

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

\_\_\_\_\_  
Certiorari to Oconee County

Honorable Jocelyn J. Newman, Circuit Court Judge

\_\_\_\_\_  
JAMES R. FRADY,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO 2018-001817

\_\_\_\_\_  
APPENDIX  
\_\_\_\_\_

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RECEIVED  
JUL 30 2019  
S.C. SUPREME COURT

INDEX

|                                                                       |     |
|-----------------------------------------------------------------------|-----|
| INDEX .....                                                           | i   |
| TRIAL TRANSCRIPT AUGUST 29-31, 2006.....                              | 1   |
| ANDERS BRIEF OF APPELLANT .....                                       | 674 |
| COURT OF APPEALS OPINION NO. 2008-UP-634 FILED NOVEMBER 12, 2008..... | 683 |
| REMITTITUR .....                                                      | 685 |
| APPLICATION FOR POST-CONVICTION RELIEF .....                          | 686 |
| MOTION TO AMEND APPLICATION FOR POST-CONVICTION RELIEF .....          | 699 |
| RETURN.....                                                           | 701 |
| AMENDED RETURN.....                                                   | 708 |
| POST-CONVICTION RELIEF HEARING TRANSCRIPT DATED OCTOBER 3, 2011 ..... | 715 |
| ORDER OF DISMISSAL FILED JANUARY 19, 2012.....                        | 729 |
| MOTION TO REMAND FOR RECONSTRUCTION .....                             | 752 |
| RETURN TO MOTION TO REMAND FOR RECONSTRUCTION.....                    | 825 |
| REPLY TO RETURN.....                                                  | 828 |
| SUPREME COURT ORDER FILED AUGUST 10, 2012 .....                       | 832 |
| LETTER FROM JUDGE MADDOX TO SUPREME COURT .....                       | 834 |
| LETTER FROM SUPREME COURT .....                                       | 836 |
| OPINION ON WRIT OF CERTIORARI.....                                    | 837 |
| POST-CONVICTION RELIEF HEARING TRANSCRIPT DATED JUNE 26, 2017 .....   | 840 |
| APPLICANT'S EXHIBIT 1 (MOTION TO PRODUCE EVIDENCE) .....              | 930 |
| APPLICANT'S EXHIBIT 2 (MOTION TO CHANGE VENUE).....                   | 941 |
| APPLICANT'S EXHIBIT 3 (SCHMERBER ORDER).....                          | 949 |

|                                                 |     |
|-------------------------------------------------|-----|
| APPLICANT’S EXHIBIT 4 (MOTION TO SUPPRESS)..... | 951 |
| RESPONDENT’S EXHIBIT 1 (Letter).....            | 954 |
| ORDER OF DISMISSAL.....                         | 955 |
| INDICTMENTS .....                               | 976 |

STATE OF SOUTH CAROLINA

COUNTY OF OCONEE

COURT OF GENERAL SESSIONS

2004-GS-37-2070

2004-GS-37-2071

2004-GS-37-2072

2004-GS-37-2073

2004-GS-37-2074

2004-GS-37-2078

STATE OF SOUTH CAROLINA,

vs.

TRANSCRIPT OF RECORD

JAMES RANDOLPH FRADY,  
DEFENDANT.

**COPY**

August 29, 30, and 31, 2006  
Walhalla, South Carolina

B E F O R E:

THE HONORABLE PERRY M. BUCKNER, JUDGE; and a jury.

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

MINDY L. HERVEY, ESQ.  
DAVID R. WAGNER, JR., ESQ.  
Assistant Solicitors

DONALD LEVERETTE ALLEN, ESQ.  
C. ELIZABETH WALDREP, ESQ.  
Attorneys for the Defendant

HOLLIE M. JENKINS  
Circuit Court Reporter



# I N D E X

(SW) - Denotes State's Witness  
 (DW) - Denotes Defense Witness  
 (IC) - Denotes In Camera

## Page No.

|                                        |    |
|----------------------------------------|----|
| Introductory Remarks by the Court..... | 13 |
| Opening Statement by Ms. Hervey.....   | 32 |
| Opening Statement by Mr. Allen.....    | 44 |

### (SW) PHILLIP BRYANT:

|                                         |    |
|-----------------------------------------|----|
| Direct Examination by Ms. Hervey.....   | 54 |
| Cross-Examination by Mr. Allen.....     | 61 |
| Redirect Examination by Ms. Hervey..... | 63 |
| Recross Examination by Mr. Allen.....   | 64 |

### (SW) JULIA FORD:

|                                         |    |
|-----------------------------------------|----|
| Direct Examination by Ms. Hervey.....   | 65 |
| Cross-Examination by Mr. Allen.....     | 73 |
| Redirect Examination by Ms. Hervey..... | 74 |

### (SW) WILLIAM FLOYD WHITE:

|                                       |    |
|---------------------------------------|----|
| Direct Examination by Ms. Hervey..... | 76 |
| Cross-Examination by Mr. Allen.....   | 81 |

### (SW) TIMOTHY G. HUNNICUTT:

|                                         |     |
|-----------------------------------------|-----|
| Direct Examination by Ms. Hervey.....   | 84  |
| Cross-Examination by Mr. Allen.....     | 99  |
| Redirect Examination by Ms. Hervey..... | 107 |
| Recross Examination by Mr. Allen.....   | 111 |
| Further Examination by Ms. Hervey.....  | 111 |

### (SW) JAMES CLEVELAND FRADY:

|                                       |     |
|---------------------------------------|-----|
| Direct Examination by Ms. Hervey..... | 113 |
|---------------------------------------|-----|

### (SW) JOSEPH ADAM HAMILTON:

|                                       |     |
|---------------------------------------|-----|
| Direct Examination by Ms. Hervey..... | 124 |
| Cross-Examination by Mr. Allen.....   | 131 |

### (SW) TAMMY PITTS HARPER:

|                                       |     |
|---------------------------------------|-----|
| Direct Examination by Ms. Hervey..... | 134 |
| Cross-Examination by Mr. Allen.....   | 152 |

|                     |     |
|---------------------|-----|
| Matters of Law..... | 157 |
|---------------------|-----|

INDEX (CONTINUED)

|                                         |     |
|-----------------------------------------|-----|
| <u>(SW) CHRIS KELLEY:</u>               |     |
| Direct Examination by Ms. Hervey.....   | 167 |
| <u>(SW) DOUGLAS LOWELL BLACKWELL:</u>   |     |
| Direct Examination by Ms. Hervey.....   | 173 |
| Cross-Examination by Mr. Allen.....     | 183 |
| Redirect Examination by Ms. Hervey..... | 186 |
| <u>(SW) STEVEN BRIAN JENKINS:</u>       |     |
| Direct Examination by Ms. Hervey.....   | 188 |
| Cross-Examination by Mr. Allen.....     | 199 |
| <u>(SW) CASEY BOWLING:</u>              |     |
| Direct Examination by Ms. Hervey.....   | 200 |
| <u>(SW) MARK LYLES:</u>                 |     |
| Direct Examination by Ms. Hervey.....   | 209 |
| Cross-Examination by Mr. Allen.....     | 219 |
| Redirect Examination by Ms. Hervey..... | 221 |
| Recross Examination by Mr. Allen.....   | 221 |
| <u>(SW) ANNETTE K. BURNEY:</u>          |     |
| Direct Examination by Ms. Hervey.....   | 222 |
| Cross-Examination by Mr. Allen.....     | 227 |
| <u>(SW) STEVEN CURTIS:</u>              |     |
| Direct Examination by Ms. Hervey.....   | 230 |

WEDNESDAY AUGUST 30, 2006

|                                                 |     |
|-------------------------------------------------|-----|
| <u>(SW) STEVEN CURTIS:</u>                      |     |
| Continued Direct Examination by Ms. Hervey..... | 281 |
| Cross-Examination by Mr. Allen.....             | 325 |
| Redirect Examination by Ms. Hervey.....         | 336 |
| Recross Examination by Mr. Allen.....           | 339 |
| <u>(SW) WENDY BELL:</u>                         |     |
| Direct Examination by Ms. Hervey.....           | 340 |
| Cross-Examination by Mr. Allen.....             | 350 |
| <u>(SW) GRADY ALEX LAYTON:</u>                  |     |
| Direct Examination by Ms. Hervey.....           | 352 |

INDEX (CONTINUED)

|                                         |     |
|-----------------------------------------|-----|
| <u>(SW) ILA SIMMONS:</u>                |     |
| Direct Examination by Ms. Hervey.....   | 377 |
| <u>(SW) BRETT WOODARD, M.D.:</u>        |     |
| Direct Examination by Ms. Hervey.....   | 387 |
| Cross-Examination by Mr. Allen.....     | 409 |
| Redirect Examination by Ms. Hervey..... | 412 |
| <u>(SW) KEVIN DAVIS:</u>                |     |
| Direct Examination by Ms. Hervey.....   | 413 |
| <u>(SW) CHARLES KEVIN COMER:</u>        |     |
| Direct Examination by Mr. Wagner.....   | 421 |
| Cross-Examination by Mr. Allen.....     | 424 |
| Redirect Examination by Mr. Wagner..... | 429 |
| <u>(SW) MICHAEL HAROLD HARPER (IC):</u> |     |
| Direct Examination by Mr. Allen.....    | 432 |
| Matters of Law.....                     | 443 |
| <u>(SW) MICHAEL HAROLD HARPER:</u>      |     |
| Direct Examination by Ms. Hervey.....   | 458 |
| Cross-Examination by Mr. Allen.....     | 493 |
| Redirect Examination by Ms. Hervey..... | 499 |
| <u>(SW) IRA BYRD PARNELL:</u>           |     |
| Direct Examination by Ms. Hervey.....   | 504 |
| Cross-Examination by Mr. Allen.....     | 549 |
| Redirect Examination by Ms. Hervey..... | 563 |
| Recross Examination by Mr. Allen.....   | 567 |
| Matters of Law.....                     | 570 |

INDEX (CONTINUED)THURSDAY, AUGUST 31, 2003

|                                                |     |
|------------------------------------------------|-----|
| State Rests.....                               | 579 |
| Motions.....                                   | 579 |
| Questioning of the Defendant by the Court..... | 583 |
| Matters of Law.....                            | 586 |
| Defense Rests.....                             | 589 |
| Closing Argument by Ms. Hervey.....            | 589 |
| Closing Argument by Mr. Allen.....             | 616 |
| Matters of Law.....                            | 628 |
| Charge on the Law by the Court.....            | 635 |
| Verdict of the Jury.....                       | 664 |
| Sentencing by the Court.....                   | 669 |
| Certificate of the Reporter.....               | 671 |

INDEX (CONTINUED)E X H I B I T S

| <u>NO.</u> | <u>DESCRIPTION</u>                                 | <u>ID.</u> | <u>EVD.</u> |
|------------|----------------------------------------------------|------------|-------------|
|            | (State's Exhibits)                                 |            |             |
| S-1        | Aerial Map of [REDACTED]                           |            |             |
|            | [REDACTED] .....                                   | 50.....    | 58          |
| S-2        | Aerial Map of Lake Jemiki Road.....                | 87.....    | 87          |
| S-3        | Lighter from Pool Room and Smoke<br>Detectors..... | 263        |             |
| S-4A       | Photo of Residence at [REDACTED]                   |            |             |
|            | [REDACTED] .....                                   | 239.....   | 240         |
| S-4B       | Photo of Residence at [REDACTED]                   |            |             |
|            | [REDACTED] .....                                   | 239.....   | 240         |
| S-4C       | Photo of Residence at [REDACTED]                   |            |             |
|            | [REDACTED] .....                                   | 239.....   | 240         |
| S-4D       | Photo of Residence at [REDACTED]                   |            |             |
|            | [REDACTED] .....                                   | 239.....   | 240         |
| S-4E       | Photo of Residence at [REDACTED]                   |            |             |
|            | [REDACTED] .....                                   | 239.....   | 240         |
| S-4F       | Photo of Residence at [REDACTED]                   |            |             |
|            | [REDACTED] .....                                   | 239.....   | 240         |
| S-4G       | Photo of Residence at [REDACTED]                   |            |             |
|            | [REDACTED] .....                                   | 239.....   | 240         |
| S-4H       | Photo of Residence at [REDACTED]                   |            |             |
|            | [REDACTED] .....                                   | 239.....   | 240         |
| S-4I       | Photo of Residence at [REDACTED]                   |            |             |
|            | [REDACTED] .....                                   | 248.....   | 249         |
| S-4J       | Photo of Residence at [REDACTED]                   |            |             |
|            | [REDACTED] .....                                   | 248.....   | 249         |
| S-4K       | Photo of Residence at [REDACTED]                   |            |             |
|            | [REDACTED] .....                                   | 248.....   | 249         |
| S-4L       | Photo of Residence at [REDACTED]                   |            |             |
|            | [REDACTED] .....                                   | 248.....   | 249         |
| S-4M       | Photo of Residence at [REDACTED]                   |            |             |
|            | [REDACTED] .....                                   | 248        |             |
| S-4N       | Photo of Residence at [REDACTED]                   |            |             |
|            | [REDACTED] .....                                   | 250.....   | 251         |
| S-4O       | Photo of Residence at [REDACTED]                   |            |             |
|            | [REDACTED] .....                                   | 250.....   | 251         |
| S-4P       | Photo of Residence at [REDACTED]                   |            |             |
|            | [REDACTED] .....                                   | 252.....   | 253         |
| S-4Q       | Photo of Residence at [REDACTED]                   |            |             |
|            | [REDACTED] .....                                   | 252.....   | 253         |

INDEX (CONTINUED)E X H I B I T S

| <u>NO.</u> | <u>DESCRIPTION</u>               | <u>ID.</u> | <u>EVD.</u> |
|------------|----------------------------------|------------|-------------|
| S-4R       | Photo of Residence at [REDACTED] |            |             |
|            | [REDACTED] .....                 | 252.....   | 253         |
| S-4S       | Photo of Residence at [REDACTED] |            |             |
|            | [REDACTED] .....                 | 254.....   | 255         |
| S-4T       | Photo of Residence at [REDACTED] |            |             |
|            | [REDACTED] .....                 | 254.....   | 255         |
| S-4U       | Photo of Residence at [REDACTED] |            |             |
|            | [REDACTED] .....                 | 254.....   | 255         |
| S-4V       | Photo of Residence at [REDACTED] |            |             |
|            | [REDACTED] .....                 | 254.....   | 255         |
| S-4W       | Photo of Residence at [REDACTED] |            |             |
|            | [REDACTED] .....                 | 254.....   | 255         |
| S-4X       | Photo of Residence at [REDACTED] |            |             |
|            | [REDACTED] .....                 | 254.....   | 255         |
| S-4Y       | Photo of Residence at [REDACTED] |            |             |
|            | [REDACTED] .....                 | 254.....   | 255         |
| S-4Z       | Photo of Residence at [REDACTED] |            |             |
|            | [REDACTED] .....                 | 254.....   | 255         |
| S-5A       | Photo of Residence at [REDACTED] |            |             |
|            | [REDACTED] .....                 | 280.....   | 300         |
| S-5B       | Photo of Residence at [REDACTED] |            |             |
|            | [REDACTED] .....                 | 280.....   | 300         |
| S-5C       | Photo of Residence at [REDACTED] |            |             |
|            | [REDACTED] .....                 | 280.....   | 300         |
| S-5D       | Photo of Residence at [REDACTED] |            |             |
|            | [REDACTED] .....                 | 280.....   | 300         |
| S-5E       | Photo of Residence at [REDACTED] |            |             |
|            | [REDACTED] .....                 | 280.....   | 300         |
| S-5F       | Photo of Residence at [REDACTED] |            |             |
|            | [REDACTED] .....                 | 280.....   | 300         |
| S-5G       | Photo of Residence at [REDACTED] |            |             |
|            | [REDACTED] .....                 | 299.....   | 300         |
| S-5H       | Photo of Residence at [REDACTED] |            |             |
|            | [REDACTED] .....                 | 299.....   | 300         |
| S-5I       | Photo of Residence at [REDACTED] |            |             |
|            | [REDACTED] .....                 | 309.....   | 311         |
| S-5J       | Photo of Residence at [REDACTED] |            |             |
|            | [REDACTED] .....                 | 309.....   | 311         |
| S-6A       | Photo of Mike Harper's Van.....  | 280.....   | 314         |
| S-6B       | Photo of Mike Harper's Van.....  | 280.....   | 316         |

INDEX (CONTINUED)E X H I B I T S

| <u>NO.</u> | <u>DESCRIPTION</u>                                  | <u>ID.</u> | <u>EVD.</u> |
|------------|-----------------------------------------------------|------------|-------------|
| S-6C       | Photo of Mike Harper's Van.....                     | 280.....   | 316         |
| S-6D       | Photo of Mike Harper's Van.....                     | 280.....   | 316         |
| S-6E       | Photo of Mike Harper's Van.....                     | 280.....   | 318         |
| S-6F       | Photo of Mike Harper's Van.....                     | 318.....   | 319         |
| S-9        | GSR Kit from James Frady, Jr.....                   | 274.....   | 385         |
| S-10       | GSR Kit from Barry Frady.....                       | 379.....   | 385         |
| S-11       | Shotgun Shell.....                                  | 281.....   | 531         |
| S-12       | Shotgun Shell.....                                  | 294.....   | 531         |
| S-15       | Metal Can and Metal Corkscrew.....                  | 261.....   | 366         |
| S-16       | Gas Can.....                                        | 109.....   | 366         |
| S-17       | Box of Shotgun Shells.....                          | 324.....   | 516         |
| S-18       | J.C. Higgins 12-Gauge Shotgun.....                  | 305.....   | 306         |
| S-19       | Shotgun Shell Wadding from<br>Barry Frady.....      | 203.....   | 408         |
| S-25       | Pieces of Wadding from James C.<br>Frady.....       | 203.....   | 571         |
| S-29A      | Photo of Roadside Area.....                         | 209.....   | 216         |
| S-29B      | Photo of Roadside Area.....                         | 209.....   | 216         |
| S-29C      | Photo of Roadside Area.....                         | 209.....   | 216         |
| S-29D      | Photo of Roadside Area.....                         | 209.....   | 216         |
| S-29E      | Photo of Roadside Area.....                         | 209.....   | 216         |
| S-29F      | Photo of Roadside Area.....                         | 209.....   | 216         |
| S-29G      | Photo of Roadside Area.....                         | 209.....   | 216         |
| S-29H      | Photo of Roadside Area.....                         | 209.....   | 216         |
| S-33       | Diagram of Interior Residence at<br>[REDACTED]..... | 246        |             |
| S-34A      | Photo of Residence at [REDACTED]<br>[REDACTED]..... | 254.....   | 258         |
| S-34B      | Photo of Residence at [REDACTED]<br>[REDACTED]..... | 254.....   | 258         |
| S-34C      | Photo of Residence at [REDACTED]<br>[REDACTED]..... | 254.....   | 258         |
| S-34D      | Photo of Residence at [REDACTED]<br>[REDACTED]..... | 254.....   | 258         |
| S-34E      | Photo of Residence at [REDACTED]<br>[REDACTED]..... | 254.....   | 258         |
| S-34F      | Photo of Residence at [REDACTED]<br>[REDACTED]..... | 254.....   | 258         |
| S-34G      | Photo of Residence at [REDACTED]<br>[REDACTED]..... | 254.....   | 258         |

INDEX (CONTINUED)E X H I B I T S

| <u>NO.</u> | <u>DESCRIPTION</u>               | <u>ID.</u> | <u>EVD.</u> |
|------------|----------------------------------|------------|-------------|
| S-34H      | Photo of Residence at [REDACTED] |            |             |
|            | [REDACTED] .....                 | 254.....   | 258         |
| S-34I      | Photo of Residence at [REDACTED] |            |             |
|            | [REDACTED] .....                 | 254.....   | 258         |
| S-34J      | Photo of Residence at [REDACTED] |            |             |
|            | [REDACTED] .....                 | 254.....   | 258         |
| S-34K      | Photo of Residence at [REDACTED] |            |             |
|            | [REDACTED] .....                 | 254.....   | 258         |
| S-34L      | Photo of Residence at [REDACTED] |            |             |
|            | [REDACTED] .....                 | 254.....   | 258         |
| S-34M      | Photo of Residence at [REDACTED] |            |             |
|            | [REDACTED] .....                 | 260.....   | 265         |
| S-34N      | Photo of Residence at [REDACTED] |            |             |
|            | [REDACTED] .....                 | 260.....   | 265         |
| S-34O      | Photo of Residence at [REDACTED] |            |             |
|            | [REDACTED] .....                 | 260.....   | 265         |
| S-35       | Stipulation.....                 | 504.....   | 504         |

## (Court's Exhibits)

|     |                         |          |     |
|-----|-------------------------|----------|-----|
| C-1 | Note from the Jury..... | 321..... | 321 |
| C-2 | Note from the Jury..... | 539..... | 539 |

All Exhibits were retained by the Clerk of Court for Oconee County.



1 THE COURT: Before we begin, I'm advised that the  
2 jury is all present now.

3 It's my understanding that yesterday on the record,  
4 Counsel for the Defendant had filed a written pre-trial  
5 motion for change of venue. I told Counsel for the  
6 Defendant that I would not rule on that motion until I had  
7 the opportunity to voir dire the jury. And that has been  
8 completed now.

9 I note for the record that Counsel for the Defendant  
10 did not exercise all of its peremptory strikes. I would  
11 also point out for Counsel for the Defendant, which I  
12 realize you're already aware of, that in my voir dire of  
13 the jury, I asked the jury whether they had been exposed  
14 to any type of pre-trial publicity. And although I got a  
15 number of affirmative responses, I also received  
16 affirmative responses to the fact that each of the jurors  
17 that had been exposed to any type of pre-trial publicity  
18 advised this Court, under oath, that they could put it  
19 aside and decide this case solely upon evidence presented  
20 during the trial of this case.

21 Having placed that on the record, Counsel, I ask now  
22 if you wish to be heard on your motion for change of  
23 venue?

24 MR. ALLEN: May it please the Court, Your Honor?

25 THE COURT: Yes, sir.

1 MR. ALLEN: As the Court has well articulated, and in  
2 light of yesterday's extensive voir dire with the jury  
3 venire, and after consultation with the Defendant after  
4 the jury selection process was completed, the Defense has  
5 made the decision to withdraw the motion to change venue,  
6 Your Honor.

7 THE COURT: Very well.

8 Are there any other matters that need to be placed on  
9 the record before I bring the jury in from the State of  
10 South Carolina?

11 MS. HERVEY: No, sir.

12 THE COURT: From the Defendant?

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

14 THE COURT: Well, Counsel, I'm going to ask and  
15 remind you that an opening statement -- I assume you both  
16 want to make an opening at this time.

17 Is that --

18 MS. HERVEY: Yes, Your Honor.

19 MR. ALLEN: Yes, sir.

20 THE COURT: You don't want to wait until the  
21 beginning of --

22 MR. ALLEN: No, sir.

23 THE COURT: I'm going to ask and remind you that an  
24 opening statement, before we begin, is not an argument.  
25 The arguments come at the conclusion of the case.

1 I'm going to remind you also that I do not -- we have  
2 discussed a number of matters in chambers concerning  
3 potential objections. I do not expect there to be any  
4 reference in opening statements to evidence which is  
5 subject to an objection. Because if you refer to it in  
6 opening statement and I, ultimately, rule it is  
7 inadmissible, I can't cure that problem, and we are faced  
8 with the possibility of a mistrial, which would be  
9 unfortunate to the Defendant and the State of South  
10 Carolina.

11 I caution you before you begin your opening that you  
12 are not to refer to any evidence which has been the  
13 subject of an objection. And you both are very familiar  
14 with what I'm talking about. Because I've spent over an  
15 hour in pre-trial with you on motions. And I ask you to,  
16 please, refrain from making any comment about such  
17 evidence until the trial court has an opportunity to hear  
18 the testimony and make a ruling on its admissibility.

19 Any questions about the opening from Counsel for the  
20 State of South Carolina?

21 MS. HERVEY: Nothing from the State, Your Honor.

22 THE COURT: From the Defendant?

23 MR. ALLEN: Nothing from the Defense, Your Honor.

24 THE COURT: Very well. Bring us the jury, please,  
25 sir.

1 THE CLERK: Judge, we need to swear them.

2 THE COURT: Okay. Thank you.

3 (WHEREUPON, the jury came into open court at  
4 approximately 9:15 a.m.)

5 THE COURT: Good morning, Madam Foreperson, and,  
6 ladies and gentlemen of the jury. I hope you all had a  
7 pleasant evening.

8 I told you, ladies and gentlemen, the first thing I  
9 was going to do this morning -- and we're going to do it  
10 now. I did not swear you yesterday because I wanted to  
11 take care of some other matters before we begin. So  
12 before we do anything else this morning, I'm going to ask  
13 the Clerk to, please, swear the jury at this time.

14 Would each of you stand and raise your right hand for  
15 me?

16 (WHEREUPON, the jury was sworn at 9:16 a.m.)

17 THE CLERK: Please be seated.

18 INTRODUCTORY REMARKS

19 THE COURT: All right. Ladies and gentlemen, let me  
20 see if I can assist you a little bit about how we're going  
21 to proceed. Before we begin this trial, the first thing I  
22 want to tell you is that this trial probably will be  
23 different from what you might expect.

24 You know, ladies and gentlemen, many people do not  
25 have the opportunity or the chance to attend an actual

1 court session as each of you are doing now. And many of  
2 you may think from watching television, or going to a  
3 movie, or reading a book that trials are always full of  
4 high drama and intense action and riveting and  
5 entertaining circumstances.

6 While all of those things -- ladies and gentlemen,  
7 such programs such as CSI and Law and Order, I realize  
8 that many of you have probably had a chance to see those.  
9 And while all of those things may be true at times, that  
10 is entertainment. A trial, ladies and gentlemen, an  
11 actual trial, is not like a television program. It's not  
12 like a movie or a book. A trial is not for entertainment.

13 A trial is a fundamental part, ladies and gentlemen,  
14 of our democracy. It is a search for the truth in an  
15 effort to make sure that justice is done between the  
16 parties. Searching for the truth and making sure that  
17 justice is done is often slow. It is often deliberate.  
18 It is often repetitive. The exact opposite of what many  
19 of you may have seen on television, or read in a book, or  
20 watched in a movie.

21 Ladies and gentlemen, this courtroom is a place of  
22 honor. It is dedicated to the preservation and the  
23 protection of citizens rights through what many people  
24 have called the greatest justice system in the entire  
25 world. The attorneys appearing before you are first and

1       foremost -- they're advocates for their parties they  
2       represent, whether it be the State of South Carolina or  
3       the Defendant. But first and foremost, they're officers  
4       of this Court.

5               And as officers of this Court, the attorneys that are  
6       going to be appearing before you are sworn as officers of  
7       this Court to uphold the integrity and the fairness of our  
8       system. And they are sworn as officers of this Court,  
9       ladies and gentlemen of the jury, to help you in a search  
10      for the truth as jurors. You should expect the attorneys  
11      to be professional. You should expect the attorneys to be  
12      ethical in the representation of their clients interest.

13             And I tell you that I want you to remember that just  
14      a moment ago, you took an oath. And in that oath, you  
15      said that you would, well and truly try this case and reach  
16      a fair and a just verdict. So you, ladies and gentlemen  
17      of the jury, are also expected to be professional. You're  
18      also expected to be reasonable and ethical in the  
19      discharge of your duties as jurors.

20             Before we begin this trial, I want to thank each and  
21      every one of you on behalf of Oconee County and this Court  
22      for accepting this very important responsibility of jury  
23      service and for your contribution to our justice system by  
24      serving as jurors. Without you, ladies and gentlemen,  
25      justice can never be accomplished in a courtroom.

1           Now, ladies and gentlemen, let me tell you a little  
2 bit about how we're going to proceed. First of all,  
3 ladies and gentlemen, I'd like for you to be aware that in  
4 this Court a charge of a criminal law violation is  
5 presented in a legal document, which you've heard us refer  
6 to when the Solicitor called the case, known as an  
7 indictment. I hold them in my hand. There are six  
8 indictments in this particular case. The indictments  
9 charge the Defendant with various offenses.

10           The Defendant -- which I'm going to explain the  
11 elements to you at the appropriate time in the trial. The  
12 Defendant has pled not guilty to each of these  
13 indictments. That plea of not guilty places the burden on  
14 the State of South Carolina to prove each and every  
15 element of the indictments beyond a reasonable doubt.

16           And I will tell you, ladies and gentlemen, that the  
17 indictments in this case charge the Defendant, James  
18 Randolph Frady, first, with the offense of burglary in the  
19 first degree. In the indictment, it is alleged that this  
20 offense occurred in Oconee County on or about September  
21 the 22nd, 2004, involving the dwelling of James C. Frady,  
22 Jr. and Barry Frady.

23           And the second indictment, ladies and gentlemen,  
24 charges the Defendant with the offense of murder. This  
25 indictment alleges that the Defendant did in Oconee County

1 on or about September 22nd, 2004, feloniously, willfully,  
2 and with malice aforethought kill one Barry Frady by  
3 shooting the victim with a shotgun, and that the victim  
4 died as a result thereof.

5 The third indictment charges the Defendant also with  
6 the offense of murder. It is alleged in this indictment  
7 that the Defendant, James Randolph Frady, did in Oconee  
8 County on or about September the 22nd, 2004, willfully and  
9 with malice aforethought kill one James C. Frady, Jr., by  
10 shooting the victim with a shotgun, and that said victim  
11 died as a proximate result thereof.

12 The fourth indictment charges the Defendant with the  
13 offense of grand larceny. This indictment alleges that  
14 the Defendant, James Randolph Frady, did commit the  
15 offense of grand larceny in Oconee County on or about  
16 September 22nd, 2004, by taking and carrying away the  
17 property of Mike Harper of Walhalla, South Carolina,  
18 alleged to be a 1990 Chevy Astro van.

19 The fifth indictment charges the Defendant, James  
20 Randolph Frady, with the offense of arson in the second  
21 degree. This indictment alleges that the Defendant, James  
22 Randolph Frady, in Oconee County on or about September  
23 22nd, 2004, alleged to willfully, maliciously,  
24 feloniously, and intentionally set fire to or caused to be  
25 burned a dwelling house alleged to be the residence of



1 James C. Frady, Jr., and Barry Frady.

2 And the sixth and final indictment in this case  
3 charges the Defendant with the offense of possession of a  
4 weapon during the commission of a violent crime. This  
5 also alleges that the Defendant, James Randolph Frady, in  
6 Oconee County alleged to be on or about September 22nd,  
7 2004, displayed and/or possessed a weapon during the  
8 commission of a violent crime. And I will explain to you  
9 what a violent crime is later on in my charge to you on  
10 the law in this case.

11 Now, ladies and gentlemen, those are the indictments  
12 in this case. And as I told you, ladies and gentlemen,  
13 the indictments are not evidence of any of the allegations  
14 that they contain. But I wanted you to be aware of what  
15 is alleged in the indictment. It is simply the formal  
16 written document or instrument by which the case is  
17 brought into this court, ladies and gentlemen.

18 Now, ladies and gentlemen, as I previously instructed  
19 you and I want you to be aware that this case that we are  
20 about to try -- or these indictments we are about to try,  
21 the Defendant has pled not guilty to each of these  
22 indictments, as I've told you. And that, therefore,  
23 places the burden on the State of South Carolina to prove  
24 the elements of each of those offenses. And I'll be  
25 explaining to you what the elements of each of those six

1 offenses are. And the State must prove those elements to  
2 you beyond a reasonable doubt.

3 It will be your duty, ladies and gentlemen of the  
4 jury, to determine and to decide whether the State has met  
5 that burden. It is your solemn responsibility, as jurors,  
6 to determine the guilt or the innocence of the Defendant.  
7 And your verdict, ladies and gentlemen, must be based  
8 solely on the evidence as it is presented to you in this  
9 trial and on the law as I instruct it to you during the  
10 trial and at the close of the trial.

11 Now, in just a minute, ladies and gentlemen, the  
12 Solicitor will make what is called an opening statement in  
13 which she will explain to you what she contends the issues  
14 to be in this case based on what she understands the  
15 evidence will show you in this case. And following the  
16 opening statement by the Solicitor, the attorney for the  
17 Defendant will make an opening statement.

18 Now, I wish to tell you so that you'll understand  
19 throughout this trial that what the attorneys tell you in  
20 opening statements or in their closing argument is not  
21 evidence. The attorneys are advocates for their  
22 respective clients. And what they tell you in speaking to  
23 you in opening or in closing arguments is not evidence in  
24 this case. It is only their contention, as an advocate,  
25 as to what the issues are.

1           The evidence in this case, ladies and gentlemen,  
2           which you should base your decision on will be presented  
3           to you by testimony from this witness stand -- you'll  
4           notice it's located on the side of the courtroom in  
5           closest proximity to you -- or by some exhibit, such as a  
6           document, a model, a photograph. And as to any exhibit,  
7           you will hear me say that it is in evidence. And that  
8           means it will be available to you for your consideration  
9           in your jury room during your deliberations.

10           So evidence may be testimony from the witness stand.  
11           It may be an exhibit which you will hear the Court first  
12           say is in evidence, which means you will have it with you,  
13           as to a document or a written document or something of the  
14           like. You'll have that with you in your jury room during  
15           your deliberations. Finally, evidence might be -- and I  
16           don't know whether there will be in this case -- a  
17           stipulation between Counsel where they stipulate possibly  
18           to a fact in evidence in this case. So evidence may take  
19           many forms, ladies and gentlemen.

20           Now, in the consideration of evidence, you, as a  
21           jury, should remember that under the Constitution of the  
22           State of South Carolina, you and you 12 jurors alone,  
23           possibly later one of my alternates, but you and you 12  
24           jurors alone are the sole judges of the facts in this  
25           case. And no one else but you, the jury, will be

1 permitted to weigh the evidence, to consider the evidence,  
2 and base your decision as to the facts of this case  
3 upon the evidence introduced during the trial of the  
4 case.

5 You, ladies and gentlemen of the jury, are the sole  
6 judges of the facts in this case. And the same law that  
7 makes you the sole judges of the facts makes me the sole  
8 judge of the law. I cannot invade your province and tell  
9 you, suggest to you, or in any way comment or infer to you  
10 what the facts are. And you will see that I will not make  
11 any comment to you throughout this trial about the facts.  
12 Conversely, you should not invade my province, ladies and  
13 gentlemen, and differ with me about what the law is in  
14 this case.

15 Everything that I say, ladies and gentlemen, you'll  
16 notice is being taken down by my court reporter down here.  
17 And if I make a mistake as to the law, ladies and  
18 gentlemen, to the detriment of the Defendant, then the  
19 Defendant can appeal the case to an appellate court. And  
20 if they agree I made a mistake on the law, they'll send  
21 the case back for a new trial. So don't you worry about  
22 whether or not I told you the law correctly. That is  
23 somebody else's worry.

24 Your job is to take the law as I give it to you  
25 during the trial, and at the conclusion of the trial, and

1       apply it to the facts as you find them to be based on  
2       evidence introduced during the trial of the case. And  
3       after doing that, ladies and gentlemen of the jury, you'll  
4       render your verdict, a true and just verdict, under the  
5       solemn oath which each of you just took from the Clerk of  
6       Court to well and truly try this case and base your  
7       decision on the evidence introduced during the trial of  
8       the case.

9       Now, from time to time during the trial of this case,  
10      you may hear one of the lawyers say something like, Your  
11      Honor, I believe we have a matter of law we need to take  
12      up, or, Your Honor, may we approach the bench, or I,  
13      myself, might find it necessary, ladies and gentlemen of  
14      the jury, to ask you to step to your jury room. Now, when  
15      such things take place, I want you to understand that  
16      we're not trying to hide anything from you, ladies and  
17      gentlemen. But it is the same reason that I just  
18      explained our roles. And that is that sometimes when I'm  
19      ruling on a matter of the law, I have to, by necessity,  
20      make a comment to the attorneys about the facts.

21      So that you will not be influenced by anything that I  
22      might say or do in ruling on whether or not a particular  
23      piece of law is applicable to this case or not, the custom  
24      is to take such discussions where I have to make a comment  
25      to them about the evidence to rule on a piece of law,

1       either to take it up at the bench out of your hearing or  
2       to ask you to step to the jury room so that I can discuss  
3       a matter of law with the attorneys and you will not be  
4       influenced in any way by anything that I might say or do  
5       in ruling on whether or not a particular piece of law  
6       applies. Because, as I told you, I'm not supposed to tell  
7       you what I think the facts are in this case. So the  
8       practice is to try to excuse you from the courtroom while  
9       discussions like this take place, not to hide anything  
10      from you, but to maintain that each of you will have an  
11      open mind and not be influenced by anything I might say or  
12      do.

13           And in that connection, let me tell you again that  
14      you and you alone, ladies and gentlemen of the jury, are  
15      the sole judges of the facts in this matter. And if you  
16      should gather from anything that I might say or do during  
17      the course of this trial in ruling on an objection or  
18      anything that I have any opinion as to the facts in this  
19      case, please, erase that from your mind. Because, as I  
20      have said to you, you and you alone are the sole judges of  
21      the facts in this case.

22           Now, in determining what the true facts are based on  
23      evidence, ladies and gentlemen of the jury, you, of  
24      necessity, will have to pass upon the credibility, which  
25      is a fancy legal term simply meaning the believability, of

1 each of the witnesses who will testify during the trial of  
2 this case and take this witness stand.

3 By way of illustration, so you'll understand, it will  
4 be my responsibility, ladies and gentlemen, as the trial  
5 judge, to rule as a matter of law as to whether certain  
6 testimony is admissible or not. But once I've allowed the  
7 testimony to be admitted into evidence, ladies and  
8 gentlemen of the jury, whether or not you believe the  
9 testimony is solely a matter for you, the jury, to  
10 determine.

11 In passing upon the believability or credibility of  
12 the witnesses, you, as a jury, have the right to take into  
13 consideration the interest of any witness, the bias of any  
14 witness, the prejudice of any witness, the opportunity for  
15 the witness to have observed the matters about which he or  
16 she may be testifying to. You may even take into  
17 consideration the demeanor or the appearance of the  
18 witness while the witness is on the witness stand.  
19 Anything that is in evidence during the trial of this  
20 case, ladies and gentlemen of the jury, you have the  
21 right, as the jury, to consider in determining the  
22 believability or credibility of the witnesses.

23 And that means, ladies and gentlemen, that it is your  
24 solemn obligation, as jurors, to pay close attention to  
25 the witnesses, to listen to the witnesses, and to observe

1 the witnesses. Don't let your thoughts wander, ladies and  
2 gentlemen, but give strict attention to the testimony in  
3 this case so that at the end of the case, when all the  
4 testimony has been completed and you've heard the final  
5 arguments at the end of the case by the attorneys and  
6 received my charge on the law of the case, you will be in  
7 a position, as jurors, to determine what the true facts  
8 are from evidence introduced during the case and apply the  
9 law that I give you at the conclusion of the case to the  
10 facts as you find them to be. And once you've done so,  
11 you will then render your verdict based on the evidence  
12 during the trial of the case.

13 Now, ladies and gentlemen, I instruct you, again,  
14 that you must not consider anything that you may have  
15 read, heard, or seen outside of this courtroom, whether  
16 before this trial or during this trial. I instruct you,  
17 please, do not watch, read, or listen to any such accounts  
18 of this trial. It is important, ladies and gentlemen,  
19 that each of you keep an open mind. It is important that  
20 you base your decision solely upon evidence which is  
21 introduced during the trial of this case and put aside, as  
22 each of you told me you could, anything you may have read,  
23 heard, or seen outside of this courtroom before this  
24 trial. And I instruct you, please, do not read, watch, or  
25 listen to any such account during this trial.



1           And after this case is submitted to you, ladies and  
2 gentlemen, I ask you, please, do not discuss it with  
3 anyone, not even a member of your own family. And don't  
4 even discuss it amongst yourselves until I instruct you to  
5 do so. And when I do tell you to discuss it, discuss it  
6 only with your fellow jurors in your jury room when I  
7 instruct you to discuss it after it is submitted to you.  
8 It is important, ladies and gentlemen, again, that each of  
9 you keep that open mind and not decide this case until the  
10 entire matter has been submitted to you under my  
11 instructions.

12           It will be your added duty, Madam Foreperson, as I  
13 told you, to preside in the jury room, just like a  
14 chairperson would preside, so that each of my jurors has a  
15 full and fair opportunity to voice their opinions in the  
16 jury room.

17           Because, Madam Foreperson, and, ladies and gentlemen  
18 of the jury, your verdict must be unanimous. It must be  
19 the verdict of each and every one of you.

20           It will also be your added duty, Madam Foreperson, to  
21 write the jury's verdict, but I will give you further  
22 instructions about that at the conclusion of the case.

23           Now, a couple of small housekeeping matters so we can  
24 begin. If at any time any of you cannot hear, I want you  
25 to simply raise your hand for me. I'll be watching each

1 of you throughout the trial. I want my jurors to be able  
2 to hear at all times.

3 If a document is introduced into evidence and you  
4 can't see it, you won't see it until you hear me say, it's  
5 in evidence. Because it won't be published to you before  
6 that. But if one is in evidence and you hear me say that  
7 it's in evidence and you can't see it, just raise your  
8 hand. I want my jurors to be able to hear and to see at  
9 all times throughout the trial of this case. That's most  
10 important.

11 Generally, we're going to run from 9:00 in the  
12 morning. I'm going to always take a mid-morning break.  
13 And we're going to run to about 12:30 or 1:00 and we'll  
14 stop for lunch, come back about 2:00 or 2:30, and run  
15 until 5:00 or 5:30. We will also take, at least, one  
16 mid-afternoon break so that you'll have some idea of the  
17 hours of court for planning purposes. I will not be  
18 keeping you as late as I kept you last night. I'm very  
19 aware of that. But I want to get as much work done as  
20 possible. And that's the reason that we're starting and  
21 applying those hours.

22 I've tried it both ways, ladies and gentlemen. I'm a  
23 note taker. You're going to see me -- you notice I keep a  
24 pen in my hand. I'm constantly writing notes. I ask you  
25 not to take written notes. And I'll tell you why. I've

1 found that if the written note taker makes an error in the  
2 written notes, the notes can be harmful, rather than  
3 helpful, once deliberations begin in your jury room.

4 The time tested system is for each of you to listen  
5 and listen carefully. If you're worried about your  
6 memory, we are making an audio recording of the testimony  
7 that will be presented during the trial of the case. And,  
8 if necessary, if you feel it necessary, as a jury, to  
9 listen again to an audio recording of a witness, we have  
10 the ability to play that audio recording back. But I ask  
11 you not to take written notes during the trial of this  
12 case.

13 Now, Madam Foreperson, we do not allow, normally, the  
14 jury in the courtroom to ask questions here in the  
15 courtroom. But if at any time, Madam Foreperson, a member  
16 of the jury has a question, here is the procedure that we  
17 will follow. You will retire to your jury room, you will  
18 write the question, Madam Foreperson, on a piece of paper.  
19 You'll give it to my bailiff. He'll bring it out to me.  
20 I'll read it. I will then rule as a matter of law whether  
21 or not the question can or cannot be answered just as I  
22 would any question asked by either one of the attorneys  
23 during the trial of the case if a question should arise.

24 Do you understand?

25 (All jurors said yes.)

1           THE COURT: Very well.

2           I also ask, ladies and gentlemen, if you have a cell  
3 phone or beeper, I ask you -- I know you've been  
4 instructed about this. And I'll tell you -- I always tell  
5 this story before we begin because my jurors think the  
6 purpose of prohibiting cell phones and beepers is just  
7 noise interference. And that is in part the reason we  
8 have a very strict rule in court. They're not allowed in  
9 your jury room. They're not allowed on you. I'm sorry.  
10 I know we all depend on cell phones today. I have -- I'm  
11 embarrassed to say I have two in my car down there, but I  
12 don't bring them in the courtroom.

13           The reason for that is in a county far from Oconee,  
14 we had a jury that went to deliberate some years ago. And  
15 the jury was discussing a medical issue. And one of the  
16 jurors said, well, my brother is a doctor, I'll just call  
17 him on my cell phone and ask his opinion. Obviously,  
18 ladies and gentlemen, that's improper. I've instructed  
19 you carefully throughout -- from the beginning of this  
20 trial that you must decide this case solely upon evidence  
21 that's introduced during the trial of this case when both  
22 sides are present with the right of cross-examination.  
23 That is another reason, ladies and gentlemen, we do not  
24 permit cell phones or beepers in the courtroom. And I'm  
25 sure you understand why I'm telling you that.

1           Now, ladies and gentlemen, I hope that that gives you  
2           a little bit of an idea. Obviously, what's going to  
3           happen after the opening statements is that the State of  
4           South Carolina will then present its testimony followed  
5           by, if necessary, any testimony by the Defendant. After  
6           all the testimony or evidence has been introduced in the  
7           trial of the case, then the attorneys will make their  
8           closing arguments. Following the closing arguments, I  
9           will then charge you the law that is applicable to this  
10          case. And then in the final stage of the trial, you will  
11          retire to your jury room to determine the facts based on  
12          evidence introduced during the trial of the case with the  
13          law as I give it to you.

14          I urge you, ladies and gentlemen, please accept and  
15          apply the law exactly as I state it to you. If any of you  
16          have any preconceived ideas as to what you think the law  
17          is or what you feel the law ought to be, I ask you to put  
18          that aside, ladies and gentlemen. Because your job and  
19          the oath you just took was to accept and apply the law  
20          exactly as I state it to you during this trial and at the  
21          conclusion of this trial.

22          Now, one last matter before we begin. If at any  
23          time -- I've told you I'm going to take a mid-morning  
24          break and I'm going to take a mid-afternoon break. If  
25          anybody needs a break at any other time out of some

1 necessity, raise your hand for me. I'm happy to give  
2 you a break if any member of the jury needs it at any  
3 time.

4 All right. Ladies and gentlemen, I think that gives  
5 you, hopefully, some idea of your role, some idea of the  
6 Court's role and the attorneys' role. And I hope that  
7 gives you a better understanding of how things will occur  
8 as we proceed in the trial of this case.

9 Any exceptions or additions to the Court's opening  
10 remarks from the State of South Carolina?

11 MS. HERVEY: None from the State.

12 THE COURT: From the Defendant?

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

14 THE COURT: Very well.

15 Ladies and gentlemen, we will now begin the trial of  
16 this case.

17 Solicitor.

18 MS. HERVEY: Thank you, Your Honor.

19 Could I have the indictments, please?

20 THE COURT: Pardon?

21 MS. HERVEY: The indictments, please?

22 THE COURT: Yes.

23 MS. HERVEY: The Court's indulgence, one moment, Your  
24 Honor.

25 (Pause.)

OPENING STATEMENTS

MS. HERVEY: Good morning, ladies and gentlemen of the jury.

I was introduced to you twice yesterday, I believe. But, again, my name is Mindy Hervey. And I am an assistant solicitor here in the Tenth Circuit, which is Oconee and Anderson County.

And what an assistant solicitor is, basically, is a prosecutor, a district attorney, a State's attorney. You sometimes hear those terms used on TV. And we find that juries are more familiar with them. South Carolina has just retained an old English term called "solicitor."

But for the most part, I am a prosecuting attorney. I take time to explain it to you because after I finished law school and called my father and told him that I was going to be an assistant solicitor, he became quite concerned that I was going to be a door-to-door salesman, and an assistant one at that. And he felt that he had spent far too much on my school education to let that happen. So when I explained to him that that is what I was doing, he felt a little bit more reassured about the investment he had made in my education. But that is my role. I am here to prosecute people who are accused of committing crimes here in Oconee County and Anderson County.

1           And you're here today in a case involving Oconee  
2     County. And you will hear the Judge refer to my role as  
3     being the State, the State of South Carolina. And the  
4     reason it is the State of South Carolina versus the  
5     victims in this case versus the Defendant is that they  
6     view the State of South Carolina as a whole is a victim of  
7     any crime, that crimes spill over and have that effect of  
8     damaging not only the people directly involved, but the  
9     other people. And we feel that it is more objective and  
10    more prudent to view it as the State of South Carolina  
11    versus the Defendant, in this case, James Randolph Frady.

12           My role is to work with law enforcement both during  
13    the initial investigation of this case, and then to bring  
14    those witnesses and that evidence that they collect  
15    forward to you, present it in a somewhat orderly manner in  
16    an attempt to convince you of the Defendant's guilt beyond  
17    a reasonable doubt. So that is my role.

18           In some ways, I'm an attorney. And in some ways,  
19    it's like directing a play that will unfold before you.  
20    Unfortunately, as the Judge instructed you, it's not CSI  
21    and it's not Law and Order. You're not going to see a  
22    dramatic reenactment of the crime. My forensic  
23    technicians drive around in old Explorers, not Hummers. I  
24    don't get DNA evidence in an hour, I get it in months,  
25    sometimes a year. So that is the difference between



1 Ocone County and what you see on TV.

2 And for that reason, I'm going to beg your indulgence  
3 because things will be taken out of order. In some ways  
4 getting all of these witnesses in front of you, I tell  
5 people, it's like -- you know, somebody's got to take  
6 their mother to the doctor, somebody has to be in another  
7 court to testify, this officer worked this late shift last  
8 night, he's got to sleep for four hours before he can be  
9 cognitive again to testify before you. But I will try and  
10 do it in the most orderly fashion that I can. And if not,  
11 we'll ask some preliminary questions of the witnesses so  
12 you'll understand how they fit together in the puzzle that  
13 will be laid out in front of you over the next few days.  
14 But I beg your indulgence and your patience.

15 You'll also hear me ask some questions sometimes that  
16 you don't understand. Perhaps, you won't understand until  
17 you hear other witnesses. Sometimes they're legal  
18 questions, foundations that I have to lay before I get to  
19 the next question. So I'm going to beg your indulgence in  
20 paying attention to those questions. Because sometimes  
21 you might not understand it until everything comes  
22 together at the end.

23 You have been selected as jurors because you don't  
24 know anyone from the prosecution and you don't know the  
25 Defendant. You have, what the law says, no friends to

1 reward and no enemies to punish. We have selected you  
2 here because you don't know anything about this case, or  
3 if you do know, you've said you could put that aside.  
4 Because, as we all know, the press doesn't always get it  
5 right.

6 So what we ask you to do is rely solely on the  
7 evidence that comes from the witness stand and the  
8 evidence that is admitted before you, the physical things  
9 you will hear that were collected from the scene and those  
10 type of things that help you determine whether or not the  
11 Defendant is guilty of the crimes for which he is charged.

12 I must prove to you by this witness testimony and by  
13 this evidence the Defendant's guilt of each and every  
14 offense beyond a reasonable doubt. That's a term, again,  
15 that you perhaps have heard on television. Beyond a  
16 reasonable doubt does not mean beyond all doubt or beyond  
17 a shadow of a doubt. It means beyond a doubt to which you  
18 can give reason, a doubt which would give a reasonable  
19 person hesitation to act. That's a reasonable doubt. I  
20 don't have six nuns on every street corner taking video  
21 cameras of every crime that occurs so that you have some  
22 type of video of it occurring. Unfortunately, that's not  
23 the case. What we do have to rely on is the clues that  
24 are left behind and what they tell us about who committed  
25 the crime and the nature of the crime for which they

1 committed.

2 The Defendant is charged in several indictments. And  
3 the Judge will charge you at the end that you can find him  
4 guilty of one indictment, you can find him guilty of all  
5 indictments, or you can find him not guilty of all of  
6 them. So it's not an all or nothing type war. But you  
7 must individually consider each indictment and ascertain  
8 the Defendant's guilt as to that indictment.

9 And I want to go over that. Because even though the  
10 Judge has read them to you, there are a few things about  
11 them that I think you need to know before you hear these  
12 witnesses testify and you see this evidence brought before  
13 you.

14 Initially, the Defendant is charged, Mr. James  
15 Randolph Frady, that he feloniously did take away the  
16 property of Mike Harper, which was a 1970 Chevy Astro van  
17 valued at more than \$1,000, but less than \$5,000. Grand  
18 larceny. The difference between grand larceny and petit  
19 larceny is the value of the item stolen. You take  
20 somebody's CD, petit larceny, anything less than \$1,000.  
21 Once you get to \$1,000, it's called grand larceny. A.

22 And what the State alleges is that the Defendant on  
23 or about that day, September 22nd, 2004, took Mike  
24 Harper's van and that he intended to permanently deprive  
25 him of that. The allegation will be that he attempted to

1 set that van on fire and cause other damage to the van so  
2 that, if successful, Mr. Harper would not be able to use  
3 the van again. It's not like I borrowed it without his  
4 permission, but I took it. And I intended not for him to  
5 have it back. Mr. Frady, that is what he's accused of.  
6 That's the nature of grand larceny, taking property of  
7 another with the intent to deprive them permanently of  
8 that property.

9 Why did he take the van? Why is the van important?  
10 It will be the testimony that, at the time, Mr. Frady  
11 didn't have reliable transportation, that he was relying  
12 on others to take him to and from work, and that he needed  
13 the van to go over to the house of James Frady, his  
14 father, and Barry Frady, his brother, with the intent to  
15 kill them when he got there. That will be the State's  
16 case, that he took this van to get over there to commit  
17 these murders.

18 You will hear James Frady a lot in this case. The  
19 Defendant's name is James Randolph Frady. The Defense  
20 attorney told you that he goes by "Randy." And we will  
21 make every effort for witnesses to continuously refer to  
22 him by "Randy." His father was also a James Frady, the  
23 victim in this case. He went by "Jimmy." We will make  
24 every effort for the witnesses when talking about the  
25 father to call him "Jimmy." You will also hear from the

1 grandfather, also named James Frady. He goes by "Jim."  
2 He is the grandfather of the Defendant.

3 So you have a grandfather, a father, a brother, and a  
4 son. The Defendant being the son. And I understand it's  
5 a difficult family tree. And when we hear from the  
6 grandfather, we'll try and draw it all out for you so it  
7 even gets clearer. But you're dealing with this paternal  
8 line, this grandfather, father, son, and then a brother of  
9 the Defendant. Those are the players involved in this.

10 And the allegation will be that the Defendant went  
11 over there to kill his brother, Barry, and his father,  
12 Jimmy. And that the next morning, the grandfather, Jim,  
13 discovers the bodies. So that's kind of how they kind of  
14 all interrelate into the scheme that the State alleges  
15 occurred on the night of September 22nd going into the  
16 morning of September 23rd.

17 Once he went over there, the State alleges that the  
18 Defendant committed burglary in the first degree. There's  
19 three degrees of burglary in the State of South Carolina.  
20 Burglary in the first degree, most readily, is that while  
21 inside the dwelling that he caused harm to a person there.  
22 If you go into somebody's house during the day and you  
23 don't hurt anybody, it's second degree. But if you go  
24 into somebody's house and you hurt somebody, we raise it,  
25 it's first degree. It's just levels of how bad of a

1 burglary, in essence, you commit. Burglary third degree  
2 is you don't even break into a house, you break into a  
3 shed.

4 So the State alleges that the Defendant went into  
5 that house. There's not a requirement that he had to  
6 force the door open, that he had to do anything like that.  
7 It is solely that he entered the premises without consent.  
8 And you'll hear about prior difficulties between the  
9 father, the brother, and the Defendant, and that they did  
10 not want him on their property or in their house in the  
11 recent weeks prior to the murders.

12 So it was done without consent because there had been  
13 this kind of bad blood, for lack of a better term, between  
14 the two of them. And they had made it very clear that he  
15 was not welcome back there. And he went inside their  
16 house and while there, he killed his father and his  
17 brother. That is the two counts of murder for which the  
18 Defendant is charged. 2072 charges that he killed James  
19 Frady, Jimmy. And 2073 is that he killed Barry, his  
20 brother.

21 You all may have heard murder on television a number  
22 of times and think various things about what murder is.  
23 The State of South Carolina has a very simple definition  
24 of murder. It is the intentional killing of another with  
25 malice aforethought. Intentional, meaning that you meant

1 to kill them. You were not out in the woods hunting and  
2 didn't know they were out there. You intended to kill  
3 them. That they did die as a result of the injury you  
4 inflicted upon them and that you had in your mind malice  
5 aforethought. It is not premeditation. It is not  
6 planning it for months. It is not lying in wait. Those  
7 things are not required for murder in South Carolina.

8 It means that at the time the Defendant struck the  
9 fatal blow, he had malice in his heart, in his mind.  
10 Malice is meanness, evilness, a heart bent on mischief.  
11 And I tell you these things so that you look for them as  
12 the witnesses come forward. You ask yourself whether or  
13 not Randy Frady had that malice towards his father and  
14 towards his brother, and whether it was in his heart at  
15 the time that he killed them.

16 He is charged with possession of a weapon during the  
17 commission of a violent crime. For some of you, it may  
18 seem very obvious, if a guy shoots another guy with a gun,  
19 of course, he's going to have a gun in his hand at the  
20 time he commits the crime. Some murders are not committed  
21 by weapons. And what the State of South Carolina says is  
22 that if you do arm yourself with a deadly weapon in order  
23 to commit that crime that that is a separate offense. And  
24 the testimony will be that the Defendants [sic] died of a  
25 shotgun wound. And that was the manner of death.

1           And, finally, the Defendant is charged with arson in  
2           the second degree. Arson is that he willfully,  
3           maliciously, and intentionally set fire to or caused to be  
4           burned the residence of his father and brother, that in  
5           order to destroy the evidence or hide the evidence or for  
6           whatever purpose whatsoever that he set fire to their  
7           residence prior to leaving the house that night. Those  
8           are the crimes that you need to look for. Was this  
9           intentional on his part? Did he take the van? Did he go  
10          into the house without consent? Did he shoot the two  
11          victims? And did he then set the house on fire? That is  
12          the facts and the evidence that will be put before you  
13          here today.

14          And we go over those elements with you just so you  
15          understand. Because when you heard the term arson, you  
16          don't necessarily -- what does that mean? The burning or  
17          charring or smoldering or fire damage in some way to a  
18          residence. What does murder mean? What does it mean in  
19          the State of South Carolina? What is burglary in the  
20          first degree? And that is why I wanted to go over them  
21          with you just a little more than the Judge did so that you  
22          understand, as these witnesses testify here before you  
23          today, what you're looking for, what things you want to  
24          pay attention to. We ask that you do pay attention. We  
25          will try and be as focussed as we can with the testimony



1 while still providing you with contacts to that testimony.  
2 You were selected because you don't know anyone. You  
3 don't know the witnesses who will testify.

4 If at any time you feel you are unable to perform  
5 your oath, that you can no longer perform as a juror, then  
6 you need to advise the Court of that. And the thing that  
7 most recently happened to me is when we read a witness  
8 list, the name didn't sound familiar, but a lot of people  
9 are better with faces than names. So sometimes once a  
10 witness is called -- and maybe they've been married and  
11 their name has changed, you're like, oh, I recognize that  
12 person. So you need to make the Court aware of that so  
13 the Court can go through the similar questioning process  
14 or handle it. That is why we've got the alternates.

15 So if something does occur or for some reason you  
16 feel uncomfortable, you need to notify the Court. We  
17 selected you because you would use your life experiences  
18 to evaluate the guilt or innocence of the Defendant in  
19 this case. The same way that people talk to you at work  
20 or talk to you in a store and try and sell you something  
21 and you evaluate whether or not they're telling you the  
22 truth, the whole truth, what bias they might have, you  
23 will use that same testimony or that same life experience  
24 and common sense to evaluate the witnesses that will be  
25 called before you. What are they telling you? What do

1       they know? What were they paying attention to, what were  
2       they not? What bias or prejudice do they have against the  
3       Defendant, other witnesses, law enforcement? Anything of  
4       those type of general natures.

5               We ask that you pay attention. This is, obviously, a  
6       very serious case. We understand that. We are taking you  
7       out of your comfort zone. Most of you have never  
8       contemplated murder happening in your backyard, here in  
9       Oconee County on such an intimate level that you will  
10      become acquainted with for the next three days. We  
11      understand that. We apologize for that. We know we are  
12      taking you away from your jobs and your families and your  
13      lives outside this courtroom. But your service is  
14      necessary. This is how the justice system works. And  
15      without you, it would not work. So we appreciate your  
16      time and your patience and your diligence in this matter.  
17      And I thank you for the service that you are about to  
18      perform.

19             But at the end of this trial, I am going to ask that  
20      you convict the Defendant of two counts of murder, one  
21      count of burglary, one count of arson, and one count of  
22      grand larceny, and, finally, that he had a weapon during  
23      the commission of the murders. That is my role, to prove  
24      the Defendant guilty. It is the Defense attorney's role  
25      to test the State's evidence to make sure the State has

1 sufficient evidence to prove the Defendant guilty beyond a  
2 reasonable doubt and to show it if we do not. Those are  
3 our two competing roles as we go forward.

4 And as the Judge told you, we're not witnesses. I  
5 was not out there at the time this occurred and didn't  
6 know anybody until months after it occurred, neither was  
7 the Defense attorney. So what we tell you are things that  
8 we see as how the facts relate to the law.

9 Thank you for your service here today.

10 Thank you for your patience as we begin this trial.

11 THE COURT: Mr. Allen.

12 MR. ALLEN: May it please the Court?

13 THE COURT: Proceed.

14 MR. ALLEN: Good morning, ladies and gentlemen of the  
15 jury. I hope you had a good evening and a good morning as  
16 well.

17 I'm going to be brief in some preliminary remarks  
18 that I've been afforded the opportunity to make on behalf  
19 of Randy Frady. First of all, I want to reiterate to you,  
20 just as the Court informed you, that these indictments are  
21 allegations. That's all they are. They're claims at this  
22 point. There's been no evidence. It's an accusation that  
23 has been made at this time with no supporting evidence,  
24 which that's not supposed to occur in opening statements,  
25 but it's a claim. You've heard of accusations, I'm sure,

1 in your day-to-day activities or claims made. That's all  
2 this is.

3 And I would also like to reiterate to you, at this  
4 time, on behalf of Randy Frady that he has entered the  
5 plea of not guilty to not just one of the indictments, but  
6 all of the indictments, all six of the indictments. And  
7 that entering of the not guilty plea was done without  
8 reservation. It was done without equivocation. It was  
9 done in the greatest of steadfastness of Randy Frady.

10 Now, also, as the Court informed you, you know, we  
11 have, basically, two different components of our legal  
12 system in the American system of justice. We have a civil  
13 justice system and we have a criminal justice system. And  
14 as you all well know, I'm sure, and the Court has very  
15 thoroughly explained both yesterday and today, this is the  
16 Court of General Sessions. That's what we call it in  
17 State Court and State Circuit Court here in South  
18 Carolina. But that's just kind of a term that's been used  
19 historically for criminal court.

20 We're not in civil court in any degree whatsoever.  
21 This case is not civil in any degree whatsoever. Civil  
22 cases are, basically, between private parties, two private  
23 individuals, two citizens that have their own dispute or  
24 their own contested matters between them.

25 A criminal case, as you well know at this point, just

1 as the Judge and the Court explained to you, is a case  
2 between a prosecuting authority also -- you know, a  
3 prosecutor representing a prosecuting authority against an  
4 individual. And, again, that's what this is all about.  
5 This is a prosecuting authority that is attempting to  
6 prosecute on the basis of a claim and on the basis of  
7 allegations contained in the indictments that have been  
8 referred to now several times.

9 Now, because it's a criminal case, it triggers a  
10 different -- what we know as the standard of proof. And  
11 you're very familiar with this term. And you've already  
12 heard it several times. But, again, in a civil case, the  
13 burden of proof is only more likely than not. One side,  
14 in particular, the moving party in a civil case only has  
15 to prove something is more likely than not, just a  
16 fraction over 50 percent likely is the way we usually look  
17 at it, just barely tip the scales of justice in the civil  
18 justice system.

19 Well, in the criminal justice system, for good  
20 reason -- and I'll talk more with you about this in  
21 closing arguments when we get to that at whatever point  
22 that is. But the burden of proof in a criminal case is  
23 much different. It's much higher. And you all have heard  
24 it -- again, we've already heard it several times now, but  
25 it's beyond a reasonable doubt. That is much greater.

1 And beyond a reasonable doubt or a reasonable doubt has  
2 been defined by our system in South Carolina as the kind  
3 of doubt that would cause a reasonable person to hesitate  
4 to act. That's what it is. Any hesitation, any  
5 reservation. Reasonable doubt is the kind of doubt that  
6 would cause a reasonable person to hesitate to act.

7 And just as the Court informed you, since this is a  
8 criminal case, whatever -- and just in any other criminal  
9 case for that matter, and in any other jurisdiction in  
10 this great country of ours, every element of every  
11 indictment must be proven beyond a reasonable doubt. That  
12 is the absolute mandatory requirement that our system of  
13 juris prudence requires, just as in this case, in the next  
14 case, and next month's case, and the case in the  
15 neighboring state of Georgia, or any case in any state in  
16 the Union. That has to be done. It's a fundamental  
17 element, again, of our system of juris prudence, of our  
18 system of justice. And everything you hear and see and  
19 decide, you have a duty and an obligation to apply that.

20 Now, just briefly, I want to tell you what the  
21 evidence will not show. And I'm going just a couple of  
22 more minutes and I'll be done. I'll be brief here.

23 There will be no evidence of a DNA match. There will  
24 be none of that. There will be no evidence -- and this  
25 situation was processed as far as what they claim to have

1 taken place. There will be no evidence of a fingerprint  
2 match or fingerprints match. There will be no evidence of  
3 that. And I had to make a list because I can't recall  
4 just on memory alone. There will be no evidence of any  
5 footprints match. No evidence of that. There will be no  
6 evidence of palm prints match, obviously, fingerprints,  
7 palm prints. There will be no evidence of that. There  
8 will be no evidence of a blood type match. No evidence of  
9 that. There will be no evidence of hair strands or human  
10 hair match or matches. There will be no evidence of that.  
11 None at all. There will be no evidence of shoe print  
12 matches. No evidence of that.

13 There will be no eyewitness testimony. And there  
14 will be no surveillance testimony that the Solicitor  
15 mentioned. But there will be no eyewitness testimony.  
16 There will be none of that. And the witnesses they've  
17 produced -- I don't know, the prosecuting authority knows  
18 that. I do not know how many witnesses will be produced.  
19 But if it's 10 or 30 or 50 or 80, there will be no DNA  
20 match, no fingerprint match, no footprint match, no blood  
21 type match, no eyewitness testimony, no palm print match,  
22 no shoe print match. And that's what the evidence will  
23 not show.

24 Again, this is a criminal prosecution. You consider  
25 everything with the scope of the burden of proof that we

1 understand, recognize, and appreciate in this country, of  
2 proof beyond a reasonable doubt, just as the Court said.  
3 Proof beyond a reasonable doubt of every element of every  
4 indictment, every element of every claim, every element of  
5 every accusation. If it's not proven beyond a reasonable  
6 doubt, the appropriate response by a jury, a seated,  
7 sworn, impaneled jury is an acquittal. And that's what I  
8 will ask you for at the conclusion based on a lack of  
9 evidence.

10 \*Thank you.

11 Thank you, Your Honor.

12 MS. HERVEY: Your Honor, can we approach just  
13 briefly?

14 THE COURT: Counsel, approach.

15 (WHEREUPON, a bench conference was held.)

16 THE COURT: Madam Foreperson, and, ladies and  
17 gentlemen of the jury, I'm going to take my mid-morning  
18 break at this time. I ask you during the break to stretch  
19 your legs. If I've got any smokers on the jury and they  
20 need to go outside, I will allow you to do so if I've got  
21 a smoker on the jury.

