 180 day requirement which is set forth in the Interstate Agreement on Detainers Act. (R. p. 69, line 2-p. 70, line 18).

The last matter put on the record on September 1, 2011 was a renewed objection to Judge John's order from the Schmerber hearing that required Appellant to provide involuntary, non-testimonial identification evidence. Appellant argued the State's failure to present any documentation of the CODIS hit or the SLED DNA analysis prevented the court from making neutral and detached determination as to whether to grant the State's motion. (R. p. 70, line 20-p. 72, line 2). Judge John declined to reconsider his prior ruling without the opportunity to first review a copy of the Schmerber hearing transcript. (R. p. 73, lines 10-18).

Appellant's trial began on September 12, 2011. Over Appellant's objection, the State admitted the results of the DNA profile created by Lambert in 2007 into evidence. (R. p. 221, lines 3-21). When the State sought to admit the result of the DNA testing of the evidence collected from Appellant as a result of the Schmerber hearing, the evidence was again admitted over Appellant's objection. (R. p. 255, lines 17-24). The State rested on September 14, 2011, and the court denied Appellant's motion for a directed verdict.

(R. p. 302, line 23-p. 304, line 1). After a recess, Appellant rested his case without putting up a defense. (R. p. 309, line 23-p. 310, line 1). The jury was excused to deliberate at 12:55 p.m. on September 14, 2011, and returned their verdict of guilty at 3:35 p.m. (R. p. 49, lines 16, 19).

ARGUMENT

Appellant raises three distinct errors committed by the trial judge. First, the trial judge erred when he ruled that Appellant could not mention the conviction of Richard Gagnon in opening argument, on cross-examination and, by extension, during closing summation. The trial judge cited relevance and a concern regarding one potential jury reaction to evidence of Richard Gagnon's conviction. This ruling prejudiced Appellant in two ways. It lessened the burden imposed on the State to obtain a conviction, as it allowed the State to avoid any need to attempt to connect Appellant and Richard Gagnon. It also weakened a primary theme in Appellant's defense strategy considerably.

Second, the trial judge erred when, over an objection from Appellant, he admitted the May 28, 2009 letter from SLED to Horry County law enforcement into evidence. The letter was unnecessary to the presentation of the State's case. Its admission in evidence highly prejudiced Appellant by indicating his prior criminal record to the jury.

Third, the trial judge erred when, on March 1, 2011, the very last of the 180 days the State had to bring Appellant to trial under the Interstate Agreement on Detainers Act, he granted the State a six month continuance at its request when the State failed to show good cause for its motion. The continuance was not reasonable as the State had not even extended one plea offer to Appellant, indicted Appellant on his criminal charges or took the basic step of scheduling the Schmerber hearing needed to bring Appellant to trial.

I. The trial judge erred when he excluded any mention of the conviction of Richard Gagnon from Appellant's trial.

In criminal cases, South Carolina appellate courts review error of law only and are bound by the factual findings of the trial court unless clearly erroneous. State v. Wilson, 345 S.C. 1, 5-6, 545 S.E.2d 827, 829 (2001). "A court's ruling on the admissibility of evidence will not be reversed on appeal absent an abuse of discretion or the commission of legal error that results in prejudice to the defendant." State v. Adams, 354 S.C. 361, 377, 580 S.E.2d 785, 793 (Ct. App. 2003).

Further, "[e]rror may not be predicated on a ruling to admit or exclude evidence unless a substantial right of a party is affected." Rule 103(a), SCRE. "[T]o warrant reversal based on the admission or exclusion of evidence, the complaining party must prove both the error of the ruling and the resulting prejudice." State v. Commander, 384 S.C. 66, 73, 681 S.E.2d 31, 35 (Ct. App. 2005) (citing Vaught v. A.O. Hardee & Sons, Inc., 366 S.C. 475, 480, 623 S.E.2d 373, 375 (2005)). "To establish prejudice, the appellant must convince this Court that there is a reasonable probability that the jury's verdict was influenced by the challenged evidence." Id. at 74, 681 S.E.2d at 35 (citing Fields v. Reg'l Med. Ctr. Orangeburg, 363 S.C. 19, 26, 609 S.E.2d 506, 509 (2005)).

In a pre-trial hearing that occurred twelve days before trial, the State requested that Appellant not be permitted to raise to the jury the fact Richard Gagnon had been convicted of the same crime Appellant was charged with committing. (R. p. 52, lines 13-21). In opposition to this motion, Appellant maintained that he had the right to ask any witness called to testify his trial about the involvement of Richard Gagnon in the underlying crime. (R. p. 54, lines 13-20).

The trial judge ruled Richard Gagnon's conviction was irrelevant to Appellant's trial and found it would invade the jury's role as finder of fact to hear Richard Gagnon had been convicted of the crime. (R. p. 57, lines 16-25). The trial judge concluded that the injection of Richard Gagnon into the trial would make it easy for the jury to convict Appellant without the need to treat the evidence of Appellant's involvement separately. (R. p. 58, lines 9-21). At trial, neither the State nor Appellant attempted to bring to the jury's attention to the 2008 conviction of Richard Gagnon.

As a threshold matter, the record indicates that during the September 1, 2011 pretrial hearing, the trial judge was very clear that he was not going to allow the mention of Richard Gagnon at trial. (R. p. 57, line 16-p. 58, line 21; R. p. 59, line 24-p. 60, line 19). While the trial judge's pretrial ruling was not challenged during the trial, Appellant maintains that the issue of whether he should have been permitted to inform the jury of the conviction of Richard Gagnon is preserved for appellate review.

"[O]ur courts have developed the doctrine of futility, which recognizes that in circumstances where it would be futile to raise an objection to the trial judge, failure to raise the objection will be excused." State v. Covert, 368 S.C. 188, 201, 628 S.E2d 482, 489 (Ct. App. 2006). Appellant submits that, considering the trial judge's pretrial ruling that unequivocally prohibited the mention of Richard Gagnon's conviction, it would have been futile for Appellant to attempt to proffer testimony regarding the conviction of Richard Gagnon to the trial judge during the course of trial.

"'Relevant evidence' means evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence." State v. Saltz, 346 S.C. 114, 127, 551

S.E.2d 240, 247 (2001) (quoting Rule 401, SCRE). “Even if evidence is relevant, it ‘may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury, or by considerations of undue delay . . .’” Id., 551 S.E.2d at 247 (quoting Rule 403, SCRE). “Unfair prejudice means an undue tendency to suggest decision on an improper basis, such as an emotional one.” Id., 551 S.E.2d at 247 (citing State v. Kelly, 343 S.C. 350, 540 S.E.2d 851(2001)).

Appellant maintains the trial judge’s evidentiary ruling that prevented him from informing the jury of Richard Gagnon’s conviction was reversible error that resulted in prejudice to Appellant. As was argued to the trial judge, Richard Gagnon’s conviction is a matter of public record. (R. p. 55, lines 20-21). Further, despite the State’s trial level position to the contrary, (R. p. 55, line 23-p. 56, line 7), Richard Gagnon’s conviction is relevant to the State’s theory of Appellant’s involvement in the crime.

According to the full version of the State’s theory, Richard Gagnon and Appellant acted in concert to commit a double-homicide as codefendants. The fact that the State did not need to show a connection between Appellant and Richard Gagnon took a large fact out of the equation and simplified the State’s case against Appellant considerably. The State wanted this result and indicated on the record that it did not intend to show a connection between Richard Gagnon and Appellant. (R. p. 56, lines 8-9). In response, Appellant suggested to the trial judge that the reason for this was the fact that no evidence linking the codefendants exists. (R. p. 57, lines 9-15). Regardless of whether that is true, it is precisely the lack of connection between Appellant and his codefendant that makes Richard Gagnon’s prior conviction relevant to Appellant’s trial, and when the trial judge suppressed this relevant evidence from the jury, he committed error.

The fact that Richard Gagnon was Appellant's convicted codefendant is a piece of evidence that would have tended to influence the jury's ultimate conclusion as to the guilt or innocence of Appellant. Therefore, it was relevant and should have been heard by the jury unless properly excludable under Rule 403, SCRE, supra.

The trial judge's factual (not legal) conclusion that Appellant's jury would likely convict him if it heard that a different jury convicted Richard Gagnon, (R. p. 60, lines 8-19), appears to be a Rule 403, SCRE analysis. But that conclusion, which is not a truism, was an error that prejudiced Appellant.

The jury could have drawn a different conclusion from the fact Richard Gagnon was convicted, especially if, as indicated by the solicitor pretrial, (R. p. 56, lines 8-9), the State did not present the jury with evidence that linked Richard Gagnon to Appellant. If unconvinced of a connection between the two codefendants, the jury could quite easily have viewed the fact that Richard Gagnon was convicted of the crime as evidence of Appellant's innocence. However, the trial judge's pretrial ruling took this possibility away from Appellant and his jury. To do so was reversible error.

Turning to the issue of prejudice, Appellant was prejudiced in two ways by the trial judge's ruling that evidence of Richard Gagnon's conviction would not enter into Appellant's trial. First, a theme touched upon throughout Appellant's defense, and also argued in closing summation, was the theory that the HCPD crime scene investigators obtained Appellant's DNA from some location other than the April 12, 2005 double homicide crime scene, inadvertently cataloged it with evidence from the double homicide and sent it to SLED for testing. (R. p. 316, line 2-p. 320, line 10). Appellant drew out the fact that the lead investigator, Caulder, kept the evidence he collected from the crime

scene with him until he turned it over for transportation to SLED headquarters in Columbia on April 19, 2005. (R. p. 193, lines 1-24). Appellant was also able to elicit testimony that six different individuals, including Caulder, each had access to the Horry County evidence room. (R. p. 191, lines 3-7).

Had Appellant been able to present the jury with evidence that Richard Gagnon had no connection to Appellant, as was alleged by the defense, (R. p. 57, lines 9-15), then the trial theory that the HCPD committed a mistake with the evidence it collected and sent to SLED for testing could have been strengthened by that lack of connection. At the very least, Appellant would have had the opportunity to address the State's ability or inability to establish a connection between Richard Gagnon and Appellant during its case, which could easily have had an impact on the outcome of the trial.

Second, the trial judge's pretrial ruling all but ensured that Appellant's trial, in the words of the solicitor would be "simple and straightforward." (R. p. 56, line 4). Once the State did not need to worry about the introduction of Richard Gagnon into the trial, all that was needed for the State to carry its burden of proof was to establish the chain of custody for the blood drops tested by SLED, bring out the 2009 CODIS hit that caused Appellant to be charged with the crime, and inform the jury of the result of the DNA profiles created by SLED that implicated Appellant. Had Appellant been permitted to explore Richard Gagnon's involvement in the crime, the State would have been forced to focus on the full picture and explain to the jury how both Appellant and Richard Gagnon came to be connected with this 2005 double homicide. The State was never forced to draw this connection, and for these two reasons, Appellant submits that more than a reasonable probability exists that the jury's verdict could have been different if the trial

judge had allowed the jury to hear the relevant evidence that Richard Gagnon had previously been convicted of the same crimes that Appellant faced at trial.

II. The trial judge erred when he allowed the SLED letter that informed the HCPD of the CODIS hit on Appellant's DNA into evidence.