22 Please do not discuss the case. You've, obviously,  
23 not heard any evidence in the case. Talk about sports,  
24 weather, anything else, but just don't talk about the  
25 case. I'm going to take a short break and then come back



1 and start the testimony in the trial of this case.

2 You may retire to your jury room at this time.

3 (WHEREUPON, the jury was excused from open court at  
4 approximately 10:13 a.m.)

5 THE COURT: Counsel, I've got matters I need to take  
6 up concerning other jurors from yesterday. Anything on  
7 the record -- I can excuse y'all while I take this matter  
8 up.

9 Anything you want to place on the record, Ms. Hervey?

10 MS. HERVEY: No, Your Honor.

11 THE COURT: Mr. Allen?

12 MR. ALLEN: No, sir.

13 THE COURT: Very well.

14 You can go ahead and be setting your easel up.

15 (WHEREUPON, a break was taken.)

16 (WHEREUPON, State's Exhibit No. 1 was marked for  
17 identification only.)

18 MS. HERVEY: Your Honor, before you bring the jury  
19 in, just for the record, we put an easel out here and  
20 there's a poster board. We've got about three aerial maps  
21 that we intend to use throughout the trial. We provided  
22 two of those copies to the Defense Counsel and allowed  
23 them to view the third.

24 The first one is an aerial photo of the crime scene  
25 as it was out there that day. And an officer will testify

1       that that's the crime for which he responded. He's  
2       familiar with that area and the photo accurately depicts  
3       how it looked back in 2004.

4           THE COURT: Well, you heard me tell the jury -- and  
5       this is my rule, Solicitor. And I know you know it.  
6       Before you show anything to the jury -- I understand that  
7       Mr. Allen has viewed it and he has no objection to it.  
8       That's fine.

9           But offer it -- is it going into evidence or are you  
10      just using it as a demonstrative exhibit?

11          MS. HERVEY: I would like to move it into evidence.  
12      I think it's important.

13          THE COURT: Any objection?

14          MR. ALLEN: Not at this time.

15          Could I reserve it until she makes --

16          THE COURT: Not until after she publishes it to the  
17      jury. You're going to have to tell me now. Because she's  
18      going to show it to the jury. And I want to know whether  
19      there's an objection.

20          MR. ALLEN: Well, just the foundation by the witness  
21      is all.

22          THE COURT: Well, I'm assuming, you will cover it up  
23      and put the witness up there and lay the foundation.

24          MR. ALLEN: I don't anticipate any problem with it,  
25      Judge.

1 THE COURT: Do you understand?

2 MS. HERVEY: Yes, Judge.

3 THE COURT: That way, there's a record from it. And  
4 you have it marked by the court reporter, then you show  
5 the jury.

6 MS. HERVEY: I have had it previously marked by her  
7 just for identification purposes.

8 I'm going to ask him if he viewed that map prior to  
9 being called to the witness stand and then just ask him  
10 those foundational questions, move to admit it into  
11 evidence, and flip it around, if that procedure is fine.

12 THE COURT: That's fine. As long as it's not  
13 published to the jury until I say it's in evidence and  
14 I've given Mr. Allen an opportunity to object.

15 But, Mr. Allen, this reserving on any exhibit is fish  
16 or cut bait time.

17 MR. ALLEN: Yes, sir.

18 THE COURT: You tell me whether or not there's an  
19 objection.

20 Do you understand?

21 MR. ALLEN: Yes, sir.

22 THE COURT: Anything further, Ms. Hervey?

23 MS. HERVEY: Nothing.

24 That will probably be the only major exhibit this  
25 morning, I believe, depending on how far we get.

1 THE COURT: Anything from the Defendant before I  
2 bring the jury in on the record?

3 MR. ALLEN: Not at this time.

4 THE COURT: Very well.

5 Bring us the jury, please.

6 (WHEREUPON, the jury came into open court at  
7 approximately 10:44 a.m.)

8 THE COURT: All right. Madam Foreperson, and, ladies  
9 and gentlemen of the jury, I hope everybody had a chance  
10 to take a break and get familiar with how I'm going to  
11 provide lunch for you. We'll now continue with testimony  
12 in the trial of this case.

13 Solicitor, if you'll call your first witness to the  
14 stand.

15 MS. HERVEY: The State calls Phillip Bryant to the  
16 stand.

17 THE CLERK: If you'll place your left hand on the  
18 Bible and raise your right hand.

19 WHEREUPON,

20 PHILLIP BRYANT,  
21 after first having been duly sworn, testified as follows:

22 THE CLERK: Please be seated.

23 THE COURT: Would you speak into that microphone for  
24 me. And state your full name and spell your last name for  
25 the court reporter.

1 THE WITNESS: It's Phillip Bryant, B-R-Y-A-N-T.

2 THE COURT: Your witness, Counsel.

3 MS. HERVEY: May it please the Court, Your Honor?

4 DIRECT EXAMINATION

5 BY MS. HERVEY:

6 Q Are you currently employed with the Oconee County  
7 Sheriff's Office?

8 A I am.

9 Q And you were so employed back in September of 2004?

10 A I was.

11 Q And how long have you been with them?

12 A Seven years with the Sheriff's Office, 11 years  
13 total.

14 Q And prior to being with the Oconee County Sheriff's  
15 Office, what other experience in law enforcement did you  
16 have?

17 A Seneca Police Department four years.

18 Q And back in 2004, what was your assignment, what were  
19 your duties with the Oconee County Sheriff's Office? What  
20 did you do? Road patrol?

21 A Routine road patrol.

22 Q And just what is road patrol to the jury? What do  
23 you do on a daily basis?

24 A If you hit 911, I'll answer. I'll come to your house  
25 if you live in my area. As an officer, I'll respond to

1 it. Basically, initial reports.

2 Q But you're not an investigator or any of those kind  
3 of things. If somebody calls 911, you go out to the  
4 house, what's wrong, what can I do for you, that kind of  
5 thing?

6 A Correct.

7 Q And on September 23rd of 2004, did you have the  
8 occasion to respond to [REDACTED]?

9 A I did.

10 Q Is that here in Oconee County?

11 A It is Walhalla area.

12 Q And are you familiar with that area having lived here  
13 and worked here?

14 A I am.

15 Q And when you got to the scene, what is at [REDACTED]  
16 [REDACTED]? Is it a business, a house, trailer?  
17 What's there?

18 A That particular address is a house.

19 Q And when you get there, are you the first one there?

20 A I'm the first one on scene.

21 Q And did you just happen to be in that vicinity or  
22 were you the one they sent out there?

23 A They dispatched a call to a deputy who works the  
24 Walhalla area. And I was coming from Walhalla headed  
25 towards Westminster. And I was probably within a mile

1       when they gave the call out. So I responded to it,  
2       naturally.

3       Q     And when you get there, do you pull up in the  
4       driveway?

5       A     Yeah. I pulled up to the -- the driveway is on the  
6       left side of the house. I pulled up and stopped a little  
7       distance from the residence.

8       Q     And do you go to the front door?

9       A     Yeah. I approached the house. The front door was  
10      open.

11      Q     The front door was open?

12      A     Yes.

13      Q     And are you able to see inside the house?

14      A     I'm able to see inside the house. The sun was coming  
15      up, so the glare was kind of bad. I could see inside the  
16      immediate area of the house from outside the door.

17      Q     And when you looked in that immediate area, what, if  
18      anything, were you able to see?

19      A     When you look in the house to the right side, there's  
20      a chair. And there was a person slumped over in the  
21      chair.

22      Q     And could you just kind of physically depict his  
23      position in the chair, if you could?

24      A     Like that.

25      Q     So with his head tilted to one side?

1 A That's correct.

2 Q And around this immediate time, do any other officers  
3 arrive?

4 A Actually, as I'm walking up the steps to the front  
5 door, Investigator Sergeant, I believe at the time, Greg  
6 Reed, and Lieutenant Steve Jenkins was pulling up behind  
7 me.

8 Q So Steve Jenkins and Greg Reed. This is Greg Reed  
9 right here?

10 A That's correct.

11 Q Those two pull up around the time you're approaching  
12 the house?

13 A That's correct.

14 Q Do you go inside the house at that time?

15 A No. The fact that they were pretty much the ones  
16 that would be investigating the crime -- rather than me go  
17 in and do the protective sweep, I just stood back and told  
18 Greg what I observed and what I smelled. And they did the  
19 protective sweep.

20 Q What did you smell?

21 A I smelled -- it was kind of a burnt smell.

22 Q And prior to your testimony, did I show you an aerial  
23 photo of what's purported to be the crime scene?

24 A Yes, you did.

25 Q And are you familiar with what is depicted in that



1       aerial photograph? Are you familiar with that area?

2       A     I am familiar with the area.

3       Q     And does it accurately depict the area you responded  
4       to back in September of 2004?

5       A     It does.

6       Q     And are you familiar with that area, both responding  
7       to it on that particular day and having worked and lived  
8       in this area all along?

9       A     One more time.

10      Q     Are you familiar with that area, not just because you  
11      responded to it once on that particular day, but because  
12      you have worked and lived in the area for a while?

13      A     That's correct.

14            MS. HERVEY: Your Honor, at this time, we would move  
15      to admit State's Exhibit No. 1.

16            THE COURT: Any objection?

17            MR. ALLEN: No, sir, no objection.

18            THE COURT: State's Exhibit No. 1, ladies and  
19      gentlemen of the jury, will be admitted into evidence  
20      without objection. State's Exhibit No. 1 in evidence.

21            You may publish it to the jury.

22            MS. HERVEY: Thank you, Your Honor.

23            (WHEREUPON, State's Exhibit No. 1 was admitted into  
24      evidence.)

25            MS. HERVEY: I'm going to ask Deputy Bryant to step

1 off the stand just for a little bit just to orient the  
2 jury.

3 THE COURT: Mr. Bryant, when you step down, you're  
4 not going to have a microphone. And lawyers have a  
5 tendency to make you look at an exhibit and talk with your  
6 back to the jury. I want the jury to be able to hear you.  
7 Please turn towards the jury so the court reporter can  
8 take down what you say and they can all hear you, even  
9 though you're standing down.

10 Do you understand?

11 THE WITNESS: Yes, Your Honor.

12 THE COURT: Thank you very much.

13 BY MS. HERVEY:

14 Q I'm going to ask you to stand over to this side and  
15 face the jury and the court reporter so she can hear what  
16 you're saying.

17 This road right here, what is this?

18 A That's Highway 183, Westminster Highway or Walhalla  
19 Highway, whichever way you're coming.

20 Q And this is?

21 I know you may have to look over here to see.

22 A That's Flat Rock Road.

23 Q And this road right here that runs behind or along  
24 Westminster Highway or 183?

25 A It's called Unity Road.

1 Q And just this side street down here, if you can look  
2 and see what that is. Are you familiar with that?

3 A Avalon Drive.

4 Q And you stated that this depicts the crime scene as  
5 you pulled up to it that day?

6 A That is correct.

7 Q And you stated that you came into this driveway, I  
8 believe. Correct me if I'm wrong.

9 A Yeah. I stopped right about there at the edge of the  
10 house.

11 Q And the house we're talking about, is it the one with  
12 the red roof or the house over here?

13 A It's the house with the red roof.

14 Q All right. So these two houses here would have  
15 shared this common driveway?

16 A I would imagine.

17 Q You're not that familiar with the residence?

18 A I'm not familiar with the people who live there.

19 Q And other than making this initial response, did you  
20 do anything else while you were there?

21 A Yeah. As Investigator Sergeant Reed and Lieutenant  
22 Jenkins, at the time, were doing the protective sweep of  
23 the house --

24 THE COURT: Turn toward the jury, please, sir.

25 THE WITNESS: I started to put crime scene tape

1 around the scene and keep up with the crime scene log,  
2 basically, keeping names of everybody that came inside my  
3 crime scene.

4 BY MS. HERVEY:

5 Q And was the crime scene just focused on this house or  
6 did you include any greater area?

7 A Basically, me and Deputy Buck Darby roped off the  
8 area from this tree around to my patrol car.

9 Q And then your role there was solely to take the names  
10 of anybody crossing that tape?

11 A That is correct.

12 MS. HERVEY: Thank you.

13 You can return to the stand.

14 I have no further questions of this witness, Your  
15 Honor.

16 THE COURT: Cross-examination?

17 MR. ALLEN: Yes, sir.

18 May it please the Court?

19 CROSS-EXAMINATION

20 BY MR. ALLEN:

21 Q Mr. Bryant, just briefly, you were the first one on  
22 the scene, was that your testimony?

23 A That is correct -- well, after the person that found  
24 the victims.

25 Q Okay. You -- and as far as law enforcement

1 personnel, professional personnel, you were the first to  
2 arrive?

3 A I'm the first one that was there. That's correct.

4 Q And approximately what was the time of day?

5 A I'm not sure of the approximate time, maybe 8:45,  
6 9:00, somewhere in that area.

7 Q And what shift were you working that day?

8 A First shift.

9 Q So you had commenced your shift at what time that  
10 day?

11 A My shift goes from 6:30 to 3:00.

12 Q And to the best of your recollection, it was  
13 approximately 8:45 to 9:00 a.m.?

14 A That's correct.

15 Q And when you arrived, was there another gentleman  
16 that was already there? I think -- was your testimony,  
17 not law enforcement, but an elderly gentleman that was  
18 there already?

19 A I believe he had went back to the house. He wasn't  
20 on the scene when I arrived.

21 Q Okay. Did you speak with him during your time there  
22 at the residence?

23 A I don't believe I did, no, sir.

24 Q Okay. Did you see him at or near the particular area  
25 we're talking about?

1       A     I saw a bunch of people. That's why I kept my crime  
2       scene log, which I keep for whoever enters the crime scene  
3       after I respond. So anybody on that log is who would have  
4       been there.

5       Q     But, to your recollection, while you're testifying  
6       and simply just for clarification, did you see the elderly  
7       gentlemen at or near the crime scene? Did you see him  
8       there? Not the fact that he was or was not there, but did  
9       you personally see him there?

10      A     I couldn't recall.

11           MR. ALLEN: All right. Fair enough.

12           Thank you, Your Honor.

13           That's all the questions of this witness.

14           THE COURT: Redirect?

15           MS. HERVEY: Just briefly, Your Honor.

16           Can I approach the witness, Your Honor?

17           THE COURT: You may.

18                               REDIRECT EXAMINATION

19       BY MS. HERVEY:

20      Q     Let me show you this item and ask you if that is your  
21      report that you made commensurate to responding to this  
22      location?

23      A     That is the report that I initiated.

24      Q     And does that indicate what time that you got there?

25      A     Yeah. The incident date is 9-23-04 and the time is

1 8:56 a.m.

2 Q Just to clarify one other question by Mr. Allen. He  
3 asked you if any elderly man was there or anyone else was  
4 there. When you approached the house, was the door open  
5 or closed?

6 A The door was wide open. The front door of the house  
7 was wide open.

8 MS. HERVEY: That's all, Your Honor.

9 THE COURT: Recross limited to redirect?

10 MR. ALLEN: Yes, sir, just very quickly.

11 RECROSS-EXAMINATION

12 BY MR. ALLEN:

13 Q The report refreshes your recollection, I understand?

14 A The time of day, yes.

15 Q So it was 8:56?

16 A Yes, sir.

17 MR. ALLEN: Thank you so much.

18 Thank you, Your Honor.

19 MS. HERVEY: Nothing further.

20 We would ask that this witness be excused.

21 THE COURT: Any objection?

22 MR. ALLEN: No objection.

23 THE COURT: Mr. Bryant, you may step down and you are  
24 excused.

25 Call your next witness, Counsel.

1 MS. HERVEY: The State calls Julia Ford, Your Honor.

2 THE CLERK: Raise your right hand and place your left  
3 hand on the Bible.

4 WHEREUPON,

5 JULIA FORD,

6 after first having been duly sworn, testified as follows:

7 THE CLERK: Please be seated.

8 THE COURT: Speak into that microphone for me. If  
9 you would, please, again, state your full name and spell  
10 your last.

11 THE WITNESS: Julia Ford, F-O-R-D.

12 THE COURT: Slip up in that chair a little bit.  
13 Because I want everybody on the jury to be able to hear  
14 you.

15 Your witness, Counsel.

16 MS. HERVEY: May it please the Court, Your Honor?

17 DIRECT EXAMINATION

18 BY MS. HERVEY:

19 Q Your name is Julia Ford. Where do you live, Julia,  
20 just what general area, not the address?

21 A Walhalla, South Carolina.

22 Q And do you live anywhere near [REDACTED]?

23 A Yes.

24 Q And how long have you lived there?

25 A For a while. I do not know how long.



1 Q And how old are you, Julia?

2 A 16 and a half.

3 Q And do you go to school anywhere?

4 A Yes.

5 Q Where do you go to school?

6 A Tri-County Technical College.

7 Q Do you, actually, go to the school or do you take  
8 classes at some other location?

9 A I take classes on the Internet.

10 Q And do you know Mr. Jim Frady?

11 A Yes.

12 Q And is he seated here in the courtroom today?

13 A Yes.

14 Q And is he seated here on the front row?

15 A Yes.

16 Q Wearing a yellow plaid-type shirt?

17 A Yes.

18 Q And how do you know Mr. Frady? Does he live near  
19 you?

20 A Yes. He lives across the street.

21 Q And did you know Barry and Jimmy Frady?

22 A Yes.

23 Q And did they also live across the street?

24 A Yes.

25 Q Did they live in the same house or different houses?

1 A Different houses.

2 Q And did Jimmy and Barry ever have a pet?

3 A Yes.

4 Q What kind of pet did they have?

5 A Two dogs.

6 Q And did they have a white dog?

7 A Yes.

8 Q Have you ever taken care of that dog?

9 A Yes.

10 Q And is it a big dog or a little dog?

11 A It's a big dog.

12 Q And do they have a fenced-in area or does he just  
13 kind of keep to the house?

14 A A fenced-in area.

15 Q And do you recall September 22nd, 2004?

16 A Yes.

17 Q And were you at school at that time? Were you  
18 still -- had you started to school back at Tri-County  
19 Tech?

20 A Yes.

21 Q And do you recall something unusual or something out  
22 of the ordinary happening that night?

23 A No.

24 Q All right. Do you remember talking to law  
25 enforcement the next day?

1 A Yes.

2 Q Do you remember waking up in the morning and the  
3 police are across the street?

4 A Yes.

5 Q Did you ever give them a statement about anything you  
6 heard or saw the night before?

7 A Yes.

8 Q And what did you tell police that you heard the night  
9 before?

10 A I heard two gunshots.

11 Q And approximately what time did you hear those two  
12 gunshots?

13 A Around 11:30.

14 Q And why are you so certain that it happened around  
15 11:30?

16 A Because I was on the Internet and I looked at the  
17 clock after it happened.

18 Q So there's a clock on the computer?

19 A Yes.

20 Q You heard gunshots and it made you think, well, what  
21 time is it, how late is it, that kind of stuff?

22 A Yes.

23 Q Did you look out the window at any other time that  
24 night and see anything else across the street?

25 A No.

1 MS. HERVEY: The Court's indulgence one moment, Your  
2 Honor.

3 (Pause.)

4 MS. HERVEY: May I approach the witness, Your Honor?

5 THE COURT: You may.

6 BY MS. HERVEY:

7 Q And realizing this is a copy, Miss Ford. But is this  
8 a copy of the statement you gave to police that night?

9 A Yes.

10 Q And I know it's been a while, but could you just read  
11 over it and refresh your recollection of what you told  
12 police on that night?

13 A Well --

14 Q No, no, just read over it. And understanding, that  
15 night -- or the day you gave the statement, the morning  
16 after, your memory was the freshest at that point. It's  
17 been quite some time since then.

18 A Yes.

19 Q And I understand I'm asking some open-ended  
20 questions. And you might not know where I'm going. The  
21 law just requires that, unfortunately. But I'll try to be  
22 a little bit more specific.

23 Do you remember ever seeing either Barry or Jimmy  
24 that night before or after the gunshots are heard?

25 A Yes.

1 Q What time did you see anybody, and who did you see,  
2 and what did you see?

3 A I saw Barry Frady outside at 10:30 smoking.

4 Q And was that something that you, typically, would  
5 have seen?

6 A Yes.

7 Q And you said you saw that about 10:30?

8 A Yes.

9 Q So that would have been about an hour before the  
10 gunshots?

11 A Yes.

12 Q And when I asked you if you heard anything unusual,  
13 you said, no. Does that mean hearing gunshots out there  
14 wasn't unusual?

15 A No. Because Barry shot fireworks. And they sounded  
16 like fireworks.

17 Q So it didn't cause you any alarm or any reason to  
18 call 911 when you heard those shots?

19 A No.

20 Q You just heard something loud and it sounded like  
21 gunshots to you?

22 A Yes.

23 Q Do you think you would recognize your residence if  
24 you saw it on an aerial photograph?

25 A Yes.

1 MS. HERVEY: Can I ask if she can step down, Your  
2 Honor, and just approach State's Exhibit No. 1?

3 THE COURT: Ms. Ford, I'm going to ask you, because  
4 of your voice, if you would, please, speak up so the jury  
5 can hear when you're down there without the microphone.

6 BY MS. HERVEY:

7 Q I'm going to ask you to look at State's Exhibit No.  
8 1, familiarize yourself with that aerial photo. If you  
9 could, maybe stand on this side and look at it from that  
10 angle. And just familiarizing yourself with this being  
11 Westminster Highway and everything. D?

12 O you recognize the house where you live?

13 A Yes.

14 Q And, if you could, just point that out to the jury  
15 just so they know.

16 A (Witness complied.)

17 Q And where did Barry and Jimmy live in relation to  
18 you, if you can tell that?

19 A (Witness complied.)

20 Q The red roof?

21 A Yes.

22 Q And Mr. Jim Frady, the elderly gentleman you pointed  
23 out, he would live where?

24 A (Witness complied.)

25 Q Another house beside that one?

1 A Yes.

2 Q And is there another structure behind the two Frady  
3 houses?

4 A Yes.

5 Q Are you familiar with that area?

6 A Kind of.

7 Q Do you know what that is? Is that a house or is it  
8 some other kind of building?

9 A Some other kind of building.

10 Q And is it like a garage or a business?

11 A Yes.

12 Q A garage?

13 A Yes.

14 Q So you might see them doing work on cars or  
15 something?

16 A Yes.

17 Q And do you know, just to familiarize everybody, what  
18 is next door to you? What's the structure next door to  
19 you? What is this house down here?

20 A A Children's Connection.

21 Q A day care?

22 A A day care.

23 Q So you live next door to a day care?

24 A Yes.

25 Q And is that run by Annette Burney?

1 A Yes.

2 MS. HERVEY: That's all I have of the witness at this  
3 time.

4 I'm going to ask you to retake the stand and answer  
5 any questions that Mr. Allen might have.

6 THE COURT: Cross-examination?

7 MR. ALLEN: May it please the Court?

8 CROSS-EXAMINATION

9 BY MR. ALLEN:

10 Q Ma'am, I think you said earlier that you're 16 and a  
11 half years old?

12 A Yes.

13 Q And you are attending Tri-County Tech; is that  
14 correct?

15 A Yes.

16 Q And the time that you've given as far as what you  
17 understood or believed to be gunshots, that was an  
18 approximate time you gave?

19 A Yes.

20 Q And how long have you lived at that location?

21 A For a while. I really don't know how long.

22 Q For several years?

23 A Yes.

24 Q Have you lived there -- the best you can remember,  
25 have you lived there for five years?



1 A Yes.

2 Q Do you live there with your parents?

3 A Yes.

4 Q And that -- hearing those shots, that was not out of  
5 the ordinary for you to hear; is that correct?

6 A Correct.

7 Q You had heard gunshots before; is that correct?

8 A Yes.

9 Q Approximately how many occasions would you say that  
10 you heard gunshots prior to this evening in question here?

11 A Not long -- not a lot.

12 Q More than five?

13 A Probably.

14 Q More than ten?

15 A Huh-uh.

16 Q So between five and ten times prior to this, you had  
17 heard gunshots at this location?

18 A Yes.

19 MR. ALLEN: Okay. Thank you, ma'am.

20 THE COURT: Redirect?

21 MS. HERVEY: Yes, Your Honor, just briefly.

22 REDIRECT EXAMINATION

23 BY MS. HERVEY:

24 Q Did you ever see them shooting off guns or shooting  
25 off fireworks?

1 A Yes.

2 Q Which one? Both or either?

3 A Barry.

4 Q Okay. Fireworks or gunshots?

5 A Fireworks.

6 Q Fireworks. So you had never seen either one of them  
7 shooting a gun off over there?

8 A No.

9 Q But you had heard these noises, either firecrackers  
10 or gunshots?

11 A Yes.

12 Q Around five times?

13 A Yes.

14 MS. HERVEY: Nothing further.

15 THE COURT: Recross limited to redirect?

16 MR. ALLEN: No, sir, Your Honor. No questions.

17 THE COURT: As to this witness?

18 MS. HERVEY: Nothing, Your Honor.

19 THE COURT: May she be excused?

20 MS. HERVEY: Yes.

21 THE COURT: Any objection?

22 MR. ALLEN: No objection.

23 THE COURT: You may step down, Miss Ford. And you're  
24 excused.

25 Ms. Hervey, call your next witness.

1 MS. HERVEY: William Floyd White.

2 If you'll approach the Clerk and she'll swear you in.

3 THE CLERK: Raise your right hand and place your left  
4 on the Bible.

5 WHEREUPON,

6 WILLIAM FLOYD WHITE,

7 after first having been duly sworn, testified as follows:

8 THE COURT: Have a seat and make yourself  
9 comfortable. I want you to speak into that microphone. I  
10 want everybody to be able to hear you. I would like for  
11 you to begin, if you would, by stating your full name and  
12 spelling your last name for the court reporter.

13 THE WITNESS: William Floyd White, W-H-I-T-E.

14 THE COURT: Your witness, Counsel.

15 MS. HERVEY: May it please the Court, Your Honor?

16 DIRECT EXAMINATION

17 BY MS. HERVEY:

18 Q Mr. White, I'm going to ask you to speak into that  
19 microphone so these last jurors can hear you. All right.

20 Where do you work, Mr. White?

21 A Oconee County Memorial Hospital.

22 Q And, generally, what do you do there?

23 A Haul out trash.

24 Q You work with the incinerator, that kind of thing?

25 A Yes.

1 Q And how long have you worked there?

2 A This December will be six years.

3 Q And do you live in the Walhalla area?

4 A Yes, ma'am.

5 Q Is your address, actually, Walhalla?

6 A Yes, ma'am.

7 Q All right. And what hours do you generally work, or  
8 does it change?

9 A Well, it's changed now. I used to be on the second  
10 shift. Now, I'm on first shift.

11 Q What was second shift? What hours was that?

12 A It's from 2:30 until five minutes until 11:00.

13 Q And is that the shift you were working back in  
14 September of 2004?

15 A Yes, ma'am.

16 Q All right. And prior to your testifying here today,  
17 did you come meet with me in my office?

18 A Yes, ma'am.

19 Q And did I ask you to look at this aerial photograph?

20 A Yes, ma'am.

21 Q And are you familiar with that general area?

22 A Yes, ma'am.

23 MS. HERVEY: Your Honor, I'm going to ask that he be  
24 allowed to step down for the purposes of his testimony.

25 THE COURT: Mr. White, I'm going to ask you to step

1 down. And because you have your back sometimes to the  
2 jury, I'm going to ask you to speak up. We're not  
3 amplifying your voice down there.

4 We don't have a portable microphone, do we, Bev?

5 THE CLERK: No, sir, Your Honor.

6 THE COURT: I'm going to ask you to, please, speak up  
7 so the jury can hear you and, please, face the jury while  
8 you're speaking. Even if Counsel asks you to turn and  
9 look at the photograph, before you begin to speak, face my  
10 jury so they can hear you.

11 You may step down.

12 MS. HERVEY: Thank you, Your Honor.

13 BY MS. HERVEY:

14 Q Mr. White, I'm going to ask you to stay on this side  
15 of the aerial photo. I'm going to ask you to use this  
16 yardstick and maybe that will be helpful for you to point  
17 out things without having to turn your back on the jury.

18 Now, about 11:00, what general route do you take  
19 going toward your house? If you could point that out and  
20 explain what road you're going on.

21 A I take this road coming off of Westminster Walhalla  
22 Highway, turn left, and I reckon it's a utility road.

23 Q Okay.

24 A I go on by here and take a left to go down Flat Rock  
25 Road.

1 Q So you live somewhere down off [REDACTED]  
2 somewhere?

3 A Yes, ma'am.

4 Q And you stated you turn off -- and correct me if I'm  
5 wrong. I'm just trying to be loud enough for the jury to  
6 hear.

7 You come up Westminster Highway and then you turn on  
8 that utility road of some kind and take it up to Flat  
9 Rock?

10 A Yes, ma'am.

11 Q Do you remember seeing anything unusual or out of the  
12 ordinary on the night of September 22nd, 2004?

13 A I seen a white van sitting behind this block  
14 building.

15 Q And could you point out and maybe use your hand just  
16 so we're more specific about what block building we're  
17 talking about?

18 A It's right in here.

19 Q All right. And is that a gray structure behind the  
20 one with a red roof?

21 A Yes, ma'am.

22 Q All right. And approximately what called your  
23 attention to a white van parked on the side of the  
24 road?

25 A It had "Locksmith" wrote on it.

1 Q It had "Locksmith" wrote on it?

2 A Yes, ma'am.

3 Q All right. And what else did you notice about the  
4 van, if anything?

5 A The driver's side door was cracked open.

6 Q And in what direction did it appear the van had been  
7 driving?

8 A It was facing back towards Westminster.

9 Q Away from Walhalla towards Westminster?

10 A Yes, ma'am.

11 Q With the driver's side door being open, were there  
12 any lights on inside the van?

13 A No, ma'am.

14 Q And why did you find it unusual for a locksmith van  
15 to be parked there?

16 A Well, late at night and there shouldn't have been one  
17 parked there.

18 Q No other cars around it?

19 A No, ma'am.

20 Q Did you see anybody around the van or in that area?

21 A No, ma'am.

22 Q Do you recall approximately what time you saw this  
23 van? Was it on your way home?

24 A Around 11:10, 11:15, somewhere around there.

25 Q And the next morning when you went to work, did you

1 stop and talk to law enforcement officers and give them a  
2 statement that day?

3 A I talked to Jerry Moss.

4 Q And you know Jerry because he works at the hospital  
5 with you?

6 A Yeah. He worked on weekends down there.

7 Q He moonlights down there?

8 A I guess you call it that.

9 MS. HERVEY: All right. Mr. White, I'm going to ask  
10 that you take the stand now.

11 Thank you so much for my yardstick.

12 And answer any questions Mr. Allen might have for  
13 you.

14 THE COURT: Cross-examination?

15 MR. ALLEN: May it please the Court?

16 THE COURT: Yes, sir.

17 CROSS-EXAMINATION

18 BY MR. ALLEN:

19 Q Mr. White, you noticed a van there somewhere behind  
20 the gray building, which was situated behind the house  
21 with the red roof; is that correct?

22 A Yes, sir.

23 Q And, to the best of your recollection -- and your  
24 recollection was refreshed from your statement, it was  
25 somewhere around 11:10 or 11:15; is that right?



1 A Yes, sir.

2 Q To your knowledge, was the van running or was it  
3 turned off?

4 A I don't know. I was driving by.

5 Q And did you say you destination was going to work  
6 or --

7 A Coming home from work.

8 Q Coming home from work. I beg your pardon.

9 So you have no knowledge as to whether the engine was  
10 running in that van?

11 A I don't know if it was or not. I was in my vehicle  
12 going home.

13 Q And, to your knowledge and from your recollection,  
14 were the headlights or taillights turned on on this  
15 van?

16 A There wasn't no lights on.

17 Q Were you able to ascertain -- you said it had  
18 "Locksmith" on it?

19 A Yes, sir.

20 Q Were you able to ascertain what else it had, if  
21 anything, written on it?

22 A All I seen was "Locksmith."

23 Q And you saw no persons, no individuals, at or near  
24 that van?

25 A No, sir.

1 MR. ALLEN: All right. Thank you, sir.

2 THE WITNESS: You're welcome.

3 MS. HERVEY: We would ask that he be excused, Your  
4 Honor.

5 THE COURT: Any objection?

6 MR. ALLEN: No objection.

7 THE COURT: You may step down, Mr. White. And you  
8 are excused.

9 Call your next witness.

10 MS. HERVEY: The State calls Tim Hunnicutt, Your  
11 Honor.

12 THE CLERK: Place your left hand on the Bible and  
13 raise your right hand.

14 WHEREUPON,

15 TIMOTHY G. HUNNICUTT,  
16 after first having been duly sworn, testified as follows:

17 THE CLERK: Please be seated.

18 THE COURT: Have a seat and make yourself  
19 comfortable. Please talk into the microphone. I want my  
20 two ladies down at the end to be able to hear you. I want  
21 you to begin by stating your full name and spelling your  
22 last name for the court reporter.

23 THE WITNESS: Timothy G. Hunnicutt, H-U-N-N-I-C-U-T-T.

24 THE COURT: Your witness, Counsel.

25 MS. HERVEY: May it please the Court, Your Honor?

DIRECT EXAMINATION

BY MS. HERVEY:

Q Mr. Hunnicutt, with whom are you currently employed?

A Oconee County Sheriff's Office.

Q How long have you been so employed?

A October will be five years.

Q And what are your duties and responsibilities for the Oconee County Sheriff's Office?

A Road patrol, answer calls.

Q Similar to Mr. Bryant, who testified earlier?

A Yes.

Q And were you similarly employed back in September of 2004?

A Yes, I was.

Q And did you have the occasion to respond to a 911 call that night from the Harper residence?

A Yes.

Q And when you went out to that -- what were you called -- what did dispatch tell you to go do?

A It was in reference to a stolen van.

Q And where did you go?

A I went to Mr. Harper's house at [REDACTED]

[REDACTED].

Q And do you remember approximately what time you responded or what time the call came in?

1 A 11:41 p.m.

2 Q Is that the time you responded or the time you  
3 recollect the call was made?

4 A I got the call at 11:41. I arrived at 11:43.

5 Q So you weren't too far away?

6 A No.

7 Q Okay. And when you go there, who is at that  
8 residence?

9 A Mr. Harper's wife.

10 Q And do you recall her name?

11 A I believe it's Tammy.

12 Q And is Mr. Harper there?

13 A No, he's not. He pulls up just maybe a minute after  
14 I got there.

15 Q And you begin -- without going into what she said,  
16 you begin having a conversation with Ms. Harper about this  
17 van?

18 A Yes.

19 Q And does she indicate to you that it was stolen or  
20 missing?

21 A Yes. She stated Mr. Harper was gone to look for it.

22 Q And sometime in that time frame, does Mr. Harper  
23 arrive?

24 A Yes.

25 Q And do you recall approximately what time he arrives

1 after you did?

2 A Just a minute or so, just right after.

3 Q And what does he tell you when he arrives?

4 A He has located the van.

5 MS. HERVEY: The Court's indulgence one moment, Your  
6 Honor.

7 (Pause.)

8 BY MS. HERVEY:

9 Q Prior to your testifying, did you come meet with me  
10 in my office?

11 A Yes.

12 Q And did you have occasion to examine an aerial  
13 photograph of an area of Lake Jemiki Road where you  
14 responded?

15 A Yes, I did.

16 Q And are you familiar with that area having lived here  
17 and worked in that area?

18 A Yes.

19 Q And have you responded to other calls out there that  
20 would provide you with that familiarity?

21 A Yes, ma'am.

22 Q And that aerial photograph that you looked at, does  
23 that accurately depict the vicinity of Lake Jemiki Road?

24 A Yes.

25 Q And what does Lake Jemiki turn off of?

1 A Highlands Highway.

2 THE COURT: Is it marked?

3 MS. HERVEY: No.

4 (WHEREUPON, State's Exhibit No. 2 was marked for  
5 identification only.)

6 BY MS. HERVEY:

7 Q Without showing it to the jury and just unraveling it  
8 as much you to, if you could look at what's been marked as  
9 State's Exhibit No. 2. And is that the aerial photograph  
10 that I showed you?

11 A Yes, it is.

12 MS. HERVEY: Your Honor, at this time, we would move  
13 to admit State's Exhibit No. 2.

14 THE COURT: Any objection?

15 MR. ALLEN: No, sir.

16 THE COURT: Ladies and gentlemen of the jury, State's  
17 Exhibit No. 2 will be admitted into evidence without  
18 objection. State's Exhibit No. 2 in evidence.

19 You may publish it to the jury.

20 (WHEREUPON, State's Exhibit No. 2 was admitted into  
21 evidence.)

22 MS. HERVEY: The Court's indulgence, Your Honor.

23 THE COURT: Yes, ma'am.

24 (Pause.)

25 MS. HERVEY: With the Court's indulgence, may he step

1 off the stand and familiarize the jury?

2 THE COURT: Mr. Hunnicutt, step down. And you've  
3 heard what I've previously instructed the witnesses. I  
4 ask you to face the jury and speak up. Even if Ms. Hervey  
5 wants you to look at the exhibit the entire time and talk  
6 into it, please face my jury and speak up. Your back is  
7 to my court reporter right now.

8 Have him get on the other side of the exhibit and you  
9 come on this side.

10 BY MS. HERVEY:

11 Q What's the blue road?

12 A That's Lake Jemiki Road.

13 Q All right. And what is this road here kind of going  
14 through the middle?

15 A Highlands highway.

16 Q So Lake Jemiki kind of forks off of Highlands  
17 Highway?

18 A Yes.

19 Q Highlands, obviously, leads up towards Highlands?

20 A Yes.

21 Q And what is this parking lot?

22 A That's for a church.

23 Q A church. All right. And this triangular area, what  
24 is there?

25 A That is Cemetery Road, and this is Zion Road.

1 Q And off of here, Cemetery --

2 A Is a cemetery.

3 Q Is a cemetery. That's kind of obvious.

4 Now, where do the Harpers live? Where did you go  
5 that night?

6 A The Harpers live right there.

7 THE COURT: Speak up for me, please, Mr. Hunnicutt.

8 I can't hear you.

9 THE WITNESS: They live right there.

10 BY MS. HERVEY:

11 Q And is there like a large bare area between their  
12 house and another house, a garden-type area?

13 A Yes.

14 Q And once you go there, Mr. Harper arrives and tells  
15 you he has found the van. Where has he found the van at?

16 A On Cemetery Road.

17 Q And do you follow him there?

18 A Yes, I do.

19 Q And where approximately on Cemetery Road is the van?

20 A It would be about right there.

21 Q So maybe a third of the way towards Zion Road. Would  
22 that be fair to say?

23 A Yes.

24 Q And do you follow him back there?

25 A Yes, I do.



1 Q Or does he ride with you?

2 A I follow him there.

3 Q Does Ms. Harper come with y'all?

4 A No.

5 Q She stays at the residence?

6 A Right.

7 Q And when you get to the van, what is the general  
8 condition of the van?

9 A The door on the van was -- the driver's side door was  
10 open and a gas can was laying beside it in a little area  
11 where it had been burned slightly. And there was a real  
12 strong odor of gas on the vehicle.

13 Q Was the interior of the vehicle burnt in any way?

14 A No.

15 Q The gas you said you smelled, was that coming from  
16 the gas can or was that coming from some place else?

17 A From the interior of the vehicle or on the vehicle.

18 Q Did you stick your head in there and kind of see  
19 where --

20 A I smelled it in there, yes.

21 Q Was there any damage, if you recall, to the vehicle  
22 in any way?

23 A The seats had been cut.

24 Q All right. And was there anyone around the vehicle  
25 at the time? Other than Mr. Harper and yourself, were

1       there any other deputies there?

2       A     No.

3       Q     All right. And did Mr. Harper tell you who he thinks  
4       has stolen his van?

5       A     Yes, he does.

6       Q     Who does he say he believes has stolen his van?

7       MR. ALLEN: Objection.

8       THE COURT: Just a moment.

9       Counsel, approach.

10       (WHEREUPON, a bench conference was held.)

11       THE COURT: Sustained.

12       Rephrase the question.

13       MS. HERVEY: Thank you, Your Honor.

14       The court's indulgence one moment.

15       (Pause.)

16       BY MS. HERVEY:

17       Q     And is it your role to investigate crimes? Is that  
18       something that you do as your normal course of things?

19       A     To a certain extent. And then we turn it over to an  
20       investigator. It depends on the crime.

21       Q     So certain smaller crimes, perhaps, you may be  
22       involved in the investigation of observing the evidence as  
23       it exists out there that night. But for bigger things,  
24       you would either call investigators or turn it over to  
25       investigators later?

1 A Correct.

2 Q Did you develop any information as to a possible  
3 suspect -- without going into that information, as to a  
4 possible suspect of who may have stolen the van?

5 A Yes.

6 Q And what suspect did you develop as being that  
7 person?

8 A Mr. Frady.

9 Q All right. And do you get information or do you  
10 learn where Mr. Frady lives?

11 A Yes.

12 Q And what road does he live on?

13 A [REDACTED].

14 Q And is [REDACTED] on the map?

15 A Excuse me?

16 Q Is [REDACTED] on the map?

17 A Yes. It's right there.

18 Q And is Mr. Frady's residence the only residence on

19 [REDACTED]

20 A Yes.

21 Q So it's more of a driveway than a roadway?

22 A Correct.

23 Q Okay. This being [REDACTED] and Mr. Frady's  
24 residence, as you know it to be?

25 A Yes.

1 Q And this is the Harpers' residence?

2 A Yes.

3 Q So there's kind of a triangle forming those two  
4 houses, and the road's over there?

5 A Correct.

6 Q And do you have the occasion to go to Mr. Frady's  
7 residence to find out if he knows anything about the van?

8 A Yes, I do.

9 Q And do you go there right then?

10 A Just a few minutes after.

11 THE COURT: Can he return to the witness stand,  
12 Counsel, or do you need him down there for this?

13 MS. HERVEY: Just one --

14 THE COURT: Proceed.

15 MS. HERVEY: I'll back up and ask him those questions  
16 when he returns.

17 BY MS. HERVEY:

18 Q When you're back out there at the van with Mr. Harper  
19 as you find it out there with him --

20 A Yes.

21 Q -- other than the gasoline and the damage to the van,  
22 do you notice anything regarding the surrounding area of  
23 the van?

24 A Going up the bank on this side facing this direction  
25 of [REDACTED], there were some footprints going up

1 into the mud into the cemetery.

2 Q So between the van and going back toward Highlands,  
3 so to speak, or up Highlands Highway or up Lake Jemiki  
4 Road, either one, those boots kind of lead back through  
5 the cemetery to that direction?

6 A Correct.

7 Q When you go to Mr. Frady's residence, do you drive  
8 there or do you walk through the woods?

9 A We drive.

10 Q Okay. You may retake the stand.

11 Do you ever receive any information that makes you  
12 call into question Mr. Harper's story that his van had  
13 been stolen?

14 A Yes, I do. Mr. Harper stated that --

15 Q Without going into what Mr. Harper stated -- I mean,  
16 let me rephrase the question.

17 A Okay.

18 Q Do you ever get any information that leads you to  
19 dispute or question Mr. Harper's claim that his van has  
20 been stolen?

21 A Repeat that again. I'm sorry.

22 Q Do you -- in talking to Mr. Harper --

23 A Yes.

24 Q -- do you ever have any reason to disbelieve what he  
25 is telling you?

1 A No.

2 Q Thank you.

3 You stated that you went to Randy Frady's house?

4 A Yes.

5 Q And is that the name by which you know him or you  
6 knew him that night?

7 A Yes.

8 Q And when you go to Mr. Frady's house, is he there?

9 A He was when I went, yes.

10 Q All right. And do you knock on the door, Oconee  
11 County Sheriff's Office? What do you do?

12 A That's what I did. I knocked on the door and he came  
13 to the door.

14 Q Who else is out there with you?

15 A Myself and Deputy Hamilton -- I mean, Deputy  
16 Underwood. And then just a minute or two later, Deputy  
17 Hamilton and Deputy Long pull up.

18 Q And does Mr. Frady answer the door?

19 A Yes, he does.

20 Q And is there -- how does he appear to you physically,  
21 if you recall?

22 A He was just kind of wet. He had just got out of the  
23 shower.

24 Q And did you see him get out of the shower, or did you  
25 presume that, or did he tell you that?

1 A No, he said that.

2 Q And other than being just gotten out of the shower,  
3 could you tell if he had done anything else recently upon  
4 being at the residence? Could you hear any other noises  
5 or anything?

6 A I heard the washing machine going.

7 Q And what was, just generally, your conversation with  
8 Mr. Frady that night?

9 A I just asked about how long it had been since he had  
10 seen Mr. Harper. And he said it had been a while.

11 Q Did he tell you how long he had been home that night?

12 A He said he had just got home from the funeral home.

13 Q And did he indicate that he had any knowledge about  
14 the whereabouts of Mr. Parker's van?

15 A No.

16 Q Did you ever ask him that question?

17 A I didn't get to that point, no.

18 Q You didn't get to that point. So you asked him, I  
19 believe, whether or not he had seen Mr. Harper in a while  
20 and he says, it's been a while?

21 A Right.

22 Q And do you ask him any other questions about what you  
23 find there at the residence?

24 A There's some boots, some muddy boots seen with grass  
25 and a little bit of mud on them, we asked him about them.

1 Q Where are those at when you see them?

2 A Right there at the door.

3 Q Are they outside the door or right inside the door?

4 A I believe they're right on the inside. I'm not  
5 definite.

6 Q Somewhere near the door?

7 A Right, near the doorway. We could see them.

8 Q You saw them in plain view, you didn't go in the  
9 house?

10 A Right. We just asked him if we could take a photo.

11 Q Do you ask to look at the boots to inspect them  
12 first?

13 A Yes. We looked at them.

14 Q And did he give them to you or just kind of hold them  
15 up for you?

16 A Yeah. He gives them to us.

17 Q What type of boots are they?

18 A The name -- I'm sorry. I can't think of the name of  
19 them.

20 Q And you're looking at your report, just to let the  
21 jury know what you're looking at.

22 A Brown Herman Survivor boots.

23 Q Herman Survivor, is that a brand name?

24 A Yes.

25 Q Like Red Wing or something like that?



1 A Right.

2 Q And you stated that they were muddy and had some  
3 grass on them. Is that what you stated?

4 A Yes, ma'am.

5 Q Did it appear to be fresh mud or dried, caked on mud?

6 A Fresh.

7 Q Did you ask to take a photograph?

8 A Yes.

9 Q And did -- what was Mr. Frady's initial response to  
10 that?

11 A He said we could.

12 Q And then?

13 A He changed his mind.

14 Q And he said you could not?

15 A Correct. And that's where we ended it.

16 Q And did you end your part of the investigation out  
17 there that night?

18 A Correct. I was just going to turn it over to  
19 investigations from there.

20 MS. HERVEY: There's nothing further of this witness  
21 at this time.

22 THE COURT: Cross-examination?

23 MR. ALLEN: May it please the Court?

24 And, Your Honor, I may need that. I may need this  
25 easel and this aerial photo.

1 THE COURT: State's Exhibit No. 2?

2 MR. ALLEN: Yes, sir. It would be State's Exhibit  
3 No. 2.

4 CROSS-EXAMINATION

5 BY MR. ALLEN:

6 Q Mr. Hunnicutt, the Solicitor asked you about did  
7 anything cause you to call into question Mr. Harper's  
8 claim. And along those lines, unquestionably, at this  
9 point or at that point, you understood that Michael Harper  
10 owned that van?

11 A Yes.

12 Q Is that right?

13 A Correct.

14 Q Okay. And did you -- as far as calling into question  
15 his claim, did you ask any questions about him and the  
16 situation of the van and his whereabouts at the time in  
17 question?

18 A About his --

19 Q All right. The claim was made that the van was  
20 stolen?

21 A Correct.

22 Q Right. And the claim was made that the van -- that  
23 Mr. Harper found his own van, he just happened upon it  
24 there beside the cemetery?

25 A Correct.

1 Q As far as asking him about his claim and questioning  
2 his claim, did you inquire as to his whereabouts when the  
3 van was supposedly being stolen?

4 A I don't remember.

5 Q In other words, did he tell you where he happened to  
6 be when he -- at the time that he claimed the van had been  
7 stolen by someone else?

8 A I don't remember. I'm sorry.

9 Q Did you -- as part of your investigation into the  
10 grand larceny and theft of this van, did you follow that  
11 up with any further investigation as to where he, in fact,  
12 was or was not at that time?

13 A No. It was going to be turned over to  
14 investigations.

15 Q Okay.

16 A The actual investigators.

17 Q So you personally did not do that?

18 A I started the investigation and checked with  
19 Mr. Frady and that --

20 Q In other --

21 A -- was it, just --

22 Q Excuse me for talking over you. I beg your pardon.

23 A That's okay.

24 Q In other words, you personally -- and I know others  
25 were involved and we're going to get to those. But you

1 personally did no investigation concerning Mr. Harper's  
2 claims related to Mr. Harper himself? You didn't do any  
3 of that, did you?

4 A No.

5 Q Okay. And, in fact -- and you correct me if I'm  
6 wrong. In fact, after the supposed grand larceny here,  
7 the van was released back to Michael Harper?

8 A Yes, it was.

9 Q To your knowledge, were any -- what's known as  
10 forensics done on the van? Do you know what I mean by  
11 that?

12 A Not that night, no.

13 Q And was it processed -- was it preserved just as  
14 the -- that's not the right aerial photograph. But just  
15 as the previous deputy testified, the area over on  
16 Westminster Highway, when it was preserved, was the same  
17 thing done with the van -- the alleged stolen van? Was it  
18 preserved?

19 A No, it wasn't.

20 Q In fact, again, it was handed back over to Michael  
21 Harper?

22 A Correct.

23 Q And he did what with it?

24 A He took it home.

25 Q And, furthermore -- and you correct me if I'm wrong.

1 Was there not a gas can also beside the van when he  
2 happened upon it -- and that's Michael Harper -- when  
3 Michael Harper happened upon it --

4 MS. HERVEY: Your Honor --

5 THE COURT: Just a moment.

6 MS. HERVEY: I'm sorry.

7 May we approach?

8 THE COURT: Counsel, approach.

9 (WHEREUPON, a bench conference was held.)

10 BY MR. ALLEN:

11 Q Mr. Hunnicutt, I think I was asking you about this.  
12 There was also a gas can beside the van?

13 A Yes.

14 Q Now, I understand the gas can -- and, again, you  
15 correct me if I'm wrong. I understand the gas can was  
16 taken into evidence at that time?

17 A Yes, it was.

18 Q Is that right?

19 A Yes.

20 Q Was it, to your knowledge -- and if you don't know,  
21 that's quite all right. To your knowledge, was the gas  
22 can processed?

23 A Not to my knowledge. I don't know. But I turned it  
24 into evidence, so it could have been. I'm not sure.

25 Q Okay. But the van itself -- now, from your

1 understanding, as a law enforcement officer, the van very  
2 well could have had forensics inside the van. Would you  
3 agree with that?

4 A It could have, yes, sir.

5 Q Hair, Possibly?

6 A Possibly.

7 Q DNA, possibly?

8 A Yes.

9 Q Blood, possibly?

10 A Yes. I didn't know at the time, you know, what  
11 was --

12 Q Palm prints, possibly?

13 A Yes.

14 Q I mean, that would have been a real almost -- would  
15 you agree that that could have been a real treasure trove  
16 of evidence inside that van?

17 MS. HERVEY: Your Honor, I'm going to object. That  
18 calls for speculation on his part.

19 THE COURT: Sustained.

20 MR. ALLEN: I'll withdraw.

21 BY MR. ALLEN:

22 Q And then, to your knowledge -- and if you don't know,  
23 again, that's an acceptable answer. To your knowledge,  
24 was the van seized the following day or was the van  
25 inspected the following day?

1 A I'm not sure.

2 Q Okay. And if you would, please, sir --

3 MR. ALLEN: If the witness could stand down, Your  
4 Honor?

5 THE COURT: You may step down.

6 Please speak up for me again, Mr. Hunnicutt.

7 THE WITNESS: Okay.

8 BY MR. ALLEN:

9 Q If you would, show the jury, and me as well, where  
10 the van was situated.

11 A It was in this area.

12 Q Okay. And, if you would again for me, show me where  
13 Michael Harper lived at that time?

14 A Right there.

15 Q Okay. And there was allegedly some prints of some  
16 type in the surface of the ground at the cemetery there;  
17 is that correct?

18 A Yes. There's a bank that goes up right beside where  
19 the van was at.

20 Q To your knowledge, was there any attempt or effort by  
21 anyone in the investigation to make samples, or analyze,  
22 or inspect what appeared to be right there in the  
23 cemetery? Did anybody try to do that?

24 A It was just smudges. It wasn't the actual --

25 Q But nobody, to your knowledge --

1 A No.

2 Q -- did that?

3 A No.

4 Q Well -- we're talking over one another. Let me  
5 repeat the question.

6 THE COURT: Speak up for me, Mr. Hunnicutt. I've got  
7 jurors behind you.

8 THE WITNESS: I'm sorry about that.

9 BY MR. ALLEN:

10 Q To your knowledge, no law enforcement professional,  
11 investigator, deputy, analyst, specialist, expert  
12 attempted to analyze the impressions that were made,  
13 apparently, there near the van?

14 A No.

15 Q And, in fact, no one could say for a fact whether  
16 they could be tennis shoe marks, dress shoe marks, or  
17 what -- no one is going to testify about the sole of the  
18 imprint --

19 MS. HERVEY: Your Honor, I'm going to object as to  
20 speculation. Mr. Allen is testifying.

21 THE COURT: Sustained.

22 This witness does not give opinions about who may or  
23 may not testify.

24 Proceed, Counsel.

25 MR. ALLEN: Okay.



1 BY MR. ALLEN:

2 Q To your knowledge, again, there was no effort to  
3 analyze the impressions? To your knowledge, if you know.

4 A No.

5 Q All right. You can step back up to the witness  
6 stand.

7 And I'm going to ask you while you're seated there  
8 right where the van was --

9 THE COURT: Turn it just a little bit for the  
10 witness, if you would.

11 MR. ALLEN: Yes, sir.

12 THE COURT: I don't want to exclude the jury, but --  
13 there we go.

14 Can you see it?

15 THE WITNESS: Yes, sir.

16 BY MR. ALLEN:

17 Q Where was the van on Cemetery Road? This is a vast  
18 area back here; correct?

19 A Yes, sir.

20 MR. ALLEN: The Court's indulgence, Your Honor.

21 (Pause.)

22 BY MR. ALLEN:

23 Q And, to your knowledge, was there any -- just to your  
24 knowledge, was there any effort at any time thereafter,  
25 maybe the following day or the day after or the day after,

1 was there any effort thereafter to analyze the soil on the  
2 boots that were allegedly there in the residence, to your  
3 knowledge?

4 A I have no idea.

5 THE COURT: Anything further, Counsel?

6 MR. ALLEN: No further questions, Your Honor.

7 THE COURT: Redirect?

8 MS. HERVEY: Just briefly, Your Honor.

9 REDIRECT EXAMINATION

10 BY MS. HERVEY:

11 Q You stated that when you saw the marks in the mud  
12 there -- could you see a particular trade impression or  
13 anything like that?

14 A No, ma'am.

15 Q And as to the boots and Mr. Allen's question about  
16 whether or not anybody tested any soil samples or  
17 anything. Are you aware if they were able to find the  
18 boots the next day?

19 A They were not.

20 Q And Mr. Allen asked you about palm prints or  
21 anything like that. You're not a forensic technician,  
22 you're not trained in collecting any of that evidence, are  
23 you?

24 A No, ma'am.

25 Q So that's not part of your role at the Oconee County

1 Sheriff's Office?

2 A Correct.

3 Q So if it was done or if it wasn't done, you had no  
4 reason to be a part of that?

5 A Right.

6 Q At the time that Mr. Harper -- and you're responding  
7 to this stolen vehicle call, are you aware of the double  
8 homicide on Westminster Highway?

9 A No, ma'am.

10 Q You have no knowledge that that has occurred?

11 A No, ma'am.

12 Q You have no reason to believe that the van is in any  
13 way associated with those two murders?

14 A No, ma'am.

15 Q So, at that point, all you're investigating is a  
16 stolen van, which you recovered?

17 A Correct.

18 Q And returned to the owner?

19 A Correct.

20 Q And had no reason to believe -- and, normally, in a  
21 stolen vehicle, is it something you attempt to do to  
22 preserve DNA and hair samples?

23 MR. ALLEN: Objection to leading.

24 THE COURT: Sustained.

25 Redirect -- ask direct questions.

1 BY MS. HERVEY:

2 Q As part of your duties with the Oconee County  
3 Sheriff's Office in investigating stolen vehicles, have  
4 you had the occasion to do that a time or two?

5 A No.

6 Q Is this the first stolen vehicle you've ever  
7 responded to?

8 A No.

9 Q So you've responded to others?

10 A Yes, ma'am.

11 Q Is part of your duties to preserve hair and DNA  
12 samples on a stolen vehicle call?

13 A No.

14 Q You stated that you took the gas can that night?

15 A Yes, I did.

16 Q And what did you do with it?

17 A I turned it over to Deputy Bowling.

18 Q And was he, at that time, working in evidence and  
19 those type things?

20 A Yes.

21 (WHEREUPON, State's Exhibit No. 16 was marked for  
22 identification only.)

23 BY MS. HERVEY:

24 Q Let me show you State's Exhibit No. 16. I ask you to  
25 look at that bag. Does it have a chain of custody thing

1 on it?

2 A Yes.

3 Q Does it show where it was turned over to Casey  
4 Bowling?

5 A Yes.

6 Q And if you could --

7 MS. HERVEY: The Court's indulgence one moment, Your  
8 Honor.

9 (Pause.)

10 BY MS. HERVEY:

11 Q Without removing that, I ask you just to open that  
12 bag, acquaint yourself with it. And I ask you whether or  
13 not that's the gas can you collected out there that night?

14 A Yes.

15 Q That's the gas can that you took out there that night?

16 A Yes.

17 Q And you turned it over, you said, to Casey Bowling?

18 A Yes.

19 Q Any testing or anything that happened on the gas can  
20 later, you didn't have anything to do with it?

21 A No.

22 MS. HERVEY: Nothing further of the witness.

23 THE COURT: Recross limited to redirect?

24 MR. ALLEN: One final question on the van, just one  
25 question, Your Honor.

RECROSS-EXAMINATION

BY MR. ALLEN:

Q Wasn't the reason that law enforcement turned the van back over to Michael Harper because, as you were asked earlier, you did have a question about the claim of Michael Harper? Isn't that the reason it was turned back over to Michael Harper and it wasn't preserved?

A I don't understand that question. I'm sorry.

Q I said, wasn't the reason the stolen -- the alleged stolen van was turned back over to Michael Harper, rather than take it into evidence, is because law enforcement had a question about the claim Michael Harper was making that it was stolen? Isn't that why?

A No.

MR. ALLEN: That's all the questions, Your Honor.

MS. HERVEY: Just one.

THE COURT: Re-redirect, Counsel.

MS. HERVEY: I'm sorry.

FURTHER EXAMINATION

BY MS. HERVEY:

Q Why did you turn it over to him?

A We found it and it was his vehicle.

Q Is it normally your procedure to return a stolen vehicle to the property owner?

A Yes.

1 MS. HERVEY: Nothing further.

2 THE COURT: Recross, re-recross limited to  
3 re-redirect?

4 MR. ALLEN: No, sir.

5 THE COURT: As to this witness, Solicitor?

6 MS. HERVEY: Your Honor, just out of an abundance of  
7 caution, I ask that he not be excused. But he can leave  
8 the courtroom here today.

9 THE COURT: You may leave today. You're not excused  
10 subject to being recalled.

11 You may step down, Mr. Hunnicutt.

12 Thank you very much.

13 Call your next witness.

14 MS. HERVEY: If we could approach, Your Honor?

15 THE COURT: Yes.

16 (WHEREUPON, a bench conference was held.)

17 MS. HERVEY: The State calls Mr. Jim Frady.

18 THE CLERK: Come right over here, Mr. Frady, right  
19 here.

20 If you'll place your left hand on the Bible and can  
21 you raise your right hand.

22 You're fine.

23 WHEREUPON,

24 JAMES CLEVELAND FRADY,

25 after first having been duly sworn, testified as follows:

1 THE CLERK: Okay. If you'll, please, be seated.

2 THE COURT: Mr. Frady, the microphone that's in front  
3 of you right there --

4 THE WITNESS: Here?

5 THE COURT: Yes.

6 I want you to get in close to it and speak into that,  
7 if you can. Because it's going to make your voice louder  
8 so everybody can hear what you say.

9 THE WITNESS: Okay.

10 THE COURT: I want you to begin by stating into that  
11 microphone your name, and spell your last name for the  
12 court reporter.

13 THE WITNESS: My name is James Cleveland Frady. And  
14 the last name is F-R-A-D-Y.

15 THE COURT: Your witness, Counsel.

16 MS. HERVEY: May it please the Court, Your Honor?

17 DIRECT EXAMINATION

18 BY MS. HERVEY:

19 Q Mr. Frady, how long have you lived in Walhalla?

20 A (There was no response.)

21 Q How long have you lived here in Walhalla?

22 A Nearly 89 years.

23 Q Most of your life?

24 A I was born in Westminster and moved to Walhalla when  
25 I was a kid.



1 Q All right. Who are you married to, Mr. Frady?

2 A Irene Black.

3 Q Does she go by "Blacky"?

4 A Blacky, yeah.

5 Q How long have you been married to Blacky?

6 A I've been married to her 67 years and she still  
7 bosses me around.

8 Q I can't understand that. I don't see why she would  
9 do that.

10 Mr. Frady, where do you and Blacky live now?

11 A With what?

12 Q Where do you and Blacky live now?

13 A I didn't understand.

14 Q What's your address?

15 A Oh, it's [REDACTED], Walhalla.

16 Q All right. Do you and Blacky have any children?

17 A We had the one boy.

18 Q And what was his name?

19 A James Cleveland, Jr.

20 Q And what did you call him?

21 A Jimmy.

22 MS. HERVEY: Your Honor, just to explain to the jury,  
23 what I'm doing is a little family tree of the family so  
24 the jury will understand how everybody is related to  
25 everybody, just for demonstrative.

1 Do you have any objection to that?

2 MR. ALLEN: No objection.

3 MS. HERVEY: I apologize for not doing that earlier.

4 BY MS. HERVEY:

5 Q Who was Jim married to? Was he married?

6 A Yeah. He married Patricia Black.

7 Q Did Jimmy and Patricia have any children?

8 A Well, he had -- Jim and Pat had some.

9 Q Who did Jim and Pat have -- what children did they  
10 have?

11 A What?

12 Q What children did Jimmy and Pat have?

13 A Barry and Randy.

14 Q Who was older, Randy or Barry?

15 A I beg your pardon?

16 Q Who was older, Randy or Barry?

17 A Randy.

18 Q Did Barry or Randy ever get married and have kids?

19 A Barry did, but Randy didn't.

20 Q Back in 2004, was Barry married at the time?

21 A I don't know. He didn't live with her. It didn't  
22 last long.

23 Q It didn't last too long?

24 A No.

25 Q He wasn't living with her at the time?

1 A No. He lived in Florida at the time. He wasn't  
2 around me.

3 Q All right. Did your son, Jimmy, grow up here in  
4 Walhalla?

5 A Yeah.

6 Q What high school did Jimmy go to?

7 A He finished Walhalla.

8 Q And, at some point, did Jimmy move outside of  
9 Walhalla and leave the state?

10 A (There was no response.)

11 Q Did Jimmy ever leave the state and move anywhere else  
12 and live?

13 A Oh, yeah. He moved a lot of places. He went to  
14 Clemson for a while. And then he went in the Air Force  
15 and stayed four years. When he came out, he went to work  
16 for a construction company. And he worked with a pipe  
17 place over in Greenville. He worked with one in  
18 Pennsylvania. And he moved to -- I mean, to -- well,  
19 maybe I'll think of it.

20 Q Did he ever move to Florida?

21 A He moved to Kansas City with a company and worked  
22 with them for a good little while. And then he got -- a  
23 guy from Florida came up and got with him. And he went  
24 down there and stayed 24 years.

25 Q All right. So he lived in Florida about 24 years?

1 A Yeah.

2 Q When he lived in Florida, were Barry and Randy  
3 younger? Did they grow up in Florida or did they grow up  
4 here in Walhalla?

5 A Well, they grew up part of the way in Florida and  
6 part of the way with me and Blacky.

7 Q All right. Did Barry ever come and live with you and  
8 Blacky?

9 A Barry, he didn't stay with us much.

10 Q Did Randy ever come and live with you and Blacky?

11 A Yeah. Randy came and stayed with us a good bit.

12 Q Did he go to school up here in Walhalla?

13 A Yeah, he went up here.

14 Q Did he graduate high school up here?

15 A No, he graduated at Florida.

16 Q So he went back to Florida at some point?

17 A No, no. He was an older man when he went the last  
18 time to Florida. He was --

19 Q Okay.

20 A I got his diploma at home, but I don't where it is.

21 Q Don't worry. I couldn't find mine either.

22 Back in September of 2004, you said you were living  
23 on [REDACTED]?

24 A I moved out there in 1950.

25 Q And you stated that Barry would stay with you there

1 off and on?

2 A No, Randy would.

3 Q Okay.

4 A But he didn't -- he wasn't with us when all this  
5 happened. He was living by himself.

6 Q Where was he living when all this happened?

7 A Up in a trailer up here off of 28.

8 Q Off of 28. Did he live on [REDACTED]? Do you  
9 recognize that road, [REDACTED]?

10 A Huh?

11 Q [REDACTED]?

12 A Yeah. I think that was the name of it.

13 Q And prior to him living on [REDACTED], before  
14 that, where was he living? Was he staying with you?

15 A Yeah. He stayed with me for a while.

16 Q But, at some point, he moved out and got his own  
17 place?

18 A That's right.

19 Q And around the time that this all happened, where was  
20 Randy working?

21 A He was working over at the place where they make the  
22 things and -- Oaklane, I believe it is. I'm not sure.  
23 They build boat houses.

24 Q Docks and stuff like that?

25 A Something like that. I don't know what's the name of

1 the place.

2 Q Would you ever take Randy to work?

3 A I took him to work after he tore up his -- excuse me,  
4 he tore up his transmission in his truck. And I would  
5 take him in the morning and go get him in the evening.

6 Q About what time did you take him to work most  
7 mornings?

8 A He'd go to work at 7:00.

9 Q And do you remember the morning of September 23rd of  
10 2004, when all this happened? Do you remember that day?

11 A I don't remember the day, no. But I always took him.  
12 In fact, I took him to work the morning after all this had  
13 happened.

14 Q All right. So the morning all this happened, did you  
15 take Randy to work?

16 A Yeah.

17 Q And when you got home, was there anything unusual --

18 A Yeah. We got a big white dog in the lot. And she's  
19 smart. And if you leave the latch up, she'll open it with  
20 her nose and get out. So she got out. And my wife told  
21 me, Jim, you better go put up Nicky. And I went up there  
22 to put him up and found them.

23 Q All right. So you went to put up Nicky?

24 A Yeah.

25 Q Is that the dog that little Julia Ford takes care of

1 sometimes?

2 A I beg your pardon?

3 Q Is that the dog Julia Ford, the little girl --

4 A Oh, yeah. Julia kind of -- she likes Julia better  
5 than she does me.

6 Q Now, when you went over to the -- so Jimmy and Barry  
7 lived beside you; is that right?

8 A No, no. Jim lived with his dad and Barry lived -- I  
9 mean, Randy lived up on the highway. We didn't live  
10 together.

11 Q All right. Jimmy and Barry, did they live next to  
12 you?

13 A No. Barry lived next to me, but Jimmy didn't.

14 Q Where did Jimmy live?

15 A Oh, excuse me. They both -- yeah. I was getting  
16 them mixed up. Jimmy and Barry moved in the house that me  
17 and Blacky moved out of after we built a new house for  
18 some foolish reason. And they lived above me up there.

19 Q And was there a cinder block building out back?

20 A I beg your pardon?

21 Q Was there a cinder-block building, a garage thing out  
22 back?

23 A Yeah. There was a garage and shop, too, out there.  
24 I was in the furniture moving business for a long while.  
25 And I used the 40X70 building to store furniture in. But

1 Randy and them wasn't around at that time.

2 Q And so you went over there that morning. Other than  
3 the dog being out, did you notice anything else when you  
4 went over there?

5 A Well, yeah. When I went up to feed the dog -- Blacky  
6 told me to go put Nicky up, she's out. And I went up  
7 there and the back door was locked. I couldn't get in the  
8 house.

9 So I walked around the house and the front door was  
10 standing wide open. And I never had seen it that way  
11 before. And I don't know who got the door opened or not,  
12 but Randy -- Barry was sitting in his chair. And I walked  
13 in and I said, son, get up from there and go feed the dog.  
14 And he didn't say anything. And I just walked up in front  
15 of his leg. And it was just cold as ice. And I knew he  
16 was dead.

17 So I walked just a few steps down through there and  
18 went in the hall. And Jim, evidently, he was trying to  
19 get out of the bed. He had one foot out. And he was  
20 dead.

21 And I come back home and called 919 [sic]. And the  
22 boys -- the policemen or whatever they call themselves  
23 now, they stayed up there all day long. And along about  
24 4:30 or 5:00 in the evening, they came down at the house  
25 and said, we decided that --



1 Q Before you go into what other people said --

2 A What?

3 Q Before you go there, let me back you up a little.  
4 And be real careful, you can't say what other people say,  
5 all right, only what you saw, what you know, what you  
6 said.

7 A Well, no. I don't recall -- the only thing I recall  
8 they said was the policeman --

9 THE COURT: Mr. Frady, hold on.

10 What we don't want you to do is necessarily -- unless  
11 I tell you that you can -- tell us what somebody else  
12 said.

13 THE WITNESS: Oh, well, I'm not.

14 THE COURT: Listen to the questions. Tell us what  
15 you saw with your own eyesight and what you sensed with  
16 your sense of smell or sight. But don't refer to what  
17 somebody else said unless I tell you to do so.

18 Proceed, Counsel.

19 BY MS. HERVEY:

20 Q After you go back to the house and you call 911, the  
21 police arrive?

22 A I called them and told them that the boys was dead.  
23 And that's the last time I was up there until late in the  
24 evening.

25 Q That's fine. Did you ever hear any gunshots or

1 firecrackers or any noises --

2 A I didn't hear anything.

3 Q All right.

4 A When you get as old as I am, you sleep pretty good.

5 MS. HERVEY: The Court's indulgence one moment, Your  
6 Honor.

7 (Pause.)

8 MS. HERVEY: Nothing further at this time.

9 Thank you, Mr. Frady.

10 You're going to answer Mr. Allen's questions now.

11 THE COURT: Cross-examination?

12 MR. ALLEN: No questions of this witness, Your Honor.

13 THE COURT: As to this witness?

14 MS. HERVEY: As to this witness, at this time, no,  
15 sir, nothing.

16 THE COURT: May he be excused?

17 MS. HERVEY: Yes, sir.

18 THE COURT: Any objection to this witness being  
19 excused?

20 MR. ALLEN: No, sir.

21 THE COURT: Mr. Frady, you may step down from the  
22 witness stand. And you are excused.

23 THE WITNESS: Thank you.

24 THE COURT: Call your next witness, Counsel.

25 MS. HERVEY: Your Honor, the State calls Joe Hamilton

1 to the stand.

2 THE COURT: Mr. Hamilton, will you come around and be  
3 sworn, please, sir.

4 THE CLERK: Place your left hand on the Bible and  
5 raise your right hand.

6 WHEREUPON,

7 JOSEPH ADAM HAMILTON,  
8 after first having been duly sworn, testified as follows:

9 THE CLERK: If you'll, please, be seated.

10 THE COURT: Pull your chair up.

11 And state your full name and spell your last name for  
12 the court reporter.

13 THE WITNESS: My name is Joseph Adam Hamilton,  
14 spelling my last name as H-A-M-I-L-T-O-N.

15 THE COURT: Your witness, Counsel.

16 MS. HERVEY: The Court's indulgence, one moment.

17 DIRECT EXAMINATION

18 BY MS. HERVEY:

19 Q By whom are you currently employed, Mr. Hamilton?

20 A The Oconee County Sheriff's Office.

21 Q You're employed with the Oconee County Sheriff's  
22 Office, too?

23 A Yes, ma'am.

24 Q And how long have you been with them?

25 A I've been with the Oconee County Sheriff's Office

1 about four years. And prior to that, I was with the  
2 Westminster Police Department for one year.

3 Q And are you similarly employed as Mr. Bryant and  
4 Mr. Hunnicutt out on road patrol?

5 A Yes, ma'am, I am.

6 Q We're taking you and Mr. Hunnicutt a little out of  
7 order today because he's working nights and you're in  
8 training.

9 A Yes, ma'am.

10 Q Back in September of 2004, were you similarly  
11 employed as a road patrol officer?

12 A Yes, ma'am.

13 Q And did you have occasion to respond to [REDACTED]  
14 [REDACTED] that night?

15 A Yes, ma'am, I did.

16 Q And at whose instruction did you do that?

17 A I responded to [REDACTED] at the request of  
18 Deputy Hunnicutt to attempt to locate a suspect, Mr. Randy  
19 Frady.

20 Q And when you got to the residence, initially,  
21 [REDACTED], you were called and about what time did  
22 you get out there?

23 A I arrived out there probably right around -- probably  
24 right around midnight, maybe a little before or a little  
25 after the first time I went out there.

1 Q And when you got out there the first time, what did  
2 you see?

3 A When I got out there, there were no lights on. It  
4 didn't appear anybody was around. Everything was dark.  
5 There was no activity.

6 Q So do you stay there?

7 A No, ma'am, I don't. I go back and start assisting  
8 the other deputies.

9 Q Deputy Hunnicutt?

10 A Deputy Hunnicutt, yes.

11 Q And was there a trainee with you or something like  
12 that?

13 A Yes, there was. I had a trainee, Brian Long, with  
14 me. He was on field training with me at the time.

15 Q So you, actually, participate in the training of  
16 other officers?

17 A Yes, ma'am. I'm a master deputy on third shift and  
18 that's part of our supervisory duties.

19 Q And where do you go meet up with Mr. Hunnicutt?

20 A I met with Deputy Hunnicutt and Corporal Underwood on  
21 [REDACTED] at Mr. Frady's residence.

22 Q Do you ever have the occasion to leave there or do  
23 you stay there between the first time you go there --

24 A The first time I went there when I noticed that there  
25 was no one there, I left and went back onto the road --

1 MR. ALLEN: Objection to that, Your Honor. He --

2 THE COURT: What grounds, Counsel?

3 MR. ALLEN: Well, there's no foundation. He's saying  
4 no one is there and he hasn't been to the door.

5 THE COURT: Overruled.

6 Proceed.

7 BY MS. HERVEY:

8 Q Did you ever go to the door?

9 A The first time or the second time?

10 Q The first time.

11 A The first time, no.

12 Q But do you see any lights on or anything like that?

13 A No.

14 Q Do you hear any noise or any music playing?

15 A No, nothing.

16 Q Do you roll down the window so you can hear what's  
17 going on?

18 A Yeah. I rolled down my window, cut off my car. I  
19 don't hear anything or see anything. I go on about my  
20 business.

21 Q And when you first pull up there, how close do you  
22 get to the residence? How close do you pull up?

23 A It's probably 15 to 20 feet, I would say, away from  
24 the front door or front porch area of the residence.

25 Q And what is there? Is it a trailer?

1       A     It's a single-wide mobile home. And it sits sort of  
2       parallel to Highlands Highway. It's got a porch and an  
3       old -- I believe it was a 1971 pickup truck, kind of dark  
4       blue sitting in the front yard.

5       Q     You didn't hear the engine running on the truck or  
6       anything like that?

7       A     No, ma'am.

8       Q     So you go -- so you leave and go and meet up with  
9       Deputy Hunnicutt and the others?

10      A     Yes, ma'am.

11      Q     And the decision is made to return back to the Frady  
12      residence to see if anybody is there just to make sure?

13      A     Yes, ma'am.

14      Q     And when you go there the second time, were the  
15      lights on?

16      A     The second time, I, actually, arrived a minute to  
17      five minutes, somewhere around there, after Deputy  
18      Hunnicutt had already been there. I had to go get some  
19      gas. And I came on back.

20            When I got there, there were lights on at the front.  
21      Deputy Hunnicutt and Corporal Underwood were standing at  
22      the front porch. Mr. Frady was on the interior door frame  
23      of the house speaking with them.

24      Q     And approximately -- if you recall, if you go there  
25      shortly before 12:00 the first time, about what time do

1       you get there the second time?

2       A     I would say it was probably about 20 minutes after  
3       midnight the second time I got there.

4       Q     And do you know, if at all, how long Mr. Hunnicutt  
5       had been there after you arrive?

6       A     He had been there, like I said, between one to five  
7       minutes.

8       Q     And do you go up on the steps or do you get close  
9       enough to Deputy Hunnicutt and Mr. Frady to hear what they  
10      are saying?

11      A     Yes, ma'am. I go up onto the porch area.

12      Q     And are you close enough to hear what is being said?

13      A     Yes, ma'am.

14      Q     And are you able to observe Mr. Frady as he speaks  
15      with Deputy Hunnicutt?

16      A     Yes, ma'am.

17      Q     And just generally, what did you notice about  
18      Mr. Frady's appearance and demeanor on that night?

19      A     Well, Mr. Frady, he was wearing a sort of  
20      dark-colored T-shirt, and he was wearing long blue jean  
21      pants. He wasn't wearing any shoes, any socks. And his  
22      hair was soaking wet. He had longer hair at the time.  
23      And it was kind of laying down dripping.

24      Q     And did you hear any noises coming from inside the  
25      trailer that night?



1 A Yes, ma'am. I heard a washing machine running.

2 Q And did Mr. Frady -- how was he communicating with  
3 Deputy Hunnicutt? Was he at ease in the conversation?  
4 Did he appear in any way out of the ordinary?

5 A He just seemed real nervous and fidgety. He kept  
6 rubbing his hands a lot. And when he was talking to the  
7 deputies, he would sort of dart his eyes away a good bit.  
8 He seemed pretty nervous.

9 Q And were you there when Mr. Hunnicutt asked to  
10 inspect the boots?

11 A I'm sorry. I didn't hear the last part.

12 Q Were you there when Deputy Hunnicutt asked to inspect  
13 Randy Frady's boots?

14 A Yes, ma'am.

15 Q And are you part of that -- do you see them out there  
16 that night?

17 A Yes, ma'am. I see them sitting right by the door  
18 frame.

19 Q And are you there when they ask the whole thing about  
20 photographing them and then Mr. Frady changing his mind  
21 and everything?

22 A Yes, ma'am.

23 Q And during that conversation as well, does Mr. Frady  
24 still appear nervous and those type of things?

25 A Yes, ma'am.

1 Q Did you ever enter the residence?

2 A No, ma'am, I did not.

3 Q And is that your limited involvement in this  
4 investigation?

5 A Yes, ma'am. That's essentially my involvement.

6 Q You were there to back up Deputy Hunnicutt?

7 A Yes, ma'am.

8 MS. HERVEY: Nothing further of this witness at this  
9 time.

10 THE COURT: Cross-examination?

11 MR. ALLEN: May it please the Court?

12 THE COURT: Yes, sir.

13 CROSS-EXAMINATION

14 BY MR. ALLEN:

15 Q Mr. Hamilton, the first time you went, which I  
16 understand was a few minutes before the second time you  
17 went there, you didn't get out of your vehicle, did you?

18 A No, sir, I did not.

19 Q And you -- at that time and maybe even now, you did  
20 not know that there was a back porch on this mobile home  
21 as opposed to the front porch, you didn't know that, did  
22 you?

23 A No, sir. I never went around back.

24 Q And were you involved in the investigation of the  
25 alleged theft or grand larceny of that van -- the van?

1 A No, sir. The only involvement I had was per Deputy  
2 Hunnicutt's request to see if Mr. Frady was at his  
3 residence or if he was around at that time.

4 MR. ALLEN: Very well.

5 Thank you.

6 Your Honor, that's all the questions I have of this  
7 witness.

8 MS. HERVEY: May we approach?

9 Nothing further of this witness.

10 May we approach?

11 THE COURT: Any objection to him being excused?

12 MS. HERVEY: No, Your Honor.

13 MR. ALLEN: No, sir.

14 THE COURT: Deputy Hamilton, you may be excused.

15 (WHEREUPON, a bench conference was held.)

16 THE COURT: Madam Foreperson, and, ladies and  
17 gentlemen of the jury, I'm going to take a five-minute  
18 break, just a very quick one, to give you a chance to  
19 stretch your legs and use the restroom. We're coming  
20 right back. We're going to work on until closer to 1:00  
21 when we adjourn for lunch.

22 Please don't discuss the case. You have not heard  
23 all the evidence.

24 (WHEREUPON, the jury was excused from open court at  
25 approximately 12:15 p.m.)

1 THE COURT: We'll take five minutes, Counsel.

2 (WHEREUPON, a break was taken.)

3 THE COURT: Is the State ready to proceed?

4 MS. HERVEY: Yes, Your Honor.

5 THE COURT: Is the Defendant ready to proceed?

6 MR. ALLEN: Yes, Your Honor.

7 THE COURT: Bring the jury in, please, sir.

8 (WHEREUPON, the jury came into open court at  
9 approximately 12:28 p.m.)

10 THE COURT: Madam Foreperson, and, ladies and  
11 gentlemen of the jury, I see everybody remained intact.  
12 The flock is still intact. That's good. We'll continue  
13 with the testimony and the trial of this case.

14 You may call your next witness.

15 MS. HERVEY: The State calls Tammy Harper, Your  
16 Honor.

17 THE CLERK: Come up here, please.

18 Raise your right hand and place your left on the  
19 Bible.

20 WHEREUPON,

21 TAMMY PITTS HARPER,  
22 after first having been duly sworn, testified as follows:

23 THE CLERK: Would you, please, go around and have a  
24 seat.

25 THE COURT: Good afternoon.

1           Make yourself comfortable. Get yourself a glass of  
2 water, if you like. And, ma'am, I'm going to ask you to  
3 slip that chair up to that microphone. You've got to pull  
4 up. You see the microphone in front of you, pull it down  
5 a little bit. There you go. Now, you can talk into it.

6           And, if you would, begin by stating your full name  
7 and spell your last name.

8           THE WITNESS: Tammy Pitts Harper, H-A-R-P-E-R.

9           THE COURT: Your witness, Solicitor.

10          MS. HERVEY: Thank you, Your Honor.

11                           DIRECT EXAMINATION

12          BY MS. HERVEY:

13          Q     Ms. Harper, I'm going to ask that you speak into that  
14 microphone so these last jurors can hear you. The  
15 logistics in this courtroom are not what they should be.

16               Where do you live now, in what county?

17          A     Walhalla, Oconee County.

18          Q     And how long have you lived here in Oconee County?

19          A     All my life.

20          Q     Did you grow up here, go to school here, that kind of  
21 thing?

22          A     Yes.

23          Q     Where did you go to school?

24          A     Walhalla and Seneca. I finished at Walhalla.

25          Q     And do you work?

1 A Yes.

2 Q Where do you work?

3 A Tammy's Barbershop in West Union.

4 Q And you're the Tammy of Tammy's Barbershop, I take  
5 it?

6 A Right.

7 Q So you cut hair. Is that fair to say?

8 A Yes.

9 Q And how long have you done that?

10 A I've done it about 20 some odd years. But I've had  
11 my own shop ten years.

12 Q All right. And are you married?

13 A Yes.

14 Q Who are you married to?

15 A Michael Harper.

16 Q Is he here?

17 A Yes, he is.

18 Q And he's the gentleman in the blue and green plaid  
19 shirt?

20 A Yes.

21 Q How long have you been married to Mike?

22 A 23 years.

23 Q Do you boss him around the way Mr. Frady's wife  
24 bosses him?

25 A I don't have very much luck.

1 Q Do you and Mike have any children?

2 A We have two.

3 Q And who are they?

4 A We have Benjy, our son, he's 22. And Whitney Harper  
5 is our daughter, she's going to be 18.

6 Q And does your daughter or son still live at home?

7 A Our daughter lives at home.

8 Q And back in 2004, what road were you living on?

9 A [REDACTED].

10 Q And was your son or daughter living with you then?

11 A Yes.

12 Q Both of them?

13 A I think both of them were. I'm positive my daughter  
14 was, but I'm not positive my son was at the time. He did  
15 some of the time. But he wasn't -- not the whole entire  
16 time we lived there, he wasn't with us.

17 Q Coming and going, getting older?

18 A Right.

19 Q And, at the time, did your husband work?

20 A Yes.

21 Q And what did he do?

22 A He was working for a construction company out of  
23 Toccoa. I think it was called Seminole something at that  
24 time.

25 Q And did he have any other businesses or do any other

1 work at the time?

2 A He locksmithed some.

3 Q And how long has he been doing that, locksmithing?

4 A Close to 30 years, I guess. But he was out of  
5 business sort of.

6 Q Did he have a locksmith van?

7 A Yes.

8 Q And what other cars did you have at that time?

9 A At that time, I had a 1989 Cadillac. But it was --  
10 it had been broken down and parked in the yard. So I was  
11 using, at that time, a loaner car from Bob Woods  
12 Chevrolet. It was a black '99 Cavalier.

13 Q All right. Did your daughter have a car?

14 A No.

15 Q So you guys were having to take her to and from  
16 places she needed to go?

17 A Right.

18 Q And was she going to school at the time?

19 A Yes.

20 Q And do you know the Defendant, Randy Frady?

21 A Yes.

22 Q Approximately, how long have you known him?

23 A Probably since he was about 16 or 17 years old.

24 Q And was he a friend of your husband's, is that how  
25 you knew him, or did you know him personally before that?



1 A No. I met him through my husband.

2 Q And when did you start -- I know you've been married  
3 for a while, but is that about the same time you started  
4 dating Mike?

5 A Yes.

6 Q And so you all had been, would it be fair to say,  
7 friends off and on since that time?

8 A Yes.

9 Q Did you ever -- were you ever aware -- let me back  
10 up.

11 Your husband's van, the locksmith van, was there  
12 anything wrong with the van?

13 A At the time?

14 Q Uh-huh.

15 A Well, it didn't have any handles on it, door handles.  
16 And it was out of gas.

17 Q All right. Could you get into the van?

18 A No.

19 Q Do you know how you got in the van or what you had to  
20 do to get in the van?

21 A There was some kind of way he could stick his fingers  
22 in there and pull on something inside the hole. And I  
23 never could figure out how to do it myself.

24 Q So you didn't drive the van?

25 A No. I didn't drive the van.

1 Q Did you ever know whether or not Randy Frady would  
2 borrow the van from Michael and drive it on occasion?

3 A He had driven the van before.

4 MR. ALLEN: Objection, unless there's a foundation  
5 laid for that, firsthand knowledge.

6 MS. HERVEY: I asked her that.

7 THE COURT: Overruled.

8 MR. ALLEN: Okay.

9 BY MS. HERVEY:

10 Q So, to the best of your knowledge, was he capable of  
11 doing that thing with his finger of getting in there and  
12 getting that door open?

13 A Yes. He knew how to do that.

14 MR. ALLEN: Objection.

15 THE COURT: Sustained.

16 Counsel's direct examination. No foundation.

17 Rephrase the question.

18 BY MS. HERVEY:

19 Q When Mr. Frady would borrow the van from your  
20 husband, did your husband have to go out there and get him  
21 in the van or could Randy to that himself?

22 A Randy could do that himself.

23 MR. ALLEN: Objection.

24 THE COURT: Just a moment.

25 MR. ALLEN: Just lay the foundation, what she saw or

1 heard with her own --

2 THE COURT: Don't make comments, Counsel.

3 Counsel approach.

4 (WHEREUPON, a bench conference was held.)

5 BY MS. HERVEY:

6 Q Did you know whether or not Randy could get in the  
7 van, based on your own knowledge, or is that something  
8 somebody else had told you?

9 A Based on my own knowledge.

10 THE COURT: Proceed.

11 BY MS. HERVEY:

12 Q Other than Randy and your husband, did you have  
13 knowledge of anybody else who was able to get into the  
14 van?

15 A My son could get into the van.

16 Q I want to draw your attention back to the night of  
17 September 22nd, 2004. Do you recall that day?

18 A Yes.

19 Q Do you recall about what time you would have gotten  
20 home that night?

21 A I had gotten home later that evening -- I don't  
22 remember why -- than I usually did from work. I'm  
23 thinking it was in between 7:30 and 8:00.

24 Q Okay. And what time do you normally get home from  
25 work?

1 A It would usually be around 6:00, 6:30.

2 Q But you had been delayed that night, you might have  
3 stopped somewhere or something?

4 A Yes.

5 Q And when you get home, who is there?

6 A My husband and, at least, two friends of his. They  
7 were all on the porch talking and listening to the radio.  
8 And he had -- he was waiting for me to come home. Because  
9 he said he had come home from work on fumes, that the van  
10 was out of gas.

11 Q And how was he going to remedy his gas problem? What  
12 was the plan?

13 A He had an orange plastic five-gallon gas container of  
14 his own. And he was going to take my car and go get gas  
15 to put in the van enough to where he could drive it back  
16 to the store. Then he was also going to the grocery  
17 store.

18 Q All right. And does he leave right away when you get  
19 home or do you all hang out together for a while?

20 A No. He doesn't leave right away. It was some time  
21 later after his friends had left.

22 Q And so he leaves to go get gas and everything. After  
23 he leaves, what's the next thing you remember happening  
24 that night?

25 A I was just sitting there watching television. And

1 I -- the air conditioner was running and stuff. And I was  
2 there by myself. And I thought I heard the van crank up.  
3 And -- but I didn't -- but then I thought -- but he never  
4 did bring the groceries in. So then I thought, well,  
5 okay, he's going ahead -- he's put gas in the van and he's  
6 driving it to the store. That's what I thought when I  
7 thought I heard the van crank up.

8 Q So you don't look outside?

9 A Not right then, I did not.

10 Q So you just hear the van and you presume it's your  
11 husband coming home to put gas in it?

12 A Right.

13 Q And do you remember about what time that was and  
14 about how long your husband had been gone? Did you think  
15 he had been gone long enough to go to the store?

16 A Yes. I think he had been gone long enough to go to  
17 the store. I'm thinking it was --

18 Q If you don't recall, that's fine.

19 A I don't recall. It was later, though.

20 Q That's fine.

21 And after you hear the van crank up, do you hear it  
22 pull out? Are you able to tell that.

23 A No. I just vaguely remember hearing it crank or  
24 thinking I heard it crank. And I didn't go look out or  
25 anything at that time. Later, I noticed -- later, I

1 thought, well, he didn't bring the groceries in.

2 So then I looked out and there was no car or no van.  
3 And I couldn't understand how the car and the van could be  
4 gone at the same time. And then -- so I just went on back  
5 in. And I proceeded to watch television. And then he  
6 came -- shortly after, he came home. And I stepped out  
7 and I said, How in the world is the car and the van gone  
8 at the same time? And he said, Where's my van?

9 Q And is it at that time that you determined that the  
10 van had left and possibly been stolen?

11 A Right.

12 Q And do you all decide to call 911?

13 A Yes. We didn't have a phone at the time. So I told  
14 him, I said, Go to the store and call the law. And then  
15 Deputy Hunnicutt came just right after -- he hadn't been  
16 gone long. So he had to be close by.

17 Q All right. And does Deputy Hunnicutt arrive before  
18 your husband returns?

19 A Yes.

20 Q And subsequent -- as you begin to tell what's going  
21 on to Mr. Hunnicutt, does your husband then return?

22 A Yes.

23 Q And do they determine that the van has been found?

24 A Yes.

25 Q And does your husband and Deputy Hunnicutt then

1 leave?

2 A Yes. My husband wanted Deputy Hunnicutt to follow  
3 him. And I said, Go follow -- because my husband was like  
4 at the end of the driveway and was blowing the horn and  
5 was motioning for him. And I said, He must have found the  
6 van. I said, Go follow him.

7 Q And why do you think he found the van?

8 A Well, at that time, I didn't know. We figured that  
9 he --

10 MR. ALLEN: Objection.

11 THE WITNESS: -- couldn't have gotten far.

12 MR. ALLEN: Objection.

13 THE COURT: Just a moment.

14 Grounds?

15 MR. ALLEN: Well, that calls for an opinion.

16 THE COURT: Sustained.

17 Rephrase your question, Counsel.

18 MS. HERVEY: Just briefly, Your Honor, if I could be  
19 heard. It explains why she told the --

20 THE COURT: No comment on the evidence, Counsel.

21 I've ruled on it.

22 Rephrase your question.

23 BY MS. HERVEY:

24 Q Were you aware of whether or not the van had any gas  
25 in it?

1 A I was aware that it did not.

2 Q All right. So did you believe the van would have  
3 been found nearby or far away?

4 MR. ALLEN: Objection, Your Honor. That's an  
5 opinion, Your Honor, "believe."

6 MS. HERVEY: It explains why --

7 THE COURT: Counsel, approach.

8 (WHEREUPON, a bench conference was held.)

9 BY MS. HERVEY:

10 Q Let's back up. And I know it's been confusing. And  
11 I don't want to do that, but I've kind of got to get into  
12 what you know from your own knowledge and what you said  
13 and those type things.

14 Is there a reason why you told -- when your husband  
15 comes up, does he come up and say anything to you all?  
16 Does he pull up all the way in the driveway?

17 A No. He's at the end of the driveway.

18 Q Honking his horn?

19 A Yes.

20 Q And what do you tell Deputy Hunnicutt to do?

21 A I told him, I said, He's motioning for you, go follow  
22 him. I said, He must have spotted the van.

23 Q All right. And do you go with Deputy Hunnicutt  
24 following your husband or do you go with your husband at  
25 that point?



1 A No.

2 Q And, at some point later, does your husband return?

3 A Yes.

4 Q All right. And do you ever go out to where the van  
5 is parked?

6 A Yes. They had me to -- I had to drive the car.  
7 Because they were making him drive the van back home.

8 Q So they're returning the van back over to you. And  
9 that was the way the two of you could get the two vehicles  
10 back to your house?

11 A Right.

12 MS. HERVEY: The Court's indulgence one moment, Your  
13 Honor.

14 (Pause.)

15 MS. HERVEY: Let me just ask briefly.

16 BY MS. HERVEY:

17 Q Let me back up to the original thing. And I may need  
18 to have you look at this aerial photograph we have of the  
19 area where you lived on [REDACTED].

20 Where did Randy Frady live in relationship to you?

21 A He didn't live directly behind us. We lived right  
22 beside our landlord. And he lived directly behind our  
23 landlord. So he would have been on the -- on 28 and we  
24 were on [REDACTED].

25 Q Was your landlord Randy's landlord, too?

1 A Yes.

2 Q So he rented out some houses around you. Is that  
3 fair to say?

4 A Well, to my knowledge, the one trailer and the house  
5 we lived in.

6 Q And you stated that you had been friends with Randy  
7 Frady off and on since you were about 16. And once you  
8 started --

9 A I would have probably been 20 or 21 since I'm older  
10 than they were, since they were 16 or 17.

11 Q I apologize. Thank you for correcting me.

12 Once you started living -- how long had he been  
13 living behind you? Do you recall? Had it been a long  
14 time?

15 A No. It was a couple of months, maybe two and a half  
16 months, something like that.

17 Q And when -- would he ever have -- in those two and a  
18 half months, did he ever have the occasion to come to your  
19 house?

20 A Yes.

21 Q And would he go out back along the roadway or would  
22 he walk through the woods?

23 A He always --

24 MR. ALLEN: Objection, unless -- now, that's an  
25 observation, Your Honor. It needs foundation.

1 THE COURT: Rephrase your question, Counsel.

2 Sustained.

3 BY MS. HERVEY:

4 Q Did you ever see Randy -- would Randy ever come over  
5 to the house when you were there?

6 A Yes.

7 Q And when he would arrive at your house, would you see  
8 him arrive?

9 A Sometimes if I was outside, I would.

10 Q And did he come from the roadway or what direction  
11 would he come?

12 A He came from the backyard. He would come up his  
13 backyard, the landlord's backyard, across the garden spot,  
14 and up in our backyard.

15 Q And could you, through the woods, see his trailer?  
16 Was that possible to see?

17 A No, not in the summer, not when the leaves were on  
18 the trees. We couldn't, actually, see it.

19 Q But in the winter when there were no leaves, could  
20 you see it?

21 A I'm really not positive. Because it was kind of  
22 downhill in the backyard of the landlord's. And it kind  
23 of sloped downwards. But I can't say that I can recall  
24 ever seeing the top of it or not.

25 Q Well, when he would arrive, that you would see, he

1 would come from the direction of the woods and back behind  
2 the garden?

3 A Yes.

4 Q All right. Did you ever have the occasion to go to  
5 his house?

6 A Yes.

7 Q Did you ever walk that same -- was it a pathway back  
8 through the woods?

9 A It wasn't really a path. I mean, it may have turned  
10 out to be a path. Because it had been walked by him so  
11 many times. But, yes, I think I had walked down there  
12 once, at least, once.

13 Q All right. And if I showed you an aerial photograph  
14 of that area, do you think you could point that out to the  
15 jury on that?

16 A Yes.

17 MS. HERVEY: The Court's indulgence.

18 Could I do that?

19 We're going to skip the easel.

20 THE COURT: Ms. Hervey is going to ask you in a  
21 moment to step down. When you do, keep your voice up.  
22 Because I want the jury to be able to hear you.

23 BY MS. HERVEY:

24 Q Let me ask you to step down and look at this. And  
25 I'm going to try and hold it up without being too

1 confusing. Just to orient you, Lake Jemiki Road is in  
2 blue, then Highlands is going up here.

3 Do you need to look at that for a moment?

4 A Yes, I do.

5 Q Okay.

6 A I'm trying to find where we lived.

7 Q This would be Needle Drive and Yohlanda Drive is  
8 labeled. Do you see where the landlord lived?

9 A Okay. This is Lake Jemiki.

10 THE COURT: You need to speak up for me, if you  
11 would, please, ma'am.

12 MS. HERVEY: And I think she's just trying to  
13 familiarize herself.

14 THE COURT: I understand.

15 THE WITNESS: This is the garden spot.

16 BY MS. HERVEY:

17 Q And who lived on the other side of the garden spot?

18 A The landlord lived on the one side of the garden spot  
19 and we lived on the other side.

20 Q And did you have a pool or did the landlord have a  
21 pool?

22 A The landlord had a pool.

23 Q And is that where the blue dot is?

24 A Okay. All right.

25 Q And I understand you don't often look at your house

1 from up above. I'm trying to do that and ask you to do  
2 that. And I apologize.

3 And this going back up here being labeled as  
4 Highlands Highway and this road being Yohlanda Drive.

5 A Okay. He would come up through this backyard and  
6 come right to the edge of the --

7 Q Speak up a little bit.

8 A -- the edge of the garden spot and to our backyard.

9 Q So where this little red dot is on the map, that's  
10 your house?

11 A Yes.

12 Q And where the blue dot is, that's the landlord?

13 A Yes.

14 Q And then that's the garden spot you were talking  
15 about between you?

16 A Yes.

17 MS. HERVEY: All right. Thank you.

18 I'm going to ask you to return to the stand.

19 The Court's indulgence one moment, Your Honor.

20 (Pause.)

21 MS. HERVEY: That's all we have of this witness at  
22 this time.

23 THE COURT: Cross-examination?

24 MR. ALLEN: May it please the Court?

25 THE COURT: Yes, sir.

CROSS-EXAMINATION

BY MR. ALLEN:

Q Ms. Harper, on the evening in question here, I think you said you got home about what time?

A I think it was somewhere between 7:30 and 8:00.

Q Do you recall what you told law enforcement back on September the 22nd, that it was 8:00? Do you recall that or do you not?

A I think I said around 8:00.

Q Okay. And, to your knowledge, the van that was situated there, your husband's -- that's your husband's van; right?

A Right.

Q How long had he had that van?

A He had it a long time. It had been his daddy's before it was his.

Q And it had a tricky little maneuver you had to do to get inside the driver's side door?

A I think it was the driver's side and the passenger side. The handles were gone.

Q Okay. And, to your knowledge, there when -- your husband had come home from work that night; is that right?

A Yes.

Q He had worked in Toccoa, Georgia; is that right?

A I don't know exactly where he worked. But that

1        was -- the construction company was in Toccoa, out of  
2        Toccoa. But I don't know exactly where he had worked that  
3        day.

4        Q     And, to your knowledge, when he came home in that van  
5        and rode into the driveway at your home, that van was out  
6        of gas, was it not?

7        A     Yes.

8        Q     In fact, do you recall the discussion about it was  
9        sputtering and completely running out of gas as it came  
10       into the driveway?

11       A     That's what I remember him telling his friends and he  
12       told me, too. Because they were already there when I got  
13       home.

14       Q     Did you see your husband and his friends drinking  
15       alcohol there that night?

16       A     Yeah. They had drank some beer.

17       Q     They were drinking beer, were they not?

18       A     Yeah.

19       Q     Do you have any idea how much beer they were  
20       drinking?

21       A     No.

22       Q     And when the van was moved at the approximate time  
23       that it was moved, you have no personal knowledge who  
24       drove that van out of there at that time, do you?

25       A     No. I didn't see who drove the van out of there.



1 Q And, in fact, at that same time, to any third -- I'm  
2 going to ask you, do you have any knowledge that any third  
3 party -- or do you have any knowledge that anybody knew  
4 that van was out of gas, other than your husband? Do you?

5 A Just the people that he had told.

6 Q Okay. He and the other two people there are the only  
7 ones that knew that van was out of gas, to your knowledge?

8 A To my knowledge?

9 Q Yes, ma'am.

10 And then, again, when -- this van that was situated  
11 there and out of gas, when it next departed your property  
12 or the property you rented from your landlord, you did not  
13 see who drove that van off, did you?

14 A No.

15 Q In fact, you have no knowledge who drove the van or  
16 took the van at that time, do you? You have no personal  
17 knowledge to that effect, do you?

18 A I didn't see who drove the van.

19 Q I'm asking you of your own personal knowledge, you  
20 did not see with your own eyes --

21 MS. HERVEY: Your Honor, I'm going to object as to  
22 asked and answered. He's asked the same question about  
23 three different ways.

24 MR. ALLEN: Well, she's being evasive, Your Honor.

25 THE COURT: Counsel, don't make a comment, Mr. Allen.

1 MR. ALLEN: Yes, sir.

2 THE COURT: If I need argument, I'll ask you to  
3 approach the bench.

4 MR. ALLEN: Yes, sir.

5 THE COURT: Let me hear -- state your question and  
6 I'll rule on the objection. State your question for the  
7 record, Mr. Allen.

8 BY MR. ALLEN:

9 Q You have no personal knowledge who drove the van off  
10 of your property --

11 THE COURT: Sustained.

12 Move along.

13 BY MR. ALLEN:

14 Q Then you personally, at one point, went to the  
15 cemetery where the van was?

16 A After the deputies were there. They come to get me  
17 so I could drive the car and he could drive the van back  
18 home.

19 MR. ALLEN: That's all the questions I have of this  
20 witness, Your Honor.

21 THE COURT: Redirect?

22 MS. HERVEY: None.

23 THE COURT: As to this witness?

24 MS. HERVEY: As to this witness, she may be excused,  
25 yes, Your Honor.

1 THE COURT: Any objection?

2 MR. ALLEN: No objection.

3 THE COURT: You may step down and you are excused.

4 Madam Foreperson, and, ladies and gentlemen of the  
5 jury, we're going to stop, at this point, for our lunch  
6 break. It's about a couple minutes before 1:00. Each of  
7 you have been given instructions, I understand, by our  
8 excellent staff. So you've got your juror identification  
9 so you can have lunch.

10 I'm going to ask you, if you would, if we can be  
11 back -- try to start back by 2:00. I want to give you a  
12 little more than an hour. But, please, plan your lunch so  
13 you can be back in your jury room by 2:00 so we can start  
14 as quickly after 2:00 as possible.

15 Over the lunch break, I ask you, again, do not  
16 discuss this case with anybody. If somebody tries to talk  
17 to you about it, just say, I'm on the jury and I can't  
18 talk about it. If they persist, you get their name and  
19 give it to me. And I'll handle that problem for you.

20 I hope you have a pleasant lunch. I'll see you back  
21 in your jury room so we can start shortly after 2:00.

22 (WHEREUPON, the jury was excused from open court at  
23 approximately 12:55 p.m.)

24 THE COURT: Anything on the record from the State  
25 before we adjourn for lunch?

1 MS. HERVEY: I don't want to delay lunch or anything.  
2 But I'll tell you where I'm going after lunch because I  
3 anticipate an objection from Mr. Allen.

4 THE COURT: The one that we've discussed?

5 MS. HERVEY: No.

6 THE COURT: Oh, I'm sorry. Okay. Tell me.

7 MS. HERVEY: We'll go there, too. But you know that  
8 one. And I'm not arguing anymore until we get there.

9 THE COURT: Oh, y'all want to argue it some more.  
10 But I promise you, I've heard enough.

11 Go ahead.

12 MS. HERVEY: When they go out to Mr. Frady's  
13 residence after the bodies have been discovered, they  
14 arrest -- the testimony that you heard yesterday in the  
15 Jackson v. Denno, they arrest him on two outstanding  
16 warrants for assault. The matter of that assault is that  
17 he has threatened to kill Barry and Jimmy Frady.

18 The officer who responded and took those statements  
19 and issued those warrants, we anticipate calling. So they  
20 know that there will be the evidence of all these prior  
21 expressions of malice attributed to the Defendant. And I  
22 intend to do that through this officer by not, actually,  
23 putting in the statements themselves, but that he took  
24 statements. And based on that, he issued those warrants  
25 and the conduct described in the warrants as being that.

1 And then, perhaps, the testimony of Mary Seger of  
2 attempting to serve those warrants at Mr. Frady's house.

3 I don't think we're going there today. That may come  
4 up later, if certain other issues arrive. But those would  
5 be the two witnesses as to that. And I just wanted to let  
6 the Court know and give Mr. Allen a chance, if he wanted  
7 to object at this time, and maybe flush that out going  
8 into this afternoon.

9 THE COURT: Mr. Allen, is there going to be any  
10 objection to this testimony that I have not been made  
11 aware of?

12 MR. ALLEN: Yes, sir. There would be.

13 THE COURT: All right, sir. Do you want to be heard  
14 on it now?

15 MR. ALLEN: Well, could I confer with --

16 THE COURT: You can, certainly, confer with your  
17 learned Co-Counsel --

18 MR. ALLEN: Well, I would object that it's based on  
19 hearsay, whatever that testimony would be, and it would be  
20 inadmissible. And on top of that, of course, the  
21 prejudicial effect would outweigh --

22 THE COURT: Well, now, the statements -- if the  
23 statements were made by your client to someone, I don't  
24 know if that witness is going --

25 Is the victim of this the same as the victims in this

1 case?

2 MR. ALLEN: Yes.

3 THE COURT: I see.

4 MR. ALLEN: It's coming in.

5 THE COURT: So what you've got is just the officer --

6 MS. HERVEY: Yes. Because he killed them.

7 THE COURT: Based on information he got from the  
8 victims in this case, who were also the victims of the  
9 assault, the warrants were issued. Is that what you're  
10 telling me?

11 MS. HERVEY: Yes.

12 THE COURT: Okay.

13 MR. ALLEN: And that's the objection.

14 THE COURT: All right. Well -- and the objection is  
15 hearsay and what else, Mr. Allen?

16 MR. ALLEN: Well, it's based on hearsay. And it's  
17 the third party --

18 THE COURT: Now, I understood -- and I hope I heard  
19 this right. Because you asked me to rule on something I  
20 hadn't heard yet. And I realize this is for a heads-up.  
21 But Ms. Hervey says that she is not going to ask the  
22 officer about the actual statement, if I understood that  
23 correctly.

24 MS. HERVEY: In my opinion, that was the way to avoid  
25 the hearsay --

1 THE COURT: You want to get in that the officer  
2 executed a warrant for assault?

3 MS. HERVEY: Yeah.

4 THE COURT: That's what you want to get in and not,  
5 actually, that there was a statement made as to a threat  
6 by an unavailable person.

7 MS. HERVEY: I will ask him, based on your interview  
8 of Barry and Jimmy Frady, did you issue a warrant against  
9 who and for what?

10 MR. ALLEN: That's hearsay.

11 MS. HERVEY: It goes to what he did. I mean, he's a  
12 first person witness to that conduct on his part.

13 MR. ALLEN: But when, in any form or fashion, it's  
14 relating to the statements made -- any form or fashion --

15 THE COURT: No. We're not getting into what the  
16 statements were, that's different.

17 As a result of information he received, he issued a  
18 warrant. So the jury understands what warrants were being  
19 executed when your client was --

20 Is that, basically, what you're telling me you want  
21 to do?

22 MS. HERVEY: Yes.

23 He executed those two warrants for assault, one  
24 against Barry and one against Jimmy Frady, that those  
25 were -- and we can describe them as threats to do bodily

1       harm. I mean, that's the nature of the assault. That's  
2       what's on the arrest warrant.

3               MR. ALLEN: I would object to that, Your Honor.

4               MS. HERVEY: This is my only concern -- and maybe we  
5       can avoid it some other way -- a jury doesn't necessarily  
6       know what assault is.

7               THE COURT: Nor is assault a charge that they're  
8       going to be hearing anything about in this case.

9               But you and Mr. Allen could discuss possibly a  
10      stipulation that at the time -- which would, certainly,  
11      shorten things, as opposed to lengthening things,  
12      Solicitor, that as a result of information which this  
13      officer witness received, the officer obtained two arrest  
14      warrants. The arrest warrants involved the victims who  
15      are the victims in this case. And the warrants charged an  
16      offense of assault against this Defendant. And that was  
17      the warrants for which this Defendant was being arrested.

18              Now, y'all could work that out so that no statements  
19      were put in. And let him see the warrants. I have not  
20      seen them. And I'm assuming all of what you've told me,  
21      as an officer of this court, are accurate. I'm sure that  
22      Mr. Allen has seen them or Ms. Waldrep has. I haven't,  
23      actually, seen the assault warrants.

24              You've got them?

25              MS. HERVEY: Yes, Your Honor.



1 MR. ALLEN: I think we can live with it, Your Honor,  
2 as long as the content of the previous statements -- the  
3 hearsay doesn't come in.

4 MS. HERVEY: And I understand that.

5 And that is why I was willing to define assault and  
6 an offer to do bodily harm, which is in the arrest  
7 warrant. I'm not going to go into the fact that he said  
8 he wanted to kill them twice.

9 THE COURT: Well, I sustain the objection as to  
10 hearsay as to the statement. But I think there's a means  
11 of obtaining the information.

12 MR. ALLEN: All right.

13 THE COURT: The jury needs to understand what was  
14 going on.

15 Are you objecting if all she does without going -- I  
16 see why you're concerned about the warrants now. I've  
17 seen them for the first time. And the warrants say,  
18 Stating he would kill him. And I understand that.

19 MR. ALLEN: Yes, sir.

20 THE COURT: But she tells me she's not going to  
21 elicit that information from this officer witness, that  
22 she wants to lay a foundation that it was assault, that  
23 that was the basis for the arrest, that the victims were  
24 these two victims involved in this case -- but we're not  
25 trying the assault case -- that the offense was assault

1 and the person -- as a result of information that the  
2 person that was arrested -- or was being arrested was, in  
3 fact, your client.

4 MR. ALLEN: I'm going to maintain the objection, Your  
5 Honor. And the Court can rule.

6 But, also, can I also say --

7 THE COURT: Do you understand where I think the  
8 boundary line is in light of you telling me?

9 MS. HERVEY: Right.

10 And that is why I simply wanted to ask the officer  
11 not what is this assault, but what is an assault? And  
12 then have him define it as a threat to do bodily harm and  
13 leave it at that, not go into the specifics.

14 THE COURT: I don't think an officer can necessarily  
15 give a legal opinion on what is an assault, unless you're  
16 going to lay a foundation for the officer. But you can  
17 ask me to charge it to the jury if it's raised by the  
18 evidence and I'll be happy to do so. And you can discuss  
19 it in your argument. Unless you all can agree to  
20 stipulate --

21 Mr. Allen, I can't see any reason, after you talk to  
22 your client, that you wouldn't want to do that in light of  
23 the statements that are made in this warrant. I would  
24 think you would want that for your client. But you can  
25 have the opportunity to discuss it with him.

1 MR. ALLEN: I'm okay with it all until it comes into  
2 defining what assault is.

3 But could I also say ---

4 THE COURT: Well, if we're going to tell -- we can't  
5 just say an unidentified warrant with victims. Because it  
6 would lead them to speculate something worse. That's why  
7 I'm telling you that you might want to discuss giving the  
8 jury the opportunity to understand what a simple assault  
9 is. And, I assume -- the warrants, actually, just charge  
10 simple assault and not ---

11 MS. HERVEY: No. They're just simple assault. And  
12 the reason I wanted to use that language and that's the  
13 foundation I would lay is --

14 THE COURT: Because there is such a thing as assault  
15 with intent to kill ---

16 MS. HERVEY: I understand that.

17 But in it, it says that the Defendant did offer to do  
18 bodily harm. That's the verbiage in the warrant. I'll  
19 stop there, he offered to do bodily harm to Barry Frady --

20 THE COURT: Y'all are now discussing -- what you  
21 should have been doing is talking to each other. You're  
22 trying to talk through me. If y'all can, work out a  
23 stipulation on that. Otherwise, I'm going to have to  
24 listen to your question, listen to it, listen to  
25 Mr. Allen's objection, and it slows us down.

1 Right now, if y'all can work out a stipulation during  
2 lunch, I invite you to do so. If you cannot, I'll take it  
3 on a question and objection basis. You understand my  
4 preliminary feeling since I haven't heard the testimony  
5 yet what I'm going to do.

6 MR. ALLEN: Could I also say this, Your Honor?

7 If in any way the content of the statements, the  
8 hearsay statements, would be uttered, I mean, I'd have to  
9 move for a mistrial. And the Court could --

10 THE COURT: I understand.

11 You do whatever you feel is necessary to protect the  
12 interest of your client. I'm going to do what I think is  
13 necessary in order to see that this trial is fair to both  
14 sides, Mr. Allen. And whether you feel it's necessary to  
15 move for a mistrial doesn't change my ruling in any  
16 fashion whatsoever.

17 MR. ALLEN: I'm just saying --

18 THE COURT: I understand that.

19 MR. ALLEN: That's how sensitive that issue is.

20 THE COURT: And I agree with you.

21 I've sustained the objection to the contents of that  
22 warrant. I think it's hearsay. But I also understand and  
23 you understand that this officer can testify to what he  
24 was doing. And in order to testify to what he was doing,  
25 the jury needs some explanation. And I don't want them to

1 sit there and believe that this was some offense that was  
2 greater than the offense of simple assault.

3 So I think it might assist the trier of fact if the  
4 two of y'all would work out an agreement so the jury could  
5 be informed as to what we're talking about.

6 MR. ALLEN: Yes, sir.

7 THE COURT: Anything further on the record from the  
8 State?

9 MS. HERVEY: Not from the State.

10 THE COURT: Anything from the Defendant?

11 MR. ALLEN: Not from the Defense.

12 THE COURT: Very well. This Court stands in recess  
13 until 2:00 for lunch.

14 (WHEREUPON, a lunch break was taken.)

15 THE COURT: Is the State ready to proceed?

16 MS. HERVEY: Yes, Your Honor, we are.

17 THE COURT: Is the Defendant ready to proceed?

18 MR. ALLEN: The Defense is ready, Your Honor.

19 THE COURT: Bring the jury in, please.

20 (WHEREUPON, the jury came into open court at  
21 approximately 2:12 p.m.)

22 THE COURT: I hope everybody had a pleasant lunch.  
23 We'll now continue with the testimony.

24 You may call your next witness.

25 MS. HERVEY: The State calls Chris Kelly to the

1 stand, Your Honor.

2 THE CLERK: Come up here, please.

3 Raise your right hand and place your left on the  
4 Bible.

5 WHEREUPON,

6 CHRIS KELLEY,

7 after first having been duly sworn, testified as follows:

8 THE CLERK: If you would, go around and have a seat,  
9 please.

10 THE COURT: Have a seat and adjust that microphone so  
11 you can talk into it. You can turn the chair, you just  
12 can't pull it forward.

13 I would like for you to begin by stating your full  
14 name and spell your name. And the reason I ask you to use  
15 the microphone, it will amplify your voice so those people  
16 down on the end of the jury box can hear you.

17 THE WITNESS: It's Chris Kelley.

18 And spell the last name?

19 THE COURT: Spell it.

20 THE WITNESS: C-H-R-I-S, K-E-L-L-E-Y.

21 DIRECT EXAMINATION

22 BY MS. HERVEY:

23 Q Mr. Kelley, I'm going to ask that you speak into the  
24 microphone just like you did so these last jurors can hear  
25 you.

1 All right. I understand we took you away from work  
2 today. Where do you work?

3 A Superior Dock Systems.

4 Q And where is Superior Dock Systems?

5 A It's in Westminster on Highway 24.

6 Q And how long have you worked there?

7 A Going on eight years.

8 Q And, obviously, Superior Dock builds docks; is that  
9 correct?

10 A Yes, ma'am.

11 Q Do they do anything else?

12 A No, ma'am.

13 Q And what do you do for them?

14 A I'm the project manager.

15 Q What do you do as project manager?

16 A I do all the scheduling and dealing with all the  
17 customers.

18 Q All right. And do you work with Douglas Blackwell?

19 A Yes, ma'am.

20 Q And at some time in 2004, did you have the occasion  
21 to work with a Randy Frady?

22 A Yes, ma'am.

23 Q Do you see him here today?

24 A Yes, ma'am.

25 Q And what is he wearing, just generally?

1 A The beige shirt, blue striped tie.

2 Q Sitting over there at the Defense table?

3 A Yes, ma'am.

4 Q So you knew him, he was a work colleague of yours.

5 Would that be fair to say?

6 A Yes, ma'am.

7 Q Did you ever socialize with Mr. Frady outside of  
8 work?

9 A No.

10 Q And do you recall how long you worked with him? Was  
11 it a long time or a short time?

12 A It was probably over a year, maybe. I don't know  
13 really.

14 Q You don't really recall the day he started working  
15 for you and the day he left, that kind of thing?

16 A No.

17 Q All right. And, at one time, did you own a shotgun?

18 A Yes.

19 Q And did you ever have the occasion to sell Mr. Frady  
20 a shotgun?

21 A Yes, I did.

22 Q And what kind of shotgun did you own that you sold to  
23 Mr. Frady?

24 A It was a 12-gauge.

25 Q Do you recall who made it and what brand it was?



1 A I don't.

2 Q And how long had you had it?

3 A Probably six months.

4 Q And do you remember where you got it?

5 A I bought it from a buddy of mine.

6 Q And when you had it, was it just -- had it been  
7 altered in any way from its original manufactured  
8 condition?

9 A It had camouflage tape on it. That's why I didn't  
10 know what kind it was.

11 Q And when you say you didn't know what brand it was,  
12 because that would have been covered up?

13 A Yes.

14 Q Did it have camo tape when you had it?

15 A When I bought it, it had camo tape.

16 Q All over the gun?

17 A Yes.

18 Q Barrel and buck stock?

19 A Uh-huh.

20 Q And you said it was a 12-gauge. What else do you  
21 remember about the specifications of that gun?

22 A It was a 12-gauge pump.

23 Q What size ammunition did you put in it?

24 A I think it was two and three quarter inch.

25 Q And do you recall how much you sold it to Mr. Frady

1 for?

2 A I believe it was \$150.

3 Q And do you remember when you did that?

4 A I don't know what date it was, no.

5 Q Do you remember giving a statement to law  
6 enforcement?

7 A Yes.

8 Q And that was back closer to that period of time?

9 A Uh-huh.

10 Q So your recollection back then would have been  
11 stronger?

12 A Probably.

13 MS. HERVEY: Can I approach the witness, Your Honor?

14 THE COURT: You may.

15 BY MS. HERVEY:

16 Q I'm going to show you this and ask you if this was  
17 your statement to law enforcement?

18 A Yes, it is.

19 Q And does it bear your signature?

20 A Yes.

21 Q And does it indicate in that statement and after  
22 reading it, does that refresh your recollection as to the  
23 time frame when you sold the gun to Mr. Frady?

24 A Yes. It was in September.

25 Q Do you remember early September or --

1 A Well, I have the 6th through the 10th. That's been  
2 two years ago.

3 Q But back then when you told law enforcement, that was  
4 back in 2004?

5 A Yes.

6 Q Shortly after the murders were said to have occurred;  
7 correct?

8 A Yes.

9 Q So that was still in September when you gave that  
10 statement to law enforcement?

11 A Yes.

12 Q So back then, you had a better recollection of  
13 September?

14 A Yes.

15 MS. HERVEY: Nothing further from this witness.

16 THE COURT: Cross-examination?

17 MR. ALLEN: No questions of this witness, Your Honor.

18 MS. HERVEY: He may be excused.

19 THE COURT: Any objection?

20 MR. ALLEN: No, sir.

21 THE COURT: You may step down and you are excused,  
22 Mr. Kelley.

23 Ms. Hervey, call your next witness.

24 MS. HERVEY: Douglas Blackwell, Your Honor.

25 Your Honor, can I have the Court's indulgence for one

1 moment?

2 THE CLERK: Come forward, Mr. Blackwell.

3 Raise your right hand and place your left on the  
4 Bible.

5 WHEREUPON,

6 DOUGLAS LOWELL BLACKWELL,

7 after first having been duly sworn, testified as follows:

8 THE CLERK: You may have a seat, please.

9 THE COURT: Mr. Blackwell, make yourself comfortable.  
10 And I want you to adjust that microphone up and down and  
11 speak into it so it will amplify your voice for the jury.

12 I would like for you to begin by stating your full  
13 name and spelling your last name for the court reporter.

14 THE WITNESS: Douglas Lowell Blackwell,  
15 B-L-A-C-K-W-E-L-L.

16 THE COURT: Your witness, Counsel.

17 MS. HERVEY: Thank you.

18 DIRECT EXAMINATION

19 BY MS. HERVEY:

20 Q Good afternoon, Mr. Blackwell. I'm going to ask that  
21 you speak into that microphone just like you just did so  
22 everyone can hear.

23 Do you also work at Superior Dock?

24 A Yes, ma'am.

25 Q And do you work with Chris Kelley?

1 A Yes, ma'am.

2 Q And how long have you worked at Superior Dock?

3 A Almost three years.

4 Q And how long have you lived in this general area?

5 A All my life.

6 Q All right. And while you were working at Superior  
7 Dock, were you working there in 2004?

8 A Yes, ma'am.

9 Q And did you have the occasion to work with Randy  
10 Frady?

11 A Yes, ma'am.

12 Q And is he here in the courtroom here today, the man  
13 you know by that name?

14 A Yes, ma'am.

15 Q All right. And do you recall back on the day of  
16 December 22nd -- I'm sorry, September 22nd and September  
17 23rd, did you see Randy on both of those days?

18 A Yes, ma'am.

19 Q All right. What -- did you and Randy go somewhere  
20 the night of September 22nd?

21 A I don't remember the exact date. I just know the  
22 night before that this happened that Chris Kelley's  
23 grandfather had died. And we was going to go down to the  
24 funeral home that night for family night. And Randy asked  
25 me if he could go down -- if I would come by and pick him

1 up so he could go with me. He knew Leroy, too. So we  
2 went to the funeral home.

3 Q So the individual that just testified, his granddaddy  
4 had died and you guys were going to the visitation at the  
5 funeral home?

6 A Yes, ma'am.

7 Q Did you take Randy home from work that day?

8 A No.

9 Q But you went by and picked him up to go to the  
10 funeral home?

11 A Yeah. I went by and picked him up after I went home  
12 and took a bath.

13 Q Do you recall approximately what time you would have  
14 picked him up?

15 A I figure it was around 6:00, 6:30 maybe.

16 Q And you all stayed at the funeral home for some time,  
17 I take it?

18 A We stayed about maybe 45 minutes.

19 Q Did you go anywhere else that night?

20 A No, ma'am.

21 Q And do you recall what time you took him home that  
22 night?

23 A Well, we went straight from the Davenport Funeral  
24 Home. We went straight to his house.

25 Q Did you stop anywhere along the way?

1 A No, ma'am.

2 Q All right. Did you stop anywhere on the way to the  
3 funeral home?

4 A Well, when I went up there and picked him up, we  
5 stopped in West Union on the way to the funeral home.

6 Q Why did you stop? What did you get?

7 A We stopped at the ABC Store.

8 Q Did you go there or did Mr. Frady go inside?

9 A Randy went inside.

10 Q Do you know what he got?

11 A I think he got a pint of whiskey.

12 Q Do you remember if you ever stopped at an Ingles?

13 A Yeah. We stopped at Ingles and went on down to the  
14 funeral home.

15 Q Do you recall what time you took him home? You said  
16 it had been a while. Do you recall around what time you  
17 would have dropped him off? Was it dark yet? Was it  
18 getting dark?

19 A No. I live in Westminster. I was back home before  
20 dark. We went straight to the funeral home. We stayed  
21 down there about 30, 40, 45 minutes maybe. I took him  
22 straight home. And then I went straight home to  
23 Westminster.

24 Q So sometime before dark, you dropped him off?

25 A Oh, yeah.

1 Q All right. Did you go to work the next day?

2 A Ma'am?

3 Q Did you go to work the next day?

4 A Yes, ma'am.

5 Q And what time do you start work, generally?

6 A 7:00. But I don't remember now if we was starting at

7 7:00 or 8:00 in 2004. But I went to work the next

8 morning. I always worked before work time.

9 Q You always got there a little early?

10 A I always get there early.

11 Q And was Randy there when you got there?

12 A No, ma'am.

13 Q Do you recall what time he arrived or whether he

14 arrived on time?

15 A It seems like he was just a few minutes late.

16 Q And did you all work for a little bit?

17 A Yes, ma'am. Me and him were working right directly

18 together.

19 Q And how was Randy that morning? Did he seem okay to

20 you?

21 A Yes, ma'am.

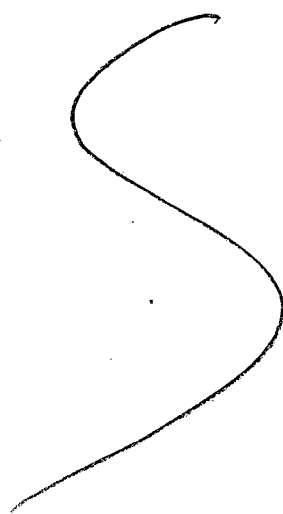
22 Q And did he ever have occasion that he left work for

23 any reason?

24 A Ma'am?

25 Q Did he ever leave work or want to leave work for any





1 reason?

2 A Well, I think he was there about an hour and he told  
3 me he was having a real bad anxiety attack. And he was  
4 going to see if the owner would let him go home.

5 Q And did you have a discussion with the owner about  
6 whether or not you could take Mr. Frady home?

7 A Yeah. I asked the boss -- he went and asked the boss  
8 if I could take him home. And he come back and said he  
9 told him that I could take him home. But all the trucks  
10 was out, I had to use my car to take him home.

11 Q And was there any problem with taking your car to  
12 take him home?

13 A No, ma'am.

14 Q Did you have enough gas to take Randy home?

15 A No. I told him it was about on empty. My gas light  
16 was already on. We come up Highway 24 and got on 11. And  
17 I stopped at Nick's, I think is what they called it down  
18 there then on Highway 11. And he got -- he told me to  
19 pump \$10 worth of gas. I didn't get out. I pumped the  
20 gas.

21 Q Did you ever go in the store?

22 A I didn't go in the store. I got out and pumped the  
23 gas and got back in the car. And he came back out and we  
24 left.

25 Q Was the agreement that he would go in and pay for the

1 gas for you taking him home?

2 A Yes, ma'am.

3 Q And do you remember what route you took going back to  
4 his house?

5 A Ma'am?

6 Q Do you remember what route you took, how you drove  
7 him home?

8 A Well, I went up beside the store and come out over  
9 there on Walhalla/Westminster Highway. And I was going to  
10 turn right. And he told me to just go straight across, if  
11 I remember, and come out over there at Five Forks and come  
12 in out Coffee Road and come up where he lived above  
13 Walhalla.

14 Q And is that how you were inclined to take him home?  
15 Is that the shortest route you would have thought to take  
16 him home?

17 A Well, I didn't know if it was any shorter or not. I  
18 just went the way he told me.

19 Q But your inclination -- the route you were going to  
20 take was to take Westminster Highway into Walhalla and  
21 pick up Highlands; right?

22 A That's probably the way I would have went. He told  
23 me to go straight across. And I went straight across.

24 Q Other than seeing him go inside and pay for anything,  
25 did you see him do anything else at the gas station?

1 A Well, he come out and started to the car and he went  
2 back and used the pay telephone over beside the building  
3 there.

4 Q Do you know if he called anybody? Did he talk to  
5 anybody or you just saw him go over there?

6 A I don't know. He wasn't on it but just a minute.

7 Q He came back and got in the truck with you and you  
8 all went to his house?

9 A Ma'am?

10 Q He came back and got in the truck with you and then  
11 you all headed to his house?

12 A Yes, ma'am.

13 Q You said up Five Forks and Coffee Road and whatnot?

14 A Yeah.

15 Q And when you get him home, do you go in and stay with  
16 him a while or what happens?

17 A No. I didn't even punch off the clock down there at  
18 work. And I just let him out and I went straight back to  
19 work. I didn't get out.

20 Q Did he leave anything in your truck?

21 A He left a 25- or 30-foot tape measure in my car. And  
22 I told him that he left -- I hollered at him. He was on  
23 the porch at his place up there, and I said, You left your  
24 tape in the car. And he said, That's all right, I'll get  
25 it tomorrow.

1 Q And then you went back to work?

2 A Yes, ma'am.

3 Q Do you remember what he had on that day?

4 A Just blue jeans and a Wrangler shirt, as best I can  
5 remember.

6 Q Do you remember what kind of shoes he was wearing?

7 A No, not right off.

8 Q Do you remember giving a statement to law  
9 enforcement, talking to the officers?

10 A Yes, ma'am.

11 Q And that was done back in September when all this  
12 came about?

13 A Yes, ma'am.

14 Q Your recollection back then would have been a little  
15 bit better, wouldn't it?

16 A Yeah.

17 Q Let me show you these two pages and ask you if that's  
18 your signature on the bottom of that statement?

19 A Yeah. That's my signature.

20 THE COURT: You've got to speak up for me, please.

21 THE WITNESS: Yes, ma'am. That's my signature.

22 BY MS. HERVEY:

23 Q I'm going to draw your attention to this last line.  
24 And in that sentence, do you describe what Mr. Frady was  
25 wearing that day?

1 A Right here?

2 Q This line here.

3 A Yeah. He had on brown work boots, denim shirt, and  
4 blue jeans. That sounds about right.

5 Q You said he had on brown work boots, a denim shirt,  
6 and blue jeans, and that sounds about right?

7 A That sounds about right.

8 Q When you went to pick him up from the funeral home  
9 the night before, did you go inside when you picked him  
10 up?

11 A When I got up there to his place after I went home  
12 and took a bath, he come to the door. And he had already  
13 took a shower, but he just had his pants on. And he told  
14 me to come on in, he liked a little bit being ready to go.  
15 And I come in and sat down.

16 Q And when you were in there, did you take particular  
17 notice of anything in his house that you two talked about?

18 A Well, I seen a shotgun.

19 Q You saw a shotgun. Where was that at? Do you  
20 recall?

21 A It was leaning up against the window.

22 Q And did you ask him about the shotgun or had you ever  
23 seen it before?

24 A No. I hadn't never seen it before. I know Chris  
25 sold him the shotgun. But I just heard about it down

1       there at work, that it had camouflage tape on it. I never  
2       did see it when it had camouflage tape on it. But the gun  
3       that was standing there didn't have camouflage tape on it.  
4       Randy told me that was the shotgun he bought from Chris.  
5       He had reblued it.

6               MS. HERVEY: The Court's indulgence one moment, Your  
7       Honor.

8       BY MS. HERVEY:

9       Q     When you dropped Randy off at his house that morning,  
10      the morning you took him home from work because he wasn't  
11      feeling well, did you go back the way he had taken you or  
12      what route did you take back to work? Do you recall?

13      A     I come back down -- I believe I come all the way back  
14      down and went down left back to 24.

15              MS. HERVEY: All right. Nothing further from this  
16      witness, Your Honor.

17              THE COURT: Cross-examination?

18              MR. ALLEN: May it please the Court, Your Honor?

19              THE COURT: Yes, sir.

20                              CROSS-EXAMINATION

21       BY MR. ALLEN:

22       Q     Mr. Blackwell, just for the benefit of information,  
23      what does it mean, if you know, to blue a shotgun?

24       A     Sir?

25       Q     To blue -- you said he had reblued the shotgun, you

1 thought. What does that mean in particular, to your  
2 knowledge?

3 A Well, a bluing kit, just strip all the -- everything  
4 off the barrel and all and put that solution on it and  
5 make the barrel look new.

6 Q Yeah. It makes the barrel look better?

7 A Yes.

8 Q Is that right?

9 A Yes.

10 Q Do you own shotguns yourself?

11 A Yes.

12 Q That's not an uncommon thing to do to a shotgun, to  
13 blue it, is it?

14 A No, it ain't.

15 Q In fact, you can buy a bluing kit at any sporting  
16 goods store probably?

17 A Uh-huh.

18 Q And how long -- at the time of September 22nd and  
19 23rd of 2004, how long had you worked with Randy? Just  
20 about, I'm not looking for exactly.

21 A Several months.

22 Q Hadn't you known him to leave work early before  
23 because of his anxiety or his panic problems?

24 A I believe he told me he had. He told me he had real  
25 bad anxiety attacks. And I know what that's like because



1 I have them, too.

2 Q And he had had them previous to the day in question  
3 that you testified about, had he not, to your knowledge?

4 A I believe he did.

5 Q And you may not have any knowledge of this, but did  
6 you have any personal knowledge -- since you drove him,  
7 did you have any personal knowledge prior to this date  
8 that he had seen a local medical doctor for the same  
9 anxiety problems?

10 A Yes, sir.

11 Q You did know that?

12 A Yes, sir.

13 Q How did you know that?

14 A He told me.

15 Q And do you personally know what doctor he went to  
16 prior to this date?

17 A No. I --

18 MS. HERVEY: Your Honor, I'm going to object.

19 THE COURT: Just a moment.

20 Is there an objection?

21 MS. HERVEY: Yes.

22 This is going into hearsay as to what the Defendant  
23 told him. It's going beyond the scope of relevance as to  
24 what doctor he went to.