At the September 1, 2011 pretrial hearing, the State informed the trial judge that it would refer to CODIS as a national DNA database without reference to Appellant's incarceration in Tennessee when the CODIS hit occurred. (R. p. 60, line 21-p. 61, line 8). Appellant objected to any mention of CODIS on grounds that the State's reference to a national DNA database would allow the jury to conclude that Appellant had been either arrested or incarcerated in the past. (R. p. 61, lines 15-21).

The trial judge ruled that it would not prejudice Appellant to allow the State to go into background information that would explain the delay between the 2005 crime and Appellant's 2009 arrest. (R. p. 62, lines 16-22). He went on to clarify that he would not allow the State to elicit testimony about how Appellant's DNA entered the database or anything about his incarceration in Tennessee, but that he would allow the State to obtain basic information about how SLED became aware of the Appellant. (R. p. 62, line 23-p. 63, line 8). Appellant objected to this ruling. (R. p. 63, lines 8-9).

At trial, the State called McClure, the SLED employee who ran the CODIS hit that linked the unknown DNA from the 2005 crime scene to Appellant's DNA sample. Contrary to the pretrial assurance made by the State that it would "basically refer to Codus [sic] as the national DNA database," (R. p. 61, lines 3-4), McClure testified CODIS is "computer software that allows DNA profiles to be shared between law enforcement agencies for the purpose of generating investigative leads for unsolved

cases.” (R. p. 230, lines 11-16). McClure then testified that he confirmed the 2009 CODIS hit in Appellant’s DNA and sent a letter to the HCPD that informed them about Appellant. (R. p. 230, line 20-p. 231, line 6).

Next, the State produced the letter McClure sent to the HCPD, laid its foundation and moved it into evidence over Appellant’s previously made and renewed objection. (R. p. 231, line 7-p. 232, line 6). McClure published the letter to the jury, which read:

Dear Neil Livingston, the short tandem repeat, STRPCR DNA profile developed from item 19 was compared to the COMbined DNA Index System, CODIS. This profile matches the STRPCR DNA profile developed from Bruce Antwain Hill. This information is provided for investigative purposes only. If the suspect is charged, additional biological specimen must be submitted for court purposes. This search was conducted by Lieutenant David McClure with the South Carolina Law Enforcement Division.

(R. p. 232, lines 10-18).

On appeal Appellant argues that the admission of the SLED letter was an error that highly prejudiced Appellant. It was a non-subtle reference to his prior criminal record. This official SLED letter was read to the jury by the supervisor of the SLED DNA Database Unit who initially wrote the letter and had literally moments ago characterized CODIS to the jury as “computer software that allows DNA profiles to be shared between law enforcement agencies for the purpose of generating investigative leads for unsolved cases.” (R. p. 230, lines 11-16). He referred to it as much more than a national DNA database. Further when the State moved the SLED letter into evidence, it had already asked the background questions it was given pre-trial clearance from the trial judge to ask. The State had no legitimate need to place this letter into evidence, and the jury easily could have interpreted the letter as an overt indication of Appellant’s prior criminal record that unfairly prejudiced him in the eyes of the jury.

Appellant asserts the fact that the State unnecessarily moved the SLED letter into evidence is the primary fact that distinguishes his case from previous reported cases where appellate courts have held that an arguably vague reference to a defendant's prior criminal record did not result in prejudice to the defendant.

In State v. Council a SLED agent testified to the jury that he obtained a voluntary fingerprint from the defendant and then "went over to the SLED records, two buildings over, retrieved a card with the name 'Council' on it and compared those impressions and in fact, they were produced by the same individual." 335 S.C. 1, 12, 515 S.E.2d 508, 513 (1999). The trial judge would not declare a mistrial, and the defense and the trial judge agreed that a curative instruction would only call more attention to the testimony. Id., 515 S.E.2d at 513.

In finding no error in the trial judge's decision, the Supreme Court held it "is questionable whether the jury even understood the implication of [the SLED agent's] statement." Id. at 13, 515 S.E.2d at 514. The Court noted that it "has held that similar references to a defendant's past conduct were too vague to be prejudicial." Id., 515 S.E. at 514. The Court characterized the SLED agent's remark as "only an inadvertent vague reference was made to appellant's prior record," and concluded, "this reference was not prejudicial." Id., 515 S.E.2d at 514 (emphasis supplied).

In a footnote, the Court distinguished Council from State v. Tate, 288 S.C. 104, 341 S.E.2d 380 (1986), which is a case in which the Court reached a different result regarding prejudice. Id. at 313, n.7, 515 S.E.2d at 514. In that case, the State introduced a mug shot of the appellant that identified the date of his arrest for another unrelated charge into evidence without meeting even the first two prongs of the three-part test controlling

the admission of a mug shot. Tate, 288 S.C. at 105-06, 341 S.E.2d at 381. The Court noted that the fingerprint card at issue in Council “was never introduced into evidence, and therefore the jury was not aware of when SLED obtained the card. Therefore, there was no evidence before the jury of when or for what purpose the fingerprint card was made.” Id., 515 S.E.2d at 514.

Unlike Council and akin to the prejudicial conduct found in Tate, right after the State’s witness referred to CODIS as “computer software that allows DNA profiles to be shared between law enforcement agencies for the purpose of generating investigative leads for unsolved cases,” (R. p. 230, lines 11-16), the State moved the very letter from SLED to the HCPD that linked Appellant with CODIS into evidence. This was completely unnecessary to accomplish the reasons given on the record at the pretrial hearing for drawing juror attention to CODIS. It was the complete opposite of the solicitor’s stated intent not to say “anything that would subjugate [Appellant] to some sort of prejudice with regard to [CODIS].” (R. p. 61, lines 5-6). The trial judge’s decision to allow the SLED letter into evidence was error, and Appellant objected in a manner that drew the least amount of juror attention to the State’s non-subtle indication that Appellant had a prior criminal record.

Appellant’s case is further distinguished from Council because the statement made by the SLED fingerprint analyst in Council was inadvertent and the fingerprint cards were never placed in evidence. In Appellant’s case the SLED agent explained CODIS as a law enforcement database that exists to generate investigative leads in unsolved cases. (R. p. 230, lines 11-16). This reference was overtly prejudicial and a far cry from a benign reference to CODIS as a national DNA database. The admission of the

SLED letter into evidence allowed the jury to hear that Appellant's DNA was discovered by SLED in CODIS. This was not an inadvertent or vague reference to Appellant's prior criminal record, and it resulted in prejudice to him.

"The admission or exclusion of evidence is left to the sound discretion of the trial judge, whose decision will not be reversed on appeal absent an abuse of discretion." State v. Saltz, 346 S.C. 114, 121, 551 S.E.2d 240, 244 (2001). "An abuse of discretion arises from an error of law or a factual conclusion that is without evidentiary support." State v. Irick, 344 S.C. 460, 463, 545 S.E.2d 282, 284 (2001). For an appellate court to reverse based on "the erroneous admission or exclusion of evidence, prejudice must be shown." State v. Taylor, 333 S.C. 159, 172, 508 S.E.2d 870, 876 (1998).

The trial judge's decision to admit the SLED letter into evidence was error because it drew juror attention to the fact Appellant had a criminal record needlessly. The probative value of the SLED letter was far outweighed by its prejudicial effect on Appellant. Right before the State moved to admit the SLED letter into evidence, it had already elicited testimony about the nature of CODIS and explained the background pertaining to how the CODIS hit on Appellant's DNA occurred. (R. p. 230, line 16-p. 231, line 6). This was the very testimony that the trial judge had ruled pretrial that he would allow the State to elicit. (R. p. 62, line 5-p. 63, line 8).

The admission of the SLED letter into evidence highlighted the fact Appellant's DNA had been entered into CODIS and prejudiced Appellant by allowing the jury to draw conclusions about his prior criminal record. When the trial judge allowed the SLED letter to enter evidence over Appellant's objection based on prejudice, he abused his discretion. See State v. Cooley, 342 S.C. 63, 69, 536 S.E.2d 666, 669 (2000) (noting

trial judges have broad discretion in ruling on the admission of testimony but cautioning “although evidence is relevant, it should be excluded where the danger of unfair prejudice substantially outweighs its probative value.”).

III. The trial judge erred when he granted the State a six-month continuance of the 180 days it had to bring Appellant to trial pursuant to the provisions of the Interstate Agreement on Detainers Act.

Typically “[t]he granting of a motion for a continuance is within the sound discretion of the trial court and will not be disturbed absent a clear showing of an abuse of discretion.” State v. Yarborough, 363 S.C. 260, 266, 609 S.E.2d 592, 595 (Ct. App. 2005). “An abuse of discretion arises from an error of law or a factual conclusion that is without evidentiary support.” State v. Irick, 344 S.C. 460, 464, 545 S.E.2d 282, 284 (2001). Even if a factual conclusion is without evidentiary support, “for an error to warrant reversal, the error must result in prejudice to the appellant.” State v. Preslar, 364 S.C. 466, 473, 613 S.E.2d 381, 385 (Ct. App. 2005).

However, when a defendant requests the final disposition of pending charges under the provision of the Interstate Agreement on Detainers Act (IAD), codified at §17-11-10 et. seq. of the South Carolina Code of Laws, the analysis regarding the grant of continuances changes. This is due to purpose of the IAD, which is to “foster the expeditious disposition of charges outstanding against prisoners so as to eliminate the uncertainties which accompany the filing of detainers.” State v. Patterson, 273 S.C. 361, 363, 256 S.E.2d 416, 418 (1979) (citing State v. Allen, 269 S.C. 233, 237 S.E.2d 64 (1977)). In relevant part, Article III(a) of the act provides:

Whenever a person has entered upon a term of imprisonment in a penal or correctional institution of a party state, and whenever during the continuance of the term of imprisonment there is pending in any other party state any untried indictment, information or complaint on the basis of which a detainer has been

lodged against the prisoner, he shall be brought to trial within one hundred eighty days after he shall have caused to be delivered to the prosecuting officer and the appropriate court of the prosecuting officer's jurisdiction written notice of the place of his imprisonment and his request for a final disposition to be made of the indictment, information or complaint; provided, that for good cause shown in open court, the prisoner or his counsel being present, the court having jurisdiction of the matter may grant any necessary or reasonable continuance.

The IAD applies to the 48 party states to the act, the District of Columbia and the United States government. Fex v. Michigan, 507 U.S. 43, 44, 113 S.Ct. 1085, 1086 (1993). Under the IAD, when an incarcerated defendant has a detainer for untried criminal charges filed against him by another party state to the IAD, he may file a request for final disposition of his pending charges. If the request is properly prepared and filed, the defendant "shall," (Article III(a)), be brought to trial 180 days "after he shall caused to be delivered," (Article III(a)), his request for disposition.

Under the act the State may request a continuance of the trial beyond the 180-day deadline "for good cause shown." (Article III(a)). Provided the defendant or his counsel is present in court, the trial judge "may grant any necessary or reasonable continuance." (Article III(a)).