25 THE COURT: Very well.

1           Mr. Blackwell, don't testify to what someone else  
2       said, confine your answers to what you know of your own  
3       personal knowledge.

4           And, Counsel, if you'll rephrase your question.

5           Objection sustained.

6           MR. ALLEN: Your Honor, that's all the questions I  
7       have of this witness at this time.

8           THE COURT: Redirect?

9           MS. HERVEY: Just one.

10                               REDIRECT EXAMINATION

11       BY MS. HERVEY:

12       Q     Had you ever taken Mr. Frady home early like that  
13       before?

14       A     No. It wasn't early. I had took him home before.

15       Q     At night after you got off or something?

16       A     Yeah, when we got off work.

17       Q     Did you take that route, Westminster to 28, or did  
18       you take that route up by Five Forks and Coffee Road?

19           MR. ALLEN: Objection. That's not in response to  
20       cross, Your Honor.

21           THE COURT: There's no limitation on redirect, just  
22       on recross.

23           Overruled.

24           You may answer the question.

25           THE WITNESS: I don't remember. It seemed like I

1       come up Highway 11 before.

2       MS. HERVEY: Thank you.

3       That's all.

4       THE COURT: Recross limited to redirect?

5       MR. ALLEN: No, sir, Your Honor.

6       THE COURT: As to this witness, may he be excused,  
7       Solicitor?

8       MS. HERVEY: Yes, sir, Your Honor.

9       THE COURT: Any objection, Mr. Allen?

10      MR. ALLEN: No objection.

11      THE COURT: You may step down and you are excused.  
12      Call your next witness, Solicitor.

13      MS. HERVEY: May we approach one quick moment?

14      THE COURT: Counsel, approach.

15      (WHEREUPON, a bench conference was held.)

16      MS. HERVEY: The State calls Steve Jenkins, Your  
17      Honor.

18      THE CLERK: Raise your right hand and place your left  
19      on the Bible.

20      WHEREUPON,

21                               STEVEN BRIAN JENKINS,  
22      after first having been duly sworn, testified as follows:

23      THE CLERK: Please go around and have a seat.

24      THE COURT: Good afternoon, Mr. Jenkins.

25      I don't have to tell you, but just remember to use

1 the microphone, if you would, please, so it will amplify  
2 you voice.

3 And, again, if you would, state your full name and  
4 spell your last name.

5 THE WITNESS: Steven Brian Jenkins, J-E-N-K-I-N-S.

6 THE COURT: Your witness.

7 DIRECT EXAMINATION

8 BY MS. HERVEY:

9 Q And you were previously sworn in yesterday during  
10 some pre-trial testimony?

11 A Correct.

12 Q You understand, as a law enforcement officer, it's  
13 your obligation to tell the truth here today?

14 A Yes, ma'am.

15 Q And you stated that your name is Steve Jenkins.

16 What's your current assignment with the sheriff's  
17 office?

18 A I'm captain of special operations, presently special  
19 operations and uniform patrol.

20 Q What is special operations, just so we know?

21 A It's narcotics, helicopter, K-9, traffic unit,  
22 anything outside the realm of uniform patrol.

23 Q And uniform patrol, is that the same thing as road  
24 patrol?

25 A Correct.

1 Q So you're in charge of the guys that go out there and  
2 respond to 911?

3 A Yes, ma'am.

4 Q You're like Hamilton and Bryant that we've heard  
5 testify earlier here today?

6 A Correct.

7 Q And back in 2004, did you have that similar  
8 assignment or did you have a different assignment?

9 A I had a different assignment. But I was a  
10 lieutenant, which I was still over uniform patrol.

11 Q So they just kind of added some more to you?

12 A Yes, ma'am.

13 Q And back in September of 2004, did you have the  
14 occasion to respond to [REDACTED]?

15 A I did.

16 Q And did you drive there yourself or did you go along  
17 with somebody else?

18 A No. I drove myself.

19 Q And when you got there, who else was there or who  
20 else arrived with you?

21 A Actually -- Lieutenant Greg Reed, we were, actually,  
22 traveling together. We left the office at the same time.  
23 And Phillip Bryant was the first officer on the scene.

24 Q And once you and Investigator Reed got there, what  
25 did you all do upon arriving at the scene?

1       A     Lieutenant Reed and myself, we entered the home to do  
2       a protective sweep.

3       Q     And what is a protective sweep?

4       A     Just pretty much making sure for officers' safety  
5       that nobody else is in there that could cause harm to the  
6       officers or to the public.

7       Q     Prior to entering the residence, did you have  
8       occasion to question anybody about the contents of the  
9       inside of the house?

10      A     Before we entered?

11      Q     Yes.

12      A     No, ma'am.

13      Q     And as you go through the residence just, generally,  
14      what do you observe there?

15      A     First entering in, just straight observation, there  
16      was a white male, presumed, deceased on first  
17      approaching, just a strong smell of burning or something  
18      that's been burned.

19            And then walking on through the house, in a bedroom,  
20      there was another deceased -- presumed deceased white male  
21      there. And then toward the back of the house, just  
22      remembering where it had been burned, smoke alarm in the  
23      floor, what I can recount at this moment without referring  
24      to any notes.

25      Q     That's fine.

1           So you found those two bodies presumed to be  
2       deceased. Were there any obvious wounds to them or those  
3       type things that led you to believe that?

4       A     Yes. I remember seeing wounds to the chest area to  
5       the individual that was -- soon as walking in the front  
6       door that was in the den area having a wound to the neck.

7       Q     And the other individual, the other deceased  
8       individual was in a different room, is that fair to say?

9       A     Correct.

10      Q     And did he similarly have a wound that lead you to  
11      believe that he was deceased?

12      A     Yes, ma'am.

13      Q     And just, generally, where do you go from there?  
14      Generally, in terms of investigation, what are the next  
15      steps? What are the things that you and Investigator Reed  
16      are going to do to proceed with this investigation?

17      A     Well, for myself, it was just making sure that the  
18      scene itself was being secured, crime scene tape, getting  
19      more personnel on the scene down there. As for me  
20      personally, I was more or less backing out from the scene,  
21      at that point, and was turning it over to our criminal  
22      investigators.

23      Q     Such as Investigator Reed?

24      A     Correct.

25      Q     And, at the time, did Oconee County Sheriff's Office

1 have its own ability to process a crime scene such as  
2 this?

3 A You know, only to certain extents, you know, with our  
4 crime scene itself, you know, dealing with latent prints  
5 and photography, you know, stuff like DNA. But when  
6 you're getting into a situation of arson then, no. I  
7 mean, you would call in SLED or other forensics that's  
8 available.

9 Q And just for the jury, what is SLED?

10 A That is our State Law Enforcement Division.

11 Q And do they have people who are more thoroughly  
12 trained to process crime scenes who were available to you?

13 A Yes. That's all they do, that particular unit.

14 Q They're there to help the smaller agencies and  
15 municipalities that don't have their own staff like that?

16 A Yes, ma'am.

17 Q And did you or Investigator Reed or someone during  
18 your investigation notify SLED to come out there and  
19 process this crime scene?

20 A I didn't. I don't know who did. But I do remember  
21 SLED being on the scene that day.

22 Q And also, while you're there, did either you or  
23 someone at Investigator Reed's direction, to the best of  
24 your knowledge, secure a search warrant to go back into  
25 the house?



1 A To my knowledge, yes, ma'am. There was a search  
2 warrant that was prepared to go into the home.

3 Q And during your investigation and your preliminary  
4 work there at the scene, did you develop any potential  
5 suspects who may have committed these two crimes?

6 A The information was given to us -- and, once again,  
7 my role, at that time, was just to assist with the  
8 investigation toward following any leads toward any  
9 suspect information, not really to go in and process the  
10 crime scene and help there, but just anything else coming  
11 in.

12 And Lieutenant Reed brought to our attention that we  
13 did have some outstanding warrants on a family member,  
14 Randy Frady. And that he could possibly be a suspect in  
15 this.

16 Q And were you able to determine through other law  
17 enforcement officers where Mr. Frady lived?

18 A Yes.

19 Q And was that similarly here in Oconee County?

20 A Yes.

21 Q And did you go out to that residence?

22 A I did.

23 Q And do you recall what street that's on?

24 A If I'm not mistaken, the 911 address is [REDACTED]  
25 [REDACTED], Walhalla area.

1 Q And 911 not being that there's a call out there,  
2 that's your CAT system?

3 A Just the street address, yes, ma'am.

4 Q That 911 uses when phone calls come in?

5 A Correct.

6 Q And when you go out there, do you go out alone or are  
7 other people there?

8 A No. Actually, we had several officers that we had  
9 sort of gathered together to help sort of go to different  
10 areas, different locations, maybe checking on what we  
11 needed to do. But there were several of us that headed  
12 back up to that residence.

13 Q And when you arrived back at Yohlanda Drive, are you  
14 one of the first officers there or do you arrive  
15 thereafter?

16 A No. I was one of the first ones there. Actually, at  
17 first, we had a couple of our guys to enter the woods back  
18 behind the residence just to go ahead and set up and sort  
19 of see if anyone is there. Mr. Frady may be there or  
20 anyone else may be there.

21 And while they were, actually, in the woods, they  
22 radioed me and stated that Mr. Frady was walking behind --  
23 came out of the residence and was walking behind the  
24 residence. I proceeded up the driveway, at that point,  
25 and made contact with Mr. Frady in the backyard.

1 Q And did those officers talk to Mr. Frady or did those  
2 officers just have previous knowledge, perhaps, one of the  
3 officers from the night before about who Mr. Frady was and  
4 what he looked like?

5 A You know, one particular officer, Sergeant Kevin  
6 Davis, was familiar with him from working a previous case.

7 Q He could have been a victim or something like that,  
8 but just said he knew him some which way?

9 A Right.

10 Q And when you go up there, you approach Mr. Frady.  
11 And just briefly relate to the jury your encounter with  
12 him that day.

13 A Just going up the driveway -- and, once again, keep  
14 in mind, we do have two active warrants on him. And  
15 that's the reason why we were there. But, yet again, it's  
16 in the back of your mind that he's possibly a suspect in a  
17 double homicide.

18 So once approaching him in the back and exiting my  
19 vehicle, I asked Mr. Frady to lie down on the ground. And  
20 I proceeded to handcuff him at that point.

21 Q And is that your standard procedure with anybody who  
22 is a suspect of this nature of a crime?

23 A Yes.

24 Q Not because of any prior knowledge you had of  
25 Mr. Frady, this is just what you generally do?

1 A It's just officer safety, yes, ma'am.

2 Q And also as to officer safety, do you ask Mr. Frady  
3 any questions regarding that?

4 A Yes. I asked him if there's anybody else in the  
5 residence. And I asked does he have any weapons.

6 Q And what were his answers to that?

7 A His response was, no, there's not anybody else in the  
8 residence, and that he had a shotgun in the house. That  
9 was his response.

10 Q And then what do you do there at the scene? Do you  
11 stay with Mr. Frady or do you leave him?

12 A No. Actually, we had several officers there at that  
13 point. So myself and three other officers, actually,  
14 entered that home. And, once again, we did a protective  
15 sweep there just to make sure there wasn't anybody else in  
16 there, just to say that we know there's not anybody else  
17 in there for officer safety.

18 Q And do you then exit the residence?

19 A Correct.

20 Q Do you go back and proceed to have any conversations  
21 with Mr. Frady?

22 A At that point, when we came back out, Sergeant Kevin  
23 Davis, actually, read Mr. Frady his rights, Miranda  
24 warning. And then he was asked about the shotgun in the  
25 residence. And he stated he had bought it from a friend

1 previously. And he was asked when was the last time he  
2 had seen his family. And his response was that he hadn't  
3 seen his folks in two to three months. So, at that point,  
4 he insinuated --

5 Q Stop.

6 A I'm sorry.

7 Q And, at that point, did you end the questioning of  
8 him?

9 A Yes. I mean, there was no further questioning of him  
10 at that point.

11 Q And do you then have other officers secure that  
12 scene?

13 A Yes, with crime scene tape, yes, ma'am.

14 Q And, again, is a search warrant obtained for that  
15 house for other officers to go back in?

16 A Correct.

17 Q So that initial entry is merely for officer safety,  
18 you're not looking for evidence at that point?

19 A No, ma'am, by no means. It's not a search. You  
20 know, with a protective sweep, you're only looking  
21 anywhere an individual may be. You know, you're not  
22 pulling open a dresser drawer searching because nobody can  
23 hide in there. So you're just going through making sure  
24 nobody is there and exiting back out.

25 Q Do you then return to the Westminster Highway crime

1 scene or do you stay there?

2 A No. I pretty much stay there for a couple of hours.

3 Q Waiting on SLED and other personnel needed at the  
4 house?

5 A Correct. The other investigators were still tied up  
6 on the other scene off of 183, Highway 183. So we were  
7 just securing it until our CID could come to that  
8 location.

9 MS. HERVEY: The Court's indulgence one moment.

10 (Pause.)

11 BY MS. HERVEY:

12 Q And you stated you remained there at the crime scene  
13 and those type things. But it's not part of your role to  
14 collect evidence or anything like that?

15 A No, ma'am, not unless I'm asked to. But other than  
16 that, with what I was doing and the guys that was with me,  
17 we were running down any leads that Lieutenant Reed or the  
18 other investigators needed us to do. But not to be a part  
19 of the search.

20 MS. HERVEY: Thank you.

21 Nothing further from this witness.

22 THE COURT: Cross-examination?

23 MR. ALLEN: May it please the Court, Your Honor?

24 THE COURT: Yes, sir.

25 MR. ALLEN: Just a quick question or two.

CROSS-EXAMINATION

BY MR. ALLEN:

Q Mr. Jenkins, with regard to your testimony, over at Randy's residence there when you were asked the question about during the protective sweep that you would routinely do -- and I understand you needed to -- you were asking him about anyone else on the property; is that correct, or in the house?

A Yeah. Anywhere that someone could possibly cause a threat for officer safety or public safety.

Q And when you asked him about the weapons, he voluntarily told you there was a 12-gauge shotgun in the house; is that right?

A Yes, sir.

Q So there was no attempt to conceal from Randy Frady at that time?

A No. Saying about the shotgun was his own admission, yes, sir.

MR. ALLEN: All right. Thank you, sir.

That's all the questions I have of this witness, Your Honor.

THE COURT: Redirect?

MS. HERVEY: No.

THE COURT: As to the witness?

MS. HERVEY: He may be excused.

1 THE COURT: Any objection?

2 MR. ALLEN: No objection.

3 THE COURT: You may step down. And you are excused.

4 Call your next witness.

5 MS. HERVEY: The State calls Casey Bowling.

6 THE CLERK: Put your left hand on the Bible and raise  
7 your right hand.

8 WHEREUPON,

9 CASEY BOWLING,

10 after first having been duly sworn, testified as follows:

11 THE CLERK: Please go around and have a seat.

12 THE COURT: Good afternoon, Mr. Bowling.

13 How are you?

14 THE WITNESS: Good.

15 THE COURT: Speak into that microphone and you can  
16 adjust it up and down.

17 State your full name for the record, if you would,  
18 and spell your last name for the court reporter.

19 THE WITNESS: Casey Bowling, B-O-W-L-I-N-G.

20 THE COURT: Your witness, Counsel.

21 MS. HERVEY: Thank you.

22 DIRECT EXAMINATION

23 BY MS. HERVEY:

24 Q You work, obviously, from your uniform, for the  
25 Ocone Sheriff's Office?



1 A Yes, ma'am.

2 Q In what capacity do you currently work there?

3 A I'm a sergeant over second shift.

4 Q And back in 2004 -- or September of 2004, to be more  
5 specific, were you similarly a sergeant over second shift?

6 A No, ma'am. I was a corporal at that time.

7 Q What's the difference between a corporal and a  
8 sergeant?

9 A One step below.

10 Q And did you have the same duties working second shift  
11 or did you have other responsibilities as well?

12 A Just working the road. And I also worked with crime  
13 scenes.

14 Q And did you ever go the crime scene school or  
15 anything like that?

16 A Yes, ma'am.

17 Q And so that was also part of your duties and  
18 responsibilities?

19 A Yes, ma'am.

20 Q And do you work with Patrick Merck?

21 A Yes, ma'am.

22 Q And have you ever also worked in evidence take in or  
23 those type things?

24 A Yes, ma'am.

25 Q And did you have the occasion, in this case, to take

1 a piece of evidence from Tim Hunnicutt?

2 A Yes, ma'am.

3 Q All right. Let me show you what's previously been  
4 marked as State's Exhibit No. 16.

5 A Yes, ma'am.

6 Q And I'll ask you if that chain of custody sticker,  
7 does that bear your name?

8 A Yes, ma'am, it does.

9 Q And who does it indicate you turned that evidence  
10 over to, if you can read his handwriting?

11 A I can't read his handwriting, but I know it's a SLED  
12 agent.

13 Q The SLED agent that processed the crime scene out  
14 there?

15 A It was a SLED agent working the case, yes. I don't  
16 know if he was there at the crime scene or not, but I  
17 imagine he was.

18 Q All right. And what did you do with that gas can?

19 A I turned it over to SLED.

20 Q All right. And did you have the occasion to go to  
21 the autopsies of Jimmy Frady and Barry Frady?

22 A Yes, ma'am.

23 Q And for what purpose did you go to those?

24 A To represent the Sheriff's Office to collect any  
25 evidence that was found at the autopsy.

1 MS. HERVEY: The Court's indulgence one moment, Your  
2 Honor.

3 (Pause.)

4 BY MS. HERVEY:

5 Q When you went to the autopsies, were you there the  
6 entire time?

7 A Yes, ma'am.

8 Q And did you ever do anything like fingerprint the  
9 victims or those type of things?

10 A No, ma'am.

11 Q You were there merely for an observational purpose?

12 A Yes, ma'am.

13 Q Did you collect any evidence while you were there?

14 A Yes, ma'am, I did.

15 Q And do you recall, specifically, what evidence you  
16 collected?

17 A I collected some wadding from shotgun shells and also  
18 some -- I believe there were some bird shot and some buck  
19 shot, I believe, found in the bodies.

20 MR. ALLEN: May we approach?

21 THE COURT: Yes.

22 (WHEREUPON, a bench conference was held.)

23 MS. HERVEY: Okay. Let's start off marking these.

24 (WHEREUPON, State's Exhibit Nos. 19 and 25 were  
25 marked for identification only.)

1 BY MS. HERVEY:

2 Q I'm going to show you what's been marked at this  
3 point for ID only --

4 A Yes, ma'am.

5 Q -- State's Exhibit Nos. 19 and 25.

6 A Okay.

7 Q Now, obviously, you didn't package these two items in  
8 their current condition; is that correct?

9 A No, ma'am.

10 Q And just, generally, are you familiar, though, with  
11 that type of packaging and for what purpose evidence is  
12 packaged in that manner?

13 A Well, for one thing, the biohazard sticker is on  
14 there stating that there's some sort of either bodily  
15 fluids or something of that nature inside the package.

16 Q And is it sealed in any way?

17 A Yes, ma'am.

18 Q And what is the purpose of sealing evidence in that  
19 container?

20 A That way, it's not tampered with.

21 Q To maintain the integrity of the evidence, would that  
22 be fair to say?

23 A Yes, ma'am.

24 Q And when you went to the autopsy and you collected,  
25 you said, this bird shot and buck shot and wadding and

1       those type things, did you see, actually, the medical  
2       examiner taking that out of the body and turning that over  
3       to you?

4       A       Yes, ma'am.

5       Q       And you stated that you didn't package it in this  
6       particular way, do you remember, if at all, how you would  
7       have packaged it?

8       A       It was packaged in a similar way, but not in this  
9       exact package.

10      Q       And would you recognize those items if you saw them  
11      again?

12      A       Yes, ma'am.

13      Q       At this time, I'm going to ask you -- I'm going to  
14      hand you a pair of scissors. And see if you can do it  
15      without taking them out of the bag and everything.

16      A       Okay.

17      Q       But just see if you can look inside of them --

18              MS. HERVEY: Mr. Allen, if you would like to observe  
19      that process.

20              MR. ALLEN: Yes.

21      BY MS. HERVEY:

22      Q       See what's inside of them and determine whether or  
23      not those are the items you took at the autopsy?

24      A       I'll do State's Exhibit No. 25 first.

25      Q       Okay.

1 A Do you want me to take it out?

2 Q No.

3 Can you look in there and see?

4 A Yes, ma'am.

5 Q Can you see anything in there that you're familiar  
6 with or bears your marking that would lead you to believe  
7 that those are items that you took from the autopsy?

8 A Yes. The containers are what I took from the  
9 autopsy.

10 Q So the containers that are inside that, that's how  
11 you originally packaged that evidence?

12 A That's how I got it from Dr. Woodard at the autopsy.

13 Q And you would have taken those back and turned them  
14 either into property and evidence or turned them over to  
15 SLED as well?

16 A Yes. I turned them into our property and evidence.

17 Q Okay. Let me ask you to do the same thing with  
18 State's Exhibit No. 19 as well.

19 A Yes, ma'am. It's --

20 Q Again, are those the items you took from the autopsy  
21 and the packaging you placed them in?

22 A Yes, ma'am, it is.

23 Q And, again, they would have been turned over to  
24 property and evidence or SLED sometime after your  
25 involvement?

1 A Yes, ma'am.

2 Q All right. Did you similarly collect a known blood  
3 sample? Did they take a blood sample or other bodily  
4 fluid that you similarly packaged and turned over to SLED?

5 A I don't recall bodily fluid.

6 Q But anything that was collected from that autopsy,  
7 you were the only one there present collecting that type  
8 of evidence?

9 A Yes, ma'am. I would be the only one.

10 Q So anything that was collected there would have been  
11 collected by you. Were there any other members of the  
12 Oconee County Sheriff's Office present?

13 A No, ma'am.

14 Q Other than you, do you recall who was there? Was the  
15 coroner there?

16 A Yes, ma'am. Coroner Karl Addis was there also.

17 Q And would there have been members of the medical  
18 examiner who staffed those type things?

19 A Yes, ma'am.

20 Q But anything evidentiary-wise taken from that autopsy  
21 was given to you and turned over either to P&E or to SLED?

22 A Yes, ma'am.

23 MS. HERVEY: The Court's indulgence one moment.

24 (Pause.)

25 MS. HERVEY: Nothing further from this witness at

1       this time.

2           THE COURT: Cross-examination?

3           MR. ALLEN: No questions of this witness, Your Honor.

4           THE COURT: As to the witness?

5           MS. HERVEY: Your Honor, I'm going to ask -- he can  
6       leave the courtroom here today. But just because he's a  
7       chain witness and some issues may come up later, if he  
8       could still remain under subpoena. But he can go home  
9       today.

10          THE COURT: Mr. Bowling, you can stand down, but  
11       you're subject to being recalled. Please check with the  
12       Solicitor's Office.

13          You may call your next witness.

14          MS. HERVEY: Thank you, Your Honor.

15          The State calls Mark Lyles.

16          THE CLERK: Put your left hand on the Bible and raise  
17       your right hand.

18       WHEREUPON,

19                       MARK LYLES,

20       after first having been duly sworn, testified as follows:

21          THE CLERK: Please go around and have a seat.

22          THE COURT: If you would, please, use that microphone  
23       for me. You can adjust it up and down and swivel your  
24       chair to get closer to it.

25          If you would, state your full name for the record and



1 spell your last name for the court reporter.

2 THE WITNESS: Mark Lyles, L-Y-L-E-S.

3 THE COURT: Your witness, Counsel.

4 MS. HERVEY: Thank you, Your Honor.

5 I'm going to use some photographs. I'm just going to  
6 let the Defense attorney see these prior.

7 (WHEREUPON, State's Exhibit Nos. 29-A, 29-B, 29-C,  
8 29-D, 29-E, 29-F, 29-G and 29-H were marked for  
9 identification only.)

10 THE COURT: Let's proceed.

11 DIRECT EXAMINATION

12 BY MS. HERVEY:

13 Q You're employed with the Oconee County Sheriff's  
14 Office?

15 A Yes, ma'am.

16 Q And in what capacity?

17 A I am an investigator, property crimes investigator.

18 Q You investigate burglaries and things like that?

19 A Yes, ma'am.

20 Q Stolen vehicles?

21 A Yes, ma'am.

22 Q And I don't know if you were here, but if officers  
23 respond out to the theft of a vehicle in the middle of the  
24 night, do you necessarily go out there or do they turn it  
25 over to you the next day or later?

1       A    The investigator on call -- the next day when the  
2       report comes in, we are handed the report if it's in our  
3       area.

4       Q    So you work a certain part of Oconee County and other  
5       property crimes detectives will work other parts of Oconee  
6       County?

7       A    Yes, ma'am.

8       Q    Did you ever have the occasion where you assisted  
9       Investigator Reed or members who investigate crimes  
10      against persons?

11      A    Yes, ma'am.

12      Q    And did you have that occasion back on September 23rd  
13      of 2004?

14      A    Yes, ma'am.

15      Q    And at Investigator Reed's direction, where did you  
16      go?

17      A    He -- when I come up on Highway 183 in front of the  
18      residence, he stated -- told me and Gentry Hawk and Curtis  
19      Rogers -- he stated that we needed to go to the cemetery  
20      on Zion Road. There was a burnt vehicle the night before,  
21      a van that was on the side of the road in front of the  
22      cemetery. I believe that would be Zion Road, the cutoff,  
23      the triangle there at the cemetery. The van would be  
24      there on the side of the road.

25            He said that the van was towed and to look for the

1 burnt spot in the grass, and walk through and see if you  
2 can find anything that's pertaining to -- that's a fresh  
3 marking, anything going back through the cemetery or  
4 around the burnt spot.

5 Q And did you go out there?

6 A Yes, ma'am.

7 MS. HERVEY: I'm going to use my easel, Your Honor.  
8 I, at least, know that it works.

9 BY MS. HERVEY:

10 Q You previously came to my office and viewed State's  
11 Exhibit No. 2 that's already been admitted, an aerial  
12 photograph of that area; is that correct?

13 A Yes, ma'am.

14 Q Are you familiar with this photograph?

15 A Yes, ma'am.

16 MS. HERVEY: The Court's indulgence, just briefly,  
17 Your Honor. I would ask him to come down here and show  
18 the jury where he went on that day in question.

19 THE COURT: You can step down.

20 And speak up when you're down there so that the  
21 jury can hear you. And try to face the jury when you  
22 speak.

23 You may step down.

24 Counsel, if you wish to come around, you may do so.

25 MR. ALLEN: Thank you, sir.

1 BY MS. HERVEY:

2 Q I'm going to ask that you stand right here and use  
3 this to point. And if you need to look at that first just  
4 initially to familiarize yourself with it, that's fine.

5 A On that day, we pulled up to -- it would be the  
6 Cemetery Road right in here. We came down -- we came down  
7 28 and turned in, came back around. And I turned around  
8 right here and went back and stopped. The burnt spot in  
9 the grass would be right in this area where the set of  
10 steps are at the cemetery. It would be right in here, a  
11 little bit down from there.

12 So we stopped. We just -- well, what I did was I  
13 walked down to the cemetery and then came back and combed  
14 both sides of the road just looking for anything, a gas  
15 can. I didn't know what was already found previous. Any  
16 type of weapon, anything. I even went on the other  
17 side -- this is real thick right in here. I went right  
18 through the woods and went back on the other side and  
19 walked back down 28 and came back. Then I crossed the  
20 road and just started doing a comb search through the  
21 cemetery.

22 And then when I came off, I was just looking for  
23 previous footsteps through the cemetery. And I come off  
24 the bank and noticed there was a slip mark that came off  
25 the bank. Then I walked around through there. And

1       there's an oak tree right here to the pull off of the  
2       cemetery and I just started walking. It was like -- that  
3       would be around 1:00 or 2:00 in the afternoon. It was a  
4       bright sunny day.

5               So when I got up to the left side, I seen something  
6       sparkling on the side of the road. So I turned back  
7       around. And it was a green 12-gauge casing laying on  
8       the -- next to a tree. And then a few more feet down,  
9       there was another one.

10              Then I called Lieutenant Greg Reed and asked him what  
11       the murder weapon was -- what type of weapon. He said a  
12       12-gauge shotgun. I advised him that I have located two  
13       shells on the side of the road at the intersection of Zion  
14       Road and 28. And he told me, Do not leave them, stay  
15       there, SLED will be coming.

16       Q       And while you're waiting for SLED -- or once SLED has  
17       arrived, do you ever find anything else or any other  
18       shotgun shells?

19       A       When I get there, I was -- you know, I didn't leave  
20       the shells. And SLED came back. When SLED pulled in  
21       right here on the side, when they were crossing the road,  
22       they, actually, found the third shell. Because it was  
23       laying on -- I believe on the white line. And it had been  
24       run over several times. It had been run over. I don't  
25       know how many times, exact times, but it had been run

1 over.

2 Q And were you there when they found that? Do you see  
3 them doing that?

4 A Yeah. They locate it and they photograph it and --  
5 but I never seen that one. It was more back towards this  
6 drive where the third one was found. Because I was more  
7 up this way with the other two casings that I found.

8 Q I'm going to ask you to retake the stand at this  
9 time.

10 A (Witness complied.)

11 Q And I'm going to show you some photographs. We can't  
12 get our fancy equipment working.

13 THE COURT: Would you move the easel so the jury can  
14 see the Defendant and the Defendant can see the witness?

15 MS. HERVEY: Yes, Your Honor.

16 I'm sorry.

17 BY MS. HERVEY:

18 Q Let me show you what's been marked as State's Exhibit  
19 Nos. 29-A through 29-H, and ask you if you recognize what  
20 is depicted in those photographs?

21 A Yes, ma'am. That would have been the first one.  
22 Because there was a thorn bush, I couldn't get to it and  
23 get in there. And I stuck my head in there and seen what  
24 it was. And it was a freshly spent 12-gauge round.

25 Q All right. Let me let you go through all of them.

1 Before you show them to the jury, go through all of them.  
2 And do you recognize what is depicted in all of those  
3 photographs?

4 A Do you want me to do it out loud?

5 Q No. Just go through them.

6 And do you recognize what's depicted in those  
7 photographs?

8 A Yes, ma'am.

9 Q And just, generally, are they the roadside area where  
10 those shotgun shells you previously talked about were  
11 located? Are they photographs of that?

12 A Yes, ma'am.

13 Q And do they depict how it looked the day in question  
14 when you were out there locating them?

15 A Yes, ma'am.

16 Q And are there some yellow markers in there?

17 A Yes, ma'am.

18 Q Did you place those there or did SLED do that?

19 A SLED did that.

20 Q While you were there, did you remain with SLED while  
21 they were at that scene?

22 A Yes, ma'am. I stayed there until SLED left.

23 MS. HERVEY: At this time, Your Honor, we would move  
24 State's Exhibit Nos. 29-A through H into evidence.

25 THE COURT: Any objection, Mr. Allen?

1 MR. ALLEN: No, sir. I've viewed them. No  
2 objection.

3 THE COURT: Ladies and gentlemen of the jury, State's  
4 Exhibit Nos. 29-A through 29-H, which are --

5 MS. HERVEY: Photographs of the shotgun.

6 THE COURT: No. How many?

7 MS. HERVEY: Eight.

8 THE COURT: The eight exhibits will be admitted into  
9 evidence without objection. State's Exhibit Nos. 29-A  
10 through 29-H in evidence.

11 You may publish to the jury.

12 (WHEREUPON, State's Exhibit Nos. 29-A, 29-B, 29-C,  
13 29-D, 29-E, 29-F, 29-G, and 29-H were admitted into  
14 evidence.)

15 BY MS. HERVEY:

16 Q I'm going to attempt to use our new fangled system.  
17 And if you'll turn around and look at that TV screen.

18 A Yes, ma'am.

19 Q Let me show you first State's Exhibit No. 29-B.  
20 What's the road sign we're looking at?

21 A Zion Road.

22 Q All right.

23 A The intersection of Zion Road and 28.

24 Q So that's the stop sign on Zion Road as you approach  
25 28?



1 A Yes, ma'am.

2 Q Let me back up again on you. And just vaguely, do  
3 you see some yellow markers that you talked about? Are  
4 they -- can you see them just vaguely in this photograph?

5 A Yes, ma'am.

6 Q And let me ask you to use the yardstick. If you  
7 could, just point them out to the jury if you can reach  
8 that from there.

9 A Okay. This would be number one. This would be  
10 number two. And this would be number three right over  
11 here on the white line at the entrance of the cemetery.

12 Q Thank you, Mr. Lyles.

13 If you could retake the stand.

14 And let me show you State's Exhibit No. 29-A. It is  
15 more less, again, that same photo just a little closer up?

16 A Yes, ma'am.

17 Q Let's start with State's Exhibit No. 29-H. And is  
18 this, actually, a picture of that marker in the woods?

19 A Yes, ma'am.

20 Q And are you able to see the shotgun shell on this  
21 photograph?

22 A Yes, ma'am.

23 Q And could you, again, take that yardstick and show  
24 the jury -- I know it's a little hard to see with the  
25 green and the green shotgun shell, but you being more

1 familiar with that area -- where that shotgun shell is in  
2 that photograph?

3 A Yes, ma'am. The shell was right here, right above  
4 the number one sign.

5 Q Let me show you State's Exhibit No. 29-G, which I  
6 think is a little closer in. And I'm going to -- again,  
7 now, we're fighting a shadow, but can you see it in that  
8 photograph?

9 A Yes, ma'am. The shell would be right here in the  
10 shadow line of the thorn bush.

11 Q That slightly gold thing in that shadow, that would  
12 be the part of the shotgun shell you found?

13 A Yes, ma'am.

14 Q All right. Let me show you State's Exhibit No. 29-E.  
15 Would this be the second shotgun shell you found?

16 A Yes, ma'am.

17 Q And State's Exhibit No. 29-F, being closer up. This  
18 is a little easier to see in the photograph. Again, would  
19 you point out that shotgun shell to the jury, Mr. Lyles?

20 A Yes, ma'am. It would be right here.

21 Q Thank you.

22 And, if you could, just stay there. We'll do number  
23 three real quick. And I believe your previous testimony  
24 was that this shotgun shell was found on the other side of  
25 the road near a white line?

1 A Yes, ma'am.

2 MS. HERVEY: And for the record, Your Honor, that  
3 would be State's Exhibit No. 29-D.

4 BY MS. HERVEY:

5 Q This is State's Exhibit No. 29-C, a closer up. And,  
6 again, just pointing it out to the jury so they'll know  
7 what they're looking at.

8 A Right here.

9 MS. HERVEY: Thanks you.

10 Nothing further.

11 THE COURT: Cross-examination?

12 MR. ALLEN: May it please the Court?

13 THE COURT: Yes, sir.

14 CROSS-EXAMINATION

15 BY MR. ALLEN:

16 Q Mr. Lyles, you were involved to some degree with the  
17 theft of this van or you had some information on that?

18 A No, ma'am -- I mean, no, sir. What happened was the  
19 van had already been towed. It had already been moved.  
20 Because when I got there was roughly around -- I started  
21 the search of the cemetery, it was around noontime and the  
22 van had already been towed.

23 Q Did you understand that the van was towed from the  
24 cemetery?

25 A Yes. He just -- when I was talking to Lieutenant

1 Reed, he gave me an order of going over there to the  
2 cemetery looking for the burnt spot on the side of the  
3 road and start the search from there.

4 Q But it was your understanding that it was towed and  
5 not relinquished or turned back over to Michael Harper?

6 A I didn't know anything about -- he just said it was a  
7 van and just look for the burnt spot.

8 Q And I thought you mentioned in your testimony that  
9 the van was burned. Was it a burned van?

10 A What I was told is there was a burnt spot or there  
11 was a -- the van was -- arson was involved with the van.  
12 That's what I thought. That's what I was told. He said,  
13 Just look for the burnt spot on the side of the road that  
14 was at the cemetery on Cemetery Road.

15 Q Let me simplify. You did or did not understand that  
16 the van in question was burned?

17 A No.

18 Q And, now, what is your capacity with the Sheriff's  
19 Department?

20 A I'm a property crimes investigator.

21 Q And you have -- you do or do not have any training in  
22 ballistics?

23 A In ballistics?

24 Q Yeah.

25 A No, sir.

1 Q In your testimony, you said, a "freshly spent" shell  
2 casing. You have no knowledge of that, do you?

3 A No, just being shiny like a new shell.

4 Q But you couldn't offer any testimony, I mean, based  
5 on your training whether that shell casing had been there  
6 a day, a week, two weeks, a month, two months? You can't  
7 say, can you?

8 A No, sir. It just looked fresh.

9 MR. ALLEN: Thank you.

10 That's all the questions of this witness.

11 THE COURT: Redirect?

12 MS. HERVEY: Just briefly.

13 REDIRECT EXAMINATION

14 BY MS. HERVEY:

15 Q When you made that comment that they were fresh,  
16 there was no debris on there or nothing of that nature?

17 A No. They were shiny. And that's what caught my eye  
18 when the sun hit them.

19 THE COURT: Recross limited to redirect?

20 RECROSS-EXAMINATION

21 BY MR. ALLEN:

22 Q And one of them had been run over by a vehicle,  
23 apparently, at least, one or more times?

24 A Yes, sir. I don't know how many times.

25 THE COURT: As to this witness?

1 MS. HERVEY: He may be excused.

2 THE COURT: You may step down, Mr. Lyles. And you  
3 are excused.

4 MR. ALLEN: No objection, Your Honor.

5 MS. HERVEY: Annette Burney.

6 THE COURT: Are you ready to proceed?

7 MS. HERVEY: Annette Burney.

8 THE CLERK: Put your left hand on the Bible and raise  
9 your right.

10 WHEREUPON,

11 ANNETTE K. BURNEY,

12 after first having been duly sworn, testified as follows:

13 THE CLERK: Please go around and have a seat.

14 THE COURT: Good afternoon.

15 I need for you to speak in that microphone, the one  
16 he's adjusting in front of you. It will amplify your  
17 voice so the jury can hear you.

18 Would you begin by stating your full name for us and  
19 spelling your last name for the court reporter.

20 THE WITNESS: My name is Annette K. Burney,  
21 B-U-R-N-E-Y.

22 DIRECT EXAMINATION

23 BY MS. HERVEY:

24 Q Ms. Burney, what do you do for a living?

25 A I run a child care group home.

1 Q What is the address of that?

2 A 2208 Westminster Highway.

3 Q And did you have your relicensing or some inspection  
4 today by the State?

5 A Yes, I did.

6 Q And that's why we agreed to call you this afternoon  
7 to give you time to take care of that?

8 A Yes.

9 Q We don't want to jeopardize that.  
10 How long have you run a day care there, Ms. Burney?

11 A Eight years.

12 Q And are you familiar with the Fradys that live across  
13 the street?

14 A Yes, I am.

15 Q And do you recall certain events that occurred on the  
16 night of September the 22nd, late night, going into the  
17 early morning of September 23rd?

18 A Yes, I do.

19 Q And on that night, do you recall ever having the  
20 occasion to hear anything that drew your attention in the  
21 direction of the Frady house?

22 A Yes, I did.

23 Q What did you hear?

24 A I heard five or six rapid fire shots.

25 Q And did you ever -- did you call 911 or anything like

1       that?

2       A     No, I did not.

3       Q     Could you really tell where the shots were coming  
4       from?

5       A     They sounded like they were coming from across the  
6       street.

7       Q     But where across the street, you didn't know?

8       A     I did not know.

9       Q     Did you have the occasion, once you heard that, to  
10      look out across the street and look across the road?

11      A     Yes, I did.

12      Q     And did you see anything unusual when you did that?

13      A     I saw no movement. The door was open at [REDACTED]

14      Q     Do you mean the front door, side door, sliding door?  
15      What door are we talking about?

16      A     The front door.

17      Q     And you stated -- was that usual for them to leave  
18      the door open at that time of night, around 11:30?

19      A     It was until my last parent picked up their child.

20      Q     And then normally you would see their door closed?

21      A     Yes.

22      Q     And had your last parent picked up your child that  
23      night?

24      A     Not at the time that I heard the shots, no.

25      Q     So that in and of itself wasn't anything unusual for



1       you to see, the door being open at that time of night?

2       A     No, it was not.

3       Q     And you stated that at that time of night it's not  
4       unusual, you run a late day care?

5       A     Yes.

6       Q     Is it a second shift day care as well?

7       A     Yes.

8       Q     So when do you normally get off work?

9       A     I normally leave around about 12:30 a.m.

10      Q     And did you leave around that time this night?

11      A     Between 12:25 and 12:30.

12      Q     And was the door still open?

13      A     Yes, it was.

14      Q     And was that unusual?

15      A     Yes, it was.

16      Q     But then maybe they were just staying up late and  
17      didn't think anything about it?

18      A     It was unusual.

19      Q     And what time do you go back to work, Ms. Burney?

20      A     I go back between 6:30 and 6:40 a.m.

21      Q     So the kids don't let you sleep a lot, do they?

22      A     No, they don't.

23      Q     And when you got back at 6:45 in the morning, was the  
24      door still open?

25      A     Yes, it was.

1 Q Did you see any movement or anything like that?

2 A No, I did not.

3 Q And did you see anything else that morning out of the  
4 ordinary? Did you ever see anybody over there?

5 A Yes, I did.

6 Q Who did you see at -- and we're talking about two  
7 houses -- there's two houses across the street; correct?

8 A Yes.

9 Q So there's Mr. Frady, the older gentleman, and then  
10 Jimmy and Barry's house?

11 A Yes.

12 Q Is that how you know it to be?

13 A Yes.

14 Q Who did you see over there and where did you see  
15 them?

16 A I saw Mr. Jim Frady coming from Jimmy and Barry's  
17 house.

18 Q And where was he going?

19 A He was coming down the steps going toward his house.

20 Q And was it usual to see him over there at that time  
21 of day?

22 A I had never seen Mr. Jim come out of their house. He  
23 could have, but I had never seen him.

24 Q The kids kind of take your attention away from  
25 everything across the street, don't they?

1 A They do.

2 MS. HERVEY: Thank you.

3 THE COURT: Anything further, Counsel?

4 MS. HERVEY: Nothing from this witness, Your Honor.

5 THE COURT: Cross-examination?

6 MR. ALLEN: May it please the Court?

7 THE COURT: Yes, sir.

8 CROSS-EXAMINATION

9 BY MR. ALLEN:

10 Q Ms. Burney, on the night there, the 22nd, you heard  
11 what you thought to be gunshots there. About what time  
12 was that? Do you have any recollection of that?

13 A Yes, I do.

14 Q Okay.

15 A It was between 10:30 and 11:30.

16 Q Okay. Between 10:30 and 11:30 --

17 A But --

18 Q To -- excuse me.

19 A Yes.

20 Q Okay. To the best of your recollection.

21 And you did not call 911?

22 A No, I did not.

23 Q Had you ever heard gunshots over there before?

24 A No, I had not.

25 MR. ALLEN: All right. Thank you, ma'am.

1           That's all the questions I have of this witness.

2           MS. HERVEY: Nothing further.

3           THE COURT: Any objection?

4           MR. ALLEN: No, sir.

5           THE COURT: You may step down, Ms. Burney. And you  
6 are excused.

7           MS. HERVEY: If we could approach just briefly?

8           THE COURT: Counsel, approach.

9           (WHEREUPON, a bench conference was held.)

10          THE COURT: Madam Foreperson, and, ladies and  
11 gentlemen of the jury, I'm going to take my mid-afternoon  
12 break at this point. And they'll have something for you  
13 to drink back there, let you use the restroom, and stretch  
14 your legs. If I've got a smoker, I'll let you go outside.

15          Please don't discuss the case. I'll be right back  
16 with you after the break.

17          You may retire to your jury room at this time.

18          (WHEREUPON, the jury was excused from open court at  
19 approximately 3:34 p.m.)

20          THE COURT: Anything else for the record before we  
21 break from the State?

22          MS. HERVEY: Nothing.

23          The other two witnesses we intend to call tonight are  
24 Steven Curtis, the one who we're going to stipulate, the  
25 known fingerprints of the Defendant were submitted to him

1 to compare to those latent lifts he made at the scene, and  
2 Kevin Davis, the one who made the two original arrest  
3 warrants and Mirandized Mr. Frady at the scene.

4 THE COURT: So neither of which involved the other  
5 stipulation that we had discussed?

6 MS. HERVEY: Yes -- no.

7 I just wanted you all to have ample time to look at  
8 the DNA stipulation.

9 THE COURT: Anything you want to put on the record?

10 MR. ALLEN: No, sir.

11 THE COURT: We stand adjourned for break.

12 (WHEREUPON, a break was taken.)

13 THE COURT: Is the State ready to proceed?

14 MS. HERVEY: Yes, Your Honor, we are.

15 THE COURT: Is the Defendant ready to proceed?

16 MR. ALLEN: Yes, sir.

17 THE COURT: Bring the jury in, please.

18 (WHEREUPON, the jury came into open court at  
19 approximately 3:55 p.m.)

20 THE COURT: We'll continue now with testimony in the  
21 trial of this case.

22 You may call your next witness, Solicitor.

23 MS. HERVEY: The State calls Steven Curtis, Your Honor.

24 THE COURT: Mr. Curtis, would you come around and,  
25 please, be sworn.

1           THE CLERK: Raise your right hand and place your left  
2 on the Bible.

3 WHEREUPON,

4                         STEVEN CURTIS,  
5 after first having been duly sworn, testified as follows:

6           THE CLERK: Please go around and have a seat.

7           THE COURT: Adjust that microphone any time. It will  
8 go up or down so you can talk into it.

9           Begin by stating your first name and spelling your  
10 last name for the court reporter.

11          THE WITNESS: Steven Curtis, C-U-R-T-I-S.

12          THE COURT: Your witness, Counsel.

13                         DIRECT EXAMINATION

14 BY MS. HERVEY:

15 Q By whom are you currently employed, Mr. Curtis?

16 A I'm in the latent print crime scene unit of the South  
17 Carolina Law Enforcement Division, SLED.

18 Q And the jury has heard a little bit about SLED, but,  
19 if you could, just because you work for them, tell them  
20 exactly what SLED does and what you do for them.

21 A SLED is an investigative agency that was designed to  
22 assist local police departments and sheriff's offices  
23 across the State with just about anything that they might  
24 need help with.

25          There's also some original jurisdictional stuff that

1       some of our units have, narcotics, alcohol enforcement,  
2       and things like that. I'm assigned to the latent print  
3       crime scene unit. And my responsibility is to be called  
4       upon to go out to help sheriff's offices or police  
5       departments, usually, in the investigation of violent  
6       crimes across the State.

7       Q     And prior to and during your tenure with SLED, what  
8       type of special training and education have you received  
9       both in crime scene processing, and collection, and latent  
10      lift identification?

11     A     I've attended a number of schools dating back to the  
12     early '90's. I was originally employed with the Richland  
13     County Sheriff's Office. I worked my way up from uniform  
14     patrol deputy to crime scene investigator there.

15           I was sent to the South Carolina Police Academy to a  
16     basic fingerprint course where we were instructed on the  
17     identification of pattern types using fingerprints to make  
18     identifications of individuals.

19           I've also attended a couple of courses at the  
20     Criminal Justice Academy through SLED on latent print  
21     processing techniques. There's various techniques used  
22     depending upon the items that you're wanting to develop  
23     fingerprints on or find out if there's fingerprints on as  
24     well.

25           And I completed the in-house training program at the

1 Richland County Sheriff's Office, which was one-year under  
2 a senior examiner. And I've also completed the in-house  
3 training program at SLED working with a senior examiner  
4 going on crime scenes and doing latent print work.

5 All total, I've got approximately -- I've been a  
6 police officer for 20 years here in South Carolina. Out  
7 of that 20 years, about ten of it, I have been involved in  
8 crime scene investigation, as well as another five, I was  
9 a detective assigned to the robbery division in Richland  
10 County.

11 So I've been involved in the investigation of violent  
12 crimes, either as an investigator or crime scene agent,  
13 for quite some time.

14 Q And are you able to offer an approximate number as to  
15 how many crime scenes you've responded to either as an  
16 investigator or to process?

17 A I would say in excess of 400, 500, somewhere around  
18 that number.

19 Q And you talked a little bit about your training as to  
20 latent lifts and that type of identification, was that  
21 in-house training part of how to process a crime scene and  
22 what things to do while you're there?

23 A Yes, ma'am, it was.

24 Q And approximately how many crime scenes have you  
25 responded to?



1       A     At SLED in the eight years that I've been working  
2       there, I've probably responded to approximately 200 total  
3       crime scenes. And out of those, maybe 120, 125 of them  
4       have been death investigations.

5       Q     And as to latent lift identifications, what is your  
6       experience in -- and let me back up a little. What is a  
7       latent lift? When we say that --

8       A     When you talk about latent lifts, you're talking  
9       about developing and being able to retrieve an unknown  
10      print from a piece of evidence or a crime scene. Latent  
11      means hidden or unknown. Sometimes there's different  
12      types of processes used to enhance the print to make it  
13      more visible. The latent print is one we don't know or  
14      you don't see it right off. You may have to use a  
15      technique to enhance that and you don't know whose it is.

16            So I've been able to develop prints on pieces of  
17      evidence and then try to use those to compare against the  
18      known prints or ink prints of individuals and see if we  
19      can make an identification.

20      Q     And approximately how many latent lifts have you  
21      taken in your tenure, if you're able to say?

22      A     Huh --

23      Q     Too many to count?

24      A     Tens of thousands. I mean, when we process one crime  
25      scene, there's no telling how many latent prints you may

1 get and look at.

2 Q And you are trained solely in the taking or  
3 collecting of those latent lifts, but does your training  
4 also include comparing them to known lifts?

5 A It includes comparing them. We will look at pieces  
6 of evidence and evaluate them if they're going to be good  
7 to get latent prints off. We process them, again,  
8 depending on what type of process we might want to use to  
9 get the best results, collecting those prints off of the  
10 items and then taking them and comparing them to inked or  
11 known prints of an individual to do a comparison and see  
12 if we can identify those prints to an individual.

13 Q Is that also -- part of your responsibilities with  
14 SLED is not only to collect those prints from a crime  
15 scene or from evidence that is submitted to you, but is it  
16 also part of comparing that to known prints?

17 A Yes, ma'am. That is part of my job.

18 Q Are you able to offer an approximate number as to how  
19 many of those pre-comparisons that you have done during  
20 your tenure?

21 A Several thousand, I would say.

22 Q And have you previously testified in court before?

23 A Yes, ma'am, I have.

24 Q And have you been qualified as an expert both in  
25 crime scene evidence collection and latent print

1 identification?

2 A Yes, ma'am, I have.

3 Q And approximately how many times have you done that?

4 A Testifying as to crime scenes as an expert, probably  
5 25 or 30 times. And then a lot of those would include the  
6 designation of being an expert in fingerprint comparison  
7 as well. I've testified probably another 15 or 20 times  
8 as well just solely to the analysis of fingerprints and  
9 comparison identifications or non-identifications.

10 Q So would it be fair to say you don't just compare  
11 prints that you've collected at a crime scene, but you  
12 might compare prints from crime scenes other people have  
13 collected?

14 A Yes, ma'am. Because evidence is submitted to SLED as  
15 well where another agency has worked the crime scene, but  
16 they will collect items that they want processed for  
17 fingerprints. So they'll send them or bring them down to  
18 SLED and then I'll process them myself. Sometimes they'll  
19 lift fingerprints from a crime scene and put them on  
20 cards, send them in, and want comparisons as well.

21 MS. HERVEY: Your Honor, at this time, we would offer  
22 Special Agent Steven Curtis as an expert both in crime  
23 scene evidence collection, as well as latent lift  
24 identification.

25 THE COURT: Would you like to cross-examine as to

1        qualifications? Any objection?

2            MR. ALLEN: No, sir. There's no objection.

3            THE COURT: Very well.

4            Ladies and gentlemen of the jury, you're about to  
5        hear the testimony of a witness who claims to have special  
6        skill, knowledge, training, or education in the field of  
7        crime scene analysis or fingerprint comparison or  
8        analysis.

9            Normally, ladies and gentlemen, the law does not  
10       permit a witness to give opinion testimony. But certain  
11       witnesses who are found to be qualified by the Court by  
12       virtue of training, skill, education, or experience are  
13       permitted to give opinions.

14           In this case, this witness has been found to be so  
15       qualified without objection in this case and who will be  
16       permitted to give an opinion as an expert in the matters  
17       in which he claims to be so skilled, crime scene analysis  
18       and fingerprint comparison or analysis.

19           In determining the weight to be given any expert  
20       opinion, ladies and gentlemen, you should, as a jury,  
21       consider the qualifications and the credibility or the  
22       believability of the expert and the reasons given for his  
23       or her opinion. You're not bound by expert opinion. You  
24       give it the weight, if any, to which you deem it should be  
25       entitled.

1 The witness is qualified without objection.

2 You may proceed, Counsel.

3 MS. HERVEY: May it please the Court?

4 BY MS. HERVEY:

5 Q Back on September 23rd of 2004, did you have the  
6 occasion to come here to Oconee County?

7 A Yes, ma'am, I did.

8 Q And was that done at the request of the Oconee County  
9 Sheriff's Office?

10 A Yes, ma'am.

11 Q And what did you think you were coming up here to do?

12 A They called us at about 9:00, 9:15 that morning and  
13 requested a crime scene unit to come up. They had a  
14 possible double homicide that they wanted us to assist  
15 them with.

16 Q And do you work out of the upstate, or the piedmont  
17 region, or do you work out of Columbia?

18 A No. I'm out of Columbia.

19 Q And did you travel up here and did anyone accompany  
20 you?

21 A Yes, ma'am. Tom Darnell accompanied me, my  
22 lieutenant, at the time, of the crime scene unit.

23 Q And just generally, if you could, explain to the jury  
24 what is your general process, not what you followed in  
25 this case. But just generally what do you do in

1 processing a crime scene?

2 A Well, we're, again, an assisting agency. So in this  
3 instance, Oconee County calls, we're going to come and do  
4 what they need us to do at a crime scene. And they  
5 explained to us that we have two victims that appear to  
6 have been murdered in a house.

7 Our normal process is to make sure that we're going  
8 to follow proper procedures. And one of those is going to  
9 be immediately to start documenting the scene through  
10 photographs and sketches. The idea is that once we're  
11 there, we want to document it. Because this case will end  
12 up going to court at some point. So we want to have  
13 photographs and sketches that the Court can use to present  
14 to the jury, witnesses, and things like that. So  
15 documentation is one of the first things we do.

16 We try to determine the scope of the crime scene.  
17 And if they have any questions that we can answer along  
18 the lines of search warrants or anything like that, we try  
19 to do that and assist them as well. And then we just  
20 enter the crime scene and see what we've got and whatever  
21 information that the investigators have gotten, at that  
22 point, and try to come up with the best game that we can  
23 as far as processing the scene. What items are going to  
24 appear at that time to be germane to the case, what we can  
25 use that maybe will help identify perpetrators or do a

1 reconstruction, maybe be able to sequence the events that  
2 occurred in the crime scene as well.

3 Q So you went through, initially -- when you get there  
4 to this crime scene, do you do a preliminary walk through,  
5 what have we got, where do we go, that kind of thing?

6 A Yes, ma'am. I mean, you've got to go in there and  
7 see what you've got. And we start taking photographs of  
8 the exterior. While we're doing that, we're looking and  
9 seeing if there's any evidence on the outside of the crime  
10 scene. And we're going to walk through because we may  
11 need some -- it just depends on what the crime scene  
12 entails.

13 We carry a lot of equipment with us. But if it's  
14 something we don't have, we may have to ask somebody to  
15 bring us specialized equipment if we're going to need  
16 that. We just go through and see what we're going to need  
17 to do the crime scene. Like I said, we come up with a  
18 game plan as to how we're going to proceed from step A to  
19 step whatever as we go through and process this.

20 Q And do you talk with members of local law enforcement  
21 about what they've been able to determine thus far?

22 A Yes, ma'am.

23 (WHEREUPON, State's Exhibit Nos. 4-A, 4-B, 4-C, 4-D,  
24 4-E, 4-F, 4-G, and 4-H were marked for identification  
25 only.)

1 BY MS. HERVEY:

2 Q Let me show you what's been marked State's Exhibit  
3 Nos. 4-A through 4-H, and ask you if you recognize what's  
4 depicted in these photographs?

5 A Yes, ma'am, I do.

6 Q And just generally, what do those photos depict?

7 A That's the exterior of the crime scene there on  
8 Westminster Highway.

9 Q And do they accurately depict the crime scene as you  
10 found it on that day?

11 A Yes, ma'am. When we arrived there, this is how it  
12 was.

13 MS. HERVEY: Your Honor, at this time, we would move  
14 to admit State's Exhibit Nos. 4-A through 4-H.

15 THE COURT: Is it State's Exhibit Nos. 4-A through 4-H?

16 MS. HERVEY: Yes, Your Honor. State's Exhibit Nos.  
17 4-A through 4-H.

18 THE COURT: Is there any objection?

19 MR. ALLEN: No, sir.

20 THE COURT: Ladies and gentlemen, State's Exhibit  
21 Nos. 4-A through 4-H will be admitted into evidence  
22 without objection. State's Exhibit Nos. 4-A through 4-H  
23 in evidence.

24 (WHEREUPON, State's Exhibit Nos. 4-A, 4-B, 4-C, 4-D,  
25 4-E, 4-F, 4-G, and 4-H were admitted into evidence.)



1 THE COURT: You may publish to the jury, Counsel.

2 MS. HERVEY: Thank you, Your Honor.

3 BY MS. HERVEY:

4 Q Detective Curtis, I'm going to ask you to turn around  
5 and look at that television behind you as you go through  
6 these photographs with the jury. I'll turn your attention  
7 first to -- is this the house, the crime scene to which  
8 you responded?

9 A Yes, ma'am. That's the front of the house.

10 THE COURT: Identify the exhibit number for the  
11 record, Counsel.

12 MS. HERVEY: Thank you, Your Honor.

13 It's State's Exhibit No. 4-C.

14 BY MS. HERVEY:

15 Q And then showing you State's Exhibit No. 4-D, what is  
16 that of?

17 A That's just a little bit closer showing the front  
18 porch area and the front door being open.

19 Q I'm showing you State's Exhibit No. 4-A. If you  
20 could, just tell the jury -- let me back up a little bit  
21 more. What are we looking at here?

22 A That's a photograph of the right side of the house,  
23 if you're facing the residence, just showing a vehicle  
24 parked under the carport there on the right side of the  
25 residence.

1 Q Let me hand you this highly technical yardstick we  
2 have. And, if you could, just use it to point out as to  
3 where is the front of the residence versus the back of the  
4 residence as we see it in the photograph.

5 A This would be the rear. I guess this is a porch  
6 behind the house. But this is the rear of the residence.  
7 And then up here is going to be the front. This vehicle  
8 is, actually, pulled up into the driveway a little bit,  
9 but this is facing the highway there.

10 Q Thank you.

11 And then showing you State's Exhibit No. 4-B. I'll  
12 try to zoom in a little for you. What are we looking at  
13 here?

14 A This is a photograph directly behind the house.  
15 Again, you know, just showing the back porch and the back  
16 of the residence as it was when we arrived there on the  
17 23rd.

18 Q And then let me show you State's Exhibit No. 4-H.  
19 What are we looking at here?

20 A This is a shed or workshop that sits behind the  
21 residence. There's like a driveway that runs between the  
22 house and this workshop area. And that just sits directly  
23 behind the house.

24 Q And let me show you State's Exhibit No. 4-E, which  
25 more accurately reflects the relationship of that garage

1 to the house?

2 A Yes, ma'am. This would be -- again, it's like we're  
3 standing out in [REDACTED] there. This would be  
4 the left side of the residence. It shows a driveway that  
5 goes back and around in front of this, it's a workshop or  
6 shed area there that sits behind the residence.

7 Q And then showing you State's Exhibit No. 4-G, what is  
8 this a photograph of?

9 A This is the back side of that same shed.

10 Q And State's Exhibit No. 4-F, which is the same thing,  
11 but just perhaps a different view of that building?

12 A Yes, ma'am. This is just going to be taken on the  
13 other side. You can, actually, see the residence a little  
14 bit here to the right side of the shed, workshop, whatever  
15 it is.

16 Q Let me see if I can zoom in on that for you. It  
17 should focus in a minute.

18 If you could, just show the house itself, the crime  
19 scene itself that you were processing.

20 A This is the main -- the crime scene that we processed  
21 where the deceased were in.

22 Q I'll ask you to return to your seat at this time.

23 A (Witness complied.)

24 Q And once you go inside the house --

25 MS. HERVEY: Oh, I thought you said something. I'm

1       sorry, Your Honor.

2               THE COURT: I did, to my law clerk.

3               Go ahead, Counsel.

4               MS. HERVEY: I wanted to make sure you didn't want  
5       me.

6       BY MS. HERVEY:

7       Q       Once you went inside the residence, before you  
8       started necessarily processing the crime scene, what do  
9       you find there? Generally, what's the condition of the  
10      house? What are the main things that draw your attention?

11      A       When we walk -- or when I walked into the residence,  
12      as soon as you step through the front door, you see one of  
13      the deceased sitting in a recliner there in the living  
14      room. The house has got a layer of soot all throughout  
15      the house. I mean, we had been advised that whoever did  
16      it had attempted to burn the residence.

17              So going inside, there was black soot or ashes or  
18      something all over the -- all over everything and,  
19      particularly, there in the living room and the other rooms  
20      as well. But as soon as you step in the door, you do see  
21      one of the deceased victims sitting in a recliner.

22      Q       Is there any particular odor about the house or  
23      anything of that general nature?

24      A       Well, you smell the smoke and stuff. I mean, it's --  
25      you know, I'm not an arson investigator. But there was

1 black soot all over, like I said, everything, even cobwebs  
2 up in the corners of the rooms had turned black and the  
3 ceilings and stuff. There was black soot all over  
4 everything and you could smell the burnt smoke smell.

5 Q And you stated there was one victim there present  
6 right inside the door. Did you locate any other victims  
7 there?

8 A Yes, ma'am. Back in the back bedroom, there was the  
9 second victim. And he was laying in the bed.

10 Q Other than the front door being open, was there  
11 anything else open about the residence that you saw just  
12 during your initial walk through?

13 A Well, as we walked through -- I mean, as soon as we  
14 step in, we're immediately starting to look for evidence.  
15 Is there going to be footwear present, things that look  
16 like they're out of place, things that would definitely  
17 scream that that's a piece of evidence that we need to pay  
18 attention to.

19 So we walk through. And we saw the two deceased  
20 victims, one in the living room, one in the back bedroom.  
21 As we walk through the rest of the residence, the kitchen  
22 had a window over the sink that had been opened. When you  
23 walk into the poolroom, you could see where the top of the  
24 pool table, the cover of the pool table had been set on  
25 fire. Walking back through in the bedrooms, there's soot

1 and everything all over the items inside the house.

2 And then we come back to a hallway that has a  
3 bathroom off of it, that bathroom had a window open as  
4 well. And then we're back to the bedroom in the living  
5 room area.

6 Q Were there any smoke detectors going off or present  
7 inside this house?

8 A When we walked in the living room, there was a smoke  
9 detector hanging from the ceiling that had been opened and  
10 the battery had been removed. And then standing there in  
11 the living room, if you look towards the hallway, there's  
12 another smoke detector laying on the floor that was broke  
13 open that apparently had been ripped off the wall and the  
14 ceiling.

15 Q As part of your investigation, did you draw -- not to  
16 scale, but a rough diagram of the crime scene to document  
17 where certain items were in relation to each other?

18 A Yes, ma'am, we did. Because you can't always get  
19 everything in a photograph, particularly going room to  
20 room. So in addition to photographing everything, we  
21 would have drawn a diagram showing where things were found  
22 at the crime scene, things that were collected, give a  
23 spacial relationship between items.

24 (WHEREUPON, State's Exhibit No. 33 was marked for  
25 identification only.)

1 BY MS. HERVEY:

2 Q Let me show you what's been marked as State's Exhibit  
3 No. 33, and ask if this is the diagram you prepared in  
4 relation to this case?

5 A Yes, ma'am. This is a copy of the diagram I  
6 prepared, yes, ma'am.

7 MS. HERVEY: And, Your Honor, we'd like to use this  
8 diagram for demonstrative purposes only. We don't intend  
9 to introduce it into evidence. But we would like to  
10 publish it to the jury for that demonstrative purpose just  
11 so they're able to understand his testimony as we go  
12 forward.

13 THE COURT: Any objection?

14 MR. ALLEN: I have no objection.

15 THE COURT: Proceed without objection..

16 BY MS. HERVEY:

17 Q I'm going to have to zoom this out to get a bigger  
18 diagram of this. And if you could, using that yardstick,  
19 on State's Exhibit No. 33, just show the jury as to the  
20 general layout of the house and what you see, how things  
21 relate to one another.

22 A This is going to be the front of the residence here.  
23 And going into the front door, you enter the living room.  
24 I just marked a few things, two recliners with a table  
25 between them, a bar here in the living room. One of

1 the victims, again, was sitting in a recliner right  
2 there, almost in front of the door when you walk  
3 in.

4 There's a smoke detector here. This is the one on  
5 the ceiling. Again, it was -- the top of it was pulled  
6 down and the battery was removed. We collected that,  
7 taken off the ceiling. Here is the hallway. I mentioned  
8 the second smoke detector, I believe, that hung on the  
9 ceiling in the hallway. That one was, actually, ripped  
10 down and broken open. I collected that as well.

11 And moving on down the hallway into the first bedroom  
12 there, the second victim was lying in bed there. Coming  
13 back here into the living room and moving into the  
14 kitchen, this window that sits over the sink was open --  
15 or as far as you could pull it open. This goes down into  
16 the poolroom. Here is the pool table. And it had the --  
17 like a vinyl cover or something on it, but that had been  
18 set on fire. Coming back out of the poolroom into the  
19 bedroom back into the hall. And then here is the bathroom  
20 I mentioned that was in the hallway. And this had a  
21 window that was also propped open as well.

22 Q All right. If you could retake the stand.

23 A (Witness complied.)

24 (WHEREUPON, State's Exhibit Nos. 4-I, 4-J, 4-K, 4-L,  
25 and 4-M were marked for identification only.)



1 BY MS. HERVEY:

2 Q Let me show you State's Exhibit Nos. 4-I through 4-L,  
3 and ask you if these photographs document the open window  
4 and open door that you just testified to previously?

5 A Yes, ma'am, they do. The picture of the front door  
6 and the two windows that were open.

7 MS. HERVEY: Your Honor, I move to admit State's  
8 Exhibit Nos. 4-I through 4-L at this time.

9 THE COURT: Any objection?

10 MR. ALLEN: No objection.

11 THE COURT: Ladies and gentlemen of the jury, State's  
12 Exhibit Nos. 4-I through 4-L will be admitted into  
13 evidence without objection. State's Exhibit Nos. 4-I  
14 through 4-L in evidence.

15 You may publish.

16 (WHEREUPON, State's Exhibit Nos. 4-I, 4-J, 4-K, and  
17 4-L were admitted into evidence.)

18 BY MS. HERVEY:

19 Q This is just a closer photo, I believe, of that front  
20 door that we previously saw standing from the street. And  
21 this is closer as to the actual structure itself?

22 A Yes, ma'am. I think it's right at the bottom step.

23 Q Do you, actually, see the house numbers on the side  
24 of the door?

25 A Yes, ma'am, [REDACTED]

1 Q And just showing you State's Exhibit No. 4-I, what is  
2 that of?

3 A That's going to be a photograph of the bathroom  
4 window that was open. And that's on the back of the  
5 house.

6 Q And then showing you State's Exhibit No. 4-L, again,  
7 what is this, just to tell the jury?

8 A That's the window on the front of the house, and that  
9 one is in the kitchen over the sink.

10 (WHEREUPON, State's Exhibit Nos. 4-N and 4-O marked  
11 for identification only.)