In Patterson, a Supreme Court IAD case, the Court addressed the question of whether a trial judge could grant a continuance after the 180 days the State had to bring the defendant to trial had passed. 273 S.C. 361, 256 S.E.2d 416 (1979). Horry County received a request from the defendant to dispose of his South Carolina charges on August 25, 1977. Id. at 363, 256 S.E.2d at 418. The State took no action, and 271 days later on May 23, 1978, the defendant moved that his charges be dismissed. Id., 256 S.E.2d at 418. Rather than dismiss the charges, the trial judge granted the State a continuance. Id., 256 S.E.2d at 418. The continuance was granted well after the expiration of the 180 days the

State had to bring the defendant to trial, and the Court held that the “mandatory language of the act, particularly when read in light of the statute’s purpose, precluded the granting of any motion for continuance after expiration of the 180 day period. We . . . conclude the trial court erred in granting the State a continuance [].” Id. at 364, 256 S.E.2d at 418.

On August 26, 2010, Appellant made a fully compliant request pursuant to the IAD to have his pending South Carolina charges disposed. (R. pp. 344-349). This request was sent via Certified Mail, Return Receipt Requested on September 1, 2010 as required by the IADA, and it was received on September 3, 2010. (R. p. 350).

According to the decision of the United States Supreme Court, with Justices Blackmun and Stevens dissenting, Appellant “caused” his request “to be delivered” to the Horry County Clerk of Court and the Solicitor’s Office of the Fifteenth Judicial Circuit on September 3, 2010, the date Horry County acknowledged receipt of his request. See Fex, 507 U.S. at 52, 113 S.Ct. at 1091 (“We hold that the 180 day time period in Article III(a) of the IAD does not commence until the prisoner’s request for final disposition of the charges against him has actually been delivered to the court and prosecuting officer of the jurisdiction that lodged the detainer against him.”).

Applying this settled rule to Appellant’s case, when the State made its request for an extension on March 1, 2010, the State had been in possession of Appellant’s request under the IAD for exactly 180 days. Had the State’s motion been brought one day later, the State’s request would not have been timely, and Appellant’s case should have been dismissed pursuant to Patterson, supra. Appellant urges this Court to consider this fact as part of an analysis of whether the State demonstrated “good cause” for the continuance it received and whether the grant of the continuance was “necessary” or “reasonable.”

State v. Finley involves Article IV(c) of the IAD which requires the State, if it files a request for temporary custody of a defendant, to bring the defendant to trial within 120 days of the date the defendant arrives in South Carolina. 277 S.C. 548, 549-50, 290 S.E.2d 808, 808-09 (1982). The defendant arrived in Richland County on July 29, 1980, and on September 16, 1980 he filed a motion to have out-of-state witness ruled material, which was heard September 29, 1980 and taken under advisement. Id. at 550, 290 S.E.2d at 809. On December 8, 1980, the judge that heard the motion had yet to reach a ruling on the defendant's motion, and the defendant moved to dismiss his charges for a violation of the 120-day rule of Article IV(c) of the IADA. Id., 290 S.E.2d at 809.

The judge who heard the motion to dismiss "ruled that the circuit judge who took under advisement appellant's motion to have certain out of state witnesses ruled material had in effect granted a continuance thereby tolling the one hundred twenty day period." Id., 290 S.E.2d at 809. The defendant was convicted at trial and appealed on grounds that the court "erred in denying his motion to dismiss due to the expiration of the one hundred twenty day period without commencement of trial." Id., 290 S.E.2d at 809.

The Court noted "the one hundred twenty day period is mandatory. Thus, the issue raised is whether the court granted a continuance which satisfies the exception stated in Article IV(c)." Id. at 551, 290 S.E.2d at 809. After examining cases from sister jurisdictions that involved similar defense motions, the Court held "a defendant cannot cause the delay in the trial and then expect dismissal of the charges because the case was not tried within the one hundred twenty day period." Id., 290 S.E.2d at 809.

In the present case, Appellant did not cause the delay in his trial. Rather, it was the State's March 1, 2010 request that delayed Appellant's trial six months. Appellant

was not tried during that six-month period, but the extension granted by the trial judge was not for good cause shown by the State, therefore the continuance was neither reasonable nor necessary and should not have been granted.

For the following reasons, the State failed to show the requisite good cause to support the grant of a continuance of the 180-day rule under the IAD. First, and most importantly, the State, which had full control of the docket pursuant to §1-7-330 of the South Carolina Code of Laws, as amended, and had made no effort to even schedule a Schmerber hearing. Second, for the sake of obtaining the continuance, it referred to the complexity surrounding Richard Gagnon's trial and drew a parallel to Appellant's then-pending trial. (R. p. 14, lines 4-5; R. p. 67, lines 5-8; R. p. 67, lines 14-20). Once the continuance was granted, the State all of a sudden recognized the case as simple and straightforward. "This is a DNA case, and it really is a very straightforward DNA case." (R. p. 52, lines 11-12). "This case is simple and straightforward." (R. p. 56, line 4).

The State was well aware of the need to conduct a Schmerber hearing. The 2009 SLED letter informed it that "[i]f the suspect is charged, additional biological specimen must be submitted for court purposes." (R. p. 232, lines 15-17). Further, at some point before Appellant filed his request under the IAD, the State testified it sent HCPD agents to Tennessee to obtain a search warrant to collect DNA evidence from Appellant. (R. p. 27, lines 9-24). That paperwork was "lost." (R. p. 27, lines 22-24).

Then, between the time Appellant arrived in South Carolina on October 21, 2010 and March 1, 2010, the State did absolutely nothing with regard to collecting Appellant's DNA until the 180th day under the IAD. At that time, the State rushed Appellant into court for a continuance and said it would hold a Schmerber hearing "next week," (R. p.

14, line 9), making one of the State's primary reasons for the extension the need to conduct a Schmerber hearing. (R. p. 14, lines 4-12). At the March 1, 2011 continuance hearing, Appellant objected and maintained the State's need to hold a Schmerber hearing was not good cause shown to support the grant of an extension. (R. p. 16, lines 6-19). Again, at the pretrial hearing held on September 1, 2011 Appellant renewed his objection to the grant of the State's extension. (R. p. 65, line 4-p. 67, line 2).

On the record on September 1, 2010, the trial judge stated that a reason he granted the continuance on March 1, 2011 was so that the Schmerber hearing could be conducted. (R. p. 69, line 2-p. 70, line 18). He noted testing had been done previously and that the State gave "valid reasons" to have testing done again. (R. p. 69, lines 5-10).

With respect to Appellant's trial judge, the record reflects that the State never gave the need to re-test Appellant as a reason for an extension on March 1, 2010. Rather, at the March 17, 2011 Schmerber hearing the State's lone witness testified that HCPD agent went to Tennessee and that the "paperwork, chain of custody, all of that with regard to the search warrant" had been lost. (R. p. 27, lines 22-24).

The reason the State gave on March 1, 2010 as to why a Schmerber hearing was needed was the simple, honest truth it had not conducted that hearing, despite the fact Appellant had been in Horry County since October 21, 2010. The fact the State offered to hold the hearing the week after their 180 days under the IAD ran supports this conclusion. (R. p. 14, lines 7-9). Appellant submits the State's complete failure to hold a Schmerber hearing between October 21, 2010 and March 1, 2011 was not good cause shown for a last second extension. As was candidly admitted on September 1, 2011, the State was simply unprepared for trial on March 1, 2011. (R. p. 67, lines 14-20).

Appellant's argument that the extension of the 180 day rule was error focuses on the State's failure to present a good cause showing to support the trial judge's grant of a continuance in favor of the State. By extension, Appellant maintains that the trial judge's grant of the motion could not have been reasonable or necessary, as the requirement that the State must present good cause for an extension should not be disconnected from the duty of the trial judge to find that the continuance is reasonable or necessary. If this Court concludes that the State's stated reasons for an extension failed to show good cause, then Appellant respectfully submits that this Court cannot easily conclude that the grant of the continuance was either reasonable or necessary.

The State made no showing whatsoever that it would be reasonable or necessary for the trial judge to grant an extension of the 180 day rule. Persuasive authority that it should have done so exists in other jurisdictions. As succinctly and correctly stated by the Court of Appeals of the State of Maryland:

Speaking generally there can be no doubt that the disposition of petitions for a continuance are within the sound discretion of the trial judge and his rulings in this regard will not be disturbed absent an abuse of that discretion. Here, however, the [IAD] controls. The pertinent language of [IAD] is as follows . . . provided that for good cause shown in open court, the prisoner or his counsel being present, the court . . . may grant any necessary or reasonable continuance. To what we have said about "good cause" might be added the observation that the State neither claimed nor made a showing that continuance of whatever duration was either "necessary" or "reasonable."

State v. Hoss, 266 Md. 136, 144-45, 292 A.2d 48, 52 (Md. 1972).

Following the recognition of Maryland high court's decision in Hoss that the State's duty to bring a defendant to trial pursuant to the IAD is not to be taken lightly, the Court of Special Appeals of Maryland held:

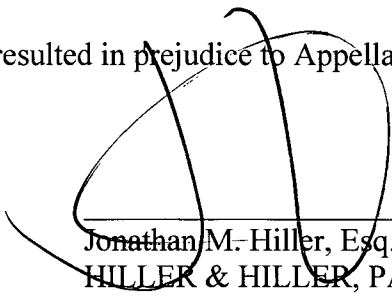
We cannot agree that a general statement that the State was not ready for trial, as opposed for example to a statement that a crucial witness was presently

hospitalized, can be considered as good cause. The statute, as interpreted by the Court of Appeals mandates that the State be ready for trial within the 180 days. Its excuse for not trying the case must amount to more than lack of preparation.

Dennett v. State, 19 Md.App. 376, 383-84, 311 A.2d 437, 442 (Md. Ct. Spec. App. 1972). In the case at hand, the State of South Carolina was simply unprepared to try Appellant at the end of the 180 day rule of the IAD. (R. p. 67, lines 14-20). It had not taken one step towards collecting DNA evidence from Appellant, who respectfully contends that the trial judge should not have granted the State a continuance. To do so excused the State's complete lack of preparation in contravention of the purpose of the Interstate Agreement on Detainers Act, S.C. Code Ann. §17-11-10, et. seq., (1976).

CONCLUSION

For the above-stated reasons, Appellant requests that this Court determine the State's request for a continuance of the IAD's mandatory 180-day rule was not based on a show of good cause, the grant of the continuance was not reasonable or necessary, and, as a result, Appellant's conviction must be vacated and his charges dismissed. In the alternative, Appellant asks this Court to rule the errors the trial judge committed during the course of Appellant's trial in disallowing the mention of Richard Gagnon and allowing the 2009 SLED letter into evidence resulted in prejudice to Appellant and that he be granted a new trial as a result.



Jonathan M. Hiller, Esq.
HILLER & HILLER, PA
1053 London St., Ste. B
Myrtle Beach, SC 29577
843-626-2835

July 25, 2013

ATTORNEY FOR APPELLANT

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM HORRY COUNTY
Steven H. John, Circuit Court Judge

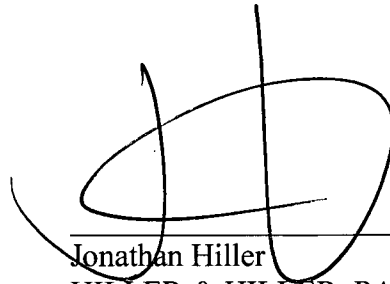
The State of South Carolina.....Respondent,

v.