12 MS. HERVEY: I'm showing the ones I just showed you  
13 before.

14 MR. ALLEN: No objection.

15 BY MS. HERVEY:

16 Q I'm showing you State's Exhibit Nos. 4-O and 4-F, and  
17 ask you if this was also part of your documentation of the  
18 crime scene?

19 A Yes, ma'am. These are photographs of the breaker box  
20 that, actually, sits at the front of the house just around  
21 the corner from the kitchen window.

22 Q And when you examined the breaker box, did there  
23 appear to be any damage to it or anything, breakers  
24 tripped or any wiring damage that you could tell?

25 A I didn't notice any damage to it. I don't recall if

1 the breakers were thrown or not. But it seemed to be  
2 unusual that the front of it or the door was open. That's  
3 what drew our attention to it. It just seemed a little  
4 bit out of place. So that was something we wanted to look  
5 at. But I don't recall if the circuits had been -- if the  
6 breakers had been tripped or not.

7 MS. HERVEY: Your Honor, again, moving to admit  
8 State's Exhibit Nos. 4-N and 4-O into evidence.

9 THE COURT: Any objection?

10 MR. ALLEN: No objection.

11 THE COURT: Ladies and gentlemen, State's Exhibit  
12 Nos. 4-O and 4-N will be admitted into evidence without  
13 objection. State's Exhibit Nos. 4-O and 4-N in evidence.

14 You may publish.

15 (WHEREUPON, State's Exhibit Nos. 4-N and 4-O were  
16 admitted into evidence.)

17 BY MS. HERVEY:

18 Q When you stated that the breaker box door was open,  
19 if you could, just point out in this photograph, which is  
20 State's Exhibit No. 4-O, what you're speaking of.

21 A I'm talking about this right here, this cover or  
22 door, actually, just folds down over the breakers. And it  
23 being propped open like that or opened up like that seemed  
24 unusual.

25 Q And did you see any burning or charring or anything

1 to the wires in this area?

2 A No, ma'am, I did not.

3 Q Take your seat again.

4 A (Witness complied.)

5 (WHEREUPON, State's Exhibit Nos. 4-P, 4-Q, and 4-R  
6 were marked for identification only.)

7 BY MS. HERVEY:

8 Q Do you recognize what's depicted in those  
9 photographs -- oh, I'm sorry. She just marked them. I  
10 got one step ahead of myself.

11 State's Exhibit Nos. 4-P, 4-Q, and 4-R, are those  
12 photographs from the crime scene?

13 A Yes, ma'am, they are. They're photographs of the  
14 doorknob and the door frame where the dead bolt locks are.  
15 We normally take pictures of doors just to show whether  
16 there's forced entry to the residence or not. It's  
17 something we usually do in most crime scenes.

18 MS. HERVEY: Thank you.

19 Your Honor, I'd move to admit State's Exhibit Nos.  
20 4-P, 4-Q, and 4-R into evidence.

21 THE COURT: Any objection, Counsel?

22 MR. ALLEN: I have no objection, Your Honor.

23 THE COURT: State's Exhibit Nos. 4-P, 4-Q, and 4-R?

24 MS. HERVEY: Yes, Your Honor.

25 THE COURT: Ladies and gentlemen of the jury, State's

1 Exhibit Nos. 4-P, 4-Q, and 4-R will be admitted into  
2 evidence without objection.

3 You may publish to the jury.

4 State's Exhibit Nos. 4-P, 4-Q, and 4-R are in  
5 evidence.

6 (WHEREUPON, State's Exhibit Nos. 4-P, 4-Q, and 4-R  
7 were admitted into evidence.)

8 BY MS. HERVEY:

9 Q This is State's Exhibit Nos. 4-Q and 4-R. If you  
10 could, just describe -- and I know we're getting a little  
11 glare. If you could, describe what we see with the  
12 doorknob and the lock..

13 A What I'm looking for is the doorknob being beat up,  
14 bent. It's is the locking mechanism like at the top there  
15 on the picture on the right. The dead bolt portion, does  
16 it look like that's been beat on or broken?

17 The picture on the left is going to show where the  
18 dead bolt -- the part that comes out that goes into the  
19 door frame. It's just to document whether or not there's  
20 forced entry. And that's something -- pretty much a  
21 standard thing that we do with any crime scenes that we've  
22 got that involve a residence or building or something.  
23 That may become pertinent later. Did somebody have access  
24 or did somebody force their way in?

25 Q And then State's Exhibit No. 4-P, would that just be

1 the flip of that door jam where it intersects with the jam  
2 itself?

3 A Yes, ma'am. That's just showing the frame itself and  
4 where the locking mechanisms go into the frame. It shows  
5 that those are not splintered or broken open or anything.

6 MS. HERVEY: Thank you.

7 (WHEREUPON, State's Exhibit Nos. 4-S, 4-T, 4-U, 4-V,  
8 4-W, 4-X, 4-Y, and 4-Z were marked for identification  
9 only.)

10 THE COURT: Let's move along, Counsel.

11 MS. HERVEY: Yes, Your Honor.

12 (WHEREUPON, State's Exhibit Nos. 34-A, 34-B, 34-C,  
13 34-D, 34-E, 34-F, 34-G, 34-H, 34-I, 34-J, 34-K, and  
14 34-L were marked for identification only.)

15 BY MS. HERVEY:

16 Q Let's deal with State's Exhibit Nos. 4-T -- 4-S, I'm  
17 sorry. State's Exhibit Nos. 4-S through 4-Z, are those  
18 general photos of the interior residence and things that  
19 you found there?

20 THE COURT: Now, the exhibits numbers are State's  
21 Exhibit Nos. 4-S through 4-Z?

22 MS. HERVEY: Yes, Your Honor.

23 THE WITNESS: Yes, ma'am.

24 These are pictures of several of the rooms in the  
25 residence, just -- we call them general scene photographs,

1 just trying to show things in the room, not close-ups, but  
2 just as much of a photograph of the entire room as we can  
3 get or certain sections of the room.

4 BY MS. HERVEY:

5 Q And those accurately depict the scene as you found  
6 it?

7 A Yes, ma'am, they do.

8 MS. HERVEY: Your Honor, at this time, I would move  
9 State's Exhibit Nos. 4-S through 4-Z into evidence.

10 THE COURT: Any objection?

11 MR. ALLEN: No objection.

12 THE COURT: State's Exhibit Nos. 4-S through 4-Z,  
13 ladies and gentlemen of the jury, will be admitted into  
14 evidence without objection. State's Exhibit Nos. 4-S  
15 through 4-Z are admitted without objection. They're in  
16 evidence.

17 You may publish.

18 (WHEREUPON, State's Exhibit Nos. 4-S, 4-T, 4-U, 4-V,  
19 4-W, 4-X, 4-Y, and 4-Z were admitted into evidence.)

20 BY MS. HERVEY:

21 Q Mr. Curtis, I'm going to ask you to turn again and  
22 start with State's Exhibit 4-T. Do you recall where this  
23 photograph was taken in the residence?

24 A That photograph was in the bedroom where one of the  
25 victims was, the victim that was laying on the bed. It's

1 in one of the corners of his bedroom.

2 Q And, just generally, what is that big book seen in  
3 the middle of the photograph?

4 A That was like a business checkbook or just a very  
5 large checkbook that was sitting there on the desk.

6 Q I'm showing you State's Exhibit No. 4-U, are we still  
7 in the room with the victim that was found in the bed?

8 A Yes, ma'am. That's the nightstand that was beside  
9 his bed.

10 Q And if you could -- I'm going to try -- you talked a  
11 little bit about the cobwebs and sooting you saw there.  
12 Is what's seen in that corner what you were referring to  
13 earlier about the condition of the house?

14 A Yes, ma'am. Those are cobwebs, or dust bunnies, or  
15 whatever you want to call them. They're black. And  
16 that's from the soot and the smoke permeating the  
17 residence. Those were up in the -- you see them on the  
18 floors and in the corners and things like that throughout  
19 the house.

20 Q State's Exhibit No. 4-V, what does this depict?

21 A That is a handgun that was inside the top drawer of  
22 the nightstand right beside the bed where the victim was.

23 Q And that being State's Exhibit No. 4-V, taking you  
24 back to State's Exhibit No. 4-U, you can see the handle of  
25 that gun in that photograph?



1       A     Yes, ma'am. That's the condition it was in when we  
2       got there and were taking the photographs. The door was  
3       pulled slightly open. The previous photograph, actually,  
4       pulled it out a little bit more so you could see what it  
5       was and get a better photograph of it.

6       Q     State's Exhibit No. 4-S being?

7       A     That is a safe that was in the bedroom with the  
8       victim on the bed, and that is in his closet.

9       Q     Was there any damage to this safe or did there appear  
10      to be any attempt to break into it or take it?

11      A     No, ma'am. That was just to show it hadn't been beat  
12      on, or cut open, or anything like that.

13      Q     State's Exhibit No. 4-W, where was this located?

14      A     This is in the living room where the other victim is  
15      in the recliner. That is kind of standing next to where  
16      that victim is taking a photograph back towards the front  
17      door or the picture window that sits on the front of the  
18      house.

19      Q     What is State's Exhibit No. 4-Z?

20      A     That's a photograph of the bedroom that is adjacent  
21      to the poolroom. To the left is the door that goes into  
22      the poolroom. And if you go to the right, there's another  
23      doorway that goes into the hallway where the bathroom is  
24      and leads into the living room or the bedroom where the  
25      other victim is.

1 Q What is State's Exhibit No. 4-Y?

2 A This is a photograph in the poolroom looking out the  
3 sliding glass door. That's on the back of the residence.

4 Q Turn around and I'll draw your attention back to  
5 State's Exhibit Nos. 34-A through 34-L, and ask you if  
6 those similarly depict the interior of the house as you  
7 saw it out there that day?

8 A Yes, ma'am, they do.

9 MS. HERVEY: And Your Honor, at this time, we would  
10 move State's Exhibit Nos. 34-A through 34-L into evidence.

11 THE COURT: State's Exhibit Nos. 34-A through 34-L?

12 MS. HERVEY: Yes, Your Honor.

13 THE COURT: Any objection, Counsel?

14 MR. ALLEN: No objection.

15 THE COURT: Ladies and gentlemen of the jury, State's  
16 Exhibit Nos. 34-A through 34-L will be admitted into  
17 evidence without objection. State's Exhibit Nos. 34-A  
18 through 34-L in evidence.

19 You may publish.

20 (WHEREUPON, State's Exhibit Nos. 34-A, 34-B, 34-C,  
21 34-D, 34-E, 34-F, 34-G, 34-H, 34-I, 34-J, 34-K, and  
22 34-L were admitted into evidence.)

23 BY MS. HERVEY:

24 Q Starting with State's Exhibit No. 34-J, in what room  
25 are we in at this point?

1       A     This is the bedroom where the victim is laying on the  
2       bed. And this is standing next to the bed shooting back  
3       towards the closet, and over to the right is the hallway.

4       Q     And when we zoom in, what are we looking at once we  
5       zoom into this photograph?

6       A     That is a Remington shotgun shell that we found  
7       laying in that position in the residence when we got  
8       there.

9       Q     State's Exhibit No. 34-K, what do we see in State's  
10      Exhibit No. 34-K?

11      A     That's a small piece of plastic that was laying on  
12      the floor next to the bed. It appeared to me to be maybe  
13      possibly the wadding from one of the shotgun shells when  
14      it was fired. It was laying on the floor, so we collected  
15      that as well.

16      Q     What is State's Exhibit No. 34-A?

17      A     That is a photograph of the pool table in the  
18      poolroom there. And it just shows the burn damage to the  
19      pool cover. I think it's a vinyl pool cover that was  
20      burned. That's just showing the overall pool table.

21      Q     And, again, State's Exhibit No. 34-B, drawing your  
22      attention to the upper left-hand corner, again, this is  
23      that back glass sliding door with the grill we saw. But  
24      what else in relation to the pool table can you see in  
25      terms of furniture in this photograph?

1       A     Well, you can see a table over to the left there at  
2       the sliding glass door. If you see the red object sitting  
3       on that table, that is a lighter, one of the long lighters  
4       like you would light a, fireplace or Bar-B-Q grill, or  
5       something like that with.

6       Q     Drawing your attention to State's Exhibit No. 34-E,  
7       in particular, I want to talk about the condition or the  
8       appearance of the ceiling in this room over the pool  
9       table.

10      A     That is a photograph from standing in front of the  
11      sliding glass door back across the pool table. And what I  
12      was really looking at, you can see the black around the  
13      rim around the ceiling there, the soot or ash or whatever  
14      it is on the walls and the cobwebs. But up on the  
15      ceiling, you can see how black it is. It looked like a  
16      parachute had been draped across the ceiling, I guess, as  
17      a decorative item. But you could see how black that is.  
18      And it appears to be either burned or heavily sooted from  
19      the fire.

20      Q     And I don't mean to interrupt you. Was that fan  
21      intact? Did there appear to be any structural damage  
22      other than the sooting?

23      A     It appeared to be intact to me from what I could  
24      tell. I didn't grab any of the blades to see if they had  
25      been melted or anything. But just looking at it from

1 standing on the floor, it appeared to be intact.

2 Q What is State's Exhibit No. 34-C?

3 A This is from the other corner to the right is where  
4 the sliding glass door is in this photograph. And that's  
5 just showing how the cover -- whatever that is on top of  
6 the pool table was burned and had melted. And you can see  
7 where some of it had fallen on the floor. And that was  
8 some kind of stone or ceramic tile on the floor.

9 So when those pieces fell off, there was nothing for  
10 them to burn any further. That's just showing some of  
11 that stuff had fallen off the pool table onto the  
12 floor.

13 Q Did you collect any items off the pool table?

14 A Yes, ma'am, I did.

15 Q Is that what is depicted in State's Exhibit No. 34-L?

16 A Yes, ma'am. That is a corkscrew to the right there,  
17 and a small tin can that was sitting on the lower  
18 right-hand corner of the pool table. And it looked like  
19 it had a hole punched in it.

20 So I collected that as, potentially, the source or  
21 the origin of the fire that had burned the top of the pool  
22 table.

23 MS. HERVEY: The Court's indulgence for a moment.

24 (WHEREUPON, State's Exhibit No. 15 was marked for  
25 identification only.)

1 BY MS. HERVEY:

2 Q I'm going to show you what's been marked previously  
3 for identification purposes as State's Exhibit No. 15 at  
4 this point. Did you package this item in that condition  
5 or has it been repackaged by someone else at SLED?

6 A It's been repacked by somebody. But right here, you  
7 can see my initials and the date. I wouldn't have done an  
8 examination on this. It would have gone to our arson  
9 unit. So I placed it in a paper bag, maybe, inside there.  
10 And I would put the seal tape with my initials on both  
11 sides. And then it's been resealed by somebody else.

12 Q And can you tell from the exterior markings what is  
13 contained within this box?

14 A No, ma'am, I cannot.

15 Q All right. I'm going to hand you these scissors and  
16 ask you, without taking these items out of the box, to  
17 break the seal on the box, identify the object contained  
18 therein, and whether you collected that item at the scene,  
19 and whether or not it relates to State's Exhibit 34-L.

20 A Inside are, actually, arson cans. I'm sorry.

21 Q Okay. And is that what you --

22 A Yes, ma'am. That would have been what I put -- I've  
23 got mine in -- that's my handwriting, and item number, and  
24 case number, and stuff on there. They're, actually,  
25 packaged in tin cans.

1 Q And you would have placed that lighter fluid bottle  
2 and that corkscrew within that can?

3 A Yes, ma'am.

4 Q You can set that down.

5 I'm showing you State's Exhibit No. 34-H, what are we  
6 looking at in this photograph?

7 A That is a lighter like one probably used on fire  
8 places or something like that.

9 Q And where is that found in relation to the pool table  
10 and to the lighter fluid can?

11 A That is sitting on a table near the sliding glass  
12 door. That picture, I'm standing right in front of the  
13 pool table on the side of the pool table taking that  
14 picture. And then to the right is going to be the sliding  
15 glass door.

16 Q Did you collect that lighter?

17 A Yes, ma'am, I did.

18 (WHEREUPON, State's Exhibit No. 3 was marked for  
19 identification only.)

20 BY MS. HERVEY:

21 Q I'm going to ask you, again, to look at State's  
22 Exhibit No. 3 the way we did the last one. Does this bear  
23 any of your marks or did you package this box in this  
24 manner?

25 A Yes, ma'am. Again, on top here is my initials and

1 the date that I placed the seal tape on the top and on the  
2 bottom of this box.

3 Q And do you know what's contained within that box?

4 A No, ma'am. I need to look inside.

5 Q All right. If you could, just break that seal and,  
6 again, without publishing those items to the jury,  
7 indicate whether the lighter is contained within that box.

8 A Yes, ma'am.

9 Q And is the lighter contained within that?

10 A Yes, ma'am, it is.

11 Q Set that down for a minute.

12 What else does that box contain?

13 A It has two smoke detectors in it.

14 Q And were those smoke detectors that you took -- the  
15 box also contains smoke detectors?

16 A Yes, ma'am.

17 Q And you collected those as well?

18 A I did.

19 (WHEREUPON, State's Exhibit Nos. 34-M, 34-N, and 34-O  
20 were marked for identification only.)

21 BY MS. HERVEY:

22 Q And let me just show you State's Exhibit No. 34-M,  
23 34-N, and 34-O, and ask you if those are photographs of  
24 the smoke detectors prior to you collecting them in their  
25 condition in this house?



1 A Yes, ma'am, they are.

2 MS. HERVEY: I'm moving State's Exhibit Nos. 34-M,  
3 35-N, and 34-O into evidence.

4 THE COURT: Any objection?

5 MR. ALLEN: No objection, Your Honor.

6 THE COURT: Ladies and gentlemen of the jury, State's  
7 Exhibit Nos. 34-M, 34-N, and 34-O will be admitted into  
8 evidence without objection.

9 You may publish.

10 (WHEREUPON, State's Exhibit Nos. 34-M, 34-N, and 34-O  
11 were admitted into evidence.)

12 BY MS. HERVEY:

13 Q Showing you State's Exhibit No. 34-M, what is the  
14 jury looking at in this picture and where is that smoke  
15 detector located both in the house in terms of floor,  
16 ceiling, or room?

17 A That is going to be the smoke detector from the  
18 living room. And that was attached to the living room  
19 ceiling. And that's the way we found it. It was opened.  
20 And you can see that there's no battery inside the smoke  
21 detector.

22 Q I'm showing you State's Exhibit No. 34-O.

23 A To the right in that photograph is the top of the  
24 smoke detector. And then over to the left is the bottom  
25 portion. That is in the hallway just off of the living

1 room. And that was the one ripped off the ceiling in the  
2 hallway where it had been. The screws were still in the  
3 panels in the ceiling where it had been pulled down.

4 (Pause.)

5 THE COURT: Counsel, let's move on.

6 MS. HERVEY: Thank you, Your Honor.

7 BY MS. HERVEY:

8 Q What was the purpose of taking these smoke detectors  
9 back to SLED or collecting them into evidence?

10 A Well, they, obviously, were out of place. I mean,  
11 you put smoke detectors in your house so if the fire goes  
12 off, to alert you, wake you up, whatever. So with the one  
13 in the living room, the top portion hanging down and the  
14 battery being removed appeared to be unusual. And then  
15 the one being ripped off the ceiling and laying in the  
16 floor in pieces like that was unusual.

17 So in my way of thinking, potentially, the suspect  
18 had pulled those down, or removed the batteries, or  
19 whatever. So the chance of developing latent prints was a  
20 possibility on these items.

21 Q And did you attempt to do that on these items?

22 A Yes, ma'am, I did.

23 Q And were you successful in that regard?

24 A No, I was not.

25 Q So you couldn't even find fingerprints on there?

1       A     No, ma'am. I didn't have any -- when I processed  
2       them back in the laboratory, I didn't get any fingerprints  
3       on them whatsoever, no ridges or anything.

4       Q     And just briefly, if you could, talk to the jury  
5       about the process you go through in attempting to collect  
6       a latent lift that you used in this case on like the smoke  
7       detector and other things you found inside the house.

8       A     The process for latent prints -- if you've got an  
9       object that you feel like may have been touched and you  
10      want to see if you can get latent prints on it, you're  
11      going to have to determine the type of service.

12            In this instance, hard plastic, which is a good  
13      surface for developing latent prints on, the standard  
14      process used is to put it in the tank and drop some  
15      superglue in the tank and heat up the superglue.  
16      Cyanoacrylate is what it's called. Once it's heated, it  
17      lets off a fume and adheres to moisture inside the --  
18      it's, basically, a fish tank. But it's going to adhere to  
19      the surface of this and stick to any moisture on it. Once  
20      you do that for just a couple of minutes, then you pull  
21      the item out, look at it and see if you've developed any  
22      prints.

23            And then, in this case, I would have taken just basic  
24      black fingerprint powder and brushed it on there to see if  
25      I could enhance any fingerprints that might have been on

1       there. And, in this instance, I didn't get any  
2       fingerprints at all. No partial prints, no ridges, or  
3       anything like that.

4       Q     What did the presence of the sooting and those type  
5       things do to your ability to collect latent lifts from the  
6       interior of this residence?

7       A     In my opinion, it would have severely hampered it. I  
8       mean, you're talking about -- fingerprints are very  
9       fragile. They're 99.6 percent water, basically, with a  
10      little mixture of oils from your skin.

11       So anytime you touch an item, you're not necessarily  
12      going to leave a fingerprint. You may not have much sweat  
13      on your fingers. But when you do leave a print, if the  
14      surface is rough, you're probably not going to leave a  
15      very good fingerprint. If the surface is smooth and  
16      conducive to holding a good print, it's possible to  
17      retain -- to retrieve a print off of that.

18       The environment that the object is in -- if it's out  
19      in the sun, the moisture is going to evaporate. If it's  
20      subjected to -- sitting on front of an air conditioner or  
21      heater, the constant blowing of air across it may make it  
22      evaporate. There's just any number of reasons why you  
23      can't get fingerprints. I know TV has indicated you get  
24      fingerprints off of everything, but it's really the  
25      exception more than the rule. You get fingerprints very

1 rarely.

2 So, in this instance, with a house like this -- I  
3 don't know what kind of housekeepers they were -- but if  
4 items are not cleaned regularly, dust and stuff may  
5 interfere. And then with this house being -- with the  
6 fire going on in this house and sooting up every room of  
7 the house, that would have severely ruined any chance of  
8 leaving prints, or any prints that might have been there  
9 probably would have obliterated them.

10 Q You stated there was a lighter that you took from the  
11 table near the glass sliding door in the poolroom, did you  
12 also attempt to get any fingerprints off of that item?

13 A Yes, ma'am, I did.

14 Q And were you able to do that?

15 A I was not able to get any prints on that as well.

16 Q What other items in the house did we attempt to  
17 fingerprint or find latent lifts where you were  
18 unsuccessful? Were there other areas?

19 A Going through the residence, just as a normal part of  
20 procedure, we would have fingerprinted the front door, the  
21 windows that were open, the breaker box on the outside.

22 In the interior, just thinking about a person moving in  
23 there, maybe in the dark or just the way that people, you  
24 know, maybe lean against the wall or whatever is going on  
25 there, you would think, perhaps, they've touched door

1       jams, door knobs, window sills, that kind of thing with  
2       the windows open, the doors open, things like that.

3               We went through and processed every door jam in the  
4       house, the two window sills that were open, the sliding  
5       glass door, and door knobs. There was a drawer open in  
6       the kitchen that had some utensils in it. I thought  
7       possibly that's where the corkscrew came from. So I  
8       processed the counter over it, and the handle, and the  
9       knob on the drawer. Just things that looked out of place  
10      that may have been disturbed that didn't appear to be  
11      normally part of the routine of the house was processed.  
12      And I didn't develop any prints on any of those items.

13      Q       Did you take any known prints from any individuals  
14      while you were at the crime scene?

15      A       Yes, ma'am. When we were done documenting the scene  
16      and working it towards the end there, when the coroner was  
17      removing the bodies, we ended up taking what we call major  
18      case prints, finger and palm prints of the two deceased  
19      individuals.

20      Q       And did Oconee County Sheriff's Office also submit  
21      known fingerprints of the Defendant, Randy Frady?

22      A       Yes, ma'am, they did.

23      Q       And from the interior of this residence or the  
24      exterior of this residence, were you able to make any  
25      latent lifts?

1       A     Yes, ma'am. There were a couple latent impressions  
2       that were on the door leading from a bedroom into the  
3       poolroom. We were able to lift some prints off of that.  
4       And I ended up comparing them to the two victims and to  
5       the Defendant in this case.

6       Q     And were you able to identify who that palm print  
7       belonged to?

8       A     None of those prints -- I couldn't identify them to  
9       any of those three people.

10      Q     What is AFIS?

11      A     AFIS is the Automated Fingerprint Identification  
12      System we have at SLED. It's, basically, a database of  
13      fingerprint cards. So when I was not able -- or when I  
14      eliminated the two victims and the Defendant, I ran the  
15      fingerprints through -- or had them run through our  
16      computer system. And it didn't yield any possible  
17      identifications as well.

18      Q     So you -- let me just clarify. You were not able to  
19      locate fingerprints of either of the two people who lived  
20      at this house, either of the two victims anywhere in that  
21      residence?

22      A     No, ma'am.

23      Q     And you found no fingerprints of the Defendant, Randy  
24      Frady, at that residence?

25      A     No, ma'am, I did not.

1 Q Despite your best efforts to the contrary to find  
2 some?

3 A Yes, ma'am.

4 Q Okay. And did you -- do you recall receiving an item  
5 from Casey Bowling from the Oconee County Sheriff's  
6 Office?

7 A At some point during that day, he had signed over --  
8 or had a gas can. And he had it in a paper bag, I believe  
9 it was, and he signed that over to me.

10 Q Let me show you State's Exhibit No. 16. And, again,  
11 without removing the item from the bag, I'm going to  
12 ask if that is the item you received from Casey  
13 Bowling?

14 A Yes, ma'am. It's a gas can. And then right there on  
15 the front of the bag is a chain of custody sticker from  
16 him. And that's my signature, and the date, and the time  
17 that I got it from him, which was noon on the 23rd.

18 Q And you did -- did you attempt to fingerprint this  
19 item?

20 A Yes, ma'am. I took that back to the SLED laboratory  
21 and attempted to get fingerprints on that as well.

22 Q And were you able to do that?

23 A No, ma'am. I didn't get any fingerprints on it at  
24 all.

25 Q Is there anything about the physical nature of the



274

1 gas can which may have impaired your ability to do that?

2 A Well, this gas can is metal and it looks to be a  
3 little bit old, or older. Also, a gas can with gasoline  
4 in it and being used, gas splashing out of the can on the  
5 sides or whatever is going to obliterate fingerprints.

6 So I processed it the same way I did the smoke  
7 detectors and the lighter. And I didn't get any ridge  
8 detail fingerprints at all.

9 MS. HERVEY: The Court's indulgence one moment, Your  
10 Honor.

11 BY MS. HERVEY:

12 Q Prior to fingerprinting the victims, either before or  
13 after doing that, did you do any GSR kits on the two  
14 victims?

15 A Yes, ma'am. The standard procedure is if we've got  
16 an incident where -- particularly in homicide cases where  
17 people are shot, we will take a gunshot residue kit from  
18 their hands prior to inking their fingers to take their  
19 fingerprints. This would show some of the elements of  
20 gunpowder and smoke maybe deposited on their hands. So we  
21 take that before we do anything else to their hands.

22 Q And what is the difference between gunshot residue  
23 and atomic absorption?

24 A I could not tell. I am not a trace person. So -- I  
25 know how to take it. I've been trained how to take the

1       kit off of individuals. I know that when you fire a gun  
2       or handle a gun, trace elements from the gun and the gun  
3       powder itself will be left on your hands. And our trace  
4       department is able to determine if those elements are  
5       present and the amount, maybe, as to whether you fired a  
6       gun or were in close proximity to a gun when it was fired.

7       Q     The kit that you performed, is it a GSR kit, is it an  
8       AA kit, which one of those?

9       A     It's a GSR kit. It's just a small envelope with some  
10      sticky tabs and some swabs that we use on the -- we take  
11      the inside and back side of both palms.

12      Q     And does SLED have a certain protocol as to when it  
13      is appropriate to do a GSR kit on an individual?

14      A     On a deceased individual, there's no time limit. On  
15      a live individual, it's always been explained to me is  
16      there's a six-hour time limit. You're talking about the  
17      body absorbing the elements. Also, if the person is  
18      alive, washing their hands, wiping their brow, putting  
19      their hands in their pockets, it's going to wipe that off.  
20      They may touch something else. It's time sensitive if the  
21      individual is alive. If they're dead, you've got  
22      whenever you can get to it as long as their not tampered  
23      with.

24           (WHEREUPON, State's Exhibit No. 9 was marked for  
25      identification only.)

1 BY MS. HERVEY:

2 Q I show you what's been marked as State's Exhibit  
3 No. 9, and ask you if you can tell from the markings on  
4 this without opening it and without removing those items  
5 how State's Exhibit No. 9 relates to the GSR kit you just  
6 discussed?

7 A My initials are on the back seal. And the sticker on  
8 the front indicates it goes to trace and the analyst in  
9 trace.

10 Do you want me to open -- I assume the GSR kits are  
11 here. Do you want me to open it?

12 Q Yes, if you can without removing those items and  
13 determine that, yes, indeed, those GSR kits are present  
14 inside.

15 A Yes, ma'am. There's two GSR kits in here with my  
16 handwriting on the envelopes.

17 Q Those are the two GSR kits you took off both of the  
18 victims while they were still at the residence?

19 A Yes, ma'am.

20 Q And, if you can, let me just back you up. Other than  
21 the condition of the surface that you're trying to lift  
22 the latent lifts from, what would the impact be if someone  
23 were wearing gloves or other clothing have on your ability  
24 to take those or find those lifts?

25 A When you're talking about with latent prints leaving

1 prints on a piece of evidence or something, you're talking  
2 about the transfer of sweat and oils off the inside of the  
3 fingers or the palms, and the impression of the ridges  
4 that flow across your fingers and palms. So if there's  
5 something between the two, you're not going to leave a  
6 fingerprint.

7 So if I'm wearing gloves or got socks on my hand or  
8 something like and I touch something, I'm not going to  
9 leave a fingerprint.

10 Q And how long will a fingerprint stay there?

11 A It just depends upon the surface that is touched and  
12 whether it's going to be conducive to receiving the print.  
13 It's going to depend upon the condition of the  
14 individual's hands. People that work with their hands a  
15 lot may have rough fingers and palms. They may not leave  
16 fingerprints ever. The environment that the fingerprint  
17 is in -- if it's out like on a car hood and it's out in  
18 the middle of summer, it's probably not going to last very  
19 long. If you touch paper, you could leave a fingerprint  
20 that could last for decades. It just depends on the  
21 surface, condition of the hands, the environment that that  
22 object is left.

23 MS. HERVEY: Your Honor, if we could approach.

24 (WHEREUPON, a bench conference was held.)

25 THE COURT: Madam Foreperson, and, ladies and

1 gentlemen of the jury, I'm going to stop at this point for  
2 the evening. I ask you to, please, be back in your jury  
3 room, as you were this morning, at 8:45 in the morning.

4 Over the overnight recess, I instruct you, again,  
5 please, do not read, watch, or listen to any account on  
6 television, radio, or in the print media. I don't know if  
7 there will even be such. But if there is, you remember  
8 that each of you took an oath to decide this case solely  
9 upon evidence presented in this courtroom when both sides  
10 are present with the right of cross-examination. So I ask  
11 you, please, do not watch, listen, or read such.

12 Ladies and gentlemen, as I've told you at each time  
13 throughout a break in this trial, I ask you to, please,  
14 not discuss this case with anyone. And if someone  
15 persists in wanting to talk with you, please, come to me,  
16 let me know. I promise you, I'll take care of that  
17 problem for you, ladies and gentlemen. That person won't  
18 bother you anymore.

19 I hope each of you have a pleasant evening. I'm  
20 going to look forward to seeing you back here -- I want to  
21 start by 9:00 a.m. in the morning. So I'm going to ask  
22 you to, please, be in your jury room by 8:45 so I can  
23 start as close to 9:00.

24 Believe it or not, ladies and gentlemen, even when  
25 you think I'm starting a couple minutes behind, we're

1       working right up to the time we start. Because we're  
2       trying to shorten the period of time that your presence  
3       may be required. One of the reasons that I'm breaking  
4       today is because we've been able to work on a number of  
5       matters which will shorten this trial. We'll continue to  
6       work after you have left today.

7               Thank you for your patience and for your willingness  
8       to serve.

9               You may leave at this time.

10              (WHEREUPON, the jury was excused from open court at  
11              approximately 4:54 p.m.)

12              THE COURT: All right. Solicitor, is there anything  
13       on the record from the State before we adjourn, outside  
14       the presence of the jury, for the evening?

15              MS. HERVEY: No, sir, Your Honor.

16              THE COURT: Anything from the Defendant on the  
17       record, outside the presence of the jury, before we  
18       adjourn for the evening?

19              MR. ALLEN: I'm sorry, Your Honor?

20              THE COURT: Anything from the Defendant on the  
21       record, outside the presence of the jury, before we  
22       adjourn for the evening?

23              MR. ALLEN: No, sir.

24              THE COURT: Very well. Court stands adjourned until  
25       9:00 a.m. tomorrow morning.

1 I want to see Counsel in chambers.

2 (WHEREUPON, the proceedings were concluded at  
3 approximately 4:55 p.m., to be reconvened on  
4 Wednesday, August 30, 2006.)

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1                                    WEDNESDAY, AUGUST 30, 2006

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3                    (WHEREUPON, State's Exhibit Nos. 5-A, 5-B, 5-C, 5-D,  
4                    5-E, 5-F, 6-A, 6-B, 6-C, 6-D, and 6-E were marked for  
5                    identification only.)

6                    THE COURT: Is the State ready to proceed?

7                    MS. HERVEY: Yes, Your Honor.

8                    THE COURT: Is the Defendant ready to proceed?

9                    MR. ALLEN: Yes, sir, Your Honor.

10                  THE COURT: Go ahead and bring the jury in, please,  
11                  sir.

12                  Where is Mr. Curtis?

13                  MS. HERVEY: He's on the back row, Your Honor.

14                  THE COURT: Have him come on back to the witness  
15                  stand.

16                  (WHEREUPON, the jury came into open court at  
17                  approximately 9:24 a.m.)

18                  THE COURT: Good morning, Madam Foreperson, and,  
19                  ladies and gentlemen of the jury, I hope everyone had a  
20                  pleasant evening.

21                  You'll recall that when we broke last night, this  
22                  witness, Mr. Steven Curtis, was on the witness stand. He  
23                  is still under oath and we're in the process of completing  
24                  his examination, which we will continue now.

25                  Solicitor, your witness still on direct.



1 MS. HERVEY: Thank you, Your Honor.

2 CONTINUED DIRECT EXAMINATION

3 BY MS. HERVEY:

4 Q I want to take you back to the Westminster Highway  
5 crime scene and, in particular, draw your attention --  
6 they haven't gotten my machine working this morning.

7 (WHEREUPON, State's Exhibit No. 11 was marked for  
8 identification only.)

9 BY MS. HERVEY:

10 Q I draw your attention back to -- this is the shotgun  
11 shell, I believe, you said was located in the bedroom with  
12 the victim who was in bed with contrast to the victim who  
13 was elsewhere in a chair; is that correct?

14 A Yes, ma'am, it is.

15 Q And did you, actually, collect this shotgun shell?

16 A Yes, I did.

17 Q All right. Let me show you what's been marked for ID  
18 only as State's Exhibit No. 11, and ask you if you  
19 recognize this item, the markings on this packaging, and  
20 if it relates to what's depicted in that photograph?

21 A Yes, ma'am. It's got my initials, and the case  
22 number, and item number on it -- or my item number.

23 Q And would that have been SLED Item #13?

24 A Yes, ma'am.

25 Q And drawing your attention to State's Exhibit No.

1       34-K, the wadding that was found --

2           MS. HERVEY: Evidently, if I touch it, Your Honor, it  
3       breaks. So I'm going to ask Mr. Wagner to hang out over  
4       there for a minute.

5       BY MS. HERVEY:

6       Q     The wadding that you said -- before we go back to the  
7       picture. You said there was a small piece of wadding on  
8       the carpet. Was that in that same room?

9       A     Yes, ma'am. The shotgun shell was near the closet,  
10      like from the foot of the bed to the closet. And the  
11      wadding was beside the bed between the bed and the wall or  
12      a piece of plastic, I'd say, would be the wadding.

13      Q     And you collected that item as well?

14      A     Yes, ma'am.

15      Q     And similarly packaged it?

16      A     Yes, ma'am.

17      Q     Is that included with that?

18      A     Yes, ma'am. I included it in the same bag as that.

19      Q     In addition to the shotgun shell and the corkscrew  
20      that you collected, and you previously testified about the  
21      GSR kit and the latent prints off the victims, did you  
22      also take any swabbings for blood anywhere within the  
23      house?

24      A     Yes, ma'am. I would have taken one swab off the bed  
25      near the victim in the bedroom there, and one swab off the

1 chair, I believe, near the victim in the living room.

2 Q And what was the purpose for collecting that  
3 evidence? For what further analysis did you collect that?

4 A Well, there have been instances where the pathologist  
5 is not able to get blood if a person has bled out or  
6 something. It's just one of those standard procedures  
7 that we do, taking blood samples closest to the victim.

8 Q And you wouldn't have done that type of testing, it  
9 would have been done by someone else at a later time?

10 A Yes, ma'am. I packaged it. And then when it was  
11 logged in, it was sent on to the DNA department.

12 Q And then before we move to the next crime scene, I  
13 want to take you back a little bit as to the  
14 fingerprinting that you did here at the house at  
15 Westminster Highway and the results that you found there.  
16 You stated that you found an unknown lift. You weren't  
17 able to identify the palm print; correct, taken from the  
18 poolroom?

19 A Yes, ma'am. There was a couple of prints on the  
20 bedroom -- it was, actually, on the bedroom side of the  
21 door. There's a glass door between one of the bedrooms  
22 and the poolroom. And we dusted that door on both sides.  
23 And the bedroom side of the door had a couple of latent  
24 prints on it. And I was not able to identify it to either  
25 victim or the Defendant in this case.

1 Q And did you enter those into AFIS as well?

2 A The prints we did, yes, ma'am.

3 Q And why would palm prints not be -- is there a palm  
4 print AFIS? Did you have that available at the time?

5 A We do have a palm print AFIS system now. We didn't  
6 have one at that time. So in preparation for trial, I  
7 went back and evaluated the palm prints to see if they  
8 would be suitable to be run. And they were not of a  
9 quality that we could capture in our system and have them  
10 run against any of the palm prints in the database.

11 Q And, if you could, just briefly, talk about AFIS  
12 being a database. Who's contained within that database,  
13 the number of fingerprints or palm prints, and what makes  
14 a print suitable or unsuitable for AFIS?

15 A I'm not sure as to the number. I know in the  
16 fingerprint data base, there's probably over a million.  
17 It's going to be people that have criminal records.  
18 Police officers are also in this database. I think school  
19 teachers, anybody that's applying for jobs that you have  
20 to have a criminal check, I believe, are going to be in  
21 that database.

22 The palm prints are something we've started in the  
23 last year and a half. I'm not sure as to how many sets of  
24 palm prints would be in that database or how often that's  
25 used by local agencies submitting those. But we do have

1 the capability of running palm prints through the computer  
2 now.

3 What we do is the computer, actually, searches for  
4 similar type patterns with looking at the database and  
5 they will kick out possible individuals. And then a  
6 person like me, a latent print examiner, has to go back  
7 and physically pull the fingerprint card and take the  
8 latent print from the crime scene or piece of evidence  
9 and, actually, do a manual comparison. So the computer  
10 system itself does not identify the print. It just gives  
11 you a possible candidate or list of candidates to look at.

12 The quality of the prints is going to vary as to what  
13 the computer will accept. If it's a very good, crisp,  
14 clean, clear latent impression, then you can be able to  
15 enter that in without a problem.

16 Unfortunately, most of the time, the pressure that  
17 people have when they're picking up an object or touching  
18 an object or smearing or something like that is going to  
19 interfere with that. And the computer -- the lens or  
20 whatever on the computer is not as good as the human eye.

21 So background noise, smudging, smearing, stuff like  
22 that can interfere with the quality of a print being  
23 entered into the computer, whereas a human may be able to  
24 discern through the background noise and the trash on a  
25 latent print and be able to make an identification or

1 comparison. The human eye is still better than the  
2 computer at this point.

3 Q And "background noise," we don't, actually, mean  
4 noise. We mean stuff behind the printer --

5 A Trash or the background may interfere with -- some  
6 prints are murky. It just depends on the surface and how  
7 the print was left and what process you used.

8 Q You said these prints were originally -- the unknown  
9 prints were lifted off a poolroom door or jam. The type  
10 of molding you would see around these type of doors, is it  
11 an even surface? Was it beveled in any way?

12 A No. Part of it was on the glass. I think there was  
13 one or two prints lifted off the glass. And the actual  
14 wooden part of door was painted. So it was, actually, a  
15 smooth surface. And the door was on the inside of the  
16 bedroom.

17 So I don't know -- the door was open when we got  
18 there. But I don't know how the door was situated when  
19 the prints were left. I don't know if maybe the door,  
20 actually, had been opened all the way and may have  
21 prevented some of the soot and stuff from getting on the  
22 door. But that was the only location in the house that we  
23 were able to develop fingerprints that we could lift.

24 Q And, just briefly, I know normally if you do have an  
25 identification, we kind of put the prints next to each

1       other. You talked about the way you make a known  
2       comparison. I know we don't have that in this case. But  
3       you really haven't talked about ridges and whirls and  
4       those type things that, I believe, you normally rely upon  
5       in making these identifications?

6       A     Yes, ma'am. What you're looking at on the fingers,  
7       there are three basic type of patterns. You have arches,  
8       loops, and whirls on your fingers. It's just the  
9       formation that the ridges go across the fingers. Those  
10      are used -- you can use to eliminate people. If I've got  
11      a latent print that's a whirl from a crime scene and I'm  
12      comparing it to somebody that has all loops, then it's not  
13      going to be their fingerprint.

14            If you've got a similar pattern, then you go in and  
15      you're looking at the ridges themselves. They have what  
16      we call a minutia of identifying characteristics. There  
17      are three basic types of those. An ending ridge, which is  
18      where a ridge will travel for a certain distance and then  
19      come to an abrupt stop. There's a bifurcation where a  
20      ridge will travel and fork off into two or more ridges.  
21      And then we have what we call short ridges, which are just  
22      a small portion of a ridge. Those and their configuration  
23      and spacial relation within a print are what I'm looking  
24      for to make an identification.

25            In addition to that -- and we use magnifying glasses

1 is what I'm using when I'm doing a comparison. I'm also  
2 looking at the size and the shape of the ridges  
3 themselves. If you get a magnifying glass, or some people  
4 will use computerized comparison software on a computer,  
5 you can see where the ridges are not very even. They'll  
6 get fat, then thin, get fat. They'll be notches in the  
7 ridges. There's just all kinds of identifying  
8 characteristics on a ridge.

9 You've got sweat pores. Those are not evenly  
10 distributed. I also use those kind of details to try to  
11 see if they'll line up in the same spacial relationship  
12 between the unknown print or the latent print from a crime  
13 scene or piece of evidence and the inked or known print  
14 that I'm comparing it to. And if those are all in  
15 agreement, then that would be considered an  
16 identification.

17 Q And is there a number of these similar  
18 characteristics to a print that is required to make an  
19 identification? If you get one similarity, is that  
20 enough, or is there a number or baseline that you're  
21 looking for to make an actual identification?

22 A No, ma'am. It's solely up to the opinion of the  
23 examiner. You're looking at any number of combinations of  
24 the pattern type and the identifying characteristics and  
25 then the smaller characteristics. It's up to the opinion.



1       There is no set standard, national standard or anything,  
2       in this country that requires you to have X amount before  
3       it's an identification.

4       Q     But, obviously, the more, the better, and the more  
5       certain you are looking at the right person?

6       A     Yes, ma'am. It's based on the premise that human  
7       nature doesn't repeat itself exactly in any case. With  
8       growing up in school, you know, the theory is that there's  
9       no two snow flakes alike. That's, basically, what we're  
10      looking at here. There's not going to be any two ridges  
11      that are going to be exactly alike in every  
12      characteristic. So if we've got what I feel are enough  
13      characteristics that are in agreement, then I would say  
14      that's an identification.

15           And then we'll have another examiner go behind me and  
16      review my work. And they should be -- come to the same  
17      conclusion as to what I've come to if they're looking at  
18      the same set of prints that I was examining.

19      Q     And you talked very initially in your testimony about  
20      the hundreds, if not thousands, of crime scenes you  
21      responded to, and latent lifts you've taken, and  
22      comparisons you've done. And I believe you said it was  
23      the exception to the rule that you, actually, find  
24      fingerprints at a crime scene; is that correct?

25      A     Yes, ma'am. I mean, things are working against

1 fingerprints. Again, they're very fragile. You're  
2 talking about moisture on the end of your fingertips,  
3 sweat, and some oils that you leave on a surface that you  
4 touch.

5 So you have to take into account the surface that is  
6 being touched. Is that going to be conducive to holding a  
7 print? A piece of glass would be an excellent item. It's  
8 hard and smooth. You pick up a rock, probably not. The  
9 condition of a person's hands, if you, you know, don't  
10 work with your hands for a living, like a carpenter or a  
11 brick mason, then your hands are probably in good shape to  
12 have prints.

13 A person that works with their hands a lot is going  
14 to have calluses. And they're going to have rough hands.  
15 And they're probably not going to leave prints. So the  
16 condition of a person's hands as well. What they have on  
17 their hands, if someone has recently washed their hands  
18 and then touches an object, they may not leave a print.  
19 If you've eaten a chicken dinner or something and haven't  
20 washed your hands, you're probably going to leave a good  
21 print if you've got chicken grease on your fingers.

22 Q And let me --

23 A And --

24 Q I apologize.

25 Not only talking about the difficulty, you say, in

1 finding fingerprints, has it been your experience of  
2 finding fingerprints at a crime scene that you weren't  
3 able to identify?

4 A Well, I mean, you can't age the prints. So someone  
5 coming into a house and touching an object at some time, I  
6 can't say when it was there. So it could be recent or it  
7 could be in the distant past.

8 The environment plays a big factor. If it's in a  
9 place that's not going to be effected by sunlight, wind,  
10 or water, the print could stay there forever, as far as I  
11 know. There's no way to age them.

12 So in going through a house, I don't find it unusual  
13 to go through and process a bunch of items and come back  
14 with no usable latent prints at all. That's just the way  
15 it is.

16 Q And once finding prints, how common is it then to not  
17 be able to identify those prints or tie it to people  
18 believed to be involved, either the victim, or the  
19 suspect, or witnesses?

20 A You're talking about a random chance that the  
21 individual touched the item that you're processing. You  
22 know, as far as a crime scene goes, I'm going to be  
23 looking at locations most probably touched by a suspect in  
24 a case or items touched.

25 Again, going through and, again, depending on the

1 environment and the condition of the hands and the surface  
2 that is touched and everything. It's just not unusual to  
3 go through and not have any prints developed at all. Or  
4 if you get prints and are not able to identify them to any  
5 of the people involved in the case, it's not something  
6 that surprises me. Because, again, you don't know when  
7 those items were touched and in what capacity. And it's  
8 just not unusual in my experience.

9 Q So finding those unknown prints, that's something  
10 you've experienced before in crime scenes?

11 A Yes, ma'am. I mean, it's a good day when you find a  
12 print that you identify to somebody in a crime scene. I  
13 mean, that's a big deal.

14 MS. HERVEY: The Court's indulgence one moment.

15 (Pause.)

16 MS. HERVEY: I think we're going to give up on the  
17 machine, Your Honor.

18 BY MS. HERVEY:

19 Q After you processed the crime scene at Westminster  
20 Highway -- and we may go back there at the end. But, for  
21 now, let's move on to the next thing you processed. Do  
22 you go to Yohlanda Drive or to the van next?

23 A We, actually, go to Zion Road and photograph and  
24 collect the shell casings that were out there at Zion Road  
25 and 28, I believe.

1 Q And let me go back to those briefly. We talked about  
2 that previously with Mark Lyles. But let me show you  
3 State's Exhibit Nos. 29-A through 29-H, I believe. I just  
4 ask you to review those photographs and, again, confirm or  
5 deny whether or not those are photographs that were taken  
6 when you all were collecting the shotgun shells found by  
7 Mark Lyles?

8 A Yes, ma'am. These are the photographs there at Zion  
9 Road. We placed the markers out there so you could see  
10 them in the photographs from a distance. And we took some  
11 close-up photographs as well. So those are the three  
12 shell casings that Investigator Lyles found out there.  
13 And we went out there and photographed and then collected.

14 Q And the yellow markers, are those something you would  
15 have placed or is that something the Oconee County  
16 Sheriff's Office would have put there, if you recall?

17 A No. Those are my markers that I put out.

18 Q And what is the purpose of putting those markers out  
19 there?

20 A Well, photographed from a distance, you're not going  
21 to be able to see something like a shell casing lying  
22 there. So it just helps to orient them in the photograph.  
23 It also gives you a reference point when you're collecting  
24 them and putting a crime scene sketch together and things  
25 like that. I can say marker one was this at this location

1 and marker two was this at this location.

2 Q If you go back and start looking at pictures of  
3 shotgun shells in the woods, you start getting confused as  
4 to which one was where?

5 A Yes, ma'am.

6 Q And Mr. Lyles talked about one being found in the  
7 roadway. Did that happen as you arrived or while you were  
8 there? Where was Item #3 found? Had they found it by the  
9 time you got there?

10 A They had found all of them and it was there. It had  
11 already been run over when I got there. And some of the  
12 Oconee County Sheriff's officers were out there trying to  
13 keep people from riding on that side of the road until we  
14 got over there and photographed it and collected it. But  
15 it had been run over before I arrived.

16 Q And those shotgun shells, similar to Item #13, would  
17 you have packaged those, collected them, and taken them to  
18 SLED for later analysis?

19 A Yes, ma'am. I would have packaged them separately  
20 from Item #13.

21 (WHEREUPON, State's Exhibit No. 12 was marked for  
22 identification only.)

23 BY MS. HERVEY:

24 Q Let me show you what's been marked, at this point, as  
25 State's Exhibit No. 12, and ask you if this box relates in

1 any way to your Items #14, 15, and 16?

2 A Yes, ma'am. I have my initials and date on the  
3 bottom seal. I can't see the top seal. It's been  
4 resealed a couple of times. I would have sent these on to  
5 evidence processing. And then they would have gone on to  
6 firearms after that.

7 Q And let me just ask you to open that box and confirm  
8 that your Item #14, 15, and 16 is still contained within  
9 State's Exhibit No. 12?

10 A Yes, ma'am. These have my initials, case number, and  
11 my item numbers on them.

12 Q All right. And was any effort made to fingerprint  
13 the shotgun shells?

14 A No, ma'am.

15 Q And is there a reason why that was not done?

16 A It has been my experience that once shells or  
17 cartridges have been ejected from a weapon, the likelihood  
18 of getting fingerprints on them is greatly reduced. Just  
19 the heat and the motion will probably disrupt the print  
20 staying on it if there are any prints.

21 In this instance, these three shotgun shells, you  
22 know, assuming they were part of the crime scene  
23 originally had been carried away. My thinking was that  
24 the person that carried them away had them in his hands  
25 for any length of time. There was a good chance that,

1 perhaps, some DNA material, skins cells or something, may  
2 have transferred onto the shotgun shells.

3 Once you process something for fingerprints -- or the  
4 process I would have used on these, it's my understanding  
5 that that might ruin the chance for getting DNA off the  
6 shotgun shells. So it was either fingerprint them or  
7 possibly get DNA. And, in my opinion, the potential of  
8 getting DNA was greater than the fingerprints. So I went  
9 ahead and chose to send them to the DNA section, instead  
10 of processing them for fingerprints.

11 Q And that heat that you talked about immediately after  
12 being ejected from the gun, does that heat linger for any  
13 amount of time, in your opinion?

14 A I mean, it could. But, I mean, you're talking about  
15 a small explosion is what happens when a bullet goes off.  
16 So when the gun is shot and then the round is racked off,  
17 you're talking about a lot of heat inside the chamber  
18 there. And then it's thrown out and bounced around on the  
19 ground possibly. That, you know, will probably ruin  
20 fingerprints if there are any on the casings.

21 Q And also what were -- the impact of the car rolling  
22 over -- or driving over the one suspect shotgun shell in  
23 that manner, what would that have done with your ability  
24 to achieve a fingerprint off of that?

25 A That would have eliminated it, in my opinion. I



1 mean, the shotgun shell was kind of flattened out because  
2 it had been run over. It just would have ruined it if  
3 there were any fingerprints on that one.

4 Q And have you ever been able to really get a known  
5 identifiable lift off a shotgun shell?

6 A I have not. I have seen it done before in reading  
7 about latent prints and stuff. And it is possible.  
8 Again, if -- in my opinion, at the time, latent print  
9 processing versus potential DNA evidence, the potential  
10 for getting DNA was greater. So I wanted to attempt that  
11 process, as opposed to the fingerprints.

12 Q All right. And not only for DNA analysis, but these  
13 shotgun shells were submitted by you to SLED for  
14 ballistics?

15 A Yes, ma'am. When I logged them in, they were sent  
16 first to evidence processing to swab them and see if there  
17 were DNA material on them. And then from there, they  
18 would have been sent to our firearms department for  
19 ballistic testing.

20 Q And other than the shotgun shells, these three  
21 shotgun shells you collected, and the photographs taken of  
22 them prior to their collection, was there any other  
23 evidence collected out there at Zion Road?

24 A Just the three shotgun shells that I'm aware of -- or  
25 that's all that I collected.

1 Q And then moving you from there, did you then go to  
2 Yohlanda Drive?

3 A Yes, ma'am.

4 Q And at -- just briefly, if you could, what did you  
5 find there? What was the structure that you found at  
6 Yohlanda Drive?

7 A It was a mobile home sitting on a lot a little ways  
8 off the road.

9 Q And let me show you State's Exhibit No. 5, and ask  
10 you does this photograph relate in any way to a second  
11 crime scene or structure that you responded to?

12 A Yes, ma'am. That's a photograph of the front door  
13 there of the mobile home. It was [REDACTED].  
14 This one shows the numbers on the side of the mobile home.

15 Q And what process do you go through once you get there  
16 in terms of -- is it similar to what you do at the  
17 Westminster Highway, the first crime scene, in terms of  
18 documenting it first with photos and those type of things,  
19 or are you looking for something more specific?

20 A Well, we would have discussed this with the  
21 investigators -- Lieutenant Reed. They had secured a  
22 search warrant for the residence. So knowing what we had  
23 at the Westminster crime scene, we would have then been  
24 looking for certain items or potential items inside this  
25 residence that was identified as potential suspect in the

1 case.

2 So we would go through and the first thing would be  
3 to document it with photographs showing how it was when we  
4 got there, just going room by room looking. We would be  
5 looking for -- since we've got a crime of violence and  
6 there was a good amount of blood shed, I would be looking  
7 for potential blood on things like door knobs, the rails  
8 on the porch, things like that. If somebody had left the  
9 Westminster crime scene and they had any blood on them --  
10 a lot of times that will happen -- if you know where they  
11 went, then you're going to look and see if you can find  
12 blood wherever they went to.

13 In this case, if this was the instance where the  
14 Defendant had come back here directly from that crime  
15 scene, then there's a possibility of blood on the  
16 doorknobs and things like that, so we would have been  
17 looking. Also in sinks, if someone had tried to clean up.  
18 We also knew that a firearm had been used. And we had a  
19 shotgun shell. So we would be looking for a shotgun and  
20 similar shells or maybe the shells we found up the road,  
21 similar shells to those. Anything that might link that  
22 scene at Yohlanda Drive back to the scene at Westminster  
23 Highway.

24 (WHEREUPON, State's Exhibit Nos. 5-G and 5-H were  
25 marked for identification only.)

1 BY MS. HERVEY:

2 Q Let me show you the rest of 5 -- I believe I showed  
3 you State's Exhibit No. 5-B. Let me show you State's  
4 Exhibit Nos. 5-A through 5-H. Let me ask you,  
5 collectively, looking at those pictures, do they document  
6 the items that you collected at the Yohlanda Drive  
7 residence and the scene as you found it out there on that  
8 particular day?

9 A Yes, ma'am, they do.

10 MS. HERVEY: Your Honor, at this time, we would move  
11 to admit State's Exhibit Nos. 5-A through 5-H into  
12 evidence.

13 THE COURT: Any objection?

14 MR. ALLEN: No objection, Your Honor.

15 THE COURT: Ladies and gentlemen, State's Exhibit  
16 Nos. 5-A through 5-H are admitted into evidence without  
17 objection. State's Exhibit Nos. 5-A through 5-H.

18 You may publish.

19 (WHEREUPON, State's Exhibit Nos. 5-A, 5-B, 5-C, 5-D,  
20 5-E, 5-F, 5-G, and 5-H were admitted into evidence.)

21 MS. HERVEY: I'm just going to hand them to the  
22 Foreman of the jury and let them familiarize themselves  
23 with the photos before we go any further with Mr. Curtis'  
24 testimony.

25 THE COURT: Very well.

1 Do you want to get the photographs back and attempt  
2 to use them?

3 MS. HERVEY: No. We're going to stick with the  
4 old-fashioned way. And if we take a break, I'll try to  
5 get it running then.

6 We'll try that.

7 Mr. Bailiff, if you'll get the photographs from them  
8 and we'll go through with everybody.

9 THE COURT: Counsel, approach.

10 (WHEREUPON, a bench conference was held.)

11 THE COURT: All right. Madam Foreperson, and, ladies  
12 and gentlemen of the jury, I received your question that  
13 was handed to me when the pictures were handed back. I  
14 believe you have your question answered. But I'll ask you  
15 in a moment whether your question was answered. I'll make  
16 the question a Court's Exhibit without objection from the  
17 attorneys.

18 You may proceed.

19 MS. HERVEY: Thank you, Your Honor.

20 BY MS. HERVEY:

21 Q Let's start with State's Exhibit No. 5-B. And if you  
22 could -- and I'll try and zoom in a little for you. Just  
23 tell the jury what we're looking at in this photo.

24 A This is the front door and front porch area of the  
25 mobile home there at Yohlanda Drive.

1 Q Thank you.

2 And then just moving quickly to State's Exhibit No.  
3 5-H, what are we seeing here?

4 A We're just seeing the side -- one of the side  
5 pictures. We would take picture from probably both sides,  
6 the front and the back, just to show the condition of the  
7 entire scene as it was when we got there.

8 Q The car in the photograph and any other cars, are  
9 those law enforcement automobiles being present there?

10 A I believe that is a sheriff's patrol car. Again,  
11 when I get there, I'm taking photographs of the way it is  
12 when I got there. We don't move anything prior to  
13 photographing. So if a car is in the way or something  
14 like that, it gets in the photograph as well.

15 Q I'm showing you State's Exhibit No. 4-G, is this just  
16 the back of the trailer?

17 A Yes, ma'am. The back porch and sliding glass door on  
18 the backside of the mobile home.

19 Q All right. And were you able to find any weapons  
20 inside the residence?

21 A There was a shotgun, a 12-gauge shotgun, in the back  
22 bedroom closet.

23 Q And let me show you State's Exhibit No. 5-F. And, if  
24 you could, explain what this is in relation to the gun you  
25 just mentioned.

1 A That's just a picture of the shotgun. It was in the  
2 closet stuck in one of the corners beside the door. If  
3 you step in the closet door there, it was on one of the  
4 sides between the two studs.

5 Q And just briefly, if you could, describe to the jury  
6 the condition in which you found this shotgun.

7 A It was propped up there in the corner. And when I  
8 pulled it out, it was empty. And it appeared to be  
9 cleaned. It was -- it appeared to be recently cleaned.  
10 There was a good amount of oil on it. It just seemed like  
11 a normal shotgun. I don't know how else to describe it.

12 Q To members of the jury not familiar with cleaning a  
13 shotgun, why does the presence of oil indicate that it's  
14 been cleaned?

15 A Well, it's a piece of metal. And if it gets wet or  
16 sits out long enough, it will rust and won't function  
17 properly. So if you own a firearm, you're periodically  
18 going to want to clean it, oil it, and keep it in working  
19 condition. This one, to me, appeared to be recently  
20 cleaned. Because there was a good amount of oil on the  
21 metal parts.

22 Q The metal parts being the rifling and chamber, those  
23 type areas?

24 A Yes, ma'am. The barrel and under the underside of  
25 the pump -- where the pump slides back to the breach and

1 things like that.

2 Q And you stated it was empty, are you referring then  
3 to a magazine or chamber present in this gun?

4 A Well, there were no shells in the tube when I got it  
5 out of the closet.

6 Q And did you simply collect that and package it in a  
7 steel container and then take it to SLED for further  
8 examination and testing?

9 A Yes, ma'am, I did.

10 Q And did the presence of any oil in any way effect  
11 your ability to retrieve any latent lifts off of this  
12 item?

13 A Well, if it's oily, it's going to inhibit leaving  
14 latent impressions. So, yes, it would.

15 MS. HERVEY: The Court's indulgence one moment, Your  
16 Honor.

17 (Pause.)

18 BY MS. HERVEY:

19 Q This picture that we're seeing here, as far as  
20 looking at this picture to know where it is -- and before  
21 we go any further, if you could, describe where this gun  
22 is located at this particular time both in terms of the  
23 room and the structure --

24 THE COURT: Use the exhibit number for the record,  
25 please, Counsel.



1 MS. HERVEY: And I apologize, Your Honor.

2 We're still on the same one we were on last time. It  
3 is still State's Exhibit No. 5-F, Your Honor.

4 THE COURT: State's Exhibit No. 5-F.

5 BY MS. HERVEY:

6 Q Where are we at? Where is this at?

7 A This is in the back bedroom all the way at the end of  
8 the trailer. There's a closet in that bedroom. And you  
9 can kind of step into the closet. But it's not what I  
10 would call a walk-in closet. So it's got -- I forget if  
11 it had like a sliding panel door on it or whatever, but  
12 you open the door.

13 This is me trying to squeeze into the closet and get  
14 a picture kind of wrapped around the corner. Like I said,  
15 it was where a portion of the closet meets a portion of  
16 the wall there. And it was just propped up in the corner.

17 Q And that's at Yohlanda Drive?

18 A Yes, ma'am.

19 Q And you collected this weapon?

20 A Yes, ma'am, I did.

21 (WHEREUPON, State's Exhibit No. 18 was marked for  
22 identification only.)

23 BY MS. HERVEY:

24 Q Let me show you State's Exhibit No. 18, and ask you  
25 if this is the gun that you collected and if there are any

1 markings either on the packaging or the weapon that  
2 indicates that that's the gun that you collected at  
3 Yohlanda Drive?

4 A It is the shotgun. It's got my -- the sticker where  
5 it was assigned to me as far as processing it for latent  
6 prints. But also back here near the trigger guard, I put  
7 the case number, the item number, and my initials. So  
8 this is the gun that I retrieved out of the closet.

9 MS. HERVEY: Your Honor, at this time, we would move  
10 State's Exhibit No. 18 into evidence.

11 THE COURT: Any objection?

12 MR. ALLEN: No objection, no, sir.

13 THE COURT: Ladies and gentlemen of the jury, State's  
14 Exhibit No. 18 will be admitted into evidence. State's  
15 Exhibit No. 18 into evidence without objection.

16 You may proceed, Counsel.

17 (WHEREUPON, State's Exhibit No. 18 was admitted into  
18 evidence.)

19 BY MS. HERVEY:

20 Q If I ask you to break that seal and open that item,  
21 are you comfortable with securing that weapon with one of  
22 these tags to impair its operation?

23 A Sure.

24 Q And I'm going to ask you to do that. I don't know  
25 which one is going to work better.

1 A Well, I said I can secure it, but maybe not. I can't  
2 get the slide back.

3 MS. HERVEY: Do you want to try it?

4 THE WITNESS: Let me let him have a try at it just  
5 out of an abundance of caution. I don't like unsecured  
6 weapons wandering around the courtroom.

7 THE COURTROOM OFFICER: I'm sorry. This is a little  
8 different than what I'm familiar with.

9 MS. HERVEY: That's okay. We'll leave it in that  
10 condition and maybe a witness later will get it. But  
11 we'll be very careful.

12 BY MS. HERVEY:

13 Q But you can tell there's no ammunition in it?

14 A No, ma'am. You can see up in the tube and it's  
15 completely empty.

16 Q And that's the weapon you collected and later  
17 submitted to SLED for testing?

18 A Yes, ma'am.

19 Q And you stated there's a sticker on the bag where  
20 they ask you to fingerprint it -- or that was attempted in  
21 any way?

22 A Well, I attempted to fingerprint it once I got back  
23 to the laboratory. I put an assignment on myself to  
24 fingerprint it before it went to firearms.

25 Q And were you able to get any fingerprints off of it?

1 A No, ma'am, I was not.

2 Q Why don't you put it back in that plastic bag for  
3 now. That's not secure, but it will be better.

4 While my camera equipment is working, let me draw  
5 your attention to State's Exhibit No. 5-E, and ask you  
6 what is depicted in State's Exhibit No. 5-E?

7 A That's a box of Remington shotgun shells and a couple  
8 of loose shells, cartridges, on a shelf inside that same  
9 closet.

10 Q And did you collect those as well?

11 A Yes, ma'am, I did.

12 Q And for what purpose was that?

13 A Well, they were similar to the shells found on Zion  
14 Road and to the one shell found in the house as far as the  
15 same brand and same gauge. But we also -- if we've got  
16 something we think may have been used, we want to collect  
17 samples for the firearms department to use.

18 So if these are similar shells or cartridges to the  
19 ones used in the crime, they're going to use them to test  
20 fire and make their comparisons. So if we're able to  
21 secure that kind of thing in a crime scene, we will send  
22 it along with the evidence for them to use.

23 Q All right. Moving you to State's Exhibit No. 5-A,  
24 are these the same shotgun shells or did you find more at  
25 the scene?

1       A     Those are the same. The shells on the left are  
2       before they were out of the box on the shelf. And then I  
3       just dumped the box out to show what shells were in there  
4       and just took a picture of them. And then I put them all  
5       back in the box and brought them back to SLED and turned  
6       them over to firearms.

7       Q     So all the shells contained within this photograph  
8       are from that upper closet area; is that correct?

9       A     Yes, ma'am.

10      Q     They were all within that box or surrounding that  
11      box?

12      A     Yeah. The ones that are near the box were inside.  
13      And then the four to the left on the picture were,  
14      actually, out on the shelf beside the box.

15      Q     Let me zoom in real quick for you. Are all the  
16      shotgun shells the same that you collected, if you know?

17      A     I didn't go through and look at all the ones in the  
18      box. You see that there's some that are different colors,  
19      there's a red one in there. I don't know if that's any  
20      different. The four on the outside all seem to be the  
21      same. They were there in the vicinity of the shotgun, so  
22      I just -- I collected all of them. That was up to  
23      firearms to look through those.

24               (WHEREUPON, State's Exhibit Nos. 5-I and 5-J were  
25               marked for identification only.)

1 BY MS. HERVEY:

2 Q Let me show you State's Exhibit Nos. 5-I and 5-J, and  
3 ask you if those are the same shotgun shells that you  
4 collected at the scene?

5 A Yes, ma'am. These are two photographs showing those  
6 shells. One of them is the picture I took first. That's  
7 the box and the -- I believe it's four shells outside. And  
8 then the other one, we moved the box just to get a better  
9 shot of the shells lying beside it.

10 Q Were there any shotgun shells in that closet that you  
11 did not collect?

12 A No. Every shotgun shell in there that I could find I  
13 brought back.

14 THE COURT: Counsel, as to the reference, are you  
15 moving for its admissibility?

16 MS. HERVEY: Yes, Your Honor.

17 I apologize.

18 THE COURT: Any objection?

19 MR. ALLEN: No objection.

20 THE COURT: Very well.

21 Ladies and gentlemen of the jury --

22 That's State's Exhibit Nos. 5-I and 5-J?

23 MS. HERVEY: Yes, Your Honor.

24 THE COURT: Ladies and gentlemen of the jury, State's  
25 Exhibit Nos. 5-I and 5-J will be admitted into evidence

1 without objection. State's Exhibit Nos. 5-I and 5-J are  
2 in evidence.

3 You may publish.

4 (WHEREUPON, State's Exhibit Nos. 5-I and 5-J were  
5 admitted into evidence.)

6 BY MS. HERVEY:

7 Q And State's Exhibit No. 5-B, if we could go to this  
8 one real quick. There are several items on the bed here.  
9 If you could, what is the jury seeing in that photograph?

10 A That's just where I pulled the shotgun out of the  
11 closet and the box of shells. And then the shells that  
12 were on the shelf beside the box, I just laid them out  
13 there and took a picture of them showing what I collected  
14 out of the closet.

15 Q And other than the shotgun and the shotgun shells,  
16 were there any attempts to lift latent prints off the  
17 residence at Yohlanda Drive?

18 A No, ma'am. It was the Defendant's residence. So  
19 getting his fingerprints inside his residence, short of  
20 them being in blood, wouldn't have been useful, in my  
21 opinion.

22 And so as part of the process of going through the  
23 trailer, like I said earlier, I was looking to see was  
24 there any blood on doorknobs, or the sink, or counters, or  
25 anything like that. And I didn't find any bloody prints

1 in the residence. So finding his prints in his own house  
2 wouldn't have been informative for the Court.

3 Q And did you find any blood of any kind or any  
4 suspected blood of any kind that you attempted to collect  
5 to preserve from the residence of Yohlanda Drive?

6 A There were a couple of drops of blood on the bed  
7 sheet. And I tested them in the field. We have a field  
8 test that will indicate whether it's blood or not -- or  
9 potentially blood. And it tested positive. So I cut  
10 those off the sheet. And I brought those back and sent  
11 those to our DNA department.

12 Q Let me show you State's Exhibit No. 5-C, and ask you  
13 if that is what's depicted in that photograph?

14 A Yes, ma'am. Those are some blood drops on the sheet  
15 in the bed in that main bedroom there at Yohlanda Drive.

16 Q You're not able to state whether or not it was fresh  
17 blood, or dried blood, or any type thing, are you?

18 A No. It was just something that appeared to be blood.  
19 So I tested it with a field kit we've got. And it tested  
20 positive. So I took it back because it was potentially  
21 blood. And I have no idea whose blood it was or when it  
22 was put on the sheets.

23 Q Other than these two residences, did you have the  
24 opportunity to process a van in relation to this case?

25 A Yes, ma'am, I did.



1 Q And where was that van located once you found it?

2 A I was taken to the impound lot at the sheriff's  
3 office here in Oconee County.

4 Q And was that after you had done these two crime  
5 scenes?

6 A Yes, ma'am.

7 Q And approximately how long were you at these two  
8 crime scenes about?

9 A We got the call at 9:00, roughly. So I left  
10 Columbia. And I think it was about 11:25, 11:30 when we  
11 got to Westminster. I believe I left there at 5:00 or  
12 5:30. Then we went to Zion Road and collected the shotgun  
13 shells. We went to Yohlanda Drive. I want to say it was  
14 10:00, 11:00 at night when I got to the van. So we had  
15 been in Oconee County -- or I had left early. So it was  
16 about a 14-hour day at that point.

17 Q Let me show you State's Exhibit Nos. 6-A through 6-E  
18 and -- let me back up. I don't know how this one got --  
19 let me show you State's Exhibit No. 6-A, and take you back  
20 to Yohlanda Drive. There was a bundle of evidence you  
21 collected at that scene?

22 A There was. This is a picture of the washing machine  
23 in the mobile home there.

24 Q And before you go any further, does that accurately  
25 depict the washing machine you found at Yohlanda Drive?

1       A     Yes, ma'am. I don't recall if the top was up or not.  
2       But when we come in to do a search warrant, we look  
3       through everything, depending on what kind of evidence  
4       we're looking for.

5           MS. HERVEY: And, Your Honor, at this time, I'm  
6       moving State's Exhibit No. 6-A into evidence without  
7       objection.

8           THE COURT: Any objection?

9           MR. ALLEN: No, sir, no objection.

10          THE COURT: Ladies and gentlemen of the jury, State's  
11       Exhibit No. 6-A will be admitted into evidence without  
12       objection. State's Exhibit No. 6-A in evidence.

13           You may publish.

14           (WHEREUPON, State's Exhibit No. 6-A was admitted into  
15       evidence.)

16       BY MS. HERVEY:

17       Q     And the items in the washing machine, in what  
18       condition were they found? Were they dry? Were they --

19       A     They were still wet. They had been washed and not  
20       moved to the dryer. So I collected everything out of the  
21       washing machine and put it in a big plastic bag.

22       Q     And you sent them to SLED as well?

23       A     I brought them back. And they would have gone to our  
24       evidence processing to see if they could find -- if there  
25       was any blood on any of the clothing or anything like

1       that, potential DNA evidence.

2       Q     And that was something you collected from Yohlanda  
3       Drive. But you didn't take those out and do the same  
4       field-testing that you did on the bed sheets?

5       A     No, ma'am. They were all wet. So they had all been  
6       together. And there were a lot of them. So we just put  
7       them in the plastic bag. And we have a department that  
8       will go through and separate evidence like that looking  
9       for bodily fluid, blood and stuff, potential DNA evidence  
10      on any number of items.

11      Q     And is Cecil Bradstreet one of those individuals that  
12      would have done something like that?

13      A     Yes, ma'am.

14      Q     And they have more sophisticated techniques than out  
15      in the field that you have that they could have performed  
16      on the bed sheet; is that correct?

17      A     Well, they're in a laboratory setting. So they've  
18      got the ability to take things, spread them out, separate  
19      them, and keep them from contaminating each other,  
20      chemicals. I think they use the same chemicals to do a  
21      presumptive test. But they're able to do a much more  
22      thorough job than I can out at somebody's home looking at  
23      stuff like that.

24      Q     Let me go back to State's Exhibit Nos. 6-B through  
25      6-E, and ask you if these relate to that van you went to

1 after Yohlanda Drive?

2 I apologize for the confusion.

3 A Yes, ma'am. These are pictures of the van at the  
4 impound lot.

5 Q And did you document those with photographs before  
6 you went through the processing of the van itself?

7 A Yes, ma'am, I did.

8 MS. HERVEY: And, Your Honor, at this time, we would  
9 move State's Exhibit Nos. 6-B through 6-E into evidence.

10 THE COURT: Any objection?

11 MR. ALLEN: No, sir, no objection.

12 THE COURT: Ladies and gentlemen of the jury, State's  
13 Exhibit Nos. 6-B through 6-E will be admitted into  
14 evidence without objection. State's Exhibit Nos. 6-B  
15 through 6-E in evidence.

16 You may publish.

17 (WHEREUPON, State's Exhibit Nos. 6-B, 6-C, 6-D, and  
18 6-E were admitted into evidence.)

19 BY MS. HERVEY:

20 Q And when you first got to the van, you said it was at  
21 the impound lot when you found it there?

22 A Yes, ma'am.

23 Q Did you notice anything about just the general  
24 condition of the van and its appearance? Did you detect  
25 any strange odors or anything else about the van?

1 A Well, it was a work van, so there was a lot of things  
2 in it. And you could smell gasoline when you opened the  
3 doors.

4 Q Was it wet in any way? Did you ever see any wet  
5 gasoline?

6 A No, ma'am. I don't recall seeing anything like that.  
7 When you opened the door, you could get a heavy odor of  
8 gasoline from the interior.

9 Q And let me show you State's Exhibit No. 6-E.

10 MS. HERVEY: Well, I've lost my lucky charm again,  
11 Your Honor.

12 BY MS. HERVEY:

13 Q Let me show you State's Exhibit No. 6-D, and ask you  
14 what is depicted in that particular photograph?

15 A This is a photograph taken from outside the driver's  
16 door with the door open, just trying to show the interior  
17 of the vehicle.

18 Q Is there any damage to what is depicted in that  
19 photograph?

20 A Well, the driver's seat looks like it has been cut  
21 up, or the vinyl has been torn on the driver's seat.

22 Q And is that what you were documenting in that  
23 photograph?

24 A Well, that and just showing what was in there and the  
25 condition. That was just showing how we found it before

1 we did anything or moved anything in there.

2 Q And did you attempt to fingerprint items anywhere  
3 inside this van?

4 A Yes, ma'am. We dusted the doors and the windows and  
5 looked through the inside. We probably did the rearview  
6 mirror. The dash and steering wheel aren't really  
7 conducive surfaces. But we looked through to see if there  
8 was anything that might be of potential to get latent  
9 prints off of.

10 (WHEREUPON, State's Exhibit No. 6-F was marked for  
11 identification only.)

12 BY MS. HERVEY:

13 Q And let me show you State's Exhibit No. 6-F -- well,  
14 I thought there was one in here of the van, the driver's  
15 side of the van.

16 Is that the condition of that same van we've been  
17 talking about?

18 A Yes, ma'am, it is.

19 MS. HERVEY: I'm moving State's Exhibit No. 6-F into  
20 evidence, Your Honor.

21 THE COURT: Any objection?

22 MR. ALLEN: No, sir, no objection.

23 THE COURT: Ladies and gentlemen of the jury, State's  
24 Exhibit No. 6-F in evidence without objection.

25 You may publish.

1 (WHEREUPON, State's Exhibit No. 6-F was admitted into  
2 evidence.)

3 BY MS. HERVEY:

4 Q Were you able to get any lifts anywhere out of this  
5 van?

6 A Yes, ma'am. I recovered a latent impression off the  
7 hood of the van, exterior, and off the interior passenger  
8 door window.

9 Q And were you able to match those to any known prints  
10 of either of the victims or the Defendant, Randy Frady?

11 A No, ma'am. I was not able to identify those prints  
12 to either the victims or the Defendant in this case.

13 Q But, again, these fingerprints, similar to the ones  
14 in the house, it was unclear as to how long those prints  
15 had been there and those type of things?

16 A Yes, ma'am. I have no idea how long they had been  
17 there.

18 Q And you didn't obtain known fingerprints from any  
19 member of Mike Harper's family or anything?

20 MR. ALLEN: Objection to leading.

21 THE COURT: Sustained.

22 Direct examination, Counsel.

23 BY MS. HERVEY:

24 Q Were you ever submitted any known fingerprints of  
25 Mr. Harper's family or anything like that?

1 A No, ma'am, I was not.

2 Q And that would be the individual to whom you know  
3 owned the van or was represented to you as owning the van?

4 A Yes, ma'am.

5 MS. HERVEY: Your Honor, at this time, we would just  
6 ask to publish State's Exhibit Nos. 6-B, 6-C, 6-D, 6-E,  
7 and 6-F to the jury and handing it to --

8 THE COURT: B through F of what number?

9 MS. HERVEY: State's Exhibit No. 6, Your Honor.

10 THE COURT: Already in evidence?

11 MS. HERVEY: Yes, already in evidence.

12 THE COURT: Before we proceed any further, Madam  
13 Foreperson, you handed me a note, which I conferred with  
14 Counsel. I believe it was in reference to earlier when  
15 our equipment was not working and we had passed to the  
16 jury --

17 At that time, I believe, Counsel, it was State's  
18 Exhibit Nos. 5-A through 5-H.

19 And the note read, "Are these the pictures from  
20 Yohlanda Drive?"

21 I ask you now, Madam Foreperson, has your question  
22 been answered sufficiently?

23 THE FOREPERSON: Yes, sir.

24 THE COURT: Very well.

25 Without objection, my understanding is I will make



1 the note Court's Exhibit No. 2.

2 Is that correct from the Defendant?

3 MR. ALLEN: Yes, Your Honor.

4 THE COURT: Is that correct from the State?

5 MS. HERVEY: Yes, Your Honor.

6 THE COURT: Very well.

7 Court's Exhibit No. 2 without objection.

8 You may proceed, Counsel.

9 (WHEREUPON, Court's Exhibit No. 2 was marked for  
10 identification and admitted into evidence.)

11 MS. HERVEY: Your Honor, if they could just have the  
12 opportunity to view those photographs without being  
13 distracted.

14 THE COURT: In light of the fact that we're passing  
15 material, at this point, ladies and gentlemen of the jury,  
16 I'm going to give the jury a break at this point. I'm  
17 going to ask you not to discuss the case during the break.

18 I will allow you, if you would like to do so, during  
19 your break -- as long as I get all my exhibits back in the  
20 courtroom, I'll allow you to take the exhibits. And you  
21 may view the exhibits so we can utilize this time during  
22 the break.

23 You can stretch your legs, use the restroom. We'll  
24 take about ten minutes.

25 Mr. Curtis, you understand you're still in the middle

1 of your examination. So I'm going to ask you not to  
2 discuss your testimony.

3 Ladies and gentlemen, if you'll retire to the jury  
4 room.

5 Please bring all my exhibits back. I believe you've  
6 got State's Exhibit Nos. 5-A -- I mean, State's Exhibit  
7 Nos. 6-A through 6-F.

8 MS. HERVEY: State's Exhibit Nos. 6-B through 6-F.

9 THE COURT: All right. State's Exhibit Nos. 6-B  
10 through 6-F.

11 (WHEREUPON, the jury was excused from open court at  
12 approximately 10:23 a.m.)

13 THE COURT: All right. We'll take ten minutes.  
14 And you can step down and use the restroom.

15 (WHEREUPON, a break was taken.)

16 THE COURT: Is the State ready to proceed?

17 MS. HERVEY: Yes, Your Honor.

18 THE COURT: Is the Defendant ready to proceed?

19 MR. ALLEN: Yes, Your Honor.

20 THE COURT: Bring the jury in.

21 (WHEREUPON, the jury came into open court at  
22 approximately 10:38 a.m.)

23 THE COURT: Madam Foreperson, if the jury has the  
24 photographs, give them back to the bailiff.

25 Each of you have had an opportunity now to view them

1 during the break?

2 THE FOREPERSON: Yes, sir.

3 THE COURT: Very well. If you will hand them back to  
4 the Solicitor.

5 Solicitor, your witness, you may proceed.

6 MS. HERVEY: Thank you, Your Honor.

7 BY MS. HERVEY:

8 Q And just to kind of bring the jury back. We  
9 processed the van; correct?

10 A Yes, ma'am.

11 Q You found those two -- and, again, they were unknown?

12 A Yes, ma'am.

13 Q And other than that, no other evidence was taken out  
14 of the van and no other samples were taken out of this  
15 van?

16 A No, ma'am. I didn't find anything that I thought  
17 would be useable inside the van, other than those latent  
18 lifts.

19 Q Okay. I'm going to draw your attention back to those  
20 shotgun shells that we talked about that you found in the  
21 closet at the residence at Yohlanda Drive. Again, taking  
22 you back, are these the ones spread out on the bed in  
23 State's Exhibit No. 5-A?

24 A Yes, they are.

25 MS. HERVEY: And, Your Honor, if I could just show

1       this as I walk down. They've already seen it on the  
2       monitor.

3               (WHEREUPON, State's Exhibit No. 17 was marked for  
4               identification only.)

5       BY MS. HERVEY:

6       Q     Let me show you what's been marked for identification  
7       purposes as State's Exhibit No. 17, and ask you, again, if  
8       this package bears marks by you to show how State's  
9       Exhibit No. 17 relates to the shotgun shells in State's  
10      Exhibit No. 5-A?

11      A     Yes, ma'am. That's going to be the package that's  
12      got my initials and the date that I sealed the back of the  
13      envelope on it.

14      Q     And, again, if you could -- are the scissors still up  
15      there?

16      A     Yes, ma'am.

17      Q     If you could, just open that and confirm that those  
18      shotgun shells are contained within State's Exhibit No. 17  
19      without removing them.

20      A     Yes, ma'am, they do.

21      Q     And these have been similarly sealed by you and  
22      submitted to SLED for further analysis?

23      A     Yes, ma'am. I would put the box and all the shells I  
24      collected inside an envelope and seal it. And it would  
25      have been sent to firearms.

1 Q And you stated there wasn't fingerprints done on  
2 these shells because they were just there in the closet,  
3 not appearing they had been touched recently. And it was  
4 more for a ballistic sample that you collected these  
5 shells; is that correct?

6 A Yes, ma'am. That was the idea behind that.

7 MS. HERVEY: Nothing further from this witness, Your  
8 Honor.

9 THE COURT: Cross-examination?

10 MR. ALLEN: May it please the Court?

11 THE COURT: Yes, sir.

12 CROSS-EXAMINATION

13 BY MR. ALLEN:

14 Q Mr. Curtis, I want to ask you if you would refer to  
15 your reports. One is dated August the 4th of 2006, and  
16 one is dated October the 26th of 2004, please, sir.

17 A Yes, sir.

18 Q Before I do that, though, let me ask you just in  
19 general about a 12-gauge shotgun. To your knowledge,  
20 that's a very, very common shotgun, is it not?

21 A To my knowledge, it is, yes, sir.

22 Q There's probably hundreds of those things in this  
23 county, wouldn't you agree with that?

24 A I would think there would be a lot.

25 Q Hundreds? Thousands?

1 A Possibly.

2 Q And a Remington shell, a Remington shotgun shell is  
3 very, very common, is it not?

4 A To my knowledge, that's a common brand of shotgun  
5 shell, yes, sir.

6 Q In fact, isn't it the most common shotgun shell?

7 A I couldn't tell you that. I'm not a hunter. But I  
8 am familiar with Remington manufacturing ammunition and  
9 shotgun shells.

10 Q In your opinion, in a county this size, wouldn't  
11 there probably --

12 MS. HERVEY: Your Honor, I'm going to object as to  
13 his opinion "in a county this size." He's been qualified  
14 as a crime scene collection --

15 THE COURT: Sustained.

16 MR. ALLEN: Well, he can say --

17 THE COURT: Rephrase the question, Counsel. This is  
18 cross-examination. You understand the limits for which  
19 the witness was qualified.

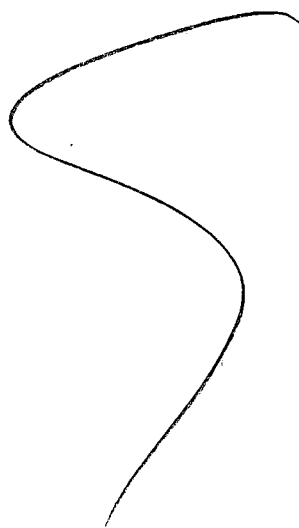
20 MR. ALLEN: Okay.

21 THE COURT: The objection is sustained on that basis.

22 MR. ALLEN: I understand.

23 THE COURT: Proceed.

24 MR. ALLEN: And if he doesn't know, that's an  
25 acceptable answer. And I'll just leave it at.



1 BY MR. ALLEN:

2 Q Remington shells are very, very, very common?

3 A To my knowledge, yes, sir.

4 Q Let me ask you about -- if you would, first of all,  
5 please, sir, refer to the October 26th, 2004, report.

6 A Yes, sir.

7 Q And I'm going to try to do this somewhat swiftly  
8 here. Just to review -- your testimony was somewhat  
9 lengthy. Just to review, there were no fingerprint  
10 matches from the smoke detector in the living room; is  
11 that correct --

12 A Yes, sir.

13 Q -- to Randy Frady?

14 And when I say a fingerprint match, I'm referring to  
15 Randy Frady.

16 A Yes, sir.

17 Q There was no fingerprint match from the smoke  
18 detector in the hallway to Randy Frady?

19 A No, sir.

20 Q There was no fingerprint match to Randy Frady from  
21 the lighter from the poolroom?

22 A No, sir.

23 Q Okay. And I'm going to skip Item #4 for right now.  
24 Okay. And we'll come back to that. Because I think that  
25 was in your supplemental report. And I'm going to skip



1 Item #5 and 6. Let's go to Item #18.

2 A Yes, sir.

3 Q The gas can, there was no positive fingerprint match  
4 to Randy Frady on the gas can, was there?

5 A No, sir.

6 Q Okay. And, in fact, on the -- what kind of shotgun  
7 was that?

8 A J.C. Higgins.

9 Q Do you have any knowledge who J.C. Higgins was?

10 A No, sir, I don't.

11 Q And the 12-gauge shotgun, there was no fingerprints  
12 matched to Randy Frady; is that correct?

13 A Correct.

14 Q Now, there was, however, a positive -- you had a  
15 print you could work from the poolroom door in the Jim and  
16 Barry Frady residence, did you not?

17 A I had three cards that I lifted prints off the  
18 poolroom door. Two of them had prints that I could  
19 compare to known individuals.

20 Q And those two that you could compare, again, came  
21 from the poolroom. I think it was the sliding glass door  
22 in the home of Jim and Barry Frady; isn't that correct?

23 A It was the door between the bedroom and the poolroom,  
24 and that was from their residence, yes, sir.

25 Q Okay. I beg your pardon. That door -- but those

1 fingerprints that you could use from that door inside Jim  
2 and Barry Frady's room did not match Jim Frady; correct?

3 A Correct.

4 Q Did not match Barry Frady; correct?

5 A Yes, sir.

6 Q And did not match Randy Frady?

7 A That is correct.

8 Q So it matched apparently someone unknown to us at  
9 this time?

10 A That is correct. I was not able to identify anybody  
11 to those prints.

12 Q That you were aware -- or made aware of?

13 A All the cards that I had that I compared, I couldn't  
14 identify them. And item -- well, I didn't run either one  
15 of those through the AFIS computer. They were not of a  
16 quality to be run. So I don't know whose prints those  
17 are.

18 Q And we still don't know?

19 A No, sir, I do not.

20 Q As far as you know?

21 A Yes, sir.

22 Q All right. In terms of the van. Now, did you  
23 personally know that the van was the subject of an alleged  
24 grand larceny at one time?

25 A Lieutenant Reed had told me that the van had been

1       stolen sometime around the incident. And that's why they  
2       were at that point thinking it may have been used and  
3       wanted me to process it.

4       Q     Did you understand as well that the van was turned  
5       back over to Michael Harper, who owned the van?

6       A     I don't recall if I knew that. I knew by the time I  
7       had gotten there -- and they told me they wanted it  
8       processed. They had it at the impound lot is where I went  
9       and processed it. So I don't know where it was during the  
10      interim. I don't recall if they told me they had turned  
11      it back over to the owner or not.

12      Q     If that van was used in this crime -- alleged crime  
13      and it was not preserved and it was turned back over to  
14      the supposed owner immediately after, say, nine hours  
15      before you looked at it, wouldn't that disturb you as an  
16      expert that that had been contaminated to some degree?

17      A     Well, the chain had been broken and the custody of  
18      the sheriff's office has been lost. So I can't attest to,  
19      you know, any evidence that would have been taken out of  
20      there. Because it was out of their control. So it would  
21      concern me, yes, sir.

22      Q     And it would have been very helpful to you, as an  
23      expert, had you had the van -- had the chain not been  
24      broken and the van gone from law enforcement to impound so  
25      that you could have inspected it?

1       A     That's the ideal situation, yes, sir. That's what  
2       people want.

3       Q     However, with the van itself, you did -- as you  
4       testified, you did attempt to process it when it was  
5       impounded at a later time; is that correct?

6       A     Yes, sir, I did.

7       Q     That's when you drove up from Columbia to Walhalla  
8       and you got here, you said, about 9:30?

9       A     No, sir. I was notified about 9:15 or so in the  
10      morning. We got here about 11:30 and did the Westminster  
11      scene. It was late in the evening when we got to the van.

12      Q     That's right. Okay. And, in spite of the situation  
13      with the van, you were able to get a couple of latent  
14      impressions that you could work with; isn't that true?

15      A     Yes, sir.

16      Q     Okay. Now, I understand -- you correct me if I'm  
17      wrong -- you got one from the hood of the van; is that  
18      correct?

19      A     Yes, sir, I did.

20      Q     And you got one from an interior window of the van?

21      A     Yes, sir, the passenger door window, interior  
22      passenger door window.

23      Q     So it was inside the van?

24      A     Yes, sir.

25      Q     You got one on the outside and one on the inside; is

1       that right?

2       A     That's correct.

3       Q     Let's start with the one on the hood of the van.

4       That fingerprint did not match Jim Frady, did it?

5       A     No, sir.

6       Q     It did not match Barry Frady, did it?

7       A     No, sir.

8       Q     And it did not match Randy Frady, did it?

9       A     No, sir, it did not.

10      Q     The fingerprint impression on the inside of the  
11      window there did not match Randy Frady, did it?

12      A     No, sir, it didn't.

13      Q     And so those two prints, the one that you had -- the  
14      impression you had to work with on the hood of the van, in  
15      your opinion, belongs to a third party that we don't -- we  
16      can't identify?

17      A     That's correct.

18      Q     And the fingerprint on the inside of the Michael  
19      Harper van belongs to a third party that we cannot now  
20      identify?

21      A     That is correct.

22      Q     Now, as far as the shotgun shells and fingerprints,  
23      let me ask you about that just for clarification. You  
24      didn't test, or SLED, whomever, didn't test the shells  
25      that were found out on the roadway or by the roadway

1 because of concern with DNA or something to that effect?

2 A Yes, sir. In looking at a piece of evidence like  
3 that, in my experience, it's extremely difficult to get  
4 latent prints off of expended cartridges. So in thinking  
5 that these cartridges had been removed from the  
6 Westminster scene and carried to Zion Road, a person  
7 probably would have held them in their hand, at least, for  
8 a period of time.

9 So, in my opinion, the chances of getting DNA was  
10 greater than me getting a useable fingerprint. And if I  
11 process something -- a shotgun shell, I'm going to fume it  
12 with super glue and black powder. And that may destroy  
13 the DNA that potentially could be on there. So I had to  
14 weigh one versus the other. And I thought potentially the  
15 DNA would have been there, as opposed to fingerprints.

16 Q So that's why that was not done?

17 A Yes, sir.

18 Q However, that did not apply to the one shell that was  
19 found in the bedroom at the Frady residence, did it?

20 A No, sir. And, again, based upon my experience,  
21 expended cartridges, the chances of getting usable  
22 fingerprints on them are very slim.

23 Q But it can be done?

24 A It is possible.

25 Q And it has been done a number of times, to your

1 knowledge, has it not?

2 A It is possible, yes, sir.

3 Q It is a fact that it can be done?

4 A Yes, sir, it is possible.

5 Q Okay. And that shell, apparently, as far as we know,  
6 went from the chamber to the floor to a carpeted floor  
7 surface?

8 A Yes, sir.

9 Q And most probably it would not have been touched by  
10 anyone else?

11 A Most probably.

12 Q Okay. But that one shell was not tested?

13 A No, sir.

14 Q For fingerprints?

15 A Not for fingerprints. I sent it for DNA, but not for  
16 fingerprints.

17 Q All right. And as far as blood and garments and  
18 such, soap and water will not remove blood from a garment,  
19 will it?

20 A No, sir. It's my understanding if something is  
21 washed, there is potential that blood and DNA could still  
22 be present.

23 Q It's very, very -- isn't it impossible to remove  
24 blood with simple soap and water?

25 MS. HERVEY: Your Honor, I'm going to object at this

1 point. He's not a qualified DNA expert. He's not  
2 qualified in attempting to extract things from these  
3 items. He can testify as to collecting it. But I think  
4 we're going beyond the scope of his expert opinion.

5 THE COURT: Sustained.

6 MR. ALLEN: I'll move on.

7 BY MR. ALLEN:

8 Q And in terms of blood, the shotgun was not checked  
9 for blood, or was it?

10 A Yes, sir. I checked the barrel. I did an  
11 examination. And then prior to processing it for  
12 fingerprints, I swabbed the interior of the barrel and did  
13 a field test for blood, which was negative.

14 Q Did you check anything other than the interior of the  
15 barrel?

16 A I did a visual exam. And in swabbing, I would have  
17 swabbed just outside the end of the barrel and in the  
18 interior. Sometimes when a firearm is shot, there's a  
19 blow back of blood. And it could have spattered back onto  
20 the weapon. That's what I was looking for.

21 Q And, certainly, in this case, as you understand it  
22 the way with what you found as far as the facts and the  
23 circumstances, there would have been blow back?

24 A There's a possibility, yes, sir.

25 Q I mean, there could have been substantial blow back?



1 A That is possible.

2 MR. ALLEN: Just one moment, Your Honor.

3 (Pause.)

4 BY MR. ALLEN:

5 Q And as far as -- just a general question. As far as  
6 fingerprinting standards, I think you testified that there  
7 is no universally recognized standards as far as  
8 identifying characteristics as far as ridges, arches, and  
9 so on, there's no universal standards?

10 A There's no set number of points of identification  
11 that once you reach that threshold that's an  
12 identification.

13 Q But there's no authority that's recognized by experts  
14 and professionals that establishes universal standards for  
15 everyone to comply with?

16 A No, sir, there's not.

17 MR. ALLEN: Thank you.

18 That's all the questions I have of this witness, Your  
19 Honor.

20 THE COURT: Redirect?

21 MS. HERVEY: Just briefly, Your Honor.

22 REDIRECT EXAMINATION

23 BY MS. HERVEY:

24 Q Mr. Allen asked you some questions about blow back  
25 and swabbing the interior of the barrel area of the gun.

1       You testified earlier about the condition of the gun being  
2       oily and those type of things. How would the condition of  
3       the gun -- the oil condition of the gun, how would that  
4       effect, in your opinion, your ability to retrieve blood or  
5       blow back blood from the barrel of that gun?

6       A     Well, the oil, if it was present on there, wouldn't  
7       effect the blood if it spattered on it. However, if the  
8       gun had been used and then cleaned afterwards, which, you  
9       know, it appeared it had been cleaned recently, that would  
10      have wiped away any of the blood and anything on there as  
11      far as blow back goes.

12            I can't say, you know, how long it had been since it  
13      had been cleaned. It appeared to have been recently.  
14      That would have effected blood present on the weapon.

15      Q     And you can't offer any opinion as to the probability  
16      of blow back blood from the victims reaching this shotgun.  
17      You don't know anything about range or those type of  
18      things in this particular case?

19      A     No. You're talking about having to conduct  
20      experiments, shooting something that's got blood in it,  
21      and that kind of thing, I mean, trying to get conditions  
22      almost exact to the way they were inside the crime scene.  
23      I can't say a certain distance or certain amount or  
24      certain caliber of a weapon creates so much blow back or  
25      whatever.

1 I do know if you shoot a living thing with a weapon,  
2 there is going to be some amount of blood that shoots back  
3 towards the source of force.

4 Q But, again, cleaning or oiling would have impaired  
5 your ability to retrieve that blood?

6 A Yes, ma'am. You wipe it down and everything, you're  
7 wiping away any blood or anything that may have been on  
8 it.

9 Q Mr. Allen talked to you about the van being turned  
10 over to Mike Harper and then being submitted to you for  
11 processing. You stated you were able to get prints out of  
12 there; correct?

13 A Yes, ma'am.

14 Q Was there anything that indicated that Mr. Harper had  
15 wiped it clean or those type things while in his  
16 possession?

17 A I didn't see anything like that to indicate that, no,  
18 ma'am.

19 Q So that's what you would have been concerned about,  
20 that if we turned it over to a third party that they would  
21 in some way clean, or change, or alter the condition of  
22 the van, thereby impairing your ability to retrieve those  
23 fingerprints, is it not?

24 A Yes, ma'am. I mean, you want as pristine condition  
25 as you can get. If it's out of police custody, then

1       they're not in control of it. That's what we're looking  
2       for. And I didn't see any indication of that.

3       Q       So that concern that Mr. Allen raised with you, you  
4       didn't have it in this case, based on your examination of  
5       the van as you found it that night?

6       A       I didn't see anything that indicated that. So it  
7       didn't seem to be an issue with me.

8               MS. HERVEY: Nothing further.

9               Thank you.

10              THE COURT: Recross limited to redirect?

11                              RECROSS-EXAMINATION

12       BY MR. ALLEN:

13       Q       And, regardless of that procedure, the only  
14       fingerprints you found inside or outside the van belonged  
15       to a third party that we don't know who it is at this  
16       time?

17       A       That is correct, sir.

18              MR. ALLEN: Thank you, sir.

19              MS. HERVEY: May he be excused?

20              THE COURT: Any objection?

21              MR. ALLEN: No, sir.

22              THE COURT: Mr. Curtis, you may step down. And you  
23       are excused.

24              Call your next witness.

25              MS. HERVEY: The State calls Wendy Bell.

1 THE CLERK: If you'll place your left hand on the  
2 Bible and raise your right hand.

3 WHEREUPON,

4 WENDY BELL,  
5 after first having been duly sworn, testified as follows:

6 THE CLERK: Please be seated.

7 THE COURT: If you'll use that microphone for me. It  
8 will amplify your voice.

9 And if you'll begin, if you would, please, by stating  
10 your full name and spelling your last name for the court  
11 reporter.

12 THE WITNESS: It's Wendy Bell, B-E-L-L.

13 THE COURT: Your witness, Counsel.

14 MS. HERVEY: Thank you, Your Honor.

15 DIRECT EXAMINATION

16 BY MS. HERVEY:

17 Q You work for SLED as well?

18 A I do.

19 Q And in what capacity are you employed with SLED?

20 A I'm a forensic toxicologist for SLED.

21 Q And what is forensic toxicology?

22 A We, basically, analyze body fluids, such as blood,  
23 urine, sometimes tissues. And we're examining them for  
24 the presence or absence of alcohol, commonly ethanol,  
25 drugs, or poisons.

1 Q And is that for the most part the focus of your work  
2 with SLED?

3 A It is.

4 Q And prior to and during your tenure with SLED, have  
5 you ever had any type of training or education in forensic  
6 toxicology?

7 A Yes. Well, I graduated with a BS in Chemistry from  
8 Furman University. And I have a Ph.D in Analytic  
9 Chemistry from the University of South Carolina. I came  
10 straight from getting my Ph.D to SLED. It's been my first  
11 employment.

12 And I was trained -- training there takes about a  
13 year in toxicology. During that time, I'm under constant  
14 supervision of another toxicologist who's certified. And  
15 I perform testing. We have to run up to 1,000 blood  
16 alcohols and revalidate results that were previously  
17 acquired. We also do over 100 drug tests. And we work  
18 side by side until they feel that I'm competent.

19 At that point, I take a proficiency test to show that  
20 I am able to perform the work. Once we become certified,  
21 we are also proficiency tested by an outside agency every  
22 six months to show we are performing to the upmost  
23 standards of forensic toxicology.

24 MS. HERVEY: Your Honor, at this time, we would  
25 submit Ms. Bell as an expert in forensic toxicology.

1 THE COURT: Any objection as to qualifications,  
2 Counsel?

3 MR. ALLEN: No, sir.

4 BY MS. HERVEY:

5 Q And, Ms. Bell, did you have the opportunity to  
6 examine the blood samples from Barry Frady and Jimmy Frady  
7 obtained from their autopsy?

8 A I did.

9 Q And as to Jimmy Frady, if we could focus on him  
10 first. What fluids did you examine? What bodily fluids  
11 did you examine and what were the results of that  
12 examination?

13 A I received from Mr. James Frady blood, urine, and  
14 ocular fluid. And I performed analysis on all of those.  
15 On the blood -- the first thing we always run is the blood  
16 alcohol analysis. And this is, basically, run to give us  
17 what level of alcohol is present. A lot of our tests are  
18 negative. We're looking to just see if it's there or not.  
19 And it also gives us a quantitative level, a very precise  
20 amount.

21 Do you want me to give the results of that?

22 Q Yes. What was Mr. Frady's alcohol level, if any?

23 A I found .155 percent ethanol in his blood.

24 Ethanol is the common alcohol found in beverages,  
25 such as beer, wine, or liquor. Many people are familiar

1 with breath alcohol analysis. The blood is, actually --  
2 what we test and it's, actually, the most accurate. It,  
3 actually, gives you the level that's circulating in the  
4 body at the time of death or at the time the blood is  
5 drawn. And it gives you what is, actually, reaching the  
6 brain and effecting at that time.

7 Q Do people continue to metabolize alcohol or do their  
8 levels raise once they expire or stop breathing or living,  
9 so to speak?

10 A Metabolism stops once an individual dies. So the  
11 level that's found in a blood sample is the level that was  
12 in their blood at the time of death.

13 Q It's a fairly scientific reasonably certain degree?

14 A Yes. There can be slight changes. It depends on --  
15 if a body decomposes for a long amount of time or is  
16 exposed to the elements, sometimes you can get bacterial  
17 contamination and can get some generation post mortem.  
18 But, typically, if a body is sampled fairly short to the  
19 death and preserved, you know, and not exposed to those  
20 type of elements, then that does not take place.

21 Q And being an expert in forensic toxicology, are you  
22 not only familiar with testing blood alcohol and those  
23 results, but also what those results mean in terms of that  
24 person's level of impairment or condition and those type  
25 things at the time that that blood sample was taken?



1       A     That's true. We constantly -- that's part of my  
2       training. During that first year, especially, we have a  
3       very intensive course where we study literature and are  
4       trained in interpretation of pharmacology, ethanol, and  
5       other drugs. We also attend seminars and conferences  
6       throughout the country where we speak with experts in the  
7       field. And we also have participated in some observations  
8       where people are dosed under scientific conditions. And  
9       we observe the effects that alcohol, especially, has on  
10      those individuals.

11      Q     So this level of .155, I believe, what would you  
12      state as to what that represented in terms of Mr. James  
13      Frady's level of impairment, if any, as it relates to the  
14      presence of alcohol in his system?

15      A     He was significantly impaired with a .155. Many of  
16      you are probably familiar with legal limits and alcohol's  
17      ability to affect your ability to drive. .08 is,  
18      typically, known as a cutoff. But alcohol and ethanol,  
19      particularly, begins to impair a body as low as a .05.

20           And ethanol is one compound, which as the levels in  
21      the body rise, it's a very well documented continual of  
22      effects as to what you see in an individual. It's a  
23      central nervous system depressant. So it begins by  
24      immediately effecting the brain. It slows your brain. It  
25      slows your ability to process thoughts. It definitely

1 controls your judgment.

2 Q How does it effect your reaction time?

3 A It slows your reaction time. If you see a stimulus  
4 or you're effected by something, your ability to react to  
5 that will take you longer when you're under the effects of  
6 ethanol. Of course, it can change your vision. It can  
7 change your perception, your ability to walk, speak.  
8 It's, basically, slowing your brain. So everything that  
9 the brain controls is slowed.

10 Q And you stated that it's a depressant of a kind.  
11 Does it render people -- does it, in essence, put them to  
12 sleep, so to speak?

13 A It does eventually. Being a depressant, it can  
14 eventually come to the point where it slows your  
15 respiratory system, which slows your breathing, and slows  
16 the amount of oxygen getting to the brain. That makes you  
17 very sleepy. A lot of times people pass out around a .25  
18 to 0.3 alcohol. And, usually, around a .4, people are  
19 dead. So it, actually, stops the respiratory system.

20 Q All right. And other than ethanol, was there any  
21 other substances found in James Frady's blood?

22 A I performed a standard drug screen on his blood. In  
23 this case, it was a six-panel drug screen. All those came  
24 back negative.

25 Because there had been a fire involved -- I was

1 informed that there had been a fire involved. So I also  
2 performed a test for carbon monoxide. That's, actually,  
3 the gas which is released when you have incomplete  
4 combustion. And many of you have heard of carbon monoxide  
5 detectors that people have in their homes. They're,  
6 actually, looking for that gas being present when there's  
7 a fire. That's, actually, what binds your hemoglobin in  
8 the blood and prevents oxygen from getting up to your  
9 brain. And it also will kill you if you reach certain  
10 levels of carboxy hemoglobin. And we can tell if an  
11 individual has been exposed to smoke by detecting whether  
12 or not there's carboxy hemoglobin present in the their  
13 blood.

14 Q And was there in Mr. Frady, Mr. James Frady?

15 A His carboxy hemoglobins were negative, less than ten  
16 percent.

17 Q And what does that indicate to you as his  
18 respirating, or breathing, or inhaling, or those type  
19 things once the fire had been set or smoke was present?

20 A He was not breathing at that point. He did not  
21 inhale smoke.

22 Q And did you perform the similar type testing on Barry  
23 Frady?

24 A I did.

25 Q And what did you find as to his blood alcohol level?

1 A Mr. Barry Frady had a .294 percent ethanol found in  
2 the blood. I also performed drug tests on Mr. Barry Frady  
3 and he screened positive for cannabinoid. Cannabinoid is  
4 a large class that includes the active component in  
5 marijuana. And any time we get a positive screen, we  
6 just -- we do not report simply screens, we have to report  
7 and find the exact ingredients that caused that screen to  
8 make sure we're not getting a false positive.

9 So I did that confirmation test. And in Mr. Frady, I  
10 found 11 hydroxy tetrahydrocannabinol, which is an active  
11 metabolite of THC.

12 Q And what does that mean, "an active metabolite"?

13 A Tetrahydrocannabinol, actually, is the active  
14 component. Just for clarification, I'm going to call it  
15 THC. That's the active component in marijuana.

16 Any time anything is ingested in the body, it  
17 immediately starts breaking it down. And we call those  
18 metabolites. The body is changing them to try to  
19 eliminate them out of the body. Some metabolites are  
20 active, some are not. 11 hydroxy is, actually, a  
21 metabolite. It, actually, causes impairment in the body.

22 Q And does that indicate anything as to how long ago  
23 those -- that substance or those substances were ingested?

24 A It does. Because, again, once the body detects that  
25 there's something foreign inside it, it starts trying to

1 eliminate that. And every compound has kind of a time  
2 period. It's called a half life in the body. That's the  
3 time it takes for half of a compound to be eliminated.  
4 And most things have been tested by scientists and  
5 averages have been determined for how long it takes an  
6 average individual to eliminate half of a substance in the  
7 body.

8 Marijuana is actually -- or cannabinoids are,  
9 actually, very short. The active component, THC, and this  
10 11 hydroxy, they're not in the body for very long. So the  
11 fact that we see 11 hydroxy shows it was probably within  
12 the last three to six hours that he had been exposed to  
13 tetrahydrocannabinol.

14 Q And what is your opinion as to the level of  
15 impairment of Barry Frady or his condition, including  
16 consciousness, at the time the blood sample was taken.

17 A Well, .294 is a very high blood alcohol level. And  
18 an inexperienced drinker or maybe an individual who just  
19 drinks frequently, like maybe even only on the weekends, I  
20 would expect that type of individual to be near comatose  
21 at a .3. That's very well documented in literature that  
22 people begin passing out and have a very difficult time  
23 functioning if they're inexperienced at a .3. They would  
24 not be able to operate a vehicle and should have a very  
25 difficult time walking.

1 I'm not familiar with the drinking patterns of this  
2 individual. So if he was a more experienced drinker, he  
3 could still be alive. We have seen alcoholics who have  
4 blood alcohol levels as high as 0.5's.

5 Q You stated "a lot," do you mean conscious or --

6 A Conscious.

7 Q Right.

8 A But not very well. Again, it's just difficult to  
9 determine. Again, I have very few cases where they're  
10 ambulatory people at a .294. And without being familiar  
11 with someone's drinking experiences, it's difficult to  
12 know at this level what might have been going on.

13 Q All right. So when you stated earlier that .4 is  
14 when you usually see alcohol-induced death?

15 A It is.

16 Q That's higher than what you saw here?

17 A This is very high. And regardless of whether he was  
18 passed out, he was extremely impaired.

19 Q And did you do that similar type of carbon monoxide  
20 testing on Mr. Barry Frady?

21 A I did. And his carboxy hemoglobin was also negative.

22 Q Again, indicating that he was not breathing or  
23 respirating when the fire was set?

24 A That's correct.

25 Q Or immediately thereafter, once the smoke had been

1 produced?

2 A That's correct.

3 MS. HERVEY: Nothing further of this witness.

4 THE COURT: Cross-examination?

5 MR. ALLEN: May it please the Court?

6 Just a couple of questions just for clarification  
7 mainly.

8 CROSS-EXAMINATION

9 BY MR. ALLEN:

10 Q You tested in your report the body fluids of Jimmy  
11 Frady and Barry Frady; correct?

12 A That's correct.

13 Q And just for quick review, Jimmy Frady's blood  
14 alcohol was a 0.155?

15 A That's correct.

16 Q And that was done by blood and other methods as well  
17 or simply by blood?

18 A We do blood testing. But we also test the urine and  
19 ocular fluid when we receive it. Those are important  
20 mainly in situations to show the consistency between the  
21 samples.

22 Q Yeah. And I wanted to ask you, just generally, why  
23 is there a variation typically between the blood and the  
24 urine on the alcohol content?

25 A Well, urine, there's a lot of reasons why you have

1 variations. A person's state of hydration can effect  
2 that. If you drink a lot of water and you're well  
3 hydrated, whenever the ethanol gets to the urine, it's,  
4 actually, diluted some and can be less in the urine.

5 If a person, on the other hand, is not very well  
6 hydrated, it can be more concentrated. It also depends on  
7 how frequently they go to the restroom and how long it has  
8 to pool in the bladder.

9 Q And then Barry Frady's blood alcohol level was a  
10 .294?

11 A That's correct.

12 Q And you said that was highly -- would it be fair to  
13 say highly intoxicated?

14 A It was very highly intoxicated.

15 MR. ALLEN: All right. Thank you so much.

16 That's all the questions of this witness.

17 THE COURT: Redirect?

18 MS. HERVEY: None.

19 She may be excused, Your Honor.

20 THE COURT: Any objection?

21 MR. ALLEN: No, Your Honor.

22 THE COURT: Call your next witness.

23 MS. HERVEY: The State calls Alex Layton.

24 THE CLERK: Sir, if you'll raise your right hand and  
25 place your left on the Bible.



1 WHEREUPON,

2 GRADY ALEX LAYTON,

3 after first having been duly sworn, testified as follows:

4 THE CLERK: Please be seated.

5 THE COURT: Make yourself comfortable. And use that  
6 microphone for me.

7 And begin by stating your full name for the record  
8 and spelling your last name for the court reporter.

9 THE WITNESS: It's Grady Alexander Layton, L-A-Y-T-O-N.

10 DIRECT EXAMINATION

11 BY MS. HERVEY:

12 Q Mr. Layton, you're also employed by SLED?

13 A That's correct.

14 Q And what is your current position with SLED?

15 A I'm a lieutenant in the trace laboratory at SLED.

16 Q And what is a lieutenant in the trace laboratory at  
17 SLED? What does that mean? What are your duties and  
18 responsibilities, Mr. Layton?

19 A Right now, currently, I do the arson part of the  
20 trace laboratory. The trace laboratory has many different  
21 subdisciplines that we work on, glass, fibers, hairs,  
22 explosives. And arson is one of the subdisciplines. I'm  
23 doing the arson accelerant detection in bringing fire  
24 debris and liquids from different fire scenes and  
25 identifying them.

1 Q All right. And what are your qualifications to be a  
2 lieutenant over the trace evidence department?

3 A I received a BS degree in Chemistry from Clemson in  
4 1971. I was hired and worked in the chemistry laboratory  
5 originally. And for about 14 years, we were just  
6 generalists. We did a lot of -- I did toxicology. I did  
7 serology and also drug analysis.

8 And then in about 1985, I became lieutenant over the  
9 drug laboratory at SLED. And after 1991, I became the  
10 lieutenant in charge of the arson laboratory at SLED.  
11 Arson was not a part of the trace laboratory in the  
12 beginning. But later on, around 2000, I moved under the  
13 trace laboratory itself. So I've been doing fire debris  
14 analysis since 1991.

15 Q What kind of special training and education do you  
16 have in fire analysis and fire science?

17 A Okay. I received training at the arson accelerant  
18 detection put on by the Bureau of Alcohol, Tobacco, and  
19 Firearms, the ATF, in Boulder, Colorado in 1991. That was  
20 in the spring. And then that same summer, I went to the  
21 FBI doing laboratory examination of fire debris. And that  
22 was a course -- both of these are one-week courses. I  
23 attended them. And we did some actual fire burning of a  
24 scene there at the FBI and collecting the evidence and  
25 then analyzing the evidence for accelerants.

356

1           The next was advanced an arson accelerant detection  
2           course put on by the Midwestern Association of Forensic  
3           Scientists. That was done in Cincinnati, Ohio in 1994.  
4           That was a one-week course, also. That dealt with  
5           mainly -- the instrument I use in the laboratory most of  
6           the time is the gas chromatograph mass spectrometer. It  
7           dealt with using that instrument to, actually, analyze the  
8           fire debris and detect fire debris at a much lower level  
9           than we normally can.

10          Q     All right. And as part of your training -- and you  
11                talked about this, is what for the most part your  
12                department does in arson, you're looking for the presence  
13                of accelerants; is that correct?

14          A     That's correct.

15          Q     And your training focuses around using these  
16                instruments to do that?

17          A     Yes, ma'am.

18          Q     But beyond that, do you have training in just general  
19                fire science, how a fire burns, those type things so you  
20                can interpret those results?

21          A     Yes, ma'am. That was part of the earlier course, the  
22                one in Boulder, Colorado, and the one at the FBI. It  
23                was -- part of the training to be an -- in arson  
24                accelerant detection are flammable liquids or ignitable  
25                liquids detection. That is -- you have to identify and

1 understand how fire, actually, works,

2 The three things you need for a fire, one is fuel,  
3 the other is oxygen, and the next is an ignition source or  
4 some energy -- some sort of energy. If you have all three  
5 of those, you have the fire triangle. You have the  
6 potential for fire.

7 And what happens in most of the fire debris I deal  
8 with -- I don't, actually, go to the scenes. We have  
9 approximately 20 arson -- full-time arson investigators in  
10 the State that are assigned to up-country, midlands, and  
11 the low country, and Pee Dee region. They go out to the  
12 scene, collect the evidence, bring the evidence in, burned  
13 clothing, couches, flooring, sometimes vehicle fires,  
14 occasionally, we do that. They'll bring anything that's  
15 burned. And I'll -- they collect it, and preserve it, and  
16 bring it to me to be looked at to see if there's a liquid  
17 accelerant present in the fire debris itself.

18 Q You talked about those arson investigators, they go  
19 to those municipalities that don't have their own. And do  
20 they similarly go to just any fire, or is there some type  
21 of damage quota that they have set?

22 A I'm sorry. Repeat that?

23 Q The arson investigators that you talked about that  
24 you work alongside, do they go to just any fire? Are they  
25 there assisting local municipalities that don't have their

1 own sources? And do they have any type of damage quota  
2 that has to be met before they'll go out and investigate  
3 one?

4 A Actually, it's gotten -- over the years, it's gotten  
5 to where there's been so many more calls. And we haven't  
6 been able to hire quite as many people as they need. They  
7 have set a \$10,000 damage value that if the fire has  
8 created \$10,000 worth of damage, usually, they will go, or  
9 if it's a high profile murder case, usually they will go  
10 to that, sometimes they won't, depending on the amount of  
11 damage.

12 We assist the agencies -- our fire investigators go  
13 to the scene. They read the scene and they collect the  
14 evidence. They assist the local people that don't have  
15 the expertise to be able to read a fire scene properly and  
16 collect the evidence properly.

17 Q And do you do any type of special training or  
18 education for other people who work in your field or in  
19 the general area of arson investigation and detection?

20 A Yes. I teach the fire investigators at the South  
21 Carolina Fire Academy there in Columbia. I teach them the  
22 evidence collection portion of their course work. It's a  
23 two-week course. I teach about an hour and a half of  
24 that.

25 Q And have you trained any prosecutors in prosecuting

1 arson cases?

2 A Yes, I have.

3 MS. HERVEY: Your Honor, at this time, we would  
4 proffer Mr. Alex Layton as an expert both in the detection  
5 of accelerants used in fires and fire science.

6 THE COURT: Any objection as to qualifications?

7 MR. ALLEN: No objection, Your Honor.

8 THE COURT: Neither field?

9 MR. ALLEN: No, sir.

10 THE COURT: So qualified.

11 You may proceed, Counsel, without objection.

12 MS. HERVEY: Thank you.

13 BY MS. HERVEY:

14 Q Let's start first with the items that you examined in  
15 this particular case and the items that were submitted to  
16 you by Steven Curtis. Let me show you what's been  
17 previously marked as State's Exhibit No. 3 for  
18 identification purposes only. I just ask you to look into  
19 that box and determine whether or not its contents contain  
20 items tested by you as part of your examination in this  
21 particular case?

22 A No, ma'am. I don't recognize any of these items in  
23 this box.

24 Q It might be the wrong number. I'm sorry. Let me get  
25 the right number. I'm sorry.

1           It's State's Exhibit No. 15.

2           THE COURT: What's the exhibit number for the record?

3           MS. HERVEY: State's Exhibit No. 15, Your Honor.

4           BY MS. HERVEY:

5           Q     Look in that box. Maybe we'll get lucky this time.

6           A     Yes, ma'am. I recognize both of these items as  
7           State's Exhibit No. 15. They have my initials, the date,  
8           and the item numbers.

9           Q     And, just briefly, before we take those items out and  
10          examine them, if you could, educate the jury about what  
11          gas -- you said that big mouthful of a word, gas  
12          chromatograph whatever, and just explain what you do and  
13          how you do it.

14          A     Okay. Essentially, once evidence is brought in in a  
15          properly sealed container to the laboratory, I open the  
16          box that the evidence comes in. And we usually receive  
17          evidence mostly through a sealed box system so that the  
18          fire investigator or whoever is bringing it -- it may be  
19          just a new guy on the force bringing the evidence up --  
20          they seal the evidence up in a box, put their initials,  
21          and tape across it so that no matter how many people  
22          handle that box, as long as when I open the box, if the  
23          evidence seal has not been broken, then I know that the  
24          evidence is still safe and secure.

25          Q     And if that seal has been broken, would you then test

1       that evidence?

2       A     I would first make a note of it on my SLED worksheet.  
3       Then I would also go down to the evidence log and find out  
4       why it was not sealed when it came in.

5       Q     In this particular case, was it sealed when you  
6       received it?

7       A     Actually, one item was sealed -- one of these items  
8       was sealed in this box when I received it.

9       Q     You tested another item and we'll get to that later.  
10       But this initial item was in a sealed container when  
11       you got it?

12       A     Yes.

13       Q     And once you get the sealed container, what do you do  
14       after you open it up and find out what's in it?

15       A     All right. Then I take -- whether it's a can, bag,  
16       or jar, in this particular case, it was two metal  
17       paint-type cans. I punch a hole in the top of the paint  
18       can. And I also put a label on it with my initials, date,  
19       time, and what item number it is in this particular case.  
20       And I put an activated charcoal strip, which is -- what I  
21       do is absorb -- activated charcoal was found to be able to  
22       absorb compounds, much like a sticky note, it just barely  
23       sticks to a substance. Activated charcoal allows  
24       molecules to absorb on the surface of it.

25       And then what I do is take that C strip and that



1 container, place it in an oven at 60 degrees centigrade  
2 for 16 hours. What that allows is if there's any  
3 ignitable liquids present in that fire debris, they will  
4 go from a liquid to a gas state. Then they will interact  
5 with that C strip and be absorbed onto it.

6 Then I take that C strip out after 16 hours, which is  
7 overnight, come in the next day, pull the cans out, bags  
8 or jars, place the C strip in a small tube, and wash the  
9 tube with carbon disulfate. And that's just a solvent  
10 that pulls everything off that's been absorbed onto that  
11 carbon strip. I take that and filter it and put it into a  
12 little small vial. And I need it in a small vial because  
13 I'm going to inject a small amount of that liquid. We're  
14 talking less than a half millimeter of liquid, which is a  
15 very small amount.

16 I inject one microliter of that liquid into a gas  
17 chromatograph. Now, a gas chromatograph is a big word,  
18 but I'll break it down for you. It's an instrument that  
19 allows me to separate mixtures into pure components. And  
20 I can identify those mixtures by pattern matching, first,  
21 if I can recognize the pattern just from my experience in  
22 the laboratory.

23 But the next -- we also have another instrument  
24 called a gas chromatograph mass spectrometer. And the  
25 mass spectrometer, all it does is identify individual

1 compounds. It can tell you if it's saline, if it's  
2 benzine, if it's etymemazine, methylbenzene, whatever. It  
3 can give you its unique structure. So it's kind of like a  
4 fingerprint. And you can then find these compounds that  
5 are present in accelerants. Most accelerants are  
6 multicomponents. There's many components in accelerants.

7 So upwards -- gasoline can have up to 300 components  
8 in it. Most of them are tiny. And I only look at about  
9 anywhere less than 20. But I get the pattern and  
10 recognize most of them over time.

11 So I do two tests. I do a gas chromatograph test and  
12 a mass spectrometer test on the same sample. One is done  
13 first, the second -- the mass spectrometer test is done  
14 secondly to identify.

15 In this particular test, I did notice that after -- I  
16 washed the solvent off the C strip. I placed it in the  
17 gas chromatograph, ran the instrument, and got it graphed.  
18 I noticed there was something in the beginning on my item  
19 listed as #17. There was a lot of peaks coming at the  
20 beginning. That told me there was probably a very  
21 volatile set of compounds present in there.

22 I was able to further look at the pattern and  
23 recognize it as something like what we call a light  
24 petroleum product. When crude oil comes out of the  
25 ground, they take that crude oil and they heat it up. And

1 the volatile components, the ones that vaporize real easy,  
2 they are easily distilled over. They're trapped first.  
3 Then you get the medium components, which are a little bit  
4 heavier, a little bit longer molecules, a little bit  
5 harder to evaporate. Then you get the heavy petroleum  
6 products which come out. They are separated. They go  
7 from medium to heavy as far as their range is concerned.  
8 So we have three different ways.

9 Now, gasoline comes out a little differently. It's a  
10 whole different process. And it comes out as a mixture of  
11 compounds. And sometimes they have to add compounds back  
12 into it to get the octane level up. And the octane level  
13 is what you're familiar with gas. You have the choices  
14 there when you go to choose. So the refinery sets all  
15 those parameters and they ship it out.

16 In this particular case, Item #18 on my list --

17 Q Let's go back to Item #17 and start with that.

18 A Okay.

19 Q And you were going over that you saw a lot of heavy  
20 volatile compounds there --

21 A No. I'm sorry. A lot of light volatiles.

22 Q I'm sorry. And if you could, what were you able to  
23 discern about the nature of Item #17 -- and first, before  
24 we go there, you said you took the sample. When you get  
25 it, what's the physical condition? What's inside the can

1 or bag submitted to you in terms of Item #17?

2 A Okay. Item #17 was listed as one metal can  
3 containing a corkscrew and a small metal can from pool  
4 table.

5 Q And did you physically examine those items?

6 A Yeah. I looked at them after the analysis. I opened  
7 them afterwards.

8 Q So do you put the charcoal strip in there with these  
9 things in the can then?

10 A That's right.

11 Q And you try to just pull anything within there?

12 A Right. If there's any volatile compound inside,  
13 either on the corkscrew or in that metal-type can, small  
14 meta- type can. It's a very small can inside this quart  
15 can. And I was able to pull off some light petroleum  
16 products, which turned out to be some sort of lighter  
17 fluid similar to Gulf lighter fluid or -- let's see --  
18 Zippo lighter fluid, Rite-Aid lighter fluid, and possibly  
19 Oops. It was most similar to those patterns.

20 Q And when you say that, do you go to the store and buy  
21 Gulf lighter fluid and test that so you have that known  
22 comparison? Is that how you make that comparison?

23 A Yes, ma'am. I have a reference collection of  
24 approximately 200 -- probably closer to 300 ignitable  
25 liquids -- known ignitable liquids.

1 Q And you perform the same type of analysis, but you  
2 know going in there that this is what they sell at the  
3 store?

4 A Exactly. Yes, ma'am.

5 Q So you stated that more than likely, Item #17  
6 contained some type of lighter fluid, any number of these  
7 three it could have been?

8 A That's correct.

9 Q All right. And then you were submitted Item #18?

10 A Yes, ma'am.

11 Q Was that submitted -- and let me show you -- and I  
12 tried to keep the same numbers. State's Exhibit No. 16,  
13 did you, actually, get this item to retrieve a sample from  
14 it?

15 A Yes, ma'am. This is the item that was brought to me.  
16 Actually, inside here, it has my initials, date, and the  
17 laboratory file number. This is what I removed from this  
18 red metal gasoline-type can to analyze.

19 Q And, obviously, you can't just bait the gasoline can,  
20 that's not appropriate. So just explain if there was a  
21 different procedure by which you went through in achieving  
22 this sample.

23 A Well, in this particular case, there was some liquid  
24 in there. And I usually remove the liquid before latent  
25 prints does any -- because they don't want to mess with

1 any ignitable liquids in their laboratory.

2 So I removed the ignitable liquid, which was --  
3 smelled like gasoline, made a note that it was positive to  
4 me like gasoline. There was 210 milliliters of gasoline  
5 in this particular container. I placed it in a quart -- a  
6 small amount in a quart can and placed the rest in a glass  
7 jar. And then I placed that quart can in the oven, heated  
8 it just like I did Item #17, which was the metal can and  
9 the corkscrew. And the compounds were absorbed on the  
10 activated charcoal strip, then wash with carbon disulfide,  
11 then injected into the gas chromatograph first, and then  
12 the gas chromatograph mass spectrometer and identified the  
13 components to be gasoline. It matched perfectly to my  
14 standard, 50 percent, of gasoline.

15 Q You didn't go through any process to try to say  
16 Citgo, BP, or any of that type of stuff?

17 A No. The FBI has done some studies on it and they had  
18 very limited success. Because what happens is sometimes a  
19 tank or truck load will have -- in the old days, back in  
20 the '90's and stuff like that, they used to have extra gas  
21 and they would take it and dump it into Exxon's pump. And  
22 if Exxon had extra, they would sell it to Hess. And Hess  
23 would -- they would sell it back and forth. And there's  
24 really no way to know exactly which brand is which, but  
25 just identify it just as gasoline.

1 MS. HERVEY: Your Honor, at this time, we would move  
2 State's Exhibit Nos. 15 and 16 into evidence.

3 THE COURT: Any objection?

4 MR. ALLEN: No objection.

5 THE COURT: Ladies and gentlemen of the jury, State's  
6 Exhibit Nos. 15 and 16 are admitted into evidence without  
7 objection. State's Exhibit Nos. 15 and 16 in evidence.

8 You may publish.

9 (WHEREUPON, State's Exhibit Nos. 15 and 16 were was  
10 admitted into evidence.)

11 BY MS. HERVEY:

12 Q Now that we've identified those items, I want to just  
13 talk to you briefly about the accelerant potential of both  
14 lighter fluid and gasoline, and how they affect a fire in  
15 a fire proceeding given various fuel loads and those type  
16 of things. And I ask that you explain those terms as we  
17 go along. We talked about them initially, but let's just  
18 put them in context for the jury.

19 Lighter fluid, is it a good accelerant? Is it a bad  
20 accelerant? What does it do to a fire, those type things,  
21 both in terms of initial ignition and duration?

22 A Well, all I can say is about the lighter fluid that I  
23 found is an extremely volatile compound. In other words,  
24 it's going to go from a -- liquids don't burn. Liquids  
25 have to mix with oxygen. Remember that fire triangle

1       where you've got oxygen, fuel, and ignition source. So  
2       what happens is the liquid has to go from a liquid to a  
3       gas and then burn, mix with oxygen, and then burn much  
4       like your automobile vehicle.

5               And what happens is the lighter -- the most light  
6       compounds are the ones that are going to go from liquid to  
7       gas first. And then as the heat energy is put into it,  
8       everything will eventually get up into the gas phase and  
9       burn extremely rapidly. And you have the great potential  
10      for explosions with light petroleum products, such as  
11      cigarette lighter fluid.

12             There's some copier -- used to be old -- the old  
13      copiers used to use cleaning solvents for cleaning them.  
14      So there -- and there's Oops and Goof Off and different  
15      compounds now that are extremely volatile and have extreme  
16      explosive potential. So you have to be very careful with  
17      light petroleum products. And they're going to burn very  
18      rapidly and very hot initially. And, you know, they're  
19      going to really evaporate and burn real quickly and  
20      rapidly.

21      Q       So big flash, big boom?

22      A       Exactly.

23      Q       Well, what about once they ignite and continuing to  
24      fuel that fire?

25      A       Well, once they ignite, once all the fuel is burned



1 up, then unless you get the ordinary combustible -- and  
2 that's the whole purpose of using an ignitable liquid in a  
3 fire is to get the ordinary room combustible, such as  
4 carpet, wood, furniture up to their ignition temperature,  
5 also. You have to convert a solid to a gas. And that's  
6 what the fire does. It, actually, burns the wood and  
7 creates more compounds from that wood to burn itself.

8 So once they get up going and all the ignitable  
9 liquid is gone, it's going to lose a lot of its potential  
10 unless you get a lot of the ordinary combustibles that are  
11 present up to their ignition temperature.

12 Q And, normally, is it typical when you do arson  
13 investigation and collect that evidence to have the can  
14 still there where you're testing that?

15 A Yes, it is.

16 Q And when you don't have that, then what do you do?  
17 What do you look for?

18 A Well, I look for patterns in the compounds that are  
19 present in the chromatograph that I get from the GC and  
20 the mass spectrometer. And I can usually tell what the  
21 components are from the mass spectrometer. And most of  
22 the time, I can identify it as an ignitable liquid. If I  
23 can't, I have to send it out negative or inconclusive.

24 Q And focusing more on you being familiar with  
25 collecting evidence at an arson scene, are you able from

1 the debris that remains there -- able also at times to  
2 detect accelerants?

3 A Oh, yes. Sometimes I can find it, depending on what  
4 the material is. It has to be a material that's protected  
5 and absorbent at the same time. And those are pretty much  
6 wood, paper, cloth, material like that. And it also has  
7 to be protected.

8 Usually, we find accelerants up under protected  
9 areas, such as furniture, up under beds sometimes, the  
10 edges of walls, concrete surfaces where they meet, up  
11 under tile, vinyl flooring. You can find the accelerant  
12 present under there, too.

13 Q But what about lighter fluid, in particular, is that  
14 easy to find, the presence of that in the remnants of fire  
15 debris?

16 A It depends on -- again, the factors are how much was  
17 poured initially, how long it burned, and what the  
18 material was that it was poured on. If it was poured on a  
19 solid surface like this, I wouldn't expect it to last long  
20 at all. If it was poured on the carpet, I would expect to  
21 find some residue of it.

22 Q If it was poured on a vinyl pool table cover, would  
23 you expect to find the residue there?

24 A If it's vinyl, it's not going to absorb it. So it  
25 would probably, eventually, burn up with the vinyl itself

1 and not be present with any kind of fire debris.