Bruce Antwain Hill.....Appellant.

CERTIFICATE OF COUNSEL

The undersigned attorney hereby certifies that the Final Brief of Appellant complies with Rule 211(b), SCACR.



Jonathan Hiller
HILLER & HILLER, PA
1053 London St., Ste. B
Myrtle Beach, SC 29577
P: 843-626-2835
F: 843-903-1608

July 25, 2013

ATTORNEY FOR APPELLANT

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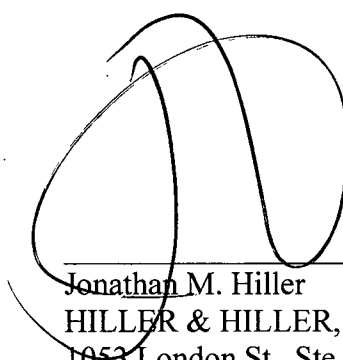
v.

Bruce Hill.....Appellant.

PROOF OF SERVICE

The undersigned certifies that on this, the 25th day of July 2013, he served a true copy the Final Brief of Appellant and the Reply Brief of Appellant on the Respondent by causing the same to be mailed to Anthony Mabry, Esq. via the United States Postal Service to the following addresses with sufficient postage attached:

Office of the Attorney General
PO Box 11549
Columbia, SC 29211


Jonathan M. Hiller
HILLER & HILLER, PA
1053 London St., Ste. B
Myrtle Beach, SC 29577
843-626-2835

July 25 2013

ATTORNEY FOR APPELLANT

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SC Court of Appeals

ORIGINAL

**STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS**

Appeal from Horry County
Steven H. John, Circuit Court Judge

THE STATE,

Appellant,

v.

BRUCE A. HILL,

Respondent.

Appellate Case No. 2011-199807

FINAL BRIEF OF RESPONDENT

ALAN WILSON
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

DONALD J. ZELENKA
Assistant Deputy Attorney General

J. ANTHONY MABRY
Assistant Attorney General
S.C. Bar No. 11973
P.O. Box 11549
Columbia, SC 29211
(803) 734-6305

JIMMY A. RICHARDSON
Solicitor, Fifteenth Judicial Circuit
P. O. Drawer 1276
Conway, SC 29528-1276
(843) 915-5460
ATTORNEYS FOR RESPONDENT

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FINAL BRIEF OF RESPONDENT

ALAN WILSON
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

DONALD J. ZELENKA
Assistant Deputy Attorney General

J. ANTHONY MABRY
Assistant Attorney General
S.C. Bar No. 11973
P.O. Box 11549
Columbia, SC 29211
(803) 734-6305

JIMMY A. RICHARDSON
Solicitor, Fifteenth Judicial Circuit
P. O. Drawer 1276
Conway, SC 29528-1276
(843) 915-5460

ATTORNEYS FOR RESPONDENT

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APPELLANT'S STATEMENT OF ISSUES ON APPEAL

1. The trial judge erred when he granted the State's request to disallow any mention of the conviction of Richard Gagnon for the same crimes for which Appellant stood trial.

2. The trial judge erred when he admitted into evidence a letter sent from SLED to local Horry County law enforcement, which indicated Appellant had a criminal record.

3. The trial judge erred when he granted the State a six month continuance of the 180 days it had to bring Appellant to trial under the Interstate Agreement on Detainers Act.

STATEMENT OF THE CASE

Appellant, Bruce Antwain Hill (“Hill”), murdered Charles Parker, Sr. and Diane G. Parker (“the Parkers”) on the night of April 11-12, 2005. The Parkers were murdered in their home located in Horry County. (R. 79-96, 97-176, 178-209, 213-268, 269-300).

Arrest warrants were issued in 2009 charging Hill with the Parkers’ murders and the burglary of their home. At that time, Hill was serving a prison sentence in the State of Tennessee for an unrelated aggravated robbery. Hill was returned to South Carolina pursuant to his request. Hill was subsequently indicted by the Horry County grand jury for the Parkers’ murders and burglary in the first (1st) degree in March of 2011. (2011-GS-26-987, 988, 1327). (R. 10). Hill was represented on the charges by Ronald D. Hazzard, Esquire. The case was prosecuted by then Solicitor Greg Hembree and Deputy Solicitor Jimmy Richardson.¹ (R. 10).

Hill proceeded to trial on September 12-14, 2011 before the Honorable Sidney H. John, Circuit Court Judge, and a jury. (R. 10). At the conclusion of the trial, the jury found Hill guilty of the Parkers’ murders and burglary in the first (1st) degree. (R.329). Based on the seriousness of the crimes, Hill’s prior criminal record, and the plea in mitigation of defense counsel, Judge John sentenced Hill to life imprisonment for each murder and thirty (30) years for burglary in the first (1st) degree.² (R. 336-37). This appeal followed.

¹Solicitor Hembree was subsequently elected to the S.C. Senate, and Deputy Solicitor Richardson was appointed by Governor Haley to fill out the remainder of Hembree’s term as Solicitor.

²Judge John was already cognizant of Hill’s prior record at the time of sentencing. Hill was convicted in Tennessee of conspiracy to commit aggravated robbery and aggravated robbery, in Virginia of conspiracy, and in South Carolina of possession of cocaine in 2005, common law robbery in 2003, Criminal Domestic Violence in 2006, and Criminal Domestic Violence 2nd in 2007. (R. 305-07, 336-37).

RESPONDENT'S STATEMENT OF FACTS

Charles "Charlie" Parker, Sr. and his wife Diane Gloria Parker ("the Parkers") were murdered during the night of April 11-12, 2005 in their own home. The Parkers' home was located on Highway 90 in Horry County approximately seventy-five (75) to one hundred (100) yards from their family business, Mirror Tech, a glass installation business. (R. 79-96, 97-176, 178-209, 213-268, 269-300).

The evidence at trial showed the Parkers were murdered as they were getting ready for bed. Mr. Parker was murdered in the bathroom of the home in his underwear. Mrs. Parker was murdered in the master bedroom in her pajamas. The Parkers' bodies were not discovered until the morning of April 12th when employees of Mirror Tech investigated why Mr. Parker was late for work. When police arrived at the scene that morning, they found a back door window pane, located just above the back door's handle, broken out. (R. 79-96, 97-176, 178-209, 213-268, 269-300).

The Parkers were shot to death. Each victim was shot three (3) times. Even though there were at least six (6) shots fired at the scene, only three (3) fired shell casings were found. (R. 79-96, 97-176, 178-209, 213-268, 269-300).

Crime scene investigators could not determine whether anything was stolen from the home; however, no cash was found in the home or in Mr. Parker's wallet or Mrs. Parker's purse. Mrs. Parker's jewelry was not taken from her body, and no jewelry was missing from a jewelry box. In the master bedroom where Mrs. Parker's body was found, drawers had been opened and papers scattered on the furniture. Another item, a gold boot, had been searched by the killer or killers looking for something. (R. 79-96, 97-176, 178-209, 213-268, 269-300).

The investigation and the evidence at appellant Hill's trial showed Mr. Parker had been shot

at the door of the bathroom and in the bathroom where he collapsed. Mrs. Parker had been shot *or* shot at while reclining in bed with the covers up, after which, she threw off the covers, got out of bed, and was then murdered in the bedroom while laying on floor. Prior to her murder, Mrs. Parker was also hit over her eye and her clavicle was broken by being struck with some kind of object. (R.79-96 , 97-176, 178-209, 213-268, 269-300).

In addition to Mr. and Mrs. Parker's blood, fresh blood from an unknown third (3rd) party was found in the master bedroom and on a piece of paper found in an extra bedroom. A crime scene analyst collected four (4) separate samples of these three (3) fresh vertical blood drops and one (1) blood smear. A DNA profile was developed by the South Carolina Law Enforcement Division (SLED) forensic lab from this unknown third (3rd) party's fresh blood found in the bedroom near Mrs. Parker's body and the adjoining bedroom. The DNA from each sample belonged to one (1) specific person. This DNA profile was then entered in the CODIS national data base.³ (R. 79-96, 97-176, 178-209, 213-268, 269-300).

Approximately two (2) years after the Parkers were murdered, Horry County police were notified by SLED that there had been a CODIS hit or match on the unknown third (3rd) person's blood/DNA found at the crime-scene. The unknown third (3rd) party DNA found in the blood drops and smear in the Parkers' home matched the DNA of appellant Bruce Antwain Hill ("Hill"). Hill was incarcerated *at the time of the CODIS hit/match* in a Tennessee prison for an aggravated robbery there. His DNA had been placed in the CODIS DNA database upon his incarceration there in 2006,

³CODIS is an anachronym for COmbined, DNA, Information, System.

after the Parkers' murders in April 2005. (R. 79-96, 97-176, 178-209, 213-268, 269-300).⁴ Horry County investigators subsequently traveled to Tennessee, obtained a Schmerber⁵ Order, and pursuant to the Order obtained a DNA buccal swab from the person of Hill for further DNA comparison.⁶ The investigators who obtained the Schmerber Order and the buccal swab subsequently left the employment of Horry County and the Order and chain of custody information for this swab were lost or misplaced. Subsequently, Horry County investigators obtained a 2nd Schmerber Order, pursuant to the same a 2nd buccal swab directly from the person of Hill, and submitted the swab to SLED for comparison with the DNA profile developed from the blood drops and smear at the crime-scene. After forensic examination, SLED confirmed the unknown DNA extracted from the fresh blood of the previously unknown third (3rd) party at the crime-scene (the Parkers' home) was a scientific match to the DNA of Hill. (R. March 1, 2011 Tr. pp. 10-17, R. March 17, 2011 Tr. pp. 19-38, R. 79-96, 97-176, 178-209, 213-268, 269-300).

As previously stated, prior to their murders, the Parkers owned a glass installation business, Mirror Tech. The Parkers' home was located adjacent to this business. At trial, Hill was also connected to an employee of the Parkers' glass installation business. Hill was arrested approximately one (1) week after the Parkers' murders in Horry County in the company of Kahlil Moore ("Moore") on an unrelated charge. Moore was employed with the Parkers' glass installation

⁴The jury was not aware Hill had committed and been convicted of an aggravated robbery in Tennessee after the Parkers' murders or that he was serving time in a Tennessee prison when the CODIS hit occurred.

⁵Schmerber v. California, 384 U.S. 757, 86 S.Ct. 1826 (1966).

⁶When a CODIS hit is made, law enforcement is instructed to obtain a buccal sample from the identified party and submit the same for further more exact and detailed DNA analysis and comparison by the forensic DNA lab. (R. 232).

business until approximately four (4) months before the Parkers' murders. Moore had also been inside the Parkers' home on several occasions before their murders. Hill was never employed by the Parkers, nor was there any evidence he had ever been inside the Parkers' home other than at the time of the murders. At the time of his arrest with Moore on the unrelated charge, only one (1) week after the Parkers' murders, Hill listed his address as being in Horry County, S.C. (R. 79-96, 97-176, 178-209, 213-268, 269-300).