2 Q And is the burning -- what it burns?

3 A Right.

4 Q If it burns vinyl, or wood, or carpet, in particular,  
5 can those things in any way contaminate the sample in any  
6 way to make it harder to detect the presence of  
7 accelerants?

8 A Sometimes they can, yes, depending on how much  
9 accelerant is left. Sometimes it can interfere. We can  
10 get interferences, but we do run comparisons. We burn  
11 carpet, we burn plastics, we burn couch material, chair  
12 material just to be sure -- so we know exactly what -- no  
13 accelerant present on them, just take a hot torch and burn  
14 them and put them in the can, put a C strip in there with  
15 them, and then run the analysis so that we know what  
16 background to look for.

17 Q Does lighter fluid -- what is its propensity to leave  
18 that signature in the fire debris versus heavier petroleum  
19 products like diesel fuel or gasoline?

20 A Oh, I would expect to find kerosene or diesel fuel  
21 given everything being equal. More than likely, I would  
22 find it because it would have the propensity -- because it  
23 has much heavier molecules. And they can survive longer  
24 in a fire. But, again, it would depend on how much was  
25 there and what the surface was that it was poured on.

1 Q Let me show you what's been previously marked and  
2 admitted as State's Exhibit Nos. 34-D, 34-E, and 34-F, and  
3 just ask you to look at these pictures of the crime scene  
4 in this particular case and if you can -- and also State's  
5 Exhibit No. 34-N also admitted. And in those pictures of  
6 the fire scene, are you able to detect any fire damage to  
7 that particular room and area?

8 A Yes, ma'am. I notice that the fire damage is on  
9 this, what looks to be like a table, a game table of some  
10 sort, possibly a pool table. It has a cover on it, it  
11 looks like, and some other kind of clothing material on  
12 there, also.

13 Q And is there any -- does that fire -- so it appears  
14 that the pool table has been burned?

15 A Yes, ma'am.

16 Q Did the damage extend anywhere else to the structure,  
17 the discoloration to the ceiling or surrounding walls, or  
18 anywhere else?

19 A It appears to have some soot damage all around the  
20 interior top of the wall in the pictures here. And the  
21 ceiling, it is hard to tell. It has sort of a black  
22 material hanging down from it or something. And there's  
23 soot damage on this, State's Exhibit No. 34-N, some soot  
24 damage on it. So something burned real hot and fast right  
25 there and left soot damage, which is incomplete

1 combustion.

2 Q And when you say hot and fast, is that consistent or  
3 inconsistent with lighter fluid being used as an  
4 accelerant?

5 A That would be consistent with lighter fluid, yes,  
6 ma'am.

7 Q So taking the hypothesis that we put this lighter  
8 fluid on this pool table and set it on fire in that  
9 particular room, what would you expect in terms of the  
10 nature of the fire that progresses?

11 A I would expect it to be very hot, very rapid flash,  
12 burn. And once the accelerant that's -- if it's on the  
13 plastic cover and doesn't penetrate through the -- and  
14 doesn't absorb into the material below it, it's going to  
15 burn up pretty quickly and go out.

16 Q And let me draw your attention -- I need to get you  
17 another picture. Hold on.

18 I'm showing you State's Exhibit No. 34-C previously  
19 admitted into evidence. And I just ask you, looking at  
20 the fire damage, in particular as to the floor of this  
21 area, what, based on your knowledge of fire science,  
22 occurred there?

23 A Just looking at this particular photograph, which is  
24 State's Exhibit No. 34-C, it appears that there was some  
25 melting and burning on the edge of the pool table. And it

1 spilled over and just landed and continued to burn a while  
2 on the floor, but never got -- that's probably -- it's  
3 hard to tell if that's ceramic tile or whatever. But it  
4 didn't burn. It charred and left charred material there.

5 Q Ceramic tile is not really a good fuel source?

6 A No.

7 Q It doesn't burn?

8 A It doesn't burn.

9 Q So if that clothing had caught on fire and then  
10 dropped over, it would have burned to the extent that it  
11 had the energy, and the oxygen, and the fuel to do it.  
12 But once that happened, it would self-extinguish?

13 A That's correct.

14 Q And is that the same thing that would have happened  
15 on that pool table?

16 A Yes, ma'am.

17 Q And you stated that after you examined the items in  
18 your, I believe, Item #17 --

19 A Yes.

20 Q -- you opened the can just to see what more  
21 particular was inside it?

22 A Yes.

23 Q And showing you State's Exhibit No. 34-L, does that  
24 picture depict items found within that can?

25 A Yes, it does. It's a small little can that looks

1     like what I'm familiar with lighter fluid coming in. But  
2     it could have been, like I say, Oops or Goof Off or  
3     something similar to that. And there's a metal -- it  
4     looked like some sort of opener with a corkscrew on it.  
5     It looks like a knife or some sort of blade thing.

6     Q     All right. So do you have an opinion as to -- if the  
7     hypothesis is taken that the lighter fluid was used to  
8     ignite the fire on the pool table with it being found  
9     there and lighter fluid being found it in, setting that  
10    pool table on fire, based on those pictures, once it  
11    ignites, why does it not spread beyond soot and smoke-type  
12    damage to the surrounding structure?

13   A     Because there was not enough ordinary combustibile  
14    there that got hot. You just burn the vinyl, burn the  
15    clothing, and that wasn't enough to generate enough heat  
16    to burn the pool table.

17   Q     But is it creating enough smoke or heat or those type  
18    things? Is that spreading beyond the pool table and  
19    affecting the surrounding structure?

20   A     Oh, yes. You'll get some radiant heat or radiant  
21    energy from the fire itself and you'll get some soot  
22    damage. You can tell where the fire goes up and out. So  
23    the fire would go straight up and the heat would go  
24    straight up, hit the ceiling and come down the walls.

25   Q     And it would have spread, if it was sufficient

1       enough --

2       A     If it spread --

3       Q     -- throughout the entire structure?

4       A     Right.

5       Q     Moving you now to Item #18, which you've previously  
6       stated gasoline was your finding in that particular gas  
7       can, is part of your experience in fire science also  
8       looking at the burning of cars or those particular things?  
9       Have you done those, controlled burns with vehicles?

10      A     I've been a part of one. I've never done one as far  
11      as the laboratory itself. But I've been a part of one at  
12      the fire school. We did, actually, fire debris and they  
13      collected the samples. And I analyzed them and presented  
14      the results the next day in class.

15      Q     When you light gasoline, do you have the same instant  
16      big heat and flash that you talked about with lighter  
17      fluid?

18      A     Yes, you will. You will have it extremely. Because  
19      gasoline is in the light range and also into the variance  
20      of medium. So you're going to have that immediate initial  
21      flash, too.

22      Q     To rush up and those type things?

23      A     Yes.

24      Q     And if you lit a fire on the ground next to a car, is  
25      there any reason why it would not spread into the car,



1 even if there was gasoline in that car?

2 A The only way I could think of is that if it didn't  
3 get enough -- again, you've got to have your fire  
4 triangle. You've got to have the oxygen, fuel, and  
5 ignition source.

6 So, apparently, there was not enough heat to come up  
7 and get in the car. You've got to get it in the car,  
8 light it in the car somewhere. Apparently, it didn't get  
9 lit in the car or the vehicle.

10 Q And if the doors are closed or the windows are  
11 closed, is it going to invade that car?

12 A It should not, no, ma'am.

13 MS. HERVEY: Nothing further of this witness.

14 THE COURT: Cross-examination?

15 MR. ALLEN: I don't have any questions of this  
16 witness, Your Honor.

17 THE COURT: As to this witness, Solicitor?

18 MS. HERVEY: He may be excused.

19 THE COURT: Any objection?

20 MR. ALLEN: No, sir.

21 THE COURT: You may step down. And you're excused.  
22 Call your next witness.

23 MS. HERVEY: Ila Simmons, Your Honor.

24 THE CLERK: Place your left hand on the Bible and  
25 raise your right.

1 WHEREUPON,

2 ILA SIMMONS,

3 after first having been duly sworn, testified as follows:

4 THE CLERK: Please be seated.

5 THE COURT: Use that microphone for me.

6 And state your full name and spell your last name for  
7 the court reporter.

8 THE WITNESS: My name is Ila Simmons, last name,  
9 S-I-M-M-O-N-S.

10 THE COURT: Your witness, Counsel.

11 DIRECT EXAMINATION

12 BY MS. HERVEY:

13 Q Ms. Simmons, you're also employed with SLED?

14 A I am.

15 Q And do you work under Alex Layton?

16 A Yes, I do.

17 Q In the trace department at SLED?

18 A Yes.

19 Q Not conducting the same type of examination as he  
20 does?

21 A I do analyze arson evidence, as well as other trace  
22 evidence disciplines.

23 Q What other trace evidence disciplines do you focus  
24 on?

25 A I analyze gunshot residue, which helps us to

1 determine whether someone's hands have been in the  
2 vicinity of a weapon or firing a weapon. We analyze  
3 explosive residues. We do paint and fiber comparisons, as  
4 well as fire debris.

5 Q And prior to and during your tenure at SLED and  
6 working under Alex Layton, what type of special training  
7 and education have you received in the field of trace  
8 evidence analysis?

9 A I began with a Bachelor of Science degree in  
10 Chemistry. I came straight from college into SLED. It  
11 was my first employment. I underwent an in-house training  
12 program that took about three years in all areas of trace  
13 evidence in all the ones I mentioned before.

14 I've also gone to numerous schools taught by  
15 different scientific affiliations, the FBI, the ATF. And  
16 I'm a member of the gunshot residue analysis symposium  
17 that's hosted by the FBI where the FBI goes out and  
18 invites analyst of gunshot residue in to discuss protocols  
19 and standards for gunshot residue analysis.

20 MS. HERVEY: Your Honor, at this time, we would  
21 proffer Ila Simmons as an expert in gunshot residue kit  
22 examination and analysis.

23 THE COURT: Any objection to qualifications?

24 MR. ALLEN: No objection.

25 THE COURT: So qualified without objection.

1           You may so proceed, Counsel.

2           Ladies and gentlemen, you recall my earlier  
3 instruction to you concerning expert testimony.

4           MS. HERVEY: Thank you, Your Honor.

5 BY MS. HERVEY:

6 Q       I'm going to show you what's been previously marked  
7 as State's Exhibit No. 9, and ask you if that bears any of  
8 your markings -- or its interior does and how they relate  
9 to the examination that you conducted in this particular  
10 case?

11 A       Yes. These were the two gunshot residue kits I  
12 analyzed in this case. They're marked with our laboratory  
13 identification number, an item number, and my initials.

14 Q       And that's so later on, you can confirm those are the  
15 actual kits that you examined?

16 A       Correct.

17 Q       And let's start with your Item #9 contained within  
18 State's Exhibit No. 9. And if you could, take that out --  
19 and before we do that, your State's Exhibit No. 10, I  
20 believe, is a GSR kit from Barry Frady; is that correct?

21 A       Yes. We have two GSR kits here. We have one from  
22 Jim Frady and one from Barry Frady, all of them in State's  
23 Exhibit No. 9.

24           (WHEREUPON, State's Exhibit No. 10 was marked for  
25 identification only.)

1 BY MS. HERVEY:

2 Q If you can, take State's Exhibit No. 10, and mark it  
3 on the one for Barry Frady.

4 A Okay.

5 Q And just briefly, before we get into what you did in  
6 this particular case, what is a GSR kit? What are we  
7 looking for? What's inside of it? And how to you analyze  
8 it?

9 A Gunshot residue is a mixture of chemicals that come  
10 out of the gun when it's fired. They come from within the  
11 cartridge or what's also known -- commonly called a  
12 bullet. It's a mixture of lead, barium, and antimony.  
13 When a gun is fired, this comes out and can get on  
14 anything in close proximity to the weapon when it's fired.  
15 That includes the person shooting the weapon or anything  
16 within about five feet of a handgun, or extended out to  
17 maybe 20 feet with a long rifle or a shotgun.

18 When we analyze these kits, they come in and they  
19 have particle lifts first. It's one part of the  
20 examination. It's, basically, double-sided tape with a  
21 handle. And they take this double-sided tape and they dab  
22 it over the different areas of the hands. You get a  
23 sample collected from the back of the right hand, the palm  
24 of the right hand, a sample from the back of the left  
25 hand, and the palm of the left hand. And we're looking

1 for the three elements that I mentioned in a certain  
2 concentration with one another.

3 Q And are there swabbings of any kind in a GSR?

4 A Yes. There is also swabbings as well.

5 Q And what is the difference between the swabbings and  
6 the double-taped tabs you're using?

7 A The swabbing helps us get a concentration of how  
8 much -- of each element present on the swabs. And the  
9 particle lifts or double-sided sticky tape would help us,  
10 actually, look at the particles and see what the particles  
11 look like and what elements are present.

12 Q And why is it important that you -- the location of  
13 the gunshot residue and a concentration of it, why are  
14 those factors important in interpreting the results of the  
15 GSR kit?

16 A Because the concentration helps us determine,  
17 perhaps, how the hands were positioned during the  
18 shooting. The particle lifts help us to determine that it  
19 is truly verified as gunshot residue.

20 Q And what is the significance of looking and making  
21 sure that we have a sample from the palm versus the back  
22 of a hand?

23 A So that we can determine the position of the hands  
24 when a gun is fired. If I were to just fire a gun using  
25 one hand, there would be nothing on my left hand. If I

1       were being fired upon, if I were to throw both of my palms  
2       up like this, you would get large amounts of gunshot  
3       residue just on the palms, but not necessarily the backs  
4       of the hands.

5       Q     Describe a weapon we would expect to see it on the  
6       back and not the palm of the hands?

7       A     When firing a gun, you can also get it on the palms  
8       of the hands, but it will be decreased amounts. You would  
9       find more on the backs of the hand than the palms of the  
10      hand.

11      Q     And the positioning of the hands being in front of  
12      the gun, why is that important? Because you said about  
13      your hands being up. But if your hands are just laying  
14      down or by your side or some other way, would you find it  
15      present elsewhere?

16      A     You can. It is a possibility.

17      Q     And focusing now on Item #9, which is the GSR kit  
18      from James Frady. What did you find as to the results of  
19      that kit after you analyzed it?

20      A     I found that gunshot residue was found on the palm  
21      and back of the right hand. And slightly less amounts of  
22      gunshot residue were found on the palm and back of the  
23      left hand.

24      Q     And is that consistent with an individual firing a  
25      weapon or being in front of a weapon when it was fired?

1 A Either one could apply. However, the levels are  
2 slightly elevated more so than what we usually find on  
3 someone firing a gun.

4 If we're looking at concentrations, we're looking at  
5 about ten counts of antimony and maybe 200 counts of lead.  
6 In this particular gunshot residue kit, we found like  
7 4,000 counts of lead. So it's much more elevated, which  
8 is more consistent with having been on the muzzle end of  
9 the gun or where the bullet comes out than being behind  
10 the gun firing a gun.

11 Q And let's back up briefly. Assuming we're talking  
12 about a shotgun being used as a weapon in this case. Is  
13 there any particular thing that you look at that's a  
14 telltale sign that a shotgun is being used from a GSR kit?  
15 Does high presence of lead indicate a weapon of that  
16 nature versus a revolver or something like that?

17 A As you increase the caliber of the weapon or the  
18 weapon gets technically larger, there's going to be more  
19 gunshot residue exposed from that.

20 Q And the levels that you detected in the GSR kit from  
21 James Frady, are they consistent or inconsistent with  
22 being in front of a shotgun blast?

23 A They are consistent, yes.

24 Q So you stated 4,000 more being in front. Having shot  
25 a shotgun, you would expect that to be in the ten range?



1 A Maybe around 200 to 500 counts, as opposed to 4,000.

2 Q All right. And you also examined a GSR kit, #10,  
3 from Barry Frady?

4 A Yes.

5 Q And what did you find with Barry Frady's GSR kit?

6 A I found that gunshot residue was present on all  
7 areas.

8 Q The back of the hands and the front of the hands?

9 A Correct.

10 Q And, again, as to the concentration levels, what did  
11 that tell you as to whether or not being in front of a gun  
12 or shooting a weapon?

13 A On the left hand, it's very high. The amounts that  
14 we found are like 5,000 counts of lead. Therefore, that  
15 was an indication that it would be more so in front of the  
16 gun, in the muzzle area of the gun instead of shooting a  
17 weapon.

18 Q So it's more consistent with being in front of a  
19 shotgun?

20 A Yes.

21 Q And does the number of shots fired at this particular  
22 individual also effect the amount of lead that you were  
23 able to detect?

24 A Yes. As you shoot more times, the more gunshot  
25 residue is going to be expelled and the more it's going to

1       contaminate the hands.

2       Q     And you stated these levels are also more closely  
3       associated with a shotgun than a small caliber handgun?

4       A     Yes, if you were on the muzzle end of this weapon.

5       MS. HERVEY: All right. Nothing further from this  
6       witness.

7       Oh, one more thing, Your Honor.

8       At this time, we would move State's Exhibit Nos. 9  
9       and 10 into evidence.

10       THE COURT: Counsel, because you're referring to item  
11       numbers, ask the witness to identify them for the record,  
12       if you would, so it is clear for the record as to what is  
13       State's Exhibit Nos. 9 and 10 for identification.

14       BY MS. HERVEY:

15       Q     And if you could do that.

16       A     State's Exhibit No. 10 is the GSR kit from Barry  
17       Frady. And State's Exhibit No. 9 is from Jim Frady, Jr.

18       THE COURT: Any objection as to State's Exhibit  
19       Nos. 9 and 10?

20       MR. ALLEN: No, sir, no objection.

21       THE COURT: Ladies and gentlemen of the jury, State's  
22       Exhibit Nos. 9 and 10 will be admitted into evidence  
23       without objection.

24       (WHEREUPON, State's Exhibit Nos. 9 and 10 were  
25       admitted into evidence.)

1 THE COURT: You may publish, if you so desire.

2 Cross-examination?

3 MR. ALLEN: No questions of this witness, Your Honor.

4 THE COURT: As to this witness, Solicitor?

5 MS. HERVEY: She may be excused.

6 THE COURT: Any objection?

7 MR. ALLEN: No objection.

8 THE COURT: Ms. Simmons, you may step down. And you  
9 are excused.

10 Thank you very much.

11 MS. HERVEY: May we approach?

12 THE COURT: Counsel, approach.

13 (WHEREUPON, a bench conference was held.)

14 THE COURT: Call your next witness.

15 MS. HERVEY: The State calls Dr. Brett Woodard to the  
16 stand.

17 THE CLERK: Place your left hand on the Bible and  
18 raise your right.

19 WHEREUPON,

20 BRETT WOODARD, M.D.,

21 after first having been duly sworn, testified as follows:

22 THE CLERK: Please be seated.

23 THE COURT: Good afternoon, Dr. Woodard.

24 Make yourself comfortable. That chair won't slide  
25 up. It will turn. And you can raise the microphone up

1 and down.

2 I would like for you to begin, if you would, by  
3 stating your full name and spelling your last for the  
4 court reporter.

5 THE WITNESS: Brett Otin [phonetic] Woodard,  
6 W-O-O-D-A-R-D.

7 THE COURT: Your witness, Counsel.

8 DIRECT EXAMINATION

9 BY MS. HERVEY:

10 Q Dr. Woodard, with whom are you currently employed?

11 A Piedmont Pathology Associates.

12 Q Do you have any other duties and responsibilities?

13 A No.

14 Q And your work with Piedmont Pathology, what are your  
15 duties and responsibilities with that practice.

16 A I do forensic autopsies as a portion of my work. And  
17 then I do general pathology as other portions of my work.

18 Q And the forensic autopsies that you conduct, for  
19 which counties or particular locations do you do those?

20 A Anderson, Oconee, Abbeville, Greenwood, and Laurens  
21 County.

22 Q And how long have you been so employed -- or  
23 conducting forensic autopsies?

24 A Since 1982.

25 Q And approximately during that tenure, how many

1       autopsies have you performed, if you can say?

2       A     150 to 200 per year during that time period.

3       Q     So in the tens of thousands, that type range, at  
4       least?

5       A     That's correct.

6       Q     And prior to and during your tenure with Piedmont  
7       Pathology, what type of special training and education  
8       have you received in the field of forensic pathology?

9       A     I trained at the North Carolina Medical Examiners  
10      Office in Chapel Hill, North Carolina. I also received  
11      training from the FBI and the Armed Forces Institute of  
12      Pathology.

13      Q     And what is just your general educational background  
14      prior to that specialized training?

15      A     I received a Bachelors Degree from the University of  
16      Pittsburgh. I attended medical school at Tulane  
17      University. I did an internship at Charity Hospital of  
18      New Orleans. And I did a residence of pathology at Duke  
19      University Medical School.

20      Q     And have you previously been qualified as an expert  
21      in the field of forensic pathology in courts in this  
22      state?

23      A     Yes, I have.

24      Q     And have you ever testified outside of this state?

25      A     Yes, I have.

1 MS. HERVEY: Your Honor, at this time, we would  
2 proffer Dr. Brett Woodard as an expert in the field of  
3 forensic pathology.

4 THE COURT: Any objection?

5 MR. ALLEN: No objection.

6 THE COURT: So qualified without objection.

7 You may proceed, Counsel.

8 BY MS. HERVEY:

9 Q If you could, just, please, explain the term  
10 "forensic pathology" to the jury, what it means, and how  
11 it relates to what you do for a living.

12 A Forensic pathology is the study of injury to the  
13 human body. An injury may be by gunshot. It may be by  
14 mechanical means, sharp injuries such as knives or other  
15 sharp objects. It may be what we refer to as blunt  
16 injury, meaning that a force is applied to the body which  
17 produces a crushing or breaking type injury to the body.  
18 It is to determine the causation of those injuries and  
19 what effect those injuries would have on the functional  
20 nature of the individual.

21 It also includes the field of toxicology, what the  
22 chemicals are in the body, what kind of effect or  
23 limitations or altering they may have produced in the way  
24 the injury presented itself or caused limitations to the  
25 individual.

1 Q And as part of that forensic pathology or autopsies  
2 that you conduct, do you also do things such as retrieving  
3 evidence from inside the body as it may relate to the  
4 cause of death or other forensic value?

5 A Yes, we do.

6 Q And, if you could, just briefly, generally, in  
7 general terms, talk to the jury about what is the  
8 procedure by which you go through in completing an autopsy  
9 or conducting one.

10 A We will receive the body from the coroner's office of  
11 a given county, usually with a summary narrative prepared  
12 by the coroner or verbally given to us by the coroner.  
13 We'll examine the body as we receive it in the clothing  
14 that it's received and photograph the exterior of the body  
15 in the condition we receive the body.

16 We then will remove the clothing and any materials  
17 that may have been on the exterior of the body. We'll  
18 remove and collect and identify those. Then we'll examine  
19 the body for any kind of exterior signs of injury or  
20 trauma.

21 And then we will follow those injuries or trauma into  
22 the body to see what additional trauma was produced below  
23 the surface of the skin in the body, collecting any  
24 evidence of that trauma as we go, be it photographically,  
25 in the case of blunt trauma, or in the case of a

1 projectile, we retrieve the projectile or parts of the  
2 projectile, identify those, and place them into evidence.

3 We also collect body fluids so that it can be  
4 analyzed and examined at later times for evidence of  
5 chemical interactions with the body such as medications,  
6 drugs, alcohol, or combustion products.

7 Q All right. And in this particular -- as a result of  
8 that, did Karl Addis, the coroner of Oconee County, ask  
9 you to perform an autopsy on Barry Frady?

10 A Yes, he did.

11 Q And just, generally, if you could, describe the  
12 general condition that you observed from the exterior of  
13 Barry Frady?

14 A Barry Frady had two shotgun wounds to the body. And  
15 there was evidence of soot on the exposed skin of the  
16 body.

17 Q And that soot, is that necessarily something you  
18 associate from the shotgun or from some other source such  
19 as a fire?

20 A No. This is a fire or the incomplete carbonaceous  
21 materials of a fire.

22 Q And the soot, did that, actually, cause damage to his  
23 body or was this just a powder-type coating?

24 A It's just a thin coating that landed on the surface  
25 of the body and adhered to it.



1 Q Did you ever observe any burning, charring, pinking,  
2 or other heat or fire damage to Barry Frady, other than  
3 the sooting?

4 A Just the soot.

5 Q And you stated that it appeared that he had two  
6 shotgun wounds just from your exterior examination?

7 A That's correct.

8 Q And where were those shotgun wounds?

9 A One shotgun wound was on the right side of the neck,  
10 passed in an upward direction and then struck the bones in  
11 the back of the neck tearing the spinal cord. On its  
12 passage, it resulted in the tears to the carotid artery  
13 and to the jugger vein on the right side of the neck.

14 Q Did it exit the other side of his neck or the back of  
15 his neck in any way?

16 A No. The pellets came into the back portion of the  
17 muscles of the neck and skin and stopped.

18 Q And where was the other shotgun wound to Barry Frady?

19 A The second shotgun wound was to the abdomen below  
20 where the breast plate stops in the upper central portion  
21 of the abdomen, just a little bit right of the midline.  
22 And it passed backwards to the left into the chest cavity.  
23 And the projectiles then -- a portion passed out the back  
24 of the chest cavity, but a portion remained within the  
25 body.

1 Q And you stated there were shotgun wounds. What about  
2 the particular nature of these wounds lead you to believe,  
3 in your opinion, that they were shotgun wounds?

4 A I retrieved from the left upper wound a series of  
5 birdshot, fine small pellets that are used in a shotgun.  
6 Plus. The plastic cup that these are held on -- in when  
7 they're loaded by the shotgun maker, you know, as well as  
8 the size, the physical size of the entry hole told me that  
9 it was a shotgun wound.

10 The second wound on the surface of the shirt was a  
11 fine white plastic particulate matter. Inside the body  
12 was a plastic -- green plastic cup, again, that held the  
13 shot that had a #26 written on the cup. And then I  
14 received buckshot or larger metal fragments that are  
15 associated with the buckshot type of shotgun shells, plus  
16 the large size of the wound and the dispersed nature of  
17 the wound tracks as they entered the body.

18 Q And, just briefly, to provide a comparison to the  
19 jury, how does a shotgun differ from just a singular  
20 projectile that might come out of a revolver or handgun?

21 A The single projectile, when it leaves the gun, it  
22 carries with it some powder and metal materials, as you  
23 heard previously. Those travel a certain distance and  
24 then fall away because of their lighter size. But the  
25 larger projectile carries forward and it produces a hole.

1 in the individual. The shape of that hole can vary as the  
2 projectile strikes the skin, either perpendicular to the  
3 skin or at various angles front perpendicular. It then  
4 passes with a single path of route through the body  
5 producing a single large core diameter injury through the  
6 body and very frequently exits the opposite side of the  
7 body if it's not found within the body.

8 Shotgun wounds, on the other hand, produce one large  
9 entry wound. Buckshot, specifically, has next to the  
10 buckshot inside the plastic piston to make them more of a  
11 solid quality to them because of their large size and  
12 vacant spaces that would be between them some fine white  
13 plastic material that will go a certain distance. This  
14 plastic filler then falls away because it is plastic and  
15 light. But it will be carried a unique distance related  
16 to the length of the barrel of the shotgun and the  
17 particular ammunition that the shotgun used. The plastic  
18 cup begins to fall behind the pellets and then the pellets  
19 begin -- instead of going as a single mass when the cup  
20 falls behind, it begins to open wider and wider. And,  
21 eventually, we would see individual holes associated with  
22 each of the pellets.

23 If the pellets reach in mass -- if the shotgun is  
24 shot close enough to the individual, once the pellets hit  
25 the body or the clothing on the surface of the body, they

1 will begin to separate. Because the front pellets begin  
2 to slow quicker than the back pellets. And the front  
3 pellets begin to bump into the back pellets or the back  
4 pellets bump into the front pellets. And we get a  
5 billiard ball effect of the projectile so that the  
6 projectiles begin to radiate further and further apart  
7 producing a very large area of tissue damage compared to  
8 that single pathway of the bullet.

9 Q Let's go back to the wound in the neck. Did you,  
10 actually, extract some of that shot -- or those  
11 projectiles from the shotgun from the neck of Barry Frady?

12 A Yes, I did.

13 Q And you stated they were birdshot. Is part of your  
14 training in forensic pathology -- you've given this  
15 testimony about the particular nature of shotgun shells --  
16 to be familiar with those type of projectiles and weapons  
17 typically used in committing these types of crimes?

18 A Yes, it is.

19 Q And would -- in terms of the neck, was there a single  
20 entrance wound or was there the more splattered pattern of  
21 injury?

22 A No. It was a single groove-like pattern running up  
23 the neck, running along the edge of the big muscle in the  
24 neck, and then entering into the body.

25 Q And is also your training to look at these wounds and

1 the particular nature, not only of them, but how they  
2 affect the body and to offer an opinion as to how far away  
3 the gun would have been fired at this particular  
4 individual?

5 A Yes, it would be.

6 Q And do you have an opinion in this case, as to the  
7 neck wound of Barry Frady, the approximate distance of the  
8 gun from him when it was shot at his neck?

9 A The approximate distance would be in the range of  
10 three feet, no more than four.

11 Q And why do you say three to four feet? What about  
12 the particular nature of the wound or what you found that  
13 leads you to that conclusion?

14 A Again, depending on the ammunition and the shotgun  
15 that's involved. As one fires from further away, the  
16 plastic cup falls away and doesn't reach the wound. The  
17 second thing is the plastic cup. Because of its plastic  
18 nature and lack of weight to it, it begins to fall away  
19 and the pellets begin to open up.

20 So this central large wound becomes smaller. And we  
21 begin to see pellets around the periphery or what we call  
22 fliers until, ultimately, all we see is a perforating type  
23 of wound like a colander where all the individual pellets  
24 went into the tissue.

25 Q And is -- that first initial shotgun wound to the

1 neck of Barry Frady, in your opinion, was that a fatal  
2 wound?

3 A Yes. Its damage to the cervical spinal cord and the  
4 cervical bodies would produce death.

5 Q Even if medical attention was immediately offered to  
6 him?

7 A Even if medical attention was immediately offered,  
8 it's fatal.

9 Q And let's go, in particular, to the shotgun wound to  
10 the upper abdomen that you mentioned. Again, do you have  
11 an opinion as to the distance away from the gun this  
12 individual was when that shot was fired at him?

13 A Again, the -- because of the white particulate  
14 material which is only carried a certain distance and the  
15 fact that the plastic cup was present inside the wound and  
16 the wound entry, it was three feet or less.

17 Q All right. And, again, you stated that this goes  
18 into his abdomen. What damage does it cause there?

19 A It produces a massive fracture of his sternum, his  
20 breast plate, and it separates the ribs along the lower  
21 edge of the sternum from the breast plate. It then passes  
22 into the left lung. It tears the liver and the spleen.  
23 And the pellets fracture multiple ribs in the back portion  
24 of the left chest cavity.

25 Q And, again, in your opinion, would that be

1 potentially a fatal wound?

2 A Yes, it would.

3 Q And did you have an opportunity to examine any  
4 toxicology results as they related to Barry Frady?

5 A No, I did not.

6 Q Do you have any opinion whether toxicology or  
7 anything else in any way contributed to his death?

8 A Except for today's court time, I was unaware of the  
9 toxicology.

10 Q All right. But based on your autopsy, did you have  
11 any concern that toxicology in any way contributed to the  
12 death of Barry Frady?

13 A No.

14 Q Did you feel that you needed those results in order  
15 to offer an opinion as to the cause of death of Barry  
16 Frady?

17 A No.

18 Q You stated you were here and present for Ms. Bell's  
19 testimony; is that correct?

20 A That's correct.

21 Q And her results, knowing them now, taking them from  
22 her, how do they effect your overall opinion as to the  
23 cause of death of Barry Frady?

24 A Well, they confirm that no toxicology was involved.  
25 And they confirm that while incomplete combustion was

1 occurring with the fire that left soot on the body, he was  
2 not breathing at the time any carbon monoxide that would  
3 be produced at that fire.

4 Q You saw nothing for you to believe that the  
5 concentration of alcohol in any way contributed, at least,  
6 medically to his death?

7 A That's correct.

8 Q And you stated that you received -- you retrieved  
9 some birdshot, I believe, from his neck?

10 A That's correct.

11 Q And were you able to -- some of what you call  
12 exemplar filler material, those white spacer plastic  
13 things from the abdomen --

14 A From the shirt of the abdomen.

15 Q From the shirt of the abdomen?

16 A That's correct.

17 Q And did you retrieve anything internally from the  
18 shotgun wound to the stomach?

19 A Yes. There was a plastic cup that had #26 on it. It  
20 was a green plastic cup. Then there was felt or cardboard  
21 wadding material that was also present. And then we also  
22 retrieved buckshot.

23 Q And are you able to render an opinion or anything as  
24 to the gauge of the shotgun used in this particular case  
25 or anything of that nature?



1 A From the plastic cups such a determination could be  
2 made. I personally cannot make one.

3 Q That's not within your purview of information?

4 A That's correct.

5 Q Sometimes you can do that from other different type  
6 projectiles, but the nature of the shotgun includes that  
7 conclusion on your part?

8 A That's correct.

9 Q Was there anything else about the examination of  
10 Mr. Frady that tells you about his condition or position  
11 at the time of death?

12 A No.

13 Q Anything that supports that he was either standing or  
14 seated at the time of death?

15 A Not from the body itself.

16 Q And other than these two shotgun wounds to Barry  
17 Frady, there were no other either potentially fatal, or  
18 fatal, or major injuries to him at that time?

19 A No. He had no other significant injuries.

20 Q And would his death be fairly instant or would that  
21 be something that would have taken a while to occur?

22 A It would be very quickly.

23 Q And the shotgun wound to his neck, would that have  
24 paralyzed him as well?

25 A Yes, it would.

1 Q So even if that didn't occur immediately, he, after  
2 that wound was received, would not have been able to move?

3 A That's correct.

4 Q Let's draw your attention to the autopsy of James  
5 Cleveland Frady that you did. Just, initially, this is  
6 the older gentleman that you examined?

7 A Yes.

8 Q And just generally, what was his physical stature and  
9 size?

10 A He was 6'2" and weighed about 330 pounds.

11 Q A big guy?

12 A Big guy.

13 Q And just generally also tell the jury what your  
14 external examination of James -- or Jimmy Frady revealed  
15 to you.

16 A He was received in a pair of gym shorts. And his  
17 skin demonstrated soot exposure, again, without any  
18 evidence of burning. He had two distinct shotgun wounds  
19 to his body.

20 Q And where were his wounds?

21 A One shotgun wound was into the right lateral chest in  
22 the armpit area. And it was associated with some of the  
23 fine white particulate material that I described before.  
24 It entered the chest and produced massive tears in the  
25 right lung. And then the projectiles passed into the back

1 portion of the neck where I retrieved multiple buckshot  
2 pellets from this area.

3 Q And where was the other shotgun wound?

4 A The second one was in the right lower abdomen. It  
5 passed toward the left and upward. It produced multiple  
6 tears in the liver, in the heart, and then into the left  
7 lobe of the lung.

8 And, again, I removed multiple buckshots from this  
9 area. I also removed a green plastic cup with wadding.  
10 And this plastic cup had, at least, the #1 and there may  
11 have been a possible second number we couldn't make out on  
12 the cup. Then he had some nonspecific bruises along the  
13 edges of his right and left wrists, and on his left elbow,  
14 and on the lateral aspect of his left elbow and left hand.

15 Q And could you tell whether or not those wounds --  
16 that bruising was contemporaneous to the shotgun?

17 A I could not.

18 Q Is it difficult to date bruises?

19 A Unless the bruising is shown at a clear color change.  
20 Bruises start out as a reddish-purple color. Once they  
21 take on a greenish-yellow hue to them, then we know  
22 they're 12 to 18 hours old. But each individual changes  
23 the color of their bruises at slightly different paces.

24 Q And as to -- so you can state to a reasonable degree  
25 of medical certainty that these two wounds to James Frady

1 are shotgun wounds as well?

2 A That's correct.

3 Q And based on the projectiles or shot that you  
4 retrieved from the chest and abdomen of James Frady, you  
5 stated that, in your opinion, that was buckshot?

6 A That's correct.

7 Q And you stated you also found some of that filler or  
8 wadding in James Frady. What does that tell you, again,  
9 about the proximity of the gun to James Frady when he was  
10 shot?

11 A That the wound to his right arm -- under his right  
12 arm area, the right axilla area was three feet away from  
13 him, the end of the barrel, at the time. The wound to the  
14 abdomen, however, was slightly closer. It could have been  
15 as close as two feet to him.

16 Beneath the abdominal wound was what we refer to as  
17 stippling. Stippling is caused by other particulate  
18 matter that come down the gun barrel and are pushed out  
19 when that piston is carrying the buckshot out of the  
20 shotgun barrel. And it strikes the skin and produces a  
21 little tiny injury on the skin. So we know that the gun  
22 was slightly closer to him at the time of the abdominal  
23 shot.

24 Q Is there anything to indicate that either of the  
25 injuries to Barry Frady or Jimmy Frady were contact

1       wounds?

2       A     No, none of them were contact.

3       Q     And what is a contact wound? How were you able to  
4       rule that out?

5       A     A contact wound would be when the end of the barrel  
6       was touching the individual. Not only do the projectiles  
7       go forth into the wound, but also the gases that are  
8       produced with the explosion and the shell go forth into  
9       the wound. And then there's massive destruction caused by  
10      the gases in the individual.

11            In the case of the wound to Mr. James Frady that had  
12      the white particulate matter, the white particulate matter  
13      would have been carried with the shotgun mass into his  
14      body and would not have been on the surface. This would  
15      also be true for Mr. Barry Frady.

16      Q     So because this white -- and are they just little  
17      beads of some type?

18      A     They're very fine white plastic particles that are  
19      placed in between the spaces that are left when they pack  
20      the buckshot.

21      Q     Because if they were just on the surface versus going  
22      deeper into the body, that tells you --

23      A     And the lack of this secondary injury caused by the  
24      gas that would also be caused by an explosion of a shotgun  
25      shell.

1 Q We move it some distance away, two to three feet,  
2 depending on the wound. But it would not be much more  
3 beyond four feet, would that be fair to say?

4 A That's correct.

5 Q And the wound under -- is it under the arm of James  
6 Frady?

7 A Yeah. It's in the line of the axilla or where the  
8 seam would be on a man's shirt, running down the arm  
9 through the axilla in the lateral aspect of the upper  
10 chest on the right side.

11 Q And does the position of that wound, in addition to  
12 its tracking, tell you anything about the position of  
13 Mr. James Frady when that shot was fired?

14 A It tells me that the shotgun shooter was to his side  
15 and that Mr. Frady was in a semi-reclined or completely  
16 reclined position.

17 Q Can you tell whether or not his arm was up in any  
18 way?

19 A Well, it had to be up because of where the wound is.  
20 If the arm was in a down position, the arm would have  
21 blocked the shotgun pellets as they entered the body and  
22 there would have been injury to the arm itself.

23 So the arm had to be out of the way. So it had to be  
24 elevated to, at least, a level that removed it from the  
25 pathway as to -- as high as it could reach.

1 Q And is that raised arm consistent -- not necessarily  
2 dispositive, but consistent with a defensive posture on  
3 the part of Mr. Frady?

4 A Yes, it would be.

5 Q And what is that defensive posture? What are you  
6 looking for?

7 A You look for a posture that signifies that there may  
8 have been recognition that this violence was going to be  
9 committed, and that leaves a signature to that  
10 recognition. In this case, a gesture that somebody would  
11 make would be to throw the palm of the hand up and stretch  
12 the arm out toward the person that was going to cause them  
13 harm. That gets the arm out of the way and preserves it  
14 from injury and would, subsequently, give the residue  
15 information that's been previously described.

16 Q So raising that arm, either to block a shot or to  
17 cover himself, that's what we're talking about in terms of  
18 defense posture?

19 A That's correct. It's some sort of gesture that one  
20 would maybe not reasonably think would protect them, but  
21 would offer them some degree of protection.

22 Q And is that more or less an involuntary response?

23 A Pretty involuntary.

24 Q And were you able to render an opinion as to the  
25 cause of death of James C. Frady, Jimmy Frady?

1 A Yes. Again, either of these two shotgun wounds would  
2 have been sufficient to produce death.

3 Q And, again, was that somewhat quick and instant or,  
4 again, would he have lingered for some time?

5 A No. It would have been very quick. Either the wound  
6 to the abdomen or the wound that pretty well destroyed the  
7 right lung would have produced sufficient injury that he  
8 would have been almost instantly incapacitated.

9 Q And, again, you had no concerns that toxicology in  
10 any way may have played a part in Mr. James Frady's death?

11 A No.

12 MS. HERVEY: The Court's indulgence one moment, Your  
13 Honor.

14 (Pause.)

15 BY MS. HERVEY:

16 Q Let me show you what's been marked as State's Exhibit  
17 No. 19 for identification purposes only, and ask you,  
18 without removing these items in the view of the jury, if  
19 looking at them, if you can tell if those are some of the  
20 items you retrieved both from the body of Barry Frady and  
21 from James Frady?

22 A Yes. These represent various items that I testified  
23 to that I removed at the time of autopsy and placed them  
24 in small enclosed plastic tubes. I identified the  
25 individual tubes and placed all the tubes in a separate



1       tamper-proof sealable envelope.

2       Q     And would you have turned them over to a member of  
3       the Oconee County Sheriff's Office?

4       A     That's correct.

5       Q     You don't, specifically, remember who, but one of  
6       them was generally present during your autopsy for the  
7       purpose of receiving that type of evidence?

8       A     That's correct.

9       Q     And those are the containers you placed those items  
10      in?

11      A     That's correct.

12            MS. HERVEY: Your Honor, at this time, we would move  
13      the items in State's Exhibit No. 19 into evidence.

14            THE COURT: Any objection as to State's Exhibit No.  
15      19?

16            MR. ALLEN: No objection, Your Honor.

17            THE COURT: Ladies and gentlemen of the jury, State's  
18      Exhibit No. 19 will be submitted into evidence without  
19      objection. State's Exhibit No. 19 in evidence.

20            You may publish.

21            (WHEREUPON, State's Exhibit No. 19 was admitted into  
22      evidence.)

23            MS. HERVEY: The Court's indulgence one moment, Your  
24      Honor.

25            (Pause.)

1 MS. HERVEY: We have nothing further from this  
2 witness at this time.

3 THE COURT: Cross-examination?

4 MR. ALLEN: May it please the Court?

5 THE COURT: Yes, sir.

6 MR. ALLEN: Just a few questions for Dr. Woodard.

7 CROSS-EXAMINATION

8 BY MR. ALLEN:

9 Q Dr. Woodard, the cause of death of Barry Frady, would  
10 it be correct to say were the projectiles you described  
11 that entered the body?

12 A That's correct.

13 Q And those projectiles with Barry Frady were birdshot;  
14 is that correct?

15 A Birdshot into the neck and buckshot into the abdomen.

16 Q So birdshot and buckshot?

17 A That's correct.

18 Q And there was some wadding also in Barry Frady that  
19 you removed?

20 A Yes. From the neck wound, I removed the plastic cup.  
21 And from the abdomen wound, I removed a green plastic cup  
22 with #26 on it as well as some felt wadding materials.

23 Q But, again, the projectiles entering the body in  
24 those particular places were what caused the fatal  
25 wounds?

1 A That's correct.

2 Q Do you have any opinion as to which wound occurred  
3 first?

4 A I would have no way to know.

5 Q Okay. And then referring you to James Cleveland  
6 Frady. The cause of death of James Cleveland Frady would  
7 have also been the projectiles that entered the body?

8 A That's correct.

9 Q And what projectiles entered James Cleveland Frady's  
10 body?

11 A Both sites had buckshot that entered the body.  
12 Within the abdomen, we found a plastic cup that had #1 and  
13 a second number next to it, as well as some cardboard or  
14 felt wadding material that was associated with that.

15 Q You found no birdshot?

16 A No birdshot, buckshot.

17 Q Okay. And then, lastly, let me ask you, all of the  
18 wounds that you've described for each individual were no  
19 less than, in your opinion, two feet away and no more than  
20 four feet away?

21 A That's correct.

22 Q So that's a close -- that's close, obviously?

23 A Yes, it is.

24 Q And a wound and the projectiles traveling that close  
25 of a distance would have produced a massive amount of blow

1 back, would that be a true statement in your opinion?

2 A In the case of Mr. Barry Frady, he was wearing a  
3 shirt and that would have precluded blow back. The shirt  
4 would have acted as an absorbent. So the blow back would  
5 be caught on the shirt.

6 Q And that was Barry that you mentioned?

7 A That was Barry.

8 But in the case of James Frady, he was not shot  
9 through any clothing, so there would have been an element  
10 of blow back, yes, sir.

11 Q And there could have potentially been a lot of blow  
12 back?

13 A There could have been a lot of blow back.

14 Q And back to Barry, would not the wound to the neck  
15 area have produced a lot of blow back?

16 A Yes, it could have.

17 Q Substantial amounts of blow back? And blow back  
18 being blood --

19 A Or tissue particles.

20 Q Blood and/or tissue?

21 A Uh-huh.

22 MR. ALLEN: Thank you.

23 That's all the questions I have of this witness, Your  
24 Honor.

25 THE COURT: Redirect?

REDIRECT EXAMINATION

BY MS. HERVEY:

Q Just to clarify. With Barry Frady, you retrieved birdshot from his neck?

A That's correct.

Q And buckshot from his abdomen?

A That's correct.

Q You never saw any mixing of the shot to either wound?

A No. They -- in Mr. Barry Frady, he had two separate types of materials, birdshot and buckshot.

MS. HERVEY: That's all, Your Honor.

I just wanted to clarify that.

THE COURT: Recross limited to redirect?

MR. ALLEN: No, sir, Your Honor.

THE COURT: As to this witness?

MS. HERVEY: He may be excused.

THE COURT: Any objection?

MR. ALLEN: No objection.

THE COURT: Dr. Woodard, you may step down. And you are excused.

Counsel, approach.

(WHEREUPON, a bench conference was held.)

THE COURT: Ladies and gentlemen, we're going to take just a little bit more testimony before we adjourn for lunch. If you all will bear with me for one moment, I'm

1 going to give both sides an opportunity to brief their  
2 respective clients.

3 MS. HERVEY: The State calls Kevin Davis.

4 THE COURT: Come around, please.

5 THE CLERK: Place your left hand on the Bible and  
6 raise your right hand.

7 WHEREUPON,

8 KEVIN DAVIS,

9 after first having been duly sworn, testified as follows:

10 THE CLERK: Please be seated.

11 THE COURT: Good afternoon.

12 If you'll adjust that microphone and speak in it so  
13 that the last two jurors down there can hear you. Make  
14 sure you use it for me. And, of course, everybody wants  
15 to pull that chair up, but that chair won't slide up. You  
16 can move from side to side, but it won't go up.

17 If you would, begin by stating your full name and  
18 spelling your last name for the court reporter.

19 THE WITNESS: Kevin Davis, D-A-V-I-S.

20 DIRECT EXAMINATION

21 BY MS. HERVEY:

22 Q Are you a sergeant?

23 A Yes. I'm currently first shift sergeant with the  
24 sheriff's department.

25 Q How long have you been with the Oconee County

1 Sheriff's Office?

2 A It's been well over ten years.

3 Q And is that your full career in law enforcement or do  
4 you have anything before that?

5 A I worked a couple years with the Walhalla Police  
6 Department.

7 Q And sergeant over first shift, are we talking about  
8 road patrol, uniform patrol?

9 A Yes, ma'am.

10 Q And were you similarly employed back in June of 2004?

11 A Yes, I was.

12 Q And back in June of 2004, did you have the occasion  
13 to respond to a call at [REDACTED]?

14 A Yes, I did.

15 Q And back in September 2004 or later on, did you go  
16 back to that residence as it relates to these murders?  
17 Were you there?

18 A Yes, I did.

19 Q And is that the same house that you responded to on  
20 June 11th, 2004?

21 A Yes, it is.

22 Q And when you went there on June 11th of 2004, what  
23 two individuals, or others, did you find there?

24 A When I went there in June, I spoke to Mr. James C.  
25 Frady, which is the father of the Defendant, and Barry

1 Frady, which is the stepbrother of the Defendant, at that  
2 residence.

3 Q I'm sorry. Did you say the brother of the Defendant?

4 A Stepbrother.

5 Q The stepbrother of the Defendant. And based on your  
6 talking with them and your investigation there at the  
7 scene, did you and is it part of your duty to go seek an  
8 arrest warrant?

9 A Yes, I did. After talking to James Frady and Barry  
10 Frady, I -- through the course of the investigation, I did  
11 obtain two arrest warrants.

12 Q And were those for the offense of assault?

13 A Yes, they were. They were for the offense of  
14 assault. One count of assault on Mr. James C. Frady and  
15 one count of assault on Mr. Randy [sic] Frady.

16 Q And let me back you up. One count of assault on  
17 James C. Frady and one -- you said on "Randy," that would  
18 be the Defendant. Do you mean someone else?

19 A I'm sorry. Barry Frady.

20 Q So both arrest warrants were assault warrants to  
21 arrest, just arrest, but it was just a warrant for the  
22 Defendant, Randy Frady, with the complainants being James  
23 Frady and Barry Frady?

24 A That's correct. The arrest warrants were for the  
25 Defendant.



1 Q And "assault" meaning an offer to do bodily harm?

2 A That's correct.

3 Q And were you ever able to serve those warrants?

4 A I -- once an officer in my department obtains a  
5 warrant, I cannot serve it per se. So I have to turn it  
6 over to other officers to, actually, serve the warrant.

7 Q Did you turn those over to Mary Seger?

8 A Yes, I did.

9 Q And is she someone who operates for the Oconee County  
10 Sheriff's Office under your command?

11 A Yes, she is.

12 Q And did -- that pretty much all occurred within the  
13 span of that day, did it not?

14 A Yes, it did.

15 Q Maybe the arrest warrants went in to the next day or  
16 something like that, but your investigation and your  
17 talking with them happened that day?

18 A That's correct.

19 Q And were you also present on September 23rd of 2004  
20 when Mr. Frady was arrested?

21 A Yes, I was.

22 Q And did you Mirandize him?

23 A Yes. I was on the scene when he was arrested. And I  
24 did read him his Miranda rights.

25 Q And, if you could, just tell the jury, they've

1       probably heard it on TV, but what are the Miranda warnings  
2       you give individuals?

3       A     I always have a card that I read them off of. So if  
4       I testify in Court, I can always advise that I read the  
5       same thing over and over. And it is simply, I tell them,  
6       I'm going to read you your Miranda warning. I say, You  
7       have the right to remain silent. Anything you say can and  
8       will be used against you in a court of law. You have a  
9       right to talk to a lawyer and have him present with you  
10      while you're being questioned. If you cannot afford to  
11      hire a lawyer, one will be appointed to represent you  
12      before any questioning, if you wish. And you can decide  
13      at any time to exercise these rights and not answer any  
14      questions or make any statements.

15      Q     And is part of your training and education with law  
16      enforcement and your experience with them just to assess  
17      whether or not the person you're Mirandizing appears to  
18      understand what you're telling them?

19      A     Yes.

20      Q     And, in your opinion, Randy Frady on that day,  
21      September 23rd, did he understand you as you Mirandized  
22      him?

23      A     Yes, he did.

24            MS. HERVEY: I have no further questions of this  
25      witness, Your Honor.

1 THE COURT: Cross-examination?

2 MR. ALLEN: No questions for this witness, Your  
3 Honor.

4 THE COURT: As to this witness, Solicitor?

5 MS. HERVEY: He may be excused, Your Honor.

6 And this may be the point to break. I believe the  
7 next witness will be more lengthy.

8 THE COURT: Very well.

9 Sergeant, you may step down and you are excused.

10 Ladies and gentlemen of the jury, now I'm going to  
11 give you a lunch break. I want you to have the  
12 opportunity to get something good to eat.

13 And, please, over the break, as I've discussed with  
14 you throughout the trial, please, do not discuss the case  
15 with anyone or even amongst yourselves. You have not  
16 heard all the arguments or evidence in the case, the  
17 arguments of the attorneys, or my charge to you on the  
18 law. And as I've instructed you throughout the trial, if  
19 somebody wants to talk to you, just tell them you're on  
20 the jury and you cannot discuss it. And if they persist,  
21 you let me know.

22 I hope you have a pleasant lunch. Please be back in  
23 your jury room, if you can, by 2:00. I'd like to start  
24 back as quickly after 2:00 as we possibly can.

25 You may retire at this time.

1 (WHEREUPON, the jury was excused from open court at  
2 approximately 12:47 p.m.)

3 THE COURT: Anything on the record from the State  
4 before we adjourn for lunch outside the presence of the  
5 jury?

6 MS. HERVEY: Nothing from the State, Your Honor.

7 THE COURT: From the Defendant?

8 MR. ALLEN: No, sir, nothing from the Defendant.

9 THE COURT: Very well. This Court stands adjourned  
10 until 2:00 this afternoon for lunch.

11 I point out to Counsel that I would expect any  
12 request to charge in this case to be handed up to the  
13 Court by the end of today.

14 Thank you very much.

15 We stand adjourned until 2:00.

16 MS. HERVEY: Your Honor, will you give us a copy of  
17 your current charge?

18 THE COURT: I will. Before y'all argue, you will  
19 have a complete copy of my charge. But I need to see your  
20 requests first.

21 MS. HERVEY: Yes. I understand. I usually pretty  
22 much stay with your standard charge and that type thing.

23 THE COURT: I'll let you look at the entire thing. I  
24 would be happy to.

25 (WHEREUPON, a lunch break was taken.)

1 THE COURT: Is the State ready to proceed, Solicitor?

2 MS. HERVEY: Your Honor, may we approach?

3 THE COURT: Counsel, approach.

4 (WHEREUPON a bench conference was held.)

5 THE COURT: Is the State ready to proceed, Solicitor.

6 MS. HERVEY: Yes, Your Honor, we are.

7 THE COURT: Is the Defendant ready to proceed?

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

9 THE COURT: Bring the jury in, please.

10 (WHEREUPON, the jury came into open court at  
11 approximately 2:27 p.m.)

12 THE COURT: Madam Foreperson, and, ladies and  
13 gentlemen, I had to take up a couple of matters of law.  
14 So I wanted you to know we were out here working.

15 We'll now continue with the testimony of the trial in  
16 this case.

17 You may call your next witness.

18 MR. WAGNER: The State calls Kevin Comer.

19 THE COURT: Mr. Comer, if you'll come around and be  
20 sworn by the clerk.

21 THE CLERK: Place your left hand on the Bible and  
22 raise your right.

23 WHEREUPON,

24 CHARLES KEVIN COMER,  
25 after first having been duly sworn, testified as follows:

1 THE CLERK: Please go around and have a seat.

2 THE COURT: Have a seat and makes yourself  
3 comfortable. Speak into the microphone. The chair won't  
4 pull up, but the microphone will raise up and down.

5 Start by stating your name and spell your last name  
6 for the court reporter. And speak into that microphone so  
7 the last two jurors can hear you.

8 THE WITNESS: Charles Kevin Comer, C-O-M-E-R.

9 THE COURT: Your witness, Counsel.

10 DIRECT EXAMINATION

11 BY MR. WAGNER:

12 Q Mr. Comer, what do you do for a living?

13 A I'm a tire salesman for C & S Tire.

14 Q Okay. And do you work there currently?

15 A Yes, sir.

16 Q Were you working today before you got called on your  
17 subpoena to come up here?

18 A Yes, sir.

19 Q Do you know the Defendant, Randy Frady?

20 A Yes, sir.

21 Q And have y'all been friends in the past?

22 A Yes, sir, before.

23 Q Did you have a conversation with him in the  
24 summertime of 2004?

25 A Yes, sir.

1 Q Do you remember the exact date?

2 A No, sir.

3 Q Do you remember what you talked about?

4 A Yes, sir.

5 Q And what was that? What was your conversation with  
6 him about?

7 A We had just been talking just different stuff. The  
8 usage of LSD got brought up. And several of us was  
9 talking about, you know, it's nontraceable, this, that,  
10 and the other. And he started asking me how much would it  
11 take to either kill somebody or, basically, put them to  
12 where they're insane.

13 Q Did he mention a specific person in regards to that?

14 A Well, he talked about him and his dad's relationship.  
15 And he talked about if his dad was out of the way, he'd  
16 have the house and this, that, and the other, and just  
17 different things of that nature.

18 Q Okay. And was this in regards to just his daddy?

19 A Pretty much, yeah. That's who he talked about the  
20 most malice with. There was something there that wasn't  
21 comfortable.

22 Q And what, if anything, did he tell you he wanted to  
23 do with his dad?

24 A From what I got from the conversation, he pretty much  
25 wanted to get rid of his dad. He either wanted his dad

1 dead, or in a nut house, or something.

2 Q Did he ever mention his brother?

3 A He mentioned his brother, but not to a great extent.

4 Q Okay. Now, Mr. Comer, have you been in trouble with  
5 the law in the past?

6 A Yes, sir.

7 Q And, basically, what for?

8 A Misdemeanors. I've had some bad checks, driving,  
9 traffic charges, you know. I'm on probation currently in  
10 the State of Georgia for burglary.

11 Q Okay. Do you also have a failure to stop for blue  
12 light?

13 A Yes, sir.

14 Q And when you say traffic charges, you got charged  
15 with running into something, hit and run with property  
16 damage and leaving the scene?

17 A Yes, sir.

18 Q Okay. Other than that and those things you've  
19 mentioned here, have you got any other convictions like  
20 that on your record?

21 A No, sir.

22 Q Do you still consider yourself friends with the  
23 Defendant?

24 A Yes, sir, as far as I know.

25 Q Okay. And when he said this stuff to you, did any



1 bells go off in your head, as far as were you concerned?

2 A Not really. I just took it as I took a lot of other  
3 people when they talk to me, just talking, shooting their  
4 mouth off.

5 Q Okay. When you heard about the murders in this case,  
6 what, if anything, did you do?

7 A I told Mark Lyles and a couple other law enforcement  
8 officers about the conversation I had with him. And they  
9 were asking what all was said between me and him and this,  
10 that, and the other. And I told them exactly what I told  
11 y'all.

12 Q Did the Defendant say anything about what he would do  
13 if he killed his father?

14 A He always talked to me about Costa Rico, friends he  
15 had in Florida, and about how easy it was to go there and  
16 back without papers or anything.

17 Q Essentially, skip the country?

18 A Yes, sir.

19 MR. WAGNER: No further questions.

20 THE COURT: Cross-examination?

21 MR. ALLEN: May it please the Court?

22 THE COURT: Yes, sir.

23 CROSS-EXAMINATION

24 BY MR. ALLEN:

25 Q Now, your name is "Cromer" or "Comer"?

1 A Comer.

2 Q Comer?

3 A Yes, sir.

4 Q Do you have an alias where you've used "Cromer"  
5 before?

6 A No, sir.

7 Q Have you ever been known as "Kevin Cromer"?

8 A No, sir. People will mistakenly put the "R" in front  
9 of the -- after the "C" because of the common name around  
10 here of Cromer.

11 Q Well, let me ask it this way. Are any of your  
12 records, criminal records, listed as Kevin Cromer, to your  
13 knowledge?

14 A No, sir.

15 Q And you have been convicted of burglary; is that  
16 right?

17 A Yes, sir.

18 Q That was in the State of Georgia?

19 A Yes, sir.

20 Q That was stealing?

21 A Yes, sir.

22 Q And what degree was it, if you can tell us? Do you  
23 know what I mean?

24 A (There was no response.)

25 Q Sometimes there's different levels of burglary and

1 stealing. What level was it?

2 A To be honest with you, I'm not sure. It was a plea  
3 bargain.

4 Q Well, did you plead guilty or were you tried?

5 A I pled no contest.

6 Q And how long are you on probation?

7 A Ten years.

8 Q For ten years?

9 A Yes, sir.

10 Q Ten years from now, or ten years from last year, or  
11 ten years from when?

12 A Ten years from May.

13 Q Ten years from May?

14 A This past May, yes, sir.

15 Q So that just recently occurred, May of '06?

16 A Yes, sir.

17 Q And how old are you?

18 A I'm 32.

19 Q Now, you also -- did you plead guilty or were you  
20 tried and convicted of obtaining goods under false  
21 pretenses?

22 A Of obtaining goods under false pretenses?

23 Q Yeah.

24 A I've never been tried or convicted of that, never.  
25 I've never been arrested for obtaining goods under false

1       pretenses.

2       Q     Well, let's go -- how about your failure to stop for  
3       a blue light? Now, that was running from the police, is  
4       that what that means?

5       A     Yes.

6           THE COURT: Just a moment.

7           MS. HERVEY: Just an objection, Your Honor. He asked  
8       that question and, he's denied it. I would move that the  
9       question and answer be stricken from the record and the  
10      jury told not to consider that. There's no factual basis  
11      for it.

12          THE COURT: Ladies and gentlemen of the jury, in  
13      response to the last question, I ask you to disregard that  
14      and not consider that in any way in your deliberations in  
15      connection with this case.

16          Counsel, you may proceed with cross-examination.

17          MR. ALLEN: Yes, sir.

18          May it please the Court?

19      BY MR. ALLEN:

20      Q     I was asking you about the failure to stop for a blue  
21      light. What county was that in?

22      A     Oconee County.

23      Q     When was that? What year was that?

24      A     About 2003, 2004.

25      Q     Okay. And that was running from the police?

1 A Yes, sir.

2 Q Okay. Was anybody injured in that situation?

3 A To my knowledge, no one was injured.

4 Q And then you've also had a -- have you had a number  
5 of fraudulent checks?

6 A Yes, sir.

7 MS. HERVEY: Your Honor, I'm going to object at this  
8 point.

9 THE COURT: Counsel, approach.

10 (WHEREUPON, a bench conference was held.)

11 BY MR. ALLEN:

12 Q And you also had a conviction for a driving offense,  
13 driving under suspension third offense?

14 A Yes, sir.

15 Q And when was that and what county was that in?

16 A It was in Oconee County. It's been a few years back.  
17 It was dropped down for DUS third to DUS first. And I  
18 paid a fine for that.

19 Q And you claim that the conversation was about Randy's  
20 inheritance or something to that effect, is that what  
21 you're saying?

22 A No, sir. I didn't say anything about inheritance at  
23 all, sir.

24 Q Well, about him getting the house or something?

25 A He mentioned something about the house. I really

1 didn't pay much attention to the details to that part of  
2 it. Because I really wasn't interested in it.

3 Q And it was about LSD, too, you claim; right?

4 A Yes, sir. We had been in a conversation talking  
5 about drugs. And when it come up that LSD was  
6 nontraceable in most toxicology reports, he twinkled. And  
7 he asked me several questions about it.

8 Q And what you were trying to do with this thing is you  
9 were trying -- is because of your own multiple problems  
10 that you've had legally, you're trying to curry favor with  
11 law enforcement to get some kind of situation worked out;  
12 isn't that true?

13 A No, sir.

14 Q Are you sure about that?

15 A Yes, sir.

16 MR. ALLEN: That's all the questions I have of this  
17 witness, Your Honor.

18 THE COURT: Redirect?

19 REDIRECT EXAMINATION

20 BY MR. WAGNER:

21 Q When you called and talked to Mark Lyles from the  
22 Sheriff's Office about what the Defendant had told you --

23 A Yes, sir.

24 Q -- were you trying to curry any favor with them on  
25 any matter?

1 A No, sir. I was not in trouble for anything at that  
2 time.

3 Q Did you have any other charges against you that you  
4 asked for help on?

5 A No, sir.

6 Q Did anybody ever promise you anything to testify  
7 today?

8 A No, sir.

9 Q Did anybody promise you anything to give a statement  
10 at that time?

11 A No, sir.

12 MR. WAGNER: Thank you.

13 THE COURT: Recross limited to redirect?

14 MR. ALLEN: Nothing further.

15 THE COURT: As to this witness, Solicitor?

16 MS. HERVEY: Nothing as to this witness, Your Honor.

17 He may be excused, yes, Your Honor.

18 THE COURT: Any objection?

19 MR. ALLEN: No objection.

20 THE COURT: You may step down and you are excused.

21 Call your next witness.

22 MS. HERVEY: Can we approach just briefly?

23 THE COURT: Yes.

24 (WHEREUPON, a bench conference was held.)

25 THE COURT: Madam Foreperson, and, ladies and

1 gentlemen of the jury, I need to take up a matter of law.

2 I'm going to ask you to step to your room. Please  
3 don't discuss the case. I'll be back with you as soon as  
4 I can.

5 Thank you.

6 (WHEREUPON, the jury was excused from open court at  
7 approximately 2:44 p.m.)

8 THE COURT: All right. Counsel, it's my  
9 understanding -- and I need to put this on the record. In  
10 the pre-trial conference, I was advised by Counsel for the  
11 Defendant that he wished to bring up an issue on  
12 cross-examination with one of the State's witnesses. I  
13 asked that we take up that matter outside the presence of  
14 the jury when we reached that point in the trial. And we  
15 have now reached that point in the trial.

16 It's my understanding, after a discussion at the  
17 bench, that Counsel is going to outlay for me exactly what  
18 areas they want to go into so I can rule on the matter  
19 outside the presence of the jury before we, actually,  
20 begin the testimony of this witness.

21 Have I accurately stated the agreement as far as the  
22 Solicitor is concerned?

23 MS. HERVEY: Yes, sir, Your Honor.

24 THE COURT: As far as the Defendant is concerned?

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



1 THE COURT: Would you call the witness, Solicitor, to  
2 the stand?

3 MS. HERVEY: Your Honor, the State calls Mike Harper  
4 to the stand.

5 And just for the proffer, I'll turn him over to  
6 Mr. Allen. I don't have anything to proffer from him.

7 THE CLERK: Come up here.

8 Raise your right hand and place your left on the  
9 Bible.

10 WHEREUPON,

11 MICHAEL HAROLD HARPER,  
12 after first having been duly sworn, testified as follows:

13 THE CLERK: Have a seat.

14 THE COURT: State your full name for the record and  
15 spell your last. We'll go through this again.

16 THE WITNESS: Michael Harold Harper. Last name,  
17 H-A-R-P-E-R.

18 THE COURT: Mr. Allen.

19 MR. ALLEN: May it please the Court?

20 THE COURT: Yes, sir.

21 DIRECT EXAMINATION

22 BY MR. ALLEN:

23 Q Mr. Harper, you are aware of the -- strike that. Let  
24 me rephrase.

25 The incident we've been discussing here in court that

1       you're aware of involved a van that was owned by you?

2       A     That's correct.

3       Q     And what kind of van was that?

4       A     A 1991 Chevy Astro.

5       Q     And was it titled to you exclusively or was it  
6 jointly titled?

7       A     Well, it started out being my dad's. When he  
8 retired, he turned it over to me. And I had it in my  
9 wife's name.

10      Q     Okay. But you --

11      A     I was the sole driver of it.

12      Q     And you considered yourself the owner, despite the  
13 title?

14      A     Yes, sir.

15      Q     All right. In September of 2004, where did you live?

16      A     [REDACTED]

17      Q     All right. And you also -- well, you've known Randy  
18 Frady a long time; is that right?

19      A     Since the age of four.

20      Q     How old are you?

21      A     I'm 42.

22      Q     So you've known him almost 40 years?

23      A     That's correct.

24      Q     And your parents live over on [REDACTED]; is  
25 that right?

436

1 A Yes, sir, [REDACTED].

2 Q Now, where is that in relation to [REDACTED]

3 [REDACTED]?

4 A It's diagonally across the street.

5 Q Okay. Is that where you grew up?

6 A Yes, sir, since I was two years old.

7 Q All right. And you don't disagree that in this  
8 incident or this situation, apparently, your van was  
9 involved and used as the vehicle to transport to and from

10 [REDACTED]?