ARGUMENT I.

The trial judge did not err when he granted the State's request to disallow any mention of Richard Gagnon's convictions for the same crimes for which Appellant stood trial.

At trial, the State established Hill's guilt of the Parkers' murders and the burglary of their home by proving his DNA was found in fresh blood at the scene of the double murders, and by establishing his connection to Kahlil Moore, a former employee of the Parkers' business "Mirror Tech."⁷ Appellant Hill now alleges the trial court should have allowed him to discuss before his jury the fact that Richard Gagnon had been **convicted** of this crime by a separate jury. Hill is wrong. Judge John did not abuse his discretion in declining to allow admission of Richard Gagnon's convictions. In fact, Judge John correctly followed the law.

Standard of Review

In criminal cases, an appellate court sits to review errors of law only. State v. Baccus, 367 S.C. 41, 48, 625 S.E.2d 216, 220 (2006); State v. Wood, 362 S.C. 520, 525, 608 S.E.2d 435, 438 (Ct. App. 2004). Thus, the appellate court is bound by the trial court's factual findings unless they are clearly erroneous. Id.; State v. Landis, 362 S.C. 97, 101, 606 S.E.2d 503, 504 (Ct. App. 2004). On appeal, the appellate court is limited to determining whether the trial court abused its discretion.

⁷At Hill's trial, the State did not attempt to establish any connection to Richard Gagnon, a co-perpetrator, who was convicted of his role in the Parkers' murders in 2007 based on statements Gagnon made to a cell-mate and other evidence introduced in Gagnon's trial. (See BOR, Gagnon). Gagnon told a cell-mate he and another person committed the murders. The cell-mate also testified Gagnon was worried about the fact that someone else's blood (DNA) was found at the crime scene that did not belong to either victim. The jury in Gagnon's trial was aware that this unknown 3rd person's DNA was found in the crime scene, but police had not been able to identify that person, Hill, at the time of Gagnon's trial. (See BOA, Gagnon). Gagnon has since been granted a new trial based on after-discovered evidence that has no relation to appellant Hill's case. (Order of Judge John granting new trial, Gagnon).

State v. Walker, 366 S.C. 643, 653, 623 S.E.2d 122, 127 (Ct. App. 2005). The conduct of a criminal trial is left largely to the sound discretion of the trial judge, who will not be reversed absent a prejudicial abuse of discretion. State v. Bridges, 278 S.C. 447, 448, 298 S.E.2d 212, 212 (1982); State v. Patterson, 367 S.C. 219, 230, 625 S.E.2d 239, 245 (Ct. App. 2006). This Court does not re-evaluate the facts based on its own view of the preponderance of the evidence but simply determines whether the trial judge's ruling is supported by any evidence. State v. Wilson, 345 S.C. 1, 6, 545 S.E.2d 827, 829 (2001)(internal citations omitted).

Standard of Review / Admission of Evidence

The admission or exclusion of evidence is within the sound discretion of the trial judge and is reversible only for an abuse of discretion. State v. Morris, 376 S.C. 189, 205, 656 S.E.2d 359, 368 (2008) State v. Pagan, 369 S.C. 201, 208, 631 S.E.2d 262, 265 (2006); State v. Patterson, 337 S.C. 215, 522 S.E.2d 845 (Ct. App. 1999); State v. Stanley, 365 S.C. 24, 33, 615 S.E.2d 455, 460 (Ct. App. 2005). "The trial judge has considerable latitude in ruling on the admissibility of evidence and his decision should not be disturbed absent prejudicial abuse of discretion." State v. Clasby, 385 S.C. 148, 682 S.E.2d 892 (2009); State v. Cope, 385 S.C. 274, 283, 684 S.E.2d 177 (Ct. App. 2009). An abuse of discretion occurs when the conclusions of the trial court either lack evidentiary support or are controlled by an error of law. State v. Pittman, 373 S.C. 527, 577, 647 S.E.2d 144, 170 (2007); Wilson, 345 S.C. at 5-6. 545 S.E.2d at 829. The relevance, materiality, and admissibility of evidence are matters within the sound discretion of the trial court, and a ruling will be disturbed only upon a showing of an abuse of discretion. State v. Rosemond, 335 S.C. 593, 518 S.E.2d 588 (1999). The trial court's decision will not be overturned unless controlled by an error of law resulting in undue prejudice. State v. Brown, 389 S.C. 84, 697 S.E.2d 622 (Ct. App. 2010). "A trial judge's

determination of admissibility of evidence will not be disturbed absent a showing of abuse of discretion that has resulted in prejudice to the complaining party. State v. Babb, 299 S.C. 451, 385 S.E.2d 827 (1989); State v. Hamilton, 344 S.C. 344, 353, 543 S.E.2d 586, 591 (Ct. App. 2001)(*overruled on other grounds by State v. Gentry*, 363 S.C. 93, 610 S.E.2d 494 (2005)).

The Lack of Merit of this Ground

At his trial, in a pre-trial hearing, appellant Hill sought to introduce evidence before his jury that someone else had been *convicted* of the murders of Charles and Diane Parker, Richard Gagnon. (R. 51-60). Judge John did not prohibit Hill from questioning any witness whether there was any evidence developed in the case that someone else was present committing or participating in the crime; however, Judge John ruled Hill could not elicit from witnesses *the result* of a co-defendant's or co-perpetrator's trial. (R. 51-60). Judge John's ruling was correct. Whether a co-defendant or co-perpetrator had been *convicted* of the crime is simply irrelevant to whether the State could prove appellant Hill was guilty of double murder and burglary in the 1st degree.

Rule 401 Definition of "Relevant Evidence"

Relevant evidence" means evidence having any tendency to make, the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence.

Rule 401, SCRE. "Evidence which is not relevant is not admissible." Rule 402, SCRE. In those cases where a co-defendant has been convicted on a charge arising out of the same facts as the defendant is being tried on, evidence of such conviction is irrelevant to the issue of the defendant's guilt or innocence and may not be introduced unless the convicted co-defendant or accomplice testifies. State v. Moore, 337 S.C. 104, 522 S.E.2d 354 (Ct. App. 1999)(cataloging cases); State v.

Brown, 306 S.C. 448, 412 S.E.2d 440 (Ct. App. 1991). However, when a co-defendant testifies for the purpose of exculpating the defendant on trial, such testimony is admissible on the co-defendant's credibility, not the guilt or innocence of the defendant on trial. State v. Brewington, 267 S.C. 97, 226 S.E.2d 249 (1976). See United States v. Mitchell, 1 F.3d 235, 245 (4th Cir. 1993); United States v. Blevins, 960 F.2d 1252, 1260 (4th Cir. 1993); Hunter v. Indiana, 578 578 N.E.2d 353, 356 (1991)(“[E]vidence of a conviction or guilty plea of others charged with the same offense as the defendant is not substantive evidence of the defendant's guilt or innocence...The trial court should receive the ...evidence ...only as it bears on the testifying co-defendant's credibility and should, on request, instruct the jury regarding its limited purpose.”); Missouri v. Johnson, 787 S.W.2d 872, 874 (Mo. App. 1990)(similar); State v. Mullens, 179 W.Va. 567, 371 S.E.2d 64, 70 (1988)(similar); Stokes v. Alabama, 462 So.2d 964, 967 (Ala. Crim. App. 1985)(outcome of co-defendant's case is simply irrelevant to the guilt or innocence of the defendant and may not be received as substantive evidence at defendant's trial); see also 23 C.J.S. *Criminal Law* Section 996 (1989)(co-defendant's conviction may not be admitted as substantive proof of the accused's guilt, complicity, or lack of guilt).⁸ Richard Gagnon did not testify at appellant Hill's trial. As a result, Judge John did not abuse his discretion in excluding the convictions of a co-defendant or co-perpetrator for the same crime in Hill's trial.⁹ This appellate ground must be dismissed.

⁸See also United States v. Solomon, 795 F.2d 747 (9th Cir. 1986); United States v. Halbert, 640 F.2d 1000 (9th Cir. 1981); Wharton's Criminal Evidence, 25:42, South Carolina (2012); Trial Handbook for South Carolina Lawyers 25:18 (2012). See generally State v. Mercer, 381 S.C. 149, 672 S.E.2d 556 (2009); State v. Charping, 333 S.C. 124, 508 S.E.2d 851 (1998).

⁹In his brief, Hill ignores all of the precedent cited above. (See BOA).

ARGUMENT II.

The trial judge did not err when he admitted into evidence a letter sent from SLED to local Horry County law enforcement, notifying them there was a CODIS match between the DNA found at the crime scene and Hill's DNA.

Standard of Review / Admission of Evidence

The admission or exclusion of evidence is within the sound discretion of the trial judge and is reversible only for an abuse of discretion. Morris, 376 S.C. at 205, 656 S.E.2d at 368; Pagan, 369 S.C. at 208, 631 S.E.2d at 265; Patterson, 337 S.C. 215, 522 S.E.2d 845 (Ct. App. 1999); State Stanley, 365 S.C. at 33, 615 S.E.2d at 460. “The trial judge has considerable latitude in ruling on the admissibility of evidence and his decision should not be disturbed absent prejudicial abuse of discretion.” State v. Clasby, 385 S.C. 148, 682 S.E.2d 892 (2009); Cope, 385 S.C. at 283, 684 S.E.2d 177. An abuse of discretion occurs when the conclusions of the trial court either lack evidentiary support or are controlled by an error of law. Pittman, 373 S.C. at 577, 647 S.E.2d at 170; Wilson, 345 S.C. at 5-6, 545 S.E.2d at 829. The relevance, materiality, and admissibility of evidence are matters within the sound discretion of the trial court, and a ruling will be disturbed only upon a showing of an abuse of discretion. Rosemond, *supra*. The trial court’s decision will not be overturned unless controlled by an error of law resulting in undue prejudice. Brown, *supra*. “A trial judge’s determination of admissibility of evidence will not be disturbed absent a showing of abuse of discretion that has resulted in prejudice to the complaining party. State v. Babb, 299 S.C. 451, 385 S.E.2d 827 (1989).; Hamilton, 344 S.C. at 353, 543 S.E.2d at 591 (*overruled on other grounds by State v. Gentry*, 363 S.C. 93, 610 S.E.2d 494 (2005)).

The Lack of Merit of this Ground

At trial, because the Parkers were murdered in 2005 and Hill was not arrested until 2009, the

State introduced the fact that the CODIS hit occurred in 2009; the Horry County Police Department was notified by SLED of the CODIS hit; and as a result the State obtained a Schmerber order and obtained a DNA buccal sample from appellant Hill, which was subsequently sent to SLED for DNA analysis. (R. 60-63, 210-13, 229-40). SLED notified Horry County of the CODIS hit by a letter which was read to the jury:

Dear [Detective] Neal Livingston

The short tandem repeat, STRPCR DNA profile developed from item 19 was compared to the COmbined DNA Index System, CODIS. This profile matches the STRPCR DNA profile developed from Bruce Antwain Hill. This information is provided for investigative purposes only. If the suspect is charged, an additional biological specimen must be submitted for court purposes. This search was conducted by Lieutenant David McClure with the South Carolina Law Enforcement Division.

(R. p. 232, ll. 10-18, State's Ex. 70). As a result of this notification, the Schmerber order was obtained and a buccal swab was taken from Hill on March 17, 2011, which resulted in the development of Hill's DNA profile from the swab, and which matched the fresh blood found inside the Parkers' residence. (R. 236-40, 256-268). The State did not introduce any evidence explaining why Hill's DNA was in the CODIS database. Nevertheless, appellant argues the admission of the letter from SLED notifying the Horry County Police Department of the CODIS hit should have been excluded because it informed the jury he had a prior criminal record. (R. 60-65, 210-13). Appellant is wrong.

This same contention has been rejected in courts throughout the United States. Whatley v. State, ___ So.3d ___, 2010 WL 3834256 (Ala. Crim. App. 2010), *Opinion After Remand* (December 16, 2011), *Not yet released for publication* ("We agree with the states that have considered this issue, and we hold that testimony of the mere existence of a defendant's DNA profile in the CODIS data

base does not ‘per se’ imply the existence of a criminal history.”); Missouri v. McMillian, 295 S.W.3d 537, 540 (Mo. Ct. App. 2009)(“In cases where a ‘hit’ or match is made, the State needs to be able to explain how a particular individual became a suspect, especially where, as here, a considerable period of time has passed since the offense.” “[T]he mere fact that McMillan’s DNA profile was present in a statewide database did not constitute an improper reference to other crimes”); People v. Harland, 251 P.3d 515, 518 (Colo. Ct. App. 2010)(“We therefore reject defendant’s assertion that [police officer’s] testimony mentioning the DNA databases necessarily led the jury to speculate that defendant had prior criminal convictions. Under the circumstances here, any inference of such prejudice is itself speculative.”); People v. Jackson, 232 Ill.2d 246, 272, 903 N.E.2d 388, 402 (2009)(“[W]e are unwilling to assume, as defendant does, that the jury had any preconceived notions of the types of persons from whom DNA had been collected and stored for [law enforcement] to reference through the ‘codus [sic] ... [or] data base administrator’ in Springfield.”); Atteberry v. State, 911 N.E.2d 601, 609 (Ind. Ct. App. 2009)(“Atteberry argues ... the jury could have inferred that, because Atteberry’s DNA profile was in the database, he had been convicted in the past. This is nothing more than speculation. Moreover, evidence which creates a mere inference of prior bad conduct does not fall within the purview of Evidence Rule 404(b).”); People v. Meekins, 34 A.3d 843, 828 N.Y.S.2d 83 (2006)(affirming admission of evidence concerning match on DNA database).¹⁰ While South Carolina has never specifically addressed the

¹⁰*For additional information see Deals v. Burghuis*, 2011 W.L. 2745904 (No. 1:08-cv-1000, June 16, 2011)(W.D. Mich. 2011)(unpublished order)(“The only unfairly prejudicial effect of the DNA evidence asserted by petitioner is that these witnesses mentioned that the DNA found at the scene was matched with petitioner using the CODIS database. Petitioner asserts that this ‘as good as tells the jury that [petitioner] has a prior record ...’ The Court of Appeals correctly noted that this argument is based on speculation and assumption concerning inferences that the jury might have made.”)

issue of CODIS, it has held similarly with similar type evidence. See State v. Council, 335 S.C. 1, 515 S.E.2d 508 (1999)(fact that defendant's fingerprints were on file did not mean defendant had a criminal record). Further, the S.L.E.D. agent who wrote the letter to Horry County notifying it of the CODIS hit or match testified at Hill's trial to what was in the letter. (R. 229-32). Furthermore, there was no testimony that Hill had previously been convicted of another crime. That was not the State's purpose in offering the evidence. (R. 60-65, 210-13, 225-28, 229-43, 252-268). Accordingly, there simply is no merit to this appellate ground. Hill cannot show error or prejudice in the admission of this evidence. As a result, Judge John did not abuse his discretion in admitting the letter from SLED notifying Horry County of the CODIS match. This ground must be dismissed.

ARGUMENT III.

Hill is not entitled to vacation and dismissal of his convictions and sentences for the murders of Charles and Diane Parker and the burglary of their home under the Interstate Agreement of Detainers Act.

Arrest warrants were not issued for Hill until 2009 after the CODIS hit on his DNA. In June of 2009, the Horry County Police Department by faxed letter forwarded Hill's *arrest warrants* in the Parkers' murders and another case to the Tennessee Department of Corrections, asked that they be placed in Hill's prison folder, and asked that a hold be placed on Hill.¹¹ The Solicitor's Office did not file a formal detainer with the Tennessee Department of Corrections or the prison where Hill was

¹¹Hill's DNA also matched DNA developed from another burglary and armed robbery in Horry County. When Horry County police forwarded the arrest warrants to the Tennessee Department of Corrections they also forwarded the arrest warrants from this additional crime as well.

incarcerated or request that he be returned to Horry County.¹² In August of 2010, the Tennessee Department of Corrections notified Hill of the outstanding warrants against him in South Carolina. (Agrmt. on Detainers Form I, pp. 1-2). On August 26, 2010, Hill submitted a request to have all of his warrants in South Carolina disposed of by submitting an Article III Agreement on Detainers Form II. (2 pages). The Solicitor's Office and the Clerk of Court for Horry County received this request on September 3, 2010. Hill was thereafter returned to South Carolina *pursuant to his request* set forth in the Article III Form he completed. On March 1, 2011, the State moved for a continuance in open court before Judge Stephen John, the administrative judge and trial judge in this case. Hill was present at the hearing along with his counsel, and at the hearing the State set forth its reasons for the need for a continuance. At the conclusion of the hearing, Judge John found and concluded the State had shown "good cause" for the continuance and a continuance was reasonable and necessary. The Horry County grand jury did not return indictments against Hill until March 31, 2011. The State was prepared to call the case for trial in July 2011. (R. 40-46 June 16, 2011 Tr., pp. 1-7). On June 16, 2011, Hill moved for a continuance which was also granted by Judge John. (R. 43-46 June 16, 2011 Tr., pp. 4-7). Hill's case then proceeded to trial in September after which he was convicted of all charges.

Hill contends on appeal he is entitled to dismissal with prejudice of the indictments and convictions for the murders of Charles and Diane Parker and the burglary of their home because under the Interstate Agreement on Detainers Act (IAD) he is entitled to dismissal of the charges

¹²The letter from the Horry County Police Department informed the Tennessee prison officials that the Solicitor would extradite Hill upon his release from prison there or possibly bring him back before the expiration of the sentence. However, neither of these two (2) ever occurred. The State did not seek to extradite Hill or seek his return under Article IV of the Interstate Agreement on Detainers Act. (June 9, 2009 letter to Tenn. DOC from Horry Police).

where the State did not bring him to trial within 180 days of his request for disposition or it did not obtain a continuance for good cause. Hill is wrong for three (3) separate reasons: (1) Hill is not entitled to dismissal of his convictions because the IAD was not triggered in this case; (2) the trial judge did not abuse his discretion in granting a timely continuance request where good cause was shown and the continuance was reasonable and necessary; and (3) Hill waived any right to dismissal by requesting a continuance himself.

I.

The Interstate Agreement on Detainers Act is an interstate compact entered into by 48 states, including South Carolina, also the District of Columbia, and the federal government. S.C. Code Ann. Section 17-11-10; State v. Tucker, 276 S.C. 412, 656 S.E.2d 403 (Ct. App. 2008). As a result, in interpreting the statute it must be remembered the Act is an interstate compact entered into by the signatory parties.¹³ Hill's *request* for disposition was made under Article III of the Interstate Agreement on Detainers Act (IAD) which reads as follows:

- (a) Whenever a person has entered upon a term of imprisonment in a penal or correctional institution of a party state, and whenever during the continuance of the term of imprisonment there is pending in any other party state *any untried indictment, information or complaint on the basis of which a detainer has been lodged against a prisoner*, he shall be brought to trial within one hundred eighty days after he shall have caused to be delivered to the prosecuting officer and the appropriate court of the prosecuting officer's jurisdiction written notice of the place of his imprisonment and his request for a final disposition to be made of **the indictment, information or complaint**; provided, that for good cause shown in open court, the prisoner or his counsel being present, the court having jurisdiction of the matter may grant any necessary or reasonable continuance.

¹³As a congressionally sanctioned interstate compact within the Compact Clause of the United States Constitution, Art. I, Section 10, cl. 3, the IAD is a federal law subject to federal construction. New York v. Hill, 528 U.S. 110, 111 (2000); Cuyler v Adams, 449 U.S. 433 (1981).

S.C. Code Ann. Section 17-11-10, Art. III (2003)(emphasis added). Further, throughout the IAD, not just in Article III, the Act refers to detainees *based on* “untried indictments, informations, or complaints.” S.C. Code Ann. Section 17-11-10 Art. I, Art. II, Art. III, Art. IV, Art. V.

Hill’s argument that Judge John erred under the IAD in granting a continuance of the 180 days to bring him to trial under Article III fails because the IAD and its time provisions were not triggered and are not applicable in this case. The “detainer”¹⁴ filed against Hill by police was based on arrest warrants, not an “untried indictment, information or complaint” as provided in the Act. Several jurisdictions which have addressed this issue have found that a detainer based only on an arrest warrant or warrants does not trigger the IAD 180 day provision under which the State must bring a defendant to trial, because it is not a detainer *based on* an “untried indictment, information, or complaint” as set forth in the Act. Herbert v. State, 288 Ga. 843, 708 S.E.2d 260 (Ga. 2011)(detainer based on arrest warrant and not pending indictment does not bring defendant within protections of the IAD);¹⁵ State v. Carlton, 276 Ga. 693, 583 S.E.2d 1 (2003)(IAD does not apply to detainees based on arrest warrants or unindicted charges); Denson v. State, 376 Ga. App. 456, 459, 731 S.E.2d 130, 132-33 (Ga. App. 2012)(same);¹⁶ Churchwell v. State, 44 So.3d 645 (Fla. App. 2010)(detainer based on arrest warrants alone is not an “untried indictment, information, or

¹⁴For IAD purposes a detainer is “a request filed by a criminal justice agency with the institution in which a prisoner is incarcerated, asking the institution either to hold the prisoner for the agency or to notify the agency when release of the prisoner is imminent.” Fex v. Michigan, 507 U.S. 43, 44 (1993); Carchman v. Nash, 473 U.S. 716, 719, 205 S.Ct. 3401, 3403 (1985).

¹⁵The South Carolina Supreme Court has previously relied on Georgia’s interpretation of the IAD. See State v. Johnson, 278 S.C. 668, 301 S.E.2d 138 (1983).