11 A I'm fully aware of that fact, yes.

12 Q And what time did you get home from work on September  
13 the 22nd, 2004, approximately?

14 A I would say approximately somewhere between 6:30,  
15 7:00.

16 Q And your claim to law enforcement was that your van  
17 was stolen later that evening; right?

18 A That's correct.

19 Q And also when you came home that evening from work,  
20 now, your claim or statement to law enforcement was that  
21 the van was running out of gas?

22 A Yes, sir. It was spitting and sputtering. And the  
23 engine, actually, went dead. And I coasted up into my  
24 driveway.

25 Q Okay.

1 A I'm sure it would have probably started back up, but  
2 it wouldn't have stayed running long. It was in the first  
3 stages of being out of gas.

4 Q And you understood that as well; right?

5 A Absolutely.

6 Q And then later, you reported that your van was  
7 stolen; is that right?

8 A That's correct.

9 Q And you also reported and claimed that you had found  
10 it there at Cemetery Road; is that right?

11 A That is correct.

12 Q Now, at some point, you had had an ongoing  
13 relationship, business relationship, we'll call it, with  
14 James and Barry Frady?

15 A I don't know if I would call it necessarily a  
16 business relationship. It was more along the lines of a  
17 friendship.

18 Q Okay. And your friendship kind of went awry or you  
19 became estranged with both James -- or Jim and Barry  
20 Frady, did you not?

21 A I had stopped going to their house, yes.

22 Q In fact, you fell out with them, didn't you?

23 A In a sense, yes, but --

24 Q Had you been barred or banned from going over there  
25 to [REDACTED]?

1 A I had been told that I was not welcome there any  
2 more, yes.

3 Q And you had stopped going there because you  
4 understood you weren't welcome there any more; isn't that  
5 right?

6 A That would be correct, yes.

7 Q And how far prior to September the 22nd did you come  
8 to the understanding that you were no longer welcome at  
9 James and Barry Frady's home?

10 A Well, I had been back a couple of times since that  
11 notification. But I would say -- I can't pinpoint it  
12 exactly, but I would say a few months.

13 Q Several months prior to September the 22nd, 2004, you  
14 came to the understanding that you weren't welcome at [REDACTED]  
15 [REDACTED]?

16 A That would be correct.

17 Q And, in fact, did you ever understand that you had  
18 been put on trespass notice with the appropriate law  
19 enforcement authority that you were not to go back there?

20 A No, sir.

21 Q You didn't understand that?

22 A I'm not aware of that.

23 Q Did you understand that, because of you, Jim and  
24 Barry Frady had placed no trespassing signs on the  
25 property?

1 A I had seen no trespassing signs. But they -- it was  
2 not notified to me that they were because of me.

3 Q Okay. Also, now, during that time and, I guess,  
4 prior to the several months before that that you  
5 understood you weren't to go back over there, you had had  
6 transactions with them that involved some type of mopeds  
7 or scooters; isn't that right?

8 A A 1955 Cushman Eagle scooter and a 1959 Super Eagle.

9 Q And you and Jim and Barry had some type of -- at that  
10 point in time, you had some type of joint venture, I'll  
11 call it, about refinishing the mopeds or the scooters and  
12 selling them at some point; is that right?

13 A That's correct.

14 Q And, at some point, that transaction or that deal  
15 went awry; is that right?

16 A That would be correct.

17 Q And, at some point, you claimed that you were owed by  
18 them about \$1,000?

19 A \$950, yes, sir.

20 Q \$950?

21 A \$950.

22 Q What kind of demands did you make to collect?

23 A I just asked them to pay me the \$950 and to get --  
24 can I go back and explain briefly?

25 THE COURT: You may explain your answer.

1 THE WITNESS: Okay. I had a 1958 Cushman Eagle  
2 scooter that I was in the process of restoring. My father  
3 had bought the '55 and the '59 for miscellaneous parts,  
4 fenders, what have you that we would need in the  
5 restoration of the one we were working on.

6 Barry and Jim came by my locksmith shop -- my dad's  
7 locksmith shop at the time and looked at my scooter and  
8 saw the other two leaned against the wall in the shop.  
9 They got excited about it and wanted to take those and get  
10 them running and ride with me.

11 BY MR. ALLEN:

12 Q And when was this? Excuse me.

13 A This was several years ago.

14 Q Okay.

15 A And so I spoke with my dad about it and --

16 THE COURT: Let me make sure, sir, there's no jury  
17 here. When you say "several years ago," are you talking  
18 several years ago from today or several years prior to  
19 2004?

20 THE WITNESS: Several years prior to 2004. I'm  
21 sorry.

22 THE COURT: Go ahead.

23 THE WITNESS: And they were going to fix them up and  
24 they said, We'll ride them with you, you know, for a few  
25 summers or what have you, you know, until we get tired of

1       them. And then you can have them back. They'll still be  
2       in your name.

3               Well, they ended up spending -- they thought they  
4       could get them going for about \$1,000 apiece. They ended  
5       up spending \$5,000 apiece on them. Because they bought a  
6       lot of extras, fancy stuff for them. So me, being the  
7       friend and being mindful of the fact that they had spent  
8       more money than they, actually, expected to, I allowed  
9       both the names, my name and James Frady's, to be on the  
10      titles to the scooters.

11             So they rode them for several years. And I told them  
12      that I just as soon let them keep the scooters and them  
13      reimburse my dad the \$950 that he paid when he bought  
14      those two scooters. And that's pretty much the story in  
15      detail up to the point of trespassing.

16      BY MR. ALLEN:

17      Q     Okay. And you became really angry about that, didn't  
18      you?

19      A     I was a little upset over the fact that Barry told me  
20      over the telephone that he had forged my name on the title  
21      and sold them in Florida. And I called the sheriff's  
22      department. And I talked to a police officer on several  
23      occasions about it and was having them to run a paper  
24      trail to see into the forgery.

25      Q     And this became an ongoing dispute back and forth,



1       you owe me the money, no, we don't, forgery, you're  
2       claiming forgery. It was an ongoing dispute that went on  
3       several months, was it not?

4       A     No, no, it was not.

5       Q     I beg your pardon?

6       A     It was not, no.

7       Q     Well, how long was it? It was an ongoing dispute,  
8       you admit that, don't you?

9       A     Well, I admit I was giving them time to decide what  
10      they wanted to do about giving my dad back the \$950, and  
11      them just get my name off the scooters and let it go at  
12      that. And when the scooters disappeared, I called Barry  
13      and asked him about them. And he said that they were  
14      sold -- or he said one was sold and that the other one  
15      disappeared.

16      Q     About when was that, please, sir?

17      A     I would say probably sometime in June.

18      Q     Is your father living?

19      A     Yes. He's very sick with emphysema. He pretty much  
20      can't leave the house.

21      Q     Was he sick then?

22      A     He got sick shortly after they obtained the scooters.

23      Q     And so that last date you referred to, you said that  
24      was June of 2004?

25      A     Yes.

1 Q Okay. But, again, it was an ongoing dispute and you  
2 became really angry about it, did you not?

3 A No, no, I didn't become really angry. I was more  
4 disappointed in the fact that we've had such an ongoing  
5 friendship for years. No, I would not say I was mad or  
6 irate. I would say I was more disappointed in the fact  
7 that our friendship --

8 Q Well, didn't you have words with them during the  
9 period of the dispute? Didn't you have cross words with  
10 them where you had a heated conversation where you would  
11 say they owed you \$950, and they would say, no, they didn't?

12 A They --

13 Q You --

14 THE COURT: Just a moment. Ask one question at a  
15 time. I know there's not a jury, Counsel.

16 MR. ALLEN: Yes, sir.

17 THE COURT: One question at a time. Rephrase your  
18 question.

19 MR. ALLEN: Yes, sir.

20 BY MR. ALLEN:

21 Q You had heated conversations with them during an  
22 ongoing dispute, did you not?

23 A We had had conversations, yes.

24 Q Heated?

25 A I don't know that I would imply "heated." We did

1 have conversations about the money. And, yes, sir, there  
2 was some disagreement. I would not say it was heated.

3 Q And also, this may -- you may want to hear this, you  
4 may not. Also, you couldn't account for your whereabouts  
5 on the night in question, on September the 22nd between  
6 9:00 and 11:40? You can't account for your whereabouts,  
7 can you?

8 A Yes, I can.

9 Q And how could you do that?

10 A Well, I left my house and went to the grocery store  
11 and got gas to pour in my van so I could drive it back to  
12 Toccoa the next morning to go to work. I stopped by a  
13 friend's house. I left that friend's house at roughly  
14 between 10:30 and 11:00 and went to my house.

15 My van was not in my yard. I was driving my wife's  
16 car. It was a loaner from Bobby Woods Chevrolet. I had  
17 my plastic five-gallon gas can full of gas. The gas can  
18 that was found at my van was a smaller metal gas can --

19 Q Let me ask you -- excuse me.

20 THE COURT: Hold on.

21 Are you finished with the answer?

22 THE WITNESS: Yeah.

23 BY MR. ALLEN:

24 Q You went to Circle K, according to what you're  
25 saying?

1 A That's correct.

2 Q Did anybody ever come forward, to your knowledge, to  
3 account that you had been there?

4 A No. I didn't encounter anybody at the store that  
5 would be able to say that on that particular day at that  
6 time I was at that store.

7 Q And you claim you went to Ed Towe's, too; right?

8 A That is correct, yes, sir.

9 Q And he won't come forward and account for that, will  
10 he?

11 A Well, I suspect if he needed to or was asked to that  
12 that would probably be in this realm of possibility.

13 Q And one other place you went to?

14 A To the grocery store.

15 MR. ALLEN: That's all the questions I have, Your  
16 Honor.

17 THE COURT: I'll be happy to hear from you now,  
18 Solicitor.

19 I understand you object to some portion of this  
20 cross-examination. I need to know exactly what it is  
21 you're objecting to now. I mean, we defined it into  
22 different areas. There's scooter testimony. There's  
23 testimony that I'll call testimony concerning a  
24 relationship between this witness and the victims,  
25 duration, the type of relationship. And then there was

1 testimony elicited by Counsel concerning this witness'  
2 whereabouts on the night of this alleged incident.

3 I'll be happy to hear from you.

4 MS. HERVEY: Well, Your Honor, I mean, as to the --  
5 well, we'll start with the last one, which is as to his  
6 whereabouts. My objection to it is his characterization  
7 of, you can't account for this and people haven't come  
8 forward. That presumes those people were asked to do that  
9 and if they never have been, I do think --

10 THE COURT: Well, let's put it in another way.

11 Does Counsel have the right in cross-examination to  
12 ask him where he was on the night in question?

13 And then my answer to you, Solicitor, is absolutely,  
14 yes.

15 MS. HERVEY: Oh, and I don't --

16 THE COURT: But he does not have the right to ask him  
17 whether or not he has to produce proof since he's not on  
18 trial.

19 So to the extent that you're asking me that, that  
20 objection is sustained. I'm not going to allow him to do  
21 it. He doesn't have to prove that. He's not on trial.

22 MS. HERVEY: Right. And that's just -- and the  
23 phrasing about people coming forward and those type of  
24 things, that would be the limit to the State's objection.

25 As to his general relationship with Jim and Barry and

1 Randy Frady, you know, that's fine. You know, I just  
2 think we start getting into specifics. We start  
3 triggering a whole bunch of things down that road. I  
4 think, certainly, their relationship at the time and those  
5 type of things -- but I think when you go into some type  
6 of debt that is owed and those type of things, which have  
7 been going on for years and which the Defense attorney can  
8 in no way tie to this particular incident or things that  
9 happened recently that retriggered this dispute, I think  
10 he has gone beyond the scope of relevance and into the  
11 realm of speculation and conjecture and those type things.

12 So I think the scooter testimony as it goes to those  
13 particular things, I think does go beyond that. I mean,  
14 these people have had a 40-year history with each other.  
15 At some point, we can go to every fight they had at  
16 Christmas, Thanksgiving, and on vacation. But I think  
17 we're going to be here a lot longer than anybody wants to.  
18 And I think we do go beyond the scope of relevance.

19 MR. ALLEN: Could I respond to that, Your Honor?

20 THE COURT: You, certainly, can. I'll be happy to  
21 hear from you.

22 MR. ALLEN: May it please the Court, Your Honor?

23 There was admittedly an ongoing disharmonious  
24 relationship that resulted in some anger.

25 THE COURT: Well, I'm listening to what the witness

1       said. I realize those are your words, Mr. Allen. He says  
2       there wasn't anger, but there was a disagreement. He says  
3       it occurred -- and I wrote it down -- several years prior  
4       to 2004. There was a disagreement. And it's my  
5       understanding that you told me -- and I want to make sure  
6       I understand this. You think this matter comes up to show  
7       that this witness had some motive in connection with the  
8       decedents?

9               MR. ALLEN: The van goes to opportunity.

10              THE COURT: This is classic -- a situation involving  
11       what you tend to do on cross-examination to proffer to  
12       this jury evidence showing that someone else allegedly  
13       could commit the crime for which your client is charged or  
14       put another way, third party guilt?

15              MR. ALLEN: Yes, sir.

16              THE COURT: And while --

17              MR. ALLEN: Could I.

18              THE COURT: I'll let you argue. I just want to make  
19       sure I understand the basis for the testimony.

20              MR. ALLEN: Yes, sir.

21              THE COURT: You go ahead.

22              MR. ALLEN: Yes, sir.

23              The third party guilt issue -- and this is a little  
24       different, the Court is aware of the Holmes v. South  
25       Carolina case. The most recent U.S. Supreme Court case

1       that came out -- I forget the citation to it. It came out  
2       this past May --

3               THE COURT: It was May of 2006. And the citation is  
4       126 Supreme Court 1727.

5               MR. ALLEN: And I would submit that the rules were  
6       substantially loose on third party guilt based on Judge  
7       Alito's opinion in Holmes v. South Carolina.

8               Furthermore, I would submit to the Court that this is  
9       not a classic or typical third party guilt situation where  
10      the Defendant is producing witnesses. What I would submit  
11      may be independent witnesses to allege the guilt of a  
12      third party. What we're doing here is simply attempting  
13      to cross-examine a chief witness for the Prosecution along  
14      the lines of third party guilt.

15              And I do think that when you do that, you couple the  
16      third party guilt issue, the standard type of issue, with  
17      the Sixth Amendment right to cross-examine and confront  
18      those witnesses against you. And I would submit that that  
19      would move us into another category that would lighten the  
20      burden even more. I mean, Holmes lightens the burden.  
21      And the fact that this is cross-examination and we have  
22      wide latitude for cross-examination and liberal rules on  
23      cross-examination that we're in another category.

24              I would submit to the Court to not be allowed to ask  
25      that question would deprive the Defendant of his Sixth



1 Amendment right to confront and cross-examine and have --  
2 and for that matter, to have a fair defense.

3 THE COURT: Thank you, Mr. Allen.

4 And I, certainly, understand your objection. You  
5 know, the Constitution, for both our state and the federal  
6 Constitution, doesn't prohibit the exclusion of defense  
7 evidence under certain circumstances. You know that and I  
8 know that. I'm not sure that it makes a difference.

9 Mr. Allen, you haven't pointed me to any case. You  
10 have asked me to review and I have reviewed in its  
11 entirety Holmes v. South Carolina. And you are correct.  
12 The rule in South Carolina did change according to the  
13 United States Supreme Court. And in making any ruling on  
14 this matter, I'm not looking at the evidence against your  
15 client. Because, frankly, I think the United States  
16 Supreme Court told us it was improper to do so to the  
17 extent prior cases in South Carolina might have suggested  
18 it.

19 Although, the Constitution might prohibit the  
20 exclusion of defense evidence under rules that serve no  
21 legitimate purpose and that are disproportionate to the  
22 ends that they are asserted to promote. It is clear that  
23 every state, including the federal government, has rules  
24 of evidence to permit a trial judge to exclude evidence if  
25 its probative value is outweighed by prejudicial effect

1 and certain other matters. Not only unfair prejudice, but  
2 things such as confusion of the issues or potential to  
3 mislead the jury.

4 With that -- with the fact that we have such rules,  
5 an application of that principle is clearly in the area  
6 that you've raised here, and that's third party guilt.  
7 I'm having to balance your client's Sixth Amendment right  
8 to confrontation against that, rules regulating the  
9 admission of evidence, whether it be on cross-examination  
10 or you affirmatively offer evidence that is proper by you  
11 to show that someone else committed the crime of which  
12 your client was charged.

13 Frequently, as you well know, courts have noted that  
14 such evidence is so remote and lacks such a connection  
15 with the crime that they are excluded. Such evidence, it  
16 has been held, can be excluded where it does not  
17 sufficiently connect the other person to the crime as, for  
18 example, where the evidence is speculative, whether it's  
19 remote or does not tend to prove or disprove a material  
20 fact in issue at trial.

21 Having said that, what I have heard on the scooter  
22 evidence is, according to this witness -- who because you  
23 asked me to, and I wanted you to have the opportunity for  
24 an appellate court to see clearly to protect the interest  
25 of your client what this testimony would be before I got

1       into -- before having to rule -- this witness says that  
2       this scooter incident happened several years ago, that it  
3       was not a business venture, as I first believed -- and  
4       that was the Judge believing that -- that this was a  
5       relationship out of friendship that involved scooters and  
6       that there was a debt of \$950.

7               There was clearly a demand for payment. You brought  
8       that out. There was clearly a disagreement as to whether  
9       or not the money was owed. The witness says there was no  
10      anger involved. The evidence that you offer, whether by  
11      cross-examination or through affirmative evidence as to  
12      the commission of a crime by another person, should be  
13      limited, I believe, to some type of evidence which is  
14      inconsistent with the Defendant's guilt. And your  
15      co-counsel has pointed out to me that she believes such  
16      evidence is inconsistent with guilt. If the theory were  
17      that broad, then any evidence which is inconsistent with  
18      the State's theory would be admissible.

19             At best, this evidence that you want to cross-examine  
20      on establishes that someone else may have had a motive to  
21      commit the offenses with which your client is charged. A  
22      motive is not an element or any requirement of the State's  
23      case, nor would it be if your client or if this individual  
24      is charged. Therefore, merely indicating that another  
25      person had a reason to commit one of the offenses charged

1 would not necessarily exculpate your client, Mr. Allen.

2 And, therefore, I find that this evidence that you  
3 want to get into, as I will call the scooter evidence, and  
4 where you have proffered it outside the presence of the  
5 jury is so remote and disconnected with the offense  
6 charged that I find, in my discretion, it should be  
7 excluded.

8 I, certainly, believe that you have the absolute  
9 right on cross-examination for your client to ask this  
10 witness about his relationship with the decedent. The  
11 Solicitor says she doesn't object anyway. But if she did,  
12 I would overrule it.

13 MR. ALLEN: Yes, sir.

14 THE COURT: I feel like you get to explore that. But  
15 I feel like raising this in this fashion, I believe is so  
16 remote and so speculative to raise just suspicion and,  
17 therefore, under my power to do so and in my discretion, I  
18 sustain the objection as to the scooter evidence.

19 And I think we've made a sufficient record on it so  
20 the Court can clearly review my ruling and know the basis  
21 for it.

22 MR. ALLEN: Yes, sir.

23 THE COURT: All right. I'm going to ask you if you  
24 would, sir -- she's going to need to recall you to the  
25 witness stand.

1           But since I'm only going to take one break this  
2           afternoon and I'm going to work straight through -- and I  
3           gave the Defendant a break. I didn't give the lawyers  
4           one. I'll give each one of you one bathroom break and  
5           then proceed and bring my jury back. And let's work  
6           through the conclusion of the afternoon.

7           Yes, ma'am.

8           MS. HERVEY: And, Judge, in the presence of the  
9           Court, while he's still on the stand, I want to make it  
10          known what I've instructed him as to what we are not going  
11          into as to the background between the two.

12          Because I understand you're going to ask about --  
13          it's absolute fair game --

14          THE COURT: It's absolute fair game for him to ask  
15          you about your relationship with the individuals who are  
16          the alleged victims in this case.

17          All right. And it's absolutely fine. But I'm not  
18          allowing any testimony -- if she objects, I'm not allowing  
19          you to go into the scooter evidence.

20          THE WITNESS: Thank you.

21          MS. HERVEY: And I wanted to get a little bit beyond  
22          that. We've gone and made known to you in chambers that  
23          this Defendant has some record. This witness, being his  
24          friend for 45 years, is familiar with that record. I have  
25          instructed him not to go into any prior crimes on the part

1 of the Defendant, whether he --

2 THE COURT: I don't think Mr. Allen, nor you, intend  
3 to elicit from this witness anything about the Defendant's  
4 record.

5 MS. HERVEY: No, no. I want to make it clear what  
6 I've instructed him so we're all operating under the same  
7 guidelines.

8 THE COURT: You understand you're not to mention the  
9 Defendant's record. That is not admissible. The  
10 Defendant has the absolute right not to testify, in which  
11 case his record would not be admissible. And even if he  
12 did testify, it would only be for the purposes of his  
13 credibility, depending on what he was convicted of.  
14 That's a matter for the Court to take up with him and you  
15 are not to mention it whatsoever in your testimony --

16 THE WITNESS: I understand that.

17 THE COURT: -- even if a question you think calls for  
18 that answer.

19 THE WITNESS: I understand.

20 MS. HERVEY: And they also had some difficulties  
21 between the two of them, which I think will be elicited at  
22 some point. That --

23 THE COURT: That's absolutely proper  
24 cross-examination for Mr. Allen to go into any difficulty  
25 between this witness and his client.

1 MS. HERVEY: Oh, I'm going there myself.

2 But I've instructed him to exclude away his  
3 allegation that the Defendant set fire to the house, his  
4 allegation that the Defendant --

5 THE COURT: Your opinion as to who did what is not  
6 admissible in this courtroom. What's on trial here --

7 THE WITNESS: I understand.

8 THE COURT: -- is Mr. Frady for these offenses. And  
9 we're not trying the case involving your opinion.

10 MS. HERVEY: And I just -- I've instructed him that  
11 he's to testify as to what he knows from his own personal  
12 knowledge. And we're going to describe that they've had  
13 difficulties and they had had difficulties in the recent  
14 past and leave it at that is how I'm going to proceed, at  
15 least, through direct.

16 THE COURT: And I'm not trying to limit Mr. Allen. I  
17 understand what you're going to do. I can only rule on  
18 what I've heard during this proffer. And I've ruled on  
19 that.

20 Now, you're asking me now --

21 MS. HERVEY: No, no, no. I'm not asking you.

22 THE COURT: Well, that's all I've ruled on.

23 MS. HERVEY: No, no. I know that. I just wanted it  
24 in the presence of the Court to make sure that what I've  
25 instructed this witness was compensatory with the

1 discussions that we had had both in chambers and prior to  
2 proceeding here today. That's all.

3 THE COURT: I recognize that you're now confirming on  
4 the record what you told me in chambers in the presence of  
5 Mr. Allen as to what you've instructed this witness.

6 MS. HERVEY: And also in the presence of Mr. Harper,  
7 just to make sure we're clear as to how we proceed.

8 MR. ALLEN: And, Judge, let me just be sure that I've  
9 got it correct.

10 THE COURT: You want to make sure you understand my  
11 ruling?

12 MR. ALLEN: Yes, sir.

13 The scooter incident, which I would understand would  
14 entail the monetary amount, I, certainly, couldn't go into  
15 that. I mean, that's the way I understand your ruling.

16 THE COURT: That's right.

17 MR. ALLEN: But the relationship otherwise is fair  
18 game?

19 THE COURT: How close he was to the victims, okay.  
20 What type of relationship, friendship. He's told you he  
21 didn't have a business relationship with them. So you  
22 already know that from the proffer. But his relationship,  
23 that they were friends and had been for a long time, you  
24 can go into that. The general relationship, I see no  
25 reason --



1 THE WITNESS: And as far as I'm concerned, we were  
2 still friends.

3 THE COURT: Well, I don't want you asking questions  
4 now. I'm talking to the attorney.

5 MR. ALLEN: But the estrangement of the relationship?

6 THE COURT: Is there an objection to the fact that  
7 there was an estrangement to the relationship?

8 MS. HERVEY: Well, you get into all -- it's how you  
9 characterize it. He said, Don't come over here anymore.  
10 He went back later and has been back --

11 THE COURT: Well, that's Mr. Allen's word, just like  
12 he characterizes it. I understand he's being an advocate  
13 for his client.

14 MS. HERVEY: And I understand that, too. But -- and  
15 let's just -- you know, if he wants to call it an  
16 estrangement, that's fine. But Mr. Harper is going to be  
17 allowed to give his own characterization.

18 MR. ALLEN: Sure. Absolutely.

19 THE COURT: Mr. Harper can answer the questions. He  
20 wants to know if he can elicit information without your  
21 objection as to that relationship. And my understanding  
22 is you had no objection to that.

23 MS. HERVEY: No. They had a falling out. That's  
24 fine.

25 THE COURT: You understand the rules.

1 MR. ALLEN: I understand the rules.

2 THE COURT: All right. We'll take five minutes.

3 (WHEREUPON, a break was taken.)

4 THE COURT: Is the State ready to proceed?

5 MS. HERVEY: Yes, Your Honor.

6 THE COURT: Is the Defendant ready to proceed?

7 MR. ALLEN: Yes, Your Honor.

8 THE COURT: Now, before I bring the jury in, I want  
9 to make sure that both sides understand my ruling  
10 concerning the admission of evidence.

11 Any questions about my ruling from the State?

12 MS. HERVEY: None from the State.

13 THE COURT: From the Defendant?

14 MR. ALLEN: I don't have any, Your Honor.

15 THE COURT: Very good. I want to make sure so you  
16 know the parameters.

17 MR. ALLEN: Yes, sir.

18 THE COURT: All right. Bring the jury in, please,  
19 sir.

20 (WHEREUPON, the jury came into open court at  
21 approximately 3:28 p.m.)

22 THE COURT: We've got everybody. Very well.

23 All right. Ladies and gentlemen, we'll continue with  
24 the testimony in the trial of this case.

25 Solicitor, you may call your next witness.

1 MS. HERVEY: The State calls Mike Harper to the  
2 stand, Your Honor.

3 THE CLERK: Put your left hand on the Bible and raise  
4 your right.

5 WHEREUPON,

6 MICHAEL HAROLD HARPER,  
7 after first having been duly sworn, testified as follows:

8 THE CLERK: Okay. Please go and have a seat.

9 THE COURT: Have a seat, if you would. Make yourself  
10 comfortable. Use that microphone for me.

11 And begin by stating your full name, spelling your  
12 last name for the record and the jury.

13 THE WITNESS: Michael Harold Harper, H-A-R-P-E-R.

14 DIRECT EXAMINATION

15 BY MS. HERVEY:

16 Q Mr. Harper, I'm going to ask that you speak in that  
17 microphone so these last jurors can hear you.

18 Mr. Bailiff is going to give you a cup of water. If  
19 you need any more, just let him know.

20 What county do you currently live in?

21 A Oconee.

22 Q And how long have you lived here in Oconee County?

23 A All my life. I was born here.

24 Q And just, generally, we've heard a lot of testimony  
25 about you having a van. Are you a locksmith?

1 A Yes.

2 Q How long have you been doing that?

3 A 27 years.

4 Q And what did your daddy do? Was he a locksmith?

5 A Yes, and my grandfather.

6 Q So it's a family business kind of passed on through  
7 the generations?

8 A That's correct.

9 Q You grew up here in Oconee County. What high school  
10 did you go to?

11 A Walhalla.

12 Q And how did you meet -- your wife, Tammy, she  
13 testified previously; is that correct?

14 A Yes.

15 Q How did you meet her? Did you meet at school or just  
16 through friends?

17 A Just through friends.

18 Q And your parents, what are their names?

19 A Harold and Jackie Harper.

20 Q And have they lived here pretty much all their lives  
21 as well?

22 A Well, my mother is from Knoxville, Tennessee. And my  
23 dad was from Salem.

24 Q And where do your parents live? Do they still live  
25 here in Oconee County?

1 A Yes. They live at [REDACTED].

2 Q And we've heard testimony about [REDACTED] and [REDACTED]. Where  
3 is your parents residence in relation to the Frady houses?

4 A It's diagonally across the street.

5 MS. HERVEY: Your Honor, if he could just step down  
6 and look at these two exhibits just briefly to familiarize  
7 the jury.

8 THE COURT: You can step down.

9 Counsel, would you like to step around?

10 MR. ALLEN: Yes, sir.

11 Thank you, Your Honor.

12 BY MS. HERVEY:

13 Q I'm showing you what's been previously marked and  
14 admitted as State's Exhibit No. 1 --

15 THE COURT: Just a moment.

16 Can you see?

17 MS. HERVEY: Let me bring it a little bit farther  
18 forward.

19 THE COURT: Mr. Harper, I'm going to ask you to speak  
20 up now so my court reporter and the people on the jury can  
21 hear you.

22 So turn and face my jury, if you would, after you  
23 look at the exhibit so they can hear you, rather than turn  
24 away from them when you speak.

25 THE WITNESS: All right.

1 BY MS. HERVEY:

2 Q And, if you could, just point out to the jury where  
3 the Frady's live, to the best of your knowledge, on this  
4 map. This is Unity Road, this is Westminster Highway  
5 here, Avalon Drive.

6 A This would be my mother and father's home.

7 MR. ALLEN: Hold on a minute.

8 Mindy, have him do that again.

9 BY MS. HERVEY:

10 Q If you could, just point.

11 A This is my mother and father's home. This is James  
12 Cleveland Frady, Sr.'s, home. And this is James Cleveland  
13 Frady, Jr.'s, home and the residence of Barry Frady.

14 Q So would it be fair to say that your parents  
15 residence is here at the intersection of Avalon Drive and  
16 Westminster Highway?

17 A That's correct.

18 Q And that was the diagonally across the street that  
19 you were speaking of?

20 A Yes.

21 Q And stay there one quick second and we'll go ahead  
22 and do both maps while you're down off the stand. I've  
23 got to get it upside right or we'll be in trouble.

24 I'm showing you what's been marked as State's Exhibit  
25 No. 2. And I know you probably never looked at this house

1 from up in the air or flying over. So if you want to take  
2 a moment and look at the map --

3 A I've found it.

4 Q You've found it. All right.

5 A That's where I lived on Lake Jemiki Road.

6 Q And where does your landlord live?

7 A My landlord lived right here where the swimming pool  
8 is.

9 Q And where, to the best of your knowledge, did Randy  
10 Frady live?

11 A Right -- this backyard down the hill. The driveway  
12 turned off of 28.

13 Q We'll skip ahead just a little bit. If you could  
14 point out on this map where -- were you able to locate  
15 your van that night?

16 A Yes. I found my van.

17 Q And where did you locate your van?

18 A Right here on Cemetery Road.

19 Q Almost where the words are printed with the street  
20 name?

21 A Yeah.

22 Q And one other question. Is there a gas station of  
23 any kind anywhere near -- on this road, on Westminster  
24 Highway?

25 A There's Frazier's General Store.

1 Q And can you see that on this map? Are you able to  
2 identify that?

3 A Right there.

4 Q With the red roof as well?

5 A That's correct.

6 Q All right. Thank you.

7 You may retake the stand.

8 And we'll talk about all those things in detail, but  
9 I wanted to get everybody on the same page as we begin.

10 MS. HERVEY: The Court's indulgence one moment, Your  
11 Honor.

12 (Pause.)

13 BY MS. HERVEY:

14 Q And that house on -- where did you state your mom and  
15 dad's residence was at?

16 A [REDACTED]

17 Q And did you more or less grow up in that house?

18 A From the age of two.

19 Q And they still live there today?

20 A That's correct.

21 Q All right. And did the Fradys, to the best of your  
22 knowledge, live across the street from you more or less  
23 all your life?

24 A James Cleveland Frady, Sr., and his wife, whom we  
25 call Blacky, they lived in the brick house closest to my



1 parents. So I've known them all my life.

2 Q You've known Jim and Blacky all your life?

3 A Yeah.

4 Q And when you were little growing up, did you know  
5 Randy and Barry Frady?

6 A Yes. They would come up every summer from Florida  
7 when they were out for summer break. And they would stay  
8 roughly a month or so every summer.

9 Q The new kids to play with across the street?

10 A Yeah. I used to look forward to them coming every  
11 summer, yeah.

12 Q And, at some point, did Randy Frady start going to  
13 school here in Oconee County?

14 A Yes.

15 Q And when he did that, was he living with his  
16 grandfather, Jim, Sr.?

17 A Yes.

18 Q And during that time, did you develop a friendship  
19 with Randy?

20 A Absolutely, from the age of four.

21 Q And how often, just growing up, would you see each  
22 other when he was living up here?

23 A Every day.

24 Q And would you all go do things outside of school, and  
25 play in that area surrounding those houses, and that type

1 of thing?

2 A Every day, yes.

3 Q And were there ever occasions that Randy would move  
4 down to Florida and resume living with his family down  
5 there or near his family down there when they were living  
6 down there?

7 A Not while we were in school, no.

8 Q But once you grew up and started to become adults and  
9 start working, does that happen?

10 A It's hard to say over that period of years. If he  
11 did, it didn't -- it wasn't for very long.

12 Q All right. And when you say -- you said every day  
13 when you were kids you would pretty much see each other.  
14 But once you grew up and became adults and started working  
15 your own jobs and that kind of thing, did you have more  
16 sporadic contact with the Defendant?

17 A Yes. In later years, he moved back and forth a few  
18 times to and from Florida, but not necessarily living with  
19 his parents at the time. He was working a job and  
20 having -- paying his -- renting his own place. And then  
21 he would come back. But we stayed in constant contact  
22 even over the telephone.

23 Q All right. So even when he would go back to Florida,  
24 you would remain friends with him?

25 A Absolutely.

1 Q And would you say that you were closer to Randy or to  
2 Barry Frady?

3 A I would say I was closer to Randy. Because Barry  
4 never did live here until just a few years prior to 2004.

5 Q All right.

6 A And I didn't see Barry for quite a few years.

7 Q What is the age difference, if you know, between  
8 Randy and Barry? How many years separate them?

9 A Roughly about six years, five or six years.

10 Q And are they brothers or are they stepbrothers?

11 A To my knowledge, they are blood brothers.

12 Q All right. And I want to draw your -- were you  
13 ever -- did you ever come to know Randy and Barry's  
14 father, Jimmy?

15 A Yes, absolutely.

16 Q And would he similarly come up with the boys or for  
17 some portion thereof?

18 A They would come to bring the boys up from Florida.  
19 And they would -- they usually didn't stay very long when  
20 they would come to bring the boys. Their trip was usually  
21 a short one.

22 And then they would leave and they would come back.  
23 And sometimes they would come and pick them up and stay  
24 for just a few hours and turn around and go back to  
25 Florida. They've -- they never spent -- to my knowledge,

1       they never spent more than two days at a time when they  
2       came themselves.

3       Q     Did you ever know them to come back at Christmas, or  
4       holidays, or those type things on occasion?

5       A     Yes.

6       Q     So during -- as a result of your friendship with  
7       Randy Frady, would you say that you developed a  
8       relationship with Jimmy Frady, his daddy?

9       A     Oh, yes, early on.

10      Q     And being that -- so is it fair to say you're also  
11      older than Barry Frady as well?

12      A     That's correct.

13      Q     And do you know about how many years separate the two  
14      of you?

15      A     The same, five or six years. To give you an idea,  
16      Randy is six -- roughly six months older than me. He  
17      turns -- he'll turn 43 six months prior to me turning 43.

18      Q     So he's about a half year older than you?

19      A     That's correct.

20      Q     And I want to draw your attention to around the year  
21      2004 and then more, specifically, we'll talk about  
22      September 2004. During 2004, where are Barry and Jimmy  
23      Frady living that year? Have they returned from Florida?

24      A     Yes. Well, Jim moved here first. And, like I had  
25      said earlier, I hadn't seen Barry in quite a few years. I

1       would guesstimate 15 years since I had seen Barry. Jim  
2       came back to take care of his mother and father after he  
3       retired from Hydroconduit Corporation in Florida.

4             And sometime after he had moved here himself, Barry  
5       came to visit his dad and grandparents and that was our  
6       first meeting in, like I said, 15 years or so. And Barry  
7       briefly went back -- he met a girl here what short time he  
8       was here and he made a brief trip back to Florida and quit  
9       his job and moved here and moved in with his dad and  
10      started dating the girl that he had met. And he had been  
11      here ever since.

12      Q       So approximately how many years prior to September of  
13      2004 would you say Barry had been living there?

14      A       I want to say -- not knowing exactly, I want to say,  
15      at least, four or five years.

16      Q       And you said that Jim had moved back here. Are you  
17      talking about their father, who we referred to as "Jimmy"  
18      just to keep them straight?

19      A       Jimmy, yes.

20      Q       And when Jim moved back here after he retired, did he  
21      ever work here locally at anything for any steady period  
22      of time or was he, for the most part, retired?

23      A       He was absolutely retired.

24      Q       And did you ever know Barry to start working around  
25      here?

1       A     Yes. He did work at the Blue Herron in Clemson, a  
2       restaurant and pub. He was a culinary chef. And he  
3       worked at the Blue Herron. And there was one other  
4       restaurant that he worked at. I can't recall the name  
5       right offhand. But he didn't work at either one of those  
6       but just a brief time.

7       Q     And knowing Randy growing up and also knowing his  
8       father, just generally, how would you describe Randy's  
9       relationship with his father?

10      A     Not a good one.

11      Q     And, if you could, just why do you -- without going  
12      into specifics, but just explain that a little bit more.  
13      Why was it not a good relationship?

14      A     The way it appeared to me, Jimmy --

15           MR. ALLEN: Objection, Your Honor, unless he can show  
16      firsthand knowledge of this now.

17           THE COURT: I'll sustain that objection.

18           Rephrase your question so the witness understands the  
19      parameters from which he can testify in light of my  
20      ruling, Counsel.

21      BY MS. HERVEY:

22      Q     Not based on anything that anybody may have told you  
23      or Randy, but just what you were able to observe  
24      personally, from your own firsthand knowledge, of Randy's  
25      relationship with his father and things that you know

1 through that knowledge, are you able to explain in more  
2 detail why you would say they did not have a good  
3 relationship?

4 A They just didn't get along.

5 Q And would you ever see that lack of getting along, or  
6 any altercations, or words between them?

7 A Yes.

8 Q And when seeing both of them together, how often  
9 would you see that occur?

10 A More than it didn't.

11 Q And how would you describe, from your own firsthand  
12 knowledge, Randy's relationship with Barry?

13 A Off and on.

14 Q Like some brothers, they would have good periods and  
15 bad periods?

16 A Correct.

17 Q And back in 2004, how would you describe their  
18 relationship in the months preceding Barry and Jim's  
19 death?

20 A Not good.

21 Q And how -- when you say it was "not good," was it the  
22 same not good that it had always been or had it gotten  
23 worse or better?

24 A It was worse.

25 Q And in the summer -- or leading up into the summer of

1       2004, we've heard -- let's start here. In September of  
2       2004, to the best of your knowledge, where was Randy Frady  
3       living?

4       A     Repeat the year.

5       Q     I'm sorry. I don't mean to confuse you.

6       A     That's okay.

7       Q     September of 2004, when the murders occurred, where  
8       was Randy living at that time?

9       A     On [REDACTED] off of Highway 28, Highlands  
10      Highway.

11     Q     And did you all share the same landlord?

12     A     Yes, we did.

13     Q     And how did Randy come to start living at that  
14     trailer?

15     A     I was already living on [REDACTED] renting from  
16     Douglas Pay. And the mobile home on [REDACTED] became  
17     open. And, at the time, Randy was staying with -- renting  
18     a -- I almost said an apartment, renting a bedroom from  
19     some Mexicans further out Westminster Highway past his  
20     grandparents and where his father lived. He had been  
21     there for a couple of weeks and was needing somewhere to  
22     go.

23               So I talked to my landlord. And I helped my landlord  
24     and Randy helped, too, do a little painting inside the  
25     trailer. And Randy rented the trailer from my landlord.



1 Q And prior to that period -- for that two weeks he's  
2 just renting that bedroom, prior to that, where was he  
3 staying, to the best of your knowledge?

4 A He was staying with his grandparents.

5 Q So he was living next door at 2209 with Jim, Sr.?

6 A Correct.

7 Q And had he done that off and on throughout his life?

8 A That's correct.

9 Q And, at some point, during that summer of 2004, after  
10 Randy moves into the trailer, do you remain friends during  
11 that period up until the time that the murders are  
12 committed or do you two have some difficulties?

13 A We had some difficulty.

14 Q And at some period during that summer leading up to  
15 September, do you stop talking to him for any period of  
16 time or do you maintain contact?

17 A No. I had cut all ties completely.

18 Q And prior to that, though, when Randy was still  
19 friends with you, we've heard a lot of talk about you, do  
20 you have a van that you use in your locksmithing business?

21 A Yes, I do.

22 Q And let me show you just initially at this point  
23 State's Exhibit Nos. 6-B, 6-C, 6-D, and 6-E, and ask you  
24 if you recognize what's contained in those photographs?

25 A Yes, I do.

1 Q And what is the vehicle that's pictured in those  
2 photographs?

3 A That would be my 1991 Chevy Astro locksmith van.

4 Q I was looking for this one. It slid under a box.

5 Let me show you State's Exhibit No. 6-F, is that also  
6 your van?

7 A That is correct.

8 Q And was it a reliable van? Did it run well?

9 A Yes.

10 Q And did it have any particular peculiar problems with  
11 it?

12 A Yes, it did. It has a full cage in it for the  
13 purpose of work and keeping work tools from, in an  
14 accident, coming up into the cab with the driver or the  
15 passenger.

16 And the only way to obtain entry to the front section  
17 of the driving section of the van, you had to literally  
18 reach inside the hole where the handles used to be --  
19 because the handles broke off. And I never did replace  
20 them. So, therefore, I didn't really have to lock my  
21 doors because there's only three people that knew how to  
22 get it open.

23 Q And who are those three people?

24 A Myself, my son --

25 MR. ALLEN: Objection, Your Honor.

1 THE COURT: Counsel, approach.

2 (WHEREUPON, a bench conference was held.)

3 BY MS. HERVEY:

4 Q From your own personal knowledge, what three people  
5 had you ever been able to see -- because you said only  
6 three people, is that because you had only ever seen three  
7 people be able to get in your van?

8 A There has been other people attempt to open my van.

9 Q Including your wife?

10 A Absolutely. And there was only three people that I  
11 knew firsthand that knew how to get my van open.

12 Q And had you, actually, seen them be able to stick  
13 their finger down in there and operate that mechanism?

14 A Yes.

15 Q All right. My equipment appears to be working for  
16 now and I'm going to take advantage of it. Well, now it's  
17 not.

18 MS. HERVEY: Can we approach briefly?

19 (WHEREUPON, a bench conference was held.)

20 MS. HERVEY: I'll let him work on it. I'll ask some  
21 more questions.

22 THE COURT: Proceed.

23 BY MS. HERVEY:

24 Q And you stated that you had seen Mr. Frady operate  
25 and be able to get in and out of that door?

1 A Yes. I have on numerous occasions being the fact  
2 that he rode with me in my van a lot of times. Anybody  
3 else, other than my son, including my daughter and my  
4 wife, I had to open the passenger door for them to get in.  
5 Randy or my son, they could do it themselves.

6 Q And was it stuck way down in there? Was it something  
7 maybe that you required a little bit longer finger to  
8 operate and knowing how to do it?

9 A Well, on one side -- well, on my side, in particular,  
10 you had to pull the little thing out of the door and pull  
11 it down out kind of at an angle outside the hole. On the  
12 passenger side, you could stick your finger in and just  
13 push it down without pulling it out of the door.

14 Q Typical, the cobblers kids don't have shoes, a  
15 locksmith doesn't have a door?

16 A Yes.

17 Q Other than that, was it pretty much a running van if  
18 it had gas in it?

19 A Yes.

20 Q And I want to draw your attention to the events of  
21 September 22nd and September 23rd of 2004. Do you  
22 remember those days?

23 A Absolutely.

24 Q And on September 22nd, 2004, from that day back, if  
25 you can say, about how long had it been since you had had

1 any contact with Randy Frady?

2 A I would say there was about a two-month period there  
3 that I had not so much as even seen him, bumped into him  
4 at a store, had any conversation, phone or otherwise. For  
5 about two months, there was no contact whatsoever.

6 Q And also how long had it been since you had seen  
7 Jimmy or Barry Frady?

8 A I would say just a few days.

9 Q And why had you seen them more recently?

10 A Well, like I said, I had cut all ties with the  
11 Defendant. And I was still in contact with Jim and Barry.

12 Q And when you say "contact," had you gone over there  
13 or spoken to them on the phone?

14 A I had been over there, yes. I spoke with them on the  
15 phone numerous times.

16 Q And you stated that you had a falling out with Randy  
17 a few months prior to the murders. Was there any period  
18 where you had any bad relationships or altercations with  
19 Jimmy or Barry Frady?

20 A No, none whatsoever.

21 Q And was there ever a period of time in that summer  
22 preceding the murders where you had stopped going over to  
23 their house?

24 A It had slowed down a little, yeah. I had slowed down  
25 on going, but I had not stopped going.

1 Q And when you would go over there, you stated that  
2 your mother -- how often would you go see your mother  
3 across the street?

4 A Pretty much on a daily basis.

5 Q And is your father in good health?

6 A No. He's terminally ill with emphysema.

7 Q And would you go over there to check on him as well?

8 A That is correct, yes.

9 Q And when you would stop over there at Jimmy and  
10 Barry's house, would you stop in to see them or hang out  
11 with them for a while, or what was the purpose of going  
12 over there in the late summer of 2004?

13 A Just to hang out. They had a nice little shop built  
14 in the warehouse building that used to be where furniture  
15 was stored when they had a moving service. And they had a  
16 TV up there. We'd watch the Grand Prix races and have a  
17 cold beer, just be friends hanging out.

18 Q And did you ever similarly do that -- have that same  
19 type of casual friendship with Jim, Sr.?

20 A He was frequently around. James, Sr., did not drink,  
21 but he was there quiet regularly.

22 Q Let me ask you to turn around real quick. I'm  
23 showing you State's Exhibit No. 6-F. And I have no idea  
24 why it's green. Obviously, your van is not that green.

25 A No.

1 Q All right. I'm trying to zoom in on where -- this  
2 kind of dent in the door. What are we looking at there?  
3 Even though it's green and it's not really green.

4 A Well, there's supposed to be a black handle right  
5 above the door lock where you see the indentation.  
6 There's supposed to be a vertical black handle there.

7 Q And let me hand you this yardstick and ask you if you  
8 can point to it on your now green van.

9 A The handle should be right there.

10 Q And you stated there was a hole that you would stick  
11 your finger into. Where is that hole at?

12 A It's not visible here because of the angle of the  
13 indentation. But the hole is back on this side right  
14 there. And the door itself, because of the way the  
15 indentation is, it's got the hole -- you can't see it.

16 Q All right. You can take your seat back.

17 Thank you.

18 I apologize for jumping around.

19 You said that Mr. Jim wouldn't be over there as much  
20 because he didn't drink?

21 A Well, he loved to come up and get in on  
22 conversations. And he liked to tinker a lot. If it was  
23 broke, he would make a piece for it. He just loved  
24 hanging up there in the conversation with us.

25 So yes, he was quite frequently at the warehouse when

1 we would be just standing around piddling on stuff,  
2 watching Grand Prix races or what have you.

3 Q And you talked about Randy not having a good  
4 relationship with his father and an on and off again  
5 relationship with his brother. How would you describe  
6 Randy's relationship with his grandfather?

7 A Well, his grandfather would get a little keyed up  
8 about certain issues that would tear his nerves up. And  
9 he would have a little tantrum.

10 Q Would you say that he had a better relationship with  
11 his grandfather or a worse relationship than he did with  
12 his father?

13 A I'd -- better.

14 Q Much better?

15 A Much, much better, yes.

16 Q And you stated that throughout his life, on occasion,  
17 Randy would live with his grandfather?

18 A Yeah. They've -- they pretty much almost raised him  
19 from a teenager.

20 Q And how did Randy's father and Barry get along, from  
21 what you were able to observe, from your own firsthand  
22 knowledge?

23 A No conflict. They got along very well.

24 Q And did you ever know them to take trips together and  
25 do those kind of things?



1       A     Yeah. As a matter of fact, I went on a trip with  
2       them. They took me with them to Key West with them for  
3       five days. Yeah. They've traveled all over the world.  
4       They've been to Fiji, Sweden, Amsterdam. They've been all  
5       over the world, New Zealand.

6       Q     And this is just based on that they would tell you  
7       they were going on these things?

8       A     Oh, yeah. Well, they would bring me back souvenirs.  
9       I've got T-shirts. I did have a Zippo lighter from New  
10      Zealand. It was the friendship -- the Irish --

11           MR. ALLEN: Objection to relevance.

12           MS. HERVEY: It just goes as to his knowledge of  
13      their relationship, Your Honor.

14           THE COURT: Counsel, approach.

15           MS. HERVEY: I'll move on.

16           THE COURT: Withdrawn.

17           Proceed.

18           THE WITNESS: But anyway, yes, I knew firsthand.  
19      They'd talk about it before they would leave and they  
20      would be gone and they would come back --

21           MR. ALLEN: Objection to hearsay.

22           And, Your Honor --

23           THE COURT: Sustained.

24           Rephrase your question.

25           MS. HERVEY: That's fine.

1 BY MS. HERVEY:

2 Q Did you ever know Randy to go on these trips with  
3 them?

4 A When we went to Key West, Randy had called my house.  
5 He -- I'm thinking he was working at the time at Marathon  
6 Key, which is just up from Key West. And he found out  
7 that I was on a trip to Key West with his brother and his  
8 dad. And we just barely did get our room rented and  
9 walked back down on the street, and we came back in to  
10 take a break from the heat and Randy was already in Key  
11 West and had --

12 Q Did he stay with you during that vacation?

13 A Yeah.

14 Q And was that the only trip or were there others that  
15 you knew that he --

16 A He went to Mexico with his dad on a trip one time.

17 Q But the majority of the trips were between the father  
18 and Barry?

19 A Absolutely.

20 Q Let me draw your attention back to the night of  
21 September 22nd, 2004. Back in that period, that month,  
22 September 2004, where were you working? Were you just  
23 doing the locksmithing or did you do something else?

24 A No. I had closed the business. My dad got sick with  
25 emphysema. And I was trying to run a 36-year-old business

1 by myself. And I had to close it.

2 So I was doing a little locksmithing on the side for  
3 people that had known me for years as a locksmith and only  
4 wanted me to work on their locks. But for the most part,  
5 my paycheck was coming from Seminole Civil Construction in  
6 Toccoa, Georgia.

7 Q And would you go to Toccoa and work or would they  
8 send you out at job sites and other places?

9 A I had to report to the office in Toccoa and figure  
10 out what job site all the crew members were going to be  
11 assigned to. And then we would get in company vehicles  
12 and go to whatever construction site we were ordered to go  
13 to.

14 Q And do you remember working that day and driving home  
15 that night -- that day?

16 A Yes, I do.

17 Q And do you remember about approximately what time you  
18 would have gotten off that day or gotten home?

19 A Well, we were working in Seneca. I forgot what they  
20 call that, the new park we were working at, but it's right  
21 next to the Christian Academy School. They built a new  
22 Village there. It's kind of an office complex.

23 At the time, what we did was go in and dig drain  
24 ditches and stuff. We would cultivate the ground and get  
25 it ready to be paved and built on.

1 Q And what -- about what hours were you working around  
2 that time? Were you working pretty much 8:00 to 5:00 or  
3 7:00 to 6:00?

4 A Yeah. We got off that day, roughly, around 5:30, I  
5 would say. And then I had to go in the company vehicle  
6 back to Toccoa from Seneca to get my van. And then I had  
7 to drive myself back home within a couple of miles of  
8 where I was working.

9 Q And would that take you about an hour, hour and a  
10 half?

11 A I would say about an hour, give or take a few  
12 minutes.

13 Q And when you got home that day, was there anything in  
14 particular about your van that was working or not working,  
15 or were you having any problems?

16 A It was acting up a little bit because it was so low  
17 on gas. It spit and sputtered a few times when I would  
18 take off. Because it would push the gas, what little was  
19 in it, away from the pickup in the tank. And when I  
20 was --

21 Q Is there a reason why you didn't stop and get gas  
22 that night on the way home?

23 A I had run out of money. And I didn't have my  
24 paycheck yet.

25 Q And was your -- we've heard from your wife and that

1 she runs a beauty shop. When you got home that day, was  
2 she home when you got home?

3 A No. She had quite a few customers come in before she  
4 closed her doors. And as long as you make it in before  
5 she puts up her closed sign, she'll stay until she gets  
6 through. So she had to work over to get rid of her -- go  
7 through all the haircuts.

8 So I had -- when my van cut off and I coasted into my  
9 driveway, I immediately went in the house and took a  
10 shower and was waiting on her to get home with the car so  
11 I could go get some gas for my van.

12 Q And do you remember when you got home that day, was  
13 either your son or your daughter there, if you recall?

14 A No.

15 Q Did anybody else come over that day?

16 A Yes, they did. I had just gotten out of the shower  
17 and a couple of friends walked up from the trailer park at  
18 the end of [REDACTED]. And I was sitting out on the  
19 back porch swing having a cold beer while I was waiting on  
20 my wife to come with the car.

21 Q And did you discuss with them that you had run out of  
22 gas and that that was what you were doing?

23 A Yeah. We were kind of laughing about the fact that I  
24 had ran out of gas and I was waiting on my wife to get  
25 home before I could go do anything about it.

1 Q And do you recall approximately what time she got  
2 home?

3 A I would say somewhere in the neighborhood of 7:30,  
4 8:00, somewhere right along there.

5 Q It was some period of time after you got home, but  
6 not hours?

7 A Right. I had had time after I got home to get a  
8 shower and speak with my friends, roughly, about ten  
9 minutes before she pulled in the yard.

10 Q And when she got home, did you immediately leave to  
11 go get gas or did you wait for a while?

12 A No. I sat around with my friends for a little bit  
13 longer on the porch and discussed my wife's day at work  
14 and my -- how my day went and the fact that I ran out of  
15 gas and was going to have to take my lawn mower can,  
16 just -- I didn't get in no real big rush. I had until the  
17 next morning to make sure I had gas.

18 Q And, at some point, do you leave to go get gas?

19 A Yes, I did.

20 Q And were you going anywhere else when you left that  
21 night?

22 A I was going to the grocery store. But before I did  
23 all that, I went by a friend's house for a little while.

24 Q And who is your friend?

25 A Ed Towe.

1 Q And did you hang out with him for a while?

2 A Yes, I did.

3 Q And then, at some point, did you leave his house?

4 A Yes.

5 Q And did you --

6 A I went to the grocery store. And I had my plastic  
7 five-gallon lawn mower gas can. And I went and got some  
8 gas to pour in my van.

9 Q This whole trip that you're doing that, are you in  
10 your wife's car or in your van?

11 A In my wife's car.

12 Q And you pointed out Frazier's store on that map.  
13 That late at night, was Frazier's store still open?

14 A No, it was not. As a matter of fact, he was already  
15 closed, if I'm not mistaken, before I even made it home  
16 from work.

17 Q All right. And when you -- so you go to get gas, not  
18 right there, but at some other location?

19 A I got the gas at Circle K on Main Street.

20 Q And do you recall approximately what time you got  
21 home that night?

22 A I got home somewhere between 11:30 and 11:45.

23 Q And when you get home, is there anything unusual  
24 about your house that draws your attention immediately?

25 A Absolutely. My van was not in the yard where I

1       parked it.

2       Q     And did you think for any reason that -- do you go in  
3       and discuss that with your wife?

4       A     Well, my first thought was -- well, I wondered how  
5       she would have got in it any way because she's never been  
6       able to open my doors. But my first thought was that  
7       she's evidently needed to go somewhere before I got back.  
8       And I ran in the house to see if she was there or if she  
9       had, in fact, took my van and tried to go somewhere in my  
10      van.

11      Q     And was your wife there?

12      A     She was in the house.

13      Q     And did she know the whereabouts of your van?

14      A     No, she did not. She asked me --

15      Q     And without going into what she said or anything --

16      A     Right.

17      Q     But do you all begin to discuss where your van might  
18      be?

19      A     Yeah. I asked her where was my van when I saw she  
20      was at home and she had not, in fact, tried to go anywhere  
21      in it.

22      Q     And then as a result of that conversation with your  
23      wife, do you make any decisions on whether or not to  
24      contact law enforcement?

25      A     I left pretty much immediately and drove straight to



1 the nearest store that had a pay phone. Because at the  
2 time, we didn't have a cell phone and we didn't have a  
3 home phone.

4 Q And what store did you go to?

5 A I went to Little General right beside the new car  
6 wash on Main Street.

7 Q And did you call 911?

8 A Yes, I did. And I explained to them that my van had  
9 been stolen from [REDACTED] and to, please,  
10 send out an officer immediately.

11 Q And on the way back to your house, do you  
12 subsequently locate your van?

13 A Yes, I did. I was going by Cemetery Road and  
14 directly across from Rocky Knoll Church, for whatever  
15 reason, I glanced over. And my van is sitting parked  
16 facing Highway 28, parked on the wrong side of the road.  
17 It was parked on the -- if I would have made a left off of  
18 28, the van was facing me parked on the right closest to  
19 the cemetery with the driver's door standing open.

20 Q And was there anything else, other than the door  
21 being open, unusual about the condition of your van and  
22 the surrounding area?

23 A Well, when I noticed that my van was there -- the  
24 officer was already at my house by the time I could get  
25 off the phone.

1 Q Right. When you first find your van, is there  
2 anything about the surrounding area, other than the door  
3 being open, that's unusual about the condition of your  
4 van? Is there anything right there around it?

5 A There was a red gas can sitting on the ground just  
6 under the stoop -- the step going -- getting up into the  
7 driver's side. There were -- there was a spot of grass  
8 beside the gas can about the size of a half dollar that  
9 was burning, that was on fire.

10 And the driver's -- the glove box was open. The  
11 driver's seat had been sliced all to pieces with a knife  
12 and -- to expose the foam rubber in the seat so that it  
13 would soak up the gas from the can that was poured in the  
14 seat.

15 Q And you say to "soak" that up, could you smell  
16 gasoline inside the van?

17 A Oh, absolutely. The whole inside of my van in the  
18 front compartment reeked of gas.

19 Q And the fire, the small fire that you said was near  
20 the gas can, what did you do with that?

21 A I immediately put my foot on it and put it out.

22 Q So you were able to just stomp it out?

23 A Yeah. It was just, like I said, about a half dollar  
24 size flame.

25 Q And do you stay there with your van or do you go back

1 to your house?

2 A Well, my first thought was that no more grass than  
3 was on fire, whoever had taken my van had to still be  
4 close by because --

5 Q Right. Do you go back to the house?

6 A I jumped in my car and I pulled up into the cemetery.

7 Q Why do you pull up in the cemetery?

8 A To shine my lights around to see if I seen any  
9 movement --

10 Q And --

11 A -- because I did see where the bank was tore up where  
12 whoever had parked my van there went up a muddy bank right  
13 beside the concrete steps.

14 Q And did you see anybody?

15 A I saw nothing at that time. And then I pulled to my  
16 house. I pulled into my driveway blowing my horn, waving  
17 my hands, and flashing my lights at the deputy who was  
18 talking to my wife at the time. And I put my car in  
19 reverse and took off back toward my van and the patrolman  
20 followed me.

21 Q And do you then go back to where your van was  
22 located?

23 A Yes.

24 Q And the gas can that was on the ground, is that a gas  
25 can that you owned or recognized?

1 A No.

2 Q And was it a newer gas can or older gas can?

3 A It was an old gas can, but it was in extremely good  
4 shape for its age.

5 Q But that was nothing you had ever seen before of that  
6 kind?

7 A No.

8 Q You had never owned a gas can like that?

9 A No.

10 Q And was it something you had seen recently in a store  
11 to buy or anything like that?

12 A I had seen some similar to it. But, no, this -- the  
13 gas can was a very old gas can. And it was a metal gas  
14 can. And the only gas cans I've ever owned were the  
15 plastic containers.

16 Q All right. And subsequent to you going back there  
17 with the officer, do you take the gas can home with you or  
18 do the officers take that?

19 A They sat it in my van. And I drove to my house and  
20 they -- to release my van to me, I drove my van to my  
21 house. The officer followed me and opened -- he got the  
22 door open, the sliding door where the gas can had been  
23 set. And he got it and put it along with a glove, like a  
24 Spandex-type, mechanic-type glove that we found. Just as  
25 you crest the hill from my van into the cemetery, there

1 was a black glove laying there in the path of the  
2 direction they went up the bank.

3 Q All right. And so he took those items, but returned  
4 the van back to you?

5 A That's correct, yes.

6 Q And, at that time, do you have any knowledge about  
7 anything going on over on Westminster Highway?

8 A No.

9 Q You just -- the van is returned to you in that  
10 condition?

11 A Right. I didn't -- I found out what had happened on  
12 Westminster Highway when I went -- was on my way to my  
13 mother and father's house that next morning.

14 Q And that night, do you ever see the Defendant out  
15 anywhere?

16 A No.

17 Q You just go back to your house and the officers tell  
18 you somebody will be in contact with you the next day or  
19 something to that effect?

20 A Well, I had them to go and look at a particular  
21 person's shoes for mud.

22 Q You told them the other two individuals you  
23 believed --

24 A Who I believed had taken my van, yes.

25 Q And do you know where your son was that night?

1 A No, I do not.

2 Q Did you ever have any -- come to any knowledge that  
3 he in any way borrowed your van that night?

4 A Absolutely not.

5 MS. HERVEY: The Court's indulgence one moment, Your  
6 Honor.

7 (Pause.)

8 MS. HERVEY: Nothing further from this witness at  
9 this time, Your Honor.

10 THE COURT: Cross-examination?

11 MR. ALLEN: May it please the Court?

12 THE COURT: Yes, sir.

13 CROSS-EXAMINATION

14 BY MR. ALLEN:

15 Q Mr. Harper, now, you've talked about some  
16 relationships in your testimony. And I'm not really  
17 necessarily interested in 10, 15, or 20 years ago. But  
18 isn't it true that at the time in question that you had a  
19 strained relationship with James and Barry Frady? Isn't  
20 that true?

21 A Yes.

22 Q And, in fact, it was such a strained relationship  
23 between you, James Frady, and Barry Frady that you came to  
24 the understanding prior to September the 22nd that you  
25 were not to be on their property; isn't that true?

1 A That's correct.

2 Q It was so strained that you weren't even to go over  
3 there?

4 A I was asked not to for a period of time, yes.

5 Q And the night in question, you were drinking alcohol,  
6 were you not?

7 A I had had a few beers, yes.

8 Q You drank a lot of beer that night, didn't you?

9 A No. I wouldn't say I drank a lot.

10 Q What kind of beer were you drinking?

11 A I was drinking Budweiser.

12 Q Budweiser in a can or bottle?

13 A Can.

14 Q What size --

15 MS. HERVEY: Your Honor, I'm going to object to the  
16 relevance. He stated --

17 THE COURT: Just a moment.

18 Counsel, approach.

19 (WHEREUPON, a bench conference was held.)

20 THE COURT: Objection sustained.

21 BY MR. ALLEN:

22 Q So you were drinking beer; is that right?

23 A Yes, sir. I had had a few beers.

24 Q We're -- are we talking about four, five, six,  
25 twelve? What are you --

1 A I'd say probably four or five. Less than a six-pack.

2 Q In a short period of time there, too, as I  
3 understand?

4 A I'd say within probably a four-hour period.

5 Q A four-hour period?

6 A Yeah.

7 Q So you drank after you left your home?

8 A I had a couple of beers on my back porch waiting on  
9 my wife on the night in question. And after I left my  
10 home, yes, I had a couple more beers before I came back  
11 home.

12 Q And your van, as you've testified, was out of gas?

13 A That is correct.

14 Q Okay. And that van sputtered into the driveway and  
15 you realized it was out of gas?

16 A Yeah.

17 Q And it would not operate until someone put gas in it  
18 at some later time?

19 A Well, I'm sure they might have been able to crank it  
20 and get it a short distance from my house.

21 Q Well, you don't really know that, do you?

22 A Yeah. Because I've run out of --

23 MS. HERVEY: Your Honor, I'm going to object.

24 THE WITNESS: -- gas in that van several times --

25 THE COURT: Just a moment.



1 MS. HERVEY: He asked him his opinion and then tells  
2 him he doesn't have an opinion. He's stuck with his  
3 opinion or -- but he asked him, Do you think anybody would  
4 be able --

5 THE COURT: Let me hear the question, Counsel, so I  
6 can start to hear the response.

7 Rephrase the question, Counsel.

8 MR. ALLEN: Okay.

9 BY MR. ALLEN:

10 Q I had asked you if the van was out of gas?

11 A Yes.

12 Q And, therefore, someone would have had to put gas in  
13 it at a later time to operate it?

14 A To get very far, yes.

15 Q All right. And then the next day, you didn't go to  
16 work, did you?

17 A No, I did not.

18 Q Okay. And you were supposed to go to work the next  
19 day; isn't that right?

20 A I'm not aware of exactly what day of the week the  
21 22nd and the 23rd had fell on.

22 Q Okay. Well, let's think about it a little bit. The  
23 22nd of September of 2004, I understand, was a Wednesday.  
24 So you were supposed to go to work the following Thursday  
25 morning; isn't that true?

1 A That would be true, yes, sir.

2 Q And you didn't do that, did you?

3 A No, I did not.

4 Q And, in fact, by 10:00 or 11:00 the next morning, you  
5 were taking some kind of nerve pills, weren't you?

6 A (There was no response.)

7 Q Isn't that true?

8 A Taking nerve pills?

9 Q Yeah. Taking Valium.

10 A Yeah. I had taken a five milligram Valium --

11 Q You had --

12 A Yes, I did.

13 Q Excuse me for talking over you.

14 You took that after you didn't go to work the next  
15 morning, you took a Valium?

16 A I took that after I had come upon the circumstances  
17 across the road from my parents house. Because I had just  
18 found out that two close friends of mine were deceased.

19 Q Okay. But you admit you took Valium?

20 A I did take one five milligram Valium, yes, I did. My  
21 mother gave it to me.

22 Q And your claim is that when you left your house on  
23 the evening in question that you went to these other  
24 places, you went to Circle K, maybe, was that one place  
25 you claim you went?

1 A That's one place I went, yeah.

2 Q And you went to the grocery store maybe?

3 A I did, yes.

4 Q Okay. And some other friend's place?

5 A I went by to see a friend of mine, Ed Towe.

6 Q To your knowledge, would either of those people  
7 testify that you --

8 MS. HERVEY: Your Honor --

9 THE COURT: Sustained.

10 BY MR. ALLEN:

11 Q Otherwise, can you account for your whereabouts from  
12 9:00 to 11:35? You can't, can you?

13 MS. HERVEY: Your Honor, I'm going to object. He's  
14 just accounted for his whereabouts.

15 If Mr. Allen would like to point out a gap in there,  
16 that's one thing. But casting that excursion on it is  
17 improper and without a factual foundation.

18 THE COURT: Overruled.

19 I'll allow him to answer that question.

20 THE WITNESS: Could you ask the question again,  
21 please?

22 THE COURT: Rephrase your question, Counsel.

23 BY MR. ALLEN:

24 Q Well, the question was, you can't account for your  
25 whereabouts from 9:00 until 11:41 p.m.?