¹⁶For additional information see Williams v. County of Forsyth, 2008 W.L. 4445074 (N.D. Ga. 2008)(Unpublished).

complaint” and does not trigger the IAD); Taylor v. State, 582 So.2d 152 (Fla. Ct. App. 1991)(detainer based only on arrest warrant does not constitute detainer based on “untried indictment, information, or complaint” and IAD was therefore not triggered or applicable);¹⁷ Locklear v. Commonwealth, 7 Va. App. 659, 376 S.E.2d 793, 795 (1989)(detainer based only on arrest warrant does not fall within the meaning of an untried indictment, information or complaint as described in the IAD); Valentine v. Commonwealth, 18 Va. App. 334, 337-38, 443 S.E.2d 445, 446-47 (1994)(same, noting holding in Locklear); John L. Costello, *Virginia Criminal Law and Procedure*, Section 52.7[4], at 874 (4th Ed. 2008)(citing Locklear, 7 Va. App. at 663, 376 S.E.2d at 795);¹⁸ Crawford v. State, 669 N.E.2d 141 (Ind. 1996)(detainer based on arrest warrant is not based on indictment, information, or complaint as meant in the Act and therefore does not trigger IAD time requirements);¹⁹ State v. Robinson, 863 N.E.2d 894, 897 (Ind. Ct. App. 2007); Blakely v. District Court, 232 Mont. 178, 755 P.2d 1380, 1384 (1988)(similar); see United States v. Bottoms, 755 F.2d 1349 (9th Cir. 1985); United States v. Hall, 974 F.2d 1201 (9th Cir. 1994); United States v. Fulford, 825 F.2d 3, 20 (3rd Cir. 1987).²⁰

¹⁷For additional information see Welleske v. Buss, 2011 W.L. 4056085 (N.D. Fla. 2011)(Unpublished).

¹⁸For additional information see Smith v. Commonwealth, 2010 W.L. 5071192 (Va. App. 2010)(Unpublished); Payton v. Commonwealth, 2009 W.L. 1286418 (Va. App. 2009)(Unpublished).

¹⁹North Carolina appears to agree with these decisions. See State v. Prentice, 170 N.C. App. 593, 613 S.E.2d 498 (N.C. Ct. App. 2005)(holding arrest warrant can serve as a detainer and trigger the IAD only if it is based on a true-billed indictment pending before the court, as there was in this case, but must also meet other required factors, which were not met in this case).

²⁰Contra State v. Moore, 774 S.W.2d 590 (Tenn. 1989)(noting “[w]hile we think the better view and the more consistent interpretation of the Compact is that an untried ‘indictment,

Like the jurisdictions cited above, a defendant in South Carolina cannot be tried or immediately brought to trial on an arrest warrant for murder and burglary in the 1st degree. He must be indicted. S.C. Const. Art. I, Section 11; S.C. Code Ann. 17-19-10, 30. Therefore, a detainer based solely on an arrest warrant for these charges does not trigger the 180 day time provision of the compact. Carlton; Churchwell; Locklear; Crawford; Blakely. Further, South Carolina, like other courts, has construed what constitutes a detainer triggering the Act stringently. State v. Knowles, 275 S.C. 312, 270 S.E.2d 133 (1980)(conditional revocation of probation warrant does not constitute detainer based on untried indictment, information or complaint that triggers the IAD).²¹

The above cited decisions comport with the language throughout the IAD which refers to detainees *in signatory states* based on “untried indictments, informations, or complaints.” S.C. Code Ann. Section 17-11-10 Art. I, Art. II, Art. III, Art. IV, Art. V. *See specifically S.C. Code Ann.* Section 17-11-10, Art. II.(c)(“*Receiving state*’ shall mean the state **in which trial is to be had on** an indictment, information or complaint pursuant to Article III or Article IV hereof.”) *emphasis added*. The IAD by its very name and nature is an interstate compact (or treaty) between the signatory parties, and what it is contemplating is a mechanism for disposing of detainees *based on untried formal charging documents* which can be immediately brought to trial such as an indictment,

information, or complaint’ is a charging instrument upon which the requesting state may proceed to trial, and not merely a warrant of arrest..”, because *of practice* of filing detainees based on arrest warrants court refused to overrule previous decision that an arrest warrant can trigger the provisions of the IAD). *See also State v. Smith*, 316 Md. 223, 557 A.2d 1343 (1989).

²¹Although this specific issue was not raised, in another case dealing with the IAD, this Court appeared to follow a similar interpretation of the language in question here. *See State v. Adams*, 354 S.C. 361, 580 S.E.2d 785 (Ct. App. 2003)(“The IAD clearly requires an inmate send written notice to the appropriate prosecuting officer of his desire for final disposition of outstanding indictments against him in that jurisdiction.”).

information, or criminal complaint. State v. Carlton, 276 Ga. 693, 583 S.E.2d 1 (2003)(A complaint stands on equal footing with an indictment or information on bringing charges to trial, noting a common sense reading of Art. III. of the IAD dictates that a complaint must be a charging instrument upon which an individual can go to trial, and the use of the word “untried” as a qualifier for all three terms, “indictment, information, or complaint,” logically compels the conclusion that one must be able to be tried on each); Locklear v. Commonwealth, 7 Va. App. 659, 376 S.E.2d 793 (1989)(recognizing there are some states in which documents entitled complaints are instruments upon which detainees could be immediately tried upon return to the receiving state and this is what the Act refers to not arrest warrants); Crawford v. State, *supra* at 148 (similar).

Finally, if the drafters of the IAD intended for detainers based on mere arrest warrants to be covered by the Act, they could have done so by simply stating that the Act applied to detainers based on arrest warrants; however, they did not. Locklear v. Commonwealth, 7 Va. App. 659, 376 S.E.2d 793 (1989)(where appellant was being detained in N.C. pursuant to his prison sentence and detainer based on outstanding arrest warrant the Court found it “would be rewriting the Act if we added by interpretation the words ‘arrest warrant’ to untried indictment, information, and complaint”). Instead, the language clearly indicates the Act is only applicable to detainers based on “untried indictments, information or complaints[.]” in the receiving state. S.C. Code Ann. Section 17-11-10. As a result, since the IAD time provisions were not triggered by Hill’s request for disposition of a detainer based only on arrest warrants, this appellate ground must be dismissed.

II.

Furthermore, even if this Court were to find that a detainer based on arrest warrants and not “an untried indictment, information, or complaint” brought Hill within the application of the Act,

Judge John did not err in finding the State had shown good cause for a continuance and granted a necessary and reasonable delay. S.C. Code Ann. Section 17-11-10, Art. III(a).

The purpose of the IAD is to encourage the expeditious and orderly disposition of outstanding charges against prisoners and the determination of the proper status of any and all detainees based on untried indictments, information, or complaints. S.C. Code Ann. § 17-11-10, Art. I. (2003); United States v. Mauro, 436 U.S. 340 (1978); State v. Patterson, 273 S.C. 361, 256 S.E.2d 417 (1979); *see also* State v. Finley, 277 S.C. 548, 551, 290 S.E.2d 808, 809 (1982); State v. Adams, 354 S.C. 361, 580 S.E.2d 785 (Ct. App. 2003). However, as this Court found in State v. Tucker, 376 S.C. 412, 416, 656 S.E.2d 403, 405 (Ct. App. 2008), “[n]umerous courts have held the rights created by the IAD are statutory in nature and do not rise to the level of constitutionally guaranteed rights.”²² Further, this Court in Tucker recognized the Third Circuit’s characterization of the IAD as “a set of procedural rules,” and its reasoning that “[t]he statutory right to dismissal due to an administrative violation of these rules is therefore ‘not “fundamental” even though its impact

²²*See* Reed v. Farley, 512 U.S. 339, 352-54, 114 S.Ct. 2291, 2299-2300 (1994)(discussing IAD violation in context of non-constitutional claims); Cross v. Cunningham, 87 F.3d 586, 588-9 (1st Cir. 1996); Diggs v. Owens, 833 F.2d 439, 442 (3rd Cir. 1987)(IAD is set of procedural rules, the violation of which does not infringe upon a constitutional right); Reed v. Clark, 984 F.2d 209, 210 (7th Cir. 1993), *aff’d sub nom*, 512 U.S. 339 (1994)(IAD procedures are not constitutional rights); Camp v. U.S., 587 F.2d 397, 400 (8th Cir. 1978)(“the IAD amounts to nothing more than a statutory set of procedural rules which clearly do not give rise to the level of constitutionally guaranteed rights.”); Greathouse v. U.S., 655 F.2d 1032, 1034 (10th Cir. 1981)(*per curiam*)(IADA rights are statutory, not fundamental or constitutional in nature); Yellen v. Cooper, 828 F.2d 1471 (10th Cir. 1987)(same); Pethel v. McBride, 219 W.Va. 578, 638 S.E.2d 727 (2006)(same); Seymore v. Alabama, 846 F.2d 1355, 1359 (11th Cir. 1988)(addressing IADA as non-constitutional claim); State v. Vinson, 182 S.W.3d 709, 711 (Mo. Ct. App. 2006)(IAD rights are statutory not constitutional); Finley v. State, 295 Ark. 357, 748 S.W.2d 643, 647 (1988)(IAD provisions do not rise to the level of constitutionally protected rights); State v. Noonahal, 241 Wis. 2d 397, 626 N.W.2d 1, 4 (Ct. App. 2001)(rights under IAD are statutory, not constitutional, in nature)

on a defendant may be great.” *Id.*, quoting United States v. Palmer, 574 F.2d 164, 167 (3rd Cir. 1978).²³ See also People v. Nitz, 219 Ca. App. 3d 164, 170 268 Cal. Rptr. 54 (1990)(“[t]he IAD amounts to nothing more than a set of procedural rules, and the rights it protects in no way affect the fairness and accuracy of the fact-finding procedure or other due process or trial rights.”).

Pursuant to Article III (a) of the IAD, resolution of detainers based on untried indictments, information or complaints against a prisoner can be triggered by the prisoner filing a request for a “final disposition” and that request for disposition must be honored by way of holding a trial within one hundred and eighty (180) days. New York v. Hill, 528 U.S. 110, 112 (2000). However, that provision is subject to continuance for good cause. *Id.* See also S.C. Code Ann. § 17-11-10. “[A]ny requested continuance may be granted only at or prior to the expiration of the 180 day period prescribed in the statute.” State v. Patterson, 273 S.C. 361, 363, 256 S.E.2d 417, 418 (1979).²⁴

Article III of the Act reads as follows:

²³Violation of the provisions of the IAD does not make out a claim of lack of subject matter jurisdiction in the trial/sentencing court. State v. Adams, 354 S.C. 361, 580 S.E.2d 785 (Ct. App. 2003); Pethel v. McBride, 219 W.Va. 578, 638 S.E.2d 727 (W.Va. 2006)(cataloging federal and state cases). Nor does violation of IAD provisions alone make out a cognizable claim on federal habeas review. Reed; Matheney v. Hamby, 488 U.S. 913, n. 1 (1988)(White, J. dissenting)(pointing out majority rule, holding IAD violations without more do not state federal habeas claim); Bush v. Muncy, 659 F.2d 402, 408 (4th Cir. 1981); Kerr v. Finkbeiner, 757 F.2d 604, 607 (4th Cir. 1985)(violation of 180 day rule not cognizable); Seymour (violation of IAD is not fundamental defect cognizable in federal habeas absent showing of prejudice); Lara v. Johnson, 141 F.3d 239, 242 (5th Cir. 1998)(must show fundamental defect causing miscarriage of justice); Remeta v. Singletary, 85 F.3d 513, 519 (11th Cir. 1996)(to be cognizable defendant must show violation of IAD prejudiced him by affecting or impugning the integrity of the fact finding process); Pethel v. McBride, 219 W.Va. 578, 638 S.E.2d 727 (W.Va. 2006)(cataloging cases).

²⁴If, however, a defendant makes a continuance request, his request “remove[s] his case from the scope of the automatic dismissal provisions of the statute.” State v. Allen, 269 S.C. 233, 237 S.E.2d 64 (1977). See also State v. Finley, 277 S.C. 548, 290 S.E.2d 808 (1982) (“a defendant cannot cause the delay in the trial and then expect dismissal of the charges because the case was not tried within” the mandated statutory period).

(a) Whenever a person has entered upon a term of imprisonment in a penal or correctional institution of a party state, and whenever during the continuance of the term of imprisonment there is pending in any other party state any untried indictment, information or complaint on the basis of which a detainer has been lodged against a prisoner, he shall be brought to trial within one hundred eighty days after he shall have caused to be delivered to the prosecuting officer and the appropriate court of the prosecuting officer's jurisdiction written notice of the place of his imprisonment and his request for a final disposition to be made of the indictment, information or complaint; *provided, that for good cause shown* in open court, the prisoner or his counsel being present, the court having jurisdiction of the matter *may grant any necessary or reasonable continuance.*

S.C. Code Ann. Section 17-11-10, Art. III (2003)(emphasis added).

Even if the Act applies, the one hundred and eighty (180) day time limit did not commence until appellant Hill's request for final disposition was actually delivered to the court and the prosecuting officer of the jurisdiction that lodged the detainer against him. Fex v. Michigan, 507 U.S. 43, 52, 113 S.Ct. 1085 (1993)("We hold that the 180-day time period in Article III(a) of the IAD does not commence until the prisoner's request for final disposition of the charges against him has actually been delivered to the court and prosecuting officer of the jurisdiction that lodged the detainer against him."). Because appellant Hill's request for final disposition was delivered to the court and the prosecuting attorney on September 3, 2010, the 180-day period concluded on March 1, 2011. Id. The State sought a continuance pursuant to the provisions of the Act at or before the 180 days expired. (R. 10-17 March 1, 2011 Tr., pp. 1-8, R. 19-39 March 17, 2011 Tr. pp. 1-21, R. 65-75, BOA). The motion was made in open court with appellant Hill present along with his attorney. (R. 10-17 March 1, 2011 Tr., pp. 1-8, R. 19-39 March 17, 2011 Tr., pp. 1-21, R. 65-75). Judge John, the administrative judge, and trial judge in this case held the state had shown good cause

for the granting of the continuance under the Interstate Agreement on Detainers Act and granted a reasonable or necessary continuance. (R. 10-17 March 1, 2011 Tr., pp. 1-8, R. 5- Order of Continuance March 1, 2011, R. 6-Amended Order of Continuance, R. 19-39 March 17, 2011 Tr., pp. 1-21, R. 65-75). Thereafter, the State was prepared to try the case in July of 2011; however, appellant Hill made a motion for continuance which Judge John granted. (R. 8- Order of Continuance June 20, 2011, R. 65-75). Thereafter, the case was called for trial in September of 2011, and Hill was convicted.²⁵

The question here is whether Judge John's order granting a continuance satisfies the continuance provision of the IAD. It does. Without question, "the decision to grant a continuance is generally within the trial court's discretion." Patterson, 273 S.C. at 363, 256 S.E.2d at 418. It may reversed only on an abuse of discretion. Id.; State v. Williams, 321 S.C. 455, 469 S.E.2d 49 (1996). There is no question, and it is conceded by appellant Hill, the State made its request for continuance before the one hundred and eighty (180) days expired. The statute provides that the request must be made before or at the expiration of the one hundred (180) days, which was done in this case. There is no question, Judge John, the administrative judge, and the trial judge in the matter, had jurisdiction under the Act. There is no question the motion for a continuance was made, in open court, with appellant Hill present and his counsel. The request for a continuance was therefore timely under the statute and properly made before Judge John.

²⁵Hill conceded below that the State's continuance motion was made, timely made, and granted by the Court. However, he argued that the granting of the continuance was erroneous. On appeal, admitting again the motion was timely made and a continuance was granted, he argues his convictions and sentences should be vacated and the indictments for two (2) counts of murder and burglary in the 1st degree should none the less be dismissed with prejudice pursuant to the IAD because the State did not have good cause for a continuance under the IAD.

The basis for the continuance is plainly set forth in the record. (R. 10-17 March 1, 2011 Tr., pp. 1-8, R. 65-75). Judge John noted the special preparations that were required in a case of this magnitude, i.e. a double murder with an accompanying charge of burglary in the 1st degree. Judge John was also the trial judge in the Gagnon murder case so he was intimately familiar with how complicated and serious the matter was. Respondent would note that the very fact that appellant's counsel recognized a need for an additional continuance based on his schedule and need of additional time in preparation for his case [R. 65-75] is implicit acknowledgment of the additional time and additional requirements of a proceeding of this nature and magnitude. In fact, Hill relied on the magnitude of this case as one of the basis for his continuance request in June of 2011. (R. 43-46 June 16, 2011 Tr., pp. 4-7). See State v. Aguero, 791 N.W.2d 1 (N.D. 2010)(allowable delay is based on consideration of magnitude and seriousness of the offense). The Solicitor also confirmed on the record that while Hill had been detained in the Horry County Detention Center, there had been extensive plea negotiations between the State and the Defendant. (R. 10-17 March 1, 2011 Tr., pp. 1-8, R. 65-75).²⁶ There had even been discussions regarding a potential proffer of appellant Hill's testimony. (R. 65-75). Even more importantly, the original Schmerber Order had been lost, and the chain of custody documentation lost, and the State had a compelling need to obtain a second Schmerber Order for a 2nd DNA bucal sample for forensic comparison. (R. 10-17 March 1, 2011 Tr., pp. 1-8, R. 65-75). This is also supported by the record of the March 17, 2011 hearing at which the State obtained a 2nd Schmerber Order for a 2nd bucal sample. (R. 19-39 March 17, 2011 Tr., pp. 1-

²⁶Defense counsel did not deny the fact that plea negotiations were taking place before the 180 day deadline, and in fact confirmed at a September hearing that he received a written plea offer from the State on March 8, 2011. (R. 65-75). Defense counsel also conceded in a hearing immediately before the trial began, that plea negotiations were ongoing before he received the written offer on March 8th. (R. 76-78).

21, R. 65-75). The record also shows that once this bucal sample was obtained SLED expedited its examination in this case over other cases so this case would move forward without any unnecessary delay. (R. 65-75). The Orders filed by Judge John show he found and concluded that good cause was shown for the continuance and a continuance was reasonable and necessary. (R. 5, 6, Order of Continuance, March 1, 2011, Amended Order of Continuance March 12, 2011).²⁷

Again, this is not a question of constitutional magnitude or the basis for a speedy trial motion; rather, it is a matter of compliance with procedural rules under the IAD. The State complied with those rules and obtained a continuance **prior to the expiration of the 180 days**. And, the continuance was based on *good cause* as determined by the Court, and the Court granted a *necessary* and *reasonable* continuance. (R. 10-17 March 1, 2011 Tr., pp. 1-8, R. 5-March 1, 2011 Order of Continuance, R. 6-Amended Order of Continuance, R. 19-39 March 17, 2011 Tr., pp. 1-21, R. 65-75). The State was prepared to move forward with the trial *in July* of 2011; however, appellant sought a continuance, which was *also* granted by the Court. (R. 65-75, R. 8-Order of Continuance June 20, 2011). The case was then called for trial in September, and appellant was properly convicted of all charges by evidence proving his guilt beyond any reasonable doubt. And, after those convictions, appellant was sentenced to life imprisonment without parole and thirty (30) years concurrent.²⁸ Hill has not shown an abuse of discretion by Judge John.

²⁷The Amended Order of Continuance correctly reflects that Hill was brought to South Carolina pursuant to his request under Article III not Article IV; therefore, any applicable time period would be 180 days not 120 days as reflected in the original Order of Continuance.

²⁸Any loss of appellant's good time credits in Tennessee would not cause appellant any prejudice because he was sentenced to life without parole and thirty (30) years here and these sentences would extend long beyond the completion of his sentence in Tennessee. Further, Hill has shown no prejudice to his defense by any delay, but quite the opposite.

This record reflects that none of the procedural rules were violated, and, further, no unnecessary delay is evident. Hill cannot show he is entitled to vacation of his convictions for murder (2 Counts) and Burglary in the 1st Degree and dismissal of the indictments with prejudice. However, to the extent the issue raised here contests the legitimacy of the tolling based on Judge John's Order, neither case law nor the record supports Hill's position. There is no merit to this ground and it must be dismissed with prejudice.

III.

Finally, Hill's request for a continuance removed his case outside the purview of the IAD's automatic dismissal provisions. *See State v. Allen*, 269 S.C. 233, 237 S.E.2d 64 (1977) (If, however, a defendant makes a continuance request, his request "remove[s] his case from the scope of the automatic dismissal provisions of the statute."). *See also State v. Finley*, 277 S.C. 548, 290 S.E.2d 808 (1982) ("a defendant cannot cause the delay in the trial and then expect dismissal of the charges because the case was not tried within" the mandated statutory period). Hill argues that because his continuance request occurred after the expiration of the 180 days, it should not be considered as waiving the automatic dismissal provision; however, Respondent submits Hill is wrong for two (2) reasons. First, the 180 days did not expire but a proper continuance for good cause was granted by Judge John at or before the expiration of the 180 days as provided for in the statute, tolling the time period. Therefore, Hill's continuance motion did waive the automatic dismissal provision because it was made while the 180 time period was tolled. Second, Hill's continuance request constituted his taking a position contrary to his request for speedy disposition under the statute and constituted a waiver of any speedy disposition claim. *See Brown v. Wolff*, 706 F.2d 902 (9th Cir. 1983); *State v. Buhl*, 269 N.J. Super. 344, 635 A.2d 562 (App. Div. 1994). *See also New York v. Hill*, 528 U.S.

110 (2000)(discussing waiver of IAD requirements). Further, his motion for a continuance conceded Hill was not ready for trial when the State made its motion for a continuance. (R. 43-46 June 16, 2011 Tr., pp. 4-7). As a result, this ground must be dismissed.

CONCLUSION

For all of the foregoing reasons, Hill's convictions for the murders of Charles and Diane Parker and the burglary of their home and his resulting sentences should be affirmed.

Respectfully submitted,

ALAN WILSON

Attorney General

JOHN W. McINTOSH

Chief Deputy Attorney General

DONALD J. ZELENKA

Senior Assistant Deputy Attorney General

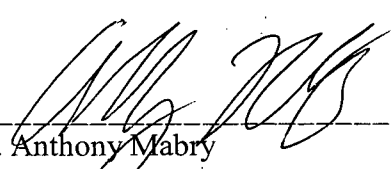
J. ANTHONY MABRY

Assistant Attorney General

JIMMY A. RICHARDSON

Solicitor, Fifteenth Judicial Circuit

By: _____


J. Anthony Mabry

ATTORNEYS FOR RESPONDENT

P.O. Box 11549

Columbia, SC 29211

